

**STATE OF OHIO  
THE STATE MEDICAL BOARD  
PERMANENT AND VOLUNTARY RETIREMENT  
FROM THE PRACTICE OF MEDICINE AND SURGERY**

I, FRED ANDREW BRINDLE, M.D., am aware of my rights to representation by counsel and to have a further formal adjudicative hearing based on the Notice of Opportunity for Hearing dated May 18, 2005, [May 2005 Notice] issued by the State Medical Board of Ohio [Board] and do hereby freely execute this document and choose to take the actions described herein.

I, FRED ANDREW BRINDLE, M.D., do hereby voluntarily, permanently, knowingly, and intelligently retire from the practice of medicine and surgery, effective upon the last date of signature below.

I, FRED ANDREW BRINDLE, M.D., do hereby voluntarily, knowingly, and intelligently surrender my certificate to practice medicine and surgery, License No. 35.052438, to the Board, thereby permanently relinquishing all rights to practice medicine and surgery in Ohio.

I understand that as a result of the permanent surrender herein that I am no longer permitted to practice medicine and surgery in any form or manner in the State of Ohio.

I agree that I shall be ineligible for, and shall not apply for, reinstatement or restoration of certificate to practice medicine and surgery License No. 35.052438 or issuance of any other certificate pursuant to Chapters 4730., 4731., 4760. or 4762., Ohio Revised Code, on or after the date of signing this Permanent and Voluntary Retirement from the Practice of Medicine and Surgery. Any such attempted reapplication shall be considered null and void and shall not be processed by the Board.

I, FRED ANDREW BRINDLE, M.D., stipulate and agree that I am taking the action described herein in lieu of completion of the formal disciplinary proceedings pending against me as a result of the issuance of the May 2005 Notice pursuant to Section 4731.22(B)(15), Ohio Revised Code. A copy of the May 2005 Notice is attached hereto and marked as Appendix A.

I, FRED ANDREW BRINDLE, M.D., admit to the factual and legal allegations, as set forth in the May 2005 Notice [Appendix A].

I, FRED ANDREW BRINDLE, M.D., hereby release the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

This document 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. I, FRED ANDREW BRINDLE, M.D., acknowledge that my social security number will be used if this information is so reported and agree to provide my social security number to the Board for such purposes.

It is expressly understood that this Permanent and Voluntary Retirement from the Practice of Medicine and Surgery 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.

Signed this 13<sup>th</sup> day of March, 2007.

  
FRED ANDREW BRINDLE, M.D.

  
WITNESS

  
WITNESS

Sworn to and subscribed before me this 13<sup>th</sup> day of March, 2007.



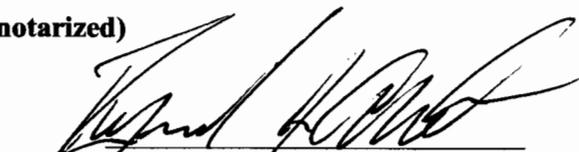
CODI L. SHANNON  
Notary Public, State of Ohio  
My Commission Expires 10/27/2010

  
NOTARY PUBLIC

SEAL

(This form must be either witnessed OR notarized)

  
LANCE A. TALMAGE, M.D.  
SECRETARY

  
RAYMOND J. ALBERT  
SUPERVISING MEMBER

4-11-07  
DATE

4/11/07  
DATE



# State Medical Board of Ohio

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

May 18, 2005

Fred Andrew Brindle, M.D.  
4215 Walnut Creek Lane  
Sandusky, Ohio 44870

Dear Doctor Brindle:

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

- (1) On or about August 3, 2001, you entered into a Consent Agreement (Step I Consent Agreement) with the State Medical Board of Ohio (Board), in lieu of formal proceedings based upon your violations of R.C. 4731.22(B)(19), and of R.C. 4731.22(B)(26).

You admitted you were treated for alcohol dependency in or about 1998; that on or about May 18, 2001, you were suffering from severe depression and were admitted to Providence Hospital in Sandusky, Ohio; following a transfer to University Hospitals of Cleveland, you were diagnosed with Bipolar Disorder and Chemical Dependency; you underwent inpatient treatment at Laurelwood Hospital; and upon discharge, on or about June 21, 2001, you received outpatient treatment through Bayshore Counseling Services in Sandusky, Ohio.

Further, you agreed to certain terms, conditions and limitations, including suspension of your certificate to practice medicine and surgery in Ohio for an indefinite period of time. Additionally, you agreed to the requirement you satisfy certain conditions prior to reinstatement of your certificate. A copy of the Step I Consent Agreement is attached hereto and incorporated herein.

- (2) On or about November 10, 2004, the Board entered an Order (Board Order) concluding you had violated R.C. 4731.22(B)(5) and R.C. 4731.22(B)(15). Further, the Board Order superseded the terms and conditions set forth in the above Step I Consent Agreement.

Additionally, the Board suspended your certificate for an indefinite period of time, but not less than 90 days, and included established interim monitoring terms, conditions and limitations for the period your certificate is suspended. Further, upon reinstatement or restoration, your certificate shall be subject to probationary terms, conditions and limitations for a minimum period of five (5) years. A copy of the Board Order is attached hereto and incorporated herein.

MAILED 5-19-05

APPENDIX A

To date, your certificate to practice medicine and surgery in the State of Ohio, indefinitely suspended effective August 8, 2001, remains suspended.

- (3) The terms, conditions and limitations of the November 10, 2004, Board Order, paragraph two (2) above, require, *inter alia*, your compliance with:

\* \* \*

**INTERIM MONITORING:** \* \* \*

3. **Quarterly Declarations:** Dr. Brindle shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

\* \* \*

6. **Drug & Alcohol Screens; Supervising Physician:** Dr. Brindle shall submit to random urine screenings for drugs and/or alcohol on a weekly basis or as otherwise directed by the Board. Dr. Brindle shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

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

Dr. Brindle shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this 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. Brindle must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Brindle shall further ensure that the previously designated

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

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

\* \* \*

8. **Rehabilitation Program**: Dr. Brindle shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A.A., C.A., or Caduceus, no less than three times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Dr. Brindle shall submit acceptable documentary evidence of continuing compliance with this program, which must be received in the Board's offices no later than the due date for Dr. Brindle's quarterly declarations.

\* \* \*

4. On or about April 13, 2005, accompanied by counsel, you presented yourself before the Board for your initial probationary appearance, in accordance with the Board Order, paragraph two (2) above. You admitted you failed to comply with the interim monitoring terms, conditions and limitations of this Order for random urine screening for drugs and/or alcohol, on a weekly basis, and participation in an alcohol and drug rehabilitation program, no less than three times a week.
5. To date, you have failed to submit a Quarterly Declaration [of Compliance with the Board Order]; results of random urine screening on a weekly basis for drugs and or alcohol; or the name and curriculum vitae of a supervising physician for whom you shall submit specimens. All of these requirements are found in the Interim Monitoring terms, conditions and limitations of the Board Order, as provided in paragraph three (3) above.

Your acts, conduct, and/or omissions, as alleged in paragraphs four (4) and five (5) above, individually and/or collectively, constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Section R.C. 4731.22(B)(15).

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

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

Fred Andrew Brindle, M.D.

Page 4

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.  
Secretary

LAT/cw  
Enclosures

CERTIFIED MAIL # 7003 0500 0002 4340 6370  
RETURN RECEIPT REQUESTED

cc:  
Eric J. Plinke, Esq.  
PORTER WRIGHT, MORRIS & ARTHUR

John P. Carney, Esq.  
PORTER WRIGHT, MORRIS & ARTHUR

CERTIFIED MAIL # 7003 0500 0002 4340 6387  
RETURN RECEIPT REQUESTED

FILED  
COURT OF APPEALS  
FRANKLIN CO. OHIO

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

2006 AUG 24 PM 12:47  
CLERK OF COURTS

Fred A. Brindle, M.D.,	:	
	:	
Appellant-Appellant,	:	No. 05AP-1067
	:	(C.P.C. No. 04CVF-13-148)
v.	:	
	:	(REGULAR CALENDAR)
State Medical Board of Ohio,	:	
	:	
Appellee-Appellee.	:	

JUDGMENT ENTRY

For the reasons stated in the opinion of this court rendered herein on August 24, 2006, all three of appellant's assignments of error are overruled, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs are assessed against appellant.

