

State Medical Board of Ohio

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



Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
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July 9, 2008

W. Scott Nekrosius, M.D.
6514 Cedar Crest Trail
Dayton, OH 45459

RE: Case No. 07-CRF-003

Dear Doctor Nekrosius:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 9, 2008, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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

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

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage MD
Lance A. Talmage, M.D. *rw*
Secretary

LAT:jam
Enclosures

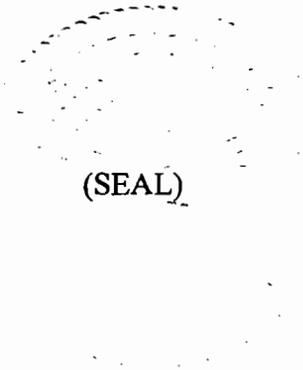
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RETURN RECEIPT REQUESTED

Mailed 8-5-08

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 9, 2008, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of W. Scott Nekrosius, M.D., Case No. 07-CRF-003, as it appears in the Journal of the State Medical Board of Ohio.

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



Lance A. Talmage MD
Lance A. Talmage, M.D. RW
Secretary

July 9, 2008
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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CASE NO. 07-CRF-003

W. SCOTT NEKROSIUS, M.D.

*

ENTRY OF ORDER

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

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

It is hereby ORDERED that:

1. **RESTORATION OF CERTIFICATE:** The certificate of W. Scott Nekrosius, M.D., to practice medicine and surgery in the State of Ohio is hereby RESTORED.
2. **LIMITATION OF CERTIFICATE:**
 - a. **Limitation of Certificate:** Dr. Nekrosius' certificate to practice medicine and surgery in the state of Ohio shall be STRICTLY LIMITED to participation in a post-graduate training program accredited by the ACGME or AOA and approved in advance by the Board. Dr. Nekrosius shall not engage in any other employment as a physician.

Dr. Nekrosius shall not request termination of the above limitation of his certificate until such time that Dr. Nekrosius shall demonstrate to the satisfaction of the Board that he is capable of independently practicing medicine and surgery according to acceptable and prevailing standards of care. Such demonstration shall include, but shall not be limited to, written documentation acceptable to the Board verifying that Dr. Nekrosius has successfully completed an accredited post-graduate training program in conformance with the requirements set forth in this Board Order, and written documentation acceptable to the Board from Dr. Nekrosius' post-graduate training program director indicating that Dr. Nekrosius is capable of independently practicing medicine and surgery according to acceptable and prevailing standards of care.

- b. **Prerequisites to Participation in a Post-Graduate Training Program:** Prior to engaging in any post-graduate training program, Dr. Nekrosius shall submit appropriate documentation acceptable to the Board indicating that he has undergone a complete, structured, formal physical and mental health evaluation, including complete diagnostic neuropsychological testing to ascertain whether he has the ability to function at the high level required for a physician, and he shall cause to be submitted to the Board a written report regarding such evaluation indicating that his ability to practice within the limited scope of a post-graduate training program has been assessed and that he has been found capable of so practicing according to acceptable and prevailing standards of care. The report shall be made by a physician treatment team associated with a multidisciplinary program experienced in dealing with physicians, unless otherwise determined by the Board, and approved in advance by the Board to provide an assessment of Dr. Nekrosius. Prior to the assessment, Dr. Nekrosius shall provide the evaluators with copies of patient records from any evaluations and/or treatment that he has received, a copy of this Board Order, and a copy of the Executive Summary from his CPEP assessment. The reports from the evaluators shall include any recommendations for treatment, monitoring, or supervision of Dr. Nekrosius, and any conditions, restrictions, or limitations that should be imposed on Dr. Nekrosius' practice. The reports shall also describe the basis for the evaluator's determinations.
- c. **Post-Graduate Monitor:** While Dr. Nekrosius participates in a post-graduate program accredited by the ACGME or AOA, the Board shall require a quarterly statement from the director of Dr. Nekrosius' post-graduate program, or alternatively, from the attending physician specifically designated by the post-graduate director as the person having responsibility to directly oversee Dr. Nekrosius' clinical rotations, addressing Dr. Nekrosius' performance (clinical and otherwise) in the post-graduate program. Prior to commencing any post-graduate training program, Dr. Nekrosius shall so notify the Board by providing a writing, signed by both himself and his post-graduate director, and, if applicable, by the attending physician specifically designated by the post-graduate director as the person having responsibility to directly oversee Dr. Nekrosius' clinical rotations, specifically identifying the post-graduate program in which he will be participating and indicating the post-graduate director's agreement to comply with the reporting requirements set forth herein. Further, should his post-graduate director or the designated attending physician become unable or unwilling to serve, Dr. Nekrosius must immediately so notify the Board in writing and within thirty days make arrangements for a replacement post-graduate monitor. Furthermore, Dr. Nekrosius shall ensure that the previously designated post-graduate monitor also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

All reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Nekrosius' quarterly declaration, as set forth in Paragraph 4.b below. It is Dr. Nekrosius' responsibility to ensure that reports are timely submitted.

In such quarterly reports, the post-graduate monitor shall specifically report on whether Dr. Nekrosius' limited practice of medicine and surgery was within acceptable and prevailing standards of care, including observations of Dr. Nekrosius' current medical knowledge, his technique and skill, his delivery of patient care, his development of patient history and chief complaints, his performance of physical and mental examinations, his formulation of diagnosis including differential plan of treatment, his relations concerning interpersonal and communication skills, his documentation related to medical record keeping, his professionalism, his development of practice-based learning and improvement, and his application of systems-based practice.

In the event that the post-graduate monitor identifies deficits in Dr. Nekrosius' performance, the Secretary and Supervising Member will make a determination as to future action, which may include, *inter alia*, instituting formal disciplinary proceedings and/or entering into a consent agreement related to remedial action.

The Board expressly reserves the right to disapprove any person proposed to serve as Dr. Nekrosius' designated post-graduate monitor, or to withdraw approval of any person previously approved to serve as Dr. Nekrosius' post-graduate monitor, in the event that the Secretary and Supervising Member of the Board determine that any such post-graduate monitor has demonstrated a lack of cooperation in providing information to the Board or for any other reason. In the event that the Board disapproves of any post-graduate monitor proposed by Dr. Nekrosius or withdraws approval of a designated post-graduate monitor, Dr. Nekrosius shall, within thirty days after the Board disapproves or withdraws approval of any post-graduate monitor, submit the name and curriculum vitae of another post-graduate monitor for prior written approval by the Board.

- d. **Obey the Law**: Dr. Nekrosius shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
3. **TERMINATION OF STRICT LIMITATION**: Upon successful completion of his post-graduate training program, as evidenced by a written release from the Board, Dr. Nekrosius' certificate will no longer be strictly limited to participation in a post-graduate training program.
 4. **PROBATION**: Upon successful completion of his post-graduate training program and the termination of the strict limitation on his certificate, as set forth in paragraph 3, above, Dr. Nekrosius' certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years:
 - a. **Obey the Law**: Dr. Nekrosius shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 - b. **Declarations of Compliance**: Dr. Nekrosius shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this probation. The first

quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

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

- d. **Practice Plan:** Prior to Dr. Nekrosius' commencement of independent practice in Ohio, or as otherwise determined by the Board, Dr. Nekrosius shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Nekrosius' activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Nekrosius shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

At the time Dr. Nekrosius submits his practice plan, he shall also submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary or Supervising Member will give preference to a physician who practices in the same locale as Dr. Nekrosius and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Nekrosius and his medical practice, and shall review Dr. Nekrosius' patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Nekrosius and his medical practice, and on the review of Dr. Nekrosius' patient charts. Dr. Nekrosius shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Nekrosius' quarterly declaration, as set forth in Paragraph 4.b, above.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Nekrosius must immediately so notify the Board in writing. In addition, Dr. Nekrosius shall make arrangements acceptable to the Board for another monitoring physician within thirty days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Nekrosius shall ensure that the

previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

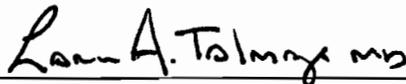
- e. **Controlled Substances Log**: Dr. Nekrosius shall keep a log of all controlled substances he prescribes, orders, administers, or personally furnishes. Such log shall be submitted in a format approved by the Board thirty days prior to Dr. Nekrosius' personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Nekrosius shall make his patient records with regard to such controlled substances available for review by an agent of the Board upon request.
 - f. **Absence from Ohio**: Dr. Nekrosius shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.
5. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Nekrosius' certificate will be fully restored.
 6. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS**: Within thirty days of the effective date of this Board Order, Dr. Nekrosius shall provide a copy of this Board Order to all employers or entities with which he is under contract to provide health care services (including but not limited to third party payors) or is receiving training, and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Nekrosius shall promptly provide a copy of this Board Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. In the event that Dr. Nekrosius provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within thirty days of the effective date of this Board Order Dr. Nekrosius shall provide a copy of this Board Order to the Ohio Department of Public Safety, Division of Emergency Medical Services. Further, Dr. Nekrosius shall provide the Board with **one** of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Board Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was emailed.
 7. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES**: Within thirty days of the effective date of this Board Order, Dr. Nekrosius shall provide a

copy of this Board Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Dr. Nekrosius further agrees to provide a copy of this Board Order at time of application to the proper licensing authority of any state in which he applies for any professional license or for reinstatement of any professional license. Further, Dr. Nekrosius shall provide the Board with **one** of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Board Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was emailed.

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

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

(SEAL)



Lance A. Talmage, M.D. RW
Secretary

July 9, 2008

Date

REPORT AND RECOMMENDATION
IN THE MATTER OF W. SCOTT NEKROSIUS, M.D.
Case No. 07-CRF-003

STATE MEDICAL BOARD
OF OHIO

2008 JUN 13 P 2:17

The Matter of W. Scott Nekrosius, M.D., was heard by R. Gregory Porter, Hearing Examiner for the State Medical Board of Ohio, on April 8, 2008.

INTRODUCTION

Basis for Hearing

In an October 10, 2007, letter to W. Scott Nekrosius, M.D., the State Medical Board of Ohio [Board] informed Dr. Nekrosius that, pursuant to the terms of a Step I Consent Agreement that the Board and Dr. Nekrosius had entered into in March 2002 [2002 Consent Agreement], the Board had scheduled a hearing to address a matter arising under that Consent Agreement.

In its letter, the Board noted that the Board had issued a Notice of Opportunity for Hearing to Dr. Nekrosius in October 2001 [2001 Notice]. The Board further noted that Dr. Nekrosius had entered into the 2002 Consent Agreement in lieu of further disciplinary proceedings based on the allegations set forth in the 2001 Notice.

In the 2002 Consent Agreement, Dr. Nekrosius admitted to the factual and legal allegations set forth in the 2001 Notice. Moreover, Dr. Nekrosius agreed to specified terms and conditions, including that his certificate to practice medicine and surgery in the State of Ohio would be suspended for an indefinite period of time. Dr. Nekrosius further agreed that the Board would not consider reinstatement of his certificate until certain conditions for reinstatement had been met. One of those conditions was that he would submit documentation acceptable to the Board verifying his participation in and successful completion of the Colorado Physicians Effectiveness Program [CPEP].¹ Dr. Nekrosius also agreed to work with CPEP to ensure that a written Assessment Report would be issued and include "a detailed plan of recommended practice limitations, if any; any recommended education; any recommended mentorship or preceptorship; and any reports upon which the recommendation was based, including reports of physical examinations and psychological or other testing."

In its letter, the Board further noted that a CPEP assessment had taken place in March 2002 and that the Board had received CPEP's assessment report for Dr. Nekrosius in May 2002. The CPEP Assessment Report Executive Summary included a statement indicating, in part, that,

[Dr. Nekrosius'] performance demonstrated inconsistent medical knowledge, poor clinical reasoning and judgment, and unacceptable documentation skills.

¹ Since that time, the Colorado Physicians Effectiveness Program has changed its name to "Center for Personalized Education for Physicians." It is still known as "CPEP."

He needed further education in patient communication. Results of the cognitive screen, when taken together with observations of behavior, suggested the need for further diagnostic evaluation. Dr. Nekrosius also needs a comprehensive health review.

The CPEP Assessment Report Executive Summary concluded, in part, that “Dr. Nekrosius cannot participate in an education program until his cognitive/health concerns are assessed and any impact on his practice is ascertained.”

In its letter, the Board also noted that Dr. Nekrosius had “failed to have his cognitive/health concerns assessed and/or failed to have reports from such assessments submitted to CPEP. By such failure, CPEP is unable to render a final opinion as to whether education could correct his identified deficiencies as set forth in the CPEP report.” Nevertheless, despite his failure to fully comply with the requisite conditions for reinstatement of his license as contained in his 2002 Consent Agreement, on August 1, 2003, Dr. Nekrosius submitted a request to the Board for reinstatement of his license to practice medicine and surgery in the State of Ohio.

Finally, the Board stated that, despite ongoing negotiations, the Board and Dr. Nekrosius had been unable to reach agreement concerning the terms, conditions, and limitations, if any, for Dr. Nekrosius’ subsequent consent agreement. Accordingly, the Board advised Dr. Nekrosius that, pursuant to the 2002 Consent Agreement, the Board had scheduled the matter for a hearing under Chapter 119, Ohio Revised Code to determine what terms, conditions, and limitations, if any, should be imposed by Board Order. The Board’s letter included the date and time of the hearing. (State’s Exhibit 1)

Appearances

On behalf of the State of Ohio: Nancy Hardin Rogers, Attorney General, by Karen A. Unver, Assistant Attorney General.

On behalf of the Respondent: W. Scott Nekrosius, M.D., pro se.

EVIDENCE EXAMINED

Testimony Heard

A. Presented by the State

Danielle Bickers
Kay Rieve
Barbara Jacobs
W. Scott Nekrosius, M.D., as if on cross-examination
Elizabeth Korinek, by telephone

B. Presented by the Respondent

W. Scott Nekrosius, M.D.

Exhibits Examined

A. Presented by the State

State's Exhibit 1: Certified copies of documents maintained by the Board pertaining to Dr. Nekrosius, including an October 10, 2007, notice and opportunity for hearing, a March 14, 2002, Step I Consent Agreement, and information from the Ohio eLicense Center concerning Dr. Nekrosius.

State's Exhibit 2: Copy of an October 10, 2001, notice of opportunity for hearing issued to Dr. Nekrosius by the Board. (Note: With the agreement of the parties, a Confidential Patient Key was removed from this document, marked State's Exhibit 2A, and sealed to protect patient confidentiality.)

State's Exhibit 2A: Copy of Patient Key. (Note: Exhibit sealed to protect patient confidentiality)

State's Exhibit 3: Copy of a March 14, 2002, Step I Consent Agreement between Dr. Nekrosius and the Board.

State's Exhibit 4: Copy of a Participation Agreement entered into by Dr. Nekrosius and the Colorado Personalized Education for Physicians [CPEP].

State's Exhibit 5: Copy of a final Assessment Report issued by CPEP regarding Dr. Nekrosius.

State's Exhibit 6: Copy of an October 5, 2002, letter from Barbara A. Rogers, Public Service Administrator for the Board, to Douglas E. Graff, Esq., counsel for Dr. Nekrosius.

State's Exhibits 7, 9, 11, 13, 14, 15, and 16: Copies of correspondence between Karen T. Dunlevy, counsel for Dr. Nekrosius, and the Board.

