

State Medical Board of Ohio

77 North State Street, Columbus, Ohio 43260-0001
767-5211

June 10, 1998

Allan Dean Packer, M.D.
1507 Hollywood Avenue
Cincinnati, OH 45224

Dear Doctor Packer:

Please find enclosed certified copies of the CORRECTED Entry of Order; the Report and Recommendation of Suzanne E. Kelly, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on June 10, 1998, including motions amending 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 may be taken to the Franklin County Court of Common Pleas only.

Such an appeal setting forth the Order appealed from and the grounds of 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 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

A handwritten signature in black ink, appearing to read "Anand G. Garg".

Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. Z 233 840 015
RETURN RECEIPT REQUESTED

cc: Eric J. Plinke, Esq.
CERTIFIED MAIL RECEIPT NO. Z 233 840 016
RETURN RECEIPT REQUESTED

Mailed 7/16/98

CERTIFICATION

I hereby certify that the attached copy of the CORRECTED Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Suzanne E. Kelly, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on June 10, 1998, including motions amending the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Allan Dean Packer, 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.

(SEAL)



Anand G. Garg, M.D.
Secretary

July 16, 1998

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

ALLAN DEAN PACKER, M.D.

*

CORRECTED
ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on June 10, 1998.

Upon the Report and Recommendation of Suzanne E. Kelly, 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:

1. The certificate of Allan D. Packer, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. Packer's certificate is SUSPENDED for an indefinite period of time, but not less than one year.
2. The Board shall not consider reinstatement of Dr. Packer's certificate to practice unless all of the following minimum requirements have been met:
 - a. Dr. Packer shall submit an application for reinstatement, accompanied by appropriate fees. Dr. Packer shall not make such application for at least one year from the effective date of this Order.
 - b. Within thirty (30) days of the effective date of this Order, Dr. Packer shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Packer shall submit urine specimens as required in paragraphs 2(c)(iv) and 3(g), below. 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.

- c. For the duration of the suspension period:
- i. Dr. Packer shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Dr. Packer's history of chemical dependency.
 - ii. Dr. Packer shall abstain completely from the use of alcohol.
 - iii. Dr. Packer shall provide satisfactory quarterly documentation of continuous participation in a drug and alcohol rehabilitation program, such as AA, NA, or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval.
 - iv. Dr. Packer shall submit to random urine screenings for drugs and/or alcohol on a random basis at least once per week, or as otherwise directed by the Board. Dr. Packer shall submit the urine specimens to the supervising physician approved by the Board pursuant to paragraph 2(b), above. The drug testing panel utilized must be acceptable to the Secretary of the Board.

Dr. Packer 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 Order, 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. Packer must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Packer shall further ensure that the previously designated supervising physician also notifies the Board directly of the inability to continue to serve and the reasons therefor.

The first quarterly report must be received in the Board's offices on the first day of the third month following the month in which this Order

becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly report must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly reports must be received in the Board's offices on or before the first day of every third month.

- v. Dr. Packer shall provide continuing authorization, through appropriate written consent forms, for disclosure by his treatment providers, counselors, or supervising physicians to the Board, to treating and monitoring physicians, and to others involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations.
- vi. Dr. Packer shall obey all federal, state, and local laws.
- d. At the time he submits his application for reinstatement, Dr. Packer shall submit to the Board and receive its approval for a plan of practice in Ohio which, until otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Packer's activities will be directly supervised and overseen by a monitoring physician approved in advance by the Board. The monitoring physician shall monitor Dr. Packer, as set forth in paragraph 3(k), below. The monitoring physician shall provide the Board with reports on Dr. Packer's progress and as directed by the Board.
- e. In the event that Dr. Packer has not been engaged in 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 his fitness to resume practice.
- f. Dr. Packer 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, Ohio Revised Code, that Dr. Packer has successfully completed any required inpatient treatment;
 - ii. Evidence of continuing full compliance with an aftercare contract or consent agreement;
 - iii. Two written reports indicating that Dr. Packer's ability to practice has been assessed and that he has been found capable of practicing

according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the Board for making such assessments and shall describe the basis for this determination.

3. Upon reinstatement, Dr. Packer's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
 - a. Dr. Packer shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.
 - b. Dr. Packer shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
 - c. Dr. Packer shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of probation. 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 probation 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.
 - d. Dr. Packer shall appear in person for interviews before the full Board or its designated representative within three months of the reinstatement of his certificate and at three month intervals thereafter, 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. Although the Board will normally give him written notification of scheduled appearances, it is Dr. Packer's responsibility to know when personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Packer shall immediately submit to the Board a written request to be notified of his next scheduled appearance.
 - e. Dr. Packer shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Dr. Packer's history of chemical dependency.

- f. Dr. Packer shall abstain completely from the use of alcohol.
- g. Dr. Packer shall submit to random urine screenings for drugs and/or alcohol on a bi-weekly basis or as otherwise directed by the Board. Dr. Packer 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.

The supervising physician approved by the Board prior to reinstatement, pursuant to paragraph 2(b), above, 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. Packer 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 Order, 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. Packer must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Packer shall further ensure that the previously designated supervising physician also notifies the Board directly of the inability to continue to serve and the reasons therefor.

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. Packer's quarterly declaration. It is Dr. Packer's responsibility to ensure that reports are timely submitted.

- h. Dr. Packer shall submit blood and/or urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Packer's expense.
- i. Dr. Packer shall maintain participation in an alcohol and drug rehabilitation program, such as AA, NA, or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval. In addition, at his appearances before the Board or its designated representative, Dr. Packer shall submit acceptable documentary evidence of continuing compliance with this program.

- j. Dr. Packer shall provide continuing authorization, through appropriate written consent forms, for disclosure by his treatment providers, monitoring physicians, and supervising physicians to the Board, to treating and monitoring physicians, and to others involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations.
- k. Dr. Packer shall comply with the practice plan approved by the Board prior to reinstatement of his certificate, as set forth in paragraph 2(d), above. The monitoring physician shall monitor Dr. Packer and provide the Board with reports on Dr. Packer's progress and status on a quarterly basis. All monitoring physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Packer's quarterly declaration. It is Dr. Packer's responsibility to ensure that the reports are timely submitted.

In the event that the approved monitoring physician becomes unable or unwilling to serve, Dr. Packer shall immediately notify the Board in writing and shall make arrangements for another monitoring physician as soon as practicable. Dr. Packer shall refrain from practicing until such supervision is in place, unless otherwise determined by the Board. Dr. Packer shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

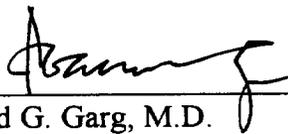
- l. Dr. Packer shall obtain the Board's prior approval for any alteration to the practice plan which was approved by the Board prior to the reinstatement of his certificate.
- m. Dr. Packer shall not prescribe, administer, dispense, order, write orders for, give verbal orders for, or possess (except as prescribed for his use by another so authorized by law) any controlled substances, without prior Board approval.
- n. Within thirty (30) days of the reinstatement of his certificate, Dr. Packer shall provide a copy of this Order to all employers or entities with which he is under contract to provide physician services, and the Chief of Staff at each hospital where Dr. Packer has privileges or appointments. Further, Dr. Packer shall provide a copy of this Order to all employers or entities with which he contracts to provide physician services, or applies for or receives training, and the Chief of Staff at each hospital where Dr. Packer applies for or obtains privileges or appointments.
- o. In the event that Dr. Packer should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Packer must notify the Board in writing of the dates of departure and return. Periods of time spent outside

Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.

- p. If Dr. Packer violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of Dr. Packer's certificate to practice medicine and surgery in Ohio.
4. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Packer's certificate will be fully restored.

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

(SEAL)



Anand G. Garg, M.D.
Secretary

July 16, 1998
Date

STATE MEDICAL BOARD
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**REPORT AND RECOMMENDATION
IN THE MATTER OF ALLAN DEAN PACKER, M.D.**

The Matter of Allan Dean Packer, M.D., came on for hearing before Suzanne E. Kelly, Esq., Hearing Examiner for the State Medical Board of Ohio, on February 24 and March 6, 1998.

INTRODUCTION

I. Basis for Hearing

A. By letter dated November 12, 1997, the State Medical Board of Ohio [Board] notified Allan Dean Packer, M.D., that it intended to determine whether to discipline his certificate to practice medicine and surgery, for one or more of the following reasons:

1. On April 14, 1997, Dr. Packer was charged with violating Section 3719.07, Ohio Revised Code, failure to keep Records of Controlled Substances, for having ordered 7,500 hydrocodone (Vicodin) tablets and 2,800 methylphenidate (Ritalin) tablets to his home and having failed to keep any records of those controlled substance medications. By Judgment Entry dated August 21, 1997, the Hamilton County Municipal Court accepted Dr. Packer's plea of no contest and found him guilty.
2. Dr. Packer has abused Vicodin, a schedule III controlled substance, for at least ten (10) years. Dr. Packer has also abused Ritalin, a schedule II controlled substance, for at least five (5) years. On August 21, 1997, Dr. Packer stipulated to the Hamilton County Municipal Court that he was drug dependent and that treatment in lieu of conviction was appropriate for him. Dr. Packer's substance abuse treatment providers have diagnosed him as opiate and amphetamine dependent.
3. Dr. Packer also ordered to his home and kept no record of the following schedule IV controlled substances: 500 Ativan tablets; 500 Valium tablets; 100 Restoril capsules; and 200 Xanax tablets.

