

**IN THE COMMON PLEAS COURT OF FRANKLIN COUNTY, OHIO
AND
BEFORE THE STATE MEDICAL BOARD OF OHIO**

MILES E. DRAKE, JR., M.D.
5261 Gender Road
Canal Winchester, Ohio 43110

Appellant,

vs.

STATE MEDICAL BOARD OF OHIO,
30 East Broad Street, 3rd Floor
Columbus, OH 43215

Appellee.

CASE NO. _____

Category F

JUDGE _____

NOTICE OF APPEAL

Miles E. Drake, Jr., M.D., ("Dr. Drake"), Appellant, hereby gives Notice of Appeal on questions of law and fact to the Court of Common Pleas, Franklin County, Ohio, pursuant to Chapter 119. of the Ohio Revised Code. Dr. Drake appeals from the Order of the Ohio State Medical Board ("Board") dated September 12, 2013, (mailed September 23, 2013). A copy of the Board Order is attached hereto as Exhibit 1.

The grounds for the appeal and the errors complained of known at this time are as follows:

I. The Order of the Board should be reversed on the basis that the Order is not supported by reliable, probative and substantial evidence and is not otherwise in accordance with law;

II. The Order of the Board should be reversed because the Board is not equipped with the necessary knowledge and experience to interpret the legal determination of when a physician patient relationship begins;

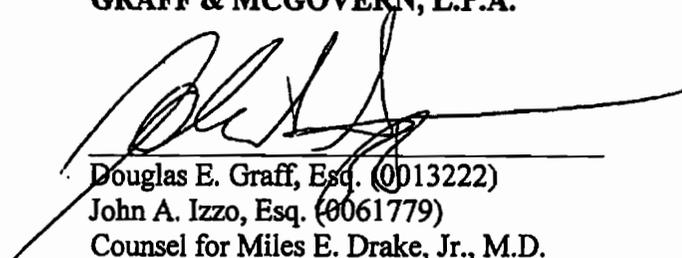
III. The Order of the Board should be reversed because the notice issued pursuant to R.C. 119.07 did not include Rule 4731-13-36 as being directly involved as a proposed reason for the disciplinary action;

IV. The Order of the Board should be reversed because, assuming arguendo the Board has the authority to act as an expert in this case, Dr. Drake was denied the opportunity to cross examine the expert opinion.

V. The Order of the Board should be reversed because R.C. § 4731.22 is unconstitutional on its face and as applied to Dr. Drake as it fails to set a standard of evidence required to establish the validity of Board Disciplinary Action.

Appellant reserves the right to add additional assignments of error and grounds for appeal once the transcript of proceedings has been completed and counsel has an opportunity to review the record.

Respectfully submitted,
GRAFF & MCGOVERN, L.P.A.

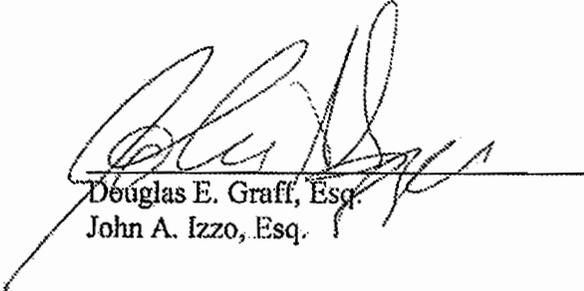


Douglas E. Graff, Esq. (013222)
John A. Izzo, Esq. (0061779)
Counsel for Miles E. Drake, Jr., M.D.
604 East Rich Street
Columbus, Ohio 43215-5341
(614) 228-5800
(614) 228-8811 Fax
doug@graflaw.com
johnizzo@graflaw.com

CERTIFICATE OF SERVICE

I hereby certify that foregoing AMENDED NOTICE OF APPEAL was filed by hand delivery this 7th day of October, 2013, with the State Medical Board of Ohio at 30 East Broad Street, 3rd Floor, Columbus, Ohio 43215; and that a true and accurate copy was e-filed with the Franklin County, Ohio, Court of Common Pleas, and e-mailed to Counsel for the State Medical Board of Ohio:

Heidi Dorn, Esq.
Assistant Attorney General,
Health & Human Services Section
30 East Broad Street, 26th Floor,
Columbus, Ohio 43215



Douglas E. Graff, Esq.
John A. Izzo, Esq.

2013 OCT 07 11:11 AM
CLERK OF COURTS
FRANKLIN COUNTY, OHIO

State Medical Board of Ohio

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

(614) 466-3934

med.ohio.gov

September 12, 2013

Miles E. Drake, Jr., M.D.
5261 Gender Road
Canal Winchester, OH 43110

RE: Case No. 13-CRF-036

Dear Doctor Drake:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Esq., Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 12, 2013, including motions approving the Findings of Fact; modifying the 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 must be commenced by the filing of a Notice of Appeal with the State Medical Board and the Franklin County Court of Common Pleas. The Notice of Appeal must set forth the Order appealed from and state that the State Medical Board's Order is not supported by reliable, probative, and substantive evidence and is not in accordance with law. The Notice of Appeal may, but is not required to, set forth the specific grounds of the appeal. 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



J. Craig Strafford, M.D., M.P.H.
Secretary

JCS;jam
Enclosures

CERTIFIED MAIL NO. 91 7199 9991 7032 2897 6842
RETURN RECEIPT REQUESTED

Cc: Douglas E. Graff and John A. Izzo, Esqs.
CERTIFIED MAIL NO. 91 7199 9991 702 2897 6859
RETURN RECEIPT REQUESTED

Mailed 9-23-13

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation R. Gregory Porter, Esq., State Medical Board Attorney Hearing Examiner; and excerpt of the Minutes of the State Medical Board, meeting in regular session on September 12, 2013, including motions approving and confirming the Findings of Fact; modifying the 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 Miles E. Drake, Jr., M.D., Case No. 13-CRF-036, 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.



J. Craig Strafford, M.D., M.P.H.
Secretary

(SEAL)

September 12, 2013

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

CASE NO. 13-CRF-036

MILES E. DRAKE, JR., M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on September 12, 2013.

Upon the Report and Recommendation of R. Gregory Porter, Esq., State Medical Board 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 within, 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.

RATIONALE FOR AMENDMENT: The physician/patient relationship was established on July 23, 2013, when Dr. Drake took the patient's history, performed a physical examination, developed a treatment plan, and prescribed medication for the patient during the time he was prohibited from undertaking the care of any patient not already under his care.

AMENDED CONCLUSION OF LAW

For the reasons set forth below, the evidence is sufficient to support a conclusion that the conduct of Dr. Drake as described in Findings of Fact 1 and 2, individually and/or collectively, constitutes a "violation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in R.C. 4731.22(B)(15).

This Board, as a panel of experts equipped with the necessary knowledge and experience to interpret the technical and ethical requirements of its profession, concludes that Dr. Drake did not render medical service sufficient to establish a physician/patient relationship with Patient 1 until July 23, 2012, when Dr. Drake took the patient's history, performed a physical examination, developed a treatment plan, and prescribed medication for the patient. Although Patient 1 previously signed appropriate forms and Dr. Drake received and reviewed the patient's prior treatment records, this did not constitute the performance of a medical service sufficient to establish a physician/patient relationship. Accordingly, Dr. Drake's conduct constitutes a violation of R.C. 4731.22(B)(15).

It is hereby ORDERED that:

The application of Miles E. Drake, Jr., M.D., for a certificate to practice medicine and surgery in Ohio is PERMANENTLY DENIED.

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



J. Craig Strafford, M.D., M.P.H.
Secretary

(SEAL)

September 12, 2013
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of	*	
Miles E. Drake, Jr., M.D.,	*	Case No. 13-CRF-036
Respondent.	*	Hearing Examiner Porter

REPORT AND RECOMMENDATION

Basis for Hearing

In a notice of opportunity for hearing dated May 8, 2013 (“Notice”), the State Medical Board of Ohio (“Board”) notified Miles E. Drake, Jr., M.D., that it had proposed to deny his application for a certificate to practice medicine and surgery in Ohio, or to take other disciplinary action, based upon Dr. Drake’s alleged treatment of a new patient during a Board-ordered wind-down period. The Board alleged that Dr. Drake’s conduct constituted a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” as that clause is used in Ohio Revised Code Section (“R.C.”) 4731.22(B)(15). Accordingly, the Board advised Dr. Drake of his right to request a hearing, and received his written request on May 14, 2013. (State’s Exhibits (“St. Exs.”) 1A, 1B)

Appearances

Michael DeWine, Attorney General of Ohio, and Heidi Wagner Dorn, Assistant Attorney General, for the State of Ohio. John A. Izzo, Esq., on behalf of Dr. Drake.

Hearing Date: June 21, 2013

PROCEDURAL MATTER

The record was reopened briefly on July 31, 2013, to admit, without objection, Board Exhibits A and B, which are excerpts from the minutes of Board meetings on December 11, 2008, and November 9, 2011, respectively.

SUMMARY OF THE EVIDENCE

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

Background Information

1. Miles E. Drake, Jr., M.D., obtained his Bachelor's Degree in biochemistry from Harvard University in 1973, and his Doctor of Medicine degree from Duke University in 1977. Dr. Drake then completed one year of internship and three years of residency in neurology at Duke University Medical Center, then a one-year fellowship in basic and clinical neurophysiology at that same institution, which he completed in 1982. Dr. Drake testified that, in 1982, he had been offered an academic appointment at the Ohio State University College of Medicine and moved to Columbus. In 2005, Dr. Drake lost his academic appointment following a Board-ordered license suspension, which is discussed in more detail below. In January 2007, he began working for the Medsave Clinic in Canal Winchester, Ohio. Dr. Drake saw patients for urgent care and neurological treatment. (Hearing Transcript ("Tr.") at 73-74, 89-92)
2. Dr. Drake testified that he was a salaried employee at the Medsave Clinic, and that he derived no additional financial benefit from seeing or not seeing any particular patient. (Tr. at 122)

Dr. Drake's Disciplinary History with the Board

3. Dr. Drake has a disciplinary history with the Board that began in 2005 and culminated with the revocation of his certificate in 2012. (St. Ex. 5)
4. Effective February 9, 2005, Dr. Drake entered into a Step I Consent Agreement with the Board based upon his violation of R.C. 4731.22(B)(26). In that agreement, Dr. Drake admitted to a history of alcohol dependency. The 2005 Step I Consent Agreement suspended Dr. Drake's license for an indefinite period of time, no minimum specified, and set forth requirements for reinstatement. (St. Ex. 5 at 2-10)
5. Effective October 12, 2005, Dr. Drake entered into another Consent Agreement with the Board. In that agreement, Dr. Drake admitted that, pursuant to the February 2005 Step I Consent Agreement, his license suspension had become effective on February 9, 2005. Nevertheless, on or about March 15, 2005, Dr. Drake prescribed medication to a patient.¹ Dr. Drake admitted that this conduct violated R.C. 4731.22(B)(10) and 4731.22(B)(15). The October 2005 Consent Agreement suspended Dr. Drake's medical license for an indefinite term of not less than five months, and left all other terms of the February 2005 Step I Consent Agreement in effect. (St. Ex. 5 at 12-19)

¹ The medication was Abilify, a psychotropic medication. Abilify requires a prescription but is not a controlled substance. (St. Ex. 5 at 13)

6. Effective June 14, 2006, Dr. Drake entered into a Step II Consent Agreement with the Board that reinstated his license and placed him under probationary monitoring requirements for a period of at least five years. The June 2006 Step II Consent Agreement was based upon the violations that had given rise to his previous consent agreements. (St. Ex. 5 at 21-29)

Following the effective date of the 2006 Step II Consent Agreement, the Board approved modifications to Dr. Drake's probationary conditions. On December 11, 2008, the Board voted to approve Dr. Drake's request to reduce the required number of recovery-group meetings from three meetings per week to two meetings per week with a total of ten per month. On the same day, the Board voted to approve Dr. Drake's request to reduce his urine screen requirement from random weekly screens to two random screens per month. (St. Ex. 5 at 24, 34; Board Exhibit A)

7. By letter dated October 12, 2011, the Board notified Dr. Drake that it had proposed to take disciplinary action against his medical license based upon allegations that he had violated various requirements set forth in his June 2006 Step II Consent Agreement. Dr. Drake requested a hearing, and a hearing was held on January 9 and March 19, 2012. A Report and Recommendation was filed on April 27, 2012, and the Board considered the matter at its meeting on June 13, 2012. (St. Ex. 5 at 44-76)

The Board adopted the Findings of Fact as set forth in the Report and Recommendation, which included the following:

5. Dr. Drake has failed to comply with Paragraph 2 of the 2006 Step II Consent Agreement. Paragraph 2 of the 2006 Step II Consent Agreement requires Dr. Drake to provide quarterly declarations to the Board on or before the first day of every third month. Dr. Drake failed to provide the Board quarterly declarations due on February 1, 2011, and May 1, 2011.

Although Dr. Drake provided evidence that he had submitted his quarterly declarations on November 5, 2010 and August 9, 2011, it is clear that Dr. Drake did not timely provide those quarterly declarations to the board by the due dates of November 1, 2010, and August 1, 2011.

6. Dr. Drake has failed to comply with Paragraph 6 of the 2006 Step II Consent Agreement. Paragraph 6 of the 2006 Step II Consent Agreement requires Dr. Drake to keep a log of all controlled substances prescribed and submit the log to the Board 30 days prior to his personal appearance before the Board or its designated representative. Dr. Drake failed to submit to the Board a log of all controlled substances prescribed from June 2009 to July 2009, September 2009 to May 2010, and November 2010.

Although Dr. Drake provided evidence that on November 8, 2010, he submitted a log to the Board of controlled substances he had prescribed in June 2010 and on May 5, 2011, a log of controlled substances he had prescribed in December 2010, Dr. Drake did not comply with Paragraph 6 of the 2006 Step II Consent Agreement because he did not submit these logs 30 days prior to his personal appearances before the Board or its designated representative.

7. Dr. Drake has failed to comply with Paragraph 10 of the 2006 Step II Consent Agreement, as modified by the Board in December 2008. Paragraph 10 of the 2006 Step II Consent Agreement, as modified in December 2008, requires Dr. Drake to submit to random, witnessed, urine screenings twice per month in which the supervising physician has appropriate control over how the specimen is maintained and the supervising physician thereafter provides quarterly reports to the Board.

From July 2009 through September 2011, Dr. Drake submitted to the Board non-random, unsupervised, and unobserved urine screen results from LabCorp. From July 2009 through September 2011, Dr. Drake did not have a Board-approved supervising physician. Beginning in July 2010, Dr. Drake failed to ensure that quarterly reports from an approved supervising physician were sent to the Board.

8. Dr. Drake has failed to comply with Paragraph 12 of the 2006 Step II Consent Agreement. Paragraph 12 of the 2006 Step II Consent Agreement requires that, before engaging in the practice of medicine, Dr. Drake shall have prior written approval of a monitoring physician and the monitoring physician shall provide the Board with monitoring reports. From May 2009 through December 2010 and then from April 2011 to November 2011, Dr. Drake failed to have a monitoring physician and no monitoring reports were sent to the Board during these time frames.
9. There is insufficient evidence to establish that Dr. Drake failed to comply with Paragraph 13 of the 2006 Step II Consent Agreement for the entire period of June 2007 through the date of the Notice. Paragraph 13 of the 2006 Step II Consent Agreement requires that Dr. Drake submit acceptable documentary evidence of continuing compliance with a recovery group program.

Rather, the evidence demonstrates that, from November 2007 to August 2011, Dr. Drake repeatedly failed to comply with Paragraph 13 of the 2006 Step II Consent Agreement by failing to submit acceptable documentary evidence of continuing compliance with a recovery group

program on the following weeks (the number of meetings that were due are listed in parentheses):

- 06/03/07 (2)
- 06/10/07 (3)
- 07/15/07 (2)
- 07/29/07 (1)
- 08/05/07 (1)
- 08/12/07 (1)
- 08/19/07 (3)
- 08/26/07 (2)
- 09/02/07 (3)
- 05/31/09 (1)
- 07/26/09 (2)
- 08/02/09 (2)
- 08/09/09 (2)
- 08/16/09 (2)
- 08/30/09 (1)
- 10/04/09 (1)
- 11/01/09 (1)
- 01/10/10 (1)
- 01/17/10 (2)
- 01/31/10 (1)
- 02/14/10 (2)
- All weeks in March 2010 (9)
- All weeks in April 2010 (8)
- 05/02/10 (2)
- 07/04/10 (2)
- 07/11/10 (1)
- 07/18/10 (2)
- 08/29/10 (2)
- 09/26/10 (1)
- 10/03/10 (2)
- 10/10/10 (2)
- 10/24/10 (2)
- 10/31/10 (2)
- 11/07/10 (1)
- 12/05/10 (2)
- 02/02/11 (2)
- 03/20/11 (2)
- 03/27/11 (2)
- 04/03/11 (1)
- 04/10/11 (2)

- 04/17/11 (1)
 - 04/24/11 (2)
10. Dr. Drake has failed to comply with Paragraph 14 of the 2006 Step II Consent Agreement. Paragraph 14 of the 2006 Step II Consent Agreement requires that, before the end of the first year of probation, Dr. Drake must submit acceptable documentary evidence of completion of a course on maintaining adequate and appropriate medical records and a written report describing the course. Dr. Drake admitted that he did not complete the medical records course before the end of his first year of probation.
 11. The Board staff repeatedly advised Dr. Drake that he was not in compliance with the probationary terms and conditions of his 2006 Step II Consent Agreement at the following office conferences: February 11, 2008, November 10, 2009, November 8, 2010, May 10, 2011, June 7, 2011, August 9, 2011, and November 7, 2011.
 12. With the exception of the Board's approval of his medical records course, Dr. Drake was in compliance with the 2006 Step II Consent Agreement by November 7, 2011.

(St. Ex. 5 at 65-67)

The Board further voted to adopt the Conclusion of Law set forth in the Report and Recommendation that Dr. Drake's conduct constituted "a '[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,' as set forth in R.C. 4731.22(B)(15)." (St. Ex. 5 at 67)

However, the Board amended the Proposed Order set forth in the Report and Recommendation, which would have extended Dr. Drake's probationary term under his June 2006 Step II Consent Agreement by at least one year and left the remainder of the consent agreement in effect. Instead, the Board imposed an Order revoking Dr. Drake's license:

It is hereby ORDERED that:

Commencing on the thirty-first day following the date on which this Order becomes effective, the certificate of Miles E. Drake, Jr., M.D., to practice medicine and surgery in the State of Ohio shall be **REVOKED**. During the thirty-day interim, Miles E. Drake, Jr., M.D., shall not undertake the care of any patient not already under his care.

