



State Medical Board of Ohio

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

April 14, 2004

Brian McNamee, M.D.
19981 Emerald View
Fairview Park, OH 44126

Dear Doctor McNamee:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 14, 2004, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal must be taken to the Franklin County Court of Common Pleas.

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

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 7000 0600 0024 5150 1733
RETURN RECEIPT REQUESTED

Cc: Kevin M. O'Connor, Esq.
CERTIFIED MAIL NO. 7000 0600 0024 5150 1726
RETURN RECEIPT REQUESTED

*Second Mailing 8/30/04
Mailed 5/4/04*

In the Matter of Brian McNamee, M.D.
Page 2

Second mailing: CERTIFIED MAIL NO. 7000 0600 0024 5149 9580
RETURN RECEIPT REQUESTED

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 14, 2004, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and Brian McNamee, M.D., 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)

April 14, 2004

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

BRIAN MCNAMEE, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on April 14, 2004.

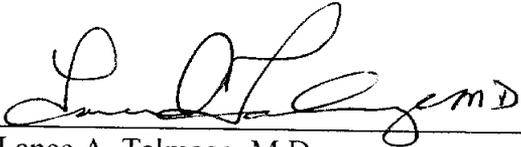
Upon the Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the modification, approval and confirmation by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

It is hereby ORDERED that:

The certificate of Brian McNamee, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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

(SEAL)



Lance A. Talmage, M.D.
Secretary

April 14, 2004

Date

2004 MAR 17 A 9:01

**REPORT AND RECOMMENDATION
IN THE MATTER OF BRIAN MCNAMEE, M.D.**

The Matter of Brian McNamee, M.D., was heard by Sharon W. Murphy, Esq., Hearing Examiner for the State Medical Board of Ohio, on October 14 and November 4, 2003.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated February 12, 2003, the State Medical Board of Ohio [Board] notified Brian McNamee, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board's proposed action arose from allegations pertaining to Dr. McNamee's history of impairment and his violation of a Consent Agreement with the Board. The Board alleged that Dr. McNamee's conduct constitutes a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,' as that clause is used in Section 4731.22(B)(15), Ohio Revised Code, [and] '[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,' as that clause is used in Section 4731.22(B)(26), Ohio Revised Code." Accordingly, the Board advised Dr. McNamee of his right to request a hearing in this matter. (State's Exhibit 1A)
- B. On March 7, 2003, Kevin M. O'Connor, Esq., submitted a written hearing request on behalf of Dr. McNamee. (State's Exhibit 1B)

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Kyle C. Wilcox, Assistant Attorney General.
- B. On behalf of the Respondent: Kevin M. O'Connor, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

- A. Presented by the State

Brian McNamee, M.D., as if on cross-examination

B. Presented by the Respondent

1. Brian McNamee, M.D.
2. Mary Ann Dixon
3. John E. Doyle III, M.D.
4. Gintautas Sabataitis, Ph.D.

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A-1Q: Procedural exhibits.
2. State's Exhibit 2: Certified copies of previous Consent Agreements between Dr. McNamee and the Board.
- * 3. State's Exhibits 3-7: Copies of documents pertaining to Dr. McNamee maintained by Glenbeigh Hospital and Outpatient Centers in Rock Creek, Ohio.
4. State's Exhibit 8: April 29, 2003, Affidavit of Dr. McNamee.

B. Presented by the Respondent

- * 1. Respondent's Exhibit 1: Copies of logs and other documents pertaining to Dr. McNamee's AA meeting attendance.
- * 2. Respondent's Exhibit 2: Copy of an October 3, 2003, report regarding Dr. McNamee written by Gintautas Z. Sabataitis, Ph.D.
3. Respondent's Exhibit 3: Copy of an October 6, 2003, letter to Dr. Doyle from Razia Ahmed, M.D.
- * 4. Respondent's Exhibit 4: Copy of an October 2, 2003, letter to John E. Doyle III, M.D., from Jim McNamee.
5. Respondent's Exhibit 5: Copy of an undated letter to Dr. Doyle from Neil P. Smith, D.O.
6. Respondent's Exhibits 6-8: Copies of letters from Kevin M. O'Connor, Esq., to the Board.

- * 7. Respondent's Exhibits 9, 9A, 9B: Copies of documents pertaining to Dr. McNamee maintained by Talbott Recovery Campus in Atlanta, Georgia.

(Note: Exhibits marked with an asterisk are sealed to protect patient and other confidentiality. Moreover, the pages of some exhibits were numbered by the Hearing Examiner, post-hearing.)

PROCEDURAL MATTERS

The hearing record in this matter was held open to allow the Respondent to submit additional exhibits. Nevertheless, the Respondent did not submit the exhibits, and the hearing record closed on February 28, 2004. (See Hearing Transcript at 154-155)

SUMMARY OF THE EVIDENCE

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

1. Brian McNamee, M.D., testified that he had received his medical degree in 1971 from St. Louis University in St. Louis, Missouri. Thereafter, Dr. McNamee trained at The Cleveland Clinic Foundation [Cleveland Clinic] in Cleveland, Ohio. Dr. McNamee completed one year of general medicine, and three years of a radiology residency program. (Hearing Transcript at [Tr.] 14-15)

After completing his residency, Dr. McNamee worked as a radiologist at St. John Hospital in Cleveland. In 1981 or 1982, Dr. McNamee became the Chairman of the Department of Radiology at St. John West Shore Hospital. Dr. McNamee also attended law school and graduated magna cum laude in 1988 from Cleveland State University. In 1989 or 1990, Dr. McNamee decided to move to a smaller hospital in Southern Ohio, and remained there for a few years. In 1990 or 1991, he returned to Cleveland and worked as a radiologist for a large physician group. In approximately 1997, Dr. McNamee purchased an imaging center that offered radiology services; Dr. McNamee later added C.T. and P.E.T. scanning, MRI, and ultrasound. (Tr. 15-18)

2. Dr. McNamee testified that, in approximately 2000, he had experienced an acute episode of lightheadedness, dizziness, photophobia, and intense anxiety. He went to the Cleveland Clinic, and was diagnosed with major depression, generalized anxiety, and atypical panic attacks. Dr. McNamee testified that the panic attacks were atypical because they continued for long periods of time. Dr. McNamee testified that he had been prescribed Remeron and Klonopin, but that the medications had been only marginally effective. (Tr. 18-19)

Dr. McNamee testified that, prior to this time, he had been a social drinker. Nevertheless, he soon realized that alcohol seemed to reduce the anxiety and depression. Over the next several months, he increased his alcohol consumption from one glass to four glasses of wine each evening. Even so, his depression increased during that time. (Tr. 19-20)

Dr. McNamee further testified that his family had been aware of his situation. They were very concerned about his anxiety, depression, and increasing alcohol consumption. In approximately February 2001, his family intervened. Dr. McNamee acquiesced, and went voluntarily to the Cleveland Clinic for a three-day evaluation, after which it was recommended that he obtain treatment. Dr. McNamee stated that he entered Glenbeigh Hospital and Outpatient Centers [Glenbeigh] in Rock Creek, Ohio, and remained there for fourteen days. Dr. McNamee testified that Glenbeigh specializes in the treatment of alcohol addiction and other addictions. (Tr. 20-21)

Dr. McNamee testified that, after leaving Glenbeigh, he had continued to suffer from depression and anxiety. Moreover, he had not yet appreciated the significance of his alcohol dependency, and he was not participating in a recovery program. Dr. McNamee added that, on occasions when he had felt “emotionally devastated,” he had hired a radiologist to cover for him. (Tr. 25-28)

Dr. McNamee testified that, at some point thereafter, someone had written an anonymous letter to the Board stating that Dr. McNamee was impaired. Dr. McNamee testified that an investigator from the Board had come to his office and told him that he would be required to obtain a three-day evaluation at Shepherd Hill Hospital in Newark, Ohio. (Tr. 24-25, 28-29)

Dr. McNamee testified that he had obtained the three-day evaluation, and that it had been recommended that he participate in a twenty-eight day inpatient treatment program. Dr. McNamee testified that he had voluntarily admitted himself to Glenbeigh and that he had completed that program. (Tr. 29)

3. On April 10, 2002, Dr. McNamee entered into a Step I Consent Agreement [April 2002 Step I Consent Agreement] with Board in lieu of formal proceedings based upon Dr. McNamee’s violation of Sections 4731.22(B)(19) and (B)(26), Ohio Revised Code. (State’s Exhibit [St. Ex.] 2 at 27-34) In the April 2002 Step I Consent Agreement, Dr. McNamee made certain admissions, including the following:
 - a. On or about February 27, 2001, Dr. McNamee had been admitted to the psychiatric service at the Cleveland Clinic, with principle diagnoses of alcohol dependence and polysubstance abuse. His secondary diagnoses were mood disorder and anxiety disorder secondary to substance dependence versus primary mood disorder.

- b. The treatment team at the Cleveland Clinic recommended that Dr. McNamee enter a minimum twenty-eight day residential program for treatment for chemical dependence.
- c. Dr. McNamee entered treatment at Glenbeigh, a Board-approved treatment provider. Nevertheless, Dr. McNamee did not complete the recommended residential treatment at that time.
- d. On February 11, 2002, Dr. McNamee submitted to a three-day inpatient examination at Shepherd Hill Hospital, a Board-approved treatment provider in Newark, Ohio. The examination had been ordered by the Board for purposes of determining whether Dr. McNamee was in violation of Sections 4731.22(B)(19) and/or (B)(26), Ohio Revised Code.
- e. The evaluating physician at Shepherd Hill Hospital diagnosed Dr. McNamee with chemical dependence and major depressive disorder. Moreover, the evaluating physician opined that Dr. McNamee was then impaired by these disorders and that he was not able to practice according to acceptable standards. Finally, the evaluating physician recommended that Dr. McNamee enter into residential treatment for both chemical dependence and major depressive disorder.
- f. On or about February 18, 2002, Dr. McNamee entered residential treatment for chemical dependence and major depressive disorder at Glenbeigh.