The Board alleges that these acts, conduct, and/or omissions, individually and/or collectively, constituted "(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.

Additionally, the Board alleged that these acts, conduct, and/or omissions, individually and/or collectively, constituted "(i)mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or

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abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

Further, the Board alleged that these acts, conduct, and/or omissions, individually and/or collectively, constituted "(c)ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice," as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 3719.07, Ohio Revised Code.

Finally, the Board alleged that the acts underlying the finding of guilt in paragraph 1, and the acts, conduct, and/or omissions outlined in paragraph 3, individually and/or collectively, constitute "(c)ommission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.11(A), Ohio Revised Code, Aggravated Possession of Drugs, to wit: Ritalin; and Section 2925.11(A), Ohio Revised Code, Possession of Drugs, to wit: Vicodin, Ativan, Valium, Restoril and Xanax.

In addition, the Board notified Dr. Packer of his right to request a hearing in this matter. (State's Exhibit 1)

B. By letter received by the State Medical Board on December 4, 1997 (State's Exhibit 2), Dr. Packer requested a hearing.

II. Appearances

A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Jonathan M. Bowman, Assistant Attorney General.

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

EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State

1. Detective Bruce Todd Koehn
2. David P. Katko, Esq.

B. Presented by the Respondent

1. Allan D. Packer, M.D.

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2. Clyde S. Watson, M.D.
3. Barry Farrier
4. Carla McConnell, by deposition

II. Exhibits Examined

In addition to State's Exhibits 1 and 2, noted above, the following exhibits were identified and admitted into evidence:

A. Presented by the State

1. State's Exhibit 3: Copy of December 8, 1997, letter to Dr. Packer from the Board advising that a hearing had been set for December 15, 1997, but further advising the hearing had been postponed, pursuant to Section 119.09, Ohio Revised Code. (3 pp.)
2. State's Exhibit 4: Copy of December 10, 1997, letter to Dr. Packer from the Board scheduling the hearing for January 13, 1998. (2 pp.)
3. State's Exhibit 5: Copy of December 31, 1997, letter to the Board from Eric J. Plinke, Esq., enclosing a Motion for Continuance of the hearing. (4 pp.)
4. State's Exhibit 6: Copy of January 7, 1998, Entry granting Motion for Continuance and rescheduling the hearing for February 24, 1998.
5. State's Exhibit 7: Copy of January 6, 1998, letter to the Board from Eric J. Plinke, Esq., enclosing Respondent's Request for List of Witnesses and Documents. (2 pp.)
6. State's Exhibit 8: Copy of January 16, 1998, letter to Attorney Plinke, enclosing the State's Response to Respondent's Request for List of Witnesses and Documents. (3 pp.)
7. State's Exhibit 9: Copy of February 5, 1998, letter to the Board from Attorney Plinke enclosing a copy of a Request for Subpoena. (3 pp.)
8. State's Exhibit 10: Copy of February 10, 1998, letter to the Board from Attorney Plinke, enclosing a copy of a Second Request for Subpoena and a Motion for Deposition of Witness. (5 pp.)
9. State's Exhibit 11: Copy of February 17, 1998, Entry granting Respondent's Motion for Deposition of Witness.

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10. State's Exhibit 12: Copy of State's Request for List of Witnesses and Documents received by the Board on February 10, 1998. (2 pp.)
 11. State's Exhibit 13: Copy of State's Request for Issuance of a Subpoena received by the Board on February 10, 1998. (2 pp.)
 - *12. State's Exhibit 14: Certified copies from Licking Memorial Hospital, Newark, Ohio, of the records of Allan Packer, M.D., made in accordance with the provisions of Section 2317.422 of the Ohio Revised Code. (21 pp.)
 - *13. State's Exhibit 15: Certified copies from Licking Memorial Hospital, Newark, Ohio, of additional records of Allan Packer, M.D., made in accordance with the provisions of Section 2317.422 of the Ohio Revised Code. (25 pp.)
 - *14. State's Exhibit 16: Copies of papers from the Ohio Physicians Effectiveness Program [OPEP] regarding Dr. Packer: Status Report; Laboratory drug screens; OPEP Advocacy Contract; and OPEP AA/NA Attendance Log. (23 pp.)
 15. State's Exhibit 17: Withdrawn.
 16. State's Exhibit 18: Copy of Supplemental Report/Follow-Up Report from Dave Katko, Enforcement Coordinator, regarding Dr. Packer. Attached are copies of Complaints from the Hamilton County Municipal Court, Case No. 97CPB15108 and Cincinnati Police Division Arrest and Investigation Reports. (12 pp.)
 17. State's Exhibit 19: Copy of April 14, 1997, report from Detective Bruce T. Koehn regarding Dr. Packer. (6 pp.)
 18. State's Exhibit 20: Withdrawn.

B. Presented by the Respondent

- *1. Respondent's Exhibit 1: Copy of Medical Records for Dr. Packer from Greene Hall Memorial Hospital, Inc., Xenia, Ohio. (85 pp.)
- *2. Respondent's Exhibit 2: Copy of Confidential OPEP Advocacy Contract of Allan Packer, M.D., Case Number: PD 970416. (3 pp.)
- *3. Respondent's Exhibit 3: Copy of OPEP records regarding Dr. Packer. (41 pp.)
4. Respondent's Exhibit 4: Copy of April 25, 1997, letter to the Board from Attorney Plinke.

5. Respondent's Exhibit 5: Copy of May 5, 1997, letter to the Board from Attorney Plinke. MAY -7 AM 11:19
6. Respondent's Exhibit 6: Copy of Unsigned Shepherd Hill Hospital Authorization for Release of Medical Records.
7. Respondent's Exhibit 7: Copy of Signed Greene Hall Authorization for Release of Medical Records.
8. Respondent's Exhibit 8: Copy of Signed Shepherd Hill Hospital Authorization for Release of Medical Records.
- *9. Respondent's Exhibit 9: Copy of Confidential OPEP Authorization for Records/Information, including alcohol and drug information.
- *10. Respondent's Exhibit 10: Copy of September 9, 1997, letter to Attorney Plinke from Clyde S. Watson, M.D., Director, Emergency Department, Middletown Regional Hospital, Middletown, Ohio. (2 pp.)

C. Joint Exhibit

Joint Exhibit 1: Stipulation of Fact regarding Dr. Packer's voluntary surrender of his DEA Registration Certificate.

(NOTE: All exhibits marked with an asterisk (*) are sealed to protect patient confidentiality.)

D. Post Hearing Exhibits: Board Exhibits 1-11: (See Procedural Issues)

PROCEDURAL ISSUES

1. At hearing, the State agreed to submit a rotarized copy of page 12 of State's Exhibit 18. The Assistant Attorney General submitted this page on March 2, 1998. Counsel for Respondent had a continuing objection to this page of the exhibit based on its authenticity. The Hearing Examiner finds this document to be sufficiently authenticated. However, the page contains information that was redacted from the hearing transcript by agreement of the parties. Accordingly, the Hearing Examiner has redacted the last sentence on this page to be consistent with the parties' agreements. (Hearing Transcript Volume I [Hrg. Tr. Vol. I] 42-44, 46-62)
2. At hearing, the State and the Respondent stipulated to redact of portions of Detective Bruce Todd Koehn's testimony after reviewing the transcript. On April 8, 1998, during a teleconference, the parties identified the redaction. The Hearing Examiner redacted the transcript to reflect this agreement. (Hrg. Tr. Vol. I 20-27, 33-34)

STATE BOARD
OF MEDICINE

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3. On the Attorney Hearing Examiner's own motion, excerpts from the Physician's Desk Reference on Ritalin, Vicodin, Valium, Restoril, Xanax, Ativan, and oxazepam have been admitted to the record as Board Exhibits 1-7. Additionally, the Attorney Hearing Examiner admitted copies of Sections 3719.07, 2925.11, 2925.01, 3719.99 Ohio Revised Code, as Board Exhibits 8-11, respectively.

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.

