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STATE MEDICAL BOARD OF OHIO  
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12/13/01

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

Brian W. Davies, MD, \*  
Appellant \* CASE NO. 01CVF08-8398  
v. \*  
The State Medical Board of Ohio \* JUDGE J. CONNOR  
Appellee. \*

Appeal from the State Medical Board of Ohio

NOTICE OF VOLUNTARY DISMISSAL

Appellant, Brian W. Davies, MD, hereby notifies the Court that the instant appeal is hereby VOLUNTARILY DISMISSED.

Respectfully submitted,  
KEVIN P. BYERS CO., L.P.A.

*KPB-J=ns*  
Kevin P. Byers 0040253  
Fifth Third Center  
21 East State Street, Suite 220  
Columbus, Ohio 43215-4297  
614.228.6283 Fax 228.6425

Attorney for Brian W. Davies, MD

Certificate of Service

I certify that a copy of this document was placed in first class U.S. Mail this 10th day of December, 2001, addressed to Assistant Attorney General Rebecca J. Albers, Health & Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3428.

*KPB-J=ns*  
Kevin P. Byers

SEP - 4 2001

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

Brian W. Davies, MD  
910 Robinwood Hills Drive  
Bath, Ohio 44333

Appellant,

v.

State Medical Board of Ohio,  
77 South High St., 17th Floor  
Columbus, Ohio 43266-0315

Appellee.

\*  
01CVF08-8398  
\*  
CASE NO. \_\_\_\_\_

JUDGE Connor

Appeal from the State Medical Board of Ohio

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APPELLANT'S NOTICE OF APPEAL

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Pursuant to RC 119.12, notice is hereby given that Appellant, Brian W. Davies, MD, appeals the order of the State Medical Board dated August 8, 2001, mailed August 13, 2001, and received by Appellant's counsel on August 14, 2001, (copy attached as Exhibit A.) The Medical Board order is not supported by the necessary quantum of reliable, probative and substantial evidence nor is it in accordance with law.

Respectfully submitted,

KEVIN P. BYERS CO., L.P.A.

*KPBYS*

Kevin P. Byers 0040253  
Fifth Third Center  
21 East State Street, Suite 220  
Columbus, Ohio 43215-4297  
614.228.6283 Fax 228.6425

Attorney for Brian W. Davies, MD

SEP - 4 2001

Certificate of Service

I certify that an original of the foregoing document was hand delivered this 28th day of August, 2001, to the State Medical Board, 77 South High Street, 17th Floor, Columbus, Ohio 43215-6127 and also a copy was placed in first class U.S. Mail this same date addressed to Assistant Attorney General Rebecca J. Albers, Health & Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3428.

KPB-1/2/01

Kevin P. Byers



# State Medical Board of Ohio

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

August 8, 2001

Brian W. Davies, M.D.  
910 Robinwood Hills Drive  
Akron, OH 44333

Dear Doctor Davies:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Daniel Roberts, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on August 8, 2001, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO

*Anand G. Garg, M.D.*  
Anand G. Garg, M.D.  
Secretary

AGG: jam  
Enclosures

CERTIFIED MAIL RECEIPT NO. 7000 0600 0022 4402 7358  
RETURN RECEIPT REQUESTED

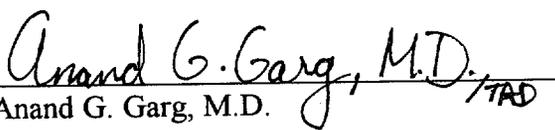
Cc: Kevin P. Byers, Esq.  
CERTIFIED MAIL RECEIPT NO. 7000 0600 0022 4402 7341  
RETURN RECEIPT REQUESTED

*Mailed 8.13.01*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Daniel Roberts, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on August 8, 2001, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Brian W. Davies, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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

  
Anand G. Garg, M.D.  
Secretary

(SEAL)

AUGUST 8, 2001

\_\_\_\_\_  
Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF

\*

\*

BRIAN W. DAVIES, M.D.

\*

**ENTRY OF ORDER**

This matter came on for consideration before the State Medical Board of Ohio on August 8, 2001.

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

It is hereby ORDERED that:

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

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

(SEAL)

*Anand G. Garg, M.D.*  
Anand G. Garg, M.D.  
Secretary

AUGUST 8, 2001

Date

2001 JUL 11 P 2: 23

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

The Matter of Brian W. Davies, M.D., was heard by Daniel Roberts, Attorney Hearing Examiner for the State Medical Board of Ohio, on June 19, 2001.

**INTRODUCTION**

I. Basis for Hearing

- A. By letter dated February 14, 2001, the State Medical Board of Ohio [Board] notified Brian W. Davies, M.D., that his license to practice medicine and surgery in this state had been immediately suspended. The Board also notified Dr. Davies that it had proposed to take disciplinary action against his certificate based on the allegation that Dr. Davies had been found guilty of eighteen counts of Aggravated Trafficking in Drugs in violation of Section 2925.03, Ohio Revised Code.

The Board alleged that these convictions each constitute “[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,” as those clauses are used in Section 4731.22(B)(3), Ohio Revised Code.”

The Board further alleged that these convictions each constitute “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony,” as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.”

Accordingly, the Board advised Dr. Davies of his right to request a hearing in this matter. (State’s Exhibit 1A)

- B. On March 16, 2001, Kevin P. Byers, Esq., submitted a written hearing request on behalf of Dr. Davies. (State’s Exhibit 1B)

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Rebecca J. Albers, Assistant Attorney General.
- B. On behalf of the Respondent: Kevin P. Byers, Esq.

**EVIDENCE EXAMINED**

2001 JUL 11 P 2: 23

I. Testimony Heard

None

II. Exhibits Examined

A. Presented by the State:

1. State's Exhibits 1A-1P: Procedural exhibits.
2. State's Exhibit 2A-2G: Certified copies of documents pertaining to Brian W. Davies from the records of the State Medical Board of Ohio, including:
  - June 14, 2001, Certification.
  - October 13, 1999, Step 1 Consent Agreement.
  - June 9, 1999, Entry of Order, Report and Recommendation and an excerpt of the draft minutes of the Board's June 9, 1999, meeting.
  - October 14, 1998, Notice of Opportunity for Hearing.
  - October 16, 1987, Entry of Order, Report and Recommendation and October 14, 1987, motions confirming the Report and Recommendation as the Findings and Order of the Board.
  - February 13, 1987, Notice of Opportunity for Hearing.
  - February 21, 1986, Consent Agreement.
3. State's Exhibit 3: January 21, 2001, Prosecutor's Reporting Form.
4. State's Exhibit 4: Certified copy of March 23, 2000, Indictment of Brian W. Davies in the Summit County Court of Common Pleas.
5. State's Exhibit 5: Certified copy of January 17, 2001, Journal Entry filed in *State of Ohio vs. Brian W. Davies*, from the Summit County Court of Common Pleas. This Entry records findings of guilt and a sentence imposed on December 14, 2000.

B. Presented by the Respondent:

Respondent's Exhibit A: Excerpt from the minutes of the October 13, 1999, Board meeting.

**SUMMARY OF THE EVIDENCE**

2001 JUL 11 P 2:23

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

1. On December 14, 2000, Brian W. Davies, M.D., entered a plea of no contest to eighteen counts of Aggravated Trafficking in Drugs, in violation of Section 2925.03, Ohio Revised Code, each a felony of the fourth degree. Pursuant to these pleas and the facts found by the Summit County Court of Common Pleas, Dr. Davies was convicted of each of the eighteen offenses. The Court imposed community control sanctions for a period of five years with a number of conditions, including:

- supervision by the Summit County Adult Probation Department.
- payment of fines, costs, and restitution in the amount of \$56,953.29 plus undetermined costs of prosecution.
- incarceration for four weekends. (suspended pending appeal.)
- continued counseling.
- random drug screens.
- attendance at Alcoholics Anonymous [AA] meetings.

(State's Exhibit [St. Ex.] 5)

The underlying acts which led to Dr. Davies' convictions involved eighteen specific instances where Dr. Davies "did knowingly sell or offer to sell Demerol, a Schedule II controlled substance" in violation of Section 2925.03, Ohio Revised Code. These incidents occurred on seventeen separate dates between October 19, 1998, and June 30, 1999. These incidents included offenses on June 8 and June 10, 1999. (St. Ex. 4)

The Order of the Summit County Court of Common Pleas finding Dr. Davies guilty and imposing sentence was filed on January 17, 2001. The Board received notification of Dr. Davies' conviction on January 29, 2001. (St. Exs. 3-5)

2. Dr. Davies received his Doctor of Medicine degree in 1978 from Indiana University. In 1983, Dr. Davies completed a residency in general surgery at Indiana University Hospitals, Indianapolis, Indiana. From 1983 to 1984, Dr. Davies attended a residency in surgical subspecialties at Akron General Medical Center, Akron, Ohio. Next, from 1984 to 1986, Dr. Davies attended a residency in plastic surgery at that same institution. During this time period Dr. Davies also received training in hand surgery at the Cleveland Clinic. Following that, from 1986 to 1987, Dr. Davies attended a fellowship in aesthetic plastic surgery at the Manhattan Eye, Ear, and Throat Hospital, New York, New York. Also in 1987, Dr. Davies attended a fellowship in craniofacial surgery at Mt. Sinai Hospital,

Cleveland, Ohio. Finally, from 1987 to 1988, Dr. Davies attended a fellowship in 23 microsurgery at the Royal Melbourne Hospital, Melbourne, Australia. (St. Ex. 2C)

3. On or about February 27, 1986, Dr. Davies entered into a Consent Agreement with the Board. In that Consent Agreement, Dr. Davies admitted “that he has been chemically dependent on Ketamine,” and that “he has undergone treatment and aftercare therapy at the Ridgeview Institute in Georgia” for that problem. In addition, under the terms of the Consent Agreement, Dr. Davies’ certificate was placed under a number of probationary terms and conditions. Among these, Dr. Davies was required to attend AA meetings at least once per week and submit proof acceptable to the Board of his attendance, to participate in aftercare treatment and a Caduceus group and furnish proof acceptable to the Board of such participation, to submit quarterly declarations of compliance to the Board, and to submit to urine screens twice per month on a random basis. (St. Ex. 2C)
4. On October 16, 1987, following a hearing, the Board found that Dr. Davies had failed to comply with his February 27, 1986, Consent Agreement. The Board had alleged that Dr. Davies had failed to submit evidence of his participation in AA, aftercare, and Caduceus; that he had failed to submit to urine screens as required, and that he had failed to submit quarterly declarations of compliance. The Board ordered that Dr. Davies’ certificate be suspended for a period of three months. In addition, the Board placed Dr. Davies on probation for a period of two years. Moreover, the Board ordered that the terms and conditions of Dr. Davies’ Consent Agreement would remain in effect until terminated by the Board. Dr. Davies was subsequently released from his Consent Agreement in 1989. (St. Ex. 2C)
5. In the fall of 1997, Dr. Davies began taking Lorcet to help him sleep at night. His use of Lorcet began to escalate in February 1998, and escalated again in April 1998 because his pain from a shoulder injury and a ruptured tendon in his hand had escalated and he was developing a tolerance to the drug. (St. Ex. 2C)

On April 11, 1998, Dr. Davies underwent surgery to repair a ruptured tendon; on April 14, 1998, he underwent a second surgery to repair carpal tunnel syndrome. Following these surgeries, his use of medication increased. Dr. Davies was treated for addiction at Life’s Journey from April 27 until June 24, 1998. During treatment, he attended 120 meetings in 90 days. Dr. Davies returned to his practice on July 6, 1998 and was treated by a psychologist and addictionologist. Dr. Davies attended two or three AA meetings per week. (St. Ex. 2C)

6. On or about November 6, 1998, Dr. Davies was diagnosed as suffering from: 1) “Opioid dependence in remission”; 2) “Major depression by history”; 3) “Resolving injury to right shoulder”; and 4) “Resolving surgery of left hand.” Dr. Davies entered into an Advocacy Contract with the Ohio Physicians Effectiveness Program [OPEP] on February 3, 1999. (St. Ex. 2C)

7. On October 14, 1998, the Board notified Dr. Davies that it had proposed to take disciplinary action against his certificate based on allegations that he had violated its 1987 Order and the 1986 Consent Agreement. A hearing was conducted on March 4, 1999, and a Report and Recommendation was filed on May 5, 1999. On June 9, 1999, The Board imposed an Order, based on Dr. Davies' relapse, suspending him from practice for a period of not less than six months and imposing various conditions for reinstatement and probation following reinstatement. (St. Ex. 2C)
8. On October 13, 1999, Dr. Davies and the Board, entered into a Step 1 Consent Agreement [1999 Agreement], which suspended Dr. Davies' license to practice medicine for a minimum of two years, and imposed various conditions on Dr. Davies. The 1999 Agreement is based upon the violation of Section 4731.22(B)(26), Ohio Revised Code. In the 1999 Agreement, the Board expressly reserved the right to institute formal proceedings against Dr. Davies for conduct involving criminal acts, whenever they may have occurred, "regardless of whether the acts underlying such additional violations are related to the violation of Section 4731.22(B)(26), Ohio Revised Code," as set forth in the 1999 Agreement. (Respondent's [Resp Ex.] A; St. Ex. 2B)

In the 1999 Agreement, Dr. Davies admitted that urine specimens which he had submitted for testing on August 20 and 24, 1999, had tested positive for butalbital, and that the urine specimen he had submitted on August 31, 1999, had tested positive for butalbital and codeine OPEP officials directed Dr. Davies to arrange for an assessment of his treatment needs. On September 14, 1999, Dr. Davies voluntarily ceased practicing medicine and surgery and notified the Board that he had relapsed. (St. Ex. 2B)

Dr. Davies admitted in the 1999 Agreement that the Report and Recommendation filed with the Board on May 5, 1999, accurately describes his drug use, treatment, and monitoring history. (St. Exs. 2B and 2C)

### FINDINGS OF FACT

On or about December 14, 2000, in the Summit County Court of Common Pleas, Brian W. Davies, M.D., was found guilty of eighteen counts of violation of Section 2925.03, Ohio Revised Code, Aggravated Trafficking in Drugs, each a felony of the fourth degree.

### CONCLUSIONS OF LAW

1. Each of the judicial findings of guilt concerning Brian W. Davies, M.D., described in the Findings of Fact constitutes "[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu

of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug," as those clauses are used in Section 4731.22(B)(3), Ohio Revised Code.

STATE MEDICAL BOARD  
OF OHIO  
2001 JUL 11 10 2 43

2. Each of the judicial findings of guilt concerning Brian W. Davies, M.D., described in the Findings of Fact constitutes "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

### PROPOSED ORDER

It is hereby ORDERED that:

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

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



---

Daniel Roberts  
Attorney Hearing Examiner



# State Medical Board of Ohio

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

## EXCERPT FROM THE DRAFT MINUTES OF AUGUST 8, 2001

### REPORTS AND RECOMMENDATIONS

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

Dr. Bhati asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matter of Warrick Lee Barrett, M.D.; Christopher Chen, M.D.; Brian W. Davies, M.D.; Daniel X. Garcia, M.D.; Alan P. Skora, D.O.; Rezso Spruch, M.D.; Tom Reutti Starr, M.D.; Joseph A. Tore, M.D.; Quirino B. Valeros, M.D. and Dirk Gregory Wood, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye
	Dr. Bhati	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye
	Dr. Bhati	- aye

Dr. Bhati noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further

adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters.

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

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

.....

BRIAN W. DAVIES, M.D.

.....

**DR. TALMAGE MOVED TO APPROVE AND CONFIRM MR. ROBERTS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF BRIAN W. DAVIES, M.D. DR. STEINBERGH SECONDED THE MOTION.**

.....

A vote was taken on Dr. Talmage's motion to approve and confirm:

Vote:	Mr. Albert	- abstain
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye
	Dr. Bhati	- aye

The motion carried.



# State Medical Board of Ohio

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

## NOTICE OF IMMEDIATE SUSPENSION AND OPPORTUNITY FOR HEARING

February 14, 2001

Brian W. Davies, M.D.  
910 Robinwood Hills Drive  
Akron, Ohio 44333

Dear Doctor Davies:

In accordance with Sections 2929.24 and/or 3719.12, Ohio Revised Code, the Office of the Prosecuting Attorney of Summit County, Ohio, reported that on or about December 14, 2000, in the Summit County Court of Common Pleas, you were found guilty of eighteen (18) felony counts of Aggravated Trafficking in Drugs, in violation of Section 2925.03, Ohio Revised Code.

Therefore, pursuant to Section 3719.121(C), Ohio Revised Code, you are hereby notified that your license to practice medicine and surgery in the State of Ohio is immediately suspended. Continued practice after this suspension shall be considered practicing medicine without a certificate in violation of Section 4731.41, Ohio Revised Code.

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

- (1) On or about December 14, 2000, in the Summit County Court of Common Pleas, you were found guilty of eighteen (18) counts of violation of Section 2925.03, Ohio Revised Code, Aggravated Trafficking in Drugs.

The judicial finding of guilt as alleged in paragraph (1) above constitutes “[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction of, a violation of

*Mailed 2-15-01*

Suspension  
Brian W. Davies, M.D.  
Page 2

any federal or state law regulating the possession, distribution, or use of any drug,” as those clauses are used in Section 4731.22(B)(3), Ohio Revised Code.

Further, the judicial finding of guilt as alleged in paragraph (1) above constitutes “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony,” as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

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

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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

  
Anand G. Garg, M.D. /TRD  
Secretary

Suspension  
Brian W. Davies, M.D.  
Page 3

AGG/krt

Enclosures

CERTIFIED MAIL # 7000 0600 0024 5140 4324  
RETURN RECEIPT REQUESTED

cc: Kevin P. Byers, Esq.

CERTIFIED MAIL # 7000 0600 0024 5140 4331  
RETURN RECEIPT REQUESTED

72188J19

TERMINATION NO. 8  
BY 10/19/99

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

Brian W. Davies, MD,  
Appellant,  
v.