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

(St. Ex. 5 at 51, 71-74)

In its Entry of Order, the Board set forth its rationale for amending the proposed order: “The State Medical Board of Ohio is unable to verify the doctor’s sobriety as he has consistently failed to comply with probationary requirements.” (St. Ex. 5 at 51)

8. The Board’s Entry of Order and related documents were mailed to Dr. Drake via certified U.S. mail, return receipt requested, on July 10, 2012. (St. Ex. 5 at 49)
9. Dr. Drake testified that he is not currently licensed to practice medicine and surgery in Ohio, and that his license was revoked on July 13, 2012.² (Tr. at 75)

Dr. Drake testified concerning his understanding of the Board’s reasons for revoking his license: “The Board felt * * * that because of compliance difficulties and shortcomings in previous years, they could not be assured of my continuing recovery, and for that reason chose to revoke the certificate.” (Tr. at 75)

10. On or around September 26, 2012, Dr. Drake submitted to the Board an application for a new certificate to practice medicine and surgery in Ohio. (St. Ex. 4)

Testimony of Investigator Janie Sussex

11. Janie Sussex testified that she has worked for the Board for over 22 years and currently serves as an Investigator. She testified that, in August 2012, she had been assigned to investigate Dr. Drake. (Tr. at 16-17)

Investigator Sussex testified that she learned during her investigation that a pharmacist had contacted the Board concerning a patient who had presented with three prescriptions written by Dr. Drake. The patient advised the pharmacist that he had obtained the prescriptions after seeing Dr. Drake for the first time. The pharmacist had been aware that Dr. Drake’s medical license had been revoked and that Dr. Drake was then in a Board-ordered wind-down period. The pharmacist refused to fill the prescriptions. Investigator Sussex visited the pharmacy on August 6, 2012, and obtained the original prescriptions. (Tr. at 17-20; St. Ex. 2)

12. Three prescriptions were obtained by Investigator Sussex from the pharmacy. They are written to Patient 1 on Dr. Drake’s prescription pad and are dated July 23, 2012.³ The medications prescribed were oxycodone 15 mg #90, oxycodone/APAP 5/325 mg #90, and meloxicam 15 mg #30. (St. Exs. 2, 7)

² In its Notice, the Board alleged that its June 13, 2012 Entry of Order became effective on July 13, 2012, which is consistent with Dr. Drake’s testimony. Accordingly, both parties agree that July 13, 2012, was the effective date of the Order, although other evidence indicates an effective date of July 10, 2012. The outcome of this matter is not affected either way, and July 13, 2012, is accepted as the effective date of the Order. (Tr. at 75; St. Ex. 1A; St. Ex. 5 at 49, 51)

³ Patient 1 is identified on a confidential Patient Key. (St. Ex. 7)

Patient 1

13. Patient 1 is a male born in 1957. For some time he was being treated by Dr. Labadidi, a physician in Akron, Ohio. Dr. Labadidi's records indicate that Patient 1 moved to Columbus, Ohio, in June 2012. Patient 1's last visit with Dr. Labadidi occurred on June 13, 2012. (St. Ex. 3⁴ at 39, 43; St. Ex. 3A)
14. On June 26, 2012, prior to the effective date of the Board's 2012 Order, Patient 1 signed a HIPPA Authorization for Release of Medical Information for Dr. Labadidi to release his medical records to Medsave Neurology – Dr. Miles E. Drake, Jr., in Canal Winchester, Ohio. Dr. Labadidi's office faxed Patient 1's medical records to Dr. Drake that same day. (St. Ex. 3 at 38; St. Ex. 3A)
15. Dr. Drake's medical records for Patient 1 confirm that he saw Patient 1 at his initial visit on July 23, 2013, following the effective date of the Board's 2012 Order. Patient 1 also signed a patient information form and a consent form and dated them July 23, 2012. The medical record indicates that he examined Patient 1, documented that Patient 1 suffered from chronic hip, knee, and back pain due to osteoarthritis and possibly related to prostate cancer, and issued him three prescriptions, as identified above.⁵ (St. Ex. 3 at 3, 5, 10-12, 32-33; St. Ex. 3A)
16. Dr. Drake testified that Patient 1 appeared at the Medsave Clinic on June 26, 2012. Dr. Drake further testified that Medsave staff had advised him on that day of Patient 1's situation, that Patient 1 had had no prior treatment records, and asked Dr. Drake how to proceed. Dr. Drake noted that the release was signed by the patient that day and the medical records were faxed to Medsave at 5:30 PM on June 26, according to the fax information on the old medical records. Dr. Drake further testified that the records would have been placed on his desk for review when they were received. Moreover, Dr. Drake testified that, when a patient's prior treatment records were placed on his desk, it had been his practice to review the records and advise the staff whether the patient can be seen and the urgency of seeing the patient. Dr. Drake testified that, in all likelihood, he had reviewed the old medical records the next day, June 27, 2012. However, Dr. Drake was unsure whether he had made a notation in Patient 1's chart concerning his review of the old medical records.⁶ (Tr. at 83, 105-107; St. Ex. 3 at 56; St. Ex. 3A)
17. Dr. Drake noted the following statement in his July 23, 2012 progress note: “[R]eferred from Comprehensive Pain Management in June but had no medical records.” (Tr. at 84; St. Ex. 3 at 32; St. Ex. 3A)

⁴ Page numbers for State's Exhibit 3 reference the smaller page numbers at the bottom-center of each page.

⁵ The second page of Dr. Drake's July 23, 2012 progress note, which includes Dr. Drake's assessment and plan, was not included in State's Exhibit 3 but is included in State's Exhibit 3A. The same is true for the signature page of Patient 1's medication management agreement, which Patient 1 signed on July 23, 2012.

⁶ The Hearing Examiner was unable to find such a notation. (St. Exs. 3, 3A)

18. With respect to seeing Patient 1 on July 23, 2012, Dr. Drake testified:

[Patient 1] was already known to us and was in our system. He had executed release of information forms, we had received and reviewed the medical records, and had undertaken when the time came to—to rewrite the prescriptions absent any—any difficulties posed in that to rewrite the prescriptions that he had formerly received by the previous treating physician who had faxed the records to us.

(Tr. at 86-87)

19. Dr. Drake acknowledged that Patient 1's medical records indicate that the patient's first urine drug screen was obtained on July 23, 2012, and that the billing form for that visit states, among other things, "New PT." Dr. Drake denied that he had made that notation. (Tr. at 110-111, 122; St. Ex. 3 at 30, 31)

Additionally, on the billing form for Patient 1's July 23, 2012 visit, Dr. Drake had circled code number 99204 which indicates evaluation and management of a new patient. (St. Ex. 3 at 31) Dr. Drake testified:

I may have circled the wrong code because a more correct description of what happened to him on the 23rd of July would have been 99214. He was, as I said, already—He was already known to us, it's my belief he was already in our system, and was—and had gone through the preliminary stages of evaluation prior to receiving a prescription, so this—what this amounted to was an extended visit to an ongoing patient.

(Tr. at 123-124)

20. Dr. Drake testified that he did not bill patients for his review of their prior medical records. (Tr. at 124)

21. When asked if the physician/patient relationship is initiated when a patient gives the physician consent to treat the patient, Dr. Drake replied, "Not necessarily. The physician-patient relationship may begin when the patient asks to be taken into the practice, is my belief, and when he executes the forms necessary to obtain medical records for his continuing treatment." Dr. Drake further testified that "on the 26th of June, we agreed that [Patient 1] would henceforth be our patient and we would at Medsave monitor and rewrite his prescriptions. I thought, therefore, that he was—that he was our patient and we had a responsibility to him as of the 26th of June when we first undertook to get the records." (Tr. at 116-118)

When asked if Medsave had ever had someone sign a form for release of medical records and then not show up for an appointment, Dr. Drake replied that that had happened. When asked if he would have considered that person to be a patient, Dr. Drake replied:

Yes, until they—until they either transferred their care elsewhere by further instructions to us in the form of another release, informed us that they— that they did not wish to come for their appointment, or did this a number of times, indicating that they did not intend to—to—to keep—to make and keep appointments with us.

(Tr. at 118)

22. Dr. Drake made reference to an April 1, 2013 letter sent to the Board by Dr. Jaulim, the Managing Director of the Medsave Clinic, in which Dr. Jaulim replied to a Board subpoena for the Medsave Clinic's appointment book. Dr. Jaulim stated, in part:

In response to the subpoena,⁷ * * * please find a true copy of Dr. Miles E. Drake Jr. appointment book during the specified time period.

There were no new patient records found with evaluation for the first time during the period of July 14th and August the 13th of 2012.

All new patients that were on the schedule during the specified time period were rescheduled for later dates with different physicians.

(Resp. Ex. M)

23. Upon review of Medsave's appointment list for July 23, 2012, Dr. Drake noted that Patient 1 had been scheduled for a 15-minute appointment at 2:45 PM that day. Dr. Drake further noted that 15-minute appointments were typically reserved for return patients rather than new patients. Moreover, Dr. Drake noted that new patients are typically designated as "NP" on the appointment list, but that Patient 1 was not so designated. Finally, Dr. Drake noted that the appointment list indicates that Patient 1 had paid a fee of \$100 which, to Dr. Drake's knowledge, was the amount that patients were charged for return visits.

(Tr. at 125-126; Resp. Ex. S)

24. In support of his position that a patient-physician relationship between Dr. Drake and Patient 1 began on June 26, 2012, Dr. Drake presented American Medical Association ("AMA") Opinion 10.015 – The Physician-Patient Relationship. That opinion states, in part: "A patient-physician relationship exists when a physician serves a patient's medical needs, generally by mutual consent between physician and patient (or surrogate)."

(Resp. Ex. I)

⁷ A copy of the subpoena Dr. Jaulim referenced was admitted to the record as Respondent's Exhibit L.

25. Dr. Drake testified that Patient 1 continued to be seen by another physician at Medsave Clinic after Dr. Drake's wind-down period ended. (Tr. at 86; St. Exs. 3, 3A)

Further Testimony of Dr. Drake

26. Dr. Drake testified that, in response to the Board's Order that Dr. Drake see no new patients during his thirty-day wind-down period, he had spoken with Dr. Jaulim to rearrange the schedule so that all new patients would be seen by a different physician, Dr. Trowbridge, in August. Dr. Drake further testified, "I also conveyed that instruction to the staff and the receptionist and asked them if they would in the future schedule patients calling to be seen for the first time with Dr. Trowbridge after the 14th of August." (Tr. at 87-88, 113)

Dr. Drake testified that, during his wind-down period, there were no other physicians available to take new patients at the Medsave Clinic; therefore, new patients were scheduled for August 14, 2012, or afterward so that they could be seen by Dr. Trowbridge. (Tr. at 93-94)

27. Dr. Drake testified that he last practiced clinically around August 10, 2012. (Tr. at 94-95)
28. Dr. Drake testified that, since his license was revoked, he has "attempted assiduously to comply with all of the provisions of the 2006 Consent Agreement * * *." Dr. Drake further testified that he has attended ten recovery-program meetings per month, at least two per week, and has obtained signatures from the chairs of those meetings to verify his attendance. (Tr. at 75-76)

Dr. Drake presented an attendance log that covers the period from September 27, 2012, through May 31, 2013. The log indicates that he attended, and obtained signatures for:

- September 2012, two meetings: September 27 and 29. (Resp. Ex. P at 1)
- October 2012, eleven meetings: October 1 (two meetings), 12, 18, 21, 26 (two meetings), 27 (two meetings), and 31 (two meetings). Dr. Drake also apparently attended a meeting on October 16th but obtained no signature. (Resp. Ex. P at 1-2)
- November 2012, eight meetings: November 3 (two meetings), 10 (two meetings), 17, 21, and 24 (two meetings). (Resp. Ex. P at 3)
- December 2012, twelve meetings: December 1, 3, 8 (two meetings), 10, 20, 27 (two meetings), 29 (two meetings), 31 (two meetings). (Resp. Ex. P at 3-4)
- January 2013, eleven meetings: January 5 (two meetings), 12 (two meetings), 24, 26 (three meetings), 31 (two meetings). (Resp. Ex. P at 5)

- February 2013, ten meetings: February 2 (two meetings), 9 (two meetings), 14, 20, 23 (two meetings), 28 (two meetings). (Resp. Ex. P at 6)
- March 2013, ten meetings: March 9 (two meetings), 16 (two meetings), 23 (two meetings), 28, 29, 30 (two meetings). (Resp. Ex. P at 7)
- April 2013, ten meetings: April 6 (two meetings), 20 (four meetings), 27 (two meetings), 29 (two meetings). (Resp. Ex. P at 8)
- May 2013, ten meetings: May 11 (two meetings), 18 (three meetings), 25 (three meetings), 29, and 31. (Resp. Ex. P at 9-10)

Moreover, Dr. Drake testified that he has submitted to two random urine screens per month through Dr. Edward Chernick, his supervising physician since 2011. Dr. Drake submitted laboratory toxicology reports concerning urine specimens submitted by Dr. Drake on the following dates: October 8, October 30, November 13, November 16, December 10, and December 31, 2012; and January 16, January 29, February 11, February 20, March 10, March 26, April 11, April 24, May 15, May 30, and June 12, 2013. Each of the urine samples tested negative for screened substances, which included alcohol. (Tr. at 76-77; Resp. Ex. Q; Board Exhibit B)

29. On November 1 and 2, 2012, Dr. Drake attended the Intensive Course in Medical Recordkeeping offered by the Case Western Reserve University School of Medicine. (Tr. at 77; Resp. Ex. R)
30. In conclusion, Dr. Drake testified:

I would respectfully ask the Hearing Examiner not to recommend and the Board not to impose, you know, a denial of my application for a new certificate to practice medicine.

I have, since June of 2012, and to a large measure before that, corrected all of the compliance shortcomings that prompted the Board's action of 2012.

I have maintained full compliance since then with the terms of the June 2006 Consent Agreement as modified in 2008 with respect to documentation and monitoring of recovery activities.

I believe, for the reasons that we have presented, that I was in compliance with the—with the Board's order of June 2012 until the cessation of my clinical activities in August 2012, and, therefore, would request after a year-and-a-half of penance and penitence to be allowed once again to return to the practice of medicine.

(Tr. at 92-93)

Timeline of Events

31. The following table places various events relevant to this matter in chronological order:

Date	Event
2/9/05	Dr. Drake entered into a Step I Consent Agreement based on alcohol dependency; license suspended
10/12/05	Dr. Drake entered into a second consent agreement based on issuing prescription during suspension; license suspension extended by at least five months
6/14/06	Dr. Drake entered into a Step II Consent Agreement; license reinstated and probationary conditions imposed
12/11/08	Board approved modifications to probationary conditions
10/12/11	Board issued notice of opportunity for hearing alleging violations of probationary conditions
4/27/12	Report and Recommendation issued following hearing on January 9 and March 19, 2012
6/13/12	Board voted to revoke Dr. Drake's certificate based upon his violation of probationary conditions; Order provided for 30-day wind-down during which Dr. Drake was ordered not to undertake the care of any patient not already under his care; Order to become effective "immediately upon the mailing of notification of approval by the Board"
6/26/12	Patient 1 appeared at Medsave Clinic and signed medical records release form; medical records from Patient 1's prior treating physician were faxed to Medsave later that day
6/27/12 (approx)	Dr. Drake reviewed Patient 1's medical records from previous provider, according to Dr. Drake's testimony
7/13/12	Board Order became effective; Dr. Drake's 30-day wind-down period began
7/23/12	Dr. Drake examined Patient 1 for the first time, issued three prescriptions
8/10/12	Dr. Drake discontinued medical practice
8/12/12	Last day of Dr. Drake's 30-day wind-down period
9/26/12 (approx)	Dr. Drake submitted application for new certificate to practice medicine and surgery in Ohio
5/8/13	Notice of opportunity for hearing issued initiating the current matter

(Tr. at 75, 85, 105-107; St. Ex. 1A; St. Ex. 2; St. Ex. 3 at 33, 5, 10-12, 32-33, 8-39, 43, 49, 51, 56; St. Ex. 3A, St. Ex. 5 at 2-10, 12-19, 21-29, 34, 44-76; Board Exhibit A)

APPLICABLE RULES

1. **Ohio Administrative Code Rule (“Rule”) 4731-13-36(B)** provides as follows:

“Revocation” means the loss of a certificate to practice in Ohio. An individual whose certificate has been revoked shall be eligible to submit an application for a new certificate. The application for a new certificate shall be subject to all requirements for certification in effect at the time the application is submitted. *In determining whether to grant such an application, the board may consider any violations of Chapters 4730., 4731., 4760. and 4762. of the Revised Code, whichever is applicable, that were committed by the individual before or after the revocation of the individual’s certificate, including those that formed the basis for the revocation.* All disciplinary action taken by the board against the revoked certificate shall be made a part of the board’s records for any new certificate granted under this rule.

(Emphasis added)

2. **Rule 4731-27-01** provides, in pertinent part:

A physician-patient relationship is established when the physician provides service to a person to address medical needs, whether the service was provided by mutual consent or implied consent, or was provided without consent pursuant to a court order. Once a physician-patient relationship is established, a person remains a patient until the relationship is terminated.

(Emphasis added)

LEGAL ISSUE

Did Dr. Drake “undertake the care of any patient not already under his care” by examining and treating Patient 1 on July 23, 2012?

During the hearing on this matter, the State acknowledged that Patient 1 may have gone to the Medsave Clinic on June 26, 2012, to sign a medical records release form, but that that action, by itself, did not make Patient 1 a patient of Dr. Drake’s. The State noted that a patient could go to a medical office, sign a release form, and then never return to the practice. The State argued that July 23, 2012, had been the first time Dr. Drake had actually seen Patient 1, examined him, rendered diagnoses, and prescribed medications for him. The State further argued that Patient 1 did not sign a written consent form until July 23, 2012. Therefore, the State argued, no physician-patient relationship had been formed prior to July 23, 2012, and Dr. Drake violated the Board’s Order when he saw and treated Patient 1 on that day.

The Respondent argued that a physician-patient relationship began when Patient 1 signed a medical records release form and Dr. Drake received and reviewed Patient 1's medical records from his prior treating physician. By reviewing Patient 1's medical records and agreeing to accept Patient 1 as a patient, the Respondent argued, Dr. Drake "provided a service to a person to address medical needs," as stated in Rule 4731-27-01, and as similarly stated in AMA Opinion 10.015. The Respondent further argued that no face-to-face meeting between patient and physician is required to initiate the physician-patient relationship, and he referred to case law to support that argument.⁸ Moreover, the Respondent argued that the physician-patient privilege does not attach unless a physician-patient relationship exists, and that, if no physician-patient relationship existed between Dr. Drake and Patient 1 prior to July 23, 2012, then the medical records that Dr. Drake received and reviewed were not subject to the physician-patient privilege and were "just kind of floating out there."⁹ Therefore, the Respondent argued, Dr. Drake did not violate the Board's Order when he saw and treated Patient 1 on July 23, 2012.