(St. Ex. 2 at 28)

In the April 2002 Step I Consent Agreement, Dr. McNamee agreed that his certificate to practice medicine and surgery in Ohio would be suspended for an indefinite period of time, but not less than ninety days. He further agreed to certain specified terms, conditions, and limitations, including that he “shall abstain completely from the use of alcohol,” as set forth in Paragraph 3 of that agreement. (St. Ex. 2 at 28-29)

- 4. Dr. McNamee testified that, upon leaving Glenbeigh in March 2002, he had fully intended to stop drinking alcohol. Nevertheless, Dr. McNamee opined that he had not yet realized that his alcoholism was a disease entity separate and apart from his psychiatric problems. Moreover, upon discharge from Glenbeigh, his depression and anxiety continued to overwhelm him. He stated that he had been seeing a psychiatrist at that time and was trying different medications to treat his psychiatric disorders, but that his symptoms remained unmanageable. (Tr. 29-30, 32)

Dr. McNamee testified that, after his discharge from Glenbeigh, he had returned to his home where he lived alone. He stated that he had hired someone to work for him, and had sat in his living room “all day long and wait[ed] for the clock to move.” After a time,

Dr. McNamee was unable to resist the relief that alcohol provided and he started drinking again. Dr. McNamee had maintained sobriety for only a few weeks. (Tr. 31-32)

5. By letter dated April 22, 2002, Kevin M. O'Connor, Esq., Dr. McNamee's attorney, advised the Board that Dr. McNamee had suffered a relapse and had tested positive for alcohol. Mr. O'Connor further advised the Board that Dr. McNamee had arranged for an evaluation at Glenbeigh the following morning. (St. Ex. 6)
6. Dr. McNamee testified that he had voluntarily readmitted himself to Glenbeigh on April 23, 2002. Nevertheless, Dr. McNamee left Glenbeigh on May 4, 2002, and relapsed shortly thereafter. (Tr. 34-35, 38)
7. By letter dated May 7, 2002, Mr. O'Connor advised the Board that Dr. McNamee had suffered another relapse and had tested positive for alcohol. Mr. O'Connor further advised that Dr. McNamee had been admitted voluntarily to the psychiatric unit at the Cleveland Clinic for treatment of his anxiety disorder. (St. Ex. 7)
8. Dr. McNamee testified that he had voluntarily readmitted himself to Glenbeigh in mid-May 2002, and remained for twenty-eight days. (Tr. 38)
9. In approximately May 2002, Dr. McNamee underwent electroshock therapy on four occasions for treatment of his depression. Dr. McNamee explained, however, that the therapy had been unsuccessful. (Tr. 47; St. Ex. 9 at 12)
10. On June 12, 2002, Dr. McNamee entered into a Step I Consent Agreement [June 2002 Step I Consent Agreement] with the Board in lieu of formal proceedings based upon his violation of Sections 4731.22(B)(15), (B)(19), and (B)(26), Ohio Revised Code. (St. Ex. 2 at 18-26) In the June 2002 Step I Consent Agreement, Dr. McNamee made certain admissions, including the following:
 - a. Dr. McNamee had completed treatment at Glenbeigh and was discharged on March 21, 2002.
 - b. On or about April 22, 2002, through his attorney, Dr. McNamee reported to the Board that he had suffered a relapse and tested positive for alcohol on or about April 14, 2002.
 - c. On or about April 23, 2002, Dr. McNamee entered residential treatment for chemical dependence at Glenbeigh.
 - d. On or about May 4, 2002, Dr. McNamee left treatment at Glenbeigh against medical advice.
 - e. After leaving Glenbeigh on May 4, 2002, Dr. McNamee relapsed on alcohol.

- f. On or about May 7, 2002, through his attorney, Dr. McNamee reported to the Board that he had suffered another relapse and, on or about May 5, 2002, he had tested positive for alcohol.
- g. In addition to informing the Board of his relapse, Dr. McNamee also informed the Board that he had been admitted voluntarily to the psychiatric unit at the Cleveland Clinic for treatment of his anxiety disorder.
- h. Dr. McNamee's use of alcohol in April 2002 and May 2002 was in violation of Paragraph 3 of his April 2002 Step I Consent Agreement, which required that he "abstain completely from the use of alcohol."

(St. Ex. 2 at 19-20)

In the June 2002 Step I Consent Agreement, Dr. McNamee also agreed to certain specified terms, conditions, and limitations, including the termination of the indefinite suspension of his certificate to practice medicine and surgery in Ohio which had been imposed pursuant to the April 2002 Step I Consent Agreement. Moreover, he agreed that his certificate was permanently revoked; that the permanent revocation was stayed; and that his certificate was suspended for an indefinite period of time, but not less than one year from the effective date of the June 2002 Step I Consent Agreement. Dr. McNamee further agreed that he "shall abstain completely from the use of alcohol," as set forth in Paragraph 3 of that agreement. (St. Ex. 2 at 20-21)

- 11. Dr. McNamee testified that, after leaving Glenbeigh in mid-June 2002, he had returned to his home. He added that,

[I] tried to keep myself together, you know. I was not working. I would just—I just completely withdrew into myself. I was too sick emotionally to go out and see people. * * * I was so sick. I couldn't do anything. I couldn't answer the phone. I was just in hell.

(Tr. 39-40)

- 12. In a July 1, 2002, letter to the Board, Mr. O'Connor set forth written confirmation of a June 27, 2002, telephone conversation between Mr. O'Connor and Marcie P. Burrow, Enforcement Attorney for the Board. Mr. O'Connor noted that, in the June 27, 2002, conversation, he had advised the Board that Dr. McNamee had suffered a relapse of alcohol use and that, voluntarily, he had been admitted to Glenbeigh on June 25, 2002. (St. Ex. 8) Dr. McNamee remained at Glenbeigh for seven days. (Tr. 41)
- 13. On July 10, 2002, the Board issued to Dr. McNamee a Notice of Opportunity for Hearing [July 2002 Notice] alleging that Dr. McNamee was impaired and that he had violated the

conditions of limitation placed on his certificate by the June 2002 Step I Consent Agreement. More specifically, the Board alleged that Dr. McNamee had failed to abstain completely from the use of alcohol. (St. Ex. 2 at 14-17)

14. Dr. McNamee returned to Glenbeigh on August 16, 2002. He remained for thirteen days, and left on August 28, 2002. Thereafter, Dr. McNamee actively participated in an aftercare program and in Glenbeigh's outpatient program. (Tr. 38, 44-45)
15. On November 29, 2002, Dr. McNamee entered into a Step I Consent Agreement [November 2002 Step I Consent Agreement] with the Board in lieu of formal proceedings based upon the allegations set forth in the July 2002 Notice. In the November 2002 Step I Consent Agreement, Dr. McNamee admitted to the factual and legal allegations set forth in the July 2002 Notice, including the factual allegation that, on or about June 26, 2002, Dr. McNamee reported to the Board that he had relapsed on alcohol. (St. Ex. 2 at 6-13)

Thereafter, Glenbeigh issued Progress Reports regarding Dr. McNamee. The reports consistently stated that Dr. McNamee was "making slow progress in treatment." The reasons for his slow recovery included that Dr. McNamee had "difficulty accepting guidance from the recovering community," and Dr. McNamee tended "to rely on his self-will to keep him abstinent—resists change." (St. Ex. 7)

In the November 2002 Step I Consent Agreement, Dr. McNamee agreed to certain specified terms, conditions, and limitations, including the following:

1. The indefinite suspension of his certificate to practice medicine and surgery in the State of Ohio stemming from the June 2002 Step I Consent Agreement was terminated.
2. Dr. McNamee's certificate to practice medicine and surgery in the State of Ohio was permanently revoked;
3. The permanent revocation was stayed; and
4. Dr. McNamee's certificate was suspended for an indefinite period of time, but not less than three years from the effective date of the November 2002 Step I Consent Agreement.

(St. Ex. 2 at 7)

Paragraph 3 of Dr. McNamee's November 2002 Step I Consent Agreement states that Dr. McNamee "shall abstain completely from the use of alcohol." (St. Ex. 2 at 7)

16. Dr. McNamee testified that he had continued to participate in the outpatient and aftercare programs. He also attended Alcoholics Anonymous [AA] meetings, and submitted to urine

and breathalyzer testing. He stated that, despite all of this, he had not been feeling any better. He stated that he had been so focused on his mood disorders that he had still not grasped the seriousness of his alcohol dependency. He stated that he had felt so bad that he could not help but medicate himself with alcohol. Dr. McNamee relapsed again. (Tr. 44-47)

On January 27, 2003, Dr. McNamee went to Glenbeigh for an aftercare meeting. Dr. McNamee was readmitted to Glenbeigh and remained there for approximately one week. Staff at Glenbeigh reported to Board staff that Dr. McNamee had relapsed on alcohol. (Tr. 47)

When Dr. McNamee entered Glenbeigh on January 27, 2003, his Axis I diagnoses included alcohol dependence and withdrawal; benzodiazepine dependence and withdrawal; depressive disorder, not otherwise specified; and possible bipolar disorder, not otherwise specified. While he was there, it was recommended that he obtain more extensive treatment at Talbott Recovery Campus [Talbott] in Atlanta, Georgia. (Tr. 41; St. Exs. 3, 4, 5)

He was discharged from Glenbeigh on February 7, 2003, after completion of detoxification. From Glenbeigh, Dr. McNamee went to a three month specialized physicians' treatment program at Talbott for continued psychiatric treatment and medication evaluation. (St. Exs. 3, 4, 5)

17. On February 12, 2003, the Board issued a notice of opportunity for hearing to Dr. McNamee citing his continued impairment and the violation of his Consent Agreement. (St. Ex. 1A).
18. Dr. McNamee was admitted to Anchor Hospital at Talbott for evaluation on February 14, 2003. Provisional Diagnoses were listed as alcohol dependence and major depressive disorder. Admission Information included the following, "This is the 5th treatment event over the last 2 years. Patient has had maybe 6 months of clean time over last 10 years." (St. Ex. 9 at 5, 9-14)

Dr. McNamee testified that new patients to Talbott usually spend about three days at Anchor Hospital. Nevertheless, even though he had already completed detoxification at Glenbeigh, Dr. McNamee had remained at Anchor Hospital for seven or eight days for stabilization. Dr. McNamee testified that he had been "in such bad shape." (Tr. 49)

Dr. McNamee reported that he had been drinking 1 to 1½ pints of liquor per day. Dr. McNamee also reported that, between 2000 and 2003, he had been using benzodiazepines that had been prescribed by a physician who was unaware of Dr. McNamee's history of alcoholism. Moreover, Dr. McNamee stated that he had been suffering severe depression, with symptoms including anhedonia, decreased appetite, increased anxiety, poor personal hygiene, and sleep disturbance. (St. Ex. 9 at 15, 18).

19. John E. Doyle, III, M.D., testified at hearing on behalf of Dr. McNamee. Dr. Doyle testified that had attended the United States Air Force Academy for his undergraduate education. He received a medical degree from the George Washington University School of Medicine and Health Sciences in Washington, D.C. In 1980, Dr. Doyle completed a psychiatric residency at Wilford Hall Medical Center in San Antonio, Texas. Dr. Doyle was certified in psychiatry by the American Board of Psychiatry and Neurology in 1980. In 1992, he was certified in addiction medicine by the American Society of Addiction Medicine. Shortly thereafter, Dr. Doyle received certification in addiction psychiatry from the American Board of Psychiatry and Neurology. (Tr. 92-93)

Dr. Doyle testified that he is the Clinical Director of Talbott, and practices as a psychiatrist and addictionologist. Dr. Doyle testified that he had first met Dr. McNamee when Dr. McNamee was admitted to Anchor Hospital at Talbott in February 2003. (Tr. 92, 93) Regarding that meeting, Dr. Doyle described Dr. McNamee as follows:

He was a total wreck. He was obsessing, ‘God, help me. God, help me. God, help me.’ He was in an agitated, anhedonic, severe, profound depression. He was also in withdrawal, and he was in catastrophic denial. His chief complaint to me was, ‘I have depression and anxiety and I can’t get better,’ as he was sitting in the detoxification unit at the Talbot Recovery Center. He was a mess. He had just gotten out of Glenbeigh where they had detoxified him with phenobarbital, and it wasn’t working. And I needed to add benzodiazepines and antidepressant to stabilize him and structure him. He literally could not find his room part of the time. It was bad.

(Tr. 96-97).

20. On February 28, 2003, Dr. McNamee’s therapists noted that Dr. McNamee had had “a history of ineffective 12-Step participation and appears to either lack knowledge of recovery tools or to not be practicing them. He identified fear/worry as a block to his spiritual progress.” (St. Ex. 9 at 18)

On March 12, 2003, Dr. Doyle noted that,

Brian is having both acythesia and lycosidism secondary to Zyprexa including festering gait and a late onset of cog willing and slurred speech. His Zyprexa has been discontinued. He is having fluctuating levels of consciousness throughout the week with periods when he is disorganized, but this is probably attributable to a combination of Elavil and Paxil. He is on Lithium. He has developed a substantial tremor in his hands despite a Lithium level of .05, it was discontinued. * * * He does note that his depression is having good and bad days and, on the bad days, it is extremely black, but without suicidal ideations but a

heightened anxiety. On the good days, he is very hopeful and can actually enjoy life.