\* CASE NO. 99CVF06-5363  
\*

State Medical Board of Ohio,  
Appellee.

\* JUDGE O'NEILL

Appeal from the State Medical Board of Ohio

APPELLANT'S NOTICE OF VOLUNTARY DISMISSAL

Appellant Brian W. Davies, MD, hereby gives notice that the instant appeal is voluntarily dismissed with prejudice.

Respectfully submitted,

KEVIN P. BYERS CO., L.P.A.

KPB/ELS  
Kevin P. Byers 0040253  
One Columbus  
10 West Broad Street, Suite 260  
Columbus, Ohio 43215  
614.228.6283 Fax 228.6425

Attorney for Brian W. Davies, MD

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO

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CLERK OF COURTS-CV

Certificate of Service

I certify that a true copy of the foregoing document was placed in first class U.S. Mail this 27<sup>th</sup> day of October, 1999, addressed to Assistant Attorney General Rebecca J. Albers, Health & Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3428.

KPB/ELS  
Kevin P. Byers

ON COMPUTER  
11

KEVIN P. BYERS  
CO., LPA  
◆ ◆ ◆  
One Columbus  
614.228.6283

*Am*

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

This CONSENT AGREEMENT is entered into by and between BRIAN W. DAVIES, M.D., and THE STATE MEDICAL BOARD OF OHIO, a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

BRIAN W. DAVIES, M.D., 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 STATE MEDICAL BOARD OF OHIO 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 STATE MEDICAL BOARD OF OHIO 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 Paragraphs E through G below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement. Such express reservation includes, but is not limited to, the right to institute formal proceedings based upon any violations related to patient care or involving criminal acts, regardless of whether the acts underlying such additional violations are related to the violation of Section 4731.22(B)(26), Ohio Revised Code, as set forth below.

STEP I CONSENT AGREEMENT

BRIAN W. DAVIES, M.D.

PAGE 2

- C. BRIAN W. DAVIES, M.D., is licensed to practice medicine and surgery in the State of Ohio.
- D. BRIAN W. DAVIES, M.D., STATES that he is not licensed to practice medicine and surgery any other state or jurisdiction.
- E. BRIAN W. DAVIES, M.D., ADMITS that on or about February 27, 1986, he entered into a Consent Agreement with the State Medical Board of Ohio. DOCTOR DAVIES further ADMITS that he admitted in such Consent Agreement that he has been chemically dependent on ketamine and that he has undergone treatment and aftercare therapy at the Ridgeview Institute in Georgia for said chemical dependency, and that he also agreed in such Consent Agreement to certain probationary terms, conditions, and limitations for a minimum of two (2) years. A copy of this Consent Agreement is attached hereto and incorporated herein.

DOCTOR DAVIES further ADMITS that on or about February 13, 1987, the Board issued to him a Notice of Opportunity for Hearing alleging that he had violated the conditions of limitation placed by the Board upon his certificate to practice, including that he had failed to submit quarterly declarations of compliance; that he had failed to submit documentary evidence of participation in A.A., Caduceus, and aftercare treatment and therapy; and that he had failed to submit to twice monthly urine screens. A copy of this Notice of Opportunity for Hearing is attached hereto and fully incorporated herein.

DOCTOR DAVIES further ADMITS that on or about October 16, 1987, the Board entered an Order suspending his certificate for a period of three months; providing that upon reinstatement, his certificate to practice medicine and surgery would be subject to certain probationary terms, conditions, and limitations for a period of two (2) years; and establishing that his February 1986 Consent Agreement would not be terminated until deemed appropriate by the Board. DOCTOR DAVIES further ADMITS that the suspension, probation, and Consent Agreement termination requirement were based upon the Board's findings that he had violated certain conditions of limitation placed by the Board upon his certificate to practice. A copy of this Entry of Order is attached hereto and fully incorporated herein.

DOCTOR DAVIES further ADMITS that on or about October 16, 1989, he was released from the terms of such probation.

- F. BRIAN W. DAVIES, M.D., ADMITS that on or about October 14, 1998, the Board issued to him a Notice of Opportunity for Hearing alleging that he

suffered from an “[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use of drugs, alcohol, or other substances that impair ability to practice,” as that clause is used in Section 4731.22(B)(26), Ohio Revised Code. A copy of this Notice of Opportunity is attached hereto and fully incorporated herein.

DOCTOR DAVIES further ADMITS that a hearing on such allegations was held on March 4, 1999, at which time he and others testified, and documentary evidence was submitted, concerning matters including his drug use, treatment, and monitoring history. DOCTOR DAVIES further ADMITS that the resulting Report and Recommendation, filed on or about May 5, 1999, accurately describes his drug use, treatment, and monitoring history.

DOCTOR DAVIES further ADMITS that on or about June 9, 1999, the Board entered an Order suspending his certificate for an indefinite period of time, but not less than six months, and providing that, upon reinstatement, his certificate to practice medicine and surgery would be subject to certain probationary terms, conditions, and limitations for a period of ten (10) years. DOCTOR DAVIES further ADMITS that the suspension and probation were based upon the Board’s findings that he had violated Section 4731.22(B)(26), Ohio Revised Code. A copy of this Entry of Order is attached hereto and fully incorporated herein.

DOCTOR DAVIES further ADMITS that he appealed such Order to the Franklin County Court of Common Pleas and filed a motion requesting a stay of such Order. DOCTOR DAVIES further ADMITS that on July 13, 1999, the requested stay was granted.

- G. DOCTOR DAVIES further ADMITS that urine specimens which he submitted for testing on August 20 and 24, 1999, tested positive for butalbital, and that the urine specimen which he submitted on August 31, 1999, tested positive for butalbital and codeine. DOCTOR DAVIES further ADMITS that, on or about September 13, 1999, in light of the aforementioned positive screen results, the Ohio Physicians Effectiveness Program, which has been conducting monitoring of DOCTOR DAVIES since February 3, 1999, directed DOCTOR DAVIES to contact a treatment provider to arrange for an assessment of his treatment needs.

DOCTOR DAVIES further ADMITS that on September 14, 1999, he, through his attorney, notified the State Medical Board that he had again suffered a relapse of his chemical dependency. DOCTOR DAVIES STATES that he voluntarily ceased practice on September 14, 1999, and that he has not practiced medicine and surgery since that date.

**AGREED CONDITIONS**

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, BRIAN W. DAVIES, M.D., knowingly and voluntarily agrees with THE STATE MEDICAL BOARD OF OHIO, (hereinafter BOARD), to the following terms, conditions and limitations:

**REVOCATION / SUSPENSION OF CERTIFICATE**

1. The certificate of DOCTOR DAVIES to practice medicine and surgery in the State of Ohio shall be permanently REVOKED. Such revocation is stayed, and DOCTOR DAVIES' certificate is hereby SUSPENDED for an indefinite period of time, but not less than two (2) years;

**Sobriety**

2. DOCTOR DAVIES 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 DOCTOR DAVIES' history of chemical dependency;
3. DOCTOR DAVIES shall abstain completely from the use of alcohol;

**Releases; Quarterly Declarations and Appearances**

4. DOCTOR DAVIES 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 DOCTOR DAVIES' chemical dependency or related conditions, or for purposes of complying with the CONSENT AGREEMENT, whether such treatment or evaluation occurred before or after the effective date of this CONSENT AGREEMENT. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. DOCTOR DAVIES further agrees to provide the BOARD written consent permitting any treatment provider from whom he obtains treatment to notify the BOARD in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this CONSENT AGREEMENT.
5. DOCTOR DAVIES shall submit quarterly declarations under penalty of BOARD disciplinary action or criminal prosecution, stating whether there

has been compliance with all the conditions of this CONSENT AGREEMENT. The first quarterly declaration must be received in the BOARD's offices on the first day of the third month following the month in which the CONSENT AGREEMENT becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the BOARD's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the BOARD's offices on or before the first day of every third month;

6. DOCTOR DAVIES shall appear in person for quarterly interviews before the BOARD or its designated representative, or as otherwise directed by the BOARD.

If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. (Example: The first quarterly appearance is scheduled for February, but based upon the doctor's serious personal illness he is permitted to delay appearance until April. The next appearance will still be scheduled for May, three months after the appearance as originally scheduled.) Although the BOARD will normally give DOCTOR DAVIES written notification of scheduled appearances, it is DOCTOR DAVIES' responsibility to know when personal appearances will occur. If he does not receive written notification from the BOARD by the end of the month in which the appearance should have occurred, DOCTOR DAVIES shall immediately submit to the BOARD a written request to be notified of his next scheduled appearance;

Drug & Alcohol Screens; Supervising Physician

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

Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR DAVIES shall submit to the BOARD for its prior approval the name of a supervising physician to whom DOCTOR DAVIES 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 DOCTOR DAVIES. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable

person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the BOARD of any positive screening results;

DOCTOR DAVIES shall ensure that the supervising physician provides quarterly reports to the BOARD, on forms approved or provided by the BOARD, verifying whether all urine screens have been conducted in compliance with this CONSENT AGREEMENT, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his responsibilities;

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

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

8. The BOARD retains the right to require, and DOCTOR DAVIES agrees to submit, blood or urine specimens for analysis at DOCTOR DAVIES' expense upon the BOARD's request and without prior notice;

#### **Rehabilitation Program**

9. DOCTOR DAVIES shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., or Caduceus, no less than three (3) times per week. Substitution of any other specific program must receive prior BOARD approval;

DOCTOR DAVIES shall submit with each quarterly declaration required under Paragraph 5 of this CONSENT AGREEMENT acceptable documentary evidence of continuing compliance with this program;

#### **CONDITIONS FOR REINSTATEMENT**

10. The BOARD shall not consider reinstatement of DOCTOR DAVIES' certificate to practice medicine and surgery unless and until all of the following conditions are met:

- a. DOCTOR DAVIES shall submit an application for reinstatement, accompanied by appropriate fees, if any. Such application shall not be made for a minimum period of eighteen (18) months from the effective date of this CONSENT AGREEMENT;
- b. DOCTOR DAVIES shall demonstrate to the satisfaction of the BOARD that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
  - i. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that DOCTOR DAVIES has successfully completed any required inpatient treatment;
  - ii. Evidence of continuing full compliance with an aftercare contract or consent agreement;
  - iii. Two written reports indicating that DOCTOR DAVIES' ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the BOARD for making such assessments and shall include any recommendations for treatment, monitoring, or supervision of DOCTOR DAVIES, and any conditions, restrictions, or limitations that should be imposed on DOCTOR DAVIES' practice. The reports shall also describe the bases for these determinations.

Prior to the assessments, which shall be made within the six months immediately preceding the application for reinstatement, DOCTOR DAVIES shall provide the individuals or providers approved by the BOARD for making such assessments with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this CONSENT AGREEMENT.
- c. DOCTOR DAVIES shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the BOARD or, if the BOARD and DOCTOR DAVIES are unable to agree on the terms of a written CONSENT

AGREEMENT, then DOCTOR DAVIES 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. In either event, DOCTOR DAVIES agrees that his certificate to practice medicine and surgery in Ohio shall be subject to the terms, conditions, and limitations for a period of at least ten (10) years.

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

11. As DOCTOR DAVIES will not have engaged in the active practice of medicine and surgery for a period of time in excess of two years, DOCTOR DAVIES shall provide proof acceptable to the Board that he has taken and passed the SPEX (Special Purpose Examination), or its equivalent as approved in advance by the BOARD, within six months immediately preceding the application for reinstatement.

The Board may also exercise its discretion under Section 4731.222, Ohio Revised Code, to require further evidence of DOCTOR DAVIES' fitness to resume practice;

#### **REQUIRED REPORTING BY LICENSEE**

12. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR DAVIES 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. DOCTOR DAVIES 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, DOCTOR DAVIES shall provide this BOARD with a copy of the return receipt as proof of notification within thirty (30) days of receiving that return receipt.

13. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR DAVIES 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, DOCTOR DAVIES 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, DOCTOR DAVIES 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**

DOCTOR DAVIES 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.

DOCTOR DAVIES hereby releases THE STATE MEDICAL BOARD OF OHIO, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

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

Further, this information may be reported to appropriate organizations, data banks and governmental bodies.

This CONSENT AGREEMENT, upon becoming effective, shall supersede the terms of the BOARD's Order of June 9, 1999, in the Matter of Brian W. Davies, M.D.

**EFFECTIVE DATE**

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

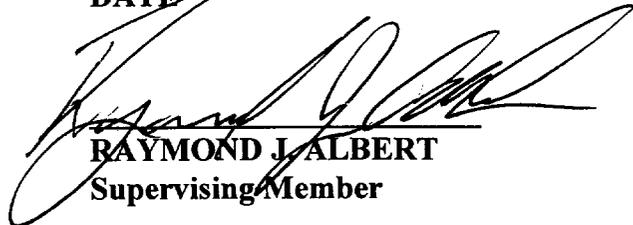
  
BRIAN W. DAVIES, M.D.

  
ANAND G. GARG, M.D.  
Secretary

9/21/99  
DATE

10/13/99  
DATE

  
KEVIN P. BYERS, ESQ.  
Attorney for Dr. DAVIES

  
RAYMOND J. ALBERT  
Supervising Member

9/24/99  
DATE

10/13/99  
DATE

  
ANNE B. STRAIT, ESQ.  
Assistant Attorney General

10/13/99  
DATE

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

OHIO STATE MEDICAL BOARD

BRIAN W. DAVIES, M.D., :

APPELLANT, :

v. :

STATE MEDICAL BOARD OF OHIO, :

APPELLEE. :

JUL 16 1999

CASE NO. 99CVF06-5363

JUDGE O'NEILL

**DECISION AND ENTRY GRANTING APPELLANT'S MOTION FOR  
SUSPENSION OF AGENCY ORDER**

Rendered this 13<sup>th</sup> day of July, 1999.

O'Neill, D., J.

Before this Court is the Appellant's Motion for Suspension of Agency Order filed June 30, 1999. The Appellee's Memorandum in Opposition to Appellant's Motion for Stay Pending Appeal filed July 7, 1999.

The Appellant Brian W. Davies (hereinafter "Appellant") asserts that he will suffer an unusual hardship if the State Medical Board's Order suspending Appellant's medical license stands during the pendency of his appeal. The Appellant points to the disastrous financial loss he will suffer if he cannot continue to practice medicine. Among the results of the suspension, the Appellant asserts he will lose his practice, his source of income and be unable to pay his debts as well as support his family. In addition, Appellant states that all staff employed by his practice will suddenly lose their jobs. The Appellant further argues that there is no threat to the public health, safety, and welfare if the State Medical Board's Order is suspended.

99 JUL 13 PM 3:07  
CLERK OF COURTS  
FRANKLIN CO., OHIO

Moreover, the Appellee State Medical Board (hereinafter "Appellee") argues that the Appellant has failed to show that he will suffer an unusual hardship if the suspension lies. In addition, the Appellee asserts that if Appellant is permitted to continue to practice medicine, there is a threat to the public health, safety, and welfare.

The present case arises from Appellant's appeal of the State Medical Board's Order suspending Appellant's certificate to practice medicine and surgery in Ohio for an indefinite period of time, but not less than six months. The Appellant is a board-certified plastic and reconstructive surgeon licensed to practice medicine and surgery in Ohio since 1983. In 1986, the Appellant admitted to the State Medical Board that he was chemically dependent on Ketamine. The State Medical Board entered into a Consent Agreement with Appellant which set forth several probationary terms and conditions. However, the Appellant failed to abide by the terms of the Consent Agreement and in 1987 the State Medical Board suspended Appellant's certificate for three months and placed him on probation for a period of two years subject to several terms and conditions. In 1997, the Appellant suffered a relapse. Due to pain from a shoulder injury and tendonitis in his wrist, the Appellant became chemically dependent on Lorcet samples. The Appellant voluntarily entered a treatment center in Palm Springs California from April 27, 1998 through June 24, 1998 and resumed practicing medicine on July 6, 1998. Upon review of the evidence before it, the State Medical Board issued an Order suspending Appellant's certificate to practice medicine for an indefinite period of time, not less than six

VIRGINIA L. BARNEY  
CLERK OF THE FRANKLIN COUNTY COMMON PLEAS COURT, COLUMBUS, OHIO 43215  
CIVIL DIVISION

JUDGE D. ONEILL

BRIAN W. DAVIES MD,  
  
APPELLANT,  
  
VS.  
  
OHIO STATE MEDICAL BOARD,  
  
APPELLEE.

99CVF-06-5363

CASE NUMBER

OHIO STATE MEDICAL BOARD

JUL 07 1999

CLERK'S ORIGINAL BRIEFING SCHEDULE

-----	LATEST TIME OF OCCURRENCE
FILING NOTICE OF APPEAL (AND DEMAND FOR RECORD, IF REQUIRED)	06/30/99
FILING OF RECORD	07/28/99
DISPOSITIVE MOTIONS	08/11/99
FILING OF RECORD, IF EXTENSION GRANTED	08/25/99
FILING OF APPELLANT'S BRIEF	09/08/99
FILING OF APPELLEE'S BRIEF	09/22/99
FILING OF APPELLANT'S REPLY BRIEF AND NON-ORAL HEARING DATE	09/29/99

NOTICE TO ALL PARTIES

-----  
ALL ATTORNEYS AND PARTIES SHOULD MAKE THEMSELVES FAMILIAR WITH THE COURT'S LOCAL RULES, INCLUDING THOSE REFERRED TO IN THIS BRIEFING SCHEDULE. IN ORDER TO COMPLY WITH THE CLERK'S BRIEFING SCHEDULE IT WILL BE NECESSARY FOR ATTORNEYS AND PARTIES TO PURSUE THEIR APPEALS VIGOROUSLY FROM THE DAY THE APPEALS ARE FILED.

BY ORDER OF THE COURT OF COMMON PLEAS,  
FRANKLIN COUNTY, OHIO

\_\_\_\_\_  
DATE

\_\_\_\_\_  
VIRGINIA L. BARNEY, CLERK

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

Brian W. Davies, MD,  
2569 Romig Road, Suite 101  
Akron, Ohio 44320  
Appellant,

v.