The Hearing Examiner finds the Respondent's arguments to be persuasive. Dr. Drake began providing medical services to Patient 1 when he received and reviewed Patient 1's medical records, and that initiated a physician-patient relationship pursuant to Rule 4731-27-01. The reason for this finding could perhaps best be illustrated by considering a slightly different factual scenario. Hypothetically, if a physician were to receive a copy of someone's prior treatment records and review them, and then, before ever examining or treating the person, begin dating that person, would that constitute a physician-patient boundary violation? The answer should be yes, because the relationship between the physician and that person became unequal as soon the physician gained access to that person's medical records. Therefore, a physician-patient relationship existed at that time.

Accordingly, the Hearing Examiner finds that Patient 1 was already a patient of Dr. Drake's when Dr. Drake saw and treated him on July 23, 2012.

FINDINGS OF FACT

1. On June 13, 2012, the Board voted to issue an Entry of Order ("Order"), which became effective on July 13, 2012, revoking the certificate of Miles E. Drake, Jr., M.D., to practice medicine and surgery in Ohio, subject to a 30-day wind-down period. The Board ordered that, during the 30-day wind-down period, Dr. Drake was prohibited from undertaking the care of any patient not already under his care.

The Order was based upon Dr. Drake's violation of the probationary terms of a prior June 2006 Step II Consent Agreement, which had reinstated his certificate pursuant to

⁸ In *Everhart v. Coshocton County Memorial Hospital, et al.*, 10th Dist. No 12AP-75, 2013-Ohio-2210, the Franklin County Court of Appeals determined, based upon the facts of that particular case, that a physician who contractually agreed to provide back-up services to a hospital would have had a duty to report abnormal x-ray findings to a patient if the physician had received those x-rays, even though the physician had never actually seen or treated the patient.

⁹ Tr. at 146

probationary conditions set forth therein. Dr. Drake's certificate was previously suspended pursuant to consent agreements based, in part, upon Dr. Drake having issued a prescription while his license was suspended.

2. On June 26, 2012, Patient 1 first came to the clinic where Dr. Drake practiced and signed a form releasing his prior treatment records to Dr. Drake. Patient 1's prior treating physician faxed Patient 1's medical records to Dr. Drake that same day. On or about June 27, 2012, Dr. Drake reviewed Patient 1's medical records. Subsequently, on July 23, 2012, after the effective date of the Order and during his 30-day wind-down period, Dr. Drake first examined and treated Patient 1, and issued three prescriptions including prescriptions for oxycodone and oxycodone/APAP.
3. On or about September 26, 2012, Dr. Drake submitted to the Board an application for a new certificate to practice medicine and surgery in Ohio. That application remains pending.

CONCLUSION OF LAW

As discussed in the Legal Issue section set forth above, the evidence is insufficient to conclude that the conduct of Dr. Drake as described in Findings of Fact 1 and 2, above, individually and/or collectively, constitutes a "violation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in R.C. 4731.22(B)(15).

DISCUSSION CONCERNING THE PROPOSED ORDER

As set forth above, the evidence is insufficient to support a conclusion that Dr. Drake committed any new violation by seeing Patient 1 on July 23, 2012. Nevertheless, Rule 4731-13-36(B) provides that the Board may consider Dr. Drake's previous disciplinary history in determining whether to grant his application for a new medical license. However, the rule does *not* provide that the Board may base any additional disciplinary action on a new license beyond the determination whether to grant or deny the application. Accordingly, because the issue of alcohol dependency was not included among the allegations set forth in the May 8, 2013, notice of opportunity for hearing, the Board cannot place any impairment-related conditions on a new license issued to Dr. Drake unless Dr. Drake waives his right to object to such conditions.¹⁰ Dr. Drake has not agreed to such waiver.

¹⁰ In *In re Eastway* (1994), 95 Ohio App.3d 516, 642 N.E.2d 1135, cert. denied, the Franklin County Court of Appeals held that the Board could not require psychiatric treatment as a condition of probation when it had not charged a physician with being mentally impaired. In such a situation, a Board order that includes such sanctions is not supported by reliable, probative, and substantial evidence and is not in accordance with the law. See also *Lawrence S. Krain, M.D. v. State Medical Board of Ohio* (Oct. 29, 1998), Franklin App. No. 97APE08-981, unreported. However, a respondent may waive his or her objection to a Board order that includes such sanctions.

Based upon Rule 4731-13-36(B) and Dr. Drake's significant disciplinary history with the Board, the Proposed Order would deny Dr. Drake's application.

PROPOSED ORDER

It is hereby ORDERED that:

The application of Miles E. Drake, Jr., M.D., for a certificate to practice medicine and surgery in Ohio is DENIED.

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



R. Gregory Porter
Hearing Examiner

State Medical Board of Ohio

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

(614) 466-3934

med.ohio.gov

EXCERPT FROM THE DRAFT MINUTES OF SEPTEMBER 12, 2013

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Steinbergh announced that the Board would now consider the Reports and Recommendations appearing on its agenda.

Dr. Steinbergh asked whether each member of the Board had received, read and considered the hearing records; the Findings of Fact, Conclusions of Law, Proposed Orders, and any objections filed in the matters of: Dustin Michael Clark, M.D.; Jeffrey T. Dardinger, M.D.; Margaret A. Davidson; Miles E. Drake, Jr., M.D.; Erica Lynne Forney, M.T.; and Emmart Yost Hoy, Jr., D.O.

A roll call was taken:

ROLL CALL:	Dr. Strafford	- aye
	Dr. Bechtel	- aye
	Ms. Elsass	- aye
	Dr. Ramprasad	- aye
	Dr. Steinbergh	- aye
	Dr. Sethi	- aye
	Dr. Saferin	- nay
	Mr. Kenney	- aye
	Mr. Gonidakis	- aye

Dr. Saferin explained that he has not had opportunity to review and consider the hearing records in these cases. Therefore, he will abstain from the discussion and vote in these matters.

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

ROLL CALL:	Dr. Strafford	- aye
	Dr. Bechtel	- aye
	Ms. Elsass	- aye
	Dr. Ramprasad	- aye
	Dr. Steinbergh	- aye
	Dr. Sethi	- aye
	Dr. Saferin	- aye
	Mr. Kenney	- aye
	Mr. Gonidakis	- aye

Dr. Steinbergh noted that, in accordance with the provision in section 4731.22(F)(2), Ohio 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 any disciplinary matters. In the matters before the Board today, Dr. Strafford served as Secretary and Dr. Bechtel served as Supervising Member.

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

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

.....
MILES E. DRAKE, JR., M.D., Case No. 13-CRF-036
.....

Ms. Elsass moved to approve and confirm Mr. Porter's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Miles E. Drake, M.D. Dr. Ramprasad seconded the motion.

.....
Dr. Ramprasad moved to amend the Conclusion of Law of the Report and Recommendation to read as follows:

For the reasons set forth below, the evidence is sufficient to support a conclusion that the conduct of Dr. Drake as described in Findings of Fact 1 and 2, individually and/or collectively, constitutes a "violation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in R.C. 4731.22(B)(15).

This Board, as a panel of experts equipped with the necessary knowledge and experience to interpret the technical and ethical requirements of its profession, concludes that Dr. Drake did not render medical service sufficient to establish a physician/patient relationship with Patient 1 until July 23, 2012, when Dr. Drake took the patient's history, performed a physical examination, developed a treatment plan, and prescribed medication for the patient. Although Patient 1 previously signed appropriate forms and Dr. Drake received and reviewed the patient's prior treatment records, this did not constitute the performance of a medical service sufficient to establish a physician/patient relationship. Accordingly, Dr. Drake's conduct constitutes a violation of R.C. 4731.22(B)(15).

Dr. Sethi seconded the motion.

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

ROLL CALL:	Dr. Strafford	- abstain
	Dr. Bechtel	- abstain
	Ms. Elsass	- aye
	Dr. Ramprasad	- aye
	Dr. Steinbergh	- aye
	Dr. Sethi	- aye
	Dr. Saferin	- abstain
	Mr. Kenney	- aye
	Mr. Gonidakis	- aye

The motion to amend carried.

Ms. Elsass moved to approve and confirm Mr. Porter's Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the matter of Miles E. Drake, Jr., M.D. Dr. Ramprasad seconded the motion. A vote was taken:

ROLL CALL:	Dr. Strafford	- abstain
	Dr. Bechtel	- abstain
	Ms. Elsass	- aye
	Dr. Ramprasad	- aye
	Dr. Steinbergh	- aye
	Dr. Sethi	- aye
	Dr. Saferin	- abstain
	Mr. Kenney	- aye
	Mr. Gonidakis	- aye

The motion to approve carried.

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

MILES E. DRAKE, M.D.,	:	
	:	
Appellant,	:	
	:	Case No. 12 CVF-9449
vs.	:	
	:	(JUDGE FRYE)
THE STATE MEDICAL BOARD OF	:	
OHIO,	:	
	:	
Appellee,	:	

**DECISION and FINAL JUDGMENT
AFFIRMING THE STATE MEDICAL BOARD OF OHIO
CASE NO. 11-CRF-095**

I. Introduction.

This is an administrative appeal from a decision of the State Medical Board in their Case No. 11-CRF-095, which REVOKED the certificate to practice medicine and surgery in the State of Ohio of Appellant Dr. Miles E. Drake, Jr. The key basis for the Board’s Order was stated as follows: “The State Medical Board of Ohio is unable to verify the doctor’s sobriety as he failed to comply with probationary requirements.”

The probationary requirements for Dr. Drake began when he entered into a Consent Agreement with the Board in February 2005. Dr. Drake agreed to an indefinite period of suspension of his license at that time based upon his admission that he was impaired due to alcohol dependence (in violation of R.C. § 4731.22(B)(26)).

Some ten (10) months into that Agreement, Dr. Drake entered into a second Consent Agreement because he had violated the terms of his original Agreement and to stave off additional formal Board proceedings, based upon conduct violative of R.C. § 4731.22(B)(10) and (B)(15). During those intervening months, it appears Dr. Drake continued to practice surgery or medicine in contravention of the terms of the Agreement and engaged in the illegal processing of drug documents, a felony.

Dr. Drake eventually sought reinstatement of his medical license from the Board. The Board agreed to reinstate his license on June 9, 2006 in a Step II Consent

Agreement. Dr. Drake agreed to abide by twenty (20) detailed probationary terms. All of the terms required specific actions to be performed by Dr. Drake and required Dr. Drake to submit proof in various ways of his compliance with the agreed terms. Dr. Drake was represented by Douglas E. Graff, Esq., in entering into this agreement. Dr. Drake signed the agreement on or about June 9, 2006.

Significantly, the Step II Agreement explicitly stated that Dr. Drake agreed that the Board reserved the right to institute formal disciplinary proceedings for any breaches of the agreement. (State's Ex. 2, App. D)

The Step II Agreement was extended by the Secretary and Dr. Drake's probation supervisor in July 2008. Dr. Drake's probation was extended to 2011 due to his non-compliance with the agreement.

Eventually, the Board did exercise its right to institute formal disciplinary proceedings. On October 12, 2011, the Board notified Dr. Drake in writing that it intended to take action against his license. That notice set forth eight (8) numbered paragraphs corresponding with provisions of the Step II Consent Agreement that it intended to prove Dr. Drake breached; each paragraph detailed the specific conduct of Dr. Drake that violated a specific term of the agreement. (State's Ex. 1- A).

Dr. Drake attended the formal proceedings with counsel, Douglas E. Graff, Esq. and John Izzo, Esq. Counsel cross-examined the State's witness and directly examined Dr. Drake. The hearing was held January 9 and March 19, 2012. At the close of the hearing on March 19, 2012, the Hearing Examiner stated: "The report and recommendation is going to be mailed to Dr. Drake and his attorneys. There is limited amount of time to respond to it – I believe it's (sic) ten days – in which Dr. Drake may submit written comments or objections prior to the final decision by the Board. The Board will meet and consider the matter. The Respondent and/or his representative may appear before the Board in person and address the Board, as long as a written request is filed at least five day in advance before the Board meeting." (Tr. P. 406, L. 12 – 25).

The Hearing Examiner recommended the Medical Board extend the duration of the 2006 Consent Agreement for at least one year. Significantly, Dr. Drake did not file any objections to the Hearing Examiner's decision. He did appear before the Board pursuant to his written request.

The Board convened for Dr. Drake's case on June 13, 2012. The Board minutes reflect that Dr. Drake "apologized for his failures of omission and commission with respect to compliance with his Consent Agreement, and expressed particular remorse that he did not live up to Mr. Albert's expression of confidence in him...and failed to always attend to what was expected of him." Dr. Drake concluded by asking the Board to accept the Hearing Examiner's recommendation and give him another chance to demonstrate compliance.

Once Dr. Drake finished speaking, Assistant Attorney General Dorn spoke on behalf of the State of Ohio. Ms. Dorn indicated agreement with the Hearing Examiner's findings that Dr. Drake did not comply with his Consent Agreement. Ms. Dorn then cited those findings in support of the State's position that the Proposed Order at the conclusion of the Hearing Examiner's report was "too light a sanction in this case." Ms. Dorn pointed out "that Dr. Drake has consistently failed to comply with this Consent Agreement multiple times and in multiple ways." Ms. Dorn then fleshed out that statement with examples drawn from the Hearing Examiner's factual findings.

Ms. Dorn argued the repetitive violations of numerous requirements of the Agreement merited a significantly harsher penalty than recommended by the Hearing Examiner, namely that "Dr. Drake should have time out from the practice of medicine."

After hearing Dr. Blake and affording Ms. Dorn an opportunity to speak on behalf of the State, the Board deliberated. Dr. Madia moved to approve and confirm the Hearing Examiner's findings of fact, conclusions of law, and proposed order. No other discussion of either the findings of fact or conclusions of law occurred. There was, however, discussion of what was the appropriate sanction based on those findings of fact and conclusions of law.

Dr. Madia started by stating a synopsis of the facts found by the Hearing Examiner. From those facts, Dr. Madia drew an inference that because of Dr. Drake's non-compliance with the Agreement's terms and reporting requirements, "the Board does not know if Dr. Drake is free of alcohol or drugs."

Various Board members echoed Dr. Madia's sentiment and those expressing themselves all felt the Proposed Order was too lenient. In the end, Dr. Madia moved that the Board's Order would read to "revoke Dr. Drake's license to practice medicine

and surgery in Ohio.” His motion was seconded and all members present voted “aye,” except for Dr. Strafford’s abstention. The motion carried.

Mr. Hairston then moved “to approve and confirm Mr. Blue’s Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the matter of Miles E. Drake, Jr., M.D.” Dr. Madia seconded the motion. The motion carried with all members present voting “aye” except for Dr. Strafford’s abstention.

The Board’s Order was mailed to Dr. Drake on July 10, 2012. From that Order, Dr. Drake filed the instant appeal, with the following Assignments of Error:

First Assignment of Error: The Order was not based upon reliable, probative, and substantial evidence.

Second Assignment of Error: The Order is not in accordance with law because the Board improperly substituted its determination of Dr. Drake’s credibility for that of the hearing examiner.

Third Assignment of Error: The Order was not in accordance with law because the Board failed to state why it modified the hearing examiners recommendation.

Fourth Assignment of Error: Dr. Drake’s Due Process rights were violated because the Notice did not state the allegations with specificity.

Fifth Assignment of Error: The order was not in accordance with law because the Board failed to comply with the terms of the June 2006 Consent Agreement.

II. Discussion

A. The Standard of Review

Under Ohio law, decisions of administrative agencies such as the Board are subject to a “hybrid form of review” in which a common pleas court must give deference to the findings of an agency, but those findings are not conclusive. *Univ. of Cincinnati*

v. Conrad, 63 Ohio St.2d 108, 111 (1980). Other rules relative to an administrative appeal from the Medical Board are summarized in *Calloway v. Ohio State Med. Bd.*, 10th District Case No. 12AP-599, 2013-Ohio-2069, and this court's decision in *Johnson v. State Med. Bd.* (Franklin Co. C.P.), 147 Ohio Misc.2d 121, 2008-Ohio-4376, at ¶¶ 21-24, and need not be repeated here.

B. Assignments of Error

First Assignment of Error: The Order was not based upon reliable, probative and substantial evidence.

Dr. Drake argues that the Board's Order was not based upon reliable, probative and substantial evidence. Dr. Drake premises this argument upon the assertion that the testimony of Ms. Bickers, a witness for the State of Ohio, was unable to provide reliable testimony. The further premise is that the Board relied upon "this testimony to prove the allegations listed in the Notice." In fact, the Board relied not only on Ms. Bickers testimony, but also on the testimonial admissions and acknowledgements of Dr. Drake. Dr. Drake acknowledged at the hearing and on the record that he failed to comply with the terms of the Step II Consent Agreement. (See, citation in the Hearing Examiner's decision to Dr. Drake's testimony.)

The Board's Order was based upon the Findings of Fact of Hearing Examiner Blue. Hearing Examiner Blue's decision cited accurately to the record for the findings of fact. The Hearing Examiner took note of the full record in the Decision. That is, the Hearing Examiner discussed the evidence concerning each of the separate allegations in the Notice. The Hearing Examiner discussed the testimony of Ms. Bickers and Dr. Drake as to each of the separate allegations. Even if the court were to agree that none of the testimony of Ms. Bickers is reliable, which it does not, the admissions and acknowledgements of Dr. Drake, standing alone, would provide sufficient reliable, probative and substantial evidence of the doctor's non compliance with his Step II Consent Agreement.

For example, Dr. Drake's Step II Consent Agreement imposed a duty to submit Quarterly Declarations. The Hearing Examiner found that Dr. Drake acknowledged that he was occasionally untimely in submitting those declarations as required. Dr.

Drake provided evidence at the hearing that he submitted late Quarterly Declarations which were due November 1, 2010 and August 1, 2010, respectively. This evidence supported Finding of Fact 5 that Dr. Drake failed to comply with paragraph 2 of the Step II Consent Agreement. (The Decision of the Hearing Examiner cites to relevant portions of the record; here to Tr. at 34; Respondent's Exhibit F.)

Beyond that, the Hearing Examiner relied upon Dr. Drake's own testimony and evidence in finding violations of other terms of the Step II Consent Agreement set forth in the Notice. Dr. Drake hardly can argue that his own testimony is unreliable, insubstantial, or non-probative. The court finds the Hearing Examiner's use of Dr. Drake's admissions and acknowledgements of his non-compliance supports a finding that the facts found by the Hearing Examiner and approved and confirmed by the Board are supported by reliable, substantial, and probative evidence. See, *Our Place, Inc. v. Ohio Liquor Comm.*, 63 Ohio St.3d 570, 589 (1992). Accordingly, Dr. Drake's first assignment of error is **overruled**.