(St. Ex. 9 at 28)

On April 21, 2003, Dr. Doyle noted that, "Brian's major depression is in remission on Klonopin, Desipramine, Elavil, and Trazodone with Zyprexa augmenting it. * * * Primary complaints are now of anxiety which is dramatically decreasing." (St. Ex. 9 at 28)

21. At hearing, Dr. Doyle testified that Dr. McNamee had received very intensive treatment at Talbott. Dr. Doyle stated that in addition to groups and other therapy, Dr. Doyle had met with Dr. McNamee on a daily basis. Nevertheless, Dr. Doyle testified that it had been two months before Dr. McNamee had been cognitively and emotionally clear. He stated that Dr. McNamee is a very difficult case with a dual diagnosis and "tremendous psychic pain and denial." (Tr. 98-99)

Dr. Doyle further testified that he had had a very difficult time managing Dr. McNamee's medications. Dr. Doyle explained that, as he had tried to reduce Dr. McNamee's anti-anxiety medications, Dr. McNamee would "just fall apart and have a meltdown in anxiety." Dr. Doyle stated that he had tried multiple combinations of medications to control Dr. McNamee's anxiety and depression with only limited success during the first few months. (Tr. 105)

Dr. Doyle testified that, in early May 2003, he had discontinued Dr. McNamee's Klonopin. Shortly thereafter, Dr. McNamee had gone on an extended therapeutic leave. Dr. Doyle testified that Dr. McNamee had called within twenty-four hours of leaving Talbott, "absolutely falling apart." (Tr. 106) In the medical record, Dr. Doyle noted that,

Brian had a serious panic attack on his [therapeutic leave] and could not formulate plans to even get on an airplane. He required direct directions on the phone in order to get himself back. Given that confusion, I reinstated Klonopin. We are going to go on a very slow Klonopin detoxification. We have added a generalized anxiety diagnosis. He continues on Paxil 80 mg, Desipramine 75 mg, and Trazodone 150 mg. He is tolerating all of this well. * * *

(St. Ex. 9 at 29) Dr. Doyle reasoned that Dr. McNamee had not been secure in his recovery at the time of his first extended therapeutic leave and that he had not had an adequate support system outside the hospital. Therefore, Dr. McNamee was not safe and Dr. Doyle instructed him to return immediately to Talbott. (Tr. 106-107)

Dr. Doyle testified that Dr. McNamee had taken a second extended therapeutic leave later in May 2003. Dr. Doyle stated that, within twenty-four hours of leaving Talbott, Dr. McNamee had consumed alcohol. Dr. Doyle further testified that, after that incident,

he had realized that Dr. McNamee would need to continue taking benzodiazepines for a few years until he was stable in recovery. Dr. Doyle added that, after the relapse, Dr. McNamee had returned to Talbott with, for the first time, a sincere commitment to recovery. (Tr. 106-1087)

22. Dr. McNamee also testified regarding the second extended therapeutic leave in May 2003. Dr. McNamee testified that he had had a two-day relapse before he returned to Talbott. He explained that he had rationalized to himself that he was doing well and that his mood disorders were under control. He further rationalized that his problem had been mood disorders and that he was not actually an alcoholic. He drank “a few drinks” at home. Dr. McNamee testified that, through that experience, he had learned to accept the fact that he is an alcoholic. (Tr. 57-59)

Dr. McNamee testified that he had not notified the Board of the relapse, but had assumed that his attorney or Talbott would have done so. (Tr. 60-61)

23. After the May 2003 relapse, Dr. McNamee returned to Talbott and underwent a psychological evaluation by David Prewett, Psy.D. In the Background Summary section of the report of the evaluation, Dr. Prewett wrote, in part, as follows:

Dr. McNamee acknowledged a significant history of depression and anxiety that he said led to his use of alcohol in an effort to control his emotional state. There has been one suicide attempt [in] the past when he was planning to jump from a height but was stopped by a passer-by. When he first arrived at [Talbott], he was very much in despair that his mood would never improve, though in fact over the course of his treatment and especially after being given Paxil, his mood did appear to lighten substantially. However, on a therapeutic leave home, he found himself feeling so well emotionally that he believed in fact he did not have the disease of chemical dependence and decided to attempt to drink normally. Initially, he was able to drink just one beer, but he soon found himself in the midst of a relapse on alcohol. He returned to [Talbott] feeling very much defeated in one sense but also gladdened that he had undergone a test of what he described as a ‘theory’ while under the care of [Talbott].

(St. Ex. 9 at 35) In the Personality Findings section, Dr. Prewett wrote,

Objective measurement of personality functioning with the MMPI-2 yielded an interpretable profile that was beyond normal clinical limits. The profile in fact suggested the combined effects of depression and anxiety in this fellow at times is severely debilitating. Similar individuals experience extreme sleep disturbance, virtually paralytic rumination that is ongoing, feelings of despair, helplessness and hopelessness, lack of emotional energy, and frequent suicidal preoccupations. At the same time, there does appear to be a

strong element of histrionic defenses in this individual. Such persons are capable of utilizing rationalization and denial as primary emotional defenses, though at the present time this gentleman's defense system has been overwhelmed. One would expect him to be having extreme difficulties with concentration and sustained attention and to be feeling quite isolated and apart from others. At times, this gentleman is probably truly fearful of 'losing his mind.'

(St. Ex. 9 at 37) Finally, in the Treatment Implications section, Dr. Prewett wrote,

This patient indeed has a significant dual diagnosis that revolves around both alcohol dependence and a severe agitated depression. The combined effects of his alcohol misuse and his anxious depression have greatly limited his level of cognitive efficiency. Nonetheless, these data do not appear to doom him to a continued degree of such extreme debilitation. With continued psychiatric care and treatment for his difficulties with alcohol, the chances are still good that he can be restored to something approximating what was probably outstanding premorbid capability. He will require considerable support and does seem amenable to follow the directions of his physicians and counselors at [Talbot].

(St. Ex. 9 at 38)

24. Dr. McNamee was released from Talbot on August 9, 2003. He was released "with a status of incomplete due to the treatment team feeling as if there was much work he still needed to complete once he returned home. Dr. McNamee was returning to Ohio with many uncertainties involving his medical license, his medical imaging business, his significant debt issues and unresolved family matters." (St. Ex. 9A at 4)

Upon release from Talbot, Dr. McNamee's diagnoses included alcohol dependency; major depression, recurrent, without seasonal variation or psychotic symptoms, in remission on medications; cognitive disorder, not otherwise specified, resolved; and avoidant personal traits. His medications at discharge included Toprol, Antabuse, Concerta, Zyprexa, BuSpar, Trazodone, and Paxil. (St. Ex. 9A at 4-5)

Upon release, Dr. McNamee agreed to a Continuing Care Plan recommended by Talbot. Terms of the Continuing Care Plan included the following:

1. Attend daily meetings for ninety days and then four to six meetings per week.
2. Participate in frequent random urine drug screens, at least two to three per month initially.
3. Attend weekly chemical dependency aftercare group meetings at Glenbeigh.

4. Comply with his contract with the Ohio Physicians Effectiveness Program.
5. Return to Talbot to meet with Dr. Doyle prior to the scheduled Board hearing [in October 2003] with documented sobriety for reassessment of treatment completion.

(St. Ex. 9 at 54)

25. Dr. McNamee relapsed on alcohol in mid-August 2003. Dr. McNamee testified that, when he left Talbott for the extended therapeutic leave in August 2003, he had joined his family on vacation. While there, Dr. McNamee thought that he had been suffering side effects from Zyprexa, a major tranquilizer, and he discontinued the drug. Two days later, Dr. McNamee was feeling anxious, agitated, and depressed. He decided that, since he had been doing so well, he would drink a beer to help his mood. Dr. McNamee testified that the relapse had lasted a few days before he restarted his medication. (Tr. 53-55; St. Ex. 9B at 1)

Later in the hearing, Dr. McNamee admitted that he also discontinued taking Klonopin in August 2003. (Tr. 59)

Dr. McNamee testified that he had reported his relapse to Dr. Doyle and to Razia Ahmed, M.D., his treating psychiatrist. Dr. McNamee stated that he had thought Dr. Ahmed would notify the Board. He stated that he had also asked his attorney to contact OPEP. Dr. McNamee acknowledged, however, that he had not contacted the Board to report his relapse. (Tr. 55-56) Dr. McNamee did not return to Talbott in August 2003. (Tr. 62)

26. At hearing, Dr. Doyle testified that, upon Dr. McNamee's admission to Talbott in February 2003, Dr. Doyle had hoped to treat Dr. McNamee for one full year. Dr. Doyle testified that, because the Board had scheduled a hearing for October 2003, the treatment team had released Dr. McNamee in August 2003 despite the fact that his aftercare was not complete. Dr. Doyle explained that they had done so to allow Dr. McNamee time out of the hospital prior to the hearing. Dr. Doyle further testified that this decision had been made at a time that Dr. Doyle was not at Talbott, so Dr. Doyle had not been consulted in making the decision. Dr. Doyle testified that, when he learned of Dr. McNamee's release, he had not been pleased. (Tr. 108)

Dr. Doyle testified that Dr. McNamee had not returned to Talbott after his relapse because Dr. Doyle had wanted to see what would happen after the relapse. Dr. Doyle stated that what did happen was that Dr. McNamee had realized for the first time that he was powerless over his alcoholism. (Tr. 109-110) Dr. Doyle added that,

[T]hat's what finally gave * * * Brian the sense of desperation to do what he was supposed to do which he had been told for quite a while. But I think

that broke through the catastrophic denial. I think we had made inroads with the first relapse and treatments, but I think his second relapse once he got out really made a big difference, because when I first saw Brian in October, this guy was recovering.

(Tr. 110)

27. After the August relapse, Dr. McNamee maintained his sobriety. (Tr. 62-63) Dr. McNamee returned to Talbott for an evaluation on October 7, 2003. In a Progress Note dated October 8, 2003, Dr. Doyle noted that,

The treatment team met and reviewed findings on Brian McNamee. The treatment team was unanimous that Brian has not yet demonstrated a sufficient period of recovery to graduate him from [Talbott]. On the other hand, all acknowledged that he is doing very, very well at this point and seems to have a program set up that should ensure his continued recovery. We asked Brian to come back in late February or early March to review for graduation, assuming that he maintains his sobriety.