PETREE, BROWN & McGRATH, JJ.

BY Charles R. Petree  
Judge Charles R. Petree

HEALTH & HUMAN  
AUG 28 2006  
SERVICES SECTION



IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

FILED  
COURT OF APPEALS  
FRANKLIN CO. OHIO

2006 AUG 24 PM 12:32

CLERK OF COURTS

No. 05AP-1067  
(C.P.C. No. 04CVF-13-148)

(REGULAR CALENDAR)

Fred A. Brindle, M.D., :  
Appellant-Appellant, :  
v. :  
State Medical Board of Ohio, :  
Appellee-Appellee. :

O P I N I O N

Rendered on August 24, 2006

HEALTH & HUMAN  
AUG 28 2006  
SERVICES SECTION

*Porter, Wright, Morris & Arthur, and Eric J. Plinke, for appellant.*

*Jim Petro, Attorney General, and Steven McGann, for appellee.*

APPEAL from the Franklin County Court of Common Pleas.

PETREE, J.

{¶1} Appellant, Fred A. Brindle, M.D., appeals from a judgment of the Franklin County Court of Common Pleas which affirmed an order of appellee, State Medical Board of Ohio ("board"), suspending Dr. Brindle's certificate to practice medicine indefinitely, but for not less than 90 days. For the reasons that follow, we affirm the judgment of the trial court.

{¶2} On August 8, 2001, and in lieu of formal proceedings, appellant entered into a "Step I Consent Agreement" ("consent agreement") with the board. The parties entered the agreement after appellant was hospitalized on May 18, 2001, at Providence Hospital

in Sandusky, Ohio, for severe depression, and subsequently hospitalized at University Hospitals of Cleveland, where he was diagnosed with bipolar disorder and chemical dependency. The consent agreement provided that appellant's medical license would be suspended for an indefinite period of time. The consent agreement set forth the conditions for appellant's reinstatement. Included within those conditions was the requirement that appellant submit to random weekly urine screenings for drugs and alcohol.

{¶3} On December 10, 2003, the board sent appellant a letter notifying him as follows:

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

{¶4} Specifically, the letter alleged that appellant failed to submit urine specimens for drug and alcohol screening during the weeks beginning on June 1, June 15, July 27, August 3, August 10, September 10, and October 19 of 2003. It also alleged that appellant submitted two "declarations of compliance" despite the fact that he had not submitted urine specimens for drug and alcohol screening during the aforementioned weeks. The letter stated that appellant's failure to produce the urine specimens for screening constituted a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in R.C. 4731.22(B)(15). In addition, the letter stated that appellant's October 15, 2003 declaration of compliance constituted "[m]aking a false, fraudulent, deceptive, or misleading statement in the

solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in R.C. 4731.22(B)(5).

{¶5} Pursuant to R.C. Chapter 119, appellant requested a hearing on the matter. On August 24, 2004, a hearing was held before hearing examiner Sharon W. Murphy. At the hearing, appellant admitted that he had not fully complied with the requirement contained within the consent agreement that he submit weekly urine specimens for screening.

{¶6} On October 5, 2004, the hearing examiner issued a report and recommendation, which included a summary of the evidence, findings of fact, conclusions of law, and a proposed board order. The hearing examiner concluded that appellant violated the terms of the consent agreement by his failure to fully comply with the urine screening requirement. Additionally, the hearing examiner concluded that appellant published a false statement by means of the declaration of compliance he signed on October 15, 2003. The hearing examiner found no violation resulting from appellant's signing of a declaration of compliance on August 11, 2003. The proposed order provided for appellant's reinstatement, but outlined limitations and restrictions on appellant's certificate to practice.

{¶7} On October 15, 2004, the state, through an assistant attorney general, filed objections to the hearing examiner's report and recommendation. By said objections, the state argued that the hearing examiner's conclusion of law relating to the declaration of compliance appellant signed on August 11, 2003, was erroneous. In addition, the state

argued that the issue of appellant's reinstatement was not properly before the hearing examiner at the hearing.

{¶8} On October 20, 2004, appellant filed objections to the report and recommendation. Appellant agreed with the hearing examiner's conclusion that his license should be reinstated. However, he disagreed with the hearing examiner's conclusion that he violated the consent agreement. Appellant argued that the board's failure to act on his request for reinstatement constituted a material breach of the agreement, and that the breach discharged his obligations under the agreement. In addition, on October 28, 2004, appellant filed a motion to strike the state's objections. By letter dated November 9, 2004, said motion was denied.

{¶9} On November 10, 2004, the board considered this matter. Appellant, his counsel, and an assistant attorney general appeared before the board. At the meeting, Dr. Steinbergh, a board member, offered an amendment that substituted language for a portion of the hearing examiner's conclusions of law. The board voted to approve the amendment. Additionally, Dr. Egner, another board member, offered an amendment to the proposed order of the hearing examiner. The board approved the amendment to the proposed order. Subsequently, the board approved and confirmed the hearing examiner's proposed findings of fact, conclusions, and order, as amended, in this matter. The board's order, which was mailed December 3, 2004, suspended appellant's certificate to practice medicine indefinitely, but for not less than 90 days. The order set forth the conditions for the reinstatement or restoration of appellant's certificate to practice.

{¶10} On December 14, 2004, and pursuant to R.C. 119.12, appellant appealed the board's order to the Franklin County Court of Common Pleas. Appellant moved for an order staying the board's order. On February 14, 2005, the trial court denied said motion. On September 9, 2005, the trial court rendered its decision affirming the order of the board. The trial court found the order to be supported by reliable, probative, and substantial evidence, and in accordance with law. Appellant timely appeals from that decision and sets forth the following three assignments of error for our review:

FIRST ASSIGNMENT OF ERROR:

THE TRIAL COURT'S DECISION IS IN ERROR BECAUSE THE BOARD'S ORDER IS CONTRARY TO LAW IN THAT DR. BRINDLE WAS DISCIPLINED DESPITE THE BOARD'S PRIOR BREACH OF AGREEMENT CONCERNING HIS REINSTATEMENT REQUEST AND REFUSAL TO CONSIDER REINSTATEMENT AT HEARING.

SECOND ASSIGNMENT OF ERROR:

THE TRIAL COURT DECISION IS IN ERROR WHERE IT SUSTAINS THE BOARD'S ORDER THAT IS CONTRARY TO LAW BECAUSE IT WAS BASED UPON EX PARTE COMMUNICATIONS AND VIOLATED APPELLANT'S DUE PROCESS RIGHTS.

THIRD ASSIGNMENT OF ERROR:

THE TRIAL COURT ERRED IN FINDING THAT THE BOARD'S ORDER WAS IN ACCORDANCE WITH LAW DESPITE THE FACT THAT THE BOARD IS NOT ENTITLED UNDER R.C. CH. 119 TO OBJECT TO THE HEARING EXAMINER'S R & R.

{¶11} Before we address appellant's assignments of error, we will outline the standard of review for administrative appeals pursuant to R.C. 119.12. Pursuant to R.C. 119.12, when a common pleas court reviews an order of an administrative agency, it must consider the entire record and determine whether the agency's order is supported

by reliable, probative, and substantial evidence and is in accordance with law. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 110-111; see, also, *Andrews v. Bd. of Liquor Control* (1955), 164 Ohio St. 275, 280. The evidence required by R.C. 119.12 has been defined as follows:

- (1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true.
- (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue.
- (3) "Substantial" evidence is evidence with some weight; it must have importance and value.

*Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571.

(Footnotes omitted.)

{¶12} The common pleas court's "review of the administrative record is neither a trial *de novo* nor an appeal on questions of law only, but a hybrid review in which the court 'must appraise all the evidence as to the credibility of the witnesses, the probative character of the evidence, and the weight thereof.' " *Lies v. Ohio Veterinary Med. Bd.* (1981), 2 Ohio App.3d 204, 207, quoting *Andrews*, at 280.