Dr. Packer

1. Allan D. Packer, M.D., earned his undergraduate degree from the University of Utah in Salt Lake City. After Dr. Packer completed his medical degree, he completed three years of a residency in general surgery at Good Samaritan Hospital in Cincinnati, Ohio. Dr. Packer made the decision to pursue a career in emergency medicine in 1978. At that time, he joined a group practice based in Providence Hospital, Cincinnati, Ohio. In 1990, Dr. Packer moved to Middletown, Ohio, and took a position with an emergency medicine group practice which worked at Middletown Regional Hospital. (Hearing Transcript Volume I [Hrg. Tr. Vol. I] 90-95, 165)
2. According to records and testimony, Dr. Packer began using samples of Darvocet and Percocet to relax and enhance his performance approximately in 1987. In 1990, Dr. Packer received a prescription for Vicodin to treat back pain after surgery. Vicodin is a schedule IV controlled substance. In 1992, as Dr. Packer's use of Vicodin escalated, he began to take Ritalin. The Ritalin counteracted his experienced sleepiness. Dr. Packer further justified this use because his brother had been prescribed Ritalin for Attention Deficit Disorder [ADD], and Dr. Packer thought that it could help him. Ritalin is a schedule II controlled substance. The Ritalin caused insomnia, so Dr. Packer added Restoril, a schedule IV controlled substance to his regimen. Dr. Packer did not consult another physician regarding his personal medical treatment. (Board Exhibits [Bd. Exs.] 1-6; Hrg. Tr. Vol. I 139-146, 161-162)
3. When Dr. Packer's use exceeded his prescription for Vicodin, Dr. Packer obtained the drugs through samples left at the emergency room by pharmaceutical representatives. Dr. Packer testified that he eventually ordered the drugs to his home for the sake of convenience. Dr. Packer never explained his use of Valium, Xanax, or Ativan which he had also ordered to his home in large quantities. Dr. Packer testified that, at the time, he did not perceive that he had a problem with controlled substances. (Bd. Exs. 1-7; Hrg. Tr. Vol. I 139-146, 161-162)

STATE OF OHIO
 DEPARTMENT OF PUBLIC SAFETY

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Bruce Todd Koehn

1. Bruce Todd Koehn, a Police Officer with the City of Cincinnati, Ohio, works in the Central Vice Control Section, Pharmaceutical Diversion Unit. On April 11, 1997, Detective Koehn, Tim Mowery of the Drug Enforcement Administration [DEA], and Elaine Jones of the Pharmacy Board confronted Dr. Packer regarding the amount of drugs that he had ordered to his home since May 1996. The drugs he ordered are as follows:

<u>Date</u>	<u># Bottles</u>	<u>Amount Each</u>	<u>Drug</u>
5-6-96	1	500	hydrocodone
5-6-96	4	100	methylphenidate
7-5-96	2	500	hydrocodone
7-5-96	4	100	methylphenidate
8-23-96	1	100	alprazolam
8-23-96	1	500	Diazepam
8-23-96	2	500	hydrocodone
8-23-96	2	100	methylphenidate
8-23-96	1	100	temazepam
9-30-96	2	500	hydrocodone
9-30-96	4	100	methylphenidate
11-5-96	4	100	methylphenidate
12-16-96	1	100	Alprazolam
12-16-96	4	500	hydrocodone
12-16-96	1	500	Lorazepam
12-16-96	4	100	methylphenidate
2-7-97	5	100	methylphenidate
3-13-97	4	500	hydrocodone
3-13-97	1	100	methylphenidate

<u>Totals</u>		<u>Amount Ordered</u>	<u>Amount Surrendered on April 11, 1997</u>
Vicodin	-hydrocodone	7,500	904
Ritalin	-methylphenidate	2,800	0
Ativan	-lorazepam	500	461
Xanax	-alprazolam	200	25
Restoril	-temazepam	100	1
Valium	-diazepam	500	221

(State Exhibit [St. Exs.] 18 & 19; Hrg. Tr. Vol. I 18-19, 37)

2. After deep thought, Dr. Packer admitted that he had been ingesting the drugs. Detective Koehn testified that he believed it was the first time Dr. Packer had made such an admission to anyone. Dr. Packer explained to Detective Koehn that he had been taking Ritalin to stay

focused while he worked, he had been taking the Vicodin for years, and he had used the benzodiazepines to sleep. (Hrg. Tr. Vol. I 17-18, 28-29)

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3. At Detective Koehn's request, Dr. Packer estimated the amount of drugs that he had been taking. When Detective Koehn counted the amount of drugs surrendered by Dr. Packer and compared it to the amount allegedly ingested by Dr. Packer, there were unaccounted for pills. Dr. Packer admitted that he had not kept any records regarding his use of the medications. (St. Exs. 18 & 19; Hrg. Tr. Vol. I 19-20) Detective Koehn testified that, when an addict is confronted with evidence of addiction, the addict sometimes underestimates the amount of drugs taken each day. (Hrg. Tr. Vol. I 29-30)

Treatment

1. Dr. Packer testified that before he was confronted by Detective Koehn, he had no idea that he was an addict. As Detective Koehn detailed the amount of drugs Dr. Packer had ordered, he realized he had consumed most of them himself. Previously, Dr. Packer had looked at the drugs as medication. (Hrg. Tr. Vol. I 139-146, 161-162)
2. Prior to leaving Dr. Packer's residence, Detective Koehn recommended that Dr. Packer immediately enter a rehabilitation program and establish a support group. (Hrg. Tr. Vol. I 32) Dr. Packer testified that Detective Koehn established telephone contact with Charlie Braussard, a referral contact for OPEP, and handed the telephone to Dr. Packer. Dr. Packer spoke with Mr. Braussard for approximately an hour. Afterwards, Dr. Packer confessed to his wife that he had been taking controlled substances and explained his options. Dr. Packer made arrangements to provide daily urine samples to Mr. Braussard until he could start treatment at Shepherd Hill Hospital in Newark, Ohio. (Hrg. Tr. Vol. I 96-99)

Dr. Watson

1. Clyde Stewart Watson, M.D., serves as the director of emergency department at Middletown Regional Hospital. Dr. Watson has supervised or worked with Dr. Packer for the past nine years. (Hrg. Tr. Vol. I 65-66)
2. On April 11, 1997, Dr. Watson received a call from Dr. Packer, who requested to speak with Dr. Watson at his home. Dr. Packer revealed that he had been taking Vicodin. Dr. Watson testified that he was surprised. Dr. Watson described Dr. Packer as a premier physician who was always on time for work and received very few complaints from staff or patients. Since 1990, Dr. Watson had observed Dr. Packer several times per month when their shifts overlapped at the hospital or when they consulted on cases. In retrospect, Dr. Watson testified that he could identify that Dr. Packer had exhibited moodiness. (Respondent's Exhibit [Res. Ex.] 10; Hrg. Tr. Vol. I 69-71, 76-78, 85-86, 89, 100-103)

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Shepherd Hill Admission

1. Dr. Packer entered inpatient treatment at Shepherd Hill on April 15, 1997. For the first week, treatment progressed well. Shepherd Hill provided Level II treatment, which consists of education and medical support for possible withdrawal symptoms. Shepherd Hill diagnosed Dr. Packer as Amphetamine and Opioid Dependent. Dr. Packer testified that he discovered that his addiction had affected his life in many ways. For instance, Dr. Packer testified that he had experienced gaps in his short-term memory, which the recovery community considers "blackouts." Further, Dr. Packer felt he had learned some of what can trigger his use of controlled substances. (St. Ex. 14; Bd. Ex. 1; Hrg. Tr. Vol. I 100-110, 159-160)
2. Dr. Packer's first urine screen included a positive result for oxazepam, a schedule IV, 3-hydroxybenzodiazepinone. Dr. Packer had not reported using this drug. Upon confrontation, Dr. Packer told Shepherd Hill Staff that oxazepam was the generic name for Restoril. The Shepherd Hill staff noted that this information was incorrect. However no additional confrontation was noted in the records. The Physician's Desk Reference identifies Restoril, temazepam, as a schedule IV, benzodiazepine hypnotic agent. Dr. Packer did not reveal his source for the oxazepam. It should be noted that subsequently in July 1997, Dr. Packer had another positive test for oxazepam and again identified it as a generic for Restoril. Dr. Packer justified this positive test by stating he received Restoril during legitimate hospitalization for a heart problem. No additional information about this use was noted in the records. (St. Ex. 15 at 2, 17; Res. Ex. 10; Bd. Exs. 1 & 7; Hrg. Tr. Vol. I 134-135)
3. On April 25, 1997, Dr. Packer appeared before the Treatment Team [TT] of Shepherd Hill to determine the future course of his treatment. Initially, Dr. Packer expected to continue his treatment in an outpatient program. However, the TT recommended that Dr. Packer remain at Level II treatment for an additional week. On April 29, 1997, Dr. Packer's attorney contacted Shepherd Hill and requested a transfer to an outpatient program closer to Dr. Packer's home. Shepherd Hill staff informed Dr. Packer's attorney that the request would be presented to the TT on the following day. On April 30, 1997, the TT reviewed Dr. Packer's progress and recommended a transfer to the Shepherd Hill half-way house program, CORR. (St. Ex. 14; Hrg. Tr. Vol. I 111-114)
4. Dr. Packer began to lose faith in the motives of the Shepherd Hill staff. Dr. Packer testified that he questioned other patients and became concerned that the focus of the Shepherd Hill staff was on monetary gain, not his recovery. (Hrg. Tr. Vol. I 111-114) Shepherd Hill staff noted that Dr. Packer was considering leaving with his "treatment incomplete, due to inability to make financial arrangements to go into CORR." Shepherd Hill staff contacted Dr. Packer's wife who verified that the family could not finance Dr. Packer's stay at CORR. Further, Mrs. Packer expressed that treatment closer to home would be adequate. The Shepherd Hill staff noted that Dr. Packer's concern with his finances affected his performance in treatment at one session. (St. Ex. 14 at 15-16)