(St. Ex. 9B at 3)

At hearing, Dr. Doyle testified that Dr. McNamee now has enough external control that he has a good chance of maintaining sobriety. Dr. Doyle testified that Dr. McNamee was working his recovery program appropriately. Moreover, his depression and anxiety disorder were in remission. Nevertheless, Dr. Doyle testified that Dr. McNamee still needed to be monitored, and was scheduled to return to Talbott for an evaluation in February 2004. (Tr. 111-118)

Dr. Doyle stated that he is supportive of Dr. McNamee's recovery, so much so that this is the first time that Dr. Doyle has testified on behalf of an out-of-state physician in over six years. (Tr. 111-112)

28. Gintautas Z. Sabataitis, Ph.D., testified by telephone on behalf of Dr. McNamee. Dr. Sabataitis testified that he had received a Master's degree in clinical psychology in 1969 from Xavier University in Cincinnati, Ohio. He received a second Master's degree in clinical psychology in 1970 from Case Western Reserve University [Case Western] in Cleveland, Ohio. Moreover, Dr. Sabataitis received a Doctorate degree from Case Western in 1974. Thereafter, Dr. Sabataitis completed residency training for four years at the Veterans' Administration Hospital at University Circle in Cleveland. (Tr. 131-132)

Since that time, Dr. Sabataitis has been a member of the staff at Saint Vincent Charity Hospital in Cleveland, and has maintained a private practice. One of his specialties is chemical dependency and alcoholism. Dr. Sabataitis testified that he runs an outpatient aftercare treatment program. (Tr. 132-133)

Dr. Sabataitis testified that he has been treating Dr. McNamee since August 2003. Dr. Sabataitis testified that, at that time, Dr. McNamee had been suffering from severe depression and anxiety. Dr. Sabataitis testified that he had determined that Dr. McNamee would need to address a number of issues if he was to remain sober. Therefore, Dr. McNamee committed to a two-year treatment program with Dr. Sabataitis. Pursuant to that commitment, Dr. McNamee agreed to attend ninety AA meetings in ninety days. He also agreed to obtain two AA sponsors. Dr. McNamee is to continue treatment with his psychiatrist, Dr. Ahmed. Dr. McNamee is also taking Antabuse daily, witnessed by a person who supports his recovery. Finally, Dr. Sabataitis supports Dr. McNamee's spirituality, and uses hypnosis to help treat Dr. McNamee's depression and anxiety. (Tr. 133-144; (Respondent's Exhibit [Resp. Ex.] 2)

Dr. Sabataitis testified that he does not screen Dr. McNamee's urine for alcohol use. He stated that he knows when an alcoholic relapses and that he has seen no indication that Dr. McNamee has relapsed since August 2003. (Tr. 148)

Dr. Sabataitis testified that Dr. McNamee has been extremely compliant with his program. Moreover, Dr. Sabataitis testified that Dr. McNamee's mood and anxiety level have improved, and that Dr. Sabataitis is pleased with his progress. Dr. Sabataitis concluded that Dr. McNamee is "getting well." (Tr. 140-142, 146)

29. Mary Ann Dixon testified at hearing on behalf of Dr. McNamee. Ms. Dixon testified that she is employed at the Oberlin Avenue Medical Center in Lorain, Ohio, which is owned by Dr. McNamee. Ms. Dixon testified that she is the Chief Technologist there, and that she performs MRIs, CT scans, mammography, and diagnostic x-rays. (Tr. 87-88)

Ms. Dixon testified that she had worked closely with Dr. McNamee since 1998. She stated that she has never seen him consume alcohol or appear to be under the influence of alcohol while at work. (Tr. 89) Ms. Dixon added that Dr. McNamee has not practiced since January 2002. (Tr. 91)

Finally, Ms. Dixon testified that Dr. McNamee is "a very caring and compassionate physician and [he] always puts his patients first and his patients' welfare." (Tr. 91)

30. At hearing, Dr. McNamee discussed his addiction to alcohol. He stated that he had not drunk to party or have fun, and he had not drunk at work. He stated that,

I just retreated in my own private hell in my living room. I sat in one brown chair there for better than two years and just suffered in despair and would take something when I thought I couldn't stand it any longer. So, I

mean, it's not like I was going out partying or having fun these two to three years. It's beyond description how I felt.

(Tr. 83). Dr. McNamee further testified that, before he went to Talbott, he had believed that he was "doomed to die" of his disease. He stated that he was "in complete and utter despair." At this point, however, Dr. McNamee stated that he feels better than he has in five years. (Tr. 76-77)

Dr. McNamee testified that, since his August 2003 relapse, he has been seeing Dr. Sabataitis once or twice weekly and, in addition, participates in Dr. Sabataitis' aftercare group. Dr. McNamee also sees Dr. Ahmed, a psychiatrist and addictionologist. Furthermore, Dr. McNamee attends an AA meeting at least daily. Dr. McNamee has his urine screened twice monthly, and undergoes breathalyzer testing. Dr. McNamee also has a contract with OPEP and he stated that he is compliant with that contract. Moreover, Dr. McNamee is participating in an aftercare program at Glenbeigh. In addition, Dr. McNamee has been taking Antabuse, closely supervised by the prescribing physician. Finally, Dr. McNamee has been taking his prescribed medications, which have been relatively stable since August 2003. (Tr. 64-77; Resp. Exs. 1 - 5)

FINDINGS OF FACT

1. On or about April 10, 2002, Brian McNamee, M.D., entered into a Step I Consent Agreement [April 2002 Step I Consent Agreement] with the Board in lieu of formal proceedings based upon Dr. McNamee's violation of Sections 4731.22(B)(19) and (B)(26), Ohio Revised Code. In the April 2002 Step I Consent Agreement, Dr. McNamee made certain admissions, including the following:
 - a. On or about February 27, 2001, Dr. McNamee had been admitted to the psychiatric service at The Cleveland Clinic Foundation [Cleveland Clinic], with principle diagnoses of alcohol dependence and polysubstance abuse. His secondary diagnoses were mood disorder and anxiety disorder secondary to substance dependence versus primary mood disorder.
 - b. The treatment team at the Cleveland Clinic recommended that Dr. McNamee enter a minimum twenty-eight day residential program for treatment of chemical dependence.
 - c. Dr. McNamee entered treatment at Glenbeigh Hospital and Outpatient Centers, a Board-approved treatment provider. Nevertheless, Dr. McNamee did not complete the recommended residential treatment at that time.
 - d. On February 11, 2002, Dr. McNamee submitted to a three-day inpatient examination at Shepherd Hill Hospital, a Board-approved treatment provider in Newark, Ohio. The examination had been ordered by the Board for purposes of determining whether

Dr. McNamee was in violation of Sections 4731.22(B)(19) and/or (B)(26), Ohio Revised Code.

- e. The evaluating physician at Shepherd Hill Hospital diagnosed Dr. McNamee with chemical dependence and major depressive disorder. Moreover, the evaluating physician opined that Dr. McNamee was then impaired by these disorders and that he was not able to practice according to acceptable standards. Finally, the evaluating physician recommended that Dr. McNamee enter into residential treatment for both chemical dependence and major depressive disorder.
- f. On or about February 18, 2002, Dr. McNamee entered residential treatment for chemical dependence and major depressive disorder at Glenbeigh.

In the April 2002 Step I Consent Agreement, Dr. McNamee agreed that his certificate to practice medicine and surgery in Ohio would be suspended for an indefinite period of time, but not less than ninety days. He further agreed to certain specified terms, conditions, and limitations, including that he “shall abstain completely from the use of alcohol,” as set forth in Paragraph 3 of that agreement.

2. On June 12, 2002, Dr. McNamee entered into a Step I Consent Agreement [June 2002 Step I Consent Agreement] with the Board in lieu of formal proceedings based upon his violation of Sections 4731.22(B)(15), (B)(19), and (B)(26), Ohio Revised Code. In the June 2002 Step I Consent Agreement, Dr. McNamee made certain admissions, including the following:
 - a. Dr. McNamee had completed treatment at Glenbeigh and was discharged on March 21, 2002.
 - b. On or about April 22, 2002, through his attorney, Dr. McNamee reported to the Board that he had suffered a relapse and tested positive for alcohol on or about April 14, 2002.
 - c. On or about April 23, 2002, Dr. McNamee entered residential treatment for chemical dependence at Glenbeigh.
 - d. On or about May 4, 2002, Dr. McNamee left treatment at Glenbeigh against medical advice.
 - e. After leaving Glenbeigh on May 4, 2002, Dr. McNamee relapsed on alcohol.
 - f. On or about May 7, 2002, through his attorney, Dr. McNamee reported to the Board that he had suffered another relapse and, on or about May 5, 2002, he had tested positive for alcohol.

- g. In addition to informing the Board of his relapse, Dr. McNamee also informed the Board that he had been admitted voluntarily to the psychiatric unit at the Cleveland Clinic for treatment of his anxiety disorder.
- h. Dr. McNamee's use of alcohol in April 2002 and May 2002 was in violation of Paragraph 3 of his April 2002 Step I Consent Agreement, which required that he "abstain completely from the use of alcohol."

In the June 2002 Step I Consent Agreement, Dr. McNamee also agreed to certain specified terms, conditions, and limitations, including the termination of the indefinite suspension of his certificate to practice medicine and surgery in Ohio which had been imposed pursuant to the April 2002 Step I Consent Agreement. Moreover, he agreed that his certificate was permanently revoked; that the permanent revocation was stayed; and that his certificate was suspended for an indefinite period of time, but not less than one year from the effective date of the June 2002 Step I Consent Agreement. Dr. McNamee further agreed that he "shall abstain completely from the use of alcohol," as set forth in Paragraph 3 of that agreement.

- 3. On July 10, 2002, the Board issued to Dr. McNamee a Notice of Opportunity for Hearing [July 2002 Notice] alleging that Dr. McNamee was impaired and that he had violated the conditions of limitation placed on his certificate by the June 2002 Step I Consent Agreement. More specifically, the Board alleged that Dr. McNamee had failed to abstain completely from the use of alcohol.

On November 29, 2002, Dr. McNamee entered into a Step I Consent Agreement [November 2002 Step I Consent Agreement] with the Board in lieu of formal proceedings based upon the allegations set forth in the July 2002 Notice. In the November 2002 Step I Consent Agreement, Dr. McNamee admitted to the factual and legal allegations set forth in the July 2002 Notice, including the factual allegation that, on or about June 26, 2002, Dr. McNamee reported to the Board that he had relapsed on alcohol.

In the November 2002 Step I Consent Agreement, Dr. McNamee agreed to certain specified terms, conditions, and limitations, including the following:

- a. The indefinite suspension of his certificate to practice medicine and surgery in the State of Ohio stemming from the June 2002 Step I Consent Agreement was terminated.
- b. Dr. McNamee's certificate to practice medicine and surgery in the State of Ohio was permanently revoked;
- c. The permanent revocation was stayed; and

- d. Dr. McNamee's certificate was suspended for an indefinite period of time, but not less than three years from the effective date of the November 2002 Step I Consent Agreement.

Dr. McNamee's certificate to practice medicine and surgery in Ohio remains suspended at this time.

4. Paragraph 3 of Dr. McNamee's November 2002 Step I Consent Agreement states that Dr. McNamee "shall abstain completely from the use of alcohol." Despite this provision, on or about January 27, 2003, Glenbeigh staff reported to Board staff that Dr. McNamee had admitted to the staff of Glenbeigh, where he was participating in the outpatient program, that he had relapsed on alcohol.

CONCLUSIONS OF LAW

1. The conduct of Brian McNamee, M.D., as set forth in Findings of Fact 4, constitutes a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.
2. The conduct of Dr. McNamee, as set forth in Findings of Fact 1 through 4, constitutes "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

* * * * *

At the time of the hearing, Dr. Doyle testified that he was not ready to "graduate" Dr. McNamee from Talbott and that Dr. Doyle would make that determination after reevaluating Dr. McNamee in February 2004. In light of that, both Dr. Doyle and Dr. McNamee asked that the hearing record be held open until February 2004 so that documentation of Dr. McNamee's evaluation could be admitted to the hearing record. The hearing examiner agreed to hold the hearing record open until February 27, 2004, to see if Dr. Doyle would submit a positive report of evaluation documenting Dr. McNamee's continued sobriety. (See Hearing Transcript at 153-154)

Unfortunately, in a telephone conference between Mr. Wilcox, Mr. O'Connor, and the Hearing Examiner, Mr. O'Connor advised that he would not be submitting any additional evidence.

Accordingly, in light of Dr. McNamee's history of dealings with the Board, including multiple relapses, some of which he did not report to the Board, the Board would be fully justified in permanently revoking his certificate to practice in this state. Nevertheless, Dr. McNamee presents some mitigating circumstances including, most significantly, his overwhelming depression and anxiety disorder. Therefore, the Board might consider revoking

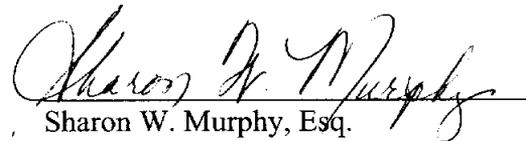
Dr. McNamee's certificate, but not permanently. If so, Dr. McNamee should be aware that reinstatement of his certificate will not be considered until Dr. McNamee can demonstrate a significant period of documented sobriety.