{¶13} An appellate court's review of an administrative decision is even more limited than that of a common pleas court. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, rehearing denied, 67 Ohio St.3d 1439. In *Pons*, the Supreme Court of Ohio stated:

\* \* \* While it is incumbent on the trial court to examine the evidence, this is not a function of the appellate court. The appellate court is to determine only if the trial court has abused its discretion, i.e., being not merely an error of judgment, but perversity of will, passion, prejudice, partiality, or moral delinquency. Absent an abuse of discretion on the

part of the trial court, a court of appeals may not substitute its judgment for those of the medical board or a trial court. Instead, the appellate court must affirm the trial court's judgment. \* \* \*

Id. at 621.

{¶14} However, an appellate court does have plenary review of purely legal questions. *Steinfels v. Ohio Dept. of Commerce, Div. of Securities* (1998), 129 Ohio App.3d 800, 803, appeal not allowed (1999), 84 Ohio St.3d 1488.

{¶15} Appellant argues in his first assignment of error that the trial court erred in affirming the board's order because the board acted contrary to law by disciplining him even though the board already had materially breached the consent agreement. Appellant contends that the board's failure to act upon his request for reinstatement constituted a material breach of the consent agreement, thereby eliminating his obligation to comply with the conditions of the consent agreement. Additionally, appellant argues that the board materially breached the consent agreement by its "unsustainable" reading of the agreement. The board argues that it did not breach the consent agreement.

{¶16} Regarding the conditions for appellant's reinstatement, the consent agreement provided, in part, as follows:

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

a. DOCTOR BRINDLE shall submit an application for reinstatement, accompanied by appropriate fees, if any;

b. DOCTOR BRINDLE 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:

\* \* \*

ii. Evidence of continuing full compliance with an aftercare contract or consent agreement.

\* \* \*

c. DOCTOR BRINDLE shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the BOARD or, if the BOARD and DOCTOR BRINDLE are unable to agree on the terms of a written CONSENT AGREEMENT, then DOCTOR BRINDLE 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.

{¶17} Appellant argues that the board should have acted upon his request for reinstatement because he had met the requirements of the agreement. The consent agreement stated that appellant's suspension was indefinite and set forth the conditions for appellant's reinstatement. However, it provided no timetable for the board to consider appellant's reinstatement upon its receipt of a proper request for reinstatement. Under the terms of the consent agreement, the fact that appellant requested reinstatement did not mandate the board's consideration of the issue. A submission of a request for reinstatement was not the only requirement set forth in paragraph 8 that had to be met before the board could consider reinstatement. The conditions for appellant's reinstatement also included the requirement that appellant demonstrate "to the satisfaction of the BOARD" that he could resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. (See paragraph 8.b. of the consent agreement.)

{¶18} In regard to paragraph 8.b.ii., the parties dispute whether appellant was required to comply with an aftercare contract and the consent agreement, or just the

consent agreement. Barbara Jacobs, the public services administrator for the board, testified at the hearing before the hearing examiner that appellant was required under the consent agreement to demonstrate continuing compliance with an aftercare contract. Appellant argues that the terms of the consent agreement do not support such an interpretation, and, therefore, the board's refusal to act on the reinstatement request was a result of its "unsustainable" interpretation of the consent agreement. In support of that argument, appellant notes that the consent agreement required him to demonstrate "[e]vidence of continuing full compliance with an aftercare contract *or* consent agreement" (emphasis added). Appellant contends that the board "is attempting to change the word 'or' in paragraph 8.b.ii to read 'and' because it was this unsustainable interpretation by Ms. Jacobs that led to Dr. Brindle not being reinstated." (Appellant's reply brief, at 5.)

{¶19} Regarding appellant's citation to the use of the disjunctive between "aftercare contract" and "consent agreement," we observe that paragraph 8.b.ii. must be read in context. As discussed above, paragraph 8.b. provided that appellant was required to demonstrate, "to the satisfaction of the BOARD that he can resume practice in compliance with acceptable and prevailing standards of care." Additionally, paragraph 8.b. provided that "[s]uch demonstration shall include *but shall not be limited to the following[.]*" (Emphasis added.) In view of those two clauses, we find that the consent agreement authorized the board to require evidence of continuing compliance with an aftercare contract, in addition to evidence of continuing compliance with the consent agreement, before it would be satisfied that appellant can return to practice in compliance with the applicable standards of care.

{¶20} Based on the foregoing, and contrary to appellant's arguments, we find that the board did not materially breach the consent agreement and that it did not act contrary to law in not acting upon appellant's request for reinstatement. Therefore, we overrule appellant's first assignment of error.

{¶21} By his second assignment of error, appellant argues that the trial court erred in affirming the board's order when that order was based upon ex parte communications that violated due process. Appellant argues that at least two board members, Drs. Egner and Steinbergh, engaged in ex parte communications with board staff, including Lauren Lubow, who is employed by the board as its senior executive staff attorney. Appellant asserts that the existence of these alleged ex parte communications was demonstrated by the fact that amendments to the report and recommendation were created prior to the hearing before the board, and by the fact that the amendments contained legal terms. The board argues that communications between Ms. Lubow and board members are not ex parte communications.

{¶22} Ohio Adm.Code 4731-13-34(A) mandates that members of the board must base their decisions only on the evidence of record, and no other information may be considered. Additionally, pursuant to Ohio Adm.Code 4731-13-34(B), board members are prohibited from initiating or considering ex parte communications concerning a substantive matter related to a pending adjudicatory proceeding. In the case at bar, appellant essentially argues that communications between members of the board and Ms. Lubow, a board attorney, constituted ex parte communications, as prohibited by Ohio Adm.Code 4731-13-34(B).

{¶23} In a letter dated November 15, 2004, appellant requested, pursuant to Ohio Adm.Code 4731-13-34(D),<sup>1</sup> the production of an affidavit from any board member who had ex parte communications concerning the pending adjudicatory proceeding. On November 16, 2004, the executive director of the board sent a letter to counsel for appellant indicating that no ex parte communications were acknowledged during the consideration of appellant's case,<sup>2</sup> and, therefore, Ohio Adm.Code 4731-13-34(D) was inapplicable. Consequently, appellant's request was denied.

{¶24} Subsequently, appellant submitted a public records request for board records relating to appellant from August 24 to December 15, 2004, including records related to Dr. Steinbergh's amendment that was offered at the November 10, 2004 meeting, and any records related to the preparation of that amendment. In response to appellant's public records request, Ms. Lubow provided appellant's counsel with electronic copies of the amendments to the hearing examiner's conclusions and to her proposed order. The provided documentation indicated that Ms. Lubow prepared the amendments on November 10, 2004. According to Ms. Lubow's affidavit that is part of the record, her duties, as an employee of the board, include assisting board members by drafting, for presentation at public board meetings, alternative findings, conclusions, and orders to the proposed reports and recommendations that are before the board for consideration.

{¶25} Contrary to appellant's assertions, any communications between the board and Ms. Lubow were not "ex parte communications." Regarding this issue, we note that

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<sup>1</sup> Ohio Adm.Code 4731-13-34(D) permits any party to request that the recipient of the ex parte communication file an affidavit indicating the substance of the ex parte communication.

<sup>2</sup> Pursuant to Ohio Adm.Code 4731-13-34(C), if ex parte communications occur, the board member must publicly disclose the source of any ex parte or attempted ex parte communications pertaining to a substantive issue.

there is a difference between legal representation of state agencies in courts or tribunals and legal advice given by in-house counsel to state agencies on day-to-day matters. See *State ex rel. Leslie v. Ohio Housing Finance Agency*, 105 Ohio St.3d 261, 2005-Ohio-1508, at ¶36 (finding that R.C. 109.02 "is directed toward the legal *representation* of state agencies and officers in *courts or tribunals* instead of legal *advice* given by in-house counsel to state agencies and officers on day-to-day matters") (emphasis sic). In *Leslie*, the Supreme Court of Ohio determined that the attorney-client privilege applies to state agencies and their in-house counsel, even if that counsel is not an assistant attorney general. *Id.* at ¶43. Here, Ms. Lubow was a staff attorney for the board and had a non-adversarial role in the administrative proceedings. Ohio Adm.Code 4731-13-34 does not prohibit board members from consulting with in-house counsel regarding issues it must address and resolve. In other words, Ohio Adm.Code 4731-13-34 does not prohibit communications between the board and a member of its administrative staff, who is an attorney. Therefore, appellant's argument that the board violated his due process rights because its order was based on ex parte communications is not persuasive.

{¶26} Accordingly, we overrule appellant's second assignment of error.