State Medical Board of Ohio,  
77 South High St., 17th Floor  
Columbus, Ohio 43266-0315  
Appellee.

\*

CASE NO. \_\_\_\_\_

\*

JUDGE \_\_\_\_\_

\*

Appeal from the State Medical Board of Ohio

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APPELLANT'S NOTICE OF APPEAL

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Pursuant to RC 119.12, notice is hereby given that Appellant, Brian W. Davies, MD, appeals the decision and order of the State Medical Board dated June 9, 1999, mailed June 29, 1999, and received by Appellant's counsel on June 30, 1999, (copy attached as Exhibit A.) The Medical Board order is not supported by the necessary quantum of reliable, probative and substantial evidence nor is it in accordance with law.

Respectfully submitted,

KEVIN P. BYERS CO., L.P.A.

*KPB-JAS*

Kevin P. Byers 0040253

One Columbus

10 West Broad Street, Suite 260

Columbus, Ohio 43215

614.228.6283 Fax 228.6425

Attorney for Brian W. Davies, MD

JUN 9 1999

OHIO STATE MEDICAL BOARD

SMB original

KEVIN P. BYERS  
CO., LPA

◆ ◆ ◆  
One Columbus  
614.228.6283

Certificate of Service

I certify that an original of the foregoing document was hand delivered this 30th day of June, 1999, to the Clerk of the Common Pleas Court of Franklin County, 369 South High Street, 3rd Floor, Columbus, Ohio 43215 and also a copy was hand delivered to the office of Assistant Attorney General James M. McGovern, Health & Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3428.

KPB/AS  
Kevin P. Byers

OHIO STATE MEDICAL BOARD  
JUN 30 1999



# State Medical Board of Ohio

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

June 9, 1999

Brian W. Davies, M.D.  
2569 Romig Road, Suite 101  
Akron, OH 44320

Dear Doctor Davies:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on June, 9, 1999, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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

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

THE STATE MEDICAL BOARD OF OHIO

*Anand G. Garg, M.D.*  
Anand G. Garg, M.D.  
Secretary

AGG:jam  
Enclosures

CERTIFIED MAIL RECEIPT NO. Z 233 839 238  
RETURN RECEIPT REQUESTED

cc: Kevin P. Byers, Esq.  
CERTIFIED MAIL RECEIPT NO. Z 233 839 239  
RETURN RECEIPT REQUESTED

*mailed 6/29/99*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on June 9, 1999, 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 Brian W. Davies, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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

(SEAL)

Anand G. Garg, M.D.  
Anand G. Garg, M.D.  
Secretary *ang*

JUNE 9, 1999  
Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF

\*

\*

BRIAN W. DAVIES, M.D.

\*

**ENTRY OF ORDER**

This matter came on for consideration before the State Medical Board of Ohio on June 9, 1999.

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

It is hereby ORDERED that:

1. The certificate of Brian W. Davies, M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than six (6) months.
2. The Board shall not consider reinstatement of Dr. Davies' certificate to practice unless all of the following minimum requirements have been met:
  - a. Dr. Davies shall submit an application for reinstatement, accompanied by appropriate fees.
  - b. Within thirty days of the effective date of this Order, or as otherwise approved by the Board, Dr. Davies shall submit to appropriate treatment, as determined by an informed assessment of his current needs. Such assessment and treatment shall be by an approved treatment provider or providers for drug and alcohol dependency. Prior to the initial assessment, Dr. Davies shall furnish the approved provider copies of the Board's Summary of the Evidence, Findings of Fact, Conclusions, Order, and any other documentation from the

hearing record which the Board may deem appropriate or helpful to that provider. Within ten (10) days after the completion of the initial assessment, Dr. Davies shall cause a written report to be submitted to the Board from the approved provider, which report shall include:

- i. A detailed plan of recommended treatment based upon the treatment provider's informed assessment of Dr. Davies' current needs;
  - ii. A statement indicating that Dr. Davies has entered into or commenced the recommended treatment program within forty-eight (48) hours of its determination;
  - iii. A copy of a treatment contract signed by Dr. Davies establishing the terms of treatment and aftercare, including any required supervision or restrictions of practice during treatment or aftercare; and
  - iv. A statement indicating that the treatment provider will immediately report to the Board any failure by Dr. Davies to comply with the terms of the treatment contract during inpatient or outpatient treatment or aftercare.
- c. For the duration of the suspension period:
- i. Dr. Davies shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Dr. Davies' history of chemical dependency.
  - ii. Dr. Davies shall abstain completely from the use of alcohol.
  - iii. Dr. Davies shall submit to random urine screenings for drugs on a weekly basis or as otherwise directed by the Board. Dr. Davies 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.
  - iv. Within 30 days of the effective date of this Order, Dr. Davies shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Davies shall submit the required urine specimens. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the Board of any positive screening results.

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

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

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

- v. Dr. Davies shall submit blood and/or urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Davies' expense.
- vi. Dr. Davies 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. Davies' chemical dependency or related conditions, to the Board, to treating and monitoring physicians, and to others involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations. Dr. Davies 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 Order.
- vii. Dr. Davies shall maintain participation in an alcohol and drug rehabilitation program, such as AA, NA, or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval. In addition, at his appearances before the Board or its designated representative, Dr. Davies shall submit acceptable documentary evidence of continuing compliance with this program.

- viii. Dr. Davies shall obey all federal, state, and local laws.
  - d. In the event that Dr. Davies has not been engaged in active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.
3. Upon reinstatement, Dr. Davies shall be subject to the following PROBATIONARY terms, conditions, and limitations, for a period of at least ten years:

- a. Dr. Davies shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these terms, conditions, and limitations.
- b. Dr. Davies shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
- c. Dr. Davies shall appear in person for interviews before the full Board or its designated representative within three months of the date in which probation becomes effective, at three month intervals thereafter, and upon his request for termination of the probationary period, or as otherwise requested by the Board.

If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. Although the Board will normally give him written notification of scheduled appearances, it is Dr. Davies' responsibility to know when personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Davies shall immediately submit to the Board a written request to be notified of his next scheduled appearance.

- d. Dr. Davies shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of probation. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

- e. Within 30 days of the effective date of this Order, Dr. Davies shall provide a copy of this Order to all employers or entities with which he is under contract to provide physician services or is receiving training, and the Chief of Staff at each hospital where Dr. Davies has privileges or appointments. Further, Dr. Davies shall provide a copy of this Order to all employers or entities with which he contracts to provide physician services, or applies for or receives training, and the Chief of Staff at each hospital where Dr. Davies applies for or obtains privileges or appointments.
- f. In the event that Dr. Davies should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Davies must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
- g. If Dr. Davies violates probation in any respect, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period.
- h. Dr. Davies shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Dr. Davies' history of chemical dependency.
- i. Dr. Davies shall abstain completely from the use of alcohol.
- j. Dr. Davies shall submit to random urine screenings for drugs on a weekly basis or as otherwise directed by the Board. Dr. Davies shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

Within 30 days of the effective date of this Order, Dr. Davies shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Davies shall submit the required urine specimens. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the Board of any positive screening results.

Dr. Davies shall ensure that the supervising physician provides quarterly reports to the Board, on forms approved or provided by the Board,

verifying whether all urine screens have been conducted in compliance with this Order, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

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

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

- k. Dr. Davies shall submit blood and/or urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Davies' expense.
- l. Dr. Davies 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. Davies' chemical dependency or related conditions, to the Board, to treating and monitoring physicians, and to others involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations. Dr. Davies 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 Order.
- m. Dr. Davies shall maintain participation in an alcohol and drug rehabilitation program, such as AA, NA, or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval. In addition, at his appearances before the Board or its designated representative, Dr. Davies shall submit acceptable documentary evidence of continuing compliance with this program.
- n. Dr. Davies shall keep a log of all controlled substances prescribed. Such log shall be submitted in the format approved by the Board 30 days prior to Dr. Davies' personal appearance before the Board or its designated representative, or as otherwise directed by the Board.

- o. Dr. Davies shall not, without prior Board approval, administer, dispense, or possess any controlled substances (except as allowed in paragraph 1h, above) as defined by state or federal law. In the event that the Board agrees at a future date to modify this order to allow Dr. Davies to administer or dispense controlled substances, Dr. Davies shall keep a log of all controlled substances administered, or dispensed. Such log shall be submitted in the format approved by the Board 30 days prior to Dr. Davies' personal appearance before the Board or its designated representative, or as otherwise directed by the Board.

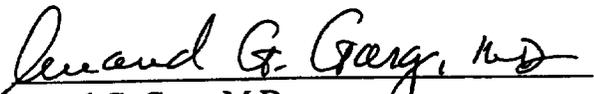
This requirement shall not be construed to limit Dr. Davies' ability to order that controlled substances be administered by another appropriately licensed health care professional to a patient for purposes of a surgical procedure.

- p. If any declaration or report required by this Order is not received in the Board's offices on or before its due date, Dr. Davies shall cease practicing medicine beginning the day following Dr. Davies' receiving notice from the Board of non-receipt, either by writing, telephone, or by personal contact, until the declaration or report is received in the Board offices. Any practice during this time period shall be considered unlicensed practice of medicine in violation of Section 4731.41, Ohio Revised Code.
- q. If, without permission from the Board, Dr. Davies fails to submit to random screenings for drugs and or alcohol, at least as frequently as required by paragraph 1j of this Order, Dr. Davies shall cease practicing medicine beginning the day following Dr. Davies' receiving notice from the Board of the violation and shall refrain from practicing medicine for 30 days. Practice during this time period shall be considered unlicensed practice in violation of Section 4731.41, Ohio Revised Code.
- r. If, without permission from the Board, Dr. Davies fails to participate in an alcohol and drug rehabilitation program, at least as frequently as required by paragraph 1m of this Order, Dr. Davies shall cease practicing medicine beginning the day following Dr. Davies' receiving notice from the Board of the violation and shall refrain from practicing medicine for 15 days. Practice during this time period shall be considered unlicensed practice in violation of Section 4731.41, Ohio Revised Code.
- s. If Dr. Davies violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

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

This Order shall become effective thirty (30) days from the date of mailing of notification of approval by the State Medical Board of Ohio. In the thirty (30) day interim, Dr. Davies shall not undertake the care of any patient not already under his care.

(SEAL)

  
Anand G. Garg, M.D.  
Secretary

JUNE 9, 1999

Date

1999 MAY 25 PM 3:47

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

The Matter of Brian W. Davies, M.D., was heard by R. Gregory Porter, Attorney Hearing Examiner for the State Medical Board of Ohio, on March 4, 1999.

**INTRODUCTION**

**I. Basis for Hearing**

- A. By letter dated October 14, 1998, the State Medical Board of Ohio [Board] notified Brian W. Davies, M.D., that it had proposed to determine whether to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board based its proposed action on the following allegations:
- (1) On or about February 27, 1986, Dr. Davies entered into a Consent Agreement with the State Medical Board of Ohio. In this Consent Agreement, Dr. Davies admitted that he had been chemically dependent on Ketamine, and that he had undergone treatment and aftercare therapy at the Ridgeview Institute in Georgia for said chemical dependency. Dr. Davies also agreed to certain probationary terms, conditions, and limitations for a minimum of two years.
  - (2) On or about February 13, 1987, the Board issued to Dr. Davies a notice of opportunity for hearing alleging that he had violated the conditions of limitation placed by the Board upon his certificate to practice by failing to submit quarterly declarations of compliance; by failing to submit documentary evidence of participation in A.A., Caduceus, and aftercare treatment and therapy; and by failing to submit to twice monthly urine screens.

Thereafter, on or about October 16, 1987, the Board entered an Order suspending Dr. Davies' certificate for a period of three months; providing that upon reinstatement, his certificate to practice medicine and surgery would be subject to certain probationary terms, conditions, and limitations for a period of two years; and establishing that his February 1986 Consent Agreement would not be terminated until deemed appropriate by the Board. The suspension, probation, and Consent Agreement termination requirement were based upon the Board's findings that Dr. Davies had

1999 MAY 25 PM 13:47

violated certain conditions of limitation placed by the Board upon his certificate to practice.

On or about October 16, 1989, Dr. Davies was released from the terms of his probation.

- (3) On or about October 8, 1998, Dr. Davies admitted to a Board investigator that after undergoing two hand surgeries in April 1998 he began abusing Vicodin, by taking ten to twelve tablets per day, and that he thereafter underwent treatment at Life's Journey Center, in Palm Springs, California.

The Board alleged that Dr. Davies' acts, conduct, and/or omissions as alleged above, individually and/or collectively, constituted "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code."

Accordingly, the Board advised Dr. Davies of his right to request a hearing in this matter. (State's Exhibit 1)

- B. On November 13, 1998, Kevin P. Byers, Esq., submitted a written hearing request on behalf of Dr. Davies. (State's Exhibit 2)

## II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by James M. McGovern, Assistant Attorney General.
- B. On behalf of the Respondent: Kevin P. Byers, Esq.

## EVIDENCE EXAMINED

### I. Testimony Heard

- A. Presented by the State
1. Peter J. Vitucci
  2. Brian W. Davies, M. D., as if on cross-examination
  3. Scott Weekley, as if on cross-examination

B. Presented by Respondent

Brian W. Davies, M.D.

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1-7: Procedural exhibits.
2. State's Exhibit 8: Copy of a March 10, 1986, Consent Agreement between Brian W. Davies, M. D., and the Board.
3. State's Exhibit 9: Copy of a February 13, 1987, notice of opportunity for hearing to Dr. Davies from the Board.
4. State's Exhibit 10: Collection of documents consisting of copies of the following: an October 16, 1987, Certification; an October 16, 1987, Entry of Order; a September 18, 1987, Report and Recommendation; an excerpt from the draft minutes of the October 14, 1987, meeting of the Board; certified mail receipts, and an October 16, 1987, cover letter to Dr. Davies from the Board.
- \* 5. State's Exhibit 11: Copy of the medical records concerning Dr. Davies' treatment at Life's Journey Center, Palm Springs, California, from April 27, 1998, through June 24, 1998; a copy of an October 20, 1998, Consent for Disclosure of these records is attached.

B. Presented by the Respondent.

1. Respondent's Exhibit A: Curriculum vitae of Brian W. Davies, M.D.
2. Respondent's Exhibit B: Copy of title page, list of consultants, Acknowledgments, and Table of Contents, from *Mosby's Perioperative Nursing Series: Plastic and Reconstructive Surgery*.
3. Respondent's Exhibit D: Copy of a November 3, 1998, letter to the Board from Scott Weekley, Practice Administrator, Brian W. Davies, M.D., Inc.
4. Respondent's Exhibit E through H: Copies of a newspaper articles that concern or mention Dr. Davies' practice.

1999 MAY 15 PM 3:47

- \* 5. Respondent's Exhibit I: Copy of medical records concerning Dr. Davies' 1998 hand surgery.
- \* 6. Respondent's Exhibit J: Copy of medical records concerning Dr. Davies' 1997 treatment for a rotator cuff injury.
- \* 7. Respondent's Exhibit L: Copy of a November 20, 1998, letter to Kevin P. Byers, Esq. from Robert A. Liebelt, M.D.
- \* 8. Respondent's Exhibit M: Copy of a January 18, 1999, letter to Mr. Byers from Christopher Adelman, M.D.
- 9. Respondent's Exhibit N: February 24, 1999, Affidavit of Scott Weekley.
- \* 10. Respondent's Exhibit O: Copy of a February 3, 1999, Advocacy Contract between the Ohio Physicians Effectiveness Program, Inc. [OPEP], and Dr. Davies; a February 22, 1999, amendment to that contract is attached.
- \* 11. Respondent's Exhibit P: Copy of a March 3, 1999, letter to Mr. Byers from Edward J. Poczekaj, CEAP, CCDC III, Director of Field Service, OPEP; copies of drug screen results are attached.
- 12. Respondent's Exhibit Q: Copy of a February 24, 1999, newspaper article from the Akron Beacon-Journal, entitled, *Plastic surgeon faces allegations of drug use*, printed from World Wide Web address: [www.ohio.com/bj/news/docs/018530.htm](http://www.ohio.com/bj/news/docs/018530.htm).
- 13. Respondent's Exhibit R: Copy of Respondent's Notice of Witnesses and Documents.
- \* 14. Respondent's Exhibit S: February 24, 1999, letter to Dr. Davies from a patient.

C. Post-Hearing Admissions to the Record

- \* 1. Respondent's Exhibit T: Copy of Dr. Liebelt's medical records for Dr. Davies for January 8, February 17, and March 12, 1999; and a copy of a March 9, 1999, letter to Dr. Liebelt from Attorney Byers requesting this material.
- 2. Respondent's Exhibit U: March 23, 1999, Affidavit of Brian W. Davies, M.D.
- 3. Board Exhibit A: Respondent's March 25, 1999, motion for the submission into evidence of Respondent's Exhibits T and U.

STATE MEDICAL BOARD  
OF OHIO

1999 MAY 25 PM 3:48

4. Board Exhibit B: April 1, 1999, Entry granting Respondent's motion for the submission into evidence of Respondent's Exhibits T and U.

**Note:** All exhibits marked with an asterisk [\*] have been sealed to protect patient confidentiality.

### PROCEDURAL MATTERS

The hearing record was held open until April 1, 1999, at the request of the Respondent in order to give him an opportunity to supplement the hearing record with additional evidence, and to give the State an opportunity to review this evidence. These items were received into evidence on April 1, 1999, and the hearing record closed on that date.