Additionally, this court is compelled to conclude that Dr. Drake waived his right to raise disagreements with factual issues on appeal. The court notes that Dr. Drake failed to object to any Finding of Fact or Conclusion of Law of Hearing Examiner Blue before the Board. Dr. Drake had been given ample opportunity and notice to do so: Hearing Examiner Blue, at the end of the hearing, explicitly told Dr. Drake and counsel that written objections to his Decision could be filed prior to consideration of his case by the Board. That was one opportunity to address alleged evidentiary or legal deficiencies of the Decision. The second opportunity to address alleged evidentiary or legal deficiencies of the Hearing Examiner Blue's decision was when Dr. Drake personally addressed the Board when it considered his case. He did not do object either to the facts or the law, despite two opportunities to raise objections to the Board.

The Board, therefore, was given no reason to discuss or question the Findings of Fact or Conclusions of Law submitted by Hearing Examiner Blue. Indeed, in addressing the Board, Dr. Drake acknowledged his failures to comply with the terms of the agreement both by commissions and omissions and by failing to live up to the expectation contained in the agreement.

Although Dr. Drake did not go so far in his statement as to explicitly ask the Board to accept the Hearing Officer's Findings and Conclusions, he did so implicitly

when he requested the Board accept the Proposed Order flowing from those same facts in light of the law.

It is a venerated rule of procedure in adjudicative cases that issues not raised at the trial level are waived, even in criminal matters (other than plain error.) *State v. Taylor*, 2012-Ohio-6200 (Ohio Ct. App., Franklin County Dec. 28, 2012). This legal principle has been applied to administrative hearings. See, *Haver v. Accountancy Bd. of Ohio*, 10th Dist. No. 05 AP-280, 2006-Ohio-1162.

Accordingly, the court overrules Dr. Drake's first assignment of error on this additional basis.

Second Assignment of Error: The Order is not in compliance with law because the Board improperly substituted its determination of Dr. Drake's credibility for that of the Hearing Examiner.

Dr. Drake supports this assignment of error by citing the general rule that an administrative agency should accord due deference to the findings and recommendations of its hearing officer, especially as to evidentiary conflicts, because the hearing office is best able to observe the demeanor of witnesses and weigh their credibility. *Jones v. Franklin Cty. Sheriff*, 52 Ohio St.3d 40, 43 (1990). But, that is only a general rule. It has limited relevance here. In this case, Dr. Drake did appear personally and through counsel at the full Board before it made a "penalty" decision. It is that "penalty" part of the case which lies at the heart of Dr. Drake's appeal. Dr. Drake is paraphrased in the Board minutes at some length, and no doubt each Board member carefully weighed what he said, and how he said it as they decided what "penalty" to impose for violations of the Consent Agreement.

The court does not see the statement of Dr. Maida that "the Board does not know if Dr. Drake is free of drugs or alcohol" as in conflict with any finding of the Hearing Examiner's report, since he references the fact that "Dr. Drake sometimes met with friends and had a friend sign an AA log attesting that Dr. Drake attended an AA meeting." Because of such things, Dr. Media drew a reasonable inference that Dr. Drake's freedom from alcohol and drugs was open to serious question.

The Board did not act improperly, or arbitrarily substitute its determination of Dr. Drake's credibility for that held by the Hearing Examiner. This assignment of error is **overruled**. Moreover, this assignment of error appears to also concern the Board's power to amend an order proposed by the Hearing Examiner, as Dr. Drake begins his argument with a cite to the well-established principle that the Board is not required to follow the recommendation of the Hearing Examiner. *Trout v. Ohio Dept. Of Edn.*, 10th Dist., 2003-Ohio-987. As Dr. Drake's third assignment of error challenges the lawfulness of the Board's amendment of the Hearing Examiner's Proposed Order, the court turns to that next.

Third Assignment of Error: The Order was not in accordance with law because the Board failed to state why it modified the Hearing Examiner's recommendation.

Dr. Drake begins this section of his argument by citing to that portion of R.C. § 119.09 which states, in relevant part, "if the agency modifies or disapproves the recommendation of the referee or examiner it shall include in the record of its proceedings the reasons for such modification or disapproval." Dr. Drake cites the relevant law correctly: a Board must incorporate its reasoning on the record when it "determines to reject the recommendation given by the referee." *Graziano v. Board of Education*, 32 Ohio St.3d 289, 293 (Per Curiam) (1987).

Here, the articulated reason for the Board's change from the Order the Hearing Examiner proposed is found on the face of the Board's Order where it stated: "The State Medical Board of Ohio is unable to verify the doctor's sobriety as he failed to comply with probationary requirements." The record of the Board's discussion concerning why it rejected the Hearing Examiner's proposed order is plain enough to satisfy *Graziano* and the concern expressed therein for "the spirit of due process, [that requires an agency to] articulate its reasons." *Id.*

Board Minutes are a reasonable and contemporaneous record of its proceeding. They memorialize, generally, how Board members articulated their reasoning. (See, e.g. *Bennet v. State Med. Bd. of Ohio*, 2011-Ohio-3158). An Order of the Board itself was adopted by roll call vote, for the reasons explained that Order complies with R.C. 119.09.

An agency's ability to modify its own Hearing Examiner's Report and Recommendation has long been settled law in Ohio. *Slingluff v. State Med. Bd. of Ohio*, 10th Dist., 2006-Ohio-3614.

Finally, because the Board complied with R.C. 119.09 and was legally authorized to enter the Order on a "penalty" that it did, this court cannot modify the Board's sanction. *Henry's Café, Inc. v. Bd. of Liquor Control*, 170 Ohio St. 233, 163 N.E.2d 678 (1959).

Accordingly, Dr. Drake's third assignment of error is overruled.

Fourth Assignment of Error: Dr. Drake's Due Process rights were violated because the notice was vague and did not indicate the precise charges against Dr. Drake.

Again, as a general matter Dr. Drake correctly sets forth applicable law. Due Process requires an agency to furnish someone like the doctor with sufficient information to enable him to respond to charges, and appear and challenge adverse evidence at a meaningful hearing. (See Dr. Drake's citations to: *In re Kralik*, 101 Ohio App.3d 232 (1995); *Johnson v. State Med. Bd. of Ohio*, Franklin App. No. 98AP-1324 (Sept. 28, 1999); *Dahlquist v Ohio State Medical Board*, 2005-Ohio-2298; *Korn v. Ohio State Med. Bd.* 61 Ohio App.3d 677 (10th Dist. 1988); *Althoff v. Ohio State Bd. of Psychology*, 10th Dist., 2007-Ohio-1010.

Notice sent to Dr. Drake set forth the specific sections of the Step II Consent Agreement that Dr. Drake was alleged to have violated. It also set forth the conduct of Dr. Drake that was alleged to have constituted the violations. (State's Ex. 1-A) That document provided sufficient information to advise Dr. Drake of the issues.

Dr. Drake was not only afforded an opportunity for a meaningful due process hearing, he participated with counsel in the hearing. At the hearing Dr. Drake challenged the evidence against him by cross-examination; Dr. Drake responded to the charges with his own testimony; and then at the most crucial phase of the case Dr. Drake was heard personally before the Board. The court can only conclude that Dr. Drake, having made no record of any deficiency of notice during the hearing, while cross-examining witnesses and presenting a defense, and then orally addressing the Board, was afforded full Due Process.

Accordingly, Dr. Drake's fourth assignment of error is overruled.

Fifth Assignment of Error: The Order was not in accordance with law because the Board failed to comply with the terms of the Consent Agreement.

Understandably, Dr. Drake views the Consent Agreement as a contract between himself and the Board. He urges that the Board violated the contract (without explaining exactly how or when) and posits that the Board's violation excuses his own breach. Neither the factual record nor the law support his argument.

Dr. Drake cites to page three of the Agreement providing that if Dr. Drake fails to comply with any provision consent agreement....such periods of non-compliance will not apply to the reduction of the probationary term of the agreement. Dr. Drake appears to be arguing that any non-compliance period can only be addressed by an extension of his overall term of probation. Dr. Drake ignores that the Step II Agreement explicitly reserved the right to proceed against him formally for failure to abide by the terms of the agreement. (State's Ex. 2) The defect in Dr. Drake's argument is fundamental: the Board did not materially breach the Consent Agreement, he did.

Also, as the State points out, Dr. Drake failed to raise this issue at the hearings and thereby waived the issue on appeal. *Haver v. Accountancy Bd. of Ohio*, 10th Dist. No. 05 AP-280, 2006-Ohio-1162.

Accordingly, Dr. Drake's fifth assignment of error is overruled.

III. FINAL JUDGMENT AFFIRMING BOARD.

The court overrules each of Dr. Drake's assignments of error. The court **AFFIRMS** the Order of the State Medical Board in all respects. The Order is lawful and is supported by reliable, probative and substantial evidence.

This appeal is dismissed at Dr. Drake's costs. This is a final appealable order.

IT IS SO ORDERED.

Franklin County Court of Common Pleas

Date: 05-23-2013
Case Title: MILES E DRAKE JR -VS- OHIO STATE MEDICAL BOARD
Case Number: 12CV009449
Type: DECISION

It Is So Ordered.


Richard A. Frye

/s/ Judge Richard A. Frye

Court Disposition

Case Number: 12CV009449

Case Style: MILES E DRAKE JR -VS- OHIO STATE MEDICAL
BOARD

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

State Medical Board of Ohio

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

(614) 466-3934
med.ohio.gov

May 8, 2013

Case number: 13-CRF- 036

Miles E. Drake, Jr., M.D.
5261 Gender Road
Canal Winchester, Ohio 43310

Dear Doctor Drake:

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

- (1) On June 13, 2012, the Board issued an Entry of Order [Order], effective July 13, 2012, which included that on the thirty-first day following the date on which this Order became effective, your certificate to practice medicine and surgery in the State of Ohio shall be revoked. During the thirty-day interim, you were prohibited from undertaking the care of any patient not already under your care.

The Board's aforementioned Order was based, in part, upon your violation of the probationary terms of a prior June 2006 Consent Agreement, which had reinstated your certificate pursuant to the conditions set forth in a preceding October 2005 Consent Agreement that was based, in part, upon violations arising from your admitted conduct of issuing a prescription while your license to practice medicine was under suspension.

- (2) On or about July 23, 2012, you undertook the care of Patient 1, as identified on the attached Patient Key. The Patient Key is confidential and to be withheld from public disclosure. This was the first time you evaluated and treated this patient, despite the Board's Order that you shall not undertake the care of any patient not already under your care. On that date of service, you documented in Patient 1's medical record that he had chronic back and hip pain, and issued him prescriptions including ninety oxycodone and ninety oxycodone/APAP tablets.
- (3) On or about September 26, 2012, you submitted an Application for Certificate – Medicine or Osteopathic Medicine to the Board. Your License Application currently is pending.

Mailed 5-9-13

Your acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

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

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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



J. Craig Strafford, M.D., M.P.H.
Secretary

JCS/MAP/pev
Enclosures

Miles E. Drake, Jr., M.D.
Page 3

CERTIFIED MAIL #91 7199 9991 7031 2768 4985
RETURN RECEIPT REQUESTED

CC: Douglas Graff and John Izzo, Esqs.
604 East Rich Street
Columbus, Ohio 43215

CERTIFIED MAIL #91 7199 9991 7031 2768 4978
RETURN RECEIPT REQUESTED

**IN THE MATTER OF
MILES E. DRAKE, JR., M.D.**

13-CRF-036

**MAY 8, 2013, NOTICE OF
OPPORTUNITY FOR HEARING -
PATIENT KEY**

**SEALED TO
PROTECT PATIENT
CONFIDENTIALITY AND
MAINTAINED IN CASE
RECORD FILE.**

IN THE COMMON PLEAS COURT OF FRANKLIN COUNTY, OHIO
AND
BEFORE THE STATE MEDICAL BOARD OF OHIO

MILES E. DRAKE, JR., M.D.)	CASE NO. _____
5261 Gender Road)	
Canal Winchester, Ohio 43110)	Category F
)	
Appellant,)	
vs.)	JUDGE _____
)	
STATE MEDICAL BOARD OF OHIO,)	<u>NOTICE OF APPEAL</u>
30 East Broad Street, 3 rd Floor)	
Columbus, OH 43215)	
)	
Appellee.)	

Miles E. Drake, Jr., M.D., ("Dr. Lundeen"), Appellant, hereby gives Notice of Appeal on questions of law and fact to the Court of Common Pleas, Franklin County, Ohio, pursuant to Chapter 119. of the Ohio Revised Code. Dr. Lundeen appeals from the Order of the Ohio State Medical Board ("Board") dated June 13, 2012, (mailed July 10, 2012). A copy of the Board Order is attached hereto as Exhibit 1.

The grounds for the appeal and the errors complained of known at this time are as follows:

I. The Order of the Board should be reversed on the basis that the Order is not supported by reliable, probative and substantial evidence and is not otherwise in accordance with law;

II. The Order of the Board should be reversed because there is no indication on the record as to why the Board modified the Hearing Examiner's Recommendation;

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STATE MEDICAL BOARD
OF OHIO

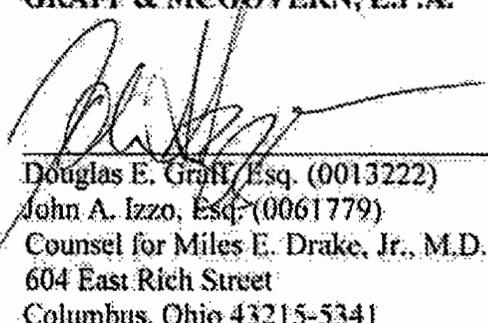
III. The Order of the Board should be reversed because the Board violated Dr. Drake's due process rights because its Notice lacked sufficient specificity as to when the alleged violations occurred;

IV. The Order of the Board should be reversed because the Board failed to comply with the terms of the June 2006 Step II consent agreement;

V. The Order of the Board should be reversed because R.C. § 4731.22 is unconstitutional on its face and as applied to Dr. Drake as it fails to set a standard of evidence required to establish the validity of Board Disciplinary Action.

Appellant reserves the right to add additional assignments of error and grounds for appeal once the transcript of proceedings has been completed and counsel has an opportunity to review the record.

Respectfully submitted,
GRAFF & MCGOVERN, L.P.A.



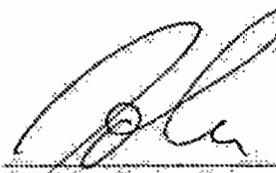
Douglas E. Graff, Esq. (0013222)
John A. Izzo, Esq. (0061779)
Counsel for Miles E. Drake, Jr., M.D.
604 East Rich Street
Columbus, Ohio 43215-5341
(614) 228-5800
(614) 228-8811 Fax
doug@grafflaw.com

2012 JUL 24 PM 3:29
STATE MEDICAL BOARD
OF OHIO

CERTIFICATE OF SERVICE

I hereby certify that foregoing NOTICE OF APPEAL was filed by hand delivery this ^{24th} day of July, 2012, with the State Medical Board of Ohio at 30 East Broad Street, 3rd Floor, Columbus, Ohio 43215; and that a true and accurate copy was e-filed with the Franklin County, Ohio, Court of Common Pleas, and e-mailed to Counsel for the State Medical Board of Ohio:

Heidi Dorn, Esq.
Assistant Attorney General,
Health & Human Services Section
30 East Broad Street, 26th Floor,
Columbus, Ohio 43215


Douglas E. Graff, Esq.

John A. Izzo, Esq.

STATE MEDICAL BOARD
OF OHIO
2012 JUL 24 PM 3:29

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

June 13, 2012

Miles E. Drake, Jr., M.D.
5261 Gender Road
Canal Winchester, OH 43110

RE: Case No. 11-CRF-095

Dear Doctor Drake:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Danielle R. Blue, Esq., Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on June 13, 2012, including motions approving and confirming the Findings of Fact and Conclusions of Law 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 must be commenced by the filing of a Notice of Appeal with the State Medical Board and the Franklin County Court of Common Pleas. The Notice of Appeal must set forth the Order appealed from and state that the State Medical Board's Order is not supported by reliable, probative, and substantive evidence and is not in accordance with law. The Notice of Appeal may, but is not required to, set forth the specific grounds of the appeal. 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



J. Craig Strafford, M.D., M.P.H.
Secretary

JCS:sjd
Enclosures

CERTIFIED MAIL NO. 91 7199 9991 7031 2766 9814
RETURN RECEIPT REQUESTED

CC: Douglas E. Graff and John A. Izzo, Esqs.
CERTIFIED MAIL NO. 91 7199 9991 7031 2766 9807
RETURN RECEIPT REQUESTED

Mailed July 10, 2012

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

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of

*

Case No. 11-CRF-095

Miles E. Drake, Jr., M.D.,

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on June 13, 2012.

Upon the Report and Recommendation of Danielle R. Blue, State Medical Board 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 within, 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.

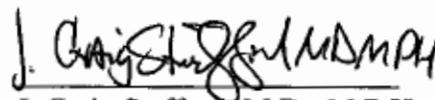
Rationale for Amendment: The State Medical Board of Ohio is unable to verify the doctor's sobriety as he has consistently failed to comply with probationary requirements.

It is hereby ORDERED that:

Commencing on the thirty-first day following the date on which this Order becomes effective, the certificate of Miles E. Drake, Jr., M.D., to practice medicine and surgery in the State of Ohio shall be **REVOKED**. During the thirty-day interim, Miles E. Drake, Jr., M.D., shall not undertake the care of any patient not already under his care.

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

(SEAL)

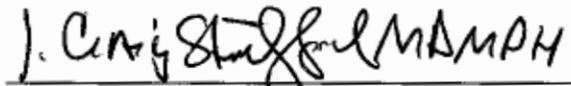


J. Craig Stafford, M.D., M.P.H.
Secretary

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Danielle Blue, Esq., State Medical Board Attorney Hearing Examiner; and excerpt of the Minutes of the State Medical Board, meeting in regular session on June 13, 2012, 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 Miles E. Drake, Jr., M.D., Case No. 11-CRF-095, 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 on its behalf.



J. Craig Strafford, M.D., M.P.H.
Secretary

(SEAL)

June 13, 2012
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of

*

Case No. 11-CRF-095

Miles E. Drake, Jr., M.D.,

*

Hearing Examiner Blue

Respondent.