State's Exhibits 8, 10, 20A: Copies of correspondence between CPEP and the Board.

State's Exhibit 12: Copy of report of an April 30, 2002, neuropsychological evaluation of Dr. Nekrosius performed by Thomas C. Sullivan, Ph.D., with cover letter.

State's Exhibit 17: Copy of an October 2006 proposed consent agreement between Dr. Nekrosius and the Board.

State's Exhibit 18: Copy of the February 14, 2007, letter from Dr. Nekrosius to the Board.

State's Exhibit 19: Copy of a May 1, 2007, letter from the Board to Dr. Nekrosius.

State's Exhibit 20: Copy of an April 8, 2008, stipulation between the parties.

State's Exhibit 21: Copy of report of a July 13, 2007, neuropsychological evaluation of Dr. Nekrosius performed by Dr. Sullivan.

B. Presented by the Respondent

Respondent's Exhibit A: Copy of a blank CPEP Assessment Services Participation Agreement.

Respondent's Exhibit B: Copy of the report of an April 30, 2002, neuropsychological evaluation of Dr. Nekrosius performed by Dr. Sullivan. (Duplicate of State's Exhibit 12)

Respondent's Exhibit C: Copy of the report of a July 13, 2007, neuropsychological evaluation of Dr. Nekrosius performed by Dr. Sullivan. (Duplicate of State's Exhibit 21)

Respondent's Exhibit D: Copy of the October 2006 proposed consent agreement between Dr. Nekrosius and the Board, without signature page. (Duplicate of State's Exhibit 17)

Respondent's Exhibit E: Copy of the February 14, 2007, letter from Dr. Nekrosius to the Board. (Duplicate of State's Exhibit 18)

Respondent's Exhibit F: Copy of a February 22, 2006, letter to Dr. Nekrosius from the University of Florida, Division of Forensic Psychiatry.

Respondent's Exhibits G, H: Information from the United States Department of Veterans Affairs regarding fellowship programs.

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.

Background Information

1. W. Scott Nekrosius, M.D., obtained his medical degree in 1971 from the Medical College of Wisconsin in Milwaukee, Wisconsin. In 1974, Dr. Nekrosius completed a combined residency in psychiatry and child psychiatry. He trained in general psychology at the

Medical College of Wisconsin, and in child psychology at Milwaukee Children's Hospital. (Hearing Transcript [Tr.] at 69; State's Exhibit [St. Ex.] 5 at 1, 4)

After completing his residency, Dr. Nekrosius served as a psychiatrist in the United States Army for approximately three years. In 1978, he relocated to Dayton, Ohio, where he practiced adult and child psychiatry. Dr. Nekrosius owned and practiced in a mental health clinic where he provided direct patient care. The clinic employed psychologists, social workers, and other therapists. Dr. Nekrosius also served as the Chief of Psychiatry at the Kettering Medical Center from 1992 until 2002, when his license to practice medicine and surgery in Ohio was suspended. (Tr. at 69-70; St. Ex. 5 at 4-5)

Dr. Nekrosius is board certified in psychiatry/neurology, and does not require recertification. He holds licenses to practice medicine in Ohio, Wisconsin, and Hawaii, but his licenses to practice in Wisconsin and Hawaii have been suspended pending the outcome of the disciplinary proceedings in Ohio. (Tr. at 70; St. Ex. 5 at 1, 4)

Dr. Nekrosius testified that he considers himself retired from the practice of medicine. Since his suspension, he has been involved in a few small businesses of his own. He also took a course in auctioneering, but was unable to obtain a license due to his problems with the Board. Initially, Dr. Nekrosius testified that he has not completed any Continuing Medical Education [CME] since 2002. Later, Dr. Nekrosius testified that he has participated in two general mental health meetings, and lectured at one. In addition, he has completed Category II CME through medical journals. (Tr. at 71-72, 194-197)

October 10, 2001, Board Notice of Opportunity for Hearing

2. On October 10, 2001, the Board issued a Notice of Opportunity for Hearing [2001 Notice] to Dr. Nekrosius. The 2001 Notice set forth the following allegations:
 - (1) In the routine course of your psychiatric practice, you undertook the treatment of Patients 1-14 (as identified on the attached Patient Key - Key confidential to be withheld from public disclosure). In your treatment of Patients 1-14, you rendered psychiatric treatment, including prescribing controlled substances and other dangerous drugs, despite the following:
 - (A) You failed to perform and/or document complete mental status examinations and/or psychiatric evaluations;
 - (B) You failed to establish a DSM diagnosis and/or you failed to obtain sufficient information/criteria to warrant your diagnosis/treatment and/or you failed to rule out alternative diagnoses and/or you failed to document any of the above;

- (C) You failed to obtain and/or document informed consent and/or you failed to provide and/or document providing adequate information regarding the patient's diagnosis, treatment plan, changes in treatment, risks and benefits of medications prescribed, and alternative treatment modalities; and
 - (D) You failed to complete and maintain accurate medical records reflecting their examination, evaluation, and/or treatment, including the utilization of any controlled substances, the diagnosis and purpose for which the controlled substances were utilized, and any additional information upon which the diagnosis was based.
- (2) In the treatment of Patients 3, 5-7, 10 and 12-14, you continued to prescribe controlled substances and other dangerous drugs despite the potential for abuse and dependence, despite information in your patients' medical records indicating drug abuse and dependence, and without taking appropriate actions to prevent drug abuse and dependence.
 - (3) In the treatment of Patients 6, 10, and 12, you prescribed narcotic analgesics despite the fact that you failed to document appropriate indications for these medications and you failed to perform a medical evaluation or to obtain a consultation and/or to document an evaluation or consultation regarding the use of the narcotic analgesics.
 - (4) In the treatment of Patients 1-14, you failed to adequately follow-up with appropriate testing and assessment, with obtaining of patients' responses to treatment, with altering of patients' treatment plans based on their responses, and/or you failed to document such follow-up. Examples of such failures include, but are not limited, to the following:
 - (A) You failed to follow up and/or document following up with Patient 9 in a timely manner after changing his medications and after receiving a report from Patient 9's mother that Patient 9 was hearing voices, had not been compliant with treatment, and had become impulsive, angry, and out of control;
 - (B) You failed to obtain and/or document appropriate laboratory tests, such as liver function studies or random blood and/or alcohol screens, for Patient 10, a diagnosed alcoholic to whom you were prescribing Tylenol with codeine and Valium. Further, you failed to sufficiently follow-up on whether Patient 10 abstained from alcohol and/or you failed to document such follow-up;
 - (C) You failed to obtain and/or document appropriate laboratory tests for Patient 12, to whom you prescribed Lithium, including a baseline laboratory evaluation with thyroid and renal functions and lithium level

checks. Further, you failed to solicit and/or document additional data, including lithium levels, after Patient 12 reported symptoms suggestive of possible lithium toxicity. Further, you failed to taper or discontinue Patient 12's use of Sinequan, an antidepressant, after you documented periods of hypomania in Patient 12 following the introduction of this medication in the patient's treatment;

- (D) You failed to perform and/or document abnormal involuntary movement examinations of Patient 13 during the 15 or more months you prescribed Triavil, a medication containing an antipsychotic which can cause side effects including tardive dyskinesia; and
- (E) You continued to treat Patient 14 with high doses of Zoloft, an SSRI antidepressant, despite the fact that Patient 14 suffered from an apparent cycling illness and that the high doses of Zoloft may have contributed to Patient 14's symptoms.

(St. Ex. 1)

3. In the 2001 Notice, the Board further alleged that Dr. Nekrosius' conduct constituted the following violations of Ohio law:

- “[f]ailure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease,’ as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code, as in effect prior to March 9, 1999.”
- “[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established,’ as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.”
- “‘violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,’ as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-02(C), Ohio Administrative Code, as in effect November 17, 1986. Pursuant to Rule 4731-11-02(F), Ohio Administrative Code, a violation of Rule 4731-11-02(C), Ohio Administrative Code, constitutes violation of Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code.”
- “‘violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,’ as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-02(D), Ohio

Administrative Code, as in effect November 17,1986. Pursuant to Rule 4731-11-02(F), Ohio Administrative Code, a violation of Rule 4731-11-02(D), Ohio Administrative Code, constitutes violation of Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code.”

(St. Ex. 1)

March 2002 Step I Consent Agreement between Dr. Nekrosius and the Board

4. In March 2002, in lieu of further formal proceedings based upon the allegations set forth in the 2001 Notice, Dr. Nekrosius entered into a Step I Consent Agreement [2002 Consent Agreement] with the Board. In the 2002 Consent Agreement, Dr. Nekrosius admitted to the factual and legal allegations set forth in the 2001 Notice. (St. Ex. 3 at 1) Dr. Nekrosius further agreed to certain specified terms, conditions, and limitations, including the following:

SUSPENSION OF CERTIFICATE

1. Dr. Nekrosius’ certificate to practice medicine and surgery shall be suspended for an indefinite period of time. Such suspension shall become effective on Saturday, March 23, 2002, at 12:01 a.m.

CONDITIONS FOR REINSTATEMENT

2. The Board shall not consider reinstatement of Dr. Nekrosius’ certificate to practice medicine and surgery until all the conditions are met.
 - A. Dr. Nekrosius shall submit an application for reinstatement, accompanied by appropriate fees, if any.
 - B. Dr. Nekrosius shall submit documentation acceptable to the Board verifying his participation in and successful completion of Colorado Physicians Effectiveness Program (hereinafter “CPEP”) program. Participation in the CPEP program will be at Dr. Nekrosius’ own expense.
 1. Prior to undertaking participation in the CPEP program, Dr. Nekrosius shall furnish CPEP copies of the Board’s notice of opportunity for hearing, expert report, and any other documentation that the Board may deem appropriate or helpful to that assessment.
 2. Prior to the initial assessment, Dr. Nekrosius shall submit copies of the patient records at issue in this matter to CPEP.

Dr. Nekrosius shall submit the additional patient records as identified by the Board to CPEP that are required for its assessment. Dr. Nekrosius shall provide copies of the additional patient records sent to CPEP to the Board. The expense of providing these copies to both the CPEP program and the Board will be at Dr. Nekrosius' own expense. Dr. Nekrosius shall ensure that CPEP maintains patient confidentiality in accordance with R.C. 4731.22(F)(5).

3. Dr. Nekrosius shall ensure that all reports, including but not limited to, the written assessment report and any Education Plan be provided to the Board within ten (10) days of the date of issuance. Dr. Nekrosius shall work with CPEP to ensure that the written assessment report includes, but is not limited to, the following:
 - a. A detailed plan of recommended practice limitations, if any;
 - b. Any recommended education;
 - c. Any recommended mentorship or preceptorship;
 - d. Any reports upon which the recommendation is based, including reports of physical examinations and psychological or other testing.
- C. Dr. Nekrosius shall enter into a written consent agreement, including probationary terms, conditions, and limitations as determined by the Board or, if the Board and Dr. Nekrosius are unable to agree on terms of a written consent agreement, then Dr. Nekrosius further agrees to abide by any terms, conditions, and limitations imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code.

For the purposes of determining acceptable probationary terms, conditions, and limitations that should be included in the consent agreement, the Board may, at its discretion, consider the findings and recommendations of the CPEP program. Further, if an administrative hearing is necessitated, the Board may, in its discretion, use the findings and recommendations of the CPEP program in connection with said hearing, and/or as evidence in the hearing.

- D. In the event that Dr. Nekrosius has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under R.C. 4731.222 to require additional evidence of his fitness to resume practice.

(St. Ex. 3)

The CPEP Assessment Process in General

5. Elizabeth Korinek testified at hearing on behalf of the state. Ms. Korinek testified that she is the Executive Director of CPEP. Ms. Korinek testified that CPEP is a nonprofit organization founded in 1990 for the purpose of providing personalized assessments and education for physicians. Ms. Korinek further testified that, since its inception, CPEP has assessed approximately 900 physicians who had been referred from all over the United States. (Tr. at 125-128)

Ms. Korinek testified that there is a standard protocol for all assessments. Nevertheless, each assessment is individualized to the specific practice of the physician. She stated that the assessment is based on CPEP's review of the physician's charts and is focused to address the core areas of each physician's practice. (Tr. at 128-129)

Ms. Korinek testified that the assessment process usually begins when a physician contacts CPEP. CPEP sends the physician a Participation Agreement. Once the physician submits a signed Participation Agreement, CPEP conducts an extensive telephone interview of the physician. CPEP asks the physician to submit 25 to 30 charts for review, and an intake form that provides background on the physician's practice. CPEP then identifies three physician-consultants from the Denver area whose practices are comparable to the physician's practice. (Tr. at 129-131)

The physician travels to Denver, Colorado, to participate in the two- or three-day assessment process. The assessment process includes 90 minute interviews with the physician-consultants. The physician-consultants generally review the physician's charts prior to meeting with the physician. During the interview, the physician-consultants discuss both the charts and hypothetical cases with the physician. There are also simulated patient encounters during which actors portray patients. These patient encounters are videotaped and reviewed by a communications specialist. Thereafter, the videotapes are reviewed with the physician with a focus on physician/patient communication skills. (Tr. at 131)

In addition, the assessment includes a multiple-choice examination in the specialty field of the physician. There is also an interactive judgment analysis which looks at a physician's ability to manage a number of patient scenarios concerning pneumonia, and a cognitive function screen. Ms. Korinek testified that the cognitive function screen is simply a screen.

Those physicians who do not perform well are recommended to undergo more extensive neuropsychological evaluation. (Tr. at 131-132)

After the physician returns to his or her practice, CPEP requires approximately six to eight weeks to complete an assessment report that includes data from all testing and consultant reports. The medical director reviews the information and compiles a detailed report. Another physician, who was not involved in the assessment, reviews the analysis of clinical information in the report. Ms. Korinek also reviews the report. After the assessment report is completed, it is sent to the physician for review and comment. Once the physician comments, the assessment report is finalized and sent to the referring organization. Ms. Korinek stated that the process generally takes three months or more. (Tr. at 132-133)

CPEP's May 2002 Assessment Report

6. On February 8, 2002, Dr. Nekrosius entered into a Participation Agreement with CPEP. By signing the CPEP participation agreement, Dr. Nekrosius agreed to cooperate fully with the objectives set forth by CPEP at the conclusion of the assessment. (Tr. at 79-80; St. Ex. 4)
7. Dr. Nekrosius participated in the CPEP evaluation on March 19 and 20, 2002. (St. Ex. 5 at 3) On May 1, 2002, CPEP issued an Assessment Report setting forth its findings and recommendations resulting from the evaluation. (St. Ex. 5 at 3) A summary of those findings and recommendations is presented below.
8. Evaluation of Medical Knowledge and Clinical Performance. It is noted that this portion of the evaluation consisted of three Structured Clinical Interviews, a standardized test of psychiatric knowledge, an Interactive Judgment Analysis, and Simulated Patient Chart Notes. (St. Ex. 5 at 21)
 - a. The first Structured Clinical Interview provides, in part, as follows:

The first consultant practices in an urban community setting. Psychopharmacology represents his area of interest and he participates in clinical research on an ongoing basis.

The evaluation consisted of a review of three of Dr. Nekrosius' cases. In addition, the consultant used a videotape to show a severely depressed woman with melancholic features. During the discussion, the consultant asked Dr. Nekrosius about pharmacological treatment, education, warnings that he gave to patients, and laboratory tests he would do. In addition, the consultant questioned Dr. Nekrosius about the substance abuse potential of different medications.