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5. As a result of his doubts, Dr. Packer contacted his attorney and Barry Farrier, a field representative for the Ohio Physicians Effectiveness Program [OPEP]. OPEP is a monitoring and advocacy program for impaired health care practitioners. (Hrg. Tr. Vol. II 5) Dr. Packer spoke to the Shepherd Hill staff and told them he wanted to be transferred directly to an outpatient program. Dr. Packer testified that the Shepherd Hill staff informed him that they did not do transfers. The TT noted the concern that the Greene Hall program in Xenia, Ohio, was not long term or comparable to CORR. Therefore, Greene Hall did not offer the intensity of treatment that the TT had determined Dr. Packer needed. (St. Ex. 14 at 17-18; Hrg. Tr. Vol. I 114-117)
6. Dr. Packer continued participating in treatment, while searching for an outpatient treatment program. On May 2, 1997, Dr. Packer testified that an administrator approached him during a group therapy session and asked him to leave. Dr. Packer protested that he only wanted to transfer. However, Dr. Packer testified that:

He said it doesn't make any difference, you just need to leave now. I said what if I don't leave now, and he said well, I guess I would do the same thing that you'd do if you had a patient in the emergency room that wouldn't leave; you'd call the police and have them thrown out. And I said you'd do that, and he said if we had to.

(Hrg. Tr. Vol. I 119) Dr. Packer left the facility. In a discharge note, the Shepherd Hill staff concluded that "perhaps too many people outside the TT had been involved in Dr. Packer's treatment." (St. Ex. 14 at 18-21)

7. Over the next week, Dr. Packer provided urine samples every day to Mr. Braussard. He signed an agreement with OPEP, and attended an AA meeting everyday until he could start treatment at Greene Memorial Hospital, Greene Hall, an intensive outpatient treatment program. (Hrg. Tr. Vol. I 119-120)

Greene Hall Admission

1. Dr. Packer testified that the first ten weeks at Greene Hall consisted of three evenings per week, three and one-half hours per evening. The aftercare program consisted of eight weeks of attending twice per week for three and one-half hours per evening. The final eight weeks required attendance of once per week for three and one-half hours per evening. (Res. Ex. 1; Hrg. Tr. Vol. I 121-122) Additionally, Dr. Packer had to report to a supervising physician, John Peterangelo, D.O., and a monitoring physician, Clyde Watson, M.D. OPEP provided drug testing and gathered reports on AA attendance, drug testing results, and program compliance. (St. Exs. 16 & 18; Res. Ex. 2 & 9; Hrg. Tr. Vol. I 122-123) In addition, Dr. Packer and his wife participated in marriage counseling during his treatment and have continued this to the present. (Hrg. Tr. Vol. I 123)

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2. The staff at Greene Hall diagnosed Dr. Packer as suffering from Opioid and Amphetamine dependency. Dr. Packer completed the 26 week program at Greene Hall. Dr. Packer testified that his treatment was very successful because it gave him the skills he needed to maintain his sobriety. (Hrg. Tr. Vol. I 124)

Carla McConnell

1. Carla McConnell, CCDCIII, LSW, is an outpatient counselor at Greene Hall. Ms. McConnell performs assessment, diagnosis, treatment planning, lectures, individual and group counseling, and discharge and aftercare planning. Ms. McConnell also serves as a liaison between the patient and employers, court systems, and family. (Deposition Transcript [Depo. Tr.] 6-7)
2. Ms. McConnell works under the supervision of John Peterangelo, D.O., and Kathryn Hitchcock, Ph.D. (Depo. Tr. 7, 41) Ms. McConnell described the program at Greene Hall as a three phase program. The entire program lasts approximately six months. (Depo. Tr. 14, 38-40) Ms. McConnell developed the outpatient program to include individuals at various phases meeting together. Ms. McConnell testified that she invites patients who have had successful recoveries to return as volunteer co-facilitators of the phases. (Depo. Tr. 15)
3. Ms. McConnell testified that the intensive outpatient treatment incorporates recovery activities into the patient's everyday life. Ms. McConnell testified that, "Inpatient is a very safe, protected little cocoon, and many times, upon leaving, the patient would go home to find everything in chaos and all the bills are behind and everything's in trouble, so they would relapse and never make it to aftercare." In her opinion, the intensive outpatient program is better for recovery than the 30 days of inpatient treatment. (Depo. Tr. 17-18) Ms. McConnell cited the structure and stability created by maintaining employment and familial ties during recovery. (Depo. Tr. 19)
4. Ms. McConnell described Dr. Packer as a willing patient. He attended all the meetings, except when he had a medical condition that required his hospitalization. Ms. McConnell testified that Dr. Packer completed all phases of treatment. Dr. Packer performed well when he returned to work; the structure and activity helped him in his recovery. (Res. Ex. 1; Depo. Tr. 26-30, 37; Hrg. Tr. Vol. I 134-135) Dr. Packer received treatment that resolved his heart condition; he engaged in marriage counseling; and developed a program of physical exercise. (Res. Ex. 1; Depo. Tr. 30; Hrg. Tr. Vol. I 134-135)
5. Ms. McConnell testified that Dr. Packer spoke openly, thoughtfully, and sincerely in group therapy. Dr. Packer demonstrated great motivation towards recovery. (Depo. Tr. 32) Because of Dr. Packer's commitment to recovery, and the group's respect for him, Ms. McConnell invited Dr. Packer to serve as a volunteer co-facilitator. Dr. Packer continues to participate in Greene Hall in this capacity once per week. (Depo. Tr. 33, 37-38, 54-55)

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6. Ms. McConnell testified that Dr. Packer would do well in recovery as long as he continues to attend AA and Caduceus meetings, to maintain a relationship with his sponsor, to follow the recommendations of OPEP, and to comply with his aftercare plan. (Depo. Tr. 33-35, 46-48, 50-52, 54)

Barry Farrier

Mr. Farrier acknowledged that Dr. Packer had difficulties during his treatment at Shepherd Hill. Mr. Farrier testified that although Dr. Packer left Shepherd Hill with his treatment incomplete, Dr. Packer continued with treatment at Greene Hall, which was the best thing to do in his situation. (Hrg. Tr. Vol. II 10) Mr. Farrier outlined that Dr. Packer had committed to a three year contract with OPEP. The OPEP contract requires Dr. Packer to submit to bi-weekly random urine screens, to attend three AA/NA meetings per week, and to work with a monitoring physician. According to OPEP's records, Dr. Packer has been compliant with all terms of his contract. (St. Ex. 16; Res. Exs. 2 & 9; Hrg. Tr. Vol. II 10-21)

Criminal Consequences

1. On April 14, 1997, Detective Koehn arrested Dr. Packer for failure to keep controlled substance records pursuant to Section 3719.07, Ohio Revised Code. (State's Exhibit [St. Ex.] 18 & 19; Hrg. Tr. Vol. I 13-15, 37-38) Section 3719.07, Ohio Revised Code, provides in pertinent part:

(E) Every practitioner or other person, except a pharmacist, manufacturer, or wholesaler, authorized to administer or use controlled substances shall keep a record of all controlled substances received, administered, dispensed, or used...

(Bd. Ex. 1) Violation of this statute is a misdemeanor of the first degree. (St. Ex. 18 at 7; Bd. Ex. 11) Specifically, Dr. Packer failed "to keep records of all controlled substances administered, dispensed, or used by him, to wit: hydrocodone and methylphenidate HCL tablets. This occurred while being a current licensed physician by the State of Ohio and as a result of these drugs having been ordered and received by him legally on his current DEA license." (St. Exs. 18, 19)

2. Dr. Packer testified that he did not know he had to keep records of medications if he was purchasing and taking them for his own use. Although Dr. Packer consumed the bulk of the controlled substances, he utilized a small portion of some of the medications for others, without keeping records. (Hrg. Tr. Vol. I 147-149) Dr. Packer kept the controlled substances in his linen closet or the basement of his home. Neither location was locked. (Hrg. Tr. Vol. I 150-151, 157-159) On June 25, 1997, Dr. Packer pleaded no contest to the charges. (St. Ex. 18)

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3. The Hamilton County Municipal Court ordered an evaluation of Dr. Packer by a Dr. Khalilli. On August 21, 1997, the Court found Dr. Packer eligible for treatment in lieu of conviction. The Court placed Dr. Packer on probation for two years. Further, the Court ordered that Dr. Packer continue with his drug treatment at Greene Hall, attend AA meetings, participate in the mentor physician program, and provide random urine screens. (St. Ex. 18; Hrg. Tr. Vol. I 127-129)

Section 2925.11, O.R.C.