*

REPORT AND RECOMMENDATION

Basis for Hearing:

By letter dated October 12, 2011, the State Medical Board of Ohio [Board] notified Miles E. Drake, Jr., M.D., that it intended to determine whether to take disciplinary action against his certificate to practice medicine and surgery in Ohio based on his alleged violations of a 2006 Step II Consent Agreement issued by the Board. The Board alleged that Dr. Drake: (1) failed to provide and/or timely provide quarterly declarations to the Board from November 2010 to August 2011; (2) failed to submit a log of all controlled substances prescribed for the time periods from June 2009 to July 2009, September 2009 to June 2010, and November 2010 to December 2010; (3) failed to submit urine screening reports in accordance with the requirements of the 2006 Step II Consent Agreement since July 2009; (4) failed to ensure that the supervising physician provide a quarterly report since July 2010; (5) failed to ensure that monitoring reports were forwarded to the Board since May 2009; (6) failed to provide the Board with acceptable documentary evidence of continuing compliance in an alcohol or drug rehabilitation program since June 2007; and (7) failed to provide before the end of the first year of probation the Board with acceptable documentary evidence of completion of a course on maintaining adequate and appropriate medical records and failed to submit a written report describing such course.

The Board charged that the above-mentioned acts, conduct, and/or omissions, individually and/or collectively, constitute a “[v]iolation of conditions of limitation placed by the board upon a certificate to practice,” as set forth in Ohio Revised Code Section [R.C.] 4731.22(B)(15). (State’s Exhibit [St. Ex.] 1A)

The Board received Dr. Drake’s request for a hearing on November 8, 2011. (St. Ex. 1B)

Appearances:

Mike DeWine, Attorney General of Ohio, and Heidi W. Dorn, Assistant Attorney General, for the State of Ohio. Douglas E. Graff and John A. Izzo, Esqs., for Dr. Drake.

Hearing Dates: January 9 and March 19, 2012

PROCEDURAL MATTERS

The hearing record was held open to allow Respondent's counsel additional time to submit a more legible copy of Respondent's Exhibit F and to determine whether State's Exhibit 5 was similar to what he received from his public records request. On March 22, 2012, the State provided a more legible copy of Respondent's Exhibit F. On March 26, 2012, Respondent's counsel verified that State's Exhibit 5 was a true and accurate copy of what had been provided to him pursuant to his public records request. Accordingly, the hearing record was closed on March 26, 2012.

SUMMARY OF THE EVIDENCE

All evidence admitted in this matter, even if not specifically mentioned, was thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

Background Information

1. Miles E. Drake, Jr., M.D., was initially licensed to practice medicine in Ohio in 1982. He currently holds an active license in Ohio. Dr. Drake testified that his specialty is neurology. He stated that he is currently the Medical Director of the MedSave Clinic, an urgent care in Canal Winchester, Ohio, and also practices at MedSave Neurology where he sees 15 to 20 patients per day for "headache treatment, pain management, and addiction medicine." (Ohio eLicense Center, <https://license.ohio.gov/lookup/>, query on March 27, 2012; Hearing Transcript [Tr.] at 30-31)

February 2005 Step I Consent Agreement

2. On February 9, 2005, the Board approved a Step I Consent Agreement [February 2005 Step I Consent Agreement] between Dr. Drake and the Board. The February Step I Consent Agreement, among other things, suspended his certificate to practice medicine and surgery in Ohio for an indefinite period of time, based upon his violation of R.C. 4731.22(B)(26). The February Step I Consent Agreement was based, in part, on Dr. Drake's admission that he was impaired due to alcohol dependence. The February Step I Consent Agreement became effective on February 9, 2005. (St. Ex. 3 at 1-10; Tr. at 31-32)

October 2005 Consent Agreement

3. On October 12, 2005, Dr. Drake entered into another Consent Agreement [October 2005 Consent Agreement] with the Board in lieu of formal proceedings based upon his violations of R.C. 4731.22(B)(10) and (B)(15). Pursuant to this Consent Agreement, the Board suspended his certificate to practice medicine and surgery in Ohio for an indefinite period of time, but not less than five months. The October 2005 Consent Agreement

superseded the suspension period set forth in the February 2005 Step I Consent Agreement but the terms, conditions, and limitations set forth in the February 2005 Step I Consent Agreement continued in full force and effect. The October 2005 Consent Agreement became effective on October 12, 2005. (St. Ex. 3 at 11-17; Tr. at 32-33)

June 2006 Step II Consent Agreement

4. On June 14, 2006, the Board approved a Step II Consent Agreement [2006 Step II Consent Agreement] between Dr. Drake and the Board. As a result, his certificate to practice medicine and surgery was reinstated subject to certain probationary terms, conditions, and limitations. The 2006 Step II Consent Agreement went into effect on June 14, 2006. (St. Ex. 2; Tr. at 33)
5. On July 13, 2006, the Board voted to approve Dr. Drake's monitoring physician and the frequency and number of charts for review were established. On December 11, 2008, the Board modified Dr. Drake's probation. The Board granted Dr. Drake's request to reduce his drug screens to twice per month, reduce the required alcohol and drug rehabilitation meetings to two meetings per week with a total of 10 meetings per month, and reduce the required personal appearances to every six months. The Step II Consent Agreement, as modified, is still in effect. (Ohio eLicense Center at, <https://license.ohio.gov/lookup/>, query on March 30, 2012)
6. Danielle Bickers, the Board's Compliance Supervisor, testified that she is familiar with Dr. Drake and the provisions of his 2006 Step II Consent Agreement. She testified that, in general, Dr. Drake has not complied with the terms and conditions of his 2006 Step II Consent Agreement. (Tr. at 74-77)

Quarterly Declarations

7. The 2006 Step II Consent Agreement includes the following provisions in Paragraph 2:

Dr. Drake shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the date his quarterly declaration would have been due pursuant to his February 2005 Step I Consent Agreement with the Board. *Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.*

(St. Ex. 2 at 3; Tr. at 33; Emphasis added)

8. Ms. Bickers testified that Dr. Drake did not submit and/or timely submit his quarterly declarations due in November 2010, February 2011, May 2011, and August 2011. (Tr. at 77-78, 80, 174-175)
9. Dr. Drake acknowledged that he was occasionally untimely in submitting his quarterly declarations to the Board. Moreover, Dr. Drake provided evidence at the hearing that he had actually submitted quarterly declarations to the Board on November 5, 2010 and August 9, 2011, although they were slightly late. (Tr. at 34; Respondent's Exhibit [Resp. Ex.] F)

Controlled Substance Logs

10. The 2006 Step II Consent Agreement includes the following provisions in Paragraph 6:

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

(St. Ex. 2 at 3, Emphasis added)

11. Ms. Bickers testified that Dr. Drake failed to provide the Board a log of controlled substances prescribed from June 2009 to July 2009, September 2009 to June 2010, and November 2010 to December 2010. (Tr. at 182)
12. Dr. Drake testified that he did not recall the exact months in which his controlled substance logs were not submitted to the Board but he acknowledged that he submitted some of his logs to the Board after the first of the month. At hearing, Dr. Drake provided evidence that he had submitted to the Board on November 8, 2010 a log of controlled substances that he had prescribed in June 2010, and on May 5, 2011 a log of controlled substances that he had prescribed in December 2010. (Tr. at 36; Resp. Ex. G)
13. However, Ms. Bickers explained that Dr. Drake's June 2010 and December 2010 logs were not acceptable pursuant to Paragraph 6 of the 2006 Step II Consent Agreement because the logs were due on August 1, 2010 and February 1, 2011, respectively. (Tr. at 250-251)

Random Urine Screens and Supervising Physician's Quarterly Reports

14. The 2006 Step II Consent Agreement includes the following provisions in Paragraph 10:

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

* * *

Dr. Drake and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure appropriate control over [how] the specimen is maintained and shall immediately inform the Board of any positive screening results.

* * *

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

(St. Ex. 2 at 4-5)

15. Ms. Bickers testified that, prior to July 2009, Dr. Drake complied with Paragraph 10 of the 2006 Step II Consent Agreement because he was monitored by the Ohio Physicians Effectiveness Program [OPEP] which would send to the Board Dr. Drake's urine screen results along with a quarterly report that would attest to Dr. Drake's compliance. However, Ms. Bickers testified that, beginning in July 2009, the Board began receiving quarterly reports from OPEP that stated that Dr. Drake "was not in compliance with his drug screen requirement." She further stated that the Board has not received an acceptable drug screen from Dr. Drake since July 2009. (Tr. at 83-84)
16. Ms. Bickers testified that, in July 2009, OPEP notified the Board that it was no longer monitoring Dr. Drake. She stated that, at that point, Dr. Drake was required to submit a name and curriculum vitae of an alternate supervising physician and after doing so, the Board would then have to approve the supervising physician.¹ However, Ms. Bickers testified that Dr. Drake failed to nominate a new supervising physician until the fall of 2011. Ms. Bickers testified that, from July 2009 to September 2011, Dr. Drake did not

¹ Paragraph 10 of the 2006 Step II Consent Agreement identifies this requirement. (St. Ex. 2 at 4-5)

have an approved supervising physician and the Board did not receive quarterly reports from a supervising physician on behalf of Dr. Drake. (Tr. at 85-86, 91, 257)

17. Ms. Bickers testified that Dr. Drake told the Board that he was dropping screens on his own. However, she stated that she told Dr. Drake that these types of screens do not count toward compliance with the 2006 Step II Consent Agreement because "the drug screens need to be directed by a Board approved supervising physician." (Tr. at 86-89) She further explained:

We had no evidence that Dr. Drake was submitting random specimens, that he wasn't just going on his own to provide specimens. We had no evidence to support that he was providing observed specimens, and the laboratory results themselves did not always contain the panel we were looking for, the standard panel that was approved in drug testing.

(Tr. at 88-89)

18. Ms. Bickers explained the role of a supervising physician and why it is important:

The urine screens are to be conducted with a Board approved supervising physician who selects when that randomness of testing occurs, witnesses those drug screen results or delegates someone to witness those results, and the supervising physician then submits those reports and those results to the Board on a quarterly basis.

(Tr. at 225-226)

19. Dr. Drake admitted that, beginning in 2009, he submitted his urine screen results to the Board on his own. Moreover, Dr. Drake admitted that, from 2010 to November 2011, he did not have a supervising physician. Dr. Drake denied that he was told by the Board that his arrangement with Laboratory Corporation of America [LabCorp] was unacceptable. (Tr. at 39-40, 42, 45-46)
20. Dr. Drake submitted copies of his urine screen results and chain of custody forms from LabCorp from July 2009 to August 2011. According to his urine screen results, Dr. Drake usually submitted two urine screens per month during this time period and his results were all negative; however, upon review of LabCorp's chain of custody forms, Dr. Drake's urine collection was not observed by the LabCorp collectors. (Resp. Ex. A)
21. Ms. Bickers confirmed that, in November 2011, the Board approved Dr. Edward Chernick as Dr. Drake's supervising physician. (Tr. at 45, 85, 89)

Monitoring Physician

22. The 2006 Step II Consent Agreement includes the following provisions in Paragraph 12:

Before engaging in any medical practice, Dr. Drake shall submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. * * *

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Drake and his medical practice, and on the review of Dr. Drake's patient charts. Dr. Drake 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. Drake's quarterly declaration.

(St. Ex. 2 at 5; Tr. at 48)

23. Ms. Bickers testified that, in July 2006, the Board approved Dr. George Paulson to serve as Dr. Drake's monitoring physician; however, she stated that, in 2008, Dr. Paulson notified the Board that he would be withdrawing as Dr. Drake's monitoring physician. Ms. Bickers stated that she thereafter notified Dr. Drake of Dr. Paulson's withdrawal as his monitoring physician. (Tr. at 92-94)
24. Ms. Bickers testified that, from 2009 through December 2010, Dr. Drake did not have a monitoring physician and therefore, no monitoring reports were sent to the Board. Ms. Bickers stated that, in January 2011, the Board approved Dr. Gina Nichols to serve as a monitoring physician for Dr. Drake but only on a three-month temporary basis (January-March 2011). (Tr. at 94, 184-185)
25. Dr. Drake testified however, that Dr. Paulson served as his monitoring physician from 2006 through 2010. Dr. Drake stated that he did not have a new monitoring physician until November 2011 when the Board approved Dr. Ryan Fryman as his new monitoring physician. (Tr. at 49-54)

A.A. Logs

26. The 2006 Step II Consent Agreement includes the following provisions in Paragraph 13:

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

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

(St. Ex. 2 at 6)

27. Ms. Bickers testified that Dr. Drake is required to submit acceptable documentary evidence of his attendance at 12-step meetings on the first of the month on a quarterly basis. She explained that an acceptable log includes the date of the meeting, the meeting name, and a signature of an attendee, "preferably the Secretary or Chairperson." (Tr. at 95-96, 186-187, 241)
28. Ms. Bickers testified that, with a few exceptions, Dr. Drake has not provided acceptable documentation of continued attendance at recovery group meetings since June 2007. She explained why Dr. Drake's documentation was not acceptable:

They weren't acceptable for many of the reasons I referenced, either Dr. Drake did not attend all of the required meetings for the week, Dr. Drake did not get signatures for the meetings that he attended. Dr. Drake did not go to the meetings that were recognized meetings. There was a period of time where he was meeting with a group of friends and would have one of them sign a log.

(Tr. at 188-189, 280)

29. Ms. Bickers testified that, from November 2007 to August 2011, Dr. Drake failed to submit acceptable documentation of his attendance at A.A. meetings for the following weeks (the number of meetings that were due are listed in parentheses):
- 06/03/07 (2)
 - 06/10/07 (3)
 - 07/15/07 (2)
 - 07/29/07 (1)
 - 08/05/07 (1)
 - 08/12/07 (1)
 - 08/19/07 (3)
 - 08/26/07 (2)
 - 09/02/07 (3)
 - 05/31/09 (1)
 - 07/26/09 (2)
 - 08/02/09 (2)
 - 08/09/09 (2)
 - 08/16/09 (2)

- 08/30/09 (1)
- 10/04/09 (1)
- 11/01/09 (1)
- 01/10/10/ (1)
- 01/17/10 (2)
- 01/31/10 (1)
- 02/14/10/ (2)
- All weeks in March 2010 (9)
- All weeks in April 2010 (8)
- 05/02/10 (2)
- 07/04/10 (2)
- 07/11/10 (1)
- 07/18/10 (2)
- 08/29/10 (2)
- 09/26/10 (1)
- 10/03/10 (2)
- 10/10/10 (2)
- 10/24/10 (2)
- 10/31/10 (2)
- 11/07/10 (1)
- 12/05/10 (2)
- 02/02/11 (2)
- 03/20/11 (2)
- 03/27/11 (2)
- 04/03/11 (1)
- 04/10/11 (2)
- 04/17/11 (1)
- 04/24/11 (2)

(St. Ex. 4 at 9-20; Tr. at 236-245)

30. On July 2, 2008, the Secretary and Supervising Member notified Dr. Drake that they extended his release date from his 2006 Step II Consent Agreement to November 14, 2011 based on his noncompliance with Paragraph 13 of his 2006 Step II Consent Agreement. (Tr. at 67, 189-190; Resp. Ex. P) The letter stated in pertinent part:

The Secretary and Supervising Member have determined that during the period of June 2007 through October 2007, the Board had not received acceptable documentation of your attendance, three times a week, at alcohol and drug rehabilitation meetings such as A.A., N.A., C.A., or Caduceus. Consequently, pursuant to paragraph 5., of your Agreement, the Secretary and Supervising Member have determined that such periods

of noncompliance will not apply to the reduction of the probationary period under this Consent Agreement.

(Resp. Ex. P)

31. Dr. Drake admitted that “there are weeks on which I have not attended two meetings. There are months in which I have not attended ten meetings.” He also stated that there were occasions that he got a stamp from the meeting, instead of a signature, to reflect his attendance which he later learned was not acceptable. (Tr. at 301, 307-308, 310) He explained:

Prior to 2011, I would often not have signatures, particularly from the early Saturday morning meeting because I would be coming from my home in German Village, arrive late and because I was needed to read at the meeting at 10:00, often [I] have to leave early. I have to say that I felt some embarrassment at seeking a signature and then leaving the meeting immediately or coming in late and presenting a slip to be signed which I thought might set a bad example for younger individuals in recovery.

It was not actually until the Secretary of the Board put the proposition to me why didn't I just ask the secretary of the meeting to sign the slip for me with an understanding of my predicament and temporal complaints.

I had never thought of that, and I have done so since with satisfactory results. So the meetings missing signatures were often those at which I arrived after they had begun or from which I had to leave after - - before they had finished. Some of them, in addition, reflect simply the stamp.

(Tr. at 307-308; Resp. Ex. B)

32. Ms. Bickers testified that, by November 9, 2011, Dr. Drake was in compliance with Paragraph 13 of his 2006 Step II Consent Agreement. (Tr. at 203)

Medical Records Course

33. The 2006 Step II Consent Agreement includes the following provisions in Paragraph 14:

Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Drake shall provide acceptable documentation of satisfactory completion of a course on maintaining adequate and appropriate medical records. Any course taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Drake submits the documentation of successful completion of the course of maintaining adequate and appropriate medical records, he shall also submit a written report describing the course, setting forth what he learned from the course, and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

(St. Ex. 2 at 6, Emphasis added)

34. Dr. Drake admitted that he did not complete the medical records course before the end of his first year of probation. Dr. Drake testified that he “either did not notice that provision or did not pay sufficient attention to it.” Dr. Drake testified that he has since provided the Board with certifications of completion of medical records courses and a report regarding the same. This matter is still pending with the Board. (Tr. at 62-63; Resp. Ex. C)

Office Conference Recordings

35. Ms. Bickers testified that, in general, when a probationer attends an office conference, the probationer is advised whether he or she is in compliance with the consent agreement or Board Order. (Tr. at 124)
36. The State submitted as evidence copies of the recordings of Dr. Drake’s office conferences held on the following seven dates: February 11, 2008, November 10, 2009, November 8, 2010, May 10, 2011, June 7, 2011, August 9, 2011, and November 7, 2011. During those conferences, Ms. Bickers and/or other Board staff repeatedly advised Dr. Drake that he was not in compliance with some of the terms and conditions of his 2006 Step II Consent Agreement. (St. Ex. 4)
37. Dr. Drake acknowledged that, at his prior office conferences, he was repeatedly told that his documents were missing, there were deficiencies in his documents, and that his documents had not been timely. Dr. Drake testified that, until his August 2011 office conference, “I wrongly assumed that when I was allowed to walk out of the office conference that my compliance was close enough.” (Tr. at 315, 334) He explained why this assumption was naïve on his part:

I thought that maintaining sobriety, going to two or three meetings per week or having a good reason why I couldn’t and having by now several hundred urine screens negative for alcohol and drugs done at the behest of another physician would be sufficient.

I’m afraid this reflects perhaps insufficient thinking on my part, an incomplete understanding of the necessities or of the mechanics of compliance.

And I want to assure the Hearing Examiner and the Board I have been thoroughly disabused of these notions. They have been entirely frightened out of my head.