The consultant commented that Dr. Nekrosius' chart documentation lacked appropriate details. For example, in the first case discussed, the consultant found no reference to alcohol intake, medications or allergies. The record also lacked past medical, family or psychiatric history. Dr. Nekrosius did not list the differential diagnosis. Furthermore, the consultant could not find notes about the potential interaction of alcohol or drugs with medications that Dr. Nekrosius prescribed. In the second chart, Dr. Nekrosius prescribed two sedating drugs, one of which also carried addiction potential. Subsequently, seven months later, the patient fractured his ankle. Dr. Nekrosius documented no discussion of warnings about addiction or risk to fall. In addition, he did not note any discussion that the patient should not operate heavy machinery. The consultant concluded based on these examples in his review of Dr. Nekrosius' charts that Dr. Nekrosius documented poorly.

The consultant began the interview with questions stemming from the third chart. The patient was a 48-year-old male with psychotic symptoms who believed he had crabs eating the inside of his body. He also had a problem with alcohol use. Dr. Nekrosius saw this patient for an initial visit and then for a follow-up appointment two months later. The visits appeared brief. At the follow-up, Dr. Nekrosius adjusted the dose of medication, which he had prescribed at the first visit. Dr. Nekrosius next saw the patient seven months later and had a cursory note in the chart that the patient was doing well. The consultant thought the visits too brief for this type of illness and that too much time passed between the second and third visits. In addition, the consultant related that Dr. Nekrosius should have considered the patient's alcohol use. Withdrawal from alcohol can cause hallucinatory symptoms and alcohol intake can worsen sedation, which was a side effect of the medication Dr. Nekrosius prescribed.

The consultant asked Dr. Nekrosius what sort of warnings you would give to a patient about the medication used in this case. Dr. Nekrosius would say that it was a tranquilizer. However, he made no reference to serious and disturbing involuntary movements that can occur with this medicine. At a minimum, the consultant thought this adverse effect deserved mention.

Next, the consultant inquired about the patient's diagnosis. Dr. Nekrosius stated he was schizoaffective, but could be bipolar. When asked about the criteria of a bipolar disorder, Dr. Nekrosius related only depression and "mood swings when people got high." Dr. Nekrosius did not show that he knew the criteria to make the diagnosis of major depressive or bipolar disorder in this discussion, according to the consultant. Dr. Nekrosius stated that he did not speak with the families, particularly when issues of marital conflict existed. The consultant thought this would limit his data

substantially. In this patient, the consultant thought that Dr. Nekrosius failed to display the skills needed to make the psychiatric diagnosis.

The consultant then asked about another of Dr. Nekrosius' patients. In this case of a married man, aged 55, significant substance abuse problems existed. This person spent most of his time in the basement on the Internet where he had developed a romantic contact with another woman. He worked because his wife threatened to leave him if he did not find employment. In this setting, Dr. Nekrosius provided the caveat that he would never speak to a patient's spouse. The consultant thought this would limit Dr. Nekrosius' ability to gather information, provide care for the patient and ultimately make the diagnosis.

Next, the consultant had Dr. Nekrosius view a seven-minute video. The film portrayed a severely depressed patient with melancholic features. The consultant asked about the patient's diagnosis. Dr. Nekrosius correctly stated that the patient had major depression and did an adequate job of noting the patient's lethargy. When asked about her gait, he did not use the correct term - psychomotor retardation. When asked what further workup he would want, Dr. Nekrosius wanted none. He made no effort to ask about the patient's history. He would prescribe an antidepressant at this point. Dr. Nekrosius demonstrated some knowledge about the mental status examination, but this lacked depth. The consultant thought that Dr. Nekrosius displayed poor skills. He related that Dr. Nekrosius' eagerness to treat the patient without first getting an adequate history showed poor judgment.

Dr. Nekrosius' use of medications appeared arbitrary to the consultant. In the case above, he wanted to try three different drugs in the same class. He failed to discuss any alternative treatments. The consultant compared Dr. Nekrosius' use of three serotonin reuptake inhibitors in this case equivalent to using penicillin, ampicillin, and then amoxicillin for a life-threatening infection. In other words, the consultant thought the treatment Dr. Nekrosius described was outdated and dangerous.

Dr. Nekrosius arrived on time for his interview. He was polite and cordial throughout, but seemed defensive. In review of the cases, Dr. Nekrosius displayed no knowledge of his patients. The consultant thought that Dr. Nekrosius should remember patients with significant illnesses for whom he had provided care for a long time, like the patient with psychotic symptoms (crabs). What disturbed the consultant most was the lack of curiosity that Dr. Nekrosius showed about patients in the absence of important medical information in his charts. Dr. Nekrosius did not demonstrate concern about care the consultant pointed out was poor.

(St. Ex. 5 at 5-7)

- b. The second Structured Clinical Interview provides, in part, as follows:

The second consultant has a private psychiatric practice in an urban area. He works in an outpatient setting seeing mainly adult and occasionally adolescent patients. In addition, he provides supervisory and consultative services for a number of non-medical therapists. He has cared for many patients with attention deficit disorder.

Prior to the interview, the consultant reviewed ten of Dr. Nekrosius' charts. Two of these represented hospital patients and the other eight were out-patient charts. The consultant described these as records kept by non-medical therapists that Dr. Nekrosius supervised. However, Dr. Nekrosius stated he did not supervise other employees medically at his clinic. The clinic notes were marginally legible and contained no dictation. The consultant found the organization of these notes fair. The records contained meager information and lacked elements such as history, treatment plan and the impressions of the therapist. The notes contained little in the way of clinical rationale and only the treatment plans. * * * [T]he notes lacked systematic organization. * * * The consultant did not think other members of the health care team would find Dr. Nekrosius' records useful. He found these records minimally acceptable.

The consultant used the charts to discuss two of Dr. Nekrosius' adolescent inpatients. The consultant noted that Dr. Nekrosius had poor recall for both of these cases even though they took place within the last two months.

The first case involved a 16-year-old female that Dr. Nekrosius diagnosed with major depression and personality disorder. The consultant asked why Dr. Nekrosius had made the diagnosis. Dr. Nekrosius answered that the patient failed to respond to medication quickly and required hospitalization. This led him to call it major depression. He did not cite any history of the patient or the diagnostic criteria for major depression.

In the second case, an 11-year-old female with significant mood swings and flight of ideas carried a recent diagnosis of bipolar disorder. After a twelve-day hospitalization, she came to Dr. Nekrosius' clinic. Dr. Nekrosius justified the patient's diagnosis adequately. The consultant voiced concern about Dr. Nekrosius' discounting of the DSM-IV diagnosis of bipolar II disorder. Although he had vague memory of the case, Dr. Nekrosius displayed adequate knowledge and clinical judgment about the issues.

Next, the consultant asked Dr. Nekrosius about different topics. He thought that Dr. Nekrosius described a solid approach to attention deficit disorder, insomnia, lost prescriptions, and the use of the laboratory. Dr. Nekrosius related that he didn't do psychotherapy. He described himself as a diagnostician and medication provider.

Dr. Nekrosius * * * seemed open in his communication and receptive to dialogue and comments. He communicated well, but the consultant had some trouble understanding him because he spoke rapidly. * * *

(St. Ex. 5 at 7-9)

- c. The third Structured Clinical Interview provides, in part, as follows:

The consultant maintains a private practice in psychiatry in an urban area. He reviewed 17 outpatient records and used seven as the basis of the interview with Dr. Nekrosius.

Review of Dr. Nekrosius' clinical records revealed terse entries focused on adjusting or adding medications and reviewing reported side effects. The only notes contained references to diagnostic considerations for initial encounters. Dr. Nekrosius seldom revisited the diagnosis in the course of his treatment. He infrequently supported his diagnosis by elucidation of symptoms, signs or history. Furthermore, Dr. Nekrosius often made changes in medications without supporting rationale. Throughout his charts, Dr. Nekrosius used a multitude of non-standard abbreviations for medications. The consultant found this confusing. The charts contained no laboratory determinations useful in the management of the patients.

Repeatedly, Dr. Nekrosius recorded use of medications from the same class. He combined stimulants, hypnotics, antidepressants, and on occasion, antipsychotics, without justification and without documentation for his rationale. He failed to integrate input from outside sources as well as from a treating therapist. In conclusion, the consultant wondered if these records represented those of a physician burdened by too high a volume of patient encounters. Overall, the consultant found the documentation unacceptable.

The first patient discussed was an adolescent diagnosed with attention deficit disorder. Dr. Nekrosius had given his patient two stimulants as clearly revealed by the medication log. Dr. Nekrosius agreed that he had erred, after the consultant pointed this out to him and Dr. Nekrosius examined the log.

In a 22 year-old woman presenting with depression, Dr. Nekrosius started one medication but quickly changed to another of the same type. Approximately nine months later after a poor response, Dr. Nekrosius added another medication and changed the diagnosis without any documentation in the chart or explanation during the interview. The patient inconsistently followed-up. The consultant found that the patient appeared unstable. Regardless, Dr. Nekrosius made numerous medication changes. The consultant thought the treatment haphazard and follow-up inadequate.

In the next case, Dr. Nekrosius had evaluated a 24-year-old for the treatment of depression. He had not documented a clear alcohol history, although there was evidence of it in the chart. Dr. Nekrosius used a medication without success. The patient discontinued it after she had a seizure. Dr. Nekrosius failed to note a workup or referral for the seizure. Then, he gave the patient two different tranquilizers. The consultant thought that Dr. Nekrosius should have done a seizure workup. Furthermore, he voiced concern about the combination of two like drugs, with sedative properties, in a patient who clearly abused a substance that also had sedative properties.

Next, the consultant asked Dr. Nekrosius about a 38 year-old man with non-specific anxiety symptoms. There were three different tranquilizers listed at the same time on the patient's medication log. The patient's wife had reported that he abused the medications. In addition, the patient had required hospital treatment by another physician when he took an overdose of one of the medications. Shortly after that hospitalization, Dr. Nekrosius saw the patient. He noted little about the patient's reaction to the overdose, but instead shifted to three other medications -- an antidepressant, an antipsychotic and a mood stabilizer. Dr. Nekrosius failed to document his rationale. In the discussion, Dr. Nekrosius had no recall of this patient or the overdose, which concerned the consultant because an overdose is such a serious matter. The consultant thought that Dr. Nekrosius prescribed an excessive amount of medications in this case and that he should have some memory of the aftermath.

In another case, a 43 year-old woman with a long history of bipolar disorder, maintained well on lithium, stopped her treatment. When she returned to care, Dr. Nekrosius used a medication that could worsen her condition. Dr. Nekrosius could not explain his choice or why he added a tranquilizer in a rather large dose. Dr. Nekrosius could not say why he failed to use the medication that had previously worked for the patient. It appeared he had not taken the time to appropriately interview the patient or read the chart when he reinstated her treatment.

A 38 year-old woman with a history of tranquilizer abuse received tranquilizers from Dr. Nekrosius. He offered a regimen to decrease her dose 25% by adding three other medications. The consultant asked Dr. Nekrosius to explain his treatment plan. Dr. Nekrosius failed to provide any rationale in the chart and in discussion with the consultant.

The consultant concluded by asking about a 62 year-old woman with the gradual onset of confusion. Dr. Nekrosius prescribed tranquilizers. Then, he lowered the dose and referred her to a psychologist for a dementia evaluation when her thinking did not change. In the interview, Dr. Nekrosius acknowledged that the medications could have caused her confusion. He could not explain his actions well to the consultant.

* * * In conclusion, the consultant commented that Dr. Nekrosius demonstrated unacceptable knowledge and judgment during the interview. Dr. Nekrosius' documentation lacked clarity and completeness. The consultant found it troubling that Dr. Nekrosius knew little outside of the chart. In addition, when clear errors or inconsistencies surfaced, Dr. Nekrosius could not give the rationale for his interventions. He commented that Dr. Nekrosius' performance could endanger patients as he failed to show that he took reasonable precautions in the prescribing of medication, in the follow-up of patients and in the integration of available and outside information. * * *

(St. Ex. 5 at 9-10)

- d. Dr. Nekrosius also completed a standardized test in psychiatry. He scored 67%. His problem areas included diagnosis of schizophrenia, anxiety disorder, panic disorder, and alcohol and cocaine abuse. He scored poorly on questions relating to child psychiatry. The conclusion was that his "performance was poor and indicated the need for additional learning in general psychiatry topics." (St. Ex. 5 at 11)
 - e. In an Interactive Judgment Analysis, Dr. Nekrosius performed well in a task involving the diagnosis of pneumonia. (St. Ex. 5 at 11)
 - f. In the Simulated Patient Chart Notes portion of the evaluation, Dr. Nekrosius participated in two Simulated Patient encounters. He documented each of the encounters in a Simulated Patient Chart Note. The consultant found that Dr. Nekrosius' notes were illegible. One note contained only six lines. The other "appeared to contain more information but the consultant could not understand it. The notes were not useful; thus, Dr. Nekrosius' performance was unacceptable. (St. Ex. 5 at 11)
9. Physician Communication Skills. Dr. Nekrosius met with two Simulated Patients. One presented with possible schizophrenia and the other with depression related to a recent

cancer diagnosis. Although Dr. Nekrosius performed well in asking and facilitating questions, he did poorly in many other areas. It was concluded that Dr. Nekrosius “would benefit from further education in physician-patient communication.” (St. Ex. 5 at 12-13)

10. Cognitive Function Screen. Dr. Nekrosius scored within normal limits on a cognitive function screen. It was noted that, “His reasoning, spatial processing, and reaction time were above average for his age. Overall, his memory performance was within normal limits, but his delayed recall of newly acquired verbal information was somewhat weak.” Dr. Nekrosius was also below average in a test of incidental verbal memory. The consultant concluded that, if other aspects of the CPEP evaluation suggested memory problems, Dr. Nekrosius should undergo a more comprehensive evaluation. (St. Ex. 5 at 13)
11. Observations of Participant Behavior. The consultants noted that Dr. Nekrosius demonstrated a “rapid rate of speech.” They also found that, “in general, Dr. Nekrosius had no recollection of his patients.” This was true despite that Dr. Nekrosius had seen the patients recently and/or had been treating the patients for a long period of time. Dr. Nekrosius also “appeared to have lapses in concentration.” (St. Ex. 5 at 13)
12. Review of Health Function. Dr. Nekrosius’ primary care physician submitted a brief letter describing Dr. Nekrosius’ medical conditions and prescribed medications.² The CPEP consultants reviewed this information, and determined that none of Dr. Nekrosius’ medical conditions or the medications should interfere with his practice “if well controlled and without end organ involvement.” Nevertheless, an audiogram revealed that Dr. Nekrosius “has a significant hearing loss in the left ear speech range; his right ear has hearing loss in the high pitch range.” (St. Ex. 5 at 14)
13. Assessment Summary. The Assessment Summary included the following:
 - “Dr. Nekrosius’ *medical knowledge* appeared inconsistent in the cases reviewed.” Dr. Nekrosius responded well in discussions regarding attention deficit disorder, yet he performed poorly in a standardized test regarding the same subject. Dr. Nekrosius recognized a severely depressed patient on videotape, yet he repeatedly failed to cite the diagnostic criteria for depression. Dr. Nekrosius could not describe an appropriate mental status examination and failed to demonstrate acceptable knowledge of psychotropic medications. (St. Ex. 5 at 14) (Emphasis in original)
 - “Dr. Nekrosius demonstrated poor *clinical reasoning* and *judgment*.” Dr. Nekrosius failed to use a methodical approach in diagnosis and treatment, and failed to review information appropriately. He initiated treatment before obtaining a comprehensive history and used multiple drugs from the same class at one time. “Dr. Nekrosius’ decision-making was seen as dangerous by some of the consultants and they corroborated many of the Board’s findings.” (St. Ex. 5 at 14) (Emphasis in original)

² The CPEP Assessment Report does not reveal the contents of that letter.