1. Section 2925.11, Ohio Revised Code provides that "No person shall knowingly obtain, possess or use a controlled substance." (Bd. Ex. 9) The penalty attached to violating this statute depends on the amount of drugs obtained, possessed, or used.
2. The "Bulk amount" of a controlled substance means any of the following:

An amount equal to or exceeding...thirty times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a...substance that is or contains any amount of a schedule II stimulant that is in a final dosage form manufactured by a person authorized by the Federal Food, Drug, and Cosmetic Act and the federal drug abuse control laws...;

An amount equal to or exceeding...thirty times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a schedule III or IV substance other than an anabolic steroid or a schedule III opiate or opium derivative.

(Bd. Ex. 10)

3. Ritalin is a schedule II stimulant with a maximum daily dosage of 10 mg. The bulk amount of Ritalin would be 300 mg. Ritalin is manufactured in several different pill sizes. The State did not provide evidence regarding the pill size of the Ritalin Dr. Packer purchased. Accordingly, the exact amount in relation to the bulk amount cannot be determined. However, whoever violates Section 2925.11(A), as a result of any amount of a schedule II stimulant is guilty of a felony of the fifth degree. (Bd. Ex. 1 & 10)
4. Vicodin is a schedule III drug with a maximum daily dosage of 8 tablets. The bulk amount of Vicodin would be 240 tablets. Vicodin is manufactured in one pill size. Whoever is guilty of Section 2925.11(A), and possesses a schedule III drug in an amount that exceeds five times the bulk amount, but does not exceed fifty times the bulk amount, is guilty of a felony of the third degree. Dr. Packer possessed 7,500 tablets of Vicodin. (Bd. Ex. 2 & 10)

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5. The State did not provide evidence regarding the pill size of the other controlled substances obtained by Dr. Packer. Therefore, it is impossible to determine whether, and by how much, Dr. Packer exceeded the bulk amount. For possession of schedule IV controlled substances, the penalty is a misdemeanor of the third degree. (Bd. Exs. 3-10)

DEA Registration Certificate

In May 1997, Dr. Packer delivered his DEA certificate to agents in Columbus while he was awaiting the beginning of the Greene Hall program. On the same day he reapplied for his DEA certificate. The DEA reissued a certificate to Dr. Packer on June 27, 1997. He continues to hold this certificate. (Joint Exhibit 1; Hrg. Tr. Vol. I 129-132)

Current activities

Dr. Packer reported his chemical dependency and treatment to the Board approximately ten days into his treatment at Shepherd Hill. He allowed the Board access to the records of his treatment providers. Further, Dr. Packer requested his monitoring physician to provide updated information to the Board. (Res. Ex. 4-10; Hrg. Tr. Vol. I 131-132, 135)

Dr. Packer stopped working on April 15, 1997. He returned to work at Middletown Regional Hospital's emergency room in early July 1997. Dr. Packer views work as a "tool for me to use in my sobriety to help me maintain my sobriety." Dr. Watson supervises Dr. Packer at work. (Res. Ex. 10; Hrg. Tr. Vol. I 135-136)

Currently, Dr. Packer attends Greene Hall every other week as a co-facilitator. In compliance with his aftercare agreement, Dr. Packer meets with Dr. Peterangelo on a monthly basis. On a bi-weekly basis, Dr. Packer provides random urine samples for drug testing. He attends Caduceus meetings once per week and attends AA twice to three times per week. Additionally, Dr. Packer has an agreement with the Impaired Physician's Committee of Middletown Regional Hospital. (Hrg. Tr. Vol. I 124-127)

FINDINGS OF FACT

1. Dr. Packer ordered 7,500 Vicodin tablets; 2,800 Ritalin tablets; 500 Ativan tablets; 500 Valium tablets; 100 Restoril capsules; and 200 Xanax tablets to his home by using his DEA registration certificate.
2. Dr. Packer did not keep records regarding the dispensation of 6,596 Vicodin tablets; 2,800 Ritalin tablets; 39 Ativan tablets; 279 Diazepam tablets; 99 Restoril tablets; and 175 Xanax tablets.

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3. Dr. Packer has abused Vicodin, a schedule III controlled substance, for at least ten years. Dr. Packer has abused Ritalin, a schedule II controlled substance, for at least five years. On August 21, 1997, Dr. Packer stipulated to the Hamilton County Municipal Court that he was drug dependent and that treatment in lieu of conviction was appropriate for him. Substance abuse treatment providers at Shepherd Hill and Greene Hall diagnosed Dr. Packer as opioid and amphetamine dependent.
4. By Judgment Entry dated August 21, 1997, the Hamilton County Municipal Court accepted Dr. Packer's plea of no contest and found him guilty of Section 3719.07, Ohio Revised Code, Failure to Keep Records of Controlled Substances, a misdemeanor of the first degree.
5. To maintain his current sobriety, Dr. Packer requires continued treatment, monitoring and supervision.
6. Dr. Packer knowingly obtained, possessed or used Ritalin, a schedule II controlled substance stimulant, in violation of Section 2925.11(A), Ohio Revised Code. Whoever violates Section 2925.11(A) as a result of any amount of a schedule II stimulant is subject to prosecution for a felony of the fifth degree.
7. Dr. Packer knowingly obtained, possessed, or used Vicodin, a schedule III controlled substance stimulant, in violation of Section 2925.11(A), Ohio Revised Code. Further, Dr. Packer possessed an amount greater than five times the bulk amount, but less than fifty times the bulk amount of Vicodin. Whoever violates Section 2925.11(A) as a result of this amount of Vicodin is subject to prosecution for a felony of the third degree.
8. The State did not present evidence regarding the strength of the medication ordered by Dr. Packer. The State presented evidence of only the number of pills.

CONCLUSIONS OF LAW

1. As set forth in Findings of Fact 3 and 4, the Hamilton County Municipal Court made a "judicial finding of guilt of, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.
2. As set forth in Findings of Fact 1-7, Dr. Packer's acts, conduct, and/or omissions, 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.
3. As set forth in Findings of Fact 1-4, Dr. Packer's acts, conduct, and/or omissions, individually and/or collectively, constitute "(c)ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if

the act was committed in the course of practice," as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 3719.07, Ohio Revised Code, Records of Controlled Substances.

4. As set forth in Findings of Fact 1-7, Dr. Packer's acts conduct, and/or omissions, individually and/or collectively, constitute "(c)ommission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.11(A), Ohio Revised Code, Aggravated Possession of Drugs, to wit: Ritalin; and Section 2925.11(A), Ohio Revised Code, Possession of Drugs, to wit: Vicodin.
5. Finding of Fact 8 does not support a finding that Dr. Packer's acts, conduct, and/or omissions, individually and/or collectively, constitute "(c)ommission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.11(A), Ohio Revised Code, Possession of Drugs, to wit: Ativan, Valium, Restoril and Xanax. Without knowing the strength of each pill, it is impossible to calculate the amount of the drug possessed by Dr. Packer. The amount dictates the penalty for the offense. Accordingly, the evidence is insufficient to find that possession of these drugs would constitute a felony in this state.

PROPOSED ORDER

It is hereby ORDERED that:

1. The certificate of Allan D. Packer, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than one year.
2. The Board shall not consider reinstatement of Dr. Packer's certificate to practice unless all of the following minimum requirements have been met:
 - a. Dr. Packer shall submit an application for reinstatement, accompanied by appropriate fees. Dr. Packer shall not make such application for at least one year from the effective date of this Order.
 - b. Within thirty days of the effective date of this Order, or as otherwise approved by the Board, Dr. Packer shall submit to appropriate treatment, as determined by an informed assessment of his current needs. Such assessment and treatment shall be by an approved treatment provider or providers for drug and alcohol dependency. Prior to the initial assessment, Dr. Packer shall furnish the approved provider copies of the Board's Summary of the Evidence, Findings of Fact, Conclusions, Order, and any other documentation from the hearing record which the Board may deem appropriate or helpful to that provider. Within ten (10) days after the completion of the initial

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assessment, Dr. Packer shall cause a written report to be submitted to the Board from the approved provider, which report shall include:

- i. A detailed plan of recommended treatment based upon the treatment provider's informed assessment of Dr. Packer's current needs;
 - ii. A statement indicating that Dr. Packer has entered into or commenced the recommended treatment program within forty-eight (48) hours of its determination;
 - iii. A copy of a treatment contract signed by Dr. Packer establishing the terms of treatment and aftercare, including any required supervision or restrictions of practice during treatment or aftercare; and
 - iv. A statement indicating that the treatment provider will immediately report to the Board any failure by Dr. Packer to comply with the terms of the treatment contract during inpatient or outpatient treatment or aftercare.
- c. Within thirty (30) days of the effective date of this Order, Dr. Packer shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Packer shall submit urine specimens as required in paragraphs 2(d)(v) and 3(g), below. 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.
- d. For the duration of the suspension period:
- i. Dr. Packer shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Dr. Packer's history of chemical dependency.
 - ii. Dr. Packer shall abstain completely from the use of alcohol.
 - iii. Dr. Packer shall provide satisfactory quarterly documentation of continuous participation in a drug and alcohol rehabilitation program, such as AA, NA, or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval.
 - iv. Dr. Packer shall provide the Board with acceptable documentation evidencing compliance with the plan of recommended treatment, if any, pursuant to

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paragraph 2(b), above, on a quarterly basis, or as otherwise directed by the Board.