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Brian McNamee, M.D., to practice medicine and surgery in the State of Ohio shall be REVOKED.

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


Sharon W. Murphy, Esq.
Hearing Examiner



State Medical Board of Ohio

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

EXCERPT FROM THE DRAFT MINUTES OF APRIL 14, 2004

REPORTS AND RECOMMENDATIONS

Ms. Sloan announced that the Board would now consider the findings and orders appearing on the Board's agenda. She asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and order, and any objections filed in the matters of: Adel Abdullah Bakhsh, M.D.; Minakshi B. Deshmukh, M.D.; Michael Shane Gainey, M.D.; Louis A. Ling, M.D.; Brian F. McNamee, M.D.; Michael T. Salwitz, M.D.; Ahmad Shahamat, M.D.; Luke A. Siegel-Schaefer, M.T.; and Brian D. Southern, M.D. A roll call was taken:

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

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

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

Dr. Steinbergh - aye
Ms. Sloan - aye

Ms. Sloan 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.

Ms. Sloan stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and orders in the above matters. No objections were voiced by Board members present.

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

.....
BRIAN F. MCNAMEE, M.D.

Ms. Sloan directed the Board's attention to the matter of Brian F. McNamee, M.D. She advised that no objections were filed to Hearing Examiner Murphy's Report and Recommendation.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF BRIAN F. MCNAMEE, M.D. DR. ROBBINS SECONDED THE MOTION.

Ms. Sloan stated that she would now entertain discussion in the above matter.

Dr. Steinbergh stated that she agreed with the Proposed Order of revocation and not permanent revocation in this case. Dr. Steinbergh stated that Dr. McNamee's is a case of severe impairment with repeated relapse. He has a dual diagnosis of chemical dependency and depression, with severe anxiety. Dr. Steinbergh stated that the Board needs to simply revoke his license and see what happens in time.

Dr. Egner stated that she thinks that this should be a permanent revocation for a couple of reasons. Primarily, Dr. McNamee has had time and knowledge to be very familiar with the Board's actions. While under a stayed permanent revocation, he had two relapses – one in May 2003 and one in August 2003. Neither relapse was reported to the Board, in direct violation, while he had a stayed permanent revocation. On that alone she thinks that a permanent revocation should take effect.

Dr. Egner continued that the Board hears again and again in many impairment cases that this last relapse was the one where the individual had his or her epiphany moment to understand his or her illness and addiction; and even though he or she has had relapses before, it took that relapse for him or her to understand it. Dr. Egner stated that the Board was told that the testimony given in May 2003 was really

Dr. McNamee's epiphany moment of understanding his addiction, but then it really turned out not to be, and then in August of 2003 it really was. Dr. Egner stated that it is very unfortunate, and there are very few times that the Board permanently revokes a license because of impairment, but in this case, she thinks that permanent revocation is appropriate. She doesn't think that Dr. McNamee should be practicing medicine now or in the future. She doesn't see anything in the record that makes her think that there will be any improvement. In fact, there's a part of her that feels that the Board might be helping him, that part of the reason that he cannot stick with his recovery is the stress of being a physician. Perhaps not having that kind of goal to try to attain will be helpful to him in maintaining sobriety.

DR. EGNER MOVED TO AMEND THE PROPOSED ORDER TO IMPOSE A PERMANENT REVOCATION OF DR. MCNAMEE'S LICENSE. DR. BHATI SECONDED THE MOTION.

Dr. Bhati stated that the issue here is the Board meaning what it says. If the Board is going to stay a permanent revocation, and then doesn't follow up on that upon a violation, it tells the physician that the Board isn't carrying out what it says. Dr. Bhati stated that, in addition to the poly drug abuse dependency, this physician also has a medical problem in the form of severe depression and so forth. The Proposed Order allows a chance for Dr. McNamee, but it is contradictory. It doesn't follow what the Board has said about permanent revocation, stayed permanent revocation.

Dr. Steinbergh stated that she doesn't disagree with Dr. Egner or Dr. Bhati, but her concern at this point is this: She sees this as a Board which is continuously educating itself on the topic of chemical dependency. Last month the Board spent a half day bringing experts before it to discuss the illness of chemical dependency, and what that means for the physician and what that means for the Board. The Board has talked about the language of permanent revocation, and it has done permanent revocation in the past, and it has included that language in its Board orders and consent agreements. Dr. Steinbergh stated that, for her, personally, if the Board doesn't grow and recognize that impaired or chemically dependent physicians are going to have these problems, and the Board knows that they are going to have these problems, the issue then is whether or not they can ever return to practice. She stated that she knows that the Board has experienced a case that she believes the physician could be back in practice. She added that she doesn't know that for a fact, but she's going to believe that there are some physicians the Board permanently revoked that somehow could have been salvaged.

Dr. Steinbergh continued that, in this case, the Board has a man who is very ill, there's no question about it. The Hearing Examiner has said in her last paragraph that she suggests not permanently revoking. If so, Dr. McNamee would be aware that reinstatement of his certificate will not be considered until Dr. McNamee can demonstrate a significant period of documented sobriety. That is a Board judgment: What is going to be significant? Dr. Steinbergh stated that she thinks the Board will know it when it sees it. So, he won't come back before this Board unless he can clearly document to the Board that he has been sober. At the time the Board meets to consider that, it will know. She added that this will probably be a Board in the future because she expects that it will take this physician a long time to heal. She's not sure that it serves the Board to permanently revoke under these particular circumstances, after the ongoing education that it's attempting to get for itself. She stated that she is someone who believes in consistency of Board Orders,

but she's not sure that the Board should be including this language any more and that it should be looking that way any more, except to allow the physician to heal if he or she can heal. If he or she can heal, she thinks that the Board will know it when it happens.

Dr. Buchan stated that he thinks that the public is served by the Order, as written. He added that, being a hopeful individual, he thinks that he was softened to the language of revocation as opposed to permanent revocation because he does think that it may be something for Dr. McNamee to go for and reach out for. Dr. McNamee is young enough that he might find this as a carrot for the attainment, five, ten, seven, eight years from now.

Dr. Buchan stated that he's read many of Ms. Murphy's Reports and Recommendations, and as he read this Report and Recommendation, he thought that she did a great job of sorting through the multiple relapses and the business of mental illness. If Ms. Murphy felt that there might be some sense that this physician could come back, that weighed on him. He initially thought that permanent revocation should be imposed, but he now thinks that the revocation, as written, is reasonable.

Dr. Egner stated that she thinks that it's a radical idea to not consider permanent revocation in impairment cases. She said that she's not there.

Dr. Steinbergh stated that she's not saying that she's there either. She totally understands what Dr. Egner is saying. What she's saying is that, if the Board brings those physicians who deal with chemical dependence and impairment before it like it did last month, and it has this educational process, and if the Board believes in the disease model and it believes that this is what occurs, to her it's no surprise that it has a sick individual here who can't live up to the Board's expectations.

Dr. Egner stated that that's what she wants to address. Yes, this is a sick individual, but this is not an individual who has been without treatment. In other cases the Board has looked at that have been as severe as this, maybe even more severe, the Board has allowed them the carrot to stay in practice, she thinks those physicians, if you look back, are ones that did not have adequate addressing of their impairment or their mental problems. Part of the Board's reasoning was that, if those issues are truly addressed by the right programs, by the right physicians, and that physician is amenable, then they may be able to come back into practice. That's not Dr. McNamee. Dr. McNamee has been through five programs in two years. Dr. Egner stated that she believes the majority of programs Dr. McNamee attended were Board-approved programs. Dr. McNamee has been treated by psychiatrists since early on when he has been with the Board. His problems have been addressed. This is not someone who has been without the correct diagnosis, or, what the Board has said is the right treatment. Yet, it doesn't work. Dr. Egner stated that she is concerned that one of the people whose care he is now under, Dr. Sabataitis, testified that Dr. McNamee is getting better. She noted that Dr. Sabataitis also testified that he doesn't use urine or drug screens for his patients because he can just tell when they have used and he knows. Dr. Egner stated that that makes her very uncomfortable.

Dr. Egner continued that she doesn't want to sit here and say that this doctor definitely needs to be

permanently revoked, but she thinks that he should be. There's enough evidence that he should be. She stated that she personally feels that if the Board just revokes Dr. McNamee's license, he'll never be back anyway because she doesn't see hope for him. But, she's restating this for the simple reason that she thinks that there are times when the physician has had the right diagnosis, has had the proper treatment, and there are relapses. Dr. McNamee's not reporting the other two relapses is a very big issue to her. Dr. McNamee certainly had enough knowledge of how the Board works by that time that he'd know that they need to be reported. She might state those reasons down the road again on somebody else.

Dr. Robbins stated that he's glad that Dr. Egner elucidated a little bit. He added that he thinks that five programs in two years made an important impact on him. Dr. McNamee relapsed in April 2002, in May 2002, in January 2003, and it's interesting that he's not here today. Dr. Robbins stated that he feels that there has to be a time when the Board permanently revokes, if it means anything to permanently revoke and stay. He feels that this is one of those times. He will agree with the rest of his colleagues that either Order, revoked versus permanently revoked, does protect the public. It's doubtful that, if the Board revokes Dr. McNamee's license and not permanently revokes, it will have to deal with Dr. McNamee in the future. Dr. Robbins stated that he clearly understands that position, but he comes down on the permanently revoked side.

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

Vote:	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- nay
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- nay
	Dr. Robbins	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- nay

The motion carried.

DR. KUMAR MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF BRIAN F. MCNAMEE, M.D. DR. EGNER SECONDED THE MOTION. A vote was taken:

Vote:	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- nay
	Dr. Kumar	- aye

Mr. Browning	- aye
Dr. Davidson	- nay
Dr. Robbins	- aye
Dr. Garg	- abstain
Dr. Steinbergh	- nay
Ms. Sloan	- aye

The motion carried.



State Medical Board of Ohio

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

February 12, 2003

Brian McNamee, M.D.
19981 Emerald View
Fairview Park, Ohio 44126

Dear Doctor McNamee:

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

- (1) On or about April 10, 2002, you entered into a Step I Consent Agreement [April 2002 Step I Consent Agreement] with the State Medical Board of Ohio [Board] in lieu of formal proceedings based upon your violation of Sections 4731.22(B)(19) and (B)(26), Ohio Revised Code. A copy of the April 2002 Step I Consent Agreement is attached hereto and incorporated herein.

In the April 2002 Step I Consent Agreement, you made certain admissions, including that on or about February 27, 2001, you were admitted to the psychiatric service at the Cleveland Clinic Foundation [Cleveland Clinic], with principle diagnoses of alcohol dependence and polysubstance abuse, and secondary diagnoses of mood disorder and anxiety disorder secondary to substance dependence versus primary mood disorder; that the treatment team at the Cleveland Clinic recommended that you enter a minimum 28-day residential program for treatment for chemical dependence; and that although you subsequently entered treatment at Glenbeigh Hospital, you did not complete the recommended residential treatment at that time.

You further admitted that on February 11, 2002, you submitted to a three-day inpatient examination at Shepherd Hill Hospital as ordered by the Board for purposes of determining whether you were in violation of Sections 4731.22(B)(19) and/or (B)(26), Ohio Revised Code; that the evaluating physician diagnosed you with chemical dependence and major depressive disorder, opined that you were currently impaired by these disorders and not currently able to practice according to acceptable standards, and recommended that you enter into residential treatment for both chemical dependence and major depressive disorder; and that you entered residential treatment for chemical dependence and major depressive disorder at Glenbeigh Hospital on or about February 18, 2002. In the April 2002 Step I Consent Agreement, you agreed that your certificate to practice medicine and surgery in Ohio would be suspended for an indefinite period of time, but not less than 90 days, and you further agreed to certain specified terms,

Mailed 2-13-03

conditions, and limitations, including that you “shall abstain completely from the use of alcohol,” as set forth in Paragraph 3 of that agreement.