(Tr. at 325-326)

Discussion Between Dr. Drake and Ms. Bickers: September 2011

38. Ms. Bickers testified that, in September 2011, she had a telephone conversation with Dr. Drake in which she told him that he had 90 days to get into compliance with the terms of his 2006 Step II Consent Agreement before the Board would pursue disciplinary action against him. (Tr. at 202-203)
39. In regard to his telephone call with Ms. Bickers, Dr. Drake testified that he interpreted their conversation as follows:

*** that if I do not have all Is dotted and Ts crossed in 90 days, the Board proposed to take further disciplinary action against me.

If I understood correctly, the Is were dotted and Ts were crossed by the 7th of November.

(Tr. at 322-323)

40. Ms. Bickers testified that, with the exception of the Board's pending approval of his medical records course, Dr. Drake was in compliance with his 2006 Step II Consent Agreement on November 7, 2011. However, she argued that the fact that Dr. Drake was in compliance with the 2006 Step II Consent Agreement by November 2011 does not absolve the fact that he was not in compliance with his 2006 Step II Consent Agreement prior to that date. (Tr. at 100-101)

Additional Information

41. Dr. Drake testified that he takes his sobriety seriously and noted that his sobriety date is February 14, 2004. (Tr. at 303, 305)
42. Dr. Drake testified that, in the future, he will not have any problems complying with a consent agreement and explained why:

I have been frightened as thoroughly as a human being can be frightened. I think I have been punished and chastised about as much as someone can

short of - - short of deathly illness and physical violence, and not to get off on a tangent, but I have been told by my uncle, now 85 years old, * * *, that he had seen this coming for some time because since childhood I had been neglectful and prone to procrastination. And he said you are one of those people who will not improve until someone hits you over the head, and I guess it was through some sequence maybe of good luck, it was, it has not been until October 12th, 2011 that someone hit me over the head.²

(Tr. at 335)

FINDINGS OF FACT

1. On February 9, 2005, the Board approved a Step I Consent Agreement [February 2005 Step I Consent Agreement] between Dr. Drake and the Board. The February 2005 Step I Consent Agreement, among other things, suspended his certificate to practice medicine and surgery in Ohio for an indefinite period of time, based upon his violation of R.C. 4731.22(B)(26). The February 2005 Step I Consent Agreement was based, in part, on Dr. Drake's admission that he was impaired due to alcohol dependence. The February 2005 Step I Consent Agreement became effective on February 9, 2005.
2. On October 12, 2005, Dr. Drake entered into another Consent Agreement [October 2005 Consent Agreement] with the Board in lieu of formal proceedings based upon his violations of R.C. 4731.22(B)(10) and (B)(15). Pursuant to this Consent Agreement, the Board suspended his certificate to practice medicine and surgery in Ohio for an indefinite period of time, but not less than five months. The October 2005 Consent Agreement superseded the suspension period set forth in the February 2005 Step I Consent Agreement but the terms, conditions, and limitations set forth in the February 2005 Step I Consent Agreement continued in full force and effect. The October 2005 Consent Agreement became effective on October 12, 2005.
3. On June 14, 2006, the Board approved a Step II Consent Agreement [2006 Step II Consent Agreement] between Dr. Drake and the Board. As a result, his certificate to practice medicine and surgery was reinstated subject to certain probationary terms, conditions, and limitations. The 2006 Step II Consent Agreement went into effect on June 14, 2006, was modified in December 2008, and remains in effect as modified today.
4. On July 2, 2008, the Secretary and Supervising Member notified Dr. Drake that they extended the release date from his 2006 Step II Consent Agreement to November 14, 2011 based on his noncompliance with Paragraph 13 of his 2006 Step II Consent Agreement. The Secretary and Supervising Member found that, from June 2007 through

² The Notice of Opportunity for Hearing is dated October 12, 2011. (St. Ex. 1A)

October 2007, Dr. Drake did not provide acceptable documentation of his attendance, three times per week, at alcohol and drug rehabilitation meetings.

5. Dr. Drake has failed to comply with Paragraph 2 of the 2006 Step II Consent Agreement. Paragraph 2 of the 2006 Step II Consent Agreement requires Dr. Drake to provide quarterly declarations to the Board on or before the first day of every third month. Dr. Drake failed to provide the Board quarterly declarations due on February 1, 2011, and May 1, 2011.

Although Dr. Drake provided evidence that he had submitted his quarterly declarations on November 5, 2010 and August 9, 2011, it is clear that Dr. Drake did not timely provide those quarterly declarations to the board by the due dates of November 1, 2010, and August 1, 2011.

6. Dr. Drake has failed to comply with Paragraph 6 of the 2006 Step II Consent Agreement. Paragraph 6 of the 2006 Step II Consent Agreement requires Dr. Drake to keep a log of all controlled substances prescribed and submit the log to the Board 30 days prior to his personal appearance before the Board or its designated representative. Dr. Drake failed to submit to the Board a log of all controlled substances prescribed from June 2009 to July 2009, September 2009 to May 2010, and November 2010.

Although Dr. Drake provided evidence that on November 8, 2010, he submitted a log to the Board of controlled substances he had prescribed in June 2010 and on May 5, 2011, a log of controlled substances he had prescribed in December 2010, Dr. Drake did not comply with Paragraph 6 of the 2006 Step II Consent Agreement because he did not submit these logs 30 days prior to his personal appearances before the Board or its designated representative.

7. Dr. Drake has failed to comply with Paragraph 10 of the 2006 Step II Consent Agreement, as modified by the Board in December 2008. Paragraph 10 of the 2006 Step II Consent Agreement, as modified in December 2008, requires Dr. Drake to submit to random, witnessed, urine screenings twice per month in which the supervising physician has appropriate control over how the specimen is maintained and the supervising physician thereafter provides quarterly reports to the Board.

From July 2009 through September 2011, Dr. Drake submitted to the Board non-random, unsupervised, and unobserved urine screen results from LabCorp. From July 2009 through September 2011, Dr. Drake did not have a Board-approved supervising physician. Beginning in July 2010, Dr. Drake failed to ensure that quarterly reports from an approved supervising physician were sent to the Board.

8. Dr. Drake has failed to comply with Paragraph 12 of the 2006 Step II Consent Agreement. Paragraph 12 of the 2006 Step II Consent Agreement requires that, before engaging in the practice of medicine, Dr. Drake shall have prior written approval of a

monitoring physician and the monitoring physician shall provide the Board with monitoring reports. From May 2009 through December 2010 and then from April 2011 to November 2011, Dr. Drake failed to have a monitoring physician and no monitoring reports were sent to the Board during these time frames.

9. There is insufficient evidence to establish that Dr. Drake failed to comply with Paragraph 13 of the 2006 Step II Consent Agreement for the entire period of June 2007 through the date of the Notice. Paragraph 13 of the 2006 Step II Consent Agreement requires that Dr. Drake submit acceptable documentary evidence of continuing compliance with a recovery group program.

Rather, the evidence demonstrates that, from November 2007 to August 2011, Dr. Drake repeatedly failed to comply with Paragraph 13 of the 2006 Step II Consent Agreement by failing to submit acceptable documentary evidence of continuing compliance with a recovery group program on the following weeks (the number of meetings that were due are listed in parentheses):

- 06/03/07 (2)
- 06/10/07 (3)
- 07/15/07 (2)
- 07/29/07 (1)
- 08/05/07 (1)
- 08/12/07 (1)
- 08/19/07 (3)
- 08/26/07 (2)
- 09/02/07 (3)
- 05/31/09 (1)
- 07/26/09 (2)
- 08/02/09 (2)
- 08/09/09 (2)
- 08/16/09 (2)
- 08/30/09 (1)
- 10/04/09 (1)
- 11/01/09 (1)
- 01/10/10/ (1)
- 01/17/10 (2)
- 01/31/10 (1)
- 02/14/10/ (2)
- All weeks in March 2010 (9)
- All weeks in April 2010 (8)
- 05/02/10 (2)
- 07/04/10 (2)

- 07/11/10 (1)
- 07/18/10 (2)
- 08/29/10 (2)
- 09/26/10 (1)
- 10/03/10 (2)
- 10/10/10 (2)
- 10/24/10 (2)
- 10/31/10 (2)
- 11/07/10 (1)
- 12/05/10 (2)
- 02/02/11 (2)
- 03/20/11 (2)
- 03/27/11 (2)
- 04/03/11 (1)
- 04/10/11 (2)
- 04/17/11 (1)
- 04/24/11 (2)

10. Dr. Drake has failed to comply with Paragraph 14 of the 2006 Step II Consent Agreement. Paragraph 14 of the 2006 Step II Consent Agreement requires that, before the end of the first year of probation, Dr. Drake must submit acceptable documentary evidence of completion of a course on maintaining adequate and appropriate medical records and a written report describing the course. Dr. Drake admitted that he did not complete the medical records course before the end of his first year of probation.
11. The Board staff repeatedly advised Dr. Drake that he was not in compliance with the probationary terms and conditions of his 2006 Step II Consent Agreement at the following office conferences: February 11, 2008, November 10, 2009, November 8, 2010, May 10, 2011, June 7, 2011, August 9, 2011, and November 7, 2011.
12. With the exception of the Board's approval of his medical records course, Dr. Drake was in compliance with the 2006 Step II Consent Agreement by November 7, 2011.

CONCLUSION OF LAW

The acts, conduct, and/or omissions of Dr. Drake as set forth above in the Findings of Fact 3 through 11, individually and/or collectively, constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as set forth in R.C. 4731.22(B)(15).

DISCUSSION CONCERNING PROPOSED ORDER

The State argued that Dr. Drake was not in compliance with various terms and conditions of his 2006 Step II Consent Agreement. The State argued that, because Dr. Drake failed to comply with his urine screen requirements and A.A. attendance, the Board questions his sobriety and is concerned that he is not taking his recovery seriously. The State further argued that, despite repeated warnings from the Board staff at his office conferences, Dr. Drake continued to not comply with various probationary terms and conditions.

Dr. Drake argued that, from June 2007 through November 2011, he was in substantial compliance with his 2006 Step II Consent Agreement. He further argued that, based on his conversations with the Board staff at his office conferences, he was under the impression that "he was close enough" in complying with his 2006 Step II Consent Agreement. Finally, Dr. Drake stated that, when Ms. Bickers told him in September 2011 that he had 90 days to get into compliance or he would face disciplinary action by the Board, he brought himself into compliance by November 7, 2011.

The Hearing Examiner finds that, from June 2007 through at least November 2011, Dr. Drake has failed to comply with various probationary terms and conditions of his 2006 Step II Consent Agreement and therefore, discipline for that noncompliance is warranted. The Hearing Examiner does not conclude that Dr. Drake was in substantial compliance with the 2006 Step II Consent Agreement. However, the Hearing Examiner notes that Dr. Drake did on some occasions comply with his 2006 Step II Consent Agreement and with the exception of the Board's pending approval of his medical records course, Dr. Drake was in compliance with his 2006 Step II Consent Agreement by November 7, 2011. Moreover, based on the Board's actions and/or inactions over the years, the Hearing Examiner finds that there is some validity to Dr. Drake's belief that he was "close enough" in complying with his 2006 Step II Consent Agreement. Finally, the Hearing Examiner is convinced that this disciplinary action was a wake-up call to Dr. Drake and he now comprehends that he must fully comply with any future Board order.

Accordingly, the Hearing Examiner recommends that this Board extend the probationary terms, conditions, and limitation of the 2006 Step II Consent Agreement for at least an additional year from the effective date of this Order. The Hearing Examiner believes that this extension will provide Dr. Drake an opportunity to show the Board that he is truly committed to his sobriety and recovery program in order to warrant release from the Board's monitoring. Of note, this Proposed Order would modify the 2006 Step II Consent Agreement.

PROPOSED ORDER

It is hereby ORDERED that:

- A. **MODIFICATION OF 2006 STEP II CONSENT AGREEMENT:** The probationary terms, conditions, and limitation set forth in the 2006 Step II Consent Agreement between Dr. Drake and the Board are hereby modified to extend its duration for at least one year from the effective date of this Order.
- B. Except to the extent modified by this Order and previously modified by the Board on July 13, 2006 and December 11, 2008, the 2006 Step II Consent Agreement between Dr. Drake and the Board remains otherwise in effect.

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

Danielle R. Blue, Esq.
Hearing Examiner

Whitehouse, Ms. Anderson, Ms. Vollmer, Ms. Loe, Ms. Debolt, Ms. Wehrle; Ms. Marshall, the Enforcement Attorneys, the Assistant Attorneys General, Ms. Rieve, Ms. Weaver, Ms. Jacobs, and Mr. Taylor in attendance.

The Board returned to public session.

APPLICANTS FOR LICENSURE

Mr. Hairston moved to approve for licensure, contingent upon all requested documents being received and approved in accordance with licensure protocols, the physician applicants listed in Exhibit "A," the physician assistant applicants listed in Exhibit "B," the limited practitioner applicants listed in Exhibit "C," the acupuncturist applicants listed in Exhibit "D," the anesthesiologist assistant applicants listed in Exhibit "E," and to grant Certificates of Good Standing to the limited branch schools listed in Exhibit "F." Dr. Suppan seconded the motion. A vote was taken:

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Ramprasad	- aye
	Dr. Suppan	- aye
	Dr. Mahajan	- aye
	Dr. Madia	- aye
	Dr. Bechtel	- aye
	Dr. Talmage	- aye
	Ms. Elsass	- aye
	Mr. Kenney	- aye

The motion carried.

REPORTS AND RECOMMENDATIONS

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

Dr. Mahajan asked whether each member of the Board had received, read and considered the hearing records; the Findings of Fact, Conclusions of Law, Proposed Orders, and any objections filed in the matters of: Miles E. Drake, Jr., M.D.; and Michael Bruce Gladson, M.D.

A roll call was taken:

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Ramprasad	- aye
	Dr. Suppan	- aye
	Dr. Mahajan	- aye
	Dr. Madia	- aye
	Dr. Bechtel	- aye
	Dr. Talmage	- aye

Ms. Elsass - aye
Mr. Kenney - aye

The motion carried.

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

ROLL CALL:

Dr. Strafford	- aye
Mr. Hairston	- aye
Dr. Ramprasad	- aye
Dr. Suppan	- aye
Dr. Mahajan	- aye
Dr. Madia	- aye
Dr. Bechtel	- aye
Dr. Talmage	- aye
Ms. Elsass	- aye
Mr. Kenney	- aye

The motion carried.

Dr. Mahajan noted that, in accordance with the provision in section 4731.22(F)(2), Ohio 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 this matter. In the matter before the Board today, Dr. Strafford and Dr. Talmage served as Secretary and Supervising Member.

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

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

MILES E. DRAKE, JR., M.D., Case No. 11-CRF-095

Dr. Mahajan directed the Board's attention to the matter of Miles E. Drake, Jr., M.D. He advised that no objections were filed. Ms. Blue was the Hearing Examiner.

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

Dr. Drake was represented by his attorney, John Izzo.

Mr. Izzo stated that Dr. Drake has filed no objections and he agrees with the Hearing Examiner's recommendation

Dr. Drake expressed gratitude to the Board and its staff for the opportunity to continue in the practice of medicine. Dr. Drake stated that he in no way underestimates the severity of his illness, which has cost him his tenured faculty position, his practice, his home, and his family.

Dr. Drake continued that he is grateful for the support he has received from the Board staff, and particularly the support and encouragement of the late Supervising Member, Mr. Albert. Dr. Drake apologized for his failures of omission and commission with respect to compliance with his Consent Agreement, and expressed particular remorse that he did not live up to Mr. Albert's expression of confidence in him when he allowed Dr. Drake's probationary terms to be lessened. Dr. Drake stated that he had found that he shared many interests with Mr. Albert; consequently, he may have focused on those commonalities during his meetings and failed to always attend to what was expected of him. Dr. Drake stated that he misinterpreted the affability and concern of the Board members and the professional decorum of the Board staff as acceptance of his efforts to comply with his Consent Agreement.

Dr. Drake stated that he has been as chastised and frightened as it is possible for a human being to be regarding the shortcomings of his efforts to comply. Dr. Drake stated that he is determined to do better and he takes full responsibility for his procrastination, denial, and delay, character flaws with which he has been afflicted since childhood. Dr. Drake assured the Board and the public that he is sober, spiritually transformed, and he may safely practice medicine. Dr. Drake asked the Board to accept the Hearing Examiner's recommendation and give him another chance to demonstrate compliance.

Dr. Mahajan asked if the Assistant Attorney General would like to respond. Ms. Dorn stated that she would like to respond.

Ms. Dorn agreed with the Hearing Examiner's findings that Dr. Drake did not comply with his Consent Agreement. However, Ms. Dorn felt that the Proposed Order is too light a sanction in this case. Ms. Dorn was pleased that Dr. Drake acknowledged his shortcomings and mistakes, but stated that it is too little and too late for such recriminations at this point.

Ms. Dorn continued that Dr. Drake has consistently failed to comply with this Consent Agreement multiple times and in multiple ways. Specifically, Dr. Drake failed to submit quarterly declarations of compliance or turned them in months late, failed to submit a controlled substances log, failed to submit urine drug screens or to submit them in a manner prescribed in his Consent Agreement, failed to nominate a monitoring physician, failed to submit acceptable documentary evidence of his attendance at Alcoholic Anonymous (AA) meetings, and failed to complete required courses on medical record-keeping.

Dr. Talmage exited the meeting at this time.

Ms. Dorn stated that the record of Dr. Drake's quarterly office conferences indicate a pattern of non-compliance. Ms. Dorn stated that it is wonderful that Dr. Drake got along with Mr. Albert, but Dr. Drake's contract was with the Board and he did not comply with its terms. Ms. Bickers, the Board's Compliance Supervisor, testified that she repeatedly warned Dr. Drake that he had to comply, but this seemed to have no effect. Ms. Dorn stated that Dr. Drake's unwillingness to do anything to keep his license demonstrates that the practice of medicine is not a priority in his life right now.

Ms. Dorn noted that other probationers are in circumstances similar to Dr. Drake's, but are still able to submit the required paperwork and fulfill the terms of their consent agreements. Ms. Dorn stated that it would be a poor precedent for other probationers to see someone ignore their consent agreement and suffer no consequences. Ms. Dorn opined that Dr. Drake should have some time out from the practice of medicine. Ms. Dorn requested that, if the Board chooses to impose only probationary terms, those terms should include monitoring standards and provide a defined punishment for any failure to comply.

Dr. Madia moved to approve and confirm Ms. Blue's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Miles E. Drake, Jr., M.D. Mr. Hairston seconded the motion.

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

Dr. Madia stated that Dr. Drake presently practices at an urgent care center in Canal Winchester, Ohio. Dr. Drake also practices neurology and sees 15 to 20 patients per day for headache treatment, pain management, and addiction medicine.