{¶27} Under his third assignment of error, appellant argues that the trial court erred in affirming the board's order because the board was impermissibly permitted to object to the hearing examiner's report and recommendation.

{¶28} R.C. 119.09 provides, in pertinent part, as follows: "The party may, within ten days of receipt of such copy of such written report and recommendation, file with the agency written objections to the report and recommendation, which objections shall be considered by the agency before approving, modifying, or disapproving the

recommendation." R.C. 119.09(G) defines "party" as "the person whose interests are the subject of an adjudication by an agency." R.C. 119.01(F) defines "person" as "a person, firm, corporation, association, or partnership."

{¶29} Ohio Adm.Code 4731-13-15(C) provides that "[e]ither representative of record may, within ten days of receipt of the hearing examiner's report and recommendation, file written objections to the report and recommendation." Appellant argues that Ohio Adm.Code 4731-13-15 is an invalid rule because it is contrary to law. Appellee maintains that the rule is valid.

{¶30} "It is axiomatic that administrative rules are valid unless they are unreasonable, or in clear conflict with the statutory intent of the legislation governing the subject matter. When the potential for conflict arises, the proper subject for determination is whether the rule contravenes an express provision of the statute." *Woodbridge Partners Group, Inc. v. Ohio Lottery Comm.* (1994), 99 Ohio App.3d 269, 273. The Supreme Court of Ohio has stated that "administrative rules, in general, may not add to or subtract from \* \* \* the legislative enactment." *Cent. Ohio Joint Vocational School Dist. Bd. of Edn. v. Admr., Ohio Bur. of Emp. Services* (1986), 21 Ohio St.3d 5, 10. "[A]n impermissible addition to or subtraction from a statute is one means of creating a clear conflict." *Franklin Iron and Metal Corp. v. Ohio Petroleum Underground Storage Tank Release Comp. Bd.* (1996), 117 Ohio App.3d 509, 515.

{¶31} R.C. 119.09 provides that a person whose interests are the subject of an adjudication by an agency may file objections to a report and recommendation before the agency approves, modifies, or disapproves the recommendation. However, it does not expressly prohibit a representative of the agency from filing objections to the report and

recommendation. We conclude that the rule permitting such a filing by the representative of the board is reasonable, does not impermissibly add to the legislative enactment, and does not clearly conflict with the statutory intent of the General Assembly in enacting R.C. 119.09.

{¶32} Moreover, appellant cannot demonstrate that he was prejudiced as a result of the filing of objections by the assistant attorney general on behalf of the state. Appellant argues that the filing of the board's objections to the hearing examiner's report and recommendation was prejudicial because it enabled the board an opportunity to rebut the hearing examiner in advance of the board's deliberations. We find that argument unpersuasive, as the same main arguments made in the objections were made at the hearing before the members of the board. Thus, even if the board had granted appellant's motion to strike the state's objections, the arguments set forth by the objections would have been orally presented at the hearing before the board for its due consideration.

{¶33} Considering the foregoing, we overrule appellant's third assignment of error.

{¶34} Having overruled all three of appellant's assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

BROWN and McGRATH, JJ., concur.

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IN THE COURT OF COMMON PLEAS FRANKLIN COUNTY, OHIO

Fred Andrew Brindle, M.D.  
4310 Royal Street George Drive  
Avon, Ohio 44011

Appellant,

vs.

State Medical Board of Ohio  
77 South High Street, 17<sup>th</sup> Floor  
Columbus, OH 43215-6127,

Appellee.

Case No. 04CVF-12-13148

Judge Daniel T. Hogan

Appeal from the Decision and Entry  
of September 9, 2005

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CLERK OF COURTS

**APPELLANT'S NOTICE OF APPEAL**

Notice is hereby given that Appellant, Fred Andrew Brindle, M.D., hereby appeals to the Court of Appeals of Franklin County, Tenth Appellate District, from the Decision and Entry entered in this action on the 9<sup>th</sup> day of September, 2005.

Respectfully submitted,



PORTER, WRIGHT, MORRIS & ARTHUR, LLP  
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COURT OF APPEALS  
FRANKLIN COUNTY, OHIO  
05 OCT -5 PM 4:52  
CLERK OF COURTS

**05APE-10-1067**

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

FRED ANDREW BRINDLE, MD,

Appellant,

v.

STATE MEDICAL BOARD  
OF OHIO,

Appellee.

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CLERK OF COURTS

04 CV F 13148

CASE NO. 04CVF12-13147

JUDGE HOGAN

10  
M 9-6-05

**DECISION AND ENTRY AFFIRMING  
ORDER OF THE STATE MEDICAL BOARD OF OHIO**

Appellant Fred Andrew Brindle, M.D. appeals an order of the Appellee State Medical Board of Ohio ("Board"), which was mailed to Dr. Brindle on December 3, 2004. In the order, the Board suspended Dr. Brindle's certificate to practice medicine indefinitely, but for not less than 90 days, and also set forth various conditions that Dr. Brindle must meet to have his certificate reinstated.

**I. Factual and Procedural Background.**

On December 10, 2003, the Board's secretary notified Dr. Brindle by letter ("citation letter") that the Board would determine whether to take action against Dr. Brindle's certificate to practice medicine and surgery. The citation letter alleged that Dr. Brindle violated "conditions of limitation placed by the board upon a certificate to practice," in contravention of R.C. 4731.22 (B)(15); and that Bindle made a "false, fraudulent, deceptive, or misleading statement" in attempt to secure a certificate to practice, in violation of R.C. 4731.22 (B)(5).

The allegations in the citation letter came as a result of a "Step I Consent Agreement" (hereinafter "Consent Agreement") executed by Dr. Brindle and the

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Board on August 8, 2001. In the Consent Agreement, the parties recognized that Dr. Brindle had a mental or physical illness that rendered him unable to practice medicine according to acceptable and prevailing standards of care (See R.C. 4731.22 (B)(19)), and that he was impaired in his ability to practice because of habitual or excessive drug, alcohol, or substance abuse. (See R.C. 4731.22 (B)(26)). Dr. Brindle agreed as part of the Consent Agreement to an indefinite suspension of his certificate, and to the requirement that specified conditions be satisfied before he was eligible for reinstatement. The Consent Agreement did not establish a timetable that the Board was required to act upon a request for reinstatement.

In the citation letter, the Board accused Dr. Brindle of violating requirements that he submit weekly random urine specimens, unless he obtained a waiver in advance, and that he submit quarterly declarations of compliance with the terms of the Consent Agreement.

On January 6, 2004, Dr. Brindle, through his attorney, requested a hearing on the allegations set forth in the citation letter. The hearing was held before a Board hearing examiner on August 24, 2004. The state called Dr. Brindle as a witness as if on cross-examination, and also called Danielle Bickers and Barbara A. Jacobs, Esq., as witnesses. Dr. Brindle also testified as part of his defense.

On October 5, 2004, the hearing examiner issued a 25-page report and recommendation ("R & R"), which included a summary of the evidence, findings of fact, conclusions of law, and a proposed Board order. The proposed order provided that Dr. Brindle's request to have his certificate restored was granted

with several conditions attached. The Board mailed Dr. Brindle a copy of the R & R on October 8, 2004.

On October 15, 2004, the state, through an assistant attorney general, filed objections to the R & R. On October 20, 2004, Dr. Brindle filed objections to the R & R. On October 28, 2004, Dr. Brindle's counsel filed a motion to strike the state's objections, arguing that they were not permitted under the Administrative Procedure Act, R.C. Chapter 119. On November 4, 2004, the state filed a memorandum in position to the motion to strike. On November 9, 2004, a Board staff member notified Dr. Brindle's attorney by letter that his request to strike the state's objections was denied.

The R & R and objections were considered by the Board at its November 10, 2004 meeting. After the Board heard arguments from Dr. Brindle, his counsel, and an assistant attorney general, the Board voted 8-0, with one abstention, to amend the hearing examiner's proposed order. As amended, the Board's order suspended Dr. Brindle's certificate to practice medicine indefinitely, but for not less than 90 days. The order included conditions for the reinstatement of Dr. Brindle's certificate, and provided for a probationary period upon reinstatement. The order was mailed to Dr. Brindle on December 3, 2004.