### SUMMARY OF THE EVIDENCE

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

#### *Background Information*

1. Brian W. Davies, M.D., received his Doctor of Medicine degree in 1978 from Indiana University. In 1983, Dr. Davies completed a residency in general surgery at Indiana University Hospitals, Indianapolis, Indiana. From 1983 to 1984, Dr. Davies attended a residency in surgical subspecialties at Akron General Medical Center, Akron, Ohio. Next, from 1984 to 1986, Dr. Davies attended a residency in plastic surgery at that same institution. During this time period Dr. Davies also received training in hand surgery at the Cleveland Clinic. Following that, from 1986 to 1987, Dr. Davies attended a fellowship in aesthetic plastic surgery at the Manhattan Eye, Ear, and Throat Hospital, New York, New York. Also in 1987, Dr. Davies attended a fellowship in craniofacial surgery at Mt. Sinai Hospital, Cleveland, Ohio. Finally, from 1987 to 1988, Dr. Davies attended a fellowship in microsurgery at the Royal Melbourne Hospital, Melbourne, Australia. Dr. Davies is board-certified in plastic and reconstructive surgery and in surgery of the hand. Moreover, Dr. Davies testified that he has recently received added qualifications in cosmetic surgery. (Respondent's Exhibit [Resp. Ex.] A; Hearing Transcript at pages [Tr.] 18, 93-94)

Dr. Davies testified that he has published 30 papers during his career. Dr. Davies further testified that he is an associate professor of plastic surgery at NEOCOM. (Resp. Exs. A and B; Tr. 94-99, 131-132)

1999 MAY 25 PM 3:48

2. Dr. Davies testified that he was licensed to practice medicine in Ohio in 1982 or 1983. Dr. Davies further testified that he does not hold physician licensure in any other state. (Tr. 18-19)

*Previous Board Action*

3. On or about February 27, 1986, Dr. Davies entered into a Consent Agreement with the Board. In that Consent Agreement, Dr. Davies admitted "that he has been chemically dependent on Ketamine," and that "he has undergone treatment and aftercare therapy at the Ridgeview Institute in Georgia" for that problem. In addition, under the terms of the Consent Agreement, Dr. Davies' certificate was placed under a number of probationary terms and conditions. Among these, Dr. Davies was required to attend Alcoholics Anonymous [AA] meetings at least once per week and submit proof acceptable to the Board of his attendance, to participate in aftercare treatment and a Caduceus group and furnish proof acceptable to the Board of such participation, to submit quarterly declarations of compliance to the Board, and to submit to urine screens twice per month on a random basis. (State's Exhibit [St. Ex.] 8)
4. On or about February 13, 1987, the Board sent a notice of opportunity for hearing to Dr. Davies wherein the Board alleged that Dr. Davies had violated his February 27, 1986, Consent Agreement. The Board alleged that Dr. Davies had failed to submit evidence of his participation in AA, aftercare, and Caduceus; that he had failed to submit to urine screens as required, and that he had failed to submit quarterly declarations of compliance. (St. Ex. 9)

On October 16, 1987, following a hearing, the Board found that Dr. Davies had failed to comply with his February 27, 1986, Consent Agreement, the Board ordered that Dr. Davies' certificate be suspended for a period of three months. In addition, the Board placed Dr. Davies on probation for a period of two years. Moreover, the Board ordered that the terms and conditions of Dr. Davies' Consent Agreement would remain in effect until terminated by the Board. (St. Ex. 10)

5. Concerning the events that gave rise to his February 1986 Consent Agreement, Dr. Davies testified that he had been abusing Ketamine, an anesthetic agent. Dr. Davies testified that he had used Ketamine occasionally, mainly at night, over a period of one or two years, and that he had obtained the medication from hospitals. Dr. Davies further testified that he had entered inpatient treatment for substance abuse in Georgia in 1984. Moreover, Dr. Davies testified that he had notified the Board during treatment of his problem, and that he had met with Dr. Cramblett, a Board Member, shortly after his return from treatment. Dr. Davies testified that some time passed and, in 1986, he was contacted by the Board and asked to sign a Consent Agreement, which he agreed to do. (Tr. 19-23)

1999 MAY 25 PM 3:48

Dr. Davies testified that, at the time he signed the Consent Agreement, he was to leave shortly thereafter to participate in a fellowship in New York. Dr. Davies further testified that he had been encouraged to sign the agreement by a physician who offered to take responsibility for monitoring Dr. Davies. (Tr. 19-20)

6. Dr. Davies testified that, in February 1987, he was cited by the Board for failure to supply necessary documentation. Dr. Davies denied that he had suffered any sort of relapse, however. Dr. Davies testified that the Board's citation was followed by a hearing, and that he was subsequently suspended for three months and required to continue under the terms of his Consent Agreement. Dr. Davies testified that he was subsequently released from his Consent Agreement in 1989. (Tr. 23-26)

*Current Allegations*

7. Dr. Davies testified that, sometime just before Christmas 1996, he suffered a shoulder injury as the result of a car accident. Following that injury, Dr. Davies began suffering from chronic shoulder pain. To alleviate the pain, Dr. Davies started taking large amounts of non-steroidal anti-inflammatory medication [NSAIDS]. He also received cortisone injections in his shoulder. Dr. Davies began having gastrointestinal symptoms in the fall of 1997 as a result of his use of NSAIDS. Dr. Davies testified that the biggest problem caused by the shoulder pain was sleeping. (Resp. Ex. J; Tr. 26-28)

Dr. Davies testified that, in late 1997, he developed tendonitis in his left wrist. Dr. Davies testified that this had resulted from his use of an ultrasonic liposuction device in his practice, which he had begun to use around August 1997. Dr. Davies stated that this device was very stressful on his wrist, and that his wrist eventually became quite swollen. Dr. Davies' practice associate, Dr. Pennington, treated Dr. Davies' wrist using steroid injections and a steroid patch over Dr. Davies' wrist. Nevertheless, the problem continued to worsen. (Resp. Ex. I; Tr. 29-30)

Dr. Davies testified that the wrist injury, coupled with his earlier shoulder injury, had made sleeping very difficult. "[T]he biggest problem is I had rotator cuff [problems] on one side and a wrist injury on the other side. And I couldn't get comfortable. I couldn't sleep at night." (Tr. 30-32)

8. Dr. Davies testified that, in September or October 1997, he began taking Lorcet to help him sleep at night. Dr. Davies obtained the Lorcet from samples in his office. Dr. Davies testified that took one or occasionally two Lorcet at night before he went to sleep. Dr. Davies testified that he took the "10/650" strength of Lorcet, which contains 10 mg. of hydrocodone. Dr. Davies testified that he started taking them only on occasion, as necessary, to help him sleep. (Tr. 30-34)

1998 MAY 15 PM 3:48

Dr. Davies stated that his use of Lorcet began to escalate in February 1998 when he started using it on weekends. Dr. Davies testified that Lorcet made him sleepy, and that he couldn't use it when working. He explained that "when you are working you don't notice the pain as much as when you don't have things that you have to do." Dr. Davies further testified that Lorcet helped him on weekends if he had a lot of pain. Dr. Davies noted that he may have used four Lorcet per day during February 1998. Dr. Davies denied ever having used Lorcet during a workday because it made him too tired. (Tr. 37-38, 100-101)

Dr. Davies testified that his use of Lorcet escalated again in April 1998 "because the pain escalated" and because he was developing a tolerance to the drug. Dr. Davies further testified that he had begun using four Lorcet at night, and that his weekend use had probably doubled. Moreover, Dr. Davies testified that the increased pain had resulted from a tendon in his wrist that was starting to tear. Finally, early in April 1998, while Dr. Davies was writing a prescription for a patient, the tendon ruptured. Dr. Davies stated that he "felt a pop, and [his] thumb wouldn't come back up." Dr. Davies testified that he was in constant pain after the tendon ruptured. He ceased practicing at that time. (Tr. 38-42, 50)

9. On April 11, 1998, Dr. Davies underwent surgery to repair the ruptured tendon; on April 14, 1998, he underwent a second surgery to repair carpal tunnel syndrome. Dr. Davies testified that, following these surgeries, his use of medication increased to 12 tablets per day of either Vicodin or Lorcet. Dr. Davies testified that the physician who had performed the surgery, Dr. Pennington, had prescribed Vicodin, one or two tablets every four hours. Dr. Davies testified that he took the Vicodin as prescribed. Dr. Davies testified that he would not have taken any more than 12 per day because of the danger of liver damage. Dr. Davies further testified that he did not use Lorcet in addition to the Vicodin he had been prescribed because of the liver toxicity issue. Dr. Davies testified that he believed that he had received a prescription for a three or four day supply of Vicodin. (Resp. Ex. I; Tr. 42-47)

Dr. Davies testified that Dr. Pennington had been aware of Dr. Davies' impairment history. Moreover, Dr. Davies testified that knowledge of his impairment history was "pretty public." Nevertheless, Dr. Davies testified that nobody had been aware that he had been self-treating with Lorcet except for his wife. Dr. Davies indicated that his wife had expressed concern about his use of Lorcet. (Tr. 31-33, 47-49)

10. Dr. Davies testified that, starting about one week after his second surgery, he had attempted to curtail his intake of Lorcet. Dr. Davies then "started having symptoms and [he] knew it was a problem." Dr. Davies testified that the symptoms were like the flu, and that he had never experienced that sensation before. Approximately two weeks after surgery, Dr. Davies left Akron and traveled to Houston to stay with a friend—a former college roommate who is also in recovery—to get that friend's help to stop using Lorcet.

1999 MAY 25 PM 3:48

Dr. Davies had hoped that, with his friend's help, he could stop using Lorcet on his own. Dr. Davies testified, however, that he had been unable to do that. Dr. Davies stayed in Houston for four or five days, then left to enter inpatient treatment at the Life's Journey Center [Life's Journey], in Palm Springs, California. Dr. Davies testified that he was no longer using Lorcet by the time he left Houston. (Tr. 49-52, 102-104)

Dr. Davies testified that he was treated at Life's Journey from April 27, 1998, until June 24, 1998. Dr. Davies testified that he had tried to get into the Betty Ford Clinic, but that he had instead been referred to Life's Journey, "which is a treatment center that [the Betty Ford Clinic uses] for longer-term treatment." During treatment, he attended 120 meetings in 90 days. Dr. Davies further testified that he had received Ambien at night to aid sleep, and that he had "felt horrible for about two weeks." (St. Ex. 11; Tr. 52-54)

A medical evaluation form from Life's Journey indicated that Dr. Davies had been using "20-25" Lorcet 10/650 per day. At hearing, Dr. Davies denied that he ever had used that much Lorcet and that that number was incorrect. Dr. Davies further testified that references in that evaluation to alcohol usage had occurred years before. Dr. Davies testified that he had not used alcohol since college. Moreover, Dr. Davies testified that references in the evaluation to Demerol and morphine arose from his recent surgeries when he had received one or the other of those substances. (St. Ex. 11; Tr. 56-59)

Dr. Davies testified that, sometime following his discharge, he returned to Life's Journey for approximately one week. Dr. Davies testified that he did so because he liked the people there and because the facility did a lot for him. Dr. Davies denied that he had had any potential relapse. (Tr. 64-66)

Dr. Davies testified that his family has been very supportive of his recovery efforts and was involved with his treatment at Life's Journey. (Tr. 128-129)

11. Dr. Davies returned to his practice on July 6, 1998. Dr. Davies testified that, after he returned to his practice, he took measures to restrict his access to drugs. Dr. Davies testified that "[t]here would be no more samples. We have three safes to lock everything up, including prescription pads, that could be potentially taken." Dr. Davies testified that the only samples his office accepts are anti-inflammatories. (Tr. 66-69)

Dr. Davies testified that he performs approximately 80 percent of his surgeries in his office, and that, consequently, drugs are kept there; however, they are kept in a locked safe. Dr. Davies further testified that all of the drugs kept and used at the office are carefully documented. (Tr. 86)

Dr. Davies testified that the only personnel who have access to the medication in his office are Scott Weekley, his office manager, and Ed Scheiner, a CRNA who contracts with Dr. Davies. (Tr. 117-118)

1999 MAY 25 PM 3:48

[Note that Dr. Davies has since made plans to move his practice to a hospital setting. See numbered paragraph 23, below.]

12. Dr. Davies testified that, within a month or two following his discharge from Life's Journey, he began seeing a psychologist, Christine Kemp, once or twice per week. Dr. Davies testified that he subsequently switched to seeing an addictionologist, Robert A. Liebelt, M.D., after speaking with a Board investigator in October 1998. Dr. Davies testified that he has been seeing Dr. Liebelt once per month since October or November 1998. (Tr. 61-64)

Dr. Davies testified that, since his discharge from Life's Journey, he has participated in AA meetings at least two times per week. Dr. Davies further testified that one of these meetings is for physicians and the other is a general meeting. Dr. Davies testified that he believes in AA, and that it has helped him and many other people. (Tr. 77-79)

13. Peter J. Vitucci testified that he is an investigator for the Board, and that he has been so employed for over 11 years. Inv. Vitucci noted that, prior to going to working for the Board, he had been an officer with the Ohio State Highway Patrol for 25 years. (Tr. 8-9)

Inv. Vitucci testified that, on September 8, 1998, he had received a complaint concerning a possible relapse by Dr. Davies. Inv. Vitucci testified that he spoke to a number of people who had been concerned about Dr. Davies' behavior and who indicated that Dr. Davies had "dropped out of sight for about three months." Inv. Vitucci testified that he then approached Dr. Davies about the matter. Inv. Vitucci testified that, in October 1998, he and Dr. Davies discussed Dr. Davies' "recent relapse, rehab and monitoring." Inv. Vitucci characterized Dr. Davies as "very cooperative" during this discussion. (Tr. 9-12)

14. Inv. Vitucci testified that Dr. Davies had originally stated that he had taken Vicodin. Inv. Vitucci testified that, during a subsequent contact, Dr. Davies stated that he had used Lorcet. Dr. Davies testified that Lorcet contains hydrocodone, which is the same ingredient used in Vicodin, "[t]hat's where the confusion is." Dr. Davies testified that Lorcet is a new medication that "is being pushed" in Dr. Davies' area. "[S]amples came by the truckload that were just left in the office." (Tr. 11, 34)
15. Inv. Vitucci testified that Dr. Davies discussed his shoulder and wrist injuries, and acknowledged that he had been taking up to 12 tablets of Lorcet per day. Dr. Davies also discussed his treatment at Life's Journey. Moreover, Dr. Davies acknowledged to Inv. Vitucci that he was not being monitored by anyone at that time. Nevertheless, he told Inv. Vitucci that he had been in the process of trying to arrange for monitoring with the help of his office manager, Mr. Weekley. Dr. Davies further told him that he had been seeing either a psychiatrist or a psychologist (the witness was uncertain which), and that Dr. Davies

1999 MAY 05 PM 3:48

had been attending two or three meetings of Alcoholics Anonymous [AA] per week.  
(Tr. 11-15)

Inv. Vitucci testified that he had also spoken to Mr. Weekley. Mr. Weekley told Inv. Vitucci that he was glad that the Board was getting involved because Mr. Weekley had not been sure what needed to be done. Mr. Weekley told Inv. Vitucci that he had hoped the Board would provide some guidance. (Tr. 13)

16. Inv. Vitucci testified that Dr. Davies told him that Dr. Davies was aware that there had been rumors that Dr. Davies had been abusing cocaine. Dr. Davies told Inv. Vitucci that these rumors were untrue. Inv. Vitucci further testified that he had noticed that Dr. Davies had sniffed several times during their meeting. (Tr. 13-14)

Dr. Davies testified that he had learned through one of his patients that there were rumors in the community that Dr. Davies had been abusing cocaine. Dr. Davies testified that he had told Inv. Vitucci about those rumors because he had been certain that Inv. Vitucci would hear about them during his investigation. "I was being fully honest with Mr. Vitucci, as I had in previous meetings, and told him everything, had given him all my records about my shoulder surgery, and I knew he would do an investigation, which I welcomed. But I alerted him that I had heard this, so he's certainly going to hear this." Dr. Davies testified that those rumors originated "from an area that is a little competitive." (Tr. 74-75)

Dr. Davies testified that he was deeply hurt by Inv. Vitucci's testimony at hearing that Inv. Vitucci had noticed that Dr. Davies had "sniffed several times" during their meeting. Dr. Davies testified that he took that testimony to insinuate that he had been using cocaine. Dr. Davies testified that it hurt him because he is struggling to get through the hearing and to stay sober every day. "I dealt very honestly with Mr. Vitucci. I welcomed him into my office. I signed any consent for records from anywhere or whatever he wanted. \* \* \* I guess what really bothered me is because it almost is like the rumors that are going around. That almost could be construed as another rumor." (Tr. 14, 75-76)

17. Dr. Davies testified that he began providing urine samples on a regular basis in October 1998, shortly after Inv. Vitucci's visit. "In retrospect, [Inv.] Vitucci helped me to get more stable with my efforts. \* \* \* So it really motivated us to make sure everything was done properly. \* \* \* Which, in retrospect, was a blessing." (Tr. 80-81)

Dr. Davies testified that, previously, in August 1998, he and Mr. Weekley had first discussed having Dr. Davies providing random urine samples. Dr. Davies testified that Mr. Weekley was initially going to be the person who would monitor him. Dr. Davies further testified that he had been concerned about confidentiality and didn't want to send the urine samples to a lab in his area. Dr. Davies testified that he and Mr. Weekley were in the process of trying to find a suitable lab at the time Inv. Vitucci visited Dr. Davies'

1999 MAY 25 PM 3:48

office. Dr. Davies testified that “[w]e had actually called one of [Dr. Davies’] attorneys, who has an interest in a testing company. And he was in the process of getting the kits to us. And that seemed to take a good period of time.” (Tr. 69-71)

Dr. Davies testified that Mr. Weekley is his nephew and that they have a close relationship. Dr. Davies acknowledged that there were shortcomings with their arrangement; nevertheless, Dr. Davies testified that he had trusted Mr. Weekley to be objective. Dr. Davies testified that both he and Mr. Weekley knew “the gravity of the situation.” Dr. Davies further stated that “it was for the welfare of both my family and the welfare of the office.” (Tr. 71-72)