- “Dr. Nekrosius demonstrated the need to improve his *patient communication skills*.” Dr. Nekrosius’ performance with the simulated patients “lacked basic elements that one would expect to see in a psychiatrist.” (St. Ex. 5 at 15) (Emphasis in original)
- “The stressors of seeing an inordinately high volume of patients could influence Dr. Nekrosius’ ability to care for patients.” (St. Ex. 5 at 14)
- “Dr. Nekrosius’ *documentation* was poor” (St. Ex. 5 at 15) (Emphasis in original)
- “Dr. Nekrosius’ overall *cognitive* screening performance was average.” His performance suggested a need for more extensive diagnostic testing. (St. Ex. 5 at 15) (Emphasis in original)
- Dr. Nekrosius’ medical conditions and medications do not interfere with his ability to practice psychiatry at this time “if well controlled and without serious complications.” Nevertheless, “the nature of these problems could lead to significant decline in functioning, including cognition.” In addition, Dr. Nekrosius’ performance during the assessment warrants a psychiatric evaluation due to his “pressured speech, lapses in concentration during an interview, and his practice style.” (St. Ex. 5 at 15)
- “Dr. Nekrosius should have a thorough medical evaluation for potential complications of his conditions, as well as his overall state of physical and mental health. This should be done by an organization accustomed to dealing with physician health issues and the high level of function needed by a practicing physician.” (St. Ex. 5 at 15)
- “Overall, Dr. Nekrosius’ performance demonstrated inconsistent medical knowledge, poor clinical reasoning and judgment, and unacceptable documentation skills.” (St. Ex. 5 at 15)
- “Results of the cognitive screen, taken together with observations of behavior, suggested the need for further diagnostic evaluation. Dr. Nekrosius also needs a comprehensive health review.” (St. Ex. 5 at 15)
- “Overall, it appeared that Dr. Nekrosius’ weaknesses outweighed his strengths and clinical consultants had concerns about his ability to provide patient care safely. Educational remediation would likely be extensive and require significant effort on the part of Dr. Nekrosius.” (St. Ex. 5 at 16)

(St. Ex. 5 at 14-16)

14. Prognosis, Implications for Education, and Other Interventions. The CPEP consultants noted, in part, as follows: “Dr. Nekrosius showed good insight in his communication evaluation, but poor insight in his interpretation of the Board’s concerns. While at times he

appeared to take ownership for problems identified by the consultants, he also appeared defensive or simply unmoved by other comments.” (St. Ex. 5 at 16)

15. Areas of Demonstrated Need. The CPEP evaluators recommended that Dr. Nekrosius undergo a comprehensive health evaluation and neuropsychological testing prior to attempting any form of educational remediation. The CPEP evaluators noted that Dr. Nekrosius “deserves complete diagnostic neuropsychological testing to ascertain whether he has the ability to function at the high level required for a physician practicing psychiatry.” They further recommended that evaluation by a neurologist not be substituted for the neuropsychological testing, and that the neuropsychological evaluation be performed by a neurologist who has experience working with individuals who require a high level of cognitive functioning to perform their jobs. (St. Ex. 5 at 16)

The CPEP evaluators further recommended that, if the diagnostic evaluation suggested that Dr. Nekrosius does not have problems that interfere with his ability to function, then Dr. Nekrosius should address the following educational areas:

- Knowledge in general psychiatry, including child psychiatry, substance abuse, anxiety, panic disorder, and psychotic conditions;
- Application of knowledge in all areas of his practice;
- Comprehensive patient evaluations to allow accurate and complete patient diagnoses. Full patient diagnosis with emphasis on gathering enough information to categorize patients appropriately;
- Knowledge of mental status examination;
- Appropriate patient monitoring and follow-up;
- Identification and consideration of alternative treatments;
- Understanding of psychopharmacology;
- Patient care documentation;
- Patient communication skills; and
- Practice management

(St. Ex. 5 at 17)

16. Specific Educational Recommendations. The Executive Summary included the following:

Dr. Nekrosius cannot participate in an education program until his cognitive/health concerns are assessed and any impact on his practice is ascertained. If any cognitive or health concerns are identified and treated, then Dr. Nekrosius should consider reassessment because of the potential impact any condition could have on his performance during the assessment.

If the State Medical Board of Ohio decided that it was safe to allow Dr. Nekrosius [to] return to practice, then Dr. Nekrosius should retrain in a residency setting because of the extent of the deficiencies identified and concerns that his care may put patients at risk. This would allow Dr. Nekrosius to practice in a supervised environment.

(St. Ex. 5 at 17)

17. Executive Summary. The Executive Summary included the following:

IMPRESSIONS: Overall, Dr. Nekrosius' performance demonstrated inconsistent medical knowledge, poor clinical reasoning and judgment, and unacceptable documentation skills. He needed further education in patient communication. Results of the cognitive screen, when taken together with observations of behavior, suggested the need for a further diagnostic evaluation. Dr. Nekrosius also needs a comprehensive health review. Overall, it appeared that Dr. Nekrosius' weaknesses outweighed his strengths and clinical consultants had concerns about his ability to provide patient care safely. Educational remediation would likely be extensive and require significant effort on the part of Dr. Nekrosius.

(St. Ex. 5 at 9-10)

Subsequent to the CPEP Assessment

18. Ms. Korinek testified that, after CPEP issued the assessment report, Dr. Nekrosius' attorney appeared to be confused about the recommendations. Staff at CPEP discussed the recommendations with the attorney. In addition, on September 27, 2002, Dr. Nekrosius contacted CPEP and staff at CPEP reviewed the recommendations with him. Ms. Korinek stated that, during this discussion, Dr. Nekrosius insisted that a neuropsychological evaluation encompassed the psychiatric evaluation; therefore additional psychiatric evaluation was not necessary. She stated that staff at CPEP tried to explain that neuropsychological and psychiatric evaluations are two different things and that CPEP needed both. She told him that CPEP also needed a more thorough health evaluation. (Tr. at 145)

19. At hearing, Dr. Nekrosius testified as follows regarding his understanding of the conclusions made by CPEP after his assessment:

Well, the areas that seemed to be outlined by my attorney, uh, and our understanding together, was that I was more deficient in recordkeeping and documentation than I was in fact of treating patients; that there was not a problem; that there was not a problem with the treatment of patients but the documentation I had available.

(Tr. at 75) In fact, Dr. Nekrosius testified that he believes that he did not have “any problem at all in treating patients.” (Tr. at 88) Dr. Nekrosius acknowledged that he had signed the 2002 Consent Agreement, whereby he admitted that his practice had fallen below the minimal standards of care in many ways. Dr. Nekrosius testified that he now regrets signing the Consent Agreement, and believes he could have shown the Board that his practice was not substandard other than his documentation. (Tr. at 85-90)

20. Barbara Jacobs testified at hearing on behalf of the State. Ms. Jacobs testified that she serves as the Public Services Administrator for the Board. Ms. Jacobs testified that, until approximately 2003, she had been the Board staff member responsible for assuring that Dr. Nekrosius had satisfied the terms of the 2002 Consent Agreement before his license was reinstated. (Tr. at 42-55)

Ms. Jacobs testified that, because pursuant to the March 2002 Consent Agreement Dr. Nekrosius is required to fulfill the requirements set forth by CPEP, he had been responsible to submit reports of a physical examination and a neuropsychological evaluation to CPEP. Thereafter, CPEP was to develop an educational plan appropriate to Dr. Nekrosius’ needs. (Tr. at 55-56)

21. By letter dated August 5, 2002, Ms. Jacobs notified counsel for Dr. Nekrosius that the Board had received the results of the CPEP assessment, and was aware that Dr. Nekrosius had not submitted the required evaluations to CPEP. Ms. Jacobs further advised that, if Dr. Nekrosius wished to pursue reinstatement of his license to practice medicine and surgery in Ohio, he must have the required evaluations performed and provide copies of all evaluative reports to CPEP. (St. Ex. 6)

At hearing, Ms. Jacobs testified that she had had numerous conversations with Dr. Nekrosius’ attorney before sending the letter. It had been Dr. Nekrosius’ position at the time that he had completed the physical examination and the neuropsychological evaluation. Nevertheless, Dr. Nekrosius had not submitted copies of the evaluation reports to CPEP. Ms. Jacobs repeatedly explained that he needed to submit the reports to CPEP in order to meet the requirements set forth in the 2002 Consent Agreement. (Tr. at 57-63)

22. On August 1, 2003, the Board received a request for reinstatement of Dr. Nekrosius’ medical license. (St. Ex. 7)

23. By letter dated October 3, 2003, CPEP advised the Board that Dr. Nekrosius had not submitted documentation of a comprehensive physical and mental evaluation, or of a neuropsychological evaluation. (St. Ex. 8)
24. On May 3, 2004, the Secretary and Supervising Member of the Board offered to propose a consent agreement to Dr. Nekrosius. The consent agreement would have imposed conditions which Dr. Nekrosius must first successfully complete prior to reinstatement of his certificate to practice medicine in Ohio. Negotiations followed. (St. Exs. 14, 15, 16)
25. On November 24, 2004, the Board received a report of a neuropsychological evaluation that had been performed by Thomas E. Sullivan, Ph.D., on April 30, 2002. In the report, Dr. Sullivan stated that he is a colleague of Dr. Nekrosius' wife, who is a psychologist. Dr. Sullivan further stated that he had had lunch with Dr. Nekrosius and his wife two years prior to the evaluation. (St. Ex. 12 at 2)

In his report, Dr. Sullivan briefly described Dr. Nekrosius' developmental, educational, and medical history. (St. Ex. 12 at 2-3) Dr. Sullivan also described in more detail Dr. Nekrosius' performance in each testing category, and provided scores for each test. (St. Ex. 12 at 3-5, 7-9) In his summary, Dr. Sullivan noted that Dr. Nekrosius had performed well on the evaluation. He further stated that Dr. Nekrosius' "intellectual skills are superior. His abstract reasoning and novel problem solving skills fall within the high average range. He showed good language, visuospatial, motor, and sensory skills." Dr. Sullivan concluded that Dr. Nekrosius did not demonstrate "any pattern of neuropsychological compromise consistent with organic pathology." (St. Ex. 11 at 5)

Dr. Sullivan also noted that:

[Dr. Nekrosius] showed some mild attention difficulties, including relatively poor vigilance and an occasionally haphazard response style. His response to an objective personality inventory contains a borderline elevation on a scale assessing hypomanic symptoms. Subjects with such elevations are commonly overactive, have difficulty concentrating, and display relatively poor inhibitory capacities. It is my opinion that the attention difficulties noted in this evaluation are due to personality factors, and no organic pathology.

Other elevations on the personality inventory suggest that Dr. Nekrosius worries about his physical health. Patients with similar profiles are frequently described as immature and self-centered although patients with similar profiles have a tendency to abuse substances, Dr. Nekrosius specifically denied substance abuse.

(St. Ex. 11 at 9)

26. By letter dated October 16, 2006, the Board submitted a consent agreement proposal [2006 Proposed Consent Agreement] to Dr. Nekrosius. (St. Ex. 17) In the Basis for Action section of the 2006 Proposed Consent Agreement, it was noted that:

Dr. Nekrosius admits that in March 2002, as required by the March 2002 Consent Agreement, he undertook participation in the Colorado Physicians Effectiveness Program [CPEP]. Dr. Nekrosius further admits that as a result of such assessment, CPEP recommended that Dr. Nekrosius retrain in a post-graduate training setting because of the extent of the deficiencies identified and concerns that his care might put patients at risk, thus allowing Dr. Nekrosius to practice in a supervised environment. Dr. Nekrosius further admits that CPEP additionally recommended that prior to undertaking any such post-graduate training, Dr. Nekrosius should undertake a complete, structured, formal physical and mental health evaluation with a multidisciplinary program experienced in dealing with physicians, including complete diagnostic neuropsychological testing to ascertain whether he has the ability to function at the high level required for a physician.

(St. Ex. 17 at 2)

The 2006 Proposed Consent Agreement further set forth, in part, the following terms, and conditions.

- “Dr. Nekrosius’s certificate to practice medicine and surgery in the state of Ohio shall be **STRICTLY LIMITED** to participation in a post-graduate training program approved in advance by the Board. Dr. Nekrosius shall not engage in any other employment as a physician.” (St. Ex. 17 at 2)

“Dr. Nekrosius shall not request termination of the above limitation of his certificate unless and until such time that Dr. Nekrosius shall demonstrate to the satisfaction of the Board that he is capable of independently practicing medicine and surgery according to acceptable and prevailing standards of care. Such demonstration shall include, but shall not be limited to, written documentation acceptable to the Board verifying that Dr. Nekrosius has successfully completed an accredited post-graduate training program in conformance with the requirements set forth in this consent agreement, and written documentation acceptable to the Board from Dr. Nekrosius’s post-graduate training program director indicating that Dr. Nekrosius is capable of independently practicing medicine and surgery according to acceptable and prevailing standards of care.” (St. Ex. 17 at 2)

- “Prior to engaging in any post-graduate training program, Dr. Nekrosius shall undertake a complete, structured, formal physical and mental health evaluation, including complete diagnostic neuropsychological testing to ascertain whether he has the ability to function at the high level required for a physician, and he shall cause to be submitted to the Board a written report regarding such evaluation indicating that

Dr. Nekrosius's ability to practice within the limited scope of a post-graduate training program has been assessed and that he has been found capable of so practicing according to acceptable and prevailing standards of care. The report shall be made by a physician treatment team associated with a multidisciplinary program experienced in dealing with physicians and approved in advance by the Board to provide an assessment of Dr. Nekrosius. Prior to the assessment, Dr. Nekrosius shall provide the evaluators with copies of patient records from any evaluations and/or treatment that he has received, a copy of this Consent Agreement, and a copy of the Executive Summary from his CPEP assessment. The records from the evaluators shall include any recommendations for treatment, monitoring, or supervision of Dr. Nekrosius, and any conditions, restrictions, or limitations that should be imposed on Dr. Nekrosius's practice. The report shall also describe the basis for the evaluator's determinations." (St. Ex. 17 at 2-3)