On November 15, 2004, Dr. Brindle's counsel, pursuant to Ohio Adm.

Code 4731-13-34 (D),<sup>1</sup> requested in a letter to the Board president that affidavits be produced from all Board members who had ex parte communications concerning the Brindle matter. The Board's executive director responded in a letter the next day that 1) the administrative rule does not contemplate that such affidavits be disclosed to parties, and 2) no Board member publicly disclosed that he or she had ex parte communications that fell within Ohio Adm. Code 4731-13-34 (D).

On December 15, 2004, Dr. Brindle's attorney made a public records request for Board records relating to Dr. Brindle, from August 24, 2004 to December 15, 2004, including records related to Board member Anita M.

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<sup>1</sup> Ohio Adm. Code 4731-13-34, "Ex parte communication," provides as follows:

"(A) The members of the board shall base their decisions on any matter subject to hearing only on the evidence of record. No information acquired by a member of the board in any way other than by review of the evidence of record shall be considered by such member in that member's decision on a matter subject to hearing. The receipt of information about a matter subject to hearing outside the evidence of record shall not disqualify the member from participating in the decision on that matter unless the member excuses himself or herself from participation in the decision on the ground that he or she cannot restrict his or her decision on the matter to the evidence of record.

(B) Except as otherwise provided under this chapter or by statute, no hearing examiner or member of the board shall initiate or consider ex parte communications concerning a substantive matter related to a pending adjudicatory proceeding. Nothing contained herein, however, shall preclude the hearing examiner from nonsubstantive ex parte communications on procedural matters and matters affecting the efficient conduct of adjudicatory hearings.

(C) The hearing examiner and members of the board shall disclose on the public record the source of any ex parte or attempted ex parte communications pertaining to a substantive issue. If the recipient of the ex parte communication determines that he or she can no longer render an impartial decision, the recipient shall recuse himself or herself from further participation in consideration of the matter.

(D) If requested by any party, the recipient of the ex parte communication shall file with the board an affidavit setting forth the substance of the ex parte communication. The affidavit shall be sealed, held as proffered material and maintained with the hearing record.

Steinbergh's amendment offered at the November 10, 2004 Board meeting, and records related to the preparation and revision of the amendment. Lauren Lubow, the Board's senior executive staff attorney, sent a response on December 22, 2004. Lubow turned over to Dr. Brindle's counsel a CD which indicated that Lubow prepared a draft conclusion for Steinbergh on November 10, 2004; and that a draft proposed order was prepared by Lubow for Steinbergh on the same date.

The Board provided to the Court as additional evidence for the record, an affidavit from Lubow. In the affidavit, Lubow states that her job requirements include assisting Board members by drafting, for presentation at public Board meetings, findings, conclusions, and orders that differ from those offered by Board hearing examiners. Attached to Lubow's affidavit were 1) a copy of minutes from a December 3, 1985 Board meeting, in which members passed a motion to use staff members to draft changes to proposed orders; and 2) a June 30, 1986 memorandum in which the Board's executive director identified Lubow as the staff contact person for assisting members with alternate orders.

Dr. Brindle filed a notice of appeal with this Court on December 14, 2004. Brindle filed a motion to stay the Board's order during the pendency of these proceedings. Following a hearing before a magistrate, the Court denied the motion.

## **II. Law.**

This court must affirm the order of the Board if it is supported by reliable, probative and substantial evidence and is in accordance with law. R.C. 119.12;

*Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 111. This standard of proof was defined by the Supreme Court of Ohio in *Our Place v. Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571:

“(1) ‘Reliable’ evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) ‘Probative’ evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) ‘Substantial’ evidence is evidence with some weight; it must have importance and value.” (Internal citations omitted.)

To a limited extent, this Court may substitute its judgment for that of the administrative agency. However, the Court must give the agency due deference as to its resolution of evidentiary conflicts, since the hearing officer had the opportunity to view the witnesses' demeanor and weigh their credibility. *Conrad*, 63 Ohio St.2d at 111.

In the present case, the Board brought charges under R.C. 4731.22 (B)(5) and (B)(15):

"The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:

\*\*\*

(5) Making a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to

secure any certificate to practice or certificate of registration issued by the board.

As used in this division, "false, fraudulent, deceptive, or misleading statement" means a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

\*\*\*

(15) Violation of the conditions of limitation placed by the board upon a certificate to practice\*\*\*."

### **III. Court's Findings and Conclusion.**

The Board's order was supported by reliable, probative, and substantial evidence and was in accordance with the law. At the hearing before the hearing examiner, Dr. Brindle admitted that in 2001, he was treated for bipolar disorder and alcoholism. Dr. Brindle further admitted he entered into the Consent Agreement, pursuant to which he was required to submit weekly urine screens for drugs and alcohol, and he failed to satisfy that requirement during the summer of 2003. Board Compliance Officer Danielle Bickers confirmed that Dr. Brindle missed urine screens for the weeks of June 1, June 15, June 20, July 27, and August 3, 2003, and gave as his reason that he was traveling in Argentina, Mexico, and Michigan. Moreover, Bickers had emphasized to Dr. Brindle the previous summer that it was his responsibility to comply with the urine screening provisions. Thus, Dr. Brindle's own testimony established that he violated a

condition placed upon his certificate to practice, and thus violated R.C. 4731.22 (B)(15).

Dr. Brindle also admitted that during 2003, he signed a declaration that he was in compliance with all of the probationary terms, conditions, and limitations imposed by the Board, when in fact he was not. In the declaration, Dr. Brindle acknowledged that he could be subjected to additional Board discipline if the declaration were false. This was a false statement used to secure a certificate to practice, and thus violated R.C. 4731.22 (B)(5).

The Board's order also was in accordance with law. Having found that Dr. Brindle made a false statement in attempting to secure a certificate to practice, and that he violated terms the Board imposed upon his certificate to practice, the Board was authorized under R.C. 4731.22 (B) to suspend Dr. Brindle's certificate. More than the required six members approved the Board's order.

As the Board recognized, the hearing examiner's recommendation of reinstatement exceeded the scope of her authority for the August 24, 2004 hearing. The hearing examiner did not state at any time during the hearing that she would be considering reinstatement of Dr. Brindle. Thus, the state had no notice that the reinstatement issue would be before the Board, and had no opportunity to request a continuance or adjournment, to summon witnesses who could testify about the propriety of reinstating Dr. Brindle's certificate.

In his defense, Dr. Brindle argued that he was excused from performing under the Consent Agreement in the summer of 2003, because the Board was in material breach of the Consent Agreement. Dr. Brindle's argument is based on

the fact that 1) the Consent Agreement required that Dr. Brindle display "[e]vidence of continuing full compliance with an aftercare contract or consent agreement" (August 8, 2001 Consent Agreement, at paragraph 8.b.ii) (emphasis added); 2) the Board informed Dr. Brindle in 2002 that it was requiring he fully comply with both an aftercare contract and the Consent Agreement; 3) the Board's public services administrator testified that it was her "understanding" that Dr. Brindle's failure to comply with an aftercare contract was the reason the Board did not reinstate Dr. Brindle's certificate under what the Board refers to as a Step 2 agreement.

Dr. Brindle testified that he believed he had satisfied all of the requirements to have his certificate reinstated, but he was disappointed with the speed at which the Board was considering reinstatement. Dr. Brindle added that he decided on his own to stop giving urine screens, because he believed two and one-half years of doing so, without a positive finding, was sufficient.

Even if the Court assumes that Dr. Brindle fully complied with the Consent Agreement through the summer of 2003, this argument is unpersuasive. The Consent Agreement expressly stated that the suspension was indefinite. It did not impose an affirmative duty upon the Board to reinstate Dr. Brindle's certificate. Nor did the Consent Agreement contain a timetable that the Board needed to follow after a request for reinstatement was requested.

Dr. Brindle's argument also fails to take into account the context in which the aftercare contract and consent agreement are discussed. Per the Consent Agreement, Dr. Brindle, in order to be considered for reinstatement, was required

to "demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care." (Consent Agreement, at paragraph 8.b.) The Consent Agreement stated that such a demonstration "shall include but shall not be limited to" compliance with the consent agreement or aftercare contract, and several other specified requirements. *Id.* Thus, the Board had discretion to impose reasonable requirements upon Dr. Brindle, other than those specified in paragraph 8.b of the Consent Agreement.