Dr. Davies testified that he does not know if Mr. Weekley had been aware of Dr. Davies’ abuse of Lorcet at the time that the abuse was occurring. When asked why he would expect Mr. Weekley to recognize signs of abuse today if Mr. Weekley had been unaware of Dr. Davies’ previous abuse, Dr. Davies replied that “[t]hat’s a valid question.” Dr. Davies testified that he had been concerned about that and that they “were trying to work through that.” (Tr. 72-73)

Dr. Davies testified that, beginning in October 1998, Mr. Weekley used a urine test kit which tested for all of the major abused drugs, including opiates. Mr. Weekley was able to test for these on-site. If there was any question about the results the sample would be sent to a lab under an anonymous name. Dr. Davies testified that Mr. Weekley had asked him for samples frequently, up to four times per week, but did not always test them. Dr. Davies testified that he was never aware when he gave a sample whether it would be tested. Dr. Davies further testified that Mr. Weekley never told him which samples were tested, although he did see the results of several tests. Moreover, Dr. Davies testified that Mr. Weekley had sent one or two to the lab to be tested to ensure that the on-site test was accurate. (Tr. 81-83)

18. Mr. Weekley stated in an affidavit that he had conducted between 30 and 40 urine screens on a random basis on Dr. Davies from October 1998 through February 1999. Dr. Davies testified that Mr. Weekley had determined when those urine samples would be submitted. Dr. Davies further testified that he had never refused to submit a sample when asked to do so. (Resp. Ex. N; Tr. 122-123)

Dr. Davies testified that his brother had died after Dr. Davies’ discharge from Life’s Journey. Dr. Davies further testified that his family physician had placed him on Xanax for a period of time following his brother’s death. Moreover, Dr. Davies testified that his family physician had been aware of Dr. Davies’ impairment history. Dr. Davies testified that he had used the Xanax as prescribed. Dr. Davies testified that he discontinued taking Xanax after Dr. Liebelt told him to stop. (Tr. 83-85)

1999 MAY 25 PM 3:48

Mr. Weekley indicated that each of the urine samples that he tested had yielded negative results, except for the first one. That sample had tested positive due to Xanax that Dr. Davies was being prescribed. (Tr. 154-155)

19. On or about October 14, 1998, the Board issued to Dr. Davies a notice of opportunity for hearing. (St. Ex. 1)

20. On or about November 6, 1998, Dr. Davies underwent an assessment by Dr. Liebelt, who diagnosed Dr. Davies as suffering from: 1) "Opioid dependence in remission"; 2) "Major depression by history"; 3) "Resolving injury to right shoulder"; and 4) "Resolving surgery of left hand." In his November 20, 1998, report, Dr. Liebelt made a number of recommendations, including that Dr. Davies contact OPEP for monitoring. Dr. Davies testified that he has complied with each of Dr. Liebelt's recommendations. (Resp. Ex. L; Tr. 114-117)

Dr. Davies testified that he subsequently obtained a second opinion from Christopher Adelman, M.D., an addictionologist at St. Vincent Charity Hospital in Cleveland. Dr. Davies testified that both he and his wife met with Dr. Adelman on January 7, 1999. Dr. Adelman noted, among other things, that Dr. Davies had completed residential care "but has not followed through to develop a detailed continuing care/relapse prevention program." Dr. Adelman further noted that Dr. Davies "has not consistently used his sober support network. He has limited AA/NA meetings. He does not have a sponsor." Dr. Adelman also made several recommendations, including monitoring by OPEP and a complete psychological evaluation. Dr. Davies testified that he has complied with all these recommendations except for the complete psychological evaluation. Dr. Davies stated that he was unsure if his sessions with Dr. Liebelt had satisfied that recommendation. (Resp. Ex. M; Tr. 118-122, 133-136)

21. Dr. Davies entered into an Advocacy Contract with OPEP on February 3, 1999. Dr. Davies indicated that, although Dr. Pennington had been listed as his monitoring physician in that contract, Dr. Pennington is not currently his monitoring physician. Dr. Davies testified that Dr. Pennington has left Dr. Davies' practice and gone to work for one of Dr. Davies' competitors. Dr. Davies further testified that his current OPEP monitor is Edwin Scheiner, CRNA, and that his OPEP contract had been amended accordingly. (Resp. Ex. O; Tr. 126)

Two urine screens performed under Dr. Davies' contract with OPEP yielded negative results. These urine screens concern samples submitted by Dr. Davies on February 11 and 12, 1999. (St. Ex. P)

22. Dr. Davies testified that his wrist has healed well and is "actually pretty good." Dr. Davies further testified that his shoulder continues to bother him occasionally, but that he was placed by Dr. Liebelt on Trazadone, an antidepressant, that helps the pain. Dr. Davies

1999 MAY 25 PM 3:48

noted that he takes anti-inflammatory medication on occasion. Dr. Davies further testified that he avoids activities that aggravate his shoulder. (Tr. 85-86)

Dr. Davies testified that there has been negative publicity concerning this matter in the local press, including false information such as that Dr. Davies had been arrested and that his practice had been shut down. Dr. Davies testified that his family has also suffered from this negative publicity. (Resp. Ex. Q; Tr. 76-77)

23. By affidavit dated March 23, 1999, Dr. Davies stated that he is currently finalizing plans to move his practice to the Akron General Health and Wellness Center, Akron, Ohio. Dr. Davies stated that, at his new practice location, he "will perform all of [his] surgeries in the hospital's surgery center and will no longer need to stock controlled substances in [his] own O.R." Dr. Davies further stated that 100 percent of his surgeries will be performed "under the auspices of the hospital. Thus, [his] office will not maintain a supply of controlled substance anesthetic agents and analgesics." Dr. Davies further stated:

In this setting I will receive ongoing and consistent scrutiny of all aspects of my practice and my personal demeanor and conduct by my medical peers who are not a part of my practice. I also expect to continue to refuse controlled substance samples sent to my office. I remain steadfast in my devotion to recovery and cooperation with the Medical Board.

(Resp. Ex. U)

### FINDINGS OF FACT

The evidence presented at hearing supported the following allegations regarding Brian W. Davies, M.D., made by the Board in its October 14, 1998, notice of opportunity for hearing:

1. On or about February 27, 1986, Dr. Davies entered into a Consent Agreement with the Board. In this Consent Agreement, Dr. Davies admitted that he had been chemically dependent on Ketamine, and that he had undergone treatment and aftercare therapy at the Ridgeview Institute in Georgia for said chemical dependency. Dr. Davies also agreed to certain probationary terms, conditions, and limitations for a minimum of two years.
2. On or about February 13, 1987, the Board issued to Dr. Davies a notice of opportunity for hearing alleging that he had violated the conditions of limitation placed by the Board upon his certificate to practice by failing to submit quarterly declarations of compliance; by failing to submit documentary evidence of participation in A.A., Caduceus, and aftercare treatment and therapy; and by failing to submit to twice monthly urine screens.

1999 MAY 25 PM 3:48

Thereafter, on or about October 16, 1987, the Board entered an Order suspending Dr. Davies' certificate for a period of three months; providing that upon reinstatement, his certificate to practice medicine and surgery would be subject to certain probationary terms, conditions, and limitations for a period of two years; and establishing that his February 1986 Consent Agreement would not be terminated until deemed appropriate by the Board. The suspension, probation, and Consent Agreement termination requirement were based upon the Board's findings that Dr. Davies had violated certain conditions of limitation previously placed by the Board upon his certificate to practice.

On or about October 16, 1989, Dr. Davies was released from the terms of his Consent Agreement.

3. On or about October 8, 1998, Dr. Davies admitted to a Board investigator that after undergoing two hand surgeries in April 1998 he began abusing Vicodin, by taking up to twelve tablets per day, and that he thereafter underwent treatment at Life's Journey Center, in Palm Springs, California.

### CONCLUSIONS OF LAW

The acts, conduct, and/or omissions of Brian W. Davies, M.D., as set forth in the Findings of Fact, individually and/or collectively, constitute "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

\* \* \* \* \*

The evidence indicated that Dr. Davies relapsed by inappropriately taking Lorcet and Vicodin from late 1997 through April 1998. The evidence also indicated that Dr. Davies had had prior contact with the Board in 1986 for impairment, and in 1987 for failure to comply with the terms of a Consent Agreement. All of these matters are serious. Nevertheless, there is also mitigating evidence. Dr. Davies' testimony at hearing was credible, and he appeared to give an honest and forthright account of his history. This is Dr. Davies' first and only relapse. He has been sober since April 1998. Dr. Davies' relapse began due to a legitimate painful condition rather than a desire to "get high." In addition, there is no evidence that Dr. Davies has ever been dishonest with the Board—the 1987 violation of the terms of his Consent Agreement did not involve dishonesty or a relapse, but a failure to supply necessary documentation. Moreover, the Board originally learned of Dr. Davies' impairment in the 1980s because Dr. Davies volunteered that information. Finally, Dr. Davies has changed his practice from a private office to a hospital-based practice. Dr. Davies appears to be an individual who will be amenable to monitoring by the Board.

STATE MEDICAL BOARD  
OF OHIO  
1999 MAY 25 PM 13:48

**PROPOSED ORDER**

It is hereby ORDERED that:

1. The certificate of Brian W. Davies, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for a period of 90 days. Such suspension is **STAYED**, subject to the following **PROBATIONARY** terms, conditions, and limitations for a period of at least five years.

- a. Dr. Davies shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.
- b. Dr. Davies shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
- c. Dr. Davies shall appear in person for interviews before the full Board or its designated representative within three months of the date in which probation becomes effective, at three month intervals thereafter, and upon his request for termination of the probationary period, or as otherwise requested by the Board.

If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. Although the Board will normally give him written notification of scheduled appearances, it is Dr. Davies' responsibility to know when personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Davies shall immediately submit to the Board a written request to be notified of his next scheduled appearance.

- d. Dr. Davies shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of probation. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
- e. Within 30 days of the effective date of this Order, Dr. Davies shall provide a copy of this Order to all employers or entities with which he is under contract to provide physician services or is receiving training, and the Chief of Staff at each hospital where Dr. Davies has privileges or appointments. Further, Dr. Davies shall provide a copy of this Order to all employers or entities with which he contracts to provide

1999 MAY 25 PM 3:16

physician services, or applies for or receives training, and the Chief of Staff at each hospital where Dr. Davies applies for or obtains privileges or appointments.

- f. In the event that Dr. Davies should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Davies must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
- g. If Dr. Davies violates probation in any respect, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period.
- h. Dr. Davies shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Dr. Davies' history of chemical dependency.
- i. Dr. Davies shall abstain completely from the use of alcohol.
- j. Dr. Davies shall submit to random urine screenings for drugs on a weekly basis or as otherwise directed by the Board. Dr. Davies shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

Within 30 days of the effective date of this Order, Dr. Davies shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Davies shall submit the required urine specimens. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the Board of any positive screening results.

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

In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Davies must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Davies shall further ensure that the previously designated

1999 MAY 5 PM 3:49

supervising physician also notifies the Board directly of the inability to continue to serve and the reasons therefor.

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

- k. Dr. Davies shall submit blood and/or urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Davies' expense.
- l. Dr. Davies 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. Davies' chemical dependency or related conditions, to the Board, to treating and monitoring physicians, and to others involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations. Dr. Davies 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 Order.
- m. Dr. Davies shall maintain participation in an alcohol and drug rehabilitation program, such as AA, NA, or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval. In addition, at his appearances before the Board or its designated representative, Dr. Davies shall submit acceptable documentary evidence of continuing compliance with this program.
- n. Dr. Davies shall keep a log of all controlled substances prescribed. Such log shall be submitted in the format approved by the Board 30 days prior to Dr. Davies' personal appearance before the Board or its designated representative, or as otherwise directed by the Board.
- o. Dr. Davies shall not, without prior Board approval, administer, dispense, or possess any controlled substances (except as allowed in paragraph 1h, above) as defined by state or federal law. In the event that the Board agrees at a future date to modify this order to allow Dr. Davies to administer or dispense controlled substances, Dr. Davies shall keep a log of all controlled substances administered, or dispensed. Such log shall be submitted in the format approved by the Board 30 days prior to Dr. Davies' personal appearance before the Board or its designated representative, or as otherwise directed by the Board.

1998 MAY 25 PM 3:49

This requirement shall not be construed to limit Dr. Davies' ability to order that controlled substances be administered by another appropriately licensed health care professional to a patient for purposes of a surgical procedure.

- p. If any declaration or report required by this Order is not received in the Board's offices on or before its due date, Dr. Davies shall cease practicing medicine beginning the day following Dr. Davies' receiving notice from the Board of non-receipt, either by writing, telephone, or by personal contact, until the declaration or report is received in the Board offices. Any practice during this time period shall be considered unlicensed practice of medicine in violation of Section 4731.41, Ohio Revised Code.
  - q. If, without permission from the Board, Dr. Davies fails to submit to random screenings for drugs and or alcohol, at least as frequently as required by paragraph 1j of this Order, Dr. Davies shall cease practicing medicine beginning the day following Dr. Davies' receiving notice from the Board of the violation and shall refrain from practicing medicine for 30 days. Practice during this time period shall be considered unlicensed practice in violation of Section 4731.41, Ohio Revised Code.
  - r. If, without permission from the Board, Dr. Davies fails to participate in an alcohol and drug rehabilitation program, at least as frequently as required by paragraph 1m of this Order, Dr. Davies shall cease practicing medicine beginning the day following Dr. Davies' receiving notice from the Board of the violation and shall refrain from practicing medicine for 15 days. Practice during this time period shall be considered unlicensed practice in violation of Section 4731.41, Ohio Revised Code.
  - s. If Dr. Davies violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
2. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Davies' certificate will be fully restored.

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

  
R. Gregory Porter  
Attorney Hearing Examiner



# State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF JUNE 9, 1999

## REPORTS AND RECOMMENDATIONS

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

Dr. Steinbergh asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of Brian W. Davies, M.D.; Phyllis L. Gresham, M.D.; Ashwin H. Shah, M.D.; Richard S. Simon, M.D.; Leonard K. Smith, M.D.; Karl E. Steinberg, M.D.; and Nicholas J. Triana, D.P.M. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Dr. Egner	- aye
	Mr. Browning	- aye
	Ms. Noble	- aye
	Dr. Stienecker	- aye
	Dr. Garg	- aye
	Dr. Buchan	- aye
	Dr. Steinbergh	- aye

Ms. Noble stated that she did not review the hearing record in the matter of Richard S. Simon, M.D.

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:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Dr. Egner	- aye
	Mr. Browning	- aye
	Ms. Noble	- aye
	Dr. Stienecker	- aye
	Dr. Garg	- aye
	Dr. Buchan	- aye

Dr. Steinbergh - aye

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

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

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

.....

BRIAN W. DAVIES, M.D.

Dr. Steinbergh directed the Board's attention to the matter of Brian W. Davies, M.D. She advised that no objections were filed to Hearing Examiner Porter's Report and Recommendation.

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

Mr. Byers introduced Dr. Davies to the Board.

Dr. Davies stated that he appreciates the opportunity to address the Board. He knows that the Board has a difficult decision to make, and he had a lot of anxiety about addressing it.

Dr. Davies advised that he has done everything he can to make himself as good a physician as he can be. He has the problem of addiction. He added that he feels that Mr. Porter was able to obtain and assimilate the facts of a complex case and that Mr. Porter did an excellent job in his Report and Recommendation. Mr. McGovern was essentially able to take all of the facts and question to his fullest ability. Dr. Davies stated that he believes the hearing was as fair as possible.

Dr. Davies concluded that he has a family that is close to him and a practice that is thriving. He hopes the Board agrees with Mr. Porter's Proposed Order.

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

Mr. McGovern stated that one of the factors contributing to the relapse in this case was the easy availability of the drugs at issue. The Hearing Examiner in part relied upon an affidavit submitted by Dr. Davies in

determining his sanction. The affidavit indicated that Dr. Davies was moving the operating portion of his practice from his office to a hospital setting and would no longer have access to the substances that caused his problems. Mr. McGovern recommended that the Board include in its Order a permanent restriction from Dr. Davies' maintaining controlled substances in his office, and that he continue to perform surgery only in a hospital setting. This will protect both Dr. Davies and the public.

**DR. SOMANI MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF BRIAN W. DAVIES, M.D. MS. NOBLE SECONDED THE MOTION.**

Dr. Steinbergh stated that she would now entertain discussion in the above matter.

Dr. Egner stated that she was perplexed by the Hearing Examiner's recommendation in this case. A review of this case shows that Dr. Davies had a problem with addiction prior to 1986. He had a consent agreement with the Board, which he violated in 1987. He had a relapse in October 1997 and another in April 1998. He has been out of treatment for just one year. Under the Board's guidelines, this case calls for a three-year suspension period. If all it took was to lock up the drugs so the physician can't get to them, treatment would be easy. One can lock up all of the drugs, and physicians will still have drugs accessible to them. Dr. Egner stated that she is not reassured by Dr. Davies' new system. She thinks his license needs to be suspended, not as a punishment, but to reassure the Board that he can stay drug and alcohol free. The suspension should be for not less than one year. If Dr. Davies has another relapse, his license should be revoked.

Dr. Steinbergh stated that Dr. Davies needs to know that he is on the track to losing his license. The Board takes relapses very seriously. He's had 26 years of formal education, including ten postgraduate years. Dr. Davies needs to seriously understand that with all of those years behind him, he's on track to lose his license if things don't turn around.

Dr. Bhati stated that three relapses in 1987, 1997 and 1998 would be enough to revoke a license. Dr. Davies is very lucky that the Board is even possibly considering a one-year suspension at this stage. If he has another relapse, he will be done. He agrees with Dr. Egner that there should be a minimum one-year suspension.

Mr. Byers asked whether he could speak to clarify something.

Dr. Steinbergh stated that he could not speak at this time.

Dr. Somani stated that he has the same concerns. It is unfortunate to see another relapse in this case. Although based upon being given medication for treatment of his medical condition, the fact remains that there was a relapse, and the Board can't get away from that fact. Dr. Somani stated that he was surprised to see only a 90-day suspension in the Report and Recommendation. In cases like this, the Board has allowed

physicians to have a contract with the Board, to work on their problems and resolve their problems, but if there is a relapse, particularly a second relapse, the Board is tough. He would support a one-year suspension.