- "While Dr. Nekrosius participates in the post-graduate program accredited by the ACGME or AOA, the Board shall require a quarterly statement from the director of Dr. Nekrosius's post-graduate program, or alternatively, from the attending physician specifically designated by the post-graduate director as the person having responsibility to directly oversee Dr. Nekrosius's clinical rotations, addressing Dr. Nekrosius's performance (clinical and otherwise) in the postgraduate program* * *." (St. Ex. 17 at 3)
- "* * * [S]hould Dr. Nekrosius desire in the future to commence practice in Ohio outside of such post-graduate training program, Dr. Nekrosius agrees that he shall enter into a written consent agreement including terms, conditions and limitations as determined by the Board or, if the Board and Dr. Nekrosius are unable to agree on the terms of written consent agreement, then Dr. Nekrosius further agrees to abide by any terms, conditions and limitations imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code.* * *" (St. Ex. 17 at 5)
- "Dr. Nekrosius further expressly agrees that any such future written consent agreement or Board Order shall include a requirement that prior to Dr. Nekrosius's commencement of any medical practice in Ohio outside of a post-graduate training program, or as otherwise determined by the Board, Dr. Nekrosius shall submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board.* * * The monitoring physician shall monitor Dr. Nekrosius and his medical practice, and shall review Dr. Nekrosius's patient charts.* * *" (St. Ex. 17 at 5)

(St. Ex. 17)

27. On February 28, 2007, the Board received a response from Dr. Nekrosius. Dr. Nekrosius stated that, although he understood the Board's need to protect the safety of Ohio citizens, he considered the terms of the 2006 Proposed Consent Agreement to "boarder [sic] on criminal punishment." He stated that he has not harmed or injured any patient, but had

only failed to document his patients' need for specific treatments. He acknowledged that he is in need of reeducation and monitoring. (St. Ex. 18 at 1)

Dr. Nekrosius stated that, since signing the March 2002 Consent Agreement, he has become financially insolvent and can no longer afford to hire attorneys to deal with the Board. (St. Ex. 18 at 1)

Dr. Nekrosius also stated that the 10-hour neuropsychological testing he completed with Dr. Sullivan contradicts the results of the CPEP evaluation. He stated that he has been mentally active, as demonstrated by his participation in courses on Fast Track TM Scanning and auctioneering. Therefore, he does not see the need for further neuropsychological testing. (St. Ex. 18 at 1)

Dr. Nekrosius discussed his interactions with CPEP, and explained why he may have performed poorly. Dr. Nekrosius stated that:

- “Prior to attending C-PEP, I was on call for a three day weekend. I had only 3 hours of sleep per night and was under significant stress. In flying to Colorado, my plane was held at the Dayton, OH airport for 8 hours because one of the fliers had a heart attack. Again after 3 hours of sleep, I started the C-PEP evaluations. I also failed to identify my inability to function at high altitudes; I have suffered from pulmonary problems in the military while training in Berchtesgaden, Germany. Also, I had altitude sickness in 1980 when I attended a course in Boulder, Colorado. * * *”
- “Allow me to comment on C-PEP. I was evaluated by three psychiatrists. The evaluations were done at the psychiatrist’s [sic] offices, and I had to find my own way with directions provided. In the first evaluation, I had good directions; I was on time, and I had good evaluators. To the other two offices, I was given poor directions, wrong addresses and wrong buildings. The stress to be on time, to be knowledgeable, and to be accurate was significant. In one of the evaluations, the psychiatrist said, “Tell me about the 46 year old man.” He held 40 of my charts. I did not know who he was talking about, and he would not let me see my own charts. I questioned whether the man was 46 years old when I first saw him, 46 years old when I last saw him, or 46 years old the day of the evaluation. The interview ground to a halt, and I received a poor evaluation.”

(St. Ex. 18 at 2)

Dr. Nekrosius also discussed the difficulty he had been having trying to find an appropriate residency program. He stated that he had tried to apply to seven residency positions in forensic psychiatry. Of the seven, two were filled, one was closed, and four refused to accept him without an unrestricted license to practice. No state was willing to grant him a provisional license for educational purposes. Dr. Nekrosius stated that he found the process “very discouraging.” (St. Ex. 18 at 2)

Finally, Dr. Nekrosius submitted a request for changes to the 2006 Proposed Consent Agreement. He asked that the Board grant him an unrestricted license should he find a residency position. He stated that he would promise to not practice outside the training program until the training program is completed. He also requested that, upon completing the training program, the Board monitor him for no longer than six months. Finally, Dr. Nekrosius suggested alternatives to completing a residency program, including attending a refresher course in psychotropic medications. (St. Ex. 18 at 2-3)

28. By letter dated May 1, 2007, the Board advised Dr. Nekrosius that the Secretary and Supervising Member of the Board would be willing to decrease the period of time during which he would be monitored after completing the residency program. Nevertheless, all other requests for changes had been denied. (St. Ex. 19)
29. Marcie Pastrick, Esq., is an Enforcement Attorney employed by the Board.³ In that capacity, she coordinates the investigation of licensees and assembles evidence necessary to support potential violations of the Medical Practices Act of Ohio. Ms. Pastrick was the Enforcement Attorney who negotiated with Dr. Nekrosius and/or his attorneys in developing the 2006 Proposed Consent Agreement. Nevertheless, despite lengthy negotiations that took place between May 2003 and September 2007, the parties could not agree on acceptable terms to address the Conditions for Reinstatement set forth in the 2002 Consent Agreement. (St. Ex. 20)
30. On September 6, 2007, CPEP again advised the Board that Dr. Nekrosius had not submitted any health or neuropsychological testing to CPEP following his Assessment in March 2002. (St. Ex. 20A)
31. At hearing, Dr. Nekrosius testified that he had assumed that his attorney had sent the report of his neuropsychological evaluation and other necessary documents to CPEP. He further assumed that, if the Board has received the report of his neuropsychological evaluation, CPEP had also. He stated that he “always get[s] confused of who [he] should respond to * * *.” (Tr. at 95, 99-101)
32. On September 17, 2007, the Board received a report of a second neuropsychological evaluation performed by Dr. Sullivan on September 8, 2007. In the report, Dr. Sullivan noted that Dr. Nekrosius’ test results showed that he is “high average” or “superior” in intelligence, verbal comprehension, analyzing complex visual arrays, perceptual organization, fine motor functioning, and psychomotor skills. The tests also showed that Dr. Nekrosius is “good” or “average” for attention skills, memory functioning, verbal fluency, confrontational naming skills, analyzing complex visual arrays, visuospatial and visuoconstructional skills, adaptive problem solving, and perceptual functioning. (St. Ex. 21 at 3-5, 7-9)

³ The parties submitted a Stipulation of State Medical Board of Ohio and W. Scott Nekrosius, M.D., which advised that, if Ms. Pastrick had been called upon to testify at hearing, she would have testified under oath to the statements provided in the stipulation.

Dr. Sullivan concluded, in part, as follows:

This evaluation was quite extensive and sensitive, and showed no signs or symptoms consistent with any type of pathology. No impairments were noted in any domains assessed in this evaluation, which included general intelligence, language skills, visuospatial and visual reasoning, immediate and delayed visual and verbal memory functioning, psychomotor speed, fine motor skills, and manual perceptual abilities. A standardized personality assessment did not reveal a pattern consistent with severe pathology.

(St. Ex. 21 at 6)

33. At hearing, Dr. Nekrosius testified that, at the request of CPEP and prior to traveling to Colorado for his CPEP evaluation, Dr. Nekrosius had had his personal physician perform a complete medical examination of Dr. Nekrosius. The personal physician submitted a report of the examination to CPEP. Dr. Nekrosius acknowledged that his personal physician had not elaborated in the report. Dr. Nekrosius further testified that he has had many full physical examinations over the years, including an MRI of his brain. He stated that he would be willing to submit the reports of evaluations to CPEP. He did not explain why he has not done so thus far. (Tr. at 96, 170-171)

Dr. Nekrosius further testified that CPEP had not requested a neuropsychological or psychiatric evaluation prior to his assessment. That request came at the end of the evaluation. Dr. Nekrosius stated that he had had the neuropsychological evaluation performed within two weeks of his return from Colorado. He also stated that he had not understood the difference between a neuropsychological evaluation and a psychiatric evaluation. Therefore, he made an appointment with a psychiatrist, but did not know what to ask the psychiatrist to do. He stated that he would like to have an opportunity to ask CPEP what is needed as far as a psychological evaluation. (Tr. at 15, 95-96, 107-108, 170-171)

Dr. Nekrosius further testified that he has attempted to obtain a post-graduate training position, but he has been denied acceptance because he does not have a full, unrestricted license to practice medicine. Dr. Nekrosius testified that he had applied to seven programs, which required a great deal of preparation. He obtained letters of recommendation, and completed numerous forms. Nevertheless, Dr. Nekrosius testified that he could not be admitted to an out-of-state program because of the limitations on his Ohio license. Moreover, he could not be admitted to an Ohio program in psychiatry because most programs are funded by the Veterans Administration. He explained that the Veterans Administration requires that a residency participant have a full and unrestricted license. Dr. Nekrosius stated that he would be happy to complete a residency program if he could find a program that would accept him. (Tr. at 15-16, 97-98, 121-122, 175-188; Respondent's Exhibits F-H)

Dr. Nekrosius testified that he would like to return to the practice of psychiatry because he enjoys helping people. He also needs the financial income. He stated that, although he has tried to meet the Board's requirements, he has been unable to do so. (Tr. at 17, 188)

34. Danielle Bickers testified at hearing on behalf of the State. Ms. Bickers testified that she is the Compliance Supervisor, in charge of the Compliance Section at the Board. The Compliance Section monitors the licensees who have been disciplined by the Board and who are either on probation or who have had their licenses suspended. Ms. Bickers testified that that she is aware of one physician who recently was able to complete a post-graduate training program despite having a limited or restricted license. Ms. Bickers further testified that the Board can not fulfill Dr. Nekrosius' request to grant him an unrestricted or unlimited license to assist him in gaining entrance into a post-graduate training program. She explained that the fact that he is under the terms of the 2002 Consent Agreement is itself a limitation on his license. (Tr. at 19-31)
35. Kay Rieve testified at hearing on behalf of the State. Ms. Rieve testified that she is the Administrative Officer for the Board. In that capacity, she supervises the Licensure Department and the Records and Renewal Department. (Tr. at 32)

Ms. Rieve testified that the Board offers various licenses which authorize a physician to practice in a limited capacity. The only limited license relevant to Dr. Nekrosius' situation is a training certificate, which is issued to individuals who are participating in residencies and fellowships in the State of Ohio. Nevertheless, pursuant to Ohio Administrative Code 4731-6-30(L), once an individual has held a full license to practice in Ohio, that individual is no longer eligible for a training certificate. (Tr. at 32-41)

FINDINGS OF FACT

1. On October 10, 2001, the Board issued a notice of opportunity for hearing [2001 Notice] to W. Scott Nekrosius, M.D. The 2001 Notice alleged that, in the routine course of his psychiatric practice, Dr. Nekrosius had provided inappropriate care to fourteen patients. The allegations of inappropriate care included the following: improperly prescribing controlled substances, psychotropic medications, and other dangerous drugs; failing to adequately follow-up with appropriate testing and assessment; and failing to document his treatment. The 2001 Notice alleged that Dr. Nekrosius' conduct constituted violations of Section 4731.22(B), Ohio Revised Code, including Sections 4731.22(B)(2), (B)(6), and (B)(20), and Rules 4731-11-02(C) and (D), Ohio Administrative Code.
2. Effective March 14, 2002, Dr. Nekrosius entered into a Step I Consent Agreement with the Board [2002 Consent Agreement] in lieu of further formal proceedings based upon the allegations set forth in the 2001 Notice. In the 2002 Consent Agreement, Dr. Nekrosius admitted to the factual and legal allegations as set forth in the 2001 Notice. Moreover, Dr. Nekrosius agreed to certain terms, conditions, and limitations, including that his certificate to practice medicine and surgery in the State of Ohio would be suspended for an

indefinite period of time. Dr. Nekrosius further agreed that the Board would not consider reinstatement of his certificate until certain specified conditions for reinstatement had been met, including that Dr. Nekrosius would submit documentation acceptable to the Board verifying his participation in and successful completion of the Colorado Physicians Effectiveness Program [CPEP]. Dr. Nekrosius also agreed to work with CPEP to ensure that a written Assessment Report was issued and included a detailed plan of recommended practice limitations, if any; any recommended education; any recommended mentorship or preceptorship; and any reports upon which the recommendation is based, including reports of physical examinations and psychological or other testing.

3. In May 2002, the CPEP evaluators submitted to the Board an Assessment Report based upon their assessment of Dr. Nekrosius from March 19 through 20, 2002. The CPEP Assessment Report Executive Summary included the following:

Overall, Dr. Nekrosius' performance demonstrated inconsistent medical knowledge, poor clinical reasoning and judgment, and unacceptable documentation skills. He needed further education in patient communication. Results of the cognitive screen, when taken together with observations of behavior, suggested the need for further diagnostic evaluation. Dr. Nekrosius also needs a comprehensive health review. Overall, it appeared that Dr. Nekrosius' weaknesses outweighed his strengths and clinical consultants had concerns about his ability to provide patient care safely. Educational remediation would likely be extensive and require significant effort on the part of Dr. Nekrosius.

The CPEP evaluators recommended that Dr. Nekrosius undergo a comprehensive health evaluation and neuropsychological testing prior to attempting any form of educational remediation "to ascertain whether he has the ability to function at the high level required for a physician practicing psychiatry." They further recommended that the neuropsychological evaluation be performed by a neurologist who has experience working with individuals who require a high level of cognitive functioning to perform their jobs.

Finally, the CPEP evaluators opined that,

If the State Medical Board of Ohio decided that it was safe to allow Dr. Nekrosius [to] return to practice, then Dr. Nekrosius should retrain in a residency setting because of the extent of the deficiencies identified and concerns that his care may put patients at risk. This would allow Dr. Nekrosius to practice in a supervised environment.

4. To date, Dr. Nekrosius has failed to have his health concerns appropriately assessed and has failed to have reports from his neuropsychological assessments submitted to CPEP. By such failure, CPEP is unable to render a final opinion as to whether education could correct his identified deficiencies as set forth in the CPEP report.

5. Despite his failure to fully comply with the requisite conditions for reinstatement of his license as contained in his 2002 Consent Agreement, on August 1, 2003, Dr. Nekrosius submitted a request to the Board for reinstatement of his license to practice medicine and surgery in the State of Ohio.
6. Despite lengthy negotiations, Dr. Nekrosius and the Board have not been able to agree upon terms, conditions, or limitations for a subsequent written consent agreement. Therefore, in accordance with the March 2002 Consent Agreement, a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code was required in order to determine the terms, conditions, and limitations, if any, that should be imposed upon Dr. Nekrosius by Board Order.
7. Dr. Nekrosius has not actively practiced medicine and surgery since March 2002.

CONCLUSIONS OF LAW

1. The Chapter 119 hearing as described in Findings of Fact 6, above, has been completed. The Board may now issue an Order setting forth the terms, conditions, and limitations, if any, that it determines should be imposed upon W. Scott Nekrosius, M.D.
2. Dr. Nekrosius' failure to be engaged in the active practice of medicine and surgery for a period in excess of two years prior to his application for reinstatement constitutes cause for the Board to exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.

* * * * *

This matter began in October 2001, when the Board issued a notice of opportunity for hearing to Dr. Nekrosius. The notice of opportunity for hearing alleged that Dr. Nekrosius had committed serious violations of minimal standards of care, and Dr. Nekrosius admitted to those violations in his 2002 Step I Consent Agreement. Moreover, some of the findings of the CPEP evaluators further supported the conclusion that, prior to his suspension, Dr. Nekrosius was practicing below the minimal standards of care. Among the more egregious examples of this were the following:

- A 48-year-old male patient presented with psychotic symptoms, and believed he had crabs eating the inside of his body. He also had a problem with alcohol use. Dr. Nekrosius saw this patient for an initial visit and then for a follow-up appointment two months later. The visits were brief. At the follow-up, Dr. Nekrosius adjusted the dose of a medication which he had prescribed at the first visit. Dr. Nekrosius did not see the patient again for seven months. He wrote a cursory note in the chart that the patient was doing well.