There was no evidence to demonstrate that the Board's public services administrator was authorized to act for the Board, or that she had final authority to determine when a Step 2 agreement and/or reinstatement hearing was warranted. In fact, aside from the language of the Consent Agreement itself, Dr. Brindle was informed in an April 26, 2002 and August 9, 2002 letters from Board staff members that Board ratification was required before any Step 2 agreement became final. (Respondent's Hearing Exhibits A and H.) Therefore, Dr. Brindle took an unwarranted leap by concluding that his supposed compliance with paragraph 8.b.ii, coupled with the Board's failure to consider reinstatement, constituted a material breach of the Consent Agreement, and he was no longer required to abide by it. Based on the plain language of the Consent Agreement, he should not have reasonably expected that his compliance with paragraphs 8.b.i, 8.b.ii, and 8.b.iii would automatically entitle him to reinstatement. Therefore, the Board did not commit a material breach of the Consent Agreement, and Dr. Brindle was not excused from complying with its terms in the

summer and fall of 2003. See *Kersh v. Montgomery Developmental Ctr.* (10th Dist. 1987), 35 Ohio App.3d 61, 62-63.

It also would run contrary to public policy to allow a suspended doctor to unilaterally determine that his indefinite suspension has dragged on too long, and to unilaterally determine he is entitled to reinstatement without continuing to comply with a consent agreement. As the Board pointed out in its brief, Dr. Brindle could have demanded a hearing on reinstatement, and brought a mandamus action if the Board failed to afford him one.

Dr. Brindle also argues that the Board order was not in accordance with law, because he was denied due process of law. Specifically Dr. Brindle asserts that at or before their November 10, 2004 meeting, at least two Board members engaged in ex parte communications, as defined by the Ohio Administrative Code. (See footnote 1, supra, page 4.) Dr. Brindle argues that these members failed to disclose the alleged ex parte communications on the record, as required by law. According to Dr. Brindle, the evidence of ex parte communications comes from the two typed amendments that Board members considered and adopted at the meeting.

Upon review of Dr. Brindle's arguments and the cases he cites, this Court concludes that Dr. Brindle was not denied a fair hearing. In fact, the cases cited by Dr. Brindle recognize that administrative agencies are permitted to take practical measures -- including the use of staff assistants -- in their decision making, as long as long as the agency provides a substantial hearing, and bases its decision on an appraisal of the evidence. See *State ex rel. Ormet Corp. v.*

*Industrial Commission* (1990), 54 Ohio St. 3d 102, 104, citing *Morgan v. United States* (1936), 298 U.S. 468, 481-482. The record reflects that a Board staff member, who does not play an adversarial role in Board adjudication hearings, drafted proposed orders that were different from the hearing examiner's proposal. This is similar to the role that law clerks play in assisting judges with their decisions, and does not fall within the purview of ex parte communications.

Dr. Brindle also argues that the Board's order is contrary to law because the state was impermissibly permitted to file written objections to the hearing examiner's R & R. Dr. Brindle recognizes that the Ohio Administrative Code permits "either representative of record" to file written objections to a report and recommendation. Ohio Adm. Code 4731-13-15 (C). However, Dr. Brindle argues that this rule, promulgated by the Board, impermissibly adds to a provision of the Administrative Procedure Act, R.C. 119.09, and therefore is invalid. R.C. 119.09 only permits a "party" to file written objections to a hearing examiner's R & R. Dr. Brindle points out that under R.C. 119.01 (G), a party is defined so as to include Dr. Brindle, but not the state, and therefore only Dr. Brindle should have been permitted to file written objections to the R & R.

The Court rejects this argument for two reasons. First, rules promulgated by an administrative agency, such as Ohio Adm. Code 4731-13-15 (C), are valid:

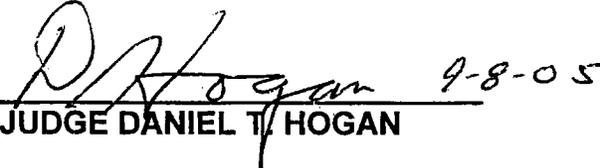
"unless they are unreasonable, or in clear conflict with the statutory intent of the legislation governing the subject matter. When the potential for conflict arises, the proper subject for determination is whether the rule contravenes an express provision of the statute." *Woodbridge Partners Group v. Ohio Lottery Comm'n* (1994), 99 Ohio St.3d 269, 273.

The Board's rule allowing either party to file written objections is reasonable, and does not contradict R.C. 119.09.

Secondly, the record indicates that the two main points made by the state in its written objections to the R & R were: 1) that the hearing examiner's conclusion of law regarding an August 2003 violation of R.C. 4731.22 (B)(5) was incorrect and 2) that the issue of Dr. Brindle's reinstatement was not properly before the hearing examiner. The assistant attorney general verbally argued the same positions at the November 10, 2003 Board meeting.<sup>2</sup> Consequently, the arguments Dr. Brindle objects to in written form would have been before the Board by way of oral argument, even if the Board had granted Dr. Brindle's motion to strike the state's objections.

In conclusion, the Board's order was supported by reliable, probative, and substantial evidence, and was in accordance with the law. It is ORDERED, ADJUDGED, AND DECREED that the Board order, decided on November 10, 2004, and mailed to Dr. Brindle on December 3, 2004, is AFFIRMED.

This is a final entry.

  
JUDGE DANIEL T. HOGAN 9-8-05

Copies to:

Eric J. Plinke, Esq. & John P. Carney, Esq., Counsel for Appellant  
Rebecca Albers, Esq., Senior Assistant Attorney General, Counsel for Appellee

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<sup>2</sup> Board rules provide that either party may request leave to address the Board at the meeting at which an R & R will be considered. The rule further states that if one party obtains leave to address the Board, the other party may address the Board as well. Ohio Adm. Code 4731-13-15 (G), (H). In this case, Dr. Brindle's counsel requested and was granted leave to address the Board. Thus, the assistant attorney general also was permitted to, and did, address the Board.



# State Medical Board of Ohio

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

May 18, 2005

Fred Andrew Brindle, M.D.  
4215 Walnut Creek Lane  
Sandusky, Ohio 44870

Dear Doctor Brindle:

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

- (1) On or about August 3, 2001, you entered into a Consent Agreement (Step I Consent Agreement) with the State Medical Board of Ohio (Board), in lieu of formal proceedings based upon your violations of R.C. 4731.22(B)(19), and of R.C. 4731.22(B)(26).

You admitted you were treated for alcohol dependency in or about 1998; that on or about May 18, 2001, you were suffering from severe depression and were admitted to Providence Hospital in Sandusky, Ohio; following a transfer to University Hospitals of Cleveland, you were diagnosed with Bipolar Disorder and Chemical Dependency; you underwent inpatient treatment at Laurelwood Hospital; and upon discharge, on or about June 21, 2001, you received outpatient treatment through Bayshore Counseling Services in Sandusky, Ohio.

Further, you agreed to certain terms, conditions and limitations, including suspension of your certificate to practice medicine and surgery in Ohio for an indefinite period of time. Additionally, you agreed to the requirement you satisfy certain conditions prior to reinstatement of your certificate. A copy of the Step I Consent Agreement is attached hereto and incorporated herein.

- (2) On or about November 10, 2004, the Board entered an Order (Board Order) concluding you had violated R.C. 4731.22(B)(5) and R.C. 4731.22(B)(15). Further, the Board Order superseded the terms and conditions set forth in the above Step I Consent Agreement.

Additionally, the Board suspended your certificate for an indefinite period of time, but not less than 90 days, and included established interim monitoring terms, conditions and limitations for the period your certificate is suspended. Further, upon reinstatement or restoration, your certificate shall be subject to probationary terms, conditions and limitations for a minimum period of five (5) years. A copy of the Board Order is attached hereto and incorporated herein.

MAILED 5-19-05

To date, your certificate to practice medicine and surgery in the State of Ohio, indefinitely suspended effective August 8, 2001, remains suspended.