Dr. Buchan noted that when the Board says "relapse," Dr. Davies is shaking his head as if the Board is not reviewing the same information he has. He asked whether Dr. Davies would like to speak to the issue of relapse.

Dr. Davies stated that he would like to quickly give the Board his history. He went voluntarily, without any Board intervention, to treatment in Atlanta, Georgia in 1983. He spent four months in Atlanta, Georgia, and had no relapses until he had an injury for which he had to take pain medicine. The problem was that his supervising physician did not send proper documentation. It was not that he had had a relapse when the Board took an action before. His relapse was associated with a physical injury. He had fourteen years of sobriety. He voluntarily gave the Board the information. Dr. Cramblett told him there would be nothing further at that time. Two years later he signed a consent agreement as he was leaving for New York City to do a fellowship. That's where his problem came. He had fourteen years of sobriety, he voluntarily went to treatment, he voluntarily gave the information to the Board. This time he had surgery on his hand. He realized that this could lead him to problem. He took time off after his surgery and underwent treatment for three months at that point in time. It was a surgical relapse. He was not going out and going to the bars and things like that. This was associated with two surgeries he had with his hand. He did what he felt was appropriate. He was honest with the investigator, and he followed OPEP's aftercare. He has a supervising physician, he does weekly urines, all of which have been negative, to date. He's done everything possible that he can to remain sober. He has a disease and that disease showed its angry head at the time of his injury to his hand.

Dr. Buchan asked whether it was correct that Dr. Davies had not taken any drugs for fourteen years prior to April 1998.

Dr. Davies stated that that is correct.

Dr. Steinbergh stated that the record indicates that he took drugs in September or October of 1997.

Dr. Egner agreed with Dr. Steinbergh, noting that the record states that in October 1997 he took Lorcet to help him sleep, secondary to pain he was having in his wrist and shoulder. She asked what he would call that.

Dr. Davies stated that that was a relapse. He took the drug at night to sleep.

Dr. Egner continued that in April 1998 he increased the use of pain medication beyond what was recommended after having wrist surgery. He then admitted himself to a treatment center. That was a relapse, too.

Dr. Davies stated that that was his first relapse.

Dr. Egner asked whether he used drugs from October 1997 through April 1998.

Dr. Davies stated that he did at night to sleep only. With the increasing pain he ruptured a tendon and had to have two surgeries on his hand.

Dr. Egner stated that from her standpoint, she believes he needs a year out of practice. She's not sure that Dr. Davies has really come to grips with his addiction. She's not sure that in the next year something else might not happen to him, causing him pain and requiring pain medication, and he might not be able to control how he takes it. This is not all up and up. He has an office manager who is his relative who starts checking his urine. That's not an appropriate relationship for a man who knows the impairment system.

**DR. EGNER MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF BRIAN W. DAVIES, M.D., TO REPLACE THE STAYED 90-DAY SUSPENSION WITH A ONE-YEAR SUSPENSION WITH NO STAY. DR. SOMANI SECONDED THE MOTION.**

Dr. Stienecker stated that he can't agree with the length of the term. He believes one year is excessive. Dr. Davies had fourteen years of sobriety in between. As Dr. Davies said, he has a disease and the length of time doesn't make any difference. If he's exposed to that same material again, he has the same enzyme system aboard he had to begin with, so he'll probably have the same addiction result. The unfortunate problem was that he did not have a physician following him who knew of his addiction, or he didn't tell him, or for whatever reason he was not able to control the pain management process when he had good cause to take pain medication. That led him down the primrose path. Dr. Stienecker stated that he doesn't think that imposing a punitive year of suspension to allow Dr. Davies to get things in order is going to make any difference, because Dr. Davies is going to be faced with this same problem forever. He has a sensitivity to these kinds of pain medications.

Dr. Stienecker stated that if the Board insists on some suspension to get Dr. Davies' attention, he would prefer a shorter suspension and a longer probationary term.

Dr. Steinbergh stated that she agrees that the proposed probation time of five years is somewhat short for this particular relapse. She feels that eight to ten years would be more appropriate.

Dr. Buchan stated that his read of this case is similar to Dr. Stienecker's and would suggest that suspension is in order. He had initially thought that three to six months would be reasonable, and that was the amendment he was prepared to offer. He would be opposed to a one-year suspension. The point has been made, and he believes that Dr. Davies understands that he's on track to lose his license. His personal feeling is that three months' suspension would be appropriate. Any longer term of probation would be in order.

Ms. Noble asked Dr. Davies whether he informed his physician of his addiction.

Dr. Davies stated that his physician was his partner and knew his history.

Ms. Noble asked whether Dr. Davies told his physician not to give him the drug because he is easily addicted.

Dr. Davies stated that that's why he left afterwards. He went to treatment a week after surgery.

Dr. Steinbergh stated that it is her understanding that Dr. Davies took the medication without his physician's prescribing it.

Dr. Davies stated that he took samples in the office.

Dr. Steinbergh stated that the physician was not prescribing the medication for him under these circumstances.

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

ROLL CALL:	Mr. Albert	- abstain
	Dr. Bhati	- nay
	Dr. Talmage	- nay
	Dr. Somani	- nay
	Dr. Egner	- aye
	Mr. Browning	- nay
	Ms. Noble	- nay
	Dr. Stienecker	- nay
	Dr. Garg	- abstain
	Dr. Buchan	- nay
	Dr. Steinbergh	- nay

The motion failed.

**DR. BHATI MOVED TO AMEND THE PROPOSED ORDER TO REMOVE THE STAY, TO SUSPEND DR. DAVIES' LICENSE FOR A MINIMUM PERIOD OF SIX MONTHS, AND TO INCREASE THE MINIMUM PROBATIONARY PERIOD TO TEN YEARS. MS. NOBLE SECONDED THE MOTION.**

Mr. Bumgarner noted that Dr. Bhati may need to prepare conditions for reinstatement.

Dr. Steinbergh stated that if Dr. Bhati intends it to be a minimum suspension, there would need to be conditions for reinstatement. If it's to be a flat six-month suspension, reinstatement conditions would not be necessary.

Dr. Buchan stated that he believes that Dr. Davies is a treatable soul and needs to be placed on life-long probation. In choosing between three months and six months of suspension, he would lean more towards three months.

Dr. Stienecker stated that he will not vote for a six-month suspension.

**DR. BHATI MOVED TO TABLE THE MATTER OF BRIAN W. DAVIES, M.D. DR. SOMANI SECONDED THE MOTION. A vote was taken:**

ROLL CALL:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Dr. Egner	- aye
	Mr. Browning	- aye
	Ms. Noble	- aye
	Dr. Stienecker	- aye
	Dr. Garg	- abstain
	Dr. Buchan	- aye
	Dr. Steinbergh	- aye

The motion carried.

.....

Mr. Albert left the meeting at this time.

.....

**DR. BHATI MOVED TO REMOVE THE MATTER OF BRIAN W. DAVIES, M.D., FROM THE TABLE. DR. SOMANI SECONDED THE MOTION. A vote was taken:**

ROLL CALL:	Dr. Bhati	- aye
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Dr. Egner	- aye

Mr. Browning	- aye
Dr. Stienecker	- aye
Dr. Garg	- abstain
Dr. Buchan	- aye
Dr. Steinbergh	- aye

The motion carried.

**DR. BHATI MOVED THAT THE PROPOSED ORDER IN THE MATTER OF BRIAN W. DAVIES, M.D., BE AMENDED AS FOLLOWS:**

**BY SUBSTITUTING THE FOLLOWING:**

1. The certificate of Brian W. Davies, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than six (6) months.
2. The Board shall not consider reinstatement of Dr. Davies' certificate to practice unless all of the following minimum requirements have been met:
  - a. Dr. Davies shall submit an application for reinstatement, accompanied by appropriate fees.
  - b. Within thirty days of the effective date of this Order, or as otherwise approved by the Board, Dr. Davies shall submit to appropriate treatment, as determined by an informed assessment of his current needs. Such assessment and treatment shall be by an approved treatment provider or providers for drug and alcohol dependency. Prior to the initial assessment, Dr. Davies shall furnish the approved provider copies of the Board's Summary of the Evidence, Findings of Fact, Conclusions, Order, and any other documentation from the hearing record which the Board may deem appropriate or helpful to that provider. Within ten (10) days after the completion of the initial assessment, Dr. Davies shall cause a written report to be submitted to the Board from the approved provider, which report shall include:
    - i. A detailed plan of recommended treatment based upon the treatment provider's informed assessment of Dr. Davies' current needs;
    - ii. A statement indicating that Dr. Davies has entered into or commenced the recommended treatment program within forty-eight (48) hours of its determination;
    - iii. A copy of a treatment contract signed by Dr. Davies establishing the terms of treatment and aftercare, including any required supervision or restrictions of practice during treatment or aftercare; and

- iv. A statement indicating that the treatment provider will immediately report to the Board any failure by Dr. Davies to comply with the terms of the treatment contract during inpatient or outpatient treatment or aftercare.
- c. For the duration of the suspension period:
  - i. Dr. Davies shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Dr. Davies' history of chemical dependency.
  - ii. Dr. Davies shall abstain completely from the use of alcohol.
  - iii. Dr. Davies shall submit to random urine screenings for drugs on a weekly basis or as otherwise directed by the Board. Dr. Davies 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.
  - iv. Within 30 days of the effective date of this Order, Dr. Davies shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Davies shall submit the required urine specimens. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the Board of any positive screening results.

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

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

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

- v. Dr. Davies shall submit blood and/or urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Davies' expense.
  - vi. Dr. Davies 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. Davies' chemical dependency or related conditions, to the Board, to treating and monitoring physicians, and to others involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations. Dr. Davies 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 Order.
  - vii. Dr. Davies shall maintain participation in an alcohol and drug rehabilitation program, such as AA, NA, or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval. In addition, at his appearances before the Board or its designated representative, Dr. Davies shall submit acceptable documentary evidence of continuing compliance with this program.
  - viii. Dr. Davies shall obey all federal, state, and local laws.
- d. In the event that Dr. Davies has not been engaged in active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.
3. Upon reinstatement, Dr. Davies shall be subject to the following PROBATIONARY terms, conditions, and limitations, for a period of at least ten years:

**ALL CONDITIONS OF PROBATION SET FORTH IN THE ORIGINAL PROPOSED ORDER SHALL REMAIN THE SAME.**

In response to Dr. Steinbergh's questions, Dr. Bhati indicated that the suspension is to be effective immediately, that the probationary terms are the same as those in the original Report and Recommendation, and that the probationary term is for ten years.

Dr. Egner asked whether the amendment indicates that Dr. Davies cannot ask for changes before a certain time.

Ms. Strait stated that that restriction is usually contained in the probationary terms. It is included in the probationary terms that this motion adopts. Probationary term 1 (a) indicates that Dr. Davies cannot request modifications for a period of one year.

Dr. Buchan stated that, historically, in these situations, the Board has allowed the physician a period of time, perhaps 30 days, to make practice modifications or transition.

Dr. Bhati stated that he doesn't have any problem with allowing 30 days to wind down. But he noted that Dr. Davies is not practicing currently.

Dr. Steinbergh noted that the original Board Order had a stay of suspension. What is the goal for suspension? If the goal concerns Dr. Davies' wellness, suspension needs to be immediate. To wind down in 30 days is something that the Board sometimes does for physicians who are revoked or where there are circumstances where patients aren't at risk. In this case, if the Board is suspending because it's not certain that the doctor has dealt well with his impairment and believes that he needs to be out of practice, then the suspension should begin immediately.

Dr. Buchan stated that Dr. Davies has been sober since April 1998. He believes the suspension is a penalty for the relapse rather than a safety issue.

Dr. Bhati stated that the thirty days could be helpful to him.

Dr. Steinbergh stated that the suspension would then be effective in 30 days.

Dr. Steinbergh added that Dr. Davies would not be allowed to see any new patients during that 30 days.

Dr. Bhati agreed.

Mr. Albert returned during the previous discussion.

**DR. SOMANI SECONDED THE MOTION. A vote was taken:**

ROLL CALL:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Dr. Egner	- aye
	Mr. Browning	- aye
	Dr. Stienecker	- nay
	Dr. Garg	- abstain
	Dr. Buchan	- aye

Dr. Steinbergh - aye

The motion carried.

**DR. BHATI MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF BRIAN W. DAVIES, M.D. DR. SOMANI SECONDED THE MOTION. A vote was taken:**

ROLL CALL:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Dr. Egner	- aye
	Mr. Browning	- aye
	Ms. Noble	- aye
	Dr. Stienecker	- nay
	Dr. Garg	- abstain
	Dr. Buchan	- aye
	Dr. Steinbergh	- aye

The motion carried.



# State Medical Board of Ohio

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

October 14, 1998

Brian W. Davies, M.D.  
2569 Romig Road, Suite 101  
Akron, Ohio 44320

Dear Doctor Davies:

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

- (1) On or about February 27, 1986, you entered into a Consent Agreement with the State Medical Board of Ohio. A copy of this Consent Agreement is attached hereto and incorporated herein.

In this Consent Agreement, you admitted that you had been chemically dependent on ketamine, and that you had undergone treatment and aftercare therapy at the Ridgeview Institute in Georgia for said chemical dependency. You also therein agreed with the Board to certain probationary terms, conditions, and limitations for a minimum of two (2) years.

- (2) On or about February 13, 1987, the Board issued to you a Notice of Opportunity for Hearing alleging that you had violated the conditions of limitation placed by the Board upon your certificate to practice, including that you had failed to submit quarterly declarations of compliance; that you had failed to submit documentary evidence of participation in A.A., Caduceus, and aftercare treatment and therapy; and that you had failed to submit to twice monthly urine screens.

Thereafter, on or about October 16, 1987, the Board entered an Order suspending your certificate for a period of three months; providing that upon reinstatement, your certificate to practice medicine and surgery would be subject to certain probationary terms, conditions, and limitations for a period of two (2) years; and establishing that your February 1986 Consent Agreement would not be terminated until deemed appropriate by the Board. The suspension, probation, and Consent Agreement termination requirement were based upon the Board's findings that you had violated certain conditions of limitation placed by the Board upon your certificate to practice. A copy of the Entry of Order is attached hereto and fully incorporated herein.

*Mailed 10/15/98*

On or about October 16, 1989, you were released from the terms of your probation.

- (3) On or about October 8, 1998, you admitted to a Board investigator that after undergoing two hand surgeries in April 1998 you began abusing Vicodin, by taking ten to twelve tablets per day, and that you thereafter underwent treatment at Life's Journey Center, in Palm Springs, California.

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

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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Anand G. Garg, M.D.

Secretary

AGG/bjs  
Enclosures

CERTIFIED MAIL #Z 395 591 060  
RETURN RECEIPT REQUESTED

STATE OF OHIO  
THE STATE MEDICAL BOARD OF OHIO  
65 SOUTH FRONT STREET  
SUITE 510  
COLUMBUS, OHIO 43266-0315

October 16, 1987

Brian W. Davies, M.D.  
233 Avondale  
Akron, Ohio 44313

Dear Doctor Davies:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, State Medical Board; and a certified copy of the Motions by the State Medical Board, meeting in regular session on October 14, 1987, approving and confirming said Report and Recommendation as the Findings and Order of the State Medical Board.

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

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

THE STATE MEDICAL BOARD OF OHIO



Henry G. Cramblett, M.D.  
Secretary

HGC:em  
Enclosures

CERTIFIED MAIL NO. P 158 073 931  
RETURN RECEIPT REQUESTED

cc: Thomas A. Downie, Esq.

CERTIFIED MAIL NO. P 158 073 932  
RETURN RECEIPT REQUESTED

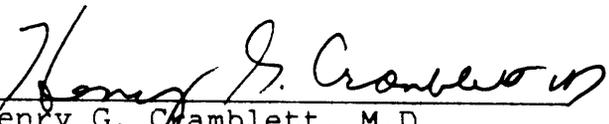
STATE MEDICAL BOARD OF OHIO

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, State Medical Board of Ohio; and attached copy of Motions by the State Medical Board, meeting in regular session on October 14, 1987, approving and confirming said Report and Recommendation as the Findings and Order of the State Medical Board, constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Brian W. Davies, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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

(SEAL)

  
Henry G. Cramblett, M.D.  
Secretary

10/16/87  
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF \*

\*

BRIAN W. DAVIES, M.D. \*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 14th day of October, 1987. Upon the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, State Medical Board, in this matter designated pursuant to R.C. 119.09, a true copy of which is attached hereto and incorporated herein, and upon the 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 for the 14th day of October, 1987.

It is hereby ORDERED:

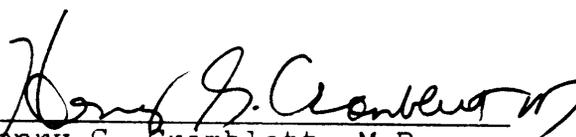
1. That the license of Brian W. Davies, M.D., to practice medicine and surgery in the State of Ohio shall be and is hereby SUSPENDED FOR A PERIOD OF THREE (3) MONTHS, commencing with the effective date of this Order.
2. Further, that upon reinstatement, Dr. Davies' medical license shall be subject to the following probationary terms, conditions, and limitations for a period of two years:
  - a. Dr. Davies shall strictly comply with all the terms and conditions set forth in his February 27, 1986, Consent Agreement with the Board, which Agreement shall remain in full force and effect for the entire period of probation.

Brian H. Davies, M.D.

- b. In addition, paragraph 6 of said Agreement shall be and is hereby amended to require that all random urine screenings done for the term of this probation shall include a specific test for Ketamine in addition to drugs previously being tested for. Dr. Davies shall be responsible for making the appropriate arrangements and for any extra expenses incurred in connection with this additional test.
3. Further, that the expiration of the period of probation established under this Order shall not terminate Dr. Davies' Consent Agreement unless and until termination of said Consent Agreement is deemed appropriate by the Board. Dr. Davies may not request termination of the Consent Agreement prior to the expiration of the period of probation.