- When a consultant inquired about a patient’s diagnosis, Dr. Nekrosius stated it was schizoaffective or bipolar. When asked about the criteria of a bipolar disorder, Dr. Nekrosius related only depression and “mood swings when people got high.” Dr. Nekrosius did not show that he knew the criteria to make the diagnosis of major depression or bipolar disorder
- Repeatedly, Dr. Nekrosius recorded use of medications from the same class. He combined stimulants, hypnotics, antidepressants, and on occasion, antipsychotics, without justification and without documentation for his rationale.
- Dr. Nekrosius treated a 38 year-old man with non-specific anxiety symptoms. Dr. Nekrosius prescribed three different tranquilizers at the same time. At the time, Dr. Nekrosius was aware that the patient abused the medications and had recently overdosed with one of the medications.
- A 43 year-old woman with a long history of bipolar disorder, maintained well on lithium, stopped her treatment. When she returned to care, Dr. Nekrosius used a medication that could worsen her condition. Dr. Nekrosius could not explain his choice or why he added a tranquilizer in a rather large dose. Dr. Nekrosius could not say why he failed to use the medication that had previously worked for the patient. It appeared he had not taken the time to appropriately interview the patient or read the chart when he reinstated her treatment.
- A 38 year-old woman with a history of tranquilizer abuse received tranquilizers from Dr. Nekrosius. He offered a regimen to “decrease her dose 25%” by adding three other medications. The consultant asked Dr. Nekrosius to explain his treatment plan. Dr. Nekrosius failed to provide any rationale in the chart or in discussion with the consultant.

It is disturbing that, despite having reviewed these findings in detail, Dr. Nekrosius insists that his shortcomings are merely those of documentation. Therefore, despite the difficulty Dr. Nekrosius has had trying to find a post-graduate training program that will accept him, the safety of the public demands that Dr. Nekrosius obtain significant reeducation.

PROPOSED ORDER

It is hereby ORDERED that:

1. **RESTORATION OF CERTIFICATE:** The certificate of W. Scott Nekrosius, M.D., to practice medicine and surgery in the State of Ohio is hereby RESTORED.
2. **LIMITATION OF CERTIFICATE:**
 - a. **Limitation of Certificate:** Dr. Nekrosius’ certificate to practice medicine and surgery in the state of Ohio shall be STRICTLY LIMITED to participation in a post-graduate

training program accredited by the ACGME or AOA and approved in advance by the Board. Dr. Nekrosius shall not engage in any other employment as a physician.

Dr. Nekrosius shall not request termination of the above limitation of his certificate until such time that Dr. Nekrosius shall demonstrate to the satisfaction of the Board that he is capable of independently practicing medicine and surgery according to acceptable and prevailing standards of care. Such demonstration shall include, but shall not be limited to, written documentation acceptable to the Board verifying that Dr. Nekrosius has successfully completed an accredited post-graduate training program in conformance with the requirements set forth in this Board Order, and written documentation acceptable to the Board from Dr. Nekrosius' post-graduate training program director indicating that Dr. Nekrosius is capable of independently practicing medicine and surgery according to acceptable and prevailing standards of care.

- b. **Prerequisites to Participation in a Post-Graduate Training Program:** Prior to engaging in any post-graduate training program, Dr. Nekrosius shall submit appropriate documentation acceptable to the Board indicating that he has undergone a complete, structured, formal physical and mental health evaluation, including complete diagnostic neuropsychological testing to ascertain whether he has the ability to function at the high level required for a physician, and he shall cause to be submitted to the Board a written report regarding such evaluation indicating that his ability to practice within the limited scope of a post-graduate training program has been assessed and that he has been found capable of so practicing according to acceptable and prevailing standards of care. The report shall be made by a physician treatment team associated with a multidisciplinary program experienced in dealing with physicians, unless otherwise determined by the Board, and approved in advance by the Board to provide an assessment of Dr. Nekrosius. Prior to the assessment, Dr. Nekrosius shall provide the evaluators with copies of patient records from any evaluations and/or treatment that he has received, a copy of this Board Order, and a copy of the Executive Summary from his CPEP assessment. The reports from the evaluators shall include any recommendations for treatment, monitoring, or supervision of Dr. Nekrosius, and any conditions, restrictions, or limitations that should be imposed on Dr. Nekrosius' practice. The reports shall also describe the basis for the evaluator's determinations.
- c. **Post-Graduate Monitor:** While Dr. Nekrosius participates in a post-graduate program accredited by the ACGME or AOA, the Board shall require a quarterly statement from the director of Dr. Nekrosius' post-graduate program, or alternatively, from the attending physician specifically designated by the post-graduate director as the person having responsibility to directly oversee Dr. Nekrosius' clinical rotations, addressing Dr. Nekrosius' performance (clinical and otherwise) in the post-graduate program. Prior to commencing any post-graduate training program, Dr. Nekrosius shall so notify the Board by providing a writing, signed by both himself and his post-graduate director, and, if applicable, by the attending physician specifically

designated by the post-graduate director as the person having responsibility to directly oversee Dr. Nekrosius' clinical rotations, specifically identifying the post-graduate program in which he will be participating and indicating the post-graduate director's agreement to comply with the reporting requirements set forth herein. Further, should his post-graduate director or the designated attending physician become unable or unwilling to serve, Dr. Nekrosius must immediately so notify the Board in writing and within thirty days make arrangements for a replacement post-graduate monitor. Furthermore, Dr. Nekrosius shall ensure that the previously designated post-graduate monitor also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

All reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Nekrosius' quarterly declaration, as set forth in Paragraph 4.b below. It is Dr. Nekrosius' responsibility to ensure that reports are timely submitted.

In such quarterly reports, the post-graduate monitor shall specifically report on whether Dr. Nekrosius' limited practice of medicine and surgery was within acceptable and prevailing standards of care, including observations of Dr. Nekrosius' current medical knowledge, his technique and skill, his delivery of patient care, his development of patient history and chief complaints, his performance of physical and mental examinations, his formulation of diagnosis including differential plan of treatment, his relations concerning interpersonal and communication skills, his documentation related to medical record keeping, his professionalism, his development of practice-based learning and improvement, and his application of systems-based practice.

In the event that the post-graduate monitor identifies deficits in Dr. Nekrosius' performance, the Secretary and Supervising Member will make a determination as to future action, which may include, *inter alia*, instituting formal disciplinary proceedings and/or entering into a consent agreement related to remedial action.

The Board expressly reserves the right to disapprove any person proposed to serve as Dr. Nekrosius' designated post-graduate monitor, or to withdraw approval of any person previously approved to serve as Dr. Nekrosius' post-graduate monitor, in the event that the Secretary and Supervising Member of the Board determine that any such post-graduate monitor has demonstrated a lack of cooperation in providing information to the Board or for any other reason. In the event that the Board disapproves of any post-graduate monitor proposed by Dr. Nekrosius or withdraws approval of a designated post-graduate monitor, Dr. Nekrosius shall, within thirty days after the Board disapproves or withdraws approval of any post-graduate monitor, submit the name and curriculum vitae of another post-graduate monitor for prior written approval by the Board.

- d. **Obey the Law**: Dr. Nekrosius shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
3. **TERMINATION OF STRICT LIMITATION**: Upon successful completion of his post-graduate training program, as evidenced by a written release from the Board, Dr. Nekrosius' certificate will no longer be strictly limited to participation in a post-graduate training program.
 4. **PROBATION**: Upon successful completion of his post-graduate training program and the termination of the strict limitation on his certificate, as set forth in paragraph 3, above, Dr. Nekrosius' certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years:
 - a. **Obey the Law**: Dr. Nekrosius shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 - b. **Declarations of Compliance**: Dr. Nekrosius shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
 - c. **Personal Appearances**: Dr. Nekrosius shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Order becomes effective, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
 - d. **Practice Plan**: Prior to Dr. Nekrosius' commencement of independent practice in Ohio, or as otherwise determined by the Board, Dr. Nekrosius shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Nekrosius' activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Nekrosius shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

At the time Dr. Nekrosius submits his practice plan, he shall also submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary or Supervising Member will give preference to a

physician who practices in the same locale as Dr. Nekrosius and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Nekrosius and his medical practice, and shall review Dr. Nekrosius' patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Nekrosius and his medical practice, and on the review of Dr. Nekrosius' patient charts. Dr. Nekrosius shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Nekrosius' quarterly declaration, as set forth in Paragraph 4.b, above.

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

- e. **Controlled Substances Log**: Dr. Nekrosius shall keep a log of all controlled substances he prescribes, orders, administers, or personally furnishes. Such log shall be submitted in a format approved by the Board thirty days prior to Dr. Nekrosius' personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Nekrosius shall make his patient records with regard to such controlled substances available for review by an agent of the Board upon request.
- f. **Absence from Ohio**: Dr. Nekrosius shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.
- g. **Violation of Terms of Probation**: If Dr. Nekrosius violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

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

6. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Board Order, Dr. Nekrosius shall provide a copy of this Board Order to all employers or entities with which he is under contract to provide health care services (including but not limited to third party payors) or is receiving training, and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Nekrosius shall promptly provide a copy of this Board Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. In the event that Dr. Nekrosius provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within thirty days of the effective date of this Board Order Dr. Nekrosius shall provide a copy of this Board Order to the Ohio Department of Public Safety, Division of Emergency Medical Services. Further, Dr. Nekrosius shall provide the Board with **one** of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Board Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was emailed.

7. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Board Order, Dr. Nekrosius shall provide a copy of this Board Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, though which he currently holds any license or certificate. Dr. Nekrosius further agrees to provide a copy of this Board Order at time of application to the proper licensing authority of any state in which he applies for any professional license or for reinstatement of any professional license. Further, Dr. Nekrosius shall provide the Board with **one** of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Board Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was emailed.

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



R. Gregory Porter
Hearing Examiner

State Medical Board of Ohio

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



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EXCERPT FROM THE DRAFT MINUTES OF JULY 9, 2008

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDER

Dr. Varyani announced that the Board would now consider the Reports and Recommendations appearing on its agenda. He asked whether each member of the Board had received, read and considered the hearing record; the Findings of Fact, Conclusions of Law and Proposed Orders; and any objections filed in the matters of Paula Clark Adkins, M.D.; Carolyn Elizabeth Johnson, M.D.; W. Scott Nekrosius, M.D.; and Bradley Rex Wolf, M.D.; and the Proposed Findings and Proposed Order in the matter of Kenneth Lester Drews, M.D. A roll call was taken:

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

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

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

Dr. Varyani noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

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

.....
Mr. Albert left the meeting during the previous discussion.

.....
W. SCOTT NEKROSIUS, M.D.

Dr. Varyani directed the Board's attention to the matter of W. Scott Nekrosius, M.D. He advised that no objections were filed to Hearing Examiner Porter's Report and Recommendation.

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

Dr. Nekrosius thanked the Board for allowing him to present his objections to the Recommendations in his case.

Dr. Nekrosius stated that the Recommendations propose that he participate in a postgraduate training program. He stated that this has been proposed before, and he's applied to seven out-of-state postgraduate training programs, taking approximately a year to eighteen months to do this. He's finally found out that all require a state license. He presented evidence at hearing, that most other states won't provide him a license for training because he has a limited license in Ohio. He's even applied to Wisconsin, where he obtained his original license, and it also denied his application, even though he was accepted into the residency program.

Dr. Nekrosius continued that he tried for another year to a year and a half to apply to residencies in Ohio. He applied to four different residencies, and found that two of them had a two-year waiting list and generally took residents from their own training program, and the other two were funded by the Veterans Administration Hospital. With great difficulty, and with the help of Dr. Goldberg in Cincinnati, he found out that the V.A. program will not accept anyone with a restriction or limitation on his or her license. Dr. Nekrosius stated that, although he has been trying to be compliant with the Board, training programs will not accept him because of the V.A. funding.

Dr. Nekrosius stated that in the level of his participation with the Board, every time he's faced restriction or found problems, he found out that the restrictions from the Board had become more difficult, such as the directive for vigorous monitoring in the postgraduate training program, as presented in this proposal. Dr. Nekrosius stated that he has done no criminal activity, and he feels that these restrictions are related to criminal monitoring.

Dr. Nekrosius stated that, concerning the probation proposed in the Report and Recommendation, he could not find or did not see what the probationary period would be. He questioned how long the quarterly compliance meetings would be required, how long personal appearances would be required, and how long he would have to have a monitoring physician for participation in the Ohio program.

Dr. Nekrosius stated that the restrictions set forth for the probationary period are extremely onerous. Things would prohibit his ability to find a job, maintain a job relationship, and to continue to practice medicine in Ohio or any state.

Dr. Nekrosius asked that the Board make any directions it issues for him a "doable" process. He's worked a number of years to try to be compliant with the Board in both finding a residency in Ohio and outside of Ohio, and finding that neither were possible, and he was between a rock and a hard place. Dr. Nekrosius stated that he wishes to return to gainful employment, and he wishes to be a productive member of his medical community.

Dr. Nekrosius stated that he looks to his egregious oversights and errors, and he seeks to repair his practice and to return to help people with mental illness.

Dr. Nekrosius stated that he seeks justice and compassion in his return to the practice of psychiatry. In light of the present recommendations, he also seeks mercy from the Board in its consideration.

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

Ms. Pfeiffer stated that Ms. Unver, who had to leave the meeting, was the Assistant Attorney General in this matter. She stated that Ms. Unver left the following written statement for her to read:

This is a case involving an impasse between Dr. Nekrosius and the Board. Dr. Nekrosius has been in a Step 1 Consent Agreement with the Board since March 2002 and he has been suspended from the practice of medicine since that time. Dr. Nekrosius entered into the Step 1 Consent Agreement in lieu of formal proceedings for violations including standard of care issues involving patients in his psychiatric practice. One of the conditions of the Step 1 Consent Agreement was a requirement for Dr. Nekrosius to verify his participation in and successfully complete the Colorado Physicians Effectiveness Program, otherwise known as CPEP. Dr. Nekrosius went to the CPEP program in 2002 for an evaluation of his clinical skills, and CPEP submitted an

Assessment Report to the Board stating that Dr. Nekrosius' performance demonstrated inconsistent medical knowledge and poor clinical reasoning and documentation skills. The CPEP evaluation concluded that education remediation would be extensive, but stated that Dr. Nekrosius could not participate in the program until full cognitive and health evaluations were completed. Dr. Nekrosius did obtain a neuropsychological evaluation in 2002, but CPEP never received the report and a breakdown in communication took place over the next few years. Dr. Nekrosius obtained an updated neuropsychological evaluation in 2007. In 2006, the Board began negotiating a Step II Consent Agreement with Dr. Nekrosius, which would reinstate his license to practice medicine but place a strict limitation on Dr. Nekrosius' license to allow him to participate in a post-graduate training program only. Dr. Nekrosius asserts that he cannot get into a training program of any sort with a limitation on his license, and so he refused to enter into a consent agreement with the Board. And so we are here today on an impasse between Dr. Nekrosius and the Board.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF W. SCOTT NEKROSIUS, M.D. DR. AMATO SECONDED THE MOTION.