- v. Dr. Packer shall submit to random urine screenings for drugs and/or alcohol on a random basis at least once per week, or as otherwise directed by the Board. Dr. Packer shall submit the urine specimens to the supervising physician approved by the Board pursuant to paragraph 2(c), above. The drug testing panel utilized must be acceptable to the Secretary of the Board.

Dr. Packer 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 Order, 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. Packer must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Packer shall further ensure that the previously designated supervising physician also notifies the Board directly of the inability to continue to serve and the reasons therefor.

The first quarterly report must be received in the Board's offices on the first day of the third month following the month in which this Order becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly report must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly reports must be received in the Board's offices on or before the first day of every third month.

- vi. Dr. Packer shall provide continuing authorization, through appropriate written consent forms, for disclosure by his treatment providers, counselors, or supervising physicians to the Board, to treating and monitoring physicians, and to others involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations.
 - vii. Dr. Packer shall obey all federal, state, and local laws.
- e. At the time he submits his application for reinstatement, Dr. Packer shall submit to the Board and receive its approval for a plan of practice in Ohio which, until otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Packer's activities will be directly supervised and overseen by a monitoring physician approved in advance by the Board. The monitoring physician shall monitor Dr. Packer, as set forth in paragraph 3(k), below. The monitoring physician shall

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provide the Board with reports on Dr. Packer's progress and as directed by the Board.

- f. In the event that Dr. Packer has not been engaged in 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 his fitness to resume practice.
3. Upon reinstatement, Dr. Packer's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
- a. Dr. Packer shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.
 - b. Dr. Packer shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
 - c. Dr. Packer shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of probation. 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 probation 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.
 - d. Dr. Packer shall appear in person for interviews before the full Board or its designated representative within three months of the reinstatement of his certificate and at three month intervals thereafter, 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. Although the Board will normally give him written notification of scheduled appearances, it is Dr. Packer's responsibility to know when personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Packer shall immediately submit to the Board a written request to be notified of his next scheduled appearance.

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

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- f. Dr. Packer shall abstain completely from the use of alcohol.
- g. Dr. Packer shall submit to random urine screenings for drugs and/or alcohol on a bi-weekly basis or as otherwise directed by the Board. Dr. Packer 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.

The supervising physician approved by the Board prior to reinstatement, pursuant to paragraph 2(c), above, 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. Packer 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 Order, 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. Packer must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Packer shall further ensure that the previously designated supervising physician also notifies the Board directly of the inability to continue to serve and the reasons therefor.

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. Packer's quarterly declaration. It is Dr. Packer's responsibility to ensure that reports are timely submitted.

- h. Dr. Packer shall submit blood and/or urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Packer's expense.
- i. Dr. Packer shall maintain participation in an alcohol and drug rehabilitation program, such as AA, NA, or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval. In addition, at his appearances before the Board or its designated representative, Dr. Packer shall submit acceptable documentary evidence of continuing compliance with this program.
- j. Dr. Packer shall provide continuing authorization, through appropriate written consent forms, for disclosure by his treatment providers, monitoring physicians, and supervising physicians to the Board, to treating and monitoring physicians, and to others involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations.

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- k. Dr. Packer shall comply with the practice plan approved by the Board prior to reinstatement of his certificate, as set forth in paragraph 2(e), above. The monitoring physician shall monitor Dr. Packer and provide the Board with reports on Dr. Packer's progress and status on a quarterly basis. All monitoring physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Packer's quarterly declaration. It is Dr. Packer's responsibility to ensure that the reports are timely submitted.

In the event that the approved monitoring physician becomes unable or unwilling to serve, Dr. Packer shall immediately notify the Board in writing and shall make arrangements for another monitoring physician as soon as practicable. Dr. Packer shall refrain from practicing until such supervision is in place, unless otherwise determined by the Board. Dr. Packer shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

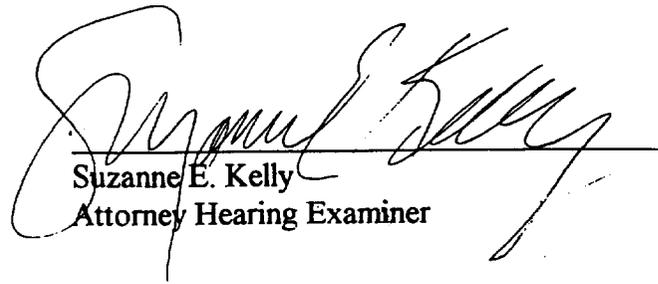
- l. Dr. Packer shall obtain the Board's prior approval for any alteration to the practice plan which was approved by the Board prior to the reinstatement of his certificate.
- m. Dr. Packer shall not prescribe, administer, dispense, order, write orders for, give verbal orders for, or possess (except as prescribed for his use by another so authorized by law) any controlled substances, without prior Board approval.
- n. Within thirty (30) days of the reinstatement of his certificate, Dr. Packer shall provide a copy of this Order to all employers or entities with which he is under contract to provide physician services, and the Chief of Staff at each hospital where Dr. Packer has privileges or appointments. Further, Dr. Packer shall provide a copy of this Order to all employers or entities with which he contracts to provide physician services, or applies for or receives training, and the Chief of Staff at each hospital where Dr. Packer applies for or obtains privileges or appointments.
- o. In the event that Dr. Packer should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Packer must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
- p. If Dr. Packer violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of Dr. Packer's certificate to practice medicine and surgery in Ohio.

STATE OF OHIO

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4. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Packer's certificate will be fully restored.

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



Suzanne E. Kelly
Attorney Hearing Examiner



State Medical Board of Ohio

77 S. High Street, 17th Floor • Columbus, Ohio 43266-0315 • 614/ 466-3934 • Website: www.state.oh.us/med/

EXCERPT FROM THE DRAFT MINUTES OF JUNE 10, 1998

REPORTS AND RECOMMENDATIONS

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

Dr. Buchan asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Allan Dean Packer, M.D.; Erian H. Y. Girgis, M.D.; Neal E. Holleran, M.D.; Axel Lennart Lofgren, M.D.; Clarence L. Huggins, M.D.; Mervet K. Saleh, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Somani	- aye
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Ms. Noble	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Dr. Buchan	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Somani	- aye
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Ms. Noble	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye

Dr. Steinbergh - aye
Dr. Buchan - aye

In accordance with the provision in Section 4731.22(C)(1), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters.

Dr. Buchan 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.

ALLAN D. PACKER, M.D.

Dr. Buchan directed the Board's attention to the matter of Allan D. Packer, M.D. He advised that objections were filed to Hearing Examiner Kelly's Report and Recommendation and were previously distributed to Board members. A motion to delay consideration of this matter until the July Board meeting was also filed on behalf of Dr. Packer, due to his inability to personally appear today. Dr. Buchan stated that he denied that motion pursuant to authority vested in him by the Board's rules.

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

Mr. Plinke advised that Dr. Packer was able to make arrangements to appear before the Board. He noted that objections to the Hearing Examiner's Report and Recommendation were filed. Dr. Packer has no objections to the probationary terms, but he does seek a stay of the proposed suspension period. Mr. Plinke stated that a stay is appropriate based on mitigating factors that were not emphasized in the Report and Recommendation. Those mitigating factors include the fact that Dr. Packer self-reported in April 1997, disclosing his abuse of substances and advising that he was entering into treatment. He provided updates to the Board and cooperated fully with the Board's investigation. Additionally, Dr. Packer removed himself from practice for nearly three months, during which time he didn't practice medicine and took no call in the emergency room. Dr. Packer is committed to his recovery efforts. He surrendered his D.E.A. This was a unilateral act on his part; he was not compelled to do so by any other entity.

Mr. Plinke stated that there are a number of other mitigating factors which he identified in the objections. He asked the Board to consider these factors and stay the proposed suspension. In light of these mitigating factors, and reading the Report and Recommendation, it does not appear that a suspension of this duration would be appropriate in this case. Mr. Plinke stated that Dr. Packer's unilateral acts served to protect the public, and these are the types of conduct that the Board would like physicians in Dr. Packer's situation to

do before the Board is able to be involved.

Mr. Plinke at this time deferred to Dr. Packer.

Dr. Packer stated that he is complying with the requirement of his OPEP agreement and with the requirements of the Impaired Physicians Committee at the hospital where he works. They obtain random urines at the hospital where he works through OPEP. He attends ten A.A., N.A. or Caduceus meetings per month, and he continues to have random drug screens every two weeks through his physician monitor. He also continues to attend Greene Hall as part of his aftercare.