This Order shall become effective 30 days from the date of its approval by the Board.

(SEAL)

  
Henry G. Cramblett, M.D.  
Secretary

10/16/87  
Date

STATE OF OHIO  
THE STATE MEDICAL BOARD

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

The Matter of Brian W. Davies, M.D., came on for hearing before me, Wanita J. Sage, Esq., Hearing Examiner for the State Medical Board of Ohio, on August 20, 1987.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Mode of Conduct

- A. During the course of this hearing, rules of evidence were relaxed, and both the State and the Respondent were given great latitude in demonstrating the relevancy and materiality of testimony and exhibits offered, as well as in attempting to discredit testimony and evidence presented by the opposing party.

II. Basis for Hearing

- A. By letter of February 13, 1987 (State's Exhibit A), the State Medical Board notified Brian Davies, M.D., that it proposed to take disciplinary action against his license to practice medicine and surgery in the State of Ohio. The Board alleged that Dr. Davies' failure to comply with the terms of his February 27, 1986, Consent Agreement with the State Medical Board constituted "violation of the conditions of limitations placed by the Board upon his certificate to practice", in contravention of Section 4731.22(B)(11), Ohio Revised Code.
- B. By letter received by the State Medical Board on February 26, 1987, Dr. Davies requested a hearing in this matter (State's Exhibit B).

III. Appearance of Counsel

- A. On behalf of the State of Ohio: Anthony J. Celebrezze, Attorney General, by Christopher J. Costantini, Assistant Attorney General.
- B. On behalf of the Respondent: Thomas A. Downie, Esq.

IV. Testimony Heard

- A. Presented by the State
  - 1. Brian W. Davies, M.D., as on cross-examination
- B. Presented by the Respondent
  - 1. James M. Lewis, M.D.
  - 2. A. Lawrence Cervino, M.D.
  - 3. Brian W. Davies, M.D.

V. Exhibits Examined

In addition to those noted above, the following exhibits were identified and admitted into evidence in this matter:

- A. Presented by the State
  - 1. State's Exhibit C: February 27, 1987, letter to Brian Davies, M.D., from the State Medical Board advising that the hearing initially set for March 12, 1987, was postponed pursuant to Section 119.09, Ohio Revised Code.
  - 2. State's Exhibit D: July 1, 1987, letter to Jack Morrison, Jr., Esq., from the State Medical Board scheduling the hearing for August 20, 1987.
  - 3. State's Exhibit E: October 13, 1986, letter to the State Medical Board from William M. Davis, M.D., Medical Director, Akron City Hospital, enclosing a laboratory report for a September 26, 1986, drug screen for Dr. Davies.
  - 4. State's Exhibit F: Excerpt from the minutes of the July 10, 1986, meeting of the State Medical Board with reference to the personal appearance of Brian W. Davies, M.D.
  - 5. State's Exhibit G: June 2, 1986, letter to the State Medical Board from James M. Lewis, M.D., reporting Dr. Davies' progress.
  - 6. State's Exhibit H: March 31, 1986, letter to the State Medical Board from A. Lawrence Cervino, M.D., reporting Dr. Davies' progress.
  - 7. State's Exhibit I: February 6, 1986, letter to Brian W. Davies, M.D., from the State Medical Board enclosing a proposed consent agreement.

8. State's Exhibit J: Consent Agreement between Brian W. Davies, M.D., and the State Medical Board of Ohio, signed by Dr. Davies on February 10, 1986, and by the Board's Secretary and Supervising Member on February 27, 1986.
9. State's Exhibit K: January 15, 1985, Aftercare Contract between Impaired Health Professionals Program and Brian Davies.

B. Presented by the Respondent

1. Defendant's Exhibit #1: November 16, 1983, letter to Brian W. Davies, M.D., from the State Medical Board notifying him of his Ohio licensure.
2. Defendant's Exhibit #2: February 13, 1985, letter to Brian W. Davies, M.D., from the State Medical Board requesting him to appear for a conference on April 9, 1985, to discuss his renewal application for licensure.
3. Defendant's Exhibit #3: April 3, 1985, letter to Dr. Davies from the State Medical Board enclosing a proposed consent agreement.
4. Defendant's Exhibit #4: Unsigned Consent Agreement with notations identified at hearing as having been made by Dr. Davies.
5. Defendant's Exhibit #5: February 6, 1986, letter to Dr. Davies from the State Medical Board enclosing a proposed Consent Agreement (duplicate of State's Exhibit I).
6. Defendant's Exhibit #6: Copy of envelope showing a postmark of February 12, 1986, identified at hearing as that in which Dr. Davies mailed a signed Consent Agreement to the State Medical Board; signed Consent Agreement between Brian W. Davies, M.D., and the State Medical Board of Ohio (duplicate of State's Exhibit J).
7. Defendant's Exhibit #7: March 5, 1986, letter to A. Lawrence Cervino, M.D., from the State Medical Board enclosing a copy of Dr. Davies' Consent Agreement and informing Dr. Cervino of his duties as supervising physician.
8. Defendant's Exhibit #8: March 13, 1986, letter to James Lewis, M.D., from the State Medical Board enclosing a copy of Dr. Davies' Consent Agreement and informing Dr. Lewis of his duties with regard to Dr. Davies' urine screens.

9. Defendant's Exhibit #9: March 31, 1986, letter to the State Medical Board from A. Lawrence Cervino, M.D., reporting Dr. Davies' progress (duplicate of State's Exhibit H).
10. Defendant's Exhibit #10: May 9, 1986, letter to Brian W. Davies, M.D., from the State Medical Board advising him of a June 11, 1986, scheduled appearance before the State Medical Board and suggesting a followup with regard to the absence of random urine screening reports from Dr. Lewis.
11. Defendant's Exhibit #11: June 2, 1986, letter to the State Medical Board from James M. Lewis, M.D., reporting Dr. Davies' progress (duplicate of State's Exhibit G).
12. Defendant's Exhibit #12: Lab reports for Dr. Davies' February 1, 1986, and April 18, 1986, urine screens.
13. Defendant's Exhibit #13: June 26, 1986, letter to Brian W. Davies, M.D., from the State Medical Board advising him that his appearance before the State Medical Board had been rescheduled for July 10, 1986.
14. Defendant's Exhibit #14: Excerpts from the minutes of the July 10, 1986, meeting of the State Medical Board with reference to the personal appearance of Dr. Davies (duplicate of State's Exhibit F).
15. Defendant's Exhibit #15: September 16, 1986, letter to Dr. Lewis, from the State Medical Board responding to his June 2, 1986, letter and instructing him with regard to the requirements of Dr. Davies' Consent Agreement.
16. Defendant's Exhibit #16: September 22, 1986, letter to the State Medical Board from Dr. Lewis reporting Dr. Davies' progress and expressing concerns about his responsibilities with regard to Dr. Davies' urine screens.
17. Defendant's Exhibit #17: September 18, 1986, letter to Dr. Davies, from the State Medical Board regarding Dr. Davies' non-compliance with his Consent Agreement. It was stipulated at hearing that this letter had been returned to the Medical Board by the post office without Dr. Davies' signature on the certified mail receipt.

18. Defendant's Exhibit #18: September 26, 1986, letter to the State Medical Board from Dr. Davies, advising that he would be in New York City for a cosmetic fellowship from October through December, 1986, and discussing future arrangements to promote compliance with his Consent Agreement.
19. Defendant's Exhibit #19: October 13, 1986, letter to the State Medical Board from William M. Davis, M.D., Medical Director, Akron City Hospital, enclosing a laboratory report for a September 26, 1986, drug screen for Dr. Davies (duplicate of State's Exhibit E).
20. Defendant's Exhibit #20: January 30, 1987, letter to the State Medical Board from Daphne DeFreest, M.D., reporting Dr. Davies' progress and advising that she would be sending monthly reports.
21. Defendant's Exhibit #21: February 12, 1987, letter to the State Medical Board from Dr. DeFreest enclosing lab reports for January 10, 1987, and February 4, 1987, urine screens for Dr. Davies.
22. Defendant's Exhibit #22: February 17, 1987, letter to Akron General Medical Center from James M. Lewis, M.D., recommending Dr. Davies to the professional staff.
23. Defendant's Exhibit #23: February 22, 1987, letter to the State Medical Board from Dr. Davies requesting a hearing in this matter and reporting his current status (duplicate of State's Exhibit B).
24. Defendant's Exhibit #24: February 24, 1987, letter to Akron General Medical Center from Bahamn Guyuron, M.D., Mt. Sinai Hospital, Cleveland, endorsing Dr. Davies' candidacy for staff membership.
25. Defendant's Exhibit #25: February 23, 1987, letter to Akron General Medical Center from Thomas D. Rees, M.D., Manhattan Eye, Ear & Throat Hospital, supporting Dr. Davies' application for staff membership.
26. Defendant's Exhibit #26: March 12, 1987, letter to the State Medical Board from Dr. DeFreest enclosing laboratory reports for Dr. Davies' February 19, 1987, and March 5, 1987, urine screens.
27. Defendant's Exhibit #27: March 20, 1987, letter to the State Medical Board from Dr. Cervino reporting Dr. Davies' progress.

28. Defendant's Exhibit #28: April 27, 1987, letter from Dr. Davies reporting his progress.
29. Defendant's Exhibit #29: May 6, 1987, letter to the State Medical Board from Dr. DeFreest enclosing laboratory reports for Dr. Davies' April 9, 1987, and April 10, 1987, urine screens.
30. Defendant's Exhibit #30: Laboratory report for Dr. Davies' April 24, 1987, urine screen.
31. Defendant's Exhibit #31: June 18, 1987, letter from Dr. DeFeest enclosing Laboratory reports for Dr. Davies' May 7, 1987; June 10, 1987; and June 11, 1987; urine screens.
32. Defendant's Exhibit #32: July 27, 1987, letter to the State Medical Board from Dr. Cervino reporting Dr. Davies' progress.
33. Defendant's Exhibit #33: Report of Dr. Davies' performance on the 1987 qualifying examination of the American Board of Plastic Surgery.
34. Defendant's Exhibit #35: August 18, 1987, Affidavit of William M. Davis, M.D.
35. Defendant's Exhibit #36: August 19, 1987, Affidavit of Daphne K. DeFreest, M.D.
36. Defendant's Exhibit #37: October 6, 1986, letter to the State Medical Board from A. T. Puskar, M.D., stating his willingness to monitor Dr. Davies' recovery and order random urines upon Dr. Davies' return from his fellowship in New York City.

SEP 18 1987  
P4:13

#### FINDINGS OF FACT

1. Brian W. Davies, M.D., became licensed to practice medicine and surgery in the State of Ohio in November, 1983.

This fact is established by Defendant's Exhibit #1.

2. On his December, 1984, renewal application, Dr. Davies answered "Yes" to a question asking whether he had ever been addicted to a chemical substance. As a result of this answer on his renewal application, Dr. Davies was requested to appear for a conference at the State Medical Board on April 9, 1985. Dr. Davies appeared as requested and disclosed his January, 1985, treatment in Georgia for addiction to Ketamine, an anesthetic drug. At the time of the conference, Dr. Davies was party to a twenty-month aftercare contract, which commenced January 15, 1985, with Impaired Health Professionals Program.

These facts are established by the testimony of Dr. Davies (Tr. at 18-21, 136-138), Defendant's Exhibit #2, and State's Exhibit K.

3. On April 30, 1985, following his conference at the State Medical Board, Dr. Davies was sent a copy of a proposed Consent Agreement. On May 16, 1985, Dr. Davies returned that proposed agreement to the State Medical Board with his notations suggesting corrections of certain provisions.

These facts are established by Defendant's Exhibits #3 and #4 and the testimony of Dr. Davies (Tr. at 112-116).

4. On February 6, 1986, the State Medical Board sent Dr. Davies a second proposed Consent Agreement. Dr. Davies signed this Consent Agreement on February 10, 1986, and returned it to the Board on February 12, 1986. This Consent Agreement (hereinafter referred to as "the Consent Agreement") became effective February 27, 1986, upon the signatures of the Secretary and Supervising Member of the Board.

These facts are established by State's Exhibits I and J, Defendant's Exhibits #5 and #6, and the testimony of Dr. Davies (Tr. at 21-23, 116-118).

5. By paragraphs 1<sup>st</sup> and 2 of the Consent Agreement, Dr. Davies consented and agreed to submit, at his scheduled appearances before the Board, documentary proof acceptable to the Board of his participation in Alcoholics Anonymous meetings at least once every week and of his participation in aftercare treatment and therapy, including Caduceus meetings at least once every two weeks. At his July 10, 1986, appearance before the Board, Dr. Davies failed to submit documentary evidence of his participation in either Alcoholics Anonymous or Caduceus. Dr. Davies was, however, accompanied to that Board appearance by Dr. A. T. Puskar, Jr., who stated that he was involved with Dr. Davies in a weekly meeting of recovering professionals.

These facts are established by State's Exhibits F and J, Defendant's Exhibits #6 and #14, and the testimony of Dr. Davies (Tr. at 25-29, 52-53).

6. [REDACTED] affidavit submitted at the hearing in this matter, Daphne K. [REDACTED], M.D., stated that she had personal knowledge that Dr. Davies had regularly attended weekly meetings of the combined Alcoholics Anonymous/Caduceus group in Akron, Ohio, since his return from his Georgia treatment program in 1984.

This fact is established by Defendant's Exhibit #36.

7. Although Dr. Davies stated at this hearing that his aftercare agreement with his treatment center had run out prior to the Consent Agreement, in fact, that 20-month contract commenced January 15, 1985, and terminated on or about September 15, 1986. At his July, 1986, Board appearance, Dr. Davies failed to submit documentary proof that he had maintained participation in aftercare treatment and therapy.

These facts are established by the testimony of Dr. Davies (Tr. at 29), State's Exhibit F, J, and K, Defendant's Exhibits #6 and #14, and the stipulation of the parties (Tr. at 151).

8. Paragraph 6 of the Consent Agreement states: "DR. DAVIES shall submit urine specimens upon request without prior notice for random urine screenings to Dr. James Lewis. Such screenings shall be conducted at least twice monthly on a random basis or as otherwise determined by the BOARD. DR. DAVIES shall ensure that screening reports are forwarded directly to the BOARD on a monthly basis. DR. DAVIES is also to ensure that DR. LEWIS submits quarterly reports to the BOARD which indicate DR. DAVIES' progress and status. The first such report shall be submitted twelve (12) weeks after the effective date of this Agreement. In the event that Dr. Lewis is or becomes unwilling or unable to serve in the above capacity, DR. DAVIES must immediately so notify the BOARD in writing, and make arrangements acceptable to the BOARD for another physician to so serve as soon as practicable."

The Board's May 9, 1986, notice of a scheduled appearance advised Dr. Davies that no random urine screens had been received from Dr. Lewis and suggested a followup. A June 2, 1986, letter from Dr. Lewis advised the Board that two random urines had been done since the commencement of the Consent Agreement; however, no laboratory screening reports were enclosed. By that time, at least six urine screens would have been required for compliance with the terms of the Consent Agreement.

At Dr. Davies' July 10, 1986, appearance before the Board, Dr. Davies stated that his supervising physician thought that the number of urine screens required was excessive. He was reminded that the Agreement was with the Board and must be followed. Before Dr. Davies left that meeting, the Board's staff was requested to contact Dr. Lewis to remind him that the Consent Agreement required Dr. Davies to continue with the urine screens.

Having received no screening reports, the Board by letter of September 16, 1986, reminded Dr. Lewis of the urine screen requirements, emphasizing the importance of full compliance with the Consent Agreement. By letter of September 22, 1986, Dr. Lewis responded that he planned to obtain one more urine test prior to Dr. Davies' departure for a fellowship in New York City, but that he did not have the time nor the inclination to perform urine tests every two weeks. Subsequently, a lab report for Dr. Davies' September 26, 1986, urine screen was forwarded to the Board on October 13, 1986, by Dr. William M. Davis.

Between February 27, 1986, and September 26, 1986, a period of six months, Dr. Davies submitted to a total of three random urine screenings. No screening reports for any of these were forwarded to the Board until the one sent on October 13, 1986. Although Dr. Davies was aware that urine specimens had not been taken as required by the Consent Agreement, he neither notified the Board in writing (or otherwise) that Dr. Lewis was unwilling or unable to serve as supervising physician nor made arrangements acceptable to the Board for another physician to so serve. Dr. Davies' September 26, 1986, letter notifying the Board of his imminent three-month fellowship in New York, did suggest that he would make new arrangements upon his return to Ohio.

These facts are established by Defendant's Exhibits #5, #6, #8, #10, #11, #12, #14, #15, #16, #18, and #19; State's Exhibits E, F, G, I, and J; the stipulation of the parties (Tr. at 151); and the testimony of Dr. Davies (Tr. at 52).

9. Paragraph 7 of the Consent Agreement states: "Dr. A. Lawrence Cervino is designated as supervising physician for DR. DAVIES. As such, DR. DAVIES is to ensure that Dr. Cervino submits quarterly reports to the BOARD which indicate DR. DAVIES' progress and status. The first such report shall be submitted six (6) weeks after the effective date of this Agreement. In the event that Dr. Cervino is or becomes unwilling or unable to serve as the supervising physician, DR. DAVIES must immediately so notify the BOARD in writing, and make arrangements acceptable to the BOARD for another supervising physician as soon as practicable."

Between February 27, 1986, and September 26, 1986, Dr. Cervino submitted one written report dated March 31, 1986, to the Board. At hearing, Dr. Cervino testified that in June, 1986, he was visited by an investigator from the State Medical Board to whom he made a verbal report regarding Dr. Davies which he believed satisfied the second quarterly report requirement.

These facts are established by State's Exhibits H and J; Defendant's Exhibits #7 and #9; and the testimony of Dr. Cervino (Tr. at 89-90, 101-104).