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

Dr. Egner stated that this was a pretty lengthy and detailed Report and Recommendation, adding that she thought it was put together very well. She stated that the first sense she has about Dr. Nekrosius is that he has really significant deficiencies in taking care of his patients. She noted the following: Dr. Nekrosius stated in the record that he would never speak to a patient's spouse, when some of the issues were especially related to the spouse; his use of medications appears arbitrary; his prescribing practices were inappropriate; his documentation was awful; his inability to remember certain patients with really significant illnesses. Concerning the latter, Dr. Egner stated that physicians see a lot of patients, but she is always amazed at the patients who stand out in her mind, whom she can remember and remember in fairly good detail. Dr. Egner stated that she doesn't think that she's unusual in that way. Dr. Egner stated that, at the conclusion of all this, Dr. Nekrosius didn't really come to see any of this.

Dr. Egner continued that Dr. Nekrosius was evaluated at CPEP and their assessment summary advises that:

- his medical knowledge is inconsistent;
- his clinical reasoning and judgment are poor;
- his decision-making was seen as dangerous;
- he demonstrated a need to improve his patient communication skills;

- his documentation was poor; and
- although his overall cognitive screening performance was average, there were some real concerns there.

Dr. Egner stated that she doesn't really see where the Board is ever going to have a conclusion of Dr. Nekrosius. Dr. Egner referred to Ms. Unver's statement where it says that Dr. Nekrosius did have a neuropsychological evaluation twice. Dr. Egner stated that when she read the record, she didn't feel that he had it quite under the circumstances that the Board had intended him to have it done. She stated that she might not be correct on that, and she doesn't want it to be a sticking point. Dr. Egner stated again that she doesn't think that the Board will ever have resolution of Dr. Nekrosius, nor does she think that Dr. Nekrosius is going to improve to the point that the Board wants him to improve, even if he found a residency program. Dr. Egner stated that she thinks that Dr. Nekrosius' license should be permanently revoked. She added that, on the other hand, even if the Board doesn't permanently revoke Dr. Nekrosius' license, she doesn't think that he will ever comply with this and essentially is revoked. She asked whether this is someone whom the Board wants to practice psychiatry, and has he shown any indication that he agrees with any of the conclusions that the Board has made. *She noted that the only thing that Dr. Nekrosius admits is poor documentation.

Dr. Steinbergh concurred with Dr. Egner. She stated that Dr. Nekrosius has substantial and serious minimal standards issues. She stated that she agrees with Dr. Egner in that she doesn't think that Dr. Nekrosius will ever practice again. The Proposed Order is appropriate if the Board wants to approve it; yet, Dr. Nekrosius is saying that it can't be done. He can't find a postgraduate program. Dr. Steinbergh stated that she doesn't think that there is any way the Board should allow Dr. Nekrosius to practice without retraining of some sort. She added that she doesn't disagree with the concept of permanent revocation.

**DR. EGNER MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF W. SCOTT NEKROSIUS, M.D., BY SUBSTITUTING AN ORDER OF PERMANENT REVOCATION.
DR. STEINBERGH SECONDED THE MOTION.**

Mr. Browning asked whether there is any reason to just revoke, as opposed to permanently revoke. He stated that he agrees with the basic concept, but he's just wondering if there is any chance that Dr. Nekrosius can put something together that adds up, that is consistent with the Board's standards.

Dr. Egner stated that if the Board wants to do that, it might as well just stay with the Proposed Order because that tells him specifically what he needs to do. If the Board just revokes him and he then comes back, it will probably just put the terms of the Proposed Order in place.

Dr. Steinbergh stated that she does think that the Board has enough evidence of substantial patient harm that permanent revocation is in order. The Board did try to resolve this through an agreement, and it hasn't been resolved. Dr. Steinbergh stated that she can't see that he should be practicing in this state. Dr. Nekrosius is telling the Board that he can't find a program, and without some type of significant

remediation, he cannot practice. Dr. Steinbergh stated that this is different from a case where the Board doesn't have enough evidence to substantiate a permanent revocation and revokes the license until it can get more evidence. She stated that she thinks that the Board has all the evidence it needs.

Mr. Browning asked what stands out in Dr. Steinbergh's mind as the most significant, relative to permanent revocation, of the fourteen patient cases in the record.

Dr. Steinbergh stated that it's Dr. Nekrosius' whole body of work, the assessments that were done, and his inability to recognize the inappropriateness of it all.

Mr. Browning stated that it's a sad state of affairs, but he agrees.

Mr. Albert returned to the meeting and Dr. Talmage left the meeting during the previous discussion.

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

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

The motion carried.

Dr. Egner asked to hear from some of the Board members who abstained on the vote. She asked whether they abstained because they know this physician and don't feel that they can vote on this case, or because they have objections to the amendment.

Dr. Mahajan stated that he felt that Dr. Nekrosius is sort of caught. Not many programs will take residents his age. He's not going to find a residency. Maybe he could work in administration or something else. Dr. Mahajan stated that he doesn't want to expose patients to danger, but he has mixed feelings.

Dr. Suppan stated that she shares Dr. Mahajan's feelings. She also cited her newness to the Board and her lack of history of this case in order to form an opinion.

Dr. Varyani stated that he was kind of ambivalent. Realistically, there is no answer. Even if Dr. Nekrosius takes an administrative position, the Medical Board's job is to issue licenses to practice medicine in Ohio. The Board cannot say that he will be an administrator. If the Board gives him the privilege to practice

medicine in Ohio, it's not doing the right thing. Dr. Varyani stated that, by adopting the Proposed Order, the Board isn't going to get anywhere. It will cause trouble for both Dr. Nekrosius and the Board, and they'll just be going around in circles. Dr. Varyani added that he feels that what Dr. Nekrosius has done is quite egregious. The Board can't let Dr. Nekrosius practice as he is and take care of patients in Ohio.

Mr. Browning stated that his sense is that the Board has allowed people to practice who have been at this level, but this is a serious problem that the Board can't fix. Mr. Browning asked whether there is any other way to fix this problem, to put Dr. Nekrosius through some education or training process that would have a serious shot at fixing the problem, if the residency idea is unworkable. He commented that, to some degree, it's unworkable not because of Dr. Nekrosius. That's just the way the programs are set up. Dr. Nekrosius is in a situation where he simply can't get in. Is there any other path forward other than what the Board has proposed?

Mr. Browning commented that Dr. Nekrosius is already out of practice; he's been out for years. He can't get back. Mr. Browning added that he's totally committed to the notion that Dr. Nekrosius cannot practice today.

Dr. Varyani stated that that's the whole point. He added that the other point that the Board has to look at, is that this started in 2002. It is now 2008. If he was bad in 2002, does the Board think that things have gotten better?

Mr. Browning stated that he doesn't.

Dr. Varyani asked how long the Board is going to keep on doing this. He added that, if Dr. Nekrosius hasn't found a remedial situation in six years, he highly doubts that he'll find one. Dr. Varyani stated that the Board's prime function is the safety of patients. He stated that he knows that the Board should give Dr. Nekrosius a chance, but six years is long enough.

Mr. Browning asked whether there is any other way forward to address the documented problems.

Dr. Varyani stated that he doesn't think that there is.

Dr. Steinbergh stated that she doesn't agree with the concept that the Board needs to try to reconcile this.

Mr. Browning stated that his only concern with permanent revocation is whether that is the appropriate end to this man's career, versus the original proposal. He's gone either way, so what's the appropriate balance?

Dr. Steinbergh stated that it's a case of very, very poor patient care. The Board can go with the Proposed Order and Dr. Nekrosius will never get a residency program, or it can cut it off now and permanently revoke.

Mr. Browning expressed concern about the consistency of the Board's policies. He asked whether this set

of shortcomings rises to the level of permanent revocation. He stated that that's a big question. He stated that Dr. Nekrosius practice was bad, but permanent revocation is a pretty high standard of this Board.

Dr. Amato stated that, that being the case, why wasn't his license permanently revoked sooner.

Dr. Steinbergh stated that the Board attempted to allow Dr. Nekrosius to retrain. That has been unsuccessful.

Dr. Amato stated that acts of commission or omission occurred prior to that; those haven't changed. The reason he abstained was that the acts occurred prior to entering into the consent agreement. With this Proposed Order, it sounds as though Dr. Nekrosius can never return to practice anyway. Permanent revocation is something that the Board should have done before, if it feels it is appropriate now.

Dr. Egner stated that her take on this is that it's not the responsibility of the Board. It is Dr. Nekrosius' responsibility. He had a consent agreement in 2002, with which he never complied. She read from page two of the Report and Recommendation, concerning the Board's October 10, 2007 citation letter, which indicates that he was to be assessed in Colorado, which he was. CPEP could not reach a conclusion until he had his neuropsychiatric evaluation and a general health evaluation so that they could then put together a plan of action for him. If he was found not even to be capable, that would have affected his plan of action.

Dr. Egner referred to the CPEP report that states:

(Dr. Nekrosius) cannot participate in an educational program until his cognitive/health concerns are assessed and any impact on his practice is ascertained.

In its notice of opportunity letter, the Board also noted that Dr. Nekrosius had "failed to have his cognitive/health concerns assessed and/or failed to have reports from such assessments submitted to CPEP.

Dr. Egner stated that, by failing to be assessed and to submit his assessments as required, CPEP was unable to do the rest of their job. In 2003, Dr. Nekrosius submitted a request to the Board for reinstatement when he had never complied with his original consent agreement. Despite ongoing negotiations, the Board and Dr. Nekrosius have been unable to reach agreement. Dr. Egner stated that she feels that the responsibility lies with Dr. Nekrosius, and part of the problem is that he, just as he is in his practice, is of a single mindset. He does not admit to the failures that he had in his practice, and he has not been compliant with his consent agreement. He just wants to reapply and be reinstated.

Dr. Amato advised that at the time it entered into the consent agreement, the Board felt that Dr. Nekrosius could be rehabilitated. Whether Dr. Nekrosius chose or did not choose to be rehabilitated was not the issue. Dr. Amato stated that if his practice was so bad that permanent revocation is in order, why wasn't it in order in 2002. He hasn't practiced since 2002, and the Board didn't permanently revoke his license then. Dr. Amato stated that permanent revocation is the ultimate punishment of this Board, and nothing

has changed.

Dr. Egner stated that what has changed is Dr. Nekrosius' non-compliance with the 2002 Consent Agreement.

Dr. Steinbergh stated that the Board gave him a chance and he didn't fulfill that.

Dr. Amato again stated that permanent revocation is the Board's ultimate club and both Dr. Egner and Dr. Steinbergh stated that the reason they're going that way is because of the way the man practiced. He practiced that way in 2002. This is 2008. Dr. Amato stated that he has to assume that they feel that the way he practiced prior to 2002 was the safety risks they're coming from. Therefore, why didn't the Board permanently revoke his license in 2002?

Dr. Steinbergh stated that the Board wanted to see if he could be retrained. To date, he has not been retrained. She stated that this Board Order is consistent with attempting to get him into training again. She stated that the Board could approve the originally Proposed Order, but Dr. Nekrosius is telling the Board that he can't get that done. What's the point of doing this again?

Dr. Amato stated that he understands that. He added that he's coming from the same place as Mr. Browning. Permanent revocation is the Board's ultimate club.

Dr. Steinbergh asked whether Dr. Amato has any other alternatives.

Dr. Amato stated that the Board should go with the original proposal. He again stressed that practice patterns did not change from 2002 to 2008. If Dr. Nekrosius' practice patterns today say that the Board should permanently revoke, why didn't the Board permanently revoke in 2002?

Mr. Browning stated that, having said that, the Board has to assume that Dr. Nekrosius is telling the truth; that, in fact, he made some good faith effort to connect with residency programs in and out of the state of Ohio, and it was simply not possible for him to be accepted anywhere. If there was no good faith effort, the Board could argue that he thumbed his nose at the Board.

Dr. Suppan stated that, if the Board can assume that Dr. Nekrosius is being truthful and made a good faith effort, then maybe he truly is between a rock and a hard place. She asked whether there is room for some middle ground. She asked whether it is at all feasible that the Board would make the appropriate change in his licensure status if Dr. Nekrosius were able to produce a letter of intent from a residency program that said that it would take him and supervise him.

Dr. Mahajan stated that the likelihood of Dr. Nekrosius getting any program to take him is nil. If the Board goes back to the Proposed Order, he's taken out of practice anyway.

Dr. Varyani at this time stated that Dr. Egner's amendment passed.

Dr. Talmage returned during the previous discussion.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF W. SCOTT NEKROSIUS, M.D. DR. EGNER SECONDED THE MOTION. A vote was taken:

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

The motion carried.

MR. BROWNING MOVED TO APPROVE AND CONFIRM MR. PORTER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF W. SCOTT NEKROSIUS, M.D. MR. HAIRSTON SECONDED THE MOTION.

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

DR. STEINBERGH MOVED TO AMEND THE PROPOSED ORDER, AS FOLLOWS:

- **AMEND PARAGRAPH 4.b. TO INDICATE THAT THE FIRST QUARTERLY DECLARATION OF COMPLIANCE BE RECEIVED ON OR BEFORE THE FIRST DAY OF THE THIRD MONTH FOLLOWING THE MONTH IN WHICH PROBATION BECOMES EFFECTIVE;**
- **AMEND PARAGRAPH 4. TO INDICATE THAT THE FIRST APPEARANCE TAKE PLACE DURING THE THIRD MONTH FOLLOWING THE MONTH IN WHICH THE PROBATION BECOMES EFFECTIVE; AND**
- **REMOVE PARAGRAPH 4.g. AND ADD IT AS PARAGRAPH 8;**

MR. BROWNING SECONDED THE MOTION.

Dr. Varyani stated that he would now entertain discussion of Dr. Steinbergh's motion. There was no

further discussion.

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

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

The motion carried.

MR. BROWNING MOVED TO APPROVE AND CONFIRM MR. PORTER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF W. SCOTT NEKROSIUS. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

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

The motion carried.

State Medical Board of Ohio

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



Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

October 10, 2007

W. Scott Nekrosius, M.D.
6514 Cedar Crest Trail
Dayton, Ohio 45459

Dear Doctor Nekrosius:

In accordance with Chapter 119., Ohio Revised Code, and the terms of the Step I Consent Agreement Between W. Scott Nekrosius, M.D., and the State Medical Board of Ohio, effective on or about March 14, 2002 [March 2002 Step I Consent Agreement], you are hereby notified that the State Medical Board of Ohio [Board] intends to determine whether or not to impose terms, conditions, and/or limitations upon your certificate to practice medicine and surgery, including, but not limited to, those set forth in Section 4731.22(B), Ohio Revised Code. A copy of the March 2002 Step I Consent Agreement is attached hereto and incorporated herein.

The basis for the Board's proposed action is more fully set forth as follows:

- (1) The March 2002 Step I Consent Agreement resulted from an October 10, 2001 Board Notice of Opportunity for Hearing [October 2001 Notice] issued to you, which alleged that you violated Section 4731.22(B), Ohio Revised Code, including Sections 4731.22(B)(2), (B)(6), and (B)(20), Ohio Revised Code, to wit: Rules 4731-11-02(C) and (D), Ohio Administrative Code. In lieu of further formal proceedings or determinations based upon the allegations set forth in the October 2001 Notice, you entered into the March 2002 Step I Consent Agreement. A copy of the October 2001 Notice is attached hereto and incorporated herein.