Dr. Madia stated that on February 9, 2005, Dr. Drake was cited by the Board for alcohol addiction and subsequently entered into a Step I Consent Agreement, which suspended his license. On October 12, 2005, Dr. Drake's suspension was extended by five months because he violated his suspension by prescribing a psychotropic drug. In June 2006, Dr. Drake entered into a Step II Consent Agreement which reinstated his license and imposed probationary conditions, including attending AA meetings and having a supervising physician. In July 2008, Dr. Drake's Step II Consent Agreement was extended by the Secretary and Supervising Member until 2011 due to non-compliance. In December 2008, Dr. Drake's probationary terms were modified to reduce the frequency of his required AA meetings, drug screens, and personal appearances.

Dr. Madia stated that despite being given multiple chances, Dr. Drake never complied with his Consent Agreements. Dr. Drake did not provide required documentation of his compliance or a controlled substance log. Dr. Drake never nominated someone to be his supervising physician, whose task it would have been to assure that Dr. Drake's urine drug screens were random and supervised. The Ohio Physicians Health Program (OPHP) had been acting as Dr. Drake's supervising authority, but in July 2009 OPHP notified the Board that it would no longer monitor Dr. Drake due to his non-compliance. Since that time, Dr. Drake has submitted his own urine screens which have been neither random nor supervised. Dr. Madia stated that Dr. Drake sometimes met with friends and had a friend sign an AA log attesting that Dr. Drake attended an AA meeting. Dr. Madia stated that because of Dr. Drake's non-compliance with most aspects of his Consent Agreement, the Board does not know if Dr. Drake is free of alcohol or drugs.

Dr. Madia stated that he disagreed with the Proposed Order, which would extend Dr. Drake's probationary terms by one year with no suspension. Dr. Madia stated that he asked the staff to prepare an alternative order which would suspend Dr. Drake's license for a minimum of three months and establish conditions for reinstatement. Dr. Madia stated that he had considered the possibility of revoking Dr. Drake's license and stated that he would like to hear from other Board members in this matter.

Mr. Kenney opined that a suspension of three months is insufficient and recommended the Dr. Drake's license be permanently revoked. Mr. Kenney stated that Dr. Drake has violated every Consent Agreement he has entered into and opined that Dr. Drake does not believe the Board will prohibit him from practicing medicine. Mr. Hairston agreed, stating the Dr. Drake has not taken the Board seriously. Ms. Elsass agreed that a three-month suspension is too lenient. Ms. Elsass stated that Dr. Drake has treated his Consent Agreements like a list of suggestions and has made a farce of the agreements. Ms. Elsass was uncertain if she would support a permanent revocation of Dr. Drake's license. Dr. Madia stated that he would support a non-permanent revocation of Dr. Drake's medical license. Dr. Ramprasad stated that rules were set for Dr. Drake and broken too many times. Dr. Ramprasad stated that the number of violations would lead him to support revocation, and possibly permanent revocation.

Dr. Mahajan commented that in earlier years, Dr. Drake was a very well-known neurologist. Dr. Mahajan stated that he could not say what kind of physician Dr. Drake is today.

Dr. Madia moved to amend the Proposed Order to revoke Dr. Drake’s license to practice medicine and surgery in Ohio. Mr. Hairston seconded the motion.

Dr. Mahajan stated that he would now entertain discuss of the proposed amendment.

Dr. Madia commented that he agreed with the Hearing Examiner’s Findings of Fact and Conclusions of Law in the Report and Recommendation.

A vote was taken on Dr. Madia’s motion to amend:

ROLL CALL:	Dr. Strafford	- abstain
	Mr. Hairston	- aye
	Dr. Ramprasad	- aye
	Dr. Suppan	- aye
	Dr. Mahajan	- aye
	Dr. Madia	- aye
	Dr. Bechtel	- aye
	Ms. Elsass	- aye
	Mr. Kenney	- aye

The motion to amend carried.

Mr. Hairston moved to approve and confirm Ms. Blue’s Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the matter of Miles E. Drake, Jr., M.D. Dr. Madia seconded the motion. A vote was taken:

ROLL CALL:	Dr. Strafford	- abstain
	Mr. Hairston	- aye
	Dr. Ramprasad	- aye
	Dr. Suppan	- aye
	Dr. Mahajan	- aye
	Dr. Madia	- aye
	Dr. Bechtel	- aye
	Ms. Elsass	- aye
	Mr. Kenney	- aye

The motion to approve carried.

MICHAEL BRUCE GLADSON, M.D., Case No. 12-CRF-002

Dr. Mahajan directed the Board’s attention to the matter of Michael Bruce Gladson, M.D. He advised that objections were filed to Ms. Blue’s Report and Recommendation and were previously distributed to Board members.

Dr. Mahajan continued that a request to address the Board has been timely filed on behalf of Dr. Gladson.

throes of her impairment and has not responded to the Board’s Notice of Opportunity for Hearing. If adopted, the amended Order will give Ms. Beaver the opportunity, should she engage in meaningful recovery, to reapply for her Ohio physician assistant license.

ROLL CALL:	Mr. Hairston	- aye
	Dr. Ramprasad	- aye
	Dr. Suppan	- aye
	Dr. Mahajan	- aye
	Dr. Madia	- aye
	Dr. Bechtel	- aye
	Ms. Elsass	- aye
	Mr. Kenney	- aye

The motion to amend carried.

Dr. Madia moved to adopt the Amended Proposed Findings and Proposed Order, as amended, in the matter of Amy Lynn Beaver, P.A. Mr. Hairston seconded the motion. A vote was taken:

ROLL CALL:	Mr. Hairston	- aye
	Dr. Ramprasad	- aye
	Dr. Suppan	- aye
	Dr. Mahajan	- aye
	Dr. Madia	- aye
	Dr. Bechtel	- aye
	Ms. Elsass	- aye
	Mr. Kenney	- aye

The motion to approve carried.

REPORTS AND RECOMMENDATIONS

Dr. Ramprasad moved to reconsider the case of Miles E. Drake, Jr., M.D., for purposes of clarifying the Order. Dr. Madia seconded the motion. All members voted aye. The motion carried.

MILES E. DRAKE, JR., M.D., Case No. 11-CRF-095

Ms. Debolt noted that earlier in the meeting, the Board members were presented with a written proposed amendment to the Proposed Order in the case of Dr. Drake. The written proposed amendment provided for a 30-day wind-down period prior to a proposed suspension. However, the written proposed amendment was never placed on the table for consideration and the Board instead amended the Proposed Order to revoke Dr. Drake’s license. Ms. Debolt noted that prior to the Board’s final vote, Dr. Drake’s attorney asked if there would be a wind-down time before the revocation was effective. Although Ms. Debolt at that time answered that there was a wind-down period, there in fact was no such period provided for in the amendment the was actually adopted by the Board.

Ms. Debolt asked the Board to consider if the Order of revocation in the matter of Dr. Drake should have a 30-day wind-down period or if the revocation should be effective upon mailing of the Order.

Dr. Madia opined that it would be appropriate to provide for a 30-day wind-down period before the revocation is effective, during which time Dr. Drake will not be allowed to accept new patients and other standard stipulations.

Dr. Madia moved to amend the Board's Order in the matter of Miles E. Drake, Jr., M.D., such that the revocation of Dr. Drake's license to practice medicine and surgery in Ohio become effective 30 days after the mailing of the Order. Dr. Madia further moved that the Board's standard language regarding such a 30-day period apply. Dr. Bechtel seconded the motion. A vote was taken:

ROLL CALL:	Mr. Hairston	- aye
	Dr. Ramprasad	- aye
	Dr. Suppan	- aye
	Dr. Mahajan	- aye
	Dr. Madia	- aye
	Dr. Bechtel	- aye
	Ms. Elsass	- aye
	Mr. Kenney	- aye

PROBATIONARY APPEARANCES

DENISE M. BACHMAN, L.M.T.

Ms. Bachman was making her final appearance before the Board pursuant to her request for release from the terms of her March 10, 2010 Consent Agreement. Ms. Bickers reviewed Ms. Bachman's history with the Board.

Dr. Madia asked if Ms. Bachman understands that she must renew her license to practice massage therapy in Ohio. Ms. Bachman replied that she does understand. Dr. Suppan asked if Ms. Bachman has a system that will remind her of her obligation to renew. Ms. Bachman answered that she has placed her renewal dates on her calendar.

Dr. Suppan asked if Ms. Bachman is currently working. Ms. Bachman replied that she is currently working.

Dr. Madia moved to release Ms. Bachman from the terms of her March 10, 2010 Consent Agreement. Mr. Hairston seconded the motion.

Dr. Mahajan stated that he will now entertain discussion in the above matter.

Mr. Hairston asked Ms. Bachman to educate others in her profession about the need to timely renew their licenses. Ms. Bachman agreed.

A vote was taken on Dr. Madia's motion. All members voted aye. The motion carried.

ALLA MIKHLI, D.P.M.

Dr. Mikhli was making her final appearance before the Board pursuant to her request for release from the terms of the Board's Order of April 11, 2007. Ms. Bickers reviewed Dr. Mikhli's history with the Board.

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 12, 2011

Case number: 11-CRF- 095

Miles E. Drake, Jr., M.D.
5261 Gender Road
Canal Winchester, Ohio 43110

Dear Doctor Drake:

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

- (1) On or about February 9, 2005, you entered into a Step I Consent Agreement with the Board in lieu of formal proceedings based upon your violation of Section 4731.22(B)(26), Ohio Revised Code, which suspended your certificate to practice medicine and surgery for an indefinite period of time. In the February 9, 2005 Step I Consent Agreement, you made certain admissions, including that you were impaired due to alcohol dependence.

On or about October 12, 2005, you entered into a Consent Agreement with the Board in lieu of formal proceedings based upon your violation of Sections 4731.22(10) and (B)(15), Ohio Revised Code, which suspended your certificate to practice medicine and surgery for an indefinite period of time, but not less than five months.

The June 2006 Step II Consent Agreement reinstated your certificate to practice medicine and surgery in Ohio subject to certain probationary terms, conditions and limitations, which are to remain in force for a minimum of five years.

On or about July 2, 2008, the Board Secretary and Supervising Member determined that during the period of June 2007 through October 2007, the Board had not received acceptable documentation of your attendance, three times a week, at alcohol and drug rehabilitation meetings. Consequently, the Secretary and Supervising Member determined that such periods of noncompliance would not apply to the reduction of the probationary period. You were notified that you would be eligible for release from the terms of the June 2006 Step II Consent Agreement on November 14, 2011.

Mailed 10-13-11

To date, you remain subject to all the terms, conditions and limitations of the June 2006 Step II Consent Agreement, as modified by the Board on or about July 13, 2006 and December 11, 2008.

- (2) Paragraph 2 of the June 2006 Step II Consent Agreement requires that you “shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement” and the “quarterly declarations must be received in the Board’s offices on or before the first day of every third month.”

Despite this provision, you have failed to provide and/or timely provide quarterly declarations to the Board since in or around November 2010 to August 2011.

- (3) Paragraph 6 of the June 2006 Step II Consent Agreement requires that you “shall keep a log of all controlled substances prescribed. Such log shall be submitted . . . thirty days prior to [your] personal appearance before the Board or its designated representative.”

Despite this provision, you failed to submit a log of all controlled substances prescribed for the time period from in or about June 2009 to July 2009, September 2009 to June 2010, and November 2010 to December 2010.

- (4) Paragraph 10 of the June 2006 Step II Consent Agreement requires that you “shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. [Y]ou shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis.” Further, paragraph 10 requires that you “shall ensure that the supervising physician provides quarterly reports to the Board.”

Despite these provisions, you have failed to submit urine screening reports in accordance with the requirements of the June 2006 Step II Consent Agreement since in or about July 2009. Further, you have failed to ensure that the supervising physician provide a quarterly report since in or around July 2010. Since in or about July 2009, you independently have submitted non-random, unsupervised, urine screens to a laboratory, twice a month, and submitted those laboratory reports yourself to the Board.

- (5) Paragraph 12 of the June 2006 Step II Consent Agreement requires that “[b]efore engaging in any medical practice, [you] shall submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board.” Paragraph 12 further requires that your “monitoring physician shall provide the Board with reports on the monitoring of [you] and [your] medical practice, and on the review of [your] patient charts. [You] 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 [your] quarterly declaration."

Despite this provision, you requested approval of a monitoring physician, however you failed to submit a curriculum vitae for that physician. On or about September 28, 2011, you nominated a different monitoring physician and subsequently provided their curriculum vita, which to date has not been approved by the Board. Further, you failed to ensure that monitoring reports were forwarded to the Board since in or around May 2009.

- (6) Paragraph 13 of the June 2006 Step II Consent Agreement requires that you "shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week." Further, this paragraph requires that you "shall submit acceptable documentary evidence of continuing compliance with this program which must be received in the Board's offices no later than the due date for [your] quarterly declarations."

Despite this provision, you have failed to submit acceptable documentary evidence of continuing compliance with a program to the Board since in or around June 2007.

- (7) Paragraph 14 of the June 2006 Step II Consent Agreement requires that before the end of the first year of probation, you "shall provide acceptable documentation of satisfactory completion of a course on maintaining adequate and appropriate medical records." Further, this paragraph requires that you "shall also submit to the Board a written report describing the course, setting forth what [you have] learned from the course, and identifying with specificity how [you] will apply what [you] learned to [your] practice of medicine in the future."

Despite this provision, you have failed to submit acceptable documentary evidence of completion of a course on maintaining adequate and appropriate medical records, and you have failed to submit a written report describing the course, etc., to the Board.

- (8) Despite repeated demands and consultations by the Compliance Section of the Board and corresponding opportunities to achieve compliance with the June 2006 Step II Consent Agreement, you have repeatedly failed to comply with the probationary conditions of the June 2006 Step II Consent Agreement.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) through (8) above, individually and/or collectively, constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

Miles E. Drake, Jr., M.D.

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

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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.

Secretary

LAT/MAP/flb

Enclosures

CERTIFIED MAIL #91 7199 9991 7030 3418 9160
RETURN RECEIPT REQUESTED

cc: Doug Graff
Graff & Associates
604 E. Rich Street
Columbus, Ohio 43215

CERTIFIED MAIL #91 7199 9991 7030 3418 9153
RETURN RECEIPT REQUESTED

STATE MEDICAL BOARD
OF OHIO

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**STEP II
CONSENT AGREEMENT
BETWEEN
MILES EDWARD DRAKE, JR., M.D.
AND
THE STATE MEDICAL BOARD OF OHIO**

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

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

BASIS FOR ACTION

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

- A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violations of Section 4731.22(B)(10), Ohio Revised Code, “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,” and/or Section 4731.22(B)(15), Ohio Revised Code, “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” and/or Section 4731.22(B)(26), Ohio Revised Code, “[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice.”
- B. The Board enters into this Step II Consent Agreement in lieu of formal proceedings based upon the violation of Section 4731.22(B)(10), Ohio Revised Code, and Section 4731.22(B)(15), Ohio Revised Code, as set forth in Paragraph E of the October 12, 2005 Consent Agreement [October 2005 Consent Agreement]; the violation of Section 4731.22(B)(26), Ohio Revised Code, as set forth in Paragraph E of the February 9, 2005 Step I Consent Agreement [February 2005 Step I Consent Agreement]; and as set forth in paragraph E herein. The Board expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Consent Agreement. Copies of the February 2005 Step I Consent Agreement and the October 2005 Consent Agreement are attached hereto and fully incorporated herein.

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- C. Dr. Drake is applying for reinstatement of his license to practice medicine and surgery in the State of Ohio, License # 35-047457, which is currently suspended pursuant to the terms of the above-referenced October 2005 Consent Agreement.
- D. Dr. Drake states that he is not licensed to practice medicine and surgery in any other state or jurisdiction.
- E. Dr. Drake admits that, having undergone residential treatment of 28 days for alcoholism at the Woods at Parkside, a Board-approved treatment provider in Columbus, Ohio, on March 14, 2005, he successfully completed treatment. Dr. Drake states that he entered into an aftercare contract with the Woods at Parkside on April 11, 2005, and subsequently on April 26, 2005, he entered into an advocacy contract with the Ohio Physicians Health Program [OPHP]. Dr. Drake states, and the Board acknowledges receipt of information in support, that Dr. Drake has remained compliant with the terms of the aftercare contract he entered into with the Woods at Parkside and the advocacy contract he entered into with OPHP. Further, Dr. Drake admits that the aforementioned aftercare and advocacy contracts remain in effect.

Dr. Drake states, and the Board acknowledges receipt of information to support, that Edna M. Jones, M.D., of the Woods at Parkside, and David D. Goldberg, D.O., of Greene Hall, Greene Memorial Hospital, a Board-approved treatment provider in Xenia, Ohio, have each provided written reports indicating that Dr. Drake's ability to practice has been assessed and he has been found capable of practicing medicine and surgery according to acceptable and prevailing standards of care, so long as certain treatment and monitoring conditions are in place.

Accordingly, Dr. Drake states, and the Board acknowledges receipt of information to support, that Dr. Martin has fulfilled the conditions for reinstatement of his certificate to practice medicine and surgery in the State of Ohio, as established in the October 2005 Consent Agreement.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, the certificate of Dr. Drake to practice medicine and surgery in the State of Ohio shall be reinstated, and Dr. Drake knowingly and voluntarily agrees with the Board to the following PROBATIONARY terms, conditions and limitations:

1. Dr. Drake shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
2. Dr. Drake shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be

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received in the Board's offices on the date his quarterly declaration would have been due pursuant to his February 2005 Step I Consent Agreement with the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. Dr. Drake shall appear in person for an interview before the full Board or its designated representative. The first such appearance shall take place on the date his appearance would have been scheduled pursuant to his February 2005 Step I Consent Agreement with the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
4. Dr. Drake 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. In the event Dr. Drake is found by the Secretary of the Board to have failed to comply with any provision of this Consent Agreement, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Consent Agreement.

MONITORING OF REHABILITATION AND TREATMENT

Drug Associated Restrictions

6. Dr. Drake shall keep a log of all controlled substances prescribed. Such log shall be submitted, in the format approved by the Board, thirty days prior to Dr. Drake's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Drake shall make his patient records with regard to such prescribing available for review by an agent of the Board upon request.
7. Dr. Drake shall not, without prior Board approval, administer, personally furnish, or possess (except as allowed under Paragraph 8 below) any controlled substances as defined by state or federal law. In the event that the Board agrees at a future date to modify this Consent Agreement to allow Dr. Drake to administer or personally furnish controlled substances, Dr. Drake shall keep a log of all controlled substances prescribed, administered or personally furnished. Such log shall be submitted in the format approved by the Board thirty days prior to Dr. Drake's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Drake shall make his patient records with regard to such

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prescribing, administering, or personally furnishing available for review by an agent of the Board upon request.