- (2) On or about June 12, 2002, you entered into a Step I Consent Agreement [June 2002 Step I Consent Agreement] with the Board in lieu of formal proceedings based upon your violation of Sections 4731.22(B)(15), (B)(19) and (B)(26), Ohio Revised Code. In the June 2002 Step I Consent Agreement, the indefinite suspension of your certificate to practice medicine and surgery in the State of Ohio stemming from the April 2002 Step I Consent Agreement was terminated. A copy of the June 2002 Step I Consent Agreement is attached hereto and incorporated herein.

In the June 2002 Step I Consent Agreement, you made certain admissions, including that on or about April 22, 2002, through your attorney, you reported to the Board that you suffered a relapse and tested positive for alcohol on or about April 14, 2002. You further admitted that on or about April 23, 2002, you entered residential treatment for chemical dependence at Glenbeigh Hospital, and further admitted that on or about May 4, 2002, you left treatment at Glenbeigh Hospital against medical advice. You further admitted that after leaving Glenbeigh Hospital on May 4, 2002, you relapsed on alcohol. You further admitted that on or about May 7, 2002, through your attorney, you reported to the Board that you suffered another relapse and had tested positive for alcohol on or about May 5, 2002. You further admitted that in addition to informing the Board of your relapse, you also informed the Board that you had been admitted voluntarily to the Cleveland Clinic’s psychiatric unit for treatment of your anxiety disorder. You further admitted that your use of alcohol in April 2002 and May 2002, was in violation of Paragraph 3 of your April 2002 Step I Consent Agreement, which required that you “abstain completely from the use of alcohol.”

In the June 2002 Step I Consent Agreement, you also agreed to certain specified terms, conditions, and limitations, including that your certificate to practice medicine and surgery in the State of Ohio was permanently revoked; such permanent revocation was stayed; and your certificate was suspended for an indefinite period of time, but not less than one year from the effective date of the June 2002 Step I Consent Agreement. You further agreed to certain specified terms, conditions, and limitations, including that you “shall abstain completely from the use of alcohol,” as set forth in Paragraph 3 of that agreement.

- (3) On or about July 10, 2002, the Board issued to you a Notice of Opportunity for Hearing [Notice] alleging that you were impaired and that you had violated the conditions of limitation placed by the June 2002 Step I Consent Agreement upon your certificate to practice, including that you failed to abstain completely from the use of alcohol.

Thereafter, on or about November 29, 2002, you entered into a Step I Consent Agreement [November 2002 Step I Consent Agreement] with the Board in lieu of formal proceedings

based upon the Notice. Copies of the Notice and the November 2002 Step I Consent Agreement are attached hereto and incorporated herein.

In the November 2002 Step I Consent Agreement, you admitted to the factual and legal allegations of the Notice, which included that you reported to the Board on or about June 26, 2002, that you relapsed on alcohol. In the November 2002 Step I Consent Agreement, you also agreed to certain specified terms, conditions, and limitations, including that the indefinite suspension of your certificate to practice medicine and surgery in the State of Ohio stemming from the June 2002 Step I Consent Agreement was terminated; your certificate to practice medicine and surgery in the State of Ohio was permanently revoked; such permanent revocation was stayed; and your certificate was suspended for an indefinite period of time, but not less than three years from the effective date of the November 2002 Step I Consent Agreement.

Your certificate to practice medicine and surgery in Ohio remains suspended to date.

- (4)(a) Paragraph 3 of your November 2002 Step I Consent Agreement states that you “shall abstain completely from the use of alcohol.”
- (b) Despite this provision, on or about January 27, 2003, Glenbeigh Hospital staff reported to Board staff that you admitted that you relapsed on alcohol to the staff of Glenbeigh Hospital, where you were participating in the outpatient program.

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

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1), (2), (3) and (4) above, individually and/or collectively, constitute “[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,” as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

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

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, effective March 9, 1999, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Anand G. Garg, M.D.
Secretary

AGG/blt
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5148 0502
RETURN RECEIPT REQUESTED

Duplicate mailing: Brian McNamee, M.D.
P.O. Box 260616
Fairview Park, Ohio 44126

CERTIFIED MAIL # 7000 0600 0024 5148 0540
RETURN RECEIPT REQUESTED

cc: Kevin O'Connor, Esq.
Walter & Haverfield
1300 Terminal Tower
50 Public Square
Cleveland, Ohio 44113-2253

CERTIFIED MAIL # 7000 0600 0024 5148 0519
RETURN RECEIPT REQUESTED

**NOVEMBER 2002
STEP I
CONSENT AGREEMENT
BETWEEN
BRIAN F. MCNAMEE, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO**

This Consent Agreement is entered into by and between Brian F. McNamee, M.D., (Dr. McNamee) and the State Medical Board of Ohio (the Board), a state agency charged with enforcing Chapter 4731, Ohio Revised Code.

Dr. McNamee enters into this Consent Agreement being fully informed of his rights under Chapter 119, Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

BASIS FOR ACTION

This Consent Agreement is entered into on the basis of the following stipulations, admissions and understandings:

- A. The Board is empowered by Section 4731.22(B)(26) and 4731.22(B)(15), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice."
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the Notice of Opportunity for Hearing issued July 10, 2002, which is attached and incorporated into this agreement. The Board expressly reserves the right to institute additional formal proceedings based upon any other violations of Chapter 4731 of the Ohio Revised Code, whether occurring before or after the effective date of this Consent Agreement.
- C. Dr. McNamee is licensed to practice medicine and surgery in the State of Ohio and that license to practice medicine and surgery in the State of Ohio is currently suspended, pursuant to the terms of the June 2002 Consent Agreement.
- D. Dr. McNamee states that he is licensed to practice in the State of California.

- E. Dr. McNamee admits to the factual and legal allegations of the July 10, 2002, Notice of Opportunity for Hearing, a copy of which is attached hereto and fully incorporated herein.

AGREED CONDITIONS

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

STAYED PERMANENT REVOCATION; SUSPENSION OF CERTIFICATE

1. The indefinite suspension of Dr. McNamee's certificate to practice medicine and surgery in the State of Ohio stemming from the June 2002 Step I Consent Agreement is hereby terminated. Further, Dr. McNamee's certificate to practice medicine and surgery in the State of Ohio shall be **PERMANENTLY REVOKED**. The permanent revocation is **STAYED**, and Dr. McNamee's certificate is hereby **SUSPENDED** for an indefinite period of time, but not less than 3 years from the effective date of this Consent Agreement.

Sobriety

2. Dr. McNamee shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. McNamee's history of chemical dependency;
3. Dr. McNamee shall abstain completely from the use of alcohol;

Releases; Quarterly Declarations and Appearances

4. Dr. McNamee 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. McNamee's chemical dependency or related conditions, or for purposes of complying with the Consent Agreement, whether such treatment or evaluation occurred before or after the effective date of this Consent Agreement. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. Dr. McNamee further agrees to provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Consent Agreement.

5. Dr. McNamee shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which the Consent Agreement becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
6. Dr. McNamee shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

Drug & Alcohol Screens; Supervising Physician

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

Within thirty days of the effective date of this Consent Agreement, Dr. McNamee shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. McNamee shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. McNamee. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the Board of any positive screening results;

Dr. McNamee shall ensure that the supervising physician provides quarterly reports to the Board, on forms approved or provided by the Board, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his responsibilities.

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

All screening reports and supervising physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. McNamee's quarterly declaration. It is Dr. McNamee's responsibility to ensure that reports are timely submitted.

Psychiatric Treatment

8. Within thirty days of the effective date of this Consent Agreement, Dr. McNamee shall submit to the Board for its prior approval the name and qualifications of a psychiatrist of his choice. Upon approval by the Board, Dr. McNamee shall undergo and continue psychiatric treatment at least once every two weeks or as otherwise directed by the Board. Dr. McNamee shall comply with his psychiatric treatment plan, including taking medications as prescribed and/or ordered for his psychiatric disorder. Dr. McNamee shall ensure that psychiatric reports are forwarded by his treating psychiatrist to the Board on a quarterly basis, or as otherwise directed by the Board. The psychiatric reports shall contain information describing Dr. McNamee's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. McNamee's compliance with his treatment plan; Dr. McNamee's mental status; Dr. McNamee's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. McNamee shall ensure that his treating psychiatrist immediately notifies the Board of his failure to comply with his psychiatric treatment plan and/or any determination that Dr. McNamee is unable to practice due to his psychiatric disorder. It is Dr. McNamee's responsibility to ensure that quarterly reports are received in the Board's offices no later than the due date for Dr. McNamee's quarterly declaration.

Rehabilitation Program

9. Dr. McNamee shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval.

Dr. McNamee shall submit acceptable documentary evidence of continuing compliance with this program, which must be received in the Board's offices no later than the due date for Dr. McNamee's quarterly declaration.

CONDITIONS FOR REINSTATEMENT

10. The Board shall not consider reinstatement of Dr. McNamee's certificate to practice medicine and surgery unless and until all of the following conditions are met:
 - a. Dr. McNamee shall submit an application for reinstatement, accompanied by appropriate fees, if any.
 - b. Dr. McNamee shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - i. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. McNamee has successfully completed any required inpatient treatment.
 - ii. Evidence of continuing full compliance with an aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
 - iii. Evidence of continuing full compliance with this Consent Agreement.
 - iv. Three written reports indicating that Dr. McNamee's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care.

Two reports shall be made by individuals or providers approved by the Board for making such assessments. Prior to the assessments, Dr. McNamee shall provide the evaluators with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The reports from the evaluators shall include any recommendations for treatment, monitoring, or supervision of Dr. McNamee, and any conditions, restrictions, or limitations that should be imposed on Dr. McNamee's practice. The reports shall also describe the basis for the evaluator's determinations.

One written report shall be made by a psychiatrist, approved in advance by the Board, who shall conduct a psychiatric examination of Dr. McNamee. Prior to the examination, Dr. McNamee shall provide the psychiatrist with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The report from the evaluating psychiatrist shall include the psychiatrist's diagnoses and conclusions; any recommendations for care, counseling, and treatment for the psychiatric diagnoses; any conditions, restrictions, or limitations that should be imposed on Dr. McNamee's practice; and the basis for the psychiatrist's determinations.

- c. Dr. McNamee shall enter into a written consent agreement including five years of probationary terms, conditions and limitations as determined by the Board or, if the Board and Dr. McNamee are unable to agree on the terms of a written Consent Agreement, then Dr. McNamee further agrees to abide by any terms, conditions and limitations imposed by the Board after a hearing conducted pursuant to Chapter 119 of the Ohio Revised Code.

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

11. In the event that Dr. McNamee 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, Dr. McNamee will be required to take and pass the SPEX examination pursuant to Section 4731.222 of the Ohio Revised Code.

REQUIRED REPORTING BY LICENSEE

12. Within thirty days of the effective date of this Consent Agreement, Dr. McNamee shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr.

McNamee further agrees to provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. McNamee shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

13. Within thirty days of the effective date of this Consent Agreement, Dr. McNamee shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. McNamee shall provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

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

FAILURE TO COMPLY

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

ACKNOWLEDGMENTS/LIABILITY RELEASE

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

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

Dr. McNamee hereby releases The State Medical Board of Ohio, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

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

Further, this information may be reported to appropriate organizations, data banks and governmental bodies. Dr. McNamee agrees to provide his Social Security number to the Board and hereby authorizes the Board to utilize that number in conjunction with that reporting.