- (3) The terms, conditions and limitations of the November 10, 2004, Board Order, paragraph two (2) above, require, *inter alia*, your compliance with:

\* \* \*

**INTERIM MONITORING:** \* \* \*

3. **Quarterly Declarations:** Dr. Brindle shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

\* \* \*

6. **Drug & Alcohol Screens; Supervising Physician:** Dr. Brindle shall submit to random urine screenings for drugs and/or alcohol on a weekly basis or as otherwise directed by the Board. Dr. Brindle shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

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

Dr. Brindle shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this 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. Brindle must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Brindle shall further ensure that the previously designated

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

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

\* \* \*

8. **Rehabilitation Program:** Dr. Brindle shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Dr. Brindle shall submit acceptable documentary evidence of continuing compliance with this program, which must be received in the Board's offices no later than the due date for Dr. Brindle's quarterly declarations.

\* \* \*

4. On or about April 13, 2005, accompanied by counsel, you presented yourself before the Board for your initial probationary appearance, in accordance with the Board Order, paragraph two (2) above. You admitted you failed to comply with the interim monitoring terms, conditions and limitations of this Order for random urine screening for drugs and/or alcohol, on a weekly basis, and participation in an alcohol and drug rehabilitation program, no less than three times a week.
5. To date, you have failed to submit a Quarterly Declaration [of Compliance with the Board Order]; results of random urine screening on a weekly basis for drugs and or alcohol; or the name and curriculum vitae of a supervising physician for whom you shall submit specimens. All of these requirements are found in the Interim Monitoring terms, conditions and limitations of the Board Order, as provided in paragraph three (3) above.

Your acts, conduct, and/or omissions, as alleged in paragraphs four (4) and five (5) above, individually and/or collectively, constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Section R.C. 4731.22(B)(15).

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

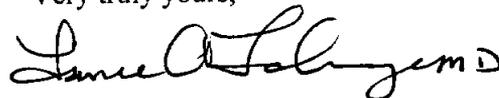
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.  
Secretary

LAT/cw  
Enclosures

CERTIFIED MAIL # 7003 0500 0002 4340 6370  
RETURN RECEIPT REQUESTED

cc:

Eric J. Plinke, Esq.  
PORTER WRIGHT, MORRIS & ARTHUR

John P. Carney, Esq.  
PORTER WRIGHT, MORRIS & ARTHUR

CERTIFIED MAIL # 7003 0500 0002 4340 6387  
RETURN RECEIPT REQUESTED



to Civil Rule 53, and stipulated that the magistrate's decision on the motion would be the order of the Court.

The standard of review for a request for a stay of an administrative order in an R.C. 119.12 appeal is set forth in the fifth paragraph of the statute:

STATE MEDICAL BOARD  
OF OHIO

2005 FEB 16 A 11:36

"The filing of a notice of appeal shall not automatically operate as a suspension of the order of an agency. \*\*\* In the case of an appeal from the state medical board or state chiropractic board, the court may grant a suspension and fix its terms if it appears to the court that an unusual hardship to the appellant will result from the execution of the agency's order pending determination of the appeal and the health, safety, and welfare of the public will not be threatened by suspension of the order. \*\*\*"

In the motion for a stay, Dr. Brindle argues that he will be subjected to an unusual hardship if the suspension is not stayed, because the 90-day minimum suspension may expire before the Court rules upon the merits of the appeal. He further argues that the health, welfare, and safety of the public would not be harmed by a stay, since Dr. Brindle would still be subject to the terms of the Board's 2001 Consent Order, in which his certificate to practice medicine and surgery was indefinitely suspended.

Appellee responds that granting a stay would be a useless act. Appellee notes that even if a stay were ordered, Dr. Brindle will be prohibited from practicing medicine under the prior consent agreement.

The Court finds that because Dr. Brindle is not currently certified to treat patients, the health, safety, and welfare of the public would not be threatened by staying the Board's order. However, Dr. Brindle must also establish that he

would suffer an unusual hardship if a stay were not granted. Dr. Brindle cannot satisfy this prong of the test.

When a typical short-term administrative suspension is involved in an R.C. 119.12 appeal, valid arguments can be made that the denial of a stay would impose an undue hardship upon the appellant. This is due to the strong possibility that the suspension would be completed before the matter was brief and ruled upon by the court. In such situations, a court's reversal of the suspension becomes pointless.

This case, however, is different. Irrespective of whether a stay is granted, Dr. Brindle will not possess a valid certificate to practice medicine and surgery in this state. He does not have an existing medical practice or hospital privileges that will be impaired if the Court denies a stay. The status quo will not change if a stay is granted. Therefore, no unusual hardship will result to Dr. Brindle if the agency's order is executed during the pendency of this appeal.

For these reasons, it is ORDERED, ADJUDGED, AND DECREED that Appellant's motion for a stay is DENIED.

  
MICHAEL C. McPHILLIPS,  
MAGISTRATE

  
JUDGE DANIEL T. HOGAN

Copies to:

Eric J. Plinke, Esq. & John P. Carney, Esq., Counsel for Appellant

Rebecca Albers, Esq., Senior Assistant Attorney General  
Counsel for Appellee

STATE MEDICAL BOARD  
OF OHIO  
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BEFORE THE STATE MEDICAL BOARD OF OHIO

Fred Andrew Brindle, M.D.  
4215 Walnut Creek Lane  
Sandusky, OH 44870

Case No. **04CVF12 13148**

Appellant,

Judge \_\_\_\_\_

vs.

State Medical Board of Ohio  
77 South High Street, 17<sup>th</sup> Floor  
Columbus, OH 43215-6127,

Appeal from the Entry of Order  
of November 10, 2004, mailed  
December 3, 2004

STATE MEDICAL BOARD  
OF OHIO  
2004 DEC 22 1:57

Appellee.

**APPELLANT'S NOTICE OF APPEAL**

Pursuant to Ohio Revised Code § 119.12, notice is hereby given that Appellant, Fred Andrew Brindle, M.D., appeals the State Medical Board of Ohio's Entry of Order dated November 10, 2004, and mailed December 3, 2004 (copy attached as Exhibit A). The State Medical Board of Ohio Entry Order is not supported by the requisite quantum of reliable, probative, and substantial evidence and is not in accordance with law.

Respectfully submitted,



Eric J. Plinke (0059463)  
John P. Carney (0074436)  
Kristin E. Matisziw (0078107)  
PORTER, WRIGHT, MORRIS & ARTHUR, LLP  
41 South High Street  
Columbus, Ohio 43215-6194  
(614) 227-2000 Fax (614) 227-2100  
Attorneys for Appellant  
Fred Andrew Brindle, M.D.

FILED  
CLERK OF COURTS  
2004 DEC 14 PM 4:39  
COLUMBUS OHIO

STATE MEDICAL BOARD  
OF OHIO  
2004 DEC 14 P 1:27

**CERTIFICATE OF SERVICE**

I hereby certify that on this 14th day of December, 2004, the foregoing Notice of Appeal was filed via hand delivery with the State Medical Board of Ohio, and with the Court of Common Pleas, Franklin County, Ohio, and that a copy was served via ordinary U.S. Mail, postage prepaid, upon:

Rebecca J. Albers, Esq.  
Senior Assistant Attorney General  
Health & Human Services Section  
Ohio Attorney General  
30 East Broad Street, 26th Floor  
Columbus, OH 43215-3400

  
Eric J. Plinke (0059463)

STATE MEDICAL BOARD  
OF OHIO

2004 DEC 14 P 1:27

STATE MEDICAL BOARD  
OF OHIO

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# State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6117 • (614) 466-5934 • Website: [www.med.ohio.gov](http://www.med.ohio.gov)

November 10, 2004

Fred Andrew Brindle, M.D.  
4215 Walnut Creek Lane  
Sandusky, OH 44870

Dear Doctor Brindle:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 10, 2004, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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

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

THE STATE MEDICAL BOARD OF OHIO

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

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 7000 0600 0024 5149 9122  
RETURN RECEIPT REQUESTED

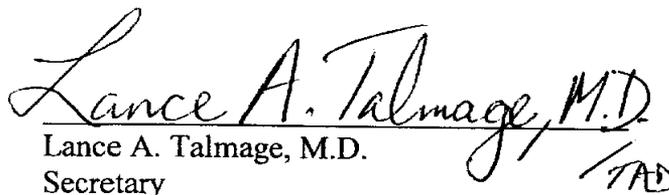
Cc: Eric J. Plinke, Esq.  
CERTIFIED MAIL NO. 7000 0600 0024 5149 9108  
RETURN RECEIPT REQUESTED