Sobriety

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

Drug and Alcohol Screens/Supervising Physician

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

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

Dr. Drake and the Board agree that the person or entity previously approved by the Board to serve as Dr. Drake's supervising physician pursuant to the February 2005 Step I Consent Agreement is hereby approved to continue as Dr. Drake's designated supervising physician under this Consent Agreement, unless within thirty days of the effective date of this Consent Agreement, Dr. Drake submits to the Board for its prior approval the name and curriculum vitae of an alternative supervising physician to whom Dr. Drake shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Drake. Dr. Drake and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

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

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

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

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

11. The Board retains the right to require, and Dr. Drake agrees to submit, blood or urine specimens for analysis at Dr. Drake's expense upon the Board's request and without prior notice. Dr. Drake's refusal to submit a blood or urine specimen upon request of the Board shall result in a minimum of one year of actual license suspension.

Monitoring Physician

12. Before engaging in any medical practice, Dr. Drake shall submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary and Supervising Member will give preference to a physician who practices in the same locale as Dr. Drake and who is engaged in the same or similar practice specialty.

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

In the event that the designated monitoring physician becomes unable or unwilling to

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serve in this capacity, Dr. Drake must immediately so notify the Board in writing. In addition, Dr. Drake 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. Drake 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.

Rehabilitation Program

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

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

Medical Records Course

14. Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Drake shall provide acceptable documentation of satisfactory completion of a course on maintaining adequate and appropriate medical records. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Drake submits the documentation of successful completion of the course on maintaining adequate and appropriate medical records, he shall also submit to the Board a written report describing the course, setting forth what he learned from the course, and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

Aftercare

15. Dr. Drake shall contact an appropriate impaired physicians committee, approved by the Board, to arrange for assistance in recovery or aftercare.
16. Dr. Drake shall maintain continued compliance with the terms of the aftercare contract entered into with his treatment provider, provided that, where terms of the aftercare contract conflict with terms of this Consent Agreement, the terms of this Consent Agreement shall control.

Releases

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

Required Reporting by Licensee

18. Within thirty days of the effective date of this Consent Agreement, Dr. Drake 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. Drake 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.
19. Within thirty days of the effective date of this Consent Agreement, Dr. Drake 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. Drake 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. Drake shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
20. Dr. Drake shall provide a copy of this Consent Agreement to all persons and entities that provide Dr. Drake chemical dependency treatment or monitoring.

2006 JUN -9 F

FAILURE TO COMPLY

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

If the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that Dr. Drake has violated any term, condition or limitation of this Consent Agreement, Dr. Drake agrees that the violation, as alleged, also constitutes clear and convincing evidence that his continued practice presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension pursuant to Section 4731.22(G), Ohio Revised Code.

DURATION/MODIFICATION OF TERMS

Dr. Drake shall not request termination of this Consent Agreement for a minimum of five years. In addition, Dr. Drake shall not request modification to the probationary terms, limitations, and conditions contained herein for at least one year. Otherwise, the above-described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties.

ACKNOWLEDGMENTS/LIABILITY RELEASE

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

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

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

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. Dr. Drake acknowledges that his social security number will be used if this information is so reported and agrees to provide his social security number to the Board for such purposes.

EFFECTIVE DATE

2006 JUN -9 P 1: 27

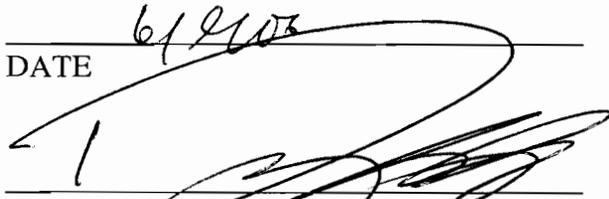
It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.



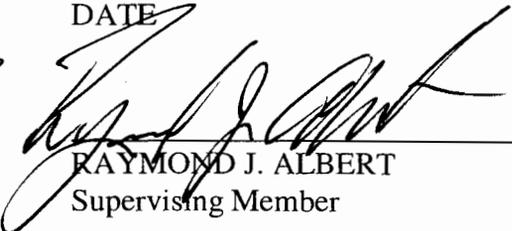
MILES EDWARD DRAKE, JR., M.D.



LANCE A. TALMAGE, M.D.
Secretary

6/9/06
DATE _____


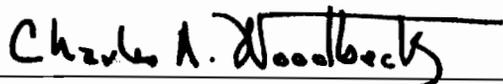
DOUGLAS E. GRAFF, ESQ.
Attorney for Dr. Drake

6-14-06
DATE _____


RAYMOND J. ALBERT
Supervising Member

6/9/06
DATE _____

6/14/06
DATE _____



CHARLES A. WOODBECK, ESQ.
Enforcement Attorney

6/12/06
DATE _____

**CONSENT AGREEMENT
BETWEEN
MILES EDWARD DRAKE, JR., MD.
AND
THE STATE MEDICAL BOARD OF OHIO**

**STATE MEDICAL BOARD
OF OHIO**

2005 OCT 12 P 1:35

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

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

BASIS FOR ACTION

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

- A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for any of the enumerated violations.
- B. The Board and Dr. Drake enter into this Consent Agreement in lieu of further formal proceedings based upon the allegations set forth in the Notice of Opportunity for Hearing issued on May 18, 2005, attached hereto as Exhibit A and incorporated herein by reference. The Board expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement.
- C. Dr. Drake admits that his license to practice medicine and surgery in the State of Ohio, License # 35.047457, was suspended pursuant to the terms of the Step I Consent Agreement between Miles Edward Drake, Jr., M.D., and the State Medical Board of Ohio that became effective on February 9, 2005 [February 2005 Step I Agreement], a copy of which is attached hereto and incorporated herein. Dr. Drake further admits that his certificate to practice medicine and surgery in the State of Ohio remains suspended to date.
- D. Dr. Drake states that he is not licensed to practice medicine or surgery in any other state or jurisdiction.
- E. Dr. Drake admits the factual and legal allegations contained in the Notice of Opportunity for Hearing issued on May 18, 2005, attached hereto as Exhibit A and incorporated herein by reference.

AGREED CONDITIONS

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

SUSPENSION OF CERTIFICATE

1. The suspension of Dr. Drake's certificate to practice medicine and surgery in the State of Ohio pursuant to the February 2005 Step I Agreement is hereby terminated. Further, Dr. Drake's certificate to practice medicine and surgery in the State of Ohio shall be suspended for an indefinite period of time, but not less than five months from the effective date of this Consent Agreement.
2. All remaining terms, conditions and limitations set forth in the February 2005 Step I Agreement continue in full force and effect.

REQUIRED REPORTING BY LICENSEE

3. Within thirty days of the effective date of this Consent Agreement, Dr. Drake 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. Drake further agrees to provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Drake shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
4. Within thirty days of the effective date of this Consent Agreement, Dr. Drake 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. Drake 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.
5. Dr. Drake shall provide a copy of this Consent Agreement to all persons and entities that provide Dr. Drake chemical dependency treatment or monitoring.

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

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CONSENT AGREEMENT
MILES EDWARD DRAKE, JR., M.D.
PAGE 3

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Drake 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. Drake acknowledges that he has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

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

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

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. Dr. Drake acknowledges that his social security number will be used if this information is so reported and agrees to provide his social security number to the Board for such purposes.

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.



MILES EDWARD DRAKE, JR., MD.



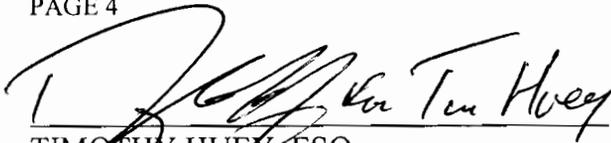
LANCE A. TALMAGE, M.D.
Secretary

10/11/05

DATE

10-12-05

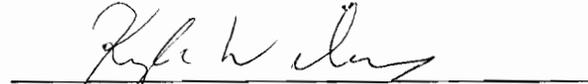
DATE


TIMOTHY HUEY, ESQ.
Attorney for Dr. Drake

10/12/05
DATE


RAYMOND J. ALBERT
Supervising Member

10/12/05
DATE


KYLE C. WILCOX
Assistant Attorney General

10-12-05
DATE

STATE MEDICAL BOARD
OF OHIO
2005 OCT 12 P 1:36



State Medical Board of Ohio

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

May 18, 2005

Miles Edward Drake, Jr., M.D.
75 Riverview Park Drive
Columbus, Ohio 43210

Dear Doctor Drake:

In accordance with R.C. Chapter 119., 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 you or place you on probation for one or more of the following reasons:

- (1) On or about February 8, 2005, you entered into a Step I Consent Agreement with the State Medical Board of Ohio (Ohio Board), in lieu of formal proceedings based upon your violation of R.C. 4731.22(B)(26).

You admitted you were an alcoholic; had a history of alcohol-related traffic accidents; and you were currently impaired in your ability to practice medicine without appropriate treatment and monitoring related to your alcohol dependency.

Further, you agreed to certain terms, conditions and limitations, including:

* * *

SUSPENSION OF CERTIFICATE

1. The certificate of Dr. Drake to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time [Emphasis in the original].

* * *

A copy of the Step I Consent Agreement is attached hereto and incorporated herein.

Although you have initiated a request for reinstatement of your Ohio Board license, your certificate to practice medicine and surgery in the State of Ohio, which was suspended on or about February 9, 2005, remains suspended.

MAILED 5-19-05

- (2) On or about March 15, 2005, at the Kroger Pharmacy, Reynoldsburg, Ohio, despite the suspension of your certificate to practice medicine and surgery in Ohio, you prescribed the psychotropic drug, Abilify®, for Patient 1, as identified on the attached confidential Patient Key (Patient Key to be withheld from public disclosure). Abilify® (aripiprazole) is labeled a dangerous drug and available only on the legal order of a prescriber.

Your acts, conduct, and/or omissions, as alleged in paragraph two (2) above, individually and/or collectively, constitute “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in R.C. 4731.22(B)(10), to wit: R.C. 4731.41 Practice of Medicine or [sic] Surgery Without Certificate. Pursuant to R.C. 4731.99, Penalties, as in effect on or after October 14, 1999, violation of R.C. 4731.41 constitutes a felony offense.

Further, your acts, conduct, and/or omissions, as alleged in paragraph two (2) above, individually and/or collectively, constitute “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in R.C. 4731.22(B)(10), to wit: R.C. 2925.23, Illegal processing of drug documents.

Further, your acts, conduct, and/or omissions, as alleged in paragraph two (2) above, constitute a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” as that clause is used in Section R.C. 4731.22(B)(15).

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

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

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

Please note that, whether or not you request a hearing, R.C. 4731.22(L), provides that “[w]hen the board refuses to grant a certificate to an applicant, revokes an individual’s certificate to practice, refuses to register an applicant, or refuses to reinstate an individual’s certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate.”

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.
Secretary

LAT/cw
Enclosures

CERTIFIED MAIL # 7003 0500 002 4340 6509
RETURN RECEIPT REQUESTED

D. Timothy Huey, Esq.
1985 West Henderson Road, Box 212
Upper Arlington, Ohio 43220

CERTIFIED MAIL # 7003 0500 0002 4340 6516
RETURN RECEIPT REQUESTED

**STEP I
CONSENT AGREEMENT
BETWEEN
MILES EDWARD DRAKE, JR., M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO**

OHIO STATE MEDICAL BOARD

FEB 08 2005

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

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

BASIS FOR ACTION

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

- A. The Board is empowered by Section 4731.22(B)(26), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice."
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Section 4731.22(B)(26), Ohio Revised Code, as set forth in Paragraph E below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement, including, but not limited to, the right to institute formal proceedings based upon any violations related to patient care, regardless of whether the acts underlying such additional violations are related to the violation of Section 4731.22(B)(26), Ohio Revised Code, described herein.
- C. Dr. Drake is licensed to practice medicine and surgery in the State of Ohio, License # 35.047457.
- D. Dr. Drake states that he is not licensed to practice medicine or surgery in any other state or jurisdiction.

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- E. Dr. Drake admits that after recently being found guilty in connection with his second alcohol-related traffic incident, as described further below, he voluntarily undertook treatment for alcoholism on an out-patient basis through Talbot Hall of The Ohio State University Hospitals, a facility that is not a Board-approved treatment provider, and that shortly after undertaking such treatment, he was charged with a third alcohol-related traffic incident. Dr. Drake states that at the time he undertook such out-patient treatment, he was unaware that the statutes and rules related to physician licensure require that he complete a minimum of twenty-eight days of in-patient treatment at a Board-approved treatment provider. Dr. Drake admits, and the Board acknowledges, that on or about January 13, 2005, Dr. Drake, through his legal counsel, self-reported to the Board that he was an alcoholic, and further indicated that he was in the process of researching various Board-approved treatment programs, and that he anticipated entering residential treatment for his alcohol dependency at a Board-approved treatment provider in the immediate future. Dr. Drake attests that he is presently scheduled to enter residential treatment at The Woods at Parkside, a Board-approved treatment provider in Columbus, Ohio, on or about February 7, 2005. Further, Dr. Drake attests that, aside from the aforementioned out-patient treatment that he recently undertook, his entry into residential treatment at The Woods at Parkside will represent his initial treatment for chemical dependency.

Dr. Drake further admits that he began consuming alcohol on almost a daily basis during or about April 2004, and that his alcohol consumption had escalated to the point that he was frequently drinking several glasses of wine or scotch in the evening. Dr. Drake admits that he is currently impaired in his ability to practice medicine without appropriate treatment and monitoring related to his alcohol dependency. Further, Dr. Drake specifically denies that his use of mood-altering chemicals has involved any substances other than alcohol, and attests that he never consumed alcohol during the hours when he was responsible for the care of patients.

Dr. Drake admits that he has a history of alcohol-related traffic incidents. Dr. Drake admits that on or about September 10, 2003, he entered a plea of guilty to a February 2003 charge of Operating a Motor Vehicle Under the Influence related to events that occurred in or around Zanesville, Ohio. Dr. Drake further admits that on or about October 1, 2004, he was found guilty of an April 2004 charge of Operating a Vehicle Under the Influence related to events that occurred in or around Columbus, Ohio. Further, Dr. Drake admits that on or about January 5, 2005, in Franklin County Municipal Court, he was arraigned on December 2004 charges of Operating a Vehicle Under the Influence and other related citations, for which final disposition remains pending. Further, Dr. Drake specifically denies that he has had any alcohol-related traffic incidents in any state or jurisdiction other than the three incidents set forth above.

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Dr. Drake further admits that on or about November 7, 2003, the medical staff administrative committee of The Ohio State University Hospitals upheld the recommendation of an evidentiary hearing committee to deny Dr. Drake's reappointment, which resulted in the termination of his clinical privileges and medical staff membership at that institution. Although Dr. Drake asserts that he disputes the validity of the basis for the aforementioned action and that he is currently engaged in litigation with the university over this matter, Dr. Drake acknowledges that the university has formally reported that it based its action upon evidence demonstrating that Dr. Drake failed to provide adequate coverage for patients, was untimely in finalizing reports, and had failed to correct these deficiencies despite opportunities to do so. At this time, the Board takes no position on the aforementioned disagreement between Dr. Drake and the university.

AGREED CONDITIONS

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

SUSPENSION OF CERTIFICATE

1. The certificate of Dr. Drake to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time.

Sobriety

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

Releases; Quarterly Declarations and Appearances

4. Dr. Drake shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Drake's chemical dependency or related conditions, or for purposes of complying with this Consent Agreement, whether such treatment or evaluation occurred before or after the effective date of this Consent Agreement. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. Dr. Drake further agrees to provide the Board written consent permitting any treatment provider

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from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Consent Agreement.

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

Drug & Alcohol Screens; Supervising Physician

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

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

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

Dr. Drake shall ensure that the supervising physician provides quarterly reports to the

FEB 08 2005

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

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

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

Rehabilitation Program

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

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

CONDITIONS FOR REINSTATEMENT

9. The Board shall not consider reinstatement of Dr. Drake's certificate to practice medicine and surgery until all of the following conditions are met:
 - a. Dr. Drake shall submit an application for reinstatement, accompanied by appropriate fees, if any.
 - b. Dr. Drake shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:

FEB 08 2005

- i. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Drake has successfully completed any required inpatient treatment, including at least twenty-eight days of in-patient or residential treatment for chemical dependence, as set forth in Rules 4731-16-02(B)(4)(a) and 4731-16-08(A)(13), Ohio Administrative Code, completed consecutively.
- ii. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
- iii. Evidence of continuing full compliance with this Consent Agreement.
- iv. Two written reports indicating that Dr. Drake's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by physicians knowledgeable in the area of addictionology and who are either affiliated with a current Board-approved treatment provider or otherwise have been approved in advance by the Board to provide an assessment of Dr. Drake. Prior to the assessments, Dr. Drake shall provide the evaluators with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The reports from the evaluators shall include any recommendations for treatment, monitoring, or supervision of Dr. Drake, and any conditions, restrictions, or limitations that should be imposed on Dr. Drake's practice. The reports shall also describe the basis for the evaluator's determinations.

All reports required pursuant to this paragraph shall be based upon examinations occurring within the three months immediately preceding any application for reinstatement.

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

Further, upon reinstatement of Dr. Drake's certificate to practice medicine and surgery in this state, the Board shall require continued monitoring which shall include, but not be limited to, compliance with the written consent agreement

FEB 08 2005

entered into before reinstatement or with conditions imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Revised Code. Moreover, upon termination of the consent agreement or Board Order, Dr. Drake shall submit to the Board for at least two years annual progress reports made under penalty of Board disciplinary action or criminal prosecution stating whether Dr. Drake has maintained sobriety.

10. In the event that Dr. Drake has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Drake's fitness to resume practice.

REQUIRED REPORTING BY LICENSEE

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

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

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Drake 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.

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ACKNOWLEDGMENTS/LIABILITY RELEASE

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

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

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

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. Dr. Drake acknowledges that his social security number will be used if this information is so reported and agrees to provide his social security number to the Board for such purposes.

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.


MILES EDWARD DRAKE, JR., M.D.

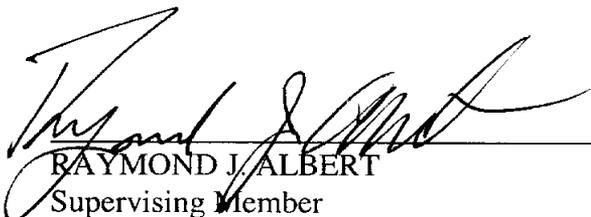
2/8/05
DATE


LANCE A. TALMAGE, M.D.
Secretary

2-9-05
DATE


TIMOTHY HUEY, ESQ.
Attorney for Dr. Drake

2-8-05
DATE


RAYMOND J. ALBERT
Supervising Member

2/9/05
DATE

FEB 08 2005

Rebecca Marshall

REBECCA J. MARSHALL, ESQ.
Enforcement Attorney

February 8, 2005

DATE