Dr. Packer stated that in recovery they teach that there are three things the recovering individual must get back: integrity, relationship with a higher power, and personal relationships. Dr. Packer stated that he got his integrity back at Shepherd Hill, he regains his relationship with a higher power while at Greene hall, and he is now getting back his personal relationships with his wife and children. His first son moved away from home a year ago, and he hasn't been able to work on that relationship with any intensity, but the two at home are happy with the way things are. His relationship with his wife remains relatively tenuous. The time of his active addiction was painful for her; it caused her more pain than he realized.

Dr. Packer concluded by stating that his life, clean and sober, is infinitely better than it was when he was using drugs.

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

Mr. Bowman stated that it is the State's position that the Hearing Examiner's Report and Recommendation should be adopted with modifications. Mr. Bowman stated that opposing counsel did raise an objection with respect to treatment. The State would not disagree with that objection. Dr. Packer did undergo treatment at Shepherd Hill and Greene Hall, both of which are Board-approved treatment providers.

Mr. Bowman continued that, since the Board is dealing with a violation of §4731.22 (B)(26), inclusion of statutory provisions needs to be made.

Mr. Bowman stated that Dr. Packer's recovery is admirable; nevertheless, in light of the egregious conduct that warranted that recovery, Dr. Packer should not be allowed to escape the appropriate disciplinary actions. The Hearing Examiner's Report and Recommendation is an appropriate disciplinary action. Dr. Packer abused Vicodin for ten years. He abused Ritalin for at least five years. There is no question from the evidence presented at hearing that Dr. Packer is an impaired physician under the law and the rules of the Board. Dr. Packer ordered and had delivered to his home 7,500 hydrocodone and 2,800 tablets of Ritalin. No records were kept with respect to these; hence, he was convicted of a misdemeanor in this regard. In addition, he committed conduct that constitutes a felony with aggravated possession and possession of drugs with respect to drugs listed in this case. Dr. Packer obtained these drugs by using his D.E.A. license, ordering a number of drugs to be delivered to his home. Mr. Bowman stated that this type

of conduct warrants the type of disciplinary action that is shown in the Report and Recommendation. Dr. Packer's recovery is admirable, but he simply cannot be allowed to escape appropriate disciplinary action in this case due to his own recovery.

Dr. Buchan stated that, subsequent to the issuance of the Report and Recommendation, the Hearing Examiner filed an errata sheet that would have made additions to the Proposed Order; however, the Board was unable to verify receipt of that errata sheet by Dr. Packer and his counsel. Consequently, the Board would consider Ms. Kelly's Report and Recommendation as originally filed.

**DR. BHATI MOVED TO APPROVE AND CONFIRM MS. KELLY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF ALLAN D. PACKER, M.D.
DR. AGRESTA SECONDED THE MOTION.**

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

DR. STEINBERGH MOVED THAT THE PROPOSED ORDER IN THE MATTER OF ALLAN D. PACKER, M.D., BE AMENDED BY ADDING THE FOLLOWING PARAGRAPHS:

2. g. Dr. Packer 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, Ohio Revised Code, that Dr. Packer has successfully completed any required inpatient treatment;
 - ii. Evidence of continuing full compliance with an aftercare contract or consent agreement;
 - iii. Two written reports indicating that Dr. Packer's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the Board for making such assessments and shall describe the basis for this determination.

Dr. Steinbergh stated that there are several other areas of concern in the Report and Recommendation that need to be addressed. Dr. Steinbergh asked to table this matter to allow time to prepare language that would make the necessary changes.

Dr. Buchan asked for a second to Dr. Steinbergh's motion.

DR. SOMANI SECONDED DR. STEINBERGH'S MOTION TO AMEND.

Dr. Buchan indicated that the Board would first vote on Dr. Steinbergh's motion before entertaining a motion to table.

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

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Somani	- aye
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Ms. Noble	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye
	Dr. Buchan	- aye

The motion carried.

DR. STEINBERGH MOVED TO TABLE THE MATTER OF ALLAN D. PACKER, M.D. The motion died for lack of a second.

Dr. Heidt stated that the Board should get all of the amendments out of the way before tabling this matter.

Dr. Heidt continued that this case involved a very grievous problem, but all of the medications ordered were to serve Dr. Packer's own drug dependence. He didn't sell any of them. Dr. Packer did self-impose a suspension in April 1997.

DR. HEIDT MOVED TO MODIFY PARAGRAPH 1 OF THE PROPOSED ORDER TO MAKE A PERIOD OF SUSPENSION OF NOT LESS THAN SIX MONTHS RATHER THAN ONE YEAR. DR. AGRESTA SECONDED THE MOTION.

Dr. Somani stated that it is not clear to him that Dr. Packer voluntarily suspended his license. Concerning Dr. Packer's surrender of his D.E.A. certificate, he reapplied for it the same day he returned to practice in June 1997. Dr. Somani stated that he can't accept that Dr. Packer has taken a course of action to correct his practice, and for that reason he could not support Dr. Heidt's amendment.

Mr. Sinnott stated that this was an egregious case with multiple severe violations of the Medical Practices

Act. It includes ten years of drug dependence, criminal conduct, performance of conduct that would justify felony violations. Dr. Packer illegally acquired tremendous quantities of street drugs. The record would support permanent revocation of Dr. Packer's license. There are mitigating factors that would indicate, but suspension of less than one year doesn't convey the message this Board consistently wants to deliver, and that is that this kind of conduct on the part of physicians is completely unacceptable and will be sanctioned severely. A year's suspension is the absolute minimum in this case.

Dr. Steinbergh stated that she agrees that the suspension period should not be less than a year. She also believes that the Board should permanently revoke Dr. Packer's license, but stay the revocation and suspend his license for a minimum period of one year. She noted that Dr. Packer was arrested in April 1997 "for his failure to keep controlled substances according to records, and so forth." So he didn't really just voluntarily decide he was going to provide himself with a treatment program. Dr. Steinbergh noted that Dr. Packer does currently have a D.E.A. certificate.

Dr. Steinbergh continued that she doesn't believe that Dr. Packer needs to be reassessed, and she believes that his probationary terms are appropriate. He's not going to be prescribing, administering, dispensing, ordering or writing orders for any controlled substances without the Board's prior approval.

Dr. Stienecker spoke in support of Dr. Heidt's amendment. Dr. Packer is in recovery now. The Board hasn't been able to show by its evidence that there's a felony in process before it. Dr. Packer has been sober for a year.

Dr. Bhati stated that he is rather surprised on this issue. The Board isn't looking at a small situation, it's looking at ten years of problems, 7,500 Vicodin ordered at home, 2,800 Ritalin ordered at home, Ativan, Xanax, Restoril, and Valium by the hundreds. From May 1996 to March 1997 Dr. Packer ordered 5,100 tablets for his home. That is a tremendous amount. Dr. Bhati stated that he feels sorry that Dr. Packer has this problem, he understands that Dr. Packer has gone through the treatment, but he's not quite sure that he is willing to believe that Dr. Packer has done everything to adequately help himself. The felony charges are documentable. Dr. Bhati stated that he would consider a permanent revocation in this case, or a minimum five-year suspension. He definitely cannot accept a six-month suspension.

Mr. Sinnott indicated that he wished to make clear the criminal status of this case. There was a finding of eligibility for treatment in lieu of conviction with respect to a first degree misdemeanor. With respect to the Ritalin and the Vicodin, the Hearing Examiner correctly notes that the conduct involved would constitute a felony in this State, that is, a felony committed in the course of practice. It is obvious that Dr. Packer was not convicted of a felony, but that doesn't settle the question. There is still the issue as to whether he engaged in conduct that represents a felony. The Hearing Examiner's finding, fully supported by the record, is that, in fact, he did.

Dr. Bhati stated that he is not willing to believe that Dr. Packer had this drug problem for the past ten years and it did not affect his practice. He has a hard time believing that.

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

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- nay
	Dr. Heidt	- aye
	Dr. Somani	- nay
	Dr. Egner	- nay
	Mr. Sinnott	- nay
	Ms. Noble	- nay
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- nay
	Dr. Buchan	- nay

The motion failed.

Dr. Buchan asked whether there is further discussion on the original order.

MR. SINNOTT MOVED TO TABLE THE MATTER OF ALLAN D. PACKER, M.D. FOR PREPARATION OF THE MODIFICATIONS DR. STEINBERGH SUGGESTED. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Somani	- aye
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Ms. Noble	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye
	Dr. Buchan	- aye

The motion carried.

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DR. STEINBERGH MOVED TO REMOVE THE MATTER OF ALLAN D. PACKER, M.D., FROM THE TABLE. MR. SINNOTT SECONDED THE MOTION. A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Somani	- aye
	Dr. Egnor	- aye
	Mr. Sinnott	- aye
	Ms. Noble	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye
	Dr. Buchan	- aye

The motion carried.