In the March 2002 Consent Agreement, you admitted to the factual and legal allegations as set forth in the Notice, and you agreed to certain specified terms, conditions, and limitations, including that your certificate to practice medicine and surgery in the State of Ohio would be suspended for an indefinite period of time. You further agreed that the Board would not consider reinstatement of your certificate until certain specified conditions for reinstatement have been met, including that you shall submit documentation acceptable to the Board verifying your participation in and successful completion of the Colorado Physicians Effectiveness Program [CPEP] as set forth in Paragraph 2(B) of the March 2002 Step I Consent Agreement. You further agreed to work with CPEP to ensure that the written Assessment Report included a detailed plan of recommended practice limitations, if any; any recommended education; any recommended mentorship or preceptorship; and any reports upon which the recommendation is based, including reports of physical examinations and psychological or other testing, as set forth in Paragraph 2(B)(3) of the Consent Agreement.

- (2) On or about May 1, 2002, the CPEP evaluators submitted to the Board an Assessment Report based upon their assessment of you from March 19 through 20, 2002. The CPEP Assessment Report Executive Summary included the following:

Mailed 10-11-07

Overall, Dr. Nekrosius' performance demonstrated inconsistent medical knowledge, poor clinical reasoning and judgment, and unacceptable documentation skills. He needed further education in patient communication. Results of the cognitive screen, when taken together with observations of behavior, suggested the need for further diagnostic evaluation. Dr. Nekrosius also needs a comprehensive health review. Overall, it appeared that Dr. Nekrosius' weaknesses outweighed his strengths and clinical consultants had concerns about his ability to provide patient care safely. Educational remediation would likely be extensive and require significant effort on the part of Dr. Nekrosius.

Dr. Nekrosius cannot participate in an education program until his cognitive/health concerns are assessed and any impact on his practice is ascertained. If any cognitive or health concerns are identified and treated, then Dr. Nekrosius should consider reassessment because of the potential impact any condition could have had on his performance during the Assessment.

The CPEP report further specified that before attempting any remediation, you need a complete, structured, formal physician physical and mental health evaluation with a multidisciplinary program experienced in dealing with physicians, and complete diagnostic neuropsychological testing to ascertain whether you have the ability to function at the high level required for a physician practicing psychiatry, and that this testing should be completed prior to your participation in an educational program.

To date, you have failed to have your cognitive/health concerns assessed and/or failed to have reports from such assessments submitted to CPEP. By such failure, CPEP is unable to render a final opinion as to whether education could correct your identified deficiencies as set forth in the CPEP report.

- (3) Despite your failure to fully comply with the requisite conditions for reinstatement of your license as contained in your March 2002 Step I Consent Agreement and as described above, you have submitted a request to the Board for reinstatement of your license to practice medicine and surgery in the State of Ohio. Further, you have not actively practiced medicine and surgery since March 13, 2002.
- (4) Further, although you partially completed the necessary actions per the CPEP assessment, and despite ongoing negotiations, you and the Board have not been able to agree upon terms, conditions, or limitations for a subsequent written consent agreement. Therefore, in accordance with the March 2002 Consent Agreement, a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code is required in order to determine the terms, conditions, and limitations, if any, that should be imposed upon you by Board Order.

As alleged in paragraphs (1) through (4) above, you have requested reinstatement of your certificate to practice medicine and surgery in Ohio, but you have failed to fulfill the requisite condition, as set forth in the March 2002 Consent Agreement, that requires you to submit documentation acceptable to the Board verifying your participation in and successful completion of the Colorado Physicians Effectiveness Program.

W. Scott Nekrosius, M.D.

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Further, your failure to be engaged in the active practice of medicine and surgery for a period in excess of two years prior to your application for reinstatement, as alleged in paragraph (4) above, constitutes cause for the Board to exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of your fitness to resume practice.

Pursuant to Chapter 119., Ohio Revised Code, **you are hereby advised that a hearing is scheduled in this matter** at the offices of the State Medical Board of Ohio, 30 E. Broad, 3rd Floor, Columbus, Ohio, **on February 5, 2008, at 9:30 a.m.**, before Gretchen Petrucci, Hearing Examiner.

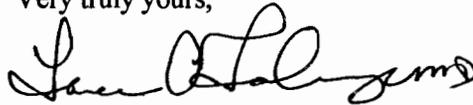
You are further advised that you are entitled to appear at such hearing in person or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing and that at the hearing you may present evidence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

You are further advised that, whether or not you or your representative attend such hearing, the Board, through its counsel, will present evidence and/or examine witnesses in support of its position, arguments, or contentions in this matter.

You are further advised that in the event that you or your representative do not attend such hearing, the Board may, in your absence and upon consideration of this matter, determine whether or not to impose terms, conditions, and/or limitations upon your certificate to practice medicine and surgery, including, but not limited to, those set forth in Section 4731.22(B), Ohio Revised Code.

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance Talmage, M.D.
Secretary

LAT/MAP/fib

Enclosures

CERTIFIED MAIL # 91 7108 2133 3931 8317 1388
RETURN RECEIPT REQUESTED

**STEP I
 CONSENT AGREEMENT
 BETWEEN
 W. SCOTT NEKROSIUS, M.D.
 AND
 THE STATE MEDICAL BOARD OF OHIO**

This Consent Agreement is entered into by and between W. Scott Nekrosius, M.D., ("Dr. Nekrosius") and the State Medical Board of Ohio ("Board"), a state agency charged with enforcing Ohio Revised Code ("R.C.") Chapter 4731.

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

BASIS FOR ACTION

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

- A. The Board is empowered by R.C. 4731.22(B), to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for any of the enumerated violations.
- B. The Board enters into this Consent Agreement in lieu of further formal proceedings based upon the violations of R.C. 4731.22, set forth in the Notice of Opportunity for Hearing issued on October 10, 2001, attached hereto as Exhibit A and incorporated herein by this reference. The Board expressly reserves the right to institute additional formal proceedings based upon any other violations of R.C. Chapter 4731 whether occurring before or after the effective date of this Consent Agreement.
- C. Dr. Nekrosius is currently licensed to practice medicine and surgery in the State of Ohio, License # 35-042576 N. Dr. Nekrosius states that he is also licensed to practice medicine and surgery in the State of Hawaii, License # 8432, as well as the State(s) of Wisconsin #18206-020.
- D. Dr. Nekrosius admits the factual and legal allegations set forth in the Notice of Opportunity for Hearing issued on October 10, 2001, attached hereto as Exhibit A and incorporated herein by reference.

STATE MEDICAL BOARD

W. Scott Nekrosius, M.D.

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AGREED CONDITIONS

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

SUSPENSION OF CERTIFICATE

1. Dr. Nekrosius' certificate to practice medicine and surgery shall be **SUSPENDED** for an indefinite period of time. Said suspension shall become effective on Saturday, March 23, 2002 at 12:01 a.m.

CONDITIONS FOR REINSTATEMENT

2. The Board shall not consider reinstatement of Dr. Nekrosius certificate to practice medicine and surgery until all of the following conditions are met.
 - A. Dr. Nekrosius shall submit an application for reinstatement, accompanied by appropriate fees, if any.
 - B. Dr. Nekrosius shall submit documentation acceptable to the Board verifying his participation in and successful completion of the Colorado Physicians Effectiveness Program (hereinafter "CPEP") program. Participation in the CPEP program will be at Dr. Nekrosius' own expense.
 1. Prior to undertaking participation in the CPEP program, Dr. Nekrosius shall furnish CPEP with copies of the Board's notice of opportunity for hearing, expert report, and any other documentation that the Board may deem appropriate or helpful to that assessment.
 2. Prior to the initial assessment, Dr. Nekrosius shall submit copies of the patient records at issue in this matter to CPEP. Dr. Nekrosius shall submit the additional patient records as identified by the Board to CPEP that are required for its assessment. Dr. Nekrosius shall provide copies of the additional patient records sent to CPEP to the Board. The expense of providing these copies to both the CPEP program and the Board will be at Dr. Nekrosius' own expense. Dr. Nekrosius shall ensure that CPEP maintains patient confidentiality in accordance with R.C. 4731.22(F)(5).
 3. Dr. Nekrosius shall ensure that all reports, including, but not limited to, the written Assessment Report and any Education Plan be provided to the Board within ten (10) days of the date of issuance. Dr. Nekrosius shall work with CPEP

W. Scott Nekrosius, M.D.
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to ensure that the written Assessment Report includes, but is not limited to, the following:

- a. A detailed plan of recommended practice limitations, if any;
 - b. Any recommended education;
 - c. Any recommended mentorship or preceptorship;
 - d. Any reports upon which the recommendation is based, including reports of physical examinations and psychological or other testing.
- C. Dr. Nekrosius shall enter into a written consent agreement including probationary terms, conditions, and limitations as determined by the Board or, if the Board and Dr. Nekrosius are unable to agree on the terms of a written consent agreement, then Dr. Nekrosius further agrees to abide by any terms, conditions, and limitations imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code.

For the purposes of determining acceptable probationary terms, conditions, and limitations that should be included in the consent agreement, the Board may, at its discretion, consider the findings and recommendations of the CPEP program. Further, if an administrative hearing is necessitated, the Board may, at its discretion, use the findings and recommendations of the CPEP program in connection with said hearing, and/or as evidence in the hearing.

- D. In the event that Dr. Nekrosius has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under R.C. 4731.222 to require additional evidence of his fitness to resume practice.

REQUIRED REPORTING BY LICENSEE

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

W. Scott Nekrosius, M.D.
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4. Within thirty days of the effective date of this Consent Agreement, Dr. Nekrosius shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Nekrosius further agrees to provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or for reinstatement of any professional license. Further, Dr. Nekrosius shall provide the Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

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

FAILURE TO COMPLY

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

ACKNOWLEDGMENTS/LIABILITY RELEASE

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

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

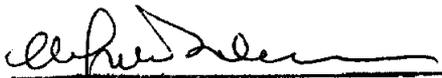
Dr. Nekrosius hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

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

W. Scott Nekrosius, M.D.
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EFFECTIVE DATE

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


W. Scott Nekrosius, M.D.

Date: 3/14/02


Douglas Craft, Esq
Attorney for Dr. Nekrosius

Date: 3/12/02


Anand G. Garg, M.D.
Secretary

Date: 3/13/02


Raymond I. Albert
Supervising Member

Date: 3/12/02


Mark A. Michael
Asst. Attorney General

Date: 3-14-02



State Medical Board of Ohio

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

October 10, 2001

W. Scott Nekrosius, M.D.
5300 Far Hills Avenue
Suite 200
Dayton, Ohio 45429

Dear Doctor Nekrosius:

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

- (1) In the routine course of your psychiatric practice, you undertook the treatment of Patients 1-14 (as identified on the attached Patient Key- Key confidential to be withheld from public disclosure). In your treatment of Patients 1-14, you rendered psychiatric treatment, including prescribing controlled substances and other dangerous drugs, despite the following:
 - (A) You failed to perform and/or document complete mental status examinations and/or psychiatric evaluations;
 - (B) You failed to establish a DSM diagnosis and/or you failed to obtain sufficient information/criteria to warrant your diagnosis/treatment and/or you failed to rule out alternative diagnoses and/or you failed to document any of the above;
 - (C) You failed to obtain and/or document informed consent and/or you failed to provide and/or document providing adequate information regarding the patient's diagnosis, treatment plan, changes in treatment, risks and benefits of medications prescribed, and alternative treatment modalities; and
 - (D) You failed to complete and maintain accurate medical records reflecting their examination, evaluation, and/or treatment, including the utilization of any controlled substances, the diagnosis and purpose for which the controlled substances were utilized, and any additional information upon which the diagnosis was based.

Mailed 10.11.01

- (2) In the treatment of Patients 3, 5-7, 10 and 12-14, you continued to prescribe controlled substances and other dangerous drugs despite the potential for abuse and dependence, despite information in your patients' medical records indicating drug abuse and dependence, and without taking appropriate actions to prevent drug abuse and dependence.
- (3) In the treatment of Patients 6, 10, and 12, you prescribed narcotic analgesics despite the fact that you failed to document appropriate indications for these medications and you failed to perform a medical evaluation or to obtain a consultation and/or to document an evaluation or consultation regarding the use of the narcotic analgesics.
- (4) In the treatment of Patients 1-14, you failed to adequately follow-up with appropriate testing and assessment, with obtaining of patients' responses to treatment, with altering of patients' treatment plans based on their responses, and/or you failed to document such follow-up. Examples of such failures include, but are not limited, to the following:
 - (A) You failed to follow up and/or document following up with Patient 9 in a timely manner after changing his medications and after receiving a report from Patient 9's mother that Patient 9 was hearing voices, had not been compliant with treatment, and had become impulsive, angry, and out of control;
 - (B) You failed to obtain and/or document appropriate laboratory tests, such as liver function studies or random blood and/or alcohol screens, for Patient 10, a diagnosed alcoholic to whom you were prescribing Tylenol with codeine and Valium. Further, you failed to sufficiently follow-up on whether Patient 10 abstained from alcohol and/or you failed to document such follow-up;
 - (C) You failed to obtain and/or document appropriate laboratory tests for Patient 12, to whom you prescribed Lithium, including a baseline laboratory evaluation with thyroid and renal functions and lithium level checks. Further, you failed to solicit and/or document additional data, including lithium levels, after Patient 12 reported symptoms suggestive of possible lithium toxicity. Further, you failed to taper or discontinue Patient 12's use of Sinequan, an antidepressant, after you documented periods of hypomania in Patient 12 following the introduction of this medication in the patient's treatment;
 - (D) You failed to perform and/or document abnormal involuntary movement examinations of Patient 13 during the 15 or more months you prescribed

Triavil, a medication containing an antipsychotic which can cause side effects including tardive dyskinesia; and

- (E) You continued to treat Patient 14 with high doses of Zoloft, an SSRI antidepressant, despite the fact that Patient 14 suffered from an apparent cycling illness and that the high doses of Zoloft may have contributed to Patient 14's symptoms.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) - (4) above, individually and/or collectively, constitute "[f]ailure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code, as in effect prior to March 9, 1999.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1) - (4) above, individually and/or collectively, constitute "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

Further, your acts, conduct, and/or omissions occurring on or after November 17, 1986, as alleged in paragraph (2) above, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-02(C), Ohio Administrative Code, as in effect November 17, 1986. Pursuant to Rule 4731-11-02(F), Ohio Administrative Code, a violation of Rule 4731-11-02(C), Ohio Administrative Code, constitutes violation of Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code.

Further, your acts, conduct, and/or omissions occurring on or after November 17, 1986, as alleged in paragraph (1)(D) above, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-02(D), Ohio Administrative Code, as in effect November 17, 1986. Pursuant to Rule 4731-11-02(F), Ohio Administrative Code, a violation of Rule 4731-11-02(D), Ohio Administrative Code, constitutes violation of Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must

W. Scott Nekrosius, M.D.

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be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

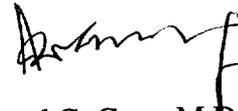
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Anand G. Garg, M.D.
Secretary

AGG/bjs
Enclosures

CERTIFIED MAIL #7000 0600 0024 5146 9927
RETURN RECEIPT REQUESTED