EFFECTIVE DATE

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


BRIAN F. MCNAMEE, M.D.


ANAND G. GARG, M.D.
Secretary

10/10/02
DATE

11/29/02
DATE


KEVIN O'CONNOR, ESQ.
Attorney for Dr. McNamee


RAYMOND J. ALBERT
Supervising Member

10/4/02
DATE

11/26/02
DATE


KYLE C. WILCOX, ESQ.
Assistant Attorney General

11/25/02
DATE



State Medical Board of Ohio

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

July 10, 2002

Brian McNamee, M.D.
19981 Emerald View
Fairview Park, Ohio 44136

Dear Doctor McNamee:

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

- (1) On or about April 10, 2002, you entered into a Step I Consent Agreement [April 2002 Step I Consent Agreement] with the State Medical Board of Ohio [Board] in lieu of formal proceedings based upon your violation of Sections 4731.22(B)(19) and (B)(26), Ohio Revised Code. A copy of the April 2002 Step I Consent Agreement is attached hereto and incorporated herein.

In the April 2002 Step I Consent Agreement, you made certain admissions, including that on or about February 27, 2001, you were admitted to the psychiatric service at the Cleveland Clinic Foundation, Cleveland, Ohio [Cleveland Clinic], with principle diagnoses of alcohol dependence and polysubstance abuse, and secondary diagnoses of mood disorder and anxiety disorder secondary to substance dependence versus primary mood disorder; that the treatment team at the Cleveland Clinic recommended that you enter a minimum 28-day residential program for treatment for chemical dependence; and that although you subsequently entered treatment at Glenbeigh Hospital, Rock Creek, Ohio, you did not complete the recommended residential treatment at that time.

You further admitted that on February 11, 2002, you submitted to a three-day inpatient examination at Shepherd Hill Hospital, Newark, Ohio, as ordered by the Board for purposes of determining whether you were in violation of Sections 4731.22(B)(19) and/or (B)(26), Ohio Revised Code; that the evaluating physician diagnosed you with chemical dependence and major depressive disorder, opined that you were currently impaired by these disorders and not currently able to practice according to acceptable standards, and recommended that you enter into

Mailed 7-11-02

residential treatment for both chemical dependence and major depressive disorder; and that you entered residential treatment for chemical dependence and major depressive disorder at Glenbeigh Hospital on or about February 18, 2002.

In the April 2002 Step I Consent Agreement, you agreed that your certificate to practice medicine and surgery in Ohio would be suspended for an indefinite period of time, but not less than 90 days, and you further agreed to certain specified terms, conditions, and limitations, including that you "shall abstain completely from the use of alcohol," as set forth in Paragraph 3 of that agreement.

- (2) On or about June 12, 2002, you entered into a Step I Consent Agreement [June 2002 Step I Consent Agreement] with the Board in lieu of formal proceedings based upon your violation of Sections 4731.22(B)(15), (B)(19) and (B)(26), Ohio Revised Code. In the June 2002 Step I Consent Agreement the indefinite suspension of your certificate to practice medicine and surgery in the State of Ohio stemming from the April 2002 Step I Consent Agreement was terminated. A copy of the June 2002 Step I Consent Agreement is attached hereto and incorporated herein.

In the June 2002 Step I Consent Agreement, you made certain admissions, including that on or about April 22, 2002, through your attorney, you reported to the Board that you suffered a relapse and tested positive for alcohol on or about April 14, 2002. You further admitted that on or about April 23, 2002, you entered residential treatment for chemical dependence at Glenbeigh Hospital, and further admitted that on or about May 4, 2002, you left treatment at Glenbeigh Hospital against medical advice. You further admitted that after leaving Glenbeigh Hospital on May 4, 2002, you relapsed on alcohol. You further admitted that on or about May 7, 2002, through your attorney, you reported to the Board that you suffered another relapse and tested positive for alcohol on or about May 5, 2002. You further admitted that in addition to informing the Board of your relapse, you also informed the Board that you had been admitted voluntarily to the Cleveland Clinic's psychiatric unit for treatment of your anxiety disorder. You further admitted that your use of alcohol in April 2002 and May 2002, was in violation of Paragraph 3 of your April 2002 Step I Consent Agreement, which required that you "abstain completely from the use of alcohol."

In the June 2002 Step I Consent Agreement, you also agreed to certain specified terms, conditions, and limitations, including that your certificate to practice medicine and surgery in the State of Ohio was permanently revoked; such permanent revocation was stayed; and your certificate was suspended for an indefinite period of time, but not less than one year from the effective date of the June 2002 Step I Consent Agreement. You further agreed to certain specified

terms, conditions, and limitations, including that you “shall abstain completely from the use of alcohol,” as set forth in Paragraph 3 of that agreement.

- (3) Paragraph (3) of the June 2002 Step I Consent Agreement states that you “shall abstain completely from the use of alcohol.” However, on or about June 26, 2002, through your attorney, you reported to the Board that you suffered a relapse and had tested positive for alcohol. You reported that you were admitted to Glenbeigh Hospital on or about June 25, 2002.

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

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1), (2) and (3) above, individually and/or collectively, constitute “[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,” as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

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

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, effective March 9, 1999, provides that “[w]hen the board refuses to grant a certificate to an applicant, revokes an individual’s certificate to practice, refuses to register an applicant, or refuses to reinstate an individual’s certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent

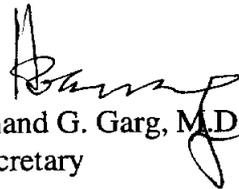
Brian F. McNamee, M.D.

Page 4

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,


Anand G. Garg, M.D.
Secretary

AGG/blt
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5142 0225
RETURN RECEIPT REQUESTED

Duplicate mailing: Brian McNamee, M.D.
P.O. Box 360616
Fairview Park, Ohio 44136

CERTIFIED MAIL # 7000 0600 0024 5142 0232
RETURN RECEIPT REQUESTED

cc: Kevin O'Connor, Esq.
Walter & Haverfield
1300 Terminal Tower
50 Public Square
Cleveland, Ohio 44113-2253

CERTIFIED MAIL # 7000 0600 0024 5142 0218
RETURN RECEIPT REQUESTED

STEP I
CONSENT AGREEMENT
BETWEEN
BRIAN F. MCNAMEE, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO

This Consent Agreement is entered into by and between Brian F. McNamee, M.D. [Dr. McNamee] and the State Medical Board of Ohio [the Board], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

Dr. McNamee enters into this Consent Agreement being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

BASIS FOR ACTION

This Consent Agreement is entered into on the basis of the following stipulations, admissions and understandings:

- A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4731.22(B)(15), Ohio Revised Code, “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice;” Section 4731.22(B)(19), Ohio Revised Code, “[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills;” and/or Section 4731.22(B)(26), Ohio Revised Code, “impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice.”
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Sections 4731.22(B)(15), (B)(19) and (B)(26), Ohio Revised Code, as set forth in Paragraphs E through H below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement.
- C. Dr. McNamee admits that his certificate to practice medicine and surgery in the State of Ohio, License #35-035216, is currently suspended pursuant to the terms of a Step I Consent Agreement into which he entered with the Board on April 10, 2002, as discussed in paragraph E below.

- D. Dr. McNamee states that he is not licensed to practice medicine and surgery in any other State or jurisdiction.
- E. Dr. McNamee admits that on or about April 10, 2002, he entered into a Step I Consent Agreement with the Board in lieu of formal proceedings based upon his violation of Sections 4731.22(B)(19) and (B)(26), Ohio Revised Code. A copy of this April 10, 2002 Step I Consent Agreement between Brian F. McNamee, M.D., and the State Medical Board of Ohio [April 2002 Step I Consent Agreement] is attached hereto and incorporated herein.

Dr. McNamee admits that in the April 2002 Step I Consent Agreement he made certain admissions, including that on or about February 27, 2001, he was admitted to the psychiatric service at the Cleveland Clinic Foundation [Cleveland Clinic], with principle diagnoses of alcohol dependence and polysubstance abuse, and secondary diagnoses of mood disorder and anxiety disorder secondary to substance dependence versus primary mood disorder; that the treatment team at the Cleveland Clinic recommended that he enter a minimum 28-day residential program for treatment for chemical dependence; and that although he subsequently entered treatment at Glenbeigh Hospital he did not complete the recommended residential treatment at that time. Dr. McNamee further admits that the admissions in the April 2002 Step I Consent Agreement also included that on February 11, 2002, he submitted to a three-day inpatient examination at Shepherd Hill Hospital as ordered by the Board for purposes of determining whether he was in violation of Sections 4731.22(B)(19) and/or (B)(26), Ohio Revised Code; that the evaluating physician diagnosed him with chemical dependence and major depressive disorder, opined that he was currently impaired by these disorders and not currently able to practice according to acceptable standards, and recommended that he enter into residential treatment for both chemical dependence and major depressive disorder; and that he entered residential treatment for chemical dependence and major depressive disorder at Glenbeigh Hospital on or about February 18, 2002.

Dr. McNamee further admits that after entering treatment at Glenbeigh Hospital on February 18, 2002, he was discharged upon completion of treatment on March 21, 2002.

Dr. McNamee further admits that in the April 2002 Step I Consent Agreement he agreed that his certificate to practice medicine and surgery in Ohio would be suspended for an indefinite period of time, but not less than 90 days, and further agreed to certain specified terms, conditions, and limitations, including that he "shall abstain completely from the use of alcohol," as set forth in Paragraph 3 of that agreement.

Dr. McNamee admits that his certificate to practice medicine and surgery in Ohio remains suspended to date.

- F. Dr. McNamee admits that on or about April 22, 2002, he, through his attorney, reported to the Board that he had suffered a relapse and had tested positive for alcohol on or about April 14, 2002. Dr. McNamee further admits that on or about April 23, 2002, he entered residential treatment for chemical dependence at Glenbeigh Hospital, and further admits that on or about May 4, 2002, he left treatment at Glenbeigh Hospital against medical advice.
- G. Dr. McNamee admits that after leaving Glenbeigh Hospital on May 4, 2002, he relapsed on alcohol. Dr. McNamee further admits that on or about May 7, 2002, he, through his attorney, reported to the Board that he had suffered another relapse and had tested positive for alcohol on or about May 5, 2002. Dr. McNamee further admits that in addition to informing the Board of his relapse, he also informed the Board that he had been admitted voluntarily to the Cleveland Clinic's psychiatric unit for treatment of his anxiety disorder.
- H. Dr. McNamee further admits that his use of alcohol in April 2002 and May 2002, as discussed in paragraphs F and G above, was in violation of Paragraph 3 of his April 2002 Step I Consent Agreement, which required that he "abstain completely from the use of alcohol."

AGREED CONDITIONS

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

STAYED PERMANENT REVOCATION; SUSPENSION OF CERTIFICATE

- 1. The indefinite suspension of Dr. McNamee's certificate to practice medicine and surgery in the State of Ohio stemming from the April 2002 Step I Consent Agreement is hereby terminated. Further, Dr. McNamee's certificate to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. The permanent revocation is stayed, and Dr. McNamee's certificate is hereby SUSPENDED for an indefinite period of time, but not less than one year from the effective date of this Consent Agreement.

Sobriety

- 2. Dr. McNamee shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. McNamee's history of chemical dependency.