DR. STEINBERGH MOVED THAT THE SUMMARY OF EVIDENCE IN THE MATTER OF ALLAN D. PACKER, M.D., BE MODIFIED TO SUBSTITUTE THE FOLLOWING, ON PAGE 13, FOR PARAGRAPH 3 BENEATH THE HEADING "SECTION 2925.11, O.R.C.":

3. Ritalin is a Schedule II stimulant with a maximum daily dosage of 60 mg. The bulk amount of Ritalin would be 1800 mg. Ritalin is manufactured in several different pill sizes. Dr. Packer purchased Ritalin in the 20 mg strength, and ordered 2800 total tablets. Whoever violates Section 2925.11(A), Ohio Revised Code, as a result possession of more than bulk amount of a Schedule II stimulant is guilty of a felony of the third degree. (Bd. Ex. 1 & 10 and St. Ex. 18)

DR. STEINBERGH FURTHER MOVED THAT THE SUMMARY OF EVIDENCE IN THE MATTER OF ALLAN D. PACKER, M.D., BE MODIFIED BY DELETING PARAGRAPH 5 ON THE TOP OF PAGE 14 AND SUBSTITUTING THE FOLLOWING:

5. State's Exhibit 18 establishes that Dr. Packer ordered and possessed the following Schedule IV controlled substances, by which bulk amount can be calculated as indicated below:

Drug	Dosage Units/Strength	Max. Daily Dosage	Bulk Amount
Ativan	500/2 mg	10 mg	300 mg
Xanax	200/2 mg	10 mg	300 mg
Valium	500/10 mg	40 mg	1200 mg
Restoril	100/30 mg	30 mg	900 mg

DR. STEINBERGH FURTHER MOVED THAT THE FINDINGS OF FACT IN THE MATTER OF ALLAN D. PACKER, M.D., BE MODIFIED BY SUBSTITUTING THE FOLLOWING FOR PARAGRAPH 8:

8. Dr. Packer knowingly obtained, possessed or used Ativan, Xanax, Valium and Restoril, all Schedule IV controlled substances, in violation of Section 2925.11(A), Ohio Revised Code. Further, Dr. Packer possessed an amount greater than the bulk amount, but less than five times the bulk amount. Whoever violates Section 2925.11(A), Ohio Revised Code, as a result of these amounts of controlled substances is subject to prosecution for a felony of the fourth degree. (St. Ex. 18)

DR. STEINBERGH FURTHER MOVED THAT THE CONCLUSIONS OF LAW IN THE MATTER OF ALLAN D. PACKER, M.D., BE MODIFIED BY SUBSTITUTING THE FOLLOWING FOR PARAGRAPH 5:

5. As set forth in Findings of Fact 1-2 and 8, Dr. Packer's acts, conduct and/or omissions, individually and/or collectively, constitute "(c)ommission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.11(A), Ohio Revised Code, Possession of Drugs, to wit: Ativan, Valium, Restoril and Xanax.

DR. STEINBERGH FURTHER MOVED THAT THE PROPOSED ORDER IN THE MATTER OF ALLAN D. PACKER, M.D., BE AMENDED BY DELETING PARAGRAPH 2.b. IN ITS ENTIRETY.

SHE FURTHER MOVED THAT THE PROPOSED ORDER IN THE MATTER OF ALLAN D. PACKER, M.D., BE AMENDED BY SUBSTITUTING THE FOLLOWING FOR PARAGRAPH 1:

1. The certificate of Allan D. Packer, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. Packer's certificate is SUSPENDED for an indefinite period of time, but not less than one year.

MR. SINNOTT SECONDED THE MOTION.

Dr. Buchan stated that he believes the proposed amendments were well written and more in line with what is reasonable.

Mr. Sinnott agreed with Dr. Buchan.

A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Somani	- aye
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Ms. Noble	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye
	Dr. Buchan	- aye

The motion carried.

DR. BHATI MOVED TO APPROVE AND CONFIRM MS. KELLY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF ALLAN D. PACKER, M.D. DR. HEIDT SECONDED THE MOTION.

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

Dr. Somani stated that he is not clear. It appears that Dr. Packer does have his D.E.A. certificate.

Dr. Steinbergh stated that he does have it, but under the probationary terms, he cannot prescribe without the Board's prior approval.

Dr. Somani stated that, generally, the Board requests physicians to surrender their D.E.A. certificates.

DR. SOMANI MOVED TO MODIFY THE PROPOSED ORDER TO INCLUDE A REQUIREMENT THAT DR. PACKER SURRENDER HIS D.E.A. AND NOT REAPPLY FOR IT WITHOUT THE BOARD'S PERMISSION. The motion died for lack of a second.

Dr. Heidt commented that the Board is already suspending Dr. Packer's license for a year.

Dr. Stienecker stated that there is no evidence that Dr. Packer misused his D.E.A. He ordered the drugs for himself.

Mr. Sinnott stated that he feels the Order, as amended by Dr. Steinbergh's motion, establishes enough control over Dr. Packer's prescribing practices to give the Board reasonable comfort. The Board will have to approve any request made by Dr. Packer for permission to prescribe, administer, dispense, order, write orders for, give verbal orders for, or possess any controlled substances. Order Dr. Packer to surrender his D.E.A. may be too much.

Dr. Steinbergh commented that the D.E.A. may ask Dr. Packer to surrender his certificate since his license will be suspended.

Dr. Bhati stated that the current language includes enough constraints.

Dr. Somani stated that Dr. Packer's problem was ordering medications for delivery to his home.

Dr. Stienecker stated that Dr. Packer won't be able to get work if he doesn't have a D.E.A. certificate.

Dr. Egner stated that her biggest concern is the possibility of Dr. Packer's relapsing. She added that she believes that there are enough safeguards in place and that requiring surrender of his D.E.A. is not necessary. Dr. Packer needs to prove that he can remain drug-free and work under the probationary terms.

A vote was taken on Dr. Bhati's motion to approve and confirm, as amended:

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Somani	- aye
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Ms. Noble	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- nay
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye
	Dr. Buchan	- aye

The motion carried.

Mr. Albert commented that the Board is all over the place on the issue of retaining the D.E.A. certificate. This is something the Board needs to consider. In this case, Dr. Packer has a stayed revocation, and if he violates the probationary terms, the Board can permanently revoke his license. Mr. Albert added that he doesn't know that it does any good to take an impaired physician's D.E.A. certificate. If such a physician wants drugs to abuse, he can get them.

Ms. Lubow stated that several years ago, in discussions with representatives from the D.E.A., the Board was requested to not use language requiring D.E.A. surrender because the D.E.A. feels that that is their jurisdiction. The language used in Dr. Packer's Proposed Order is a response to that request.

Dr. Steinbergh added that this language might be more appropriate in a managed care situations.



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614)466-3934

November 12, 1997

Allan Dean Packer, M.D.
105 McKnight Drive
Middletown, OH 45202

Dear Doctor Packer:

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, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

1. On April 14, 1997, you were charged with violating Section 3719.07, Ohio Revised Code, failure to keep Records of Controlled Substances, for having ordered 7,500 Hydrocodone (Vicodin) tablets and 2,800 Methylphenidate (Ritalin) tablets to your home and having failed to keep any records of those controlled substance medications. By judgment entry dated August 21, 1997, the Hamilton County Municipal Court accepted your plea of no contest and found you guilty of Section 3719.07, Ohio Revised Code, failure to keep Records of Controlled Substances.
2. You have abused Vicodin, a Schedule III controlled substance, for at least ten (10) years. You have also abused Ritalin, a Schedule II controlled substance, for at least five (5) years. On August 21, 1997, you stipulated to the Hamilton County Municipal Court that you are drug dependent and that treatment in lieu of conviction was appropriate for you. Your substance abuse treatment providers have diagnosed you as opiate and amphetamine dependent.
3. You also ordered to your home and kept no record of the following Schedule IV controlled substances: 500 Ativan tablets; 500 Valium tablets; 100 Restoril capsules; and 200 Xanax tablets.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) 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.

M. L. D. 11/12/97

Further, your acts, conduct, and/or omissions as alleged in paragraph (3) above, individually and/or collectively, constitute "(c)ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice," as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 3719.07, Ohio Revised Code, Records of Controlled Substances.

Further, the acts underlying the finding of guilt as alleged in paragraph 1 above, and your acts, conduct, and/or omissions as alleged in paragraph (3) above, individually and/or collectively, constitute "(c)ommission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.11(A), Ohio Revised Code, Aggravated Possession of Drugs, to wit: Ritalin; and Section 2925.11(A), Ohio Revised Code, Possession of Drugs, to wit: Vicodin, Ativan, Valium, Restoril and Xanax.

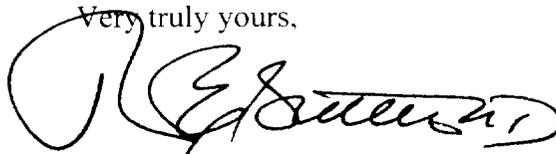
Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing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

You are further advised that 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, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Thomas E. Gretter, M.D.
Secretary

TEG/par
Enclosures
CERTIFIED MAIL # P 152 982 772
RETURN RECEIPT REQUESTED

cc: Eric Plinke, Esq.
CERTIFIED MAIL # P 152 984 505
(RETURN RECEIPT REQUESTED)