MAILED 12-03-04

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 10, 2004, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Fred Andrew Brindle, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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

  
Lance A. Talmage, M.D.  
Secretary

(SEAL)

November 10, 2004

Date



3. **Quarterly Declarations**: Dr. Brindle shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
4. **Abstention from Drugs**: Dr. Brindle shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him/her by another so authorized by law who has full knowledge of Dr. Brindle's history of chemical dependency.
5. **Abstention from Alcohol**: Dr. Brindle shall abstain completely from the use of alcohol.
6. **Drug & Alcohol Screens; Supervising Physician**: Dr. Brindle shall submit to random urine screenings for drugs and/or alcohol on a weekly basis or as otherwise directed by the Board. Dr. Brindle shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

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

Dr. Brindle shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this 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. Brindle must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Brindle shall further ensure that the previously designated supervising physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

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

7. **Submission of Blood or Urine Specimens upon Request:** Dr. Brindle shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Brindle's expense.
8. **Rehabilitation Program:** Dr. Brindle shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Dr. Brindle shall submit acceptable documentary evidence of continuing compliance with this program, which must be received in the Board's offices no later than the due date for Dr. Brindle's quarterly declarations.

C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Brindle's certificate to practice medicine and surgery until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration:** Dr. Brindle shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Compliance with Interim Conditions:** Dr. Brindle shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order.
3. **Demonstration of Ability to Resume Practice:** Dr. Brindle 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:
  - a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Brindle has successfully completed any required inpatient treatment.
  - b. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract entered into no later than thirty days following the effective date of this Order. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.

- c. Evidence of continuing full compliance with this Order.
- d. Two written reports indicating that Dr. Brindle's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care.

One report shall be made by a provider approved by the Board under Section 4731.25, O.R.C., for making such assessments. Prior to the assessment, Dr. Brindle shall provide the evaluator with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this Order. The report from the evaluator shall include all recommendations for treatment, monitoring, and supervision of Dr. Brindle, and all conditions, restrictions and limitations that should be imposed on Dr. Brindle's practice. The report shall also describe the basis for the evaluator's determinations.

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

The reports required under this section shall not be made by the same individual. The evaluations shall have been performed within ninety days prior to Dr. Brindle's reinstatement or restoration.

For purposes of this paragraph, the Board may consider, upon specific written request from Dr. Brindle, documentation previously submitted to the Board by Dr. Brindle for the purpose of meeting the reinstatement requirements established by his August 8, 2001 Step I consent agreement, provided that all required assessments and evaluations have been properly updated.

- 4. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Brindle has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.

C. **PROBATIONARY CONDITIONS:** Upon reinstatement or restoration, Dr. Brindle's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:

1. **Obey Laws in Ohio:** Dr. Brindle shall obey all federal, state, and local laws; and all rules governing the practice of medicine in Ohio.
2. **Terms, Conditions and Limitations Continued from Paragraph B:** Dr. Brindle shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
3. **Psychiatric Treatment:** Dr. Brindle shall undertake and maintain psychiatric treatment, with a psychiatrist approved in advance by the Board, at such intervals as are deemed appropriate by the treating psychiatrist, but not less than once per month unless otherwise determined by the Board. The sessions shall be in person and may not be conducted by telephone or other electronic means.

Dr. Brindle shall continue in psychiatric treatment until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the approved treating psychiatrist. Dr. Brindle shall ensure that psychiatric reports are forwarded by his treating psychiatrist to the Board on a quarterly basis, or as otherwise directed by the Board. It is Dr. Brindle's responsibility to ensure that the quarterly reports are received in the Board's offices no later than the due date for Dr. Brindle's quarterly declaration.

4. **Practice Plan:** Within thirty days of the effective date of Dr. Brindle's reinstatement or restoration, or as otherwise determined by the Board, Dr. Brindle shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Brindle's activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Brindle shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

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

The monitoring physician shall monitor Dr. Brindle and his medical practice, and shall review Dr. Brindle's patient charts. The chart review may be done

on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Brindle and his/her medical practice, and on the review of Dr. Brindle's patient charts. Dr. Brindle shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Brindle's quarterly declaration.

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

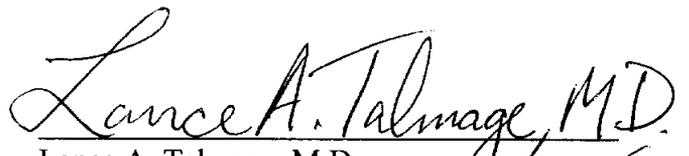
5. **Absence from Ohio:** In the event that Dr. Brindle should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Brindle must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this period under the Order, unless otherwise determined by the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
  6. **Tolling of Probationary Period while Out of Compliance:** In the event Dr. Brindle is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period.
- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Brindle's certificate will be fully restored.
- E. **RELEASES:** Dr. Brindle shall provide continuing 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. Brindle's psychiatric, chemical dependency, and/or related conditions, to the Board, to treating and monitoring physicians, and to others involved in the monitoring process. 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.
- F. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Dr. Brindle

shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Brindle shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. Further, Dr. Brindle shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

- G. **REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, Dr. Brindle shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Brindle shall also provide a copy of this Order 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 or restoration of any professional license. Further, Dr. Brindle shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
- H. **VIOLATION OF BOARD ORDER; DISCRETIONARY SANCTION IMPOSED:** If Dr. Brindle violates this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- I. **SUPERSEDE PREVIOUS CONSENT AGREEMENT:** This Order shall supersede the terms and conditions set forth in the August 8, 2001, Step I Consent Agreement between Dr. Brindle and the Board.

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

(SEAL)

  
Lance A. Talmage, M.D.  
Secretary

November 10, 2004  
Date

2004 OCT -5 A 11: 26

**REPORT AND RECOMMENDATION  
IN THE MATTER OF FRED ANDREW BRINDLE, M.D.**

The Matter of Fred Andrew Brindle, M.D., was heard by Sharon W. Murphy, Esq., Hearing Examiner for the State Medical Board of Ohio, on August 24, 2004.

**INTRODUCTION**

I. Basis for Hearing

- A. By letter dated December 10, 2003, the State Medical Board of Ohio [Board] notified Fred Andrew Brindle, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board based its proposed action on allegations pertaining to Dr. Brindle's submission of false statements to the Board and his violation of a Consent Agreement with the Board.

The Board further alleged that Dr. Brindle's conduct constitutes "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,' as that clause is used in Section 4731.22(B)(15), Ohio Revised Code [and] '[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,' as that clause is used in Section 4731.22(B)(5), Ohio Revised Code."

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

- B. On January 6, 2004, the Board received a written hearing request from Eric J. Plinke, Esq., on behalf of Dr. Brindle. (State's Exhibit 1B).

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Rebecca J. Albers, Assistant Attorney General.
- B. On behalf of the Respondent: Eric J. Plinke, Esq.

## EVIDENCE EXAMINED

### I. Testimony Heard

#### A. Presented by the State

1. Fred Andrew Brindle, M.D., as upon cross-examination
2. Danielle Bickers
3. Barbara A. Jacobs, Esq.

#### B. Presented by the Respondent

Fred Andrew Brindle, M.D.

### II. Exhibits Examined

#### A. Presented by the State

1. State's Exhibits 1A-1P: Procedural exhibits.
2. State's Exhibit 2: Certified copies of documents pertaining to Dr. Brindle maintained by the Board.
3. State's Exhibit 3: Copy of a Status Report pertaining to Dr. Brindle maintained by the Ohio Physicians Effectiveness Program.
4. State's Exhibit 4: Copy of an August 11, 2003, Declaration of Compliance submitted to the Board by Dr. Brindle.
5. State's Exhibit 5: Copy of an October 15, 2003, Declaration of Compliance submitted to the Board by Dr. Brindle.

#### B. Presented by the Respondent

1. Respondent's Exhibit A: Copy of an April 26, 2002, letter to Dr. Brindle from the Board.
- \* 2. Respondent's Exhibit B: Copy of a May 31, 2002, report of psychiatric evaluation of Dr. Brindle by Phillip L. Borders, M.D., Licking Memorial Health Professionals