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

Releases; Quarterly Declarations and Appearances

4. Dr. McNamee 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. McNamee's chemical dependency or psychiatric diagnoses, or related conditions, or for purposes of complying with this Consent Agreement, whether such treatment or evaluation occurred before or after the effective date of this Consent Agreement. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. Dr. McNamee further agrees to provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Consent Agreement.
5. Dr. McNamee shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
6. Dr. McNamee shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

Drug & Alcohol Screens; Supervising Physician

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

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

shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. McNamee shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. McNamee. Dr. McNamee and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

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

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

All screening reports and supervising physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. McNamee's quarterly declaration. It is Dr. McNamee's responsibility to ensure that reports are timely submitted.

Psychiatric Treatment

8. Within thirty days of the effective date of this Consent Agreement, Dr. McNamee shall submit to the Board for its prior approval the name and qualifications of a psychiatrist of his choice. Upon approval by the Board, Dr. McNamee shall undergo and continue psychiatric treatment at least once every two weeks or as otherwise directed by the Board. Dr. McNamee shall comply with his psychiatric treatment plan, including taking medications as prescribed and/or ordered for his psychiatric disorder. Dr. McNamee shall ensure that psychiatric reports are forwarded by his treating psychiatrist to the Board on a quarterly basis, or as otherwise directed by the Board. The psychiatric reports shall contain information describing Dr. McNamee's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. McNamee's compliance with his treatment plan; Dr. McNamee's mental status; Dr. McNamee's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. McNamee shall ensure that his treating psychiatrist immediately notifies the Board of his failure

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

Rehabilitation Program

9. Dr. McNamee shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval.

Dr. McNamee shall submit acceptable documentary evidence of continuing compliance with this program, which must be received in the Board's offices no later than the due date for Dr. McNamee's quarterly declaration.

CONDITIONS FOR REINSTATEMENT

10. The Board shall not consider reinstatement of Dr. McNamee's certificate to practice medicine and surgery until all of the following conditions are met:
 - a. Dr. McNamee shall submit an application for reinstatement, accompanied by appropriate fees, if any.
 - b. Dr. McNamee shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - i. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. McNamee has successfully completed any required inpatient treatment.
 - ii. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
 - iii. Evidence of continuing full compliance with this Consent Agreement.
 - iv. Three written reports indicating that Dr. McNamee's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care.

Two reports shall be made by individuals or providers approved by the Board for making such assessments. Prior to the assessments, Dr. McNamee shall provide the evaluators with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The reports from the evaluators shall include any recommendations for treatment, monitoring, or supervision of Dr. McNamee, and any conditions, restrictions, or limitations that should be imposed on Dr. McNamee's practice. The reports shall also describe the basis for the evaluator's determinations.

One written report shall be made by a psychiatrist, approved in advance by the Board, who shall conduct a psychiatric examination of Dr. McNamee. Prior to the examination, Dr. McNamee shall provide the psychiatrist with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The report from the evaluating psychiatrist shall include the psychiatrist's diagnoses and conclusions; any recommendations for care, counseling, and treatment for the psychiatric diagnoses; any conditions, restrictions, or limitations that should be imposed on Dr. McNamee's practice; and the basis for the psychiatrist's determinations.

- c. Dr. McNamee shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the Board or, if the Board and Dr. McNamee are unable to agree on the terms of a written Consent Agreement, then Dr. McNamee further agrees to abide by any terms, conditions and limitations imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code.

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

11. In the event that Dr. McNamee 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, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. McNamee's fitness to resume practice.

REQUIRED REPORTING BY LICENSEE

12. Within thirty days of the effective date of this Consent Agreement, Dr. McNamee shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. McNamee further agrees to provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. McNamee shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
13. Within thirty days of the effective date of this Consent Agreement, Dr. McNamee shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. McNamee shall provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

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

FAILURE TO COMPLY

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

ACKNOWLEDGMENTS/LIABILITY RELEASE

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

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

Dr. McNamee hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code, and may be reported to appropriate organizations, data banks, and governmental bodies. Dr. McNamee agrees to provide his social security number to the Board and hereby authorizes the Board to utilize that number in conjunction with that reporting.

The April 2002 Step I Consent Agreement shall be terminated upon the last date of signature below, concurrent with this Step I Consent Agreement becoming effective. Further, this Step I Consent Agreement, upon becoming effective, shall contain the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Step I Consent Agreement.

EFFECTIVE DATE

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

Brian F. McNamee, M.D.
BRIAN F. MCNAMEE, M.D.

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

6-10-02
DATE

6/12/02
DATE

Kevin O'Connor
KEVIN O'CONNOR, ESQ.
Attorney for Dr. McNamee

Raymond J. Albert
RAYMOND J. ALBERT
Supervising Member

6-10-02
DATE

6/12/02
DATE

Rebecca J. Albers
REBECCA J. ALBERS, ESQ.
Assistant Attorney General

6/12/02
DATE

STEP I
CONSENT AGREEMENT
BETWEEN
BRIAN F. MCNAMEE, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO

This Consent Agreement is entered into by and between Brian F. McNamee, M.D. and the State Medical Board of Ohio [the Board], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

Dr. McNamee enters into this Consent Agreement being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

BASIS FOR ACTION

This Consent Agreement is entered into on the basis of the following stipulations, admissions and understandings:

- A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4731.22(B)(26), Ohio Revised Code, "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," and/or violation of Section 4731.22(B)(19), Ohio Revised Code, "[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills."
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Sections 4731.22(B)(19) and (B)(26), Ohio Revised Code, as set forth in Paragraphs E through G below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement.
- C. Dr. McNamee is licensed to practice medicine and surgery in the State of Ohio, License # 35-035216.
- D. Dr. McNamee states that he is not licensed to practice medicine and surgery in any other State or jurisdiction.

- E. Dr. McNamee admits that on or about February 27, 2001, he was admitted to the psychiatric service at the Cleveland Clinic Foundation in Cleveland, Ohio [Cleveland Clinic], with principle diagnoses of alcohol dependence and polysubstance abuse, and secondary diagnoses of mood disorder and anxiety disorder secondary to substance dependence versus primary mood disorder. Dr. McNamee further admits that following a chemical dependency consultation by Gregory Collins, M.D., it was recommended that Dr. McNamee enter a minimum 28-day residential program for treatment for chemical dependence. Dr. McNamee further admits that prior to his discharge from the Cleveland Clinic on or about March 2, 2001, with diagnoses of alcohol dependence, polysubstance abuse and mood disorder of an unspecified type, he informed the Cleveland Clinic treatment team of his intent to pursue the recommended residential treatment at another facility, Glenbeigh Hospital, a Board approved treatment provider in Rock Creek, Ohio.

Dr. McNamee further admits that although he subsequently entered treatment at Glenbeigh Hospital, he did not complete the recommended residential treatment at that time. In addition, Dr. McNamee admits that when questioned by a Board investigator later in 2001, he admitted that he had failed to complete the recommended course of treatment.

- F. Dr. McNamee further admits that on February 11, 2002, he submitted to a three-day inpatient examination at Shepherd Hill Hospital, a Board approved treatment provider in Newark, Ohio, as ordered by the Board for purposes of determining whether he is in violation of Sections 4731.22(B)(19) and/or (B)(26), Ohio Revised Code. Dr. McNamee further admits that as a result of such examination the evaluating physician diagnosed Dr. McNamee with chemical dependence and major depressive disorder; opined that Dr. McNamee is currently impaired by these disorders and not currently able to practice according to acceptable standards; and recommended that Dr. McNamee enter into residential treatment for both chemical dependence and major depressive disorder.
- G. Dr. McNamee further admits that he entered residential treatment for chemical dependence and major depressive disorder at Glenbeigh Hospital on or about February 18, 2002, and that such residential treatment continues to date.

AGREED CONDITIONS

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

SUSPENSION OF CERTIFICATE

1. The certificate of Dr. McNamee to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than ninety days.

Sobriety

2. Dr. McNamee shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. McNamee's history of chemical dependency.
3. Dr. McNamee shall abstain completely from the use of alcohol.

Releases; Quarterly Declarations and Appearances

4. Dr. McNamee 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. McNamee's chemical dependency or psychiatric diagnoses, or related conditions, or for purposes of complying with this Consent Agreement, whether such treatment or evaluation occurred before or after the effective date of this Consent Agreement. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. Dr. McNamee further agrees to provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Consent Agreement.
5. Dr. McNamee shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
6. Dr. McNamee shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

Drug & Alcohol Screens; Supervising Physician

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

Within thirty days of the effective date of this Consent Agreement, Dr. McNamee shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. McNamee shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. McNamee. Dr. McNamee and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

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

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

All screening reports and supervising physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. McNamee's quarterly declaration. It is Dr. McNamee's responsibility to ensure that reports are timely submitted.

Rehabilitation Program

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

Dr. McNamee shall submit acceptable documentary evidence of continuing compliance with this program, which must be received in the Board's offices no later than the due date for Dr. McNamee's quarterly declarations.

CONDITIONS FOR REINSTATEMENT

9. The Board shall not consider reinstatement of Dr. McNamee's certificate to practice medicine and surgery until all of the following conditions are met:
 - a. Dr. McNamee shall submit an application for reinstatement, accompanied by appropriate fees, if any.
 - b. Dr. McNamee shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - i. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. McNamee has successfully completed any required inpatient treatment.
 - ii. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
 - iii. Evidence of continuing full compliance with this Consent Agreement.
 - iv. Three written reports indicating that Dr. McNamee's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care.

Two reports shall be made by individuals or providers approved by the Board for making such assessments. Prior to the assessments, Dr. McNamee shall provide the evaluators with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The reports from the evaluators shall include any recommendations for treatment, monitoring, or supervision of Dr. McNamee, and any conditions, restrictions, or limitations that should be imposed on Dr. McNamee's practice. The reports shall also describe the basis for the evaluator's determinations.

One written report shall be made by a psychiatrist, approved in advance by the Board, who shall conduct a psychiatric examination of Dr. McNamee. Prior to the examination, Dr. McNamee shall provide the psychiatrist with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The report from the evaluating psychiatrist shall include the psychiatrist's diagnoses and conclusions; any recommendations for care, counseling, and treatment for the psychiatric diagnoses; any conditions, restrictions, or limitations that should be imposed on Dr. McNamee's practice; and the basis for the psychiatrist's determinations.

- c. Dr. McNamee shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the Board or, if the Board and Dr. McNamee are unable to agree on the terms of a written Consent Agreement, then Dr. McNamee further agrees to abide by any terms, conditions and limitations imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code.

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

10. In the event that Dr. McNamee 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, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. McNamee's fitness to resume practice.

REQUIRED REPORTING BY LICENSEE

11. Within thirty days of the effective date of this Consent Agreement, Dr. McNamee shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. McNamee further agrees to provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr.

McNamee shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

12. Within thirty days of the effective date of this Consent Agreement, Dr. McNamee shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. McNamee shall provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

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

FAILURE TO COMPLY

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

ACKNOWLEDGMENTS/LIABILITY RELEASE

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

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

Dr. McNamee hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code, and may be reported to appropriate organizations, data banks, and governmental bodies. Dr. McNamee agrees to provide his social security number to the Board and hereby authorizes the Board to utilize that number in conjunction with that reporting.

EFFECTIVE DATE

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

Brian F. McNamee, M.D.
BRIAN F. MCNAMEE, M.D.

4-5-02
DATE

Kevin O'Connor, Esq.
KEVIN O'CONNOR, ESQ.
Attorney for Dr. McNamee

4-5-02
DATE

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

4/10/02
DATE

Raymond J. Albert
RAYMOND J. ALBERT
Supervising Member

4/10/02
DATE

Rebecca J. Albers, Esq.
REBECCA J. ALBERS, ESQ.
Assistant Attorney General

4/10/02
DATE