10. By Paragraph 10 of the Consent Agreement, Dr. Davies consented and to submit quarterly declarations under penalty of perjury whether there had been compliance with all conditions of the Consent Agreement. Dr. Davies failed to submit to the Board any quarterly declarations stating whether or not there had been compliance with all conditions of the Consent Agreement.

These facts are established by State's Exhibit J, Defendant's Exhibit #6, the stipulation of the parties (Tr. at 151), and the testimony of Dr. Davies (Tr. 46-51).

11. Dr. Davies was in New York City from October through December, 1986, for a plastic surgery fellowship at the Manhattan Eye, Ear & Throat Hospital. Since his return to Ohio in January, 1987, Dr. Davies has been supervised by Daphne K. DeFreest, M.D., for purposes of random urine screenings. During 1987, Dr. DeFreest has submitted screening reports to the Board for the following dates: January 10, February 4, February 19, March 5, April 9, April 10, May 7, June 10, and June 11. At hearing, an additional screening report for April 24, 1987, was submitted into evidence. Only the January 10, 1987, drug screen included a specific test for Ketamine.

These facts are established by Defendant's Exhibits #18, #20, #21, #24, #25, #26, #29, #30, #31, and #36.

12. Dr. Cervino is currently acting as supervising physician for purposes of Paragraph 7 of Dr. Davies' Consent Agreement. By his letters of March 20 and July 27, 1987, Dr. Cervino has reported to the Board regarding Dr. Davies' progress.

These facts are established by Defendant's Exhibits #27 and #32.

#### CONCLUSIONS

1. Paragraphs 1 and 2 of the Consent Agreement specifically require Dr. Davies to submit documentary proof acceptable to the Board of his participation in Alcoholics Anonymous and aftercare treatment and therapy, including Caduceus. Dr. Davies' failure to do so at his scheduled Board appearance in July, 1986, constitutes violation of the conditions of limitation, as set forth in paragraphs 1 and 2 of the Consent Agreement, placed by the Board upon his certificate to practice. Dr. Puskar's presence at that meeting and his statement that he was involved with Dr. Davies in a weekly meeting of recovering professionals does not rise to the level of substantial compliance with the requirement for documentary proof acceptable to the Board. There is no indication in the record that Dr. Davies made any effort to document his attendance at meetings or to ascertain

Proof would be acceptable to the Board. There is also no indication of any interaction between Dr. Davies and Dr. Tom Haynes, who is listed as the supervising physician under Dr. Davies' aftercare contract with Impaired Health Professionals Program. The terms of the Consent Agreement are clear and do not leave room for unilateral interpretation and change by Dr. Davies. Dr. Davies' pertinent notations on the original draft agreement (Defendant's Exhibit #4) suggest that he is very capable of reading and understanding the provisions of the Consent Agreement. It must be concluded that in failing to comply, he knowingly violated the terms of the Consent Agreement.

2. Dr. Davies' failure both to submit to random urine screens at least twice monthly and to ensure that screening reports were forwarded to the Board between February 27, 1986 and September 26, 1986, constitutes violation of the conditions of limitation, as set forth in paragraph 6 of the Consent Agreement, placed by the Board upon his certificate to practice. Dr. Davies may not take shelter in the fact that he did not get cooperation from Dr. Lewis with regard to urine screens. Paragraph 6 is very specific as to what Dr. Davies should do in the event that Dr. Lewis was or became unwilling or unable to supervise his urine screens. Dr. Davies, well aware that he was not submitting to the number of urine screens required by the Consent Agreement, took no measures during the period in question to make arrangements acceptable to the Board for another physician to supervise his screens. Dr. Davies' claim that he was led to believe at the time of his personal appearance before the Board that the Board would take initiative in ensuring that Dr. Lewis submitted reports as required does not satisfactorily explain his failure to comply during the four months prior to his Board appearance. Paragraph 6 clearly places responsibility for all aspects of compliance with screen requirements upon Dr. Davies. Therefore, Dr. Lewis' regrettable lack of cooperation does not excuse Dr. Davies' actions, conduct, and/or omissions.
3. The evidence and testimony presented at hearing with regard to Dr. Cervino's supervision substantially support a conclusion that there was substantial compliance with paragraph 7 of the Consent Agreement. Dr. Cervino submitted a written report on March 31, 1986. His assumption that his June, 1986, verbal report to a Medical Board investigator satisfied the second quarterly report requirement would appear to be a reasonable one. Paragraph 7 does not specify that quarterly reports must be in writing. Furthermore, the Board's initial instructions to Dr. Cervino, indicating that his reports "may be" submitted in letter form, would not appear to mandate a written report. Dr. Davies was aware that Dr. Cervino had reported to the Board's investigator and, thus, had no reason to believe there was a lack of compliance with paragraph 7 of the Consent Agreement. Accordingly, I find no violation with regard to paragraph 7 of the Consent Agreement.

4. Dr. Davies' failure to submit quarterly declarations stating whether there had been compliance with all the conditions of the Agreement constitutes violation of the conditions of limitation, as set forth in paragraph 10 of the Consent Agreement, placed by the Board upon his certificate to practice. Neither Dr. Davies' informational exchanges with Board staff nor statements that he is doing well satisfy the requirements of this provision or rise to the level of substantial compliance.

In accordance with the terms of the Consent Agreement, I find that the acts, conduct, and/or omissions of Brian W. Davies, M.D., as set forth in the Findings of Fact and in paragraphs 1, 2, and 4, above, constitute "violation of the conditions of limitation placed by the Board upon a certificate to practice", as that clause is used in Section 4731.22(B)(11), Ohio Revised Code, as in effect prior to March 17, 1987. While Dr. Davies' improved efforts toward compliance since January, 1987, may be considered in mitigation, it should be noted that only one of the 1987 drug screens has specifically tested for Ketamine, which was Dr. Davies' drug of choice; that only one urine screen was done in both March and May, 1987; and that Dr. Davies has not yet submitted any quarterly declarations stating whether there has been compliance with all the conditions of the Consent Agreement.

Although Dr. Davies' colleagues are of the opinion that he has maintained his drug-free status since the time of his 1984 Georgia treatment, Dr. Davies' violation of the terms and conditions of the Consent Agreement has denied this Board the ability to verify this by objective means. In order to accomplish its duty, this Board must have first-hand and accurate means by which to determine whether or not a practitioner, who has by his past actions proven himself to be a potential danger to Ohio health care consumers, is maintaining the conditions imposed by the Board to enable and ensure his safe and effective practice of medicine or surgery in this State. Such determination cannot be subject to the whim or convenience of the individual practitioner.

PROPOSED ORDER

It is hereby ORDERED:

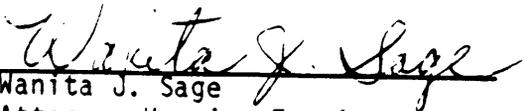
1. That the license of Brian W. Davies, M.D., to practice medicine and surgery in the State of Ohio shall be and is hereby suspended for a period of three (3) months, commencing with the effective date of this Order.

PAID 91 SEP 18.

2. Further, that upon reinstatement, Dr. Davies' medical license shall be subject to the following probationary terms, conditions, and limitations for a period of two (2) years:

- a. Dr. Davies shall strictly comply with all the terms and conditions set forth in his February 27, 1986, Consent Agreement with the Board, which Agreement shall remain in full force and effect for the entire period of probation.
  - b. In addition, paragraph 6 of said Agreement shall be and is hereby amended to require that all random urine screenings done for the term of this probation shall include a specific test for Ketamine in addition to drugs previously being tested for. Dr. Davies shall be responsible for making the appropriate arrangements and for any extra expenses incurred in connection with this additional test.
3. Further, that the expiration of the period of probation established under this Order shall not terminate Dr. Davies' Consent Agreement unless and until termination of said Consent Agreement is deemed appropriate by the Board. Dr. Davies may not request termination of the Consent Agreement prior to the expiration of the period of probation.

This Order shall become effective 30 days from the date of its approval by the Board.

  
Wanita J. Sage  
Attorney Hearing Examiner

'87 SEP 18 P4:14

EXCERPT FROM THE MINUTES OF OCTOBER 14, 1987

REPORTS AND RECOMMENDATIONS

.....

Dr. Stephens asked if each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of Mark Altchek, M.D.; Mary Catherine Hickey, M.D.; Rodney Charles Eveland; Ignacio O. Navarrete, M.D.; Brian W. Davies, M.D.; Bohumila Slabochova, M.D. A roll call was taken:

ROLL CALL:

Dr. Cramblett	- aye
Dr. Lancione	- aye
Dr. Barnes	- aye
Dr. Buchan	- aye
Dr. Lovshin	- aye
Dr. Rauch	- aye
Mr. Albert	- aye
Ms. Rolfes	- aye
Mr. Jost	- aye

.....

REPORT AND RECOMMENDATION IN THE MATTER OF BRIAN W. DAVIES, M.D.

.....

DR. BUCHAN MOVED TO APPROVE AND CONFIRM MS. SAGE'S FINDINGS OF FACT AND CONCLUSIONS IN THE MATTER OF BRIAN W. DAVIES, M.D. DR. RAUCH SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:

Dr. Cramblett	- abstain
Dr. Lancione	- aye
Dr. Barnes	- aye
Dr. Buchan	- aye
Dr. Lovshin	- aye
Dr. Rauch	- aye
Mr. Albert	- aye
Ms. Rolfes	- aye
Mr. Jost	- aye

The motion carried.

.....

DR. BARNES MOVED TO APPROVE MS. SAGE'S PROPOSED ORDER IN THE MATTER OF BRIAN W. DAVIES, M.D. DR. RAUCH SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:

Dr. Cramblett	- abstain
Dr. Lancione	- aye
Dr. Barnes	- aye
Dr. Buchan	- aye

Excerpt from the Minutes of October 15, 1987  
In the Matter of [REDACTED] W. Davies, M.D.  
Page 2

Dr. Lovshin	- aye
Dr. Rauch	- aye
Mr. Albert	- aye
Ms. Rolfes	- aye
Mr. Jost	- aye

The motion carried.

**STATE OF OHIO  
THE STATE MEDICAL BOARD  
Suite 510  
65 South Front Street  
Columbus, Ohio 43215**

February 13, 1987

Brian Davies, M.D.  
233 Avondale Avenue  
Akron, Ohio 43307

Dear Doctor Davies:

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

- (1) On or about February 10, 1986, you signed a Consent Agreement with the State Medical Board of Ohio, which placed certain conditions of limitation upon your certificate to practice medicine or surgery in Ohio. This Agreement became effective February 27, 1986, and is attached hereto and fully incorporated herein.
- (2) At your appearance before the Board in July, 1986, you failed to submit documentary evidence of participation in Alcoholic Anonymous, as required by Paragraph 1 of the Consent Agreement.
- (3) At your appearance before the Board in July, 1986, you failed to submit documentary evidence of participation in Caduceus group and your Aftercare Treatment and Therapy, as required by Paragraph 2 of the Consent Agreement.
- (4) Between February 27, 1986 to September 26, 1986, you were to submit to urine screens at least twice monthly, with the screening reports being forwarded directly to the Board on a monthly basis, pursuant to Paragraph 6 of the Consent Agreement. During that time period, the Board received one urine screen report and a letter from Dr. James Lewis reporting that two other screens had been done.
- (5) Between February 27, to September 26, 1986, your supervising physician, Dr. A. Lawrence Cervino, submitted only one report, dated March 31, 1986. You failed to notify the Board in writing that Dr. Cervino was unwilling or unable to serve as your supervising physician in compliance with Paragraph 7 of the Consent Agreement, nor did you designate anyone else to so serve.

STATE OF OHIO  
THE STATE MEDICAL BOARD

Page Two  
Brian Davies, M.D.

February 13, 1987

- (6) You have failed to submit quarterly declarations stating whether or not there has been compliance with the conditions of the Consent Agreement as required by Paragraph 10 of the Consent Agreement.

The acts and omissions, as alleged in the above paragraphs 2 through 6, individually and/or collectively, constitute the "violation of the conditions of limitation placed by the Board upon a certificate to practice", as that clause is used in Section 4731.22 (B)(11) of the 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 that request must be made within thirty (30) days of the time of mailing of this notice.

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or 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 made within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Henry G. Cramblett, M.D.  
Secretary

HGC:caa

enclosures

CERTIFIED MAIL NO. P 026 072 617  
RETURN RECEIPT REQUESTED

STATE OF OHIO  
THE STATE MEDICAL BOARD

CONSENT AGREEMENT

BETWEEN

BRIAN W. DAVIES, M.D.

AND

THE STATE MEDICAL BOARD OF OHIO

This CONSENT AGREEMENT is entered into, by and between BRIAN W. DAVIES, M.D. and THE STATE MEDICAL BOARD OF OHIO, a state agency charged with enforcing Chapters 4730. and 4731. of the Ohio Revised Code.

OHIO STATE  
MEDICAL BOARD  
FEB 18 AM 1:37

BRIAN W. DAVIES, M.D., enters into this AGREEMENT being fully cognizant of all his rights, including but not limited to, his right to be advised by counsel.

This AGREEMENT is entered into on the basis of the following statements, admissions, and understandings:

- (A) BRIAN W. DAVIES, M.D., admits that he has been chemically dependent on Ketamine;
- (B) BRIAN W. DAVIES, M.D., admits that he has undergone treatment and aftercare therapy at the Ridgeview Institute in Georgia for said chemical dependency;
- (C) BRIAN W. DAVIES, M.D., wishes to maintain his license to practice medicine and surgery in Ohio.

WHEREAS, DR. DAVIES and the BOARD have agreed to enter into this CONSENT AGREEMENT which the parties have resolved to be in their mutual best interests.

WHEREFORE, in consideration of the foregoing and mutual promises hereinafter set forth, BRIAN W. DAVIES, M.D., and the STATE MEDICAL BOARD hereby CONSENT and AGREE to the following terms and conditions:

TERMS

1. DR. DAVIES shall attend Alcoholics Anonymous meetings at least once every week. At his scheduled appearances before the BOARD or its designated representative, DR. DAVIES shall submit documentary proof acceptable to the BOARD of such participation.
2. DR. DAVIES shall maintain participation in aftercare treatment and therapy, including attending the Caduceus group at least once every two weeks. At his scheduled appearances before the BOARD or its designated representative, DR. DAVIES shall submit documentary proof acceptable to the BOARD of such participation.
3. DR. DAVIES shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio.
4. DR. DAVIES shall abstain completely from the use of alcohol.
5. DR. DAVIES shall abstain completely from the personal use of drugs, except those prescribed, administered, or dispensed to him by another person so authorized by law who has full knowledge of DR. DAVIES' history of chemical dependency.
6. DR. DAVIES shall submit urine specimens upon request without prior notice for random urine screenings to Dr. James Lewis. Such screenings shall be conducted at least twice monthly on a random basis or as otherwise determined by the BOARD. DR. DAVIES shall ensure that screening reports are forwarded directly to the BOARD on a monthly basis. DR. DAVIES is also to ensure that DR. LEWIS submits quarterly reports to the BOARD which indicate DR. DAVIES' progress and status. The first such report shall be

**STATE OF OHIO  
THE STATE MEDICAL BOARD**

submitted twelve (12) weeks after the effective date of this Agreement. In the event that Dr. Lewis is or becomes unwilling or unable to serve in the above capacity, DR. DAVIES must immediately so notify the BOARD in writing, and make arrangements acceptable to the BOARD for another physician to so serve as soon as practicable.

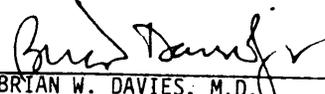
7. Dr. A. Lawrence Cervino is designated as supervising physician for DR. DAVIES. As such, DR. DAVIES is to ensure that Dr. Cervino submits quarterly reports to the BOARD which indicate DR. DAVIES progress and status. The first such report shall be submitted six (6) weeks after the effective date of this Agreement. In the event that Dr. Cervino is or becomes unwilling or unable to serve as the supervising physician, DR. DAVIES must immediately so notify the BOARD in writing, and make arrangements acceptable to the BOARD for another supervising physician as soon as practicable.
8. DR. DAVIES shall personally appear before the BOARD or its designated representative three (3) months from the effective date of this Agreement and thereafter at six (6) month intervals, until such time as the BOARD determines.
9. In the event that DR. DAVIES should leave Ohio for three (3) continuous months, or reside or practice outside Ohio, DR. DAVIES must notify the BOARD in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this period under the CONSENT AGREEMENT.
10. DR. DAVIES shall submit quarterly declarations under penalty of perjury stating whether there has been compliance with all the conditions of this AGREEMENT.

The above described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties. However, this Agreement shall remain in force for a minimum of two (2) years prior to any request for termination of said Agreement.

If in the discretion of the Secretary of THE STATE MEDICAL BOARD OF OHIO, BRIAN W. DAVIES, M.D., appears to have violated or breached any terms or conditions of this AGREEMENT, THE STATE MEDICAL BOARD OF OHIO 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 AGREEMENT. A violation of any of the terms or conditions of this agreement shall constitute "violation of the conditions of limitation placed by the BOARD upon a certificate to practice", as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.

Any action initiated by the BOARD based on alleged violations of this CONSENT AGREEMENT or Chapter 4731., Revised Code, shall comply with the Administrative Procedure Act, Chapter 119., Revised Code.

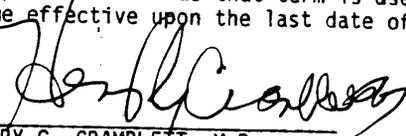
This CONSENT AGREEMENT shall be considered a public record as that term is used in Section 149.43, Revised Code, and shall become effective upon the last date of signature below.

  
BRIAN W. DAVIES, M.D.

2/10/86  
DATE

WITNESS \_\_\_\_\_

\_\_\_\_\_  
DATE

  
HENRY G. CRAMBLETT, M.D.  
Secretary

2/27/86  
DATE

  
WILLIAM W. JOHNSTON, ESQ.  
Supervising Member

21 Feb 86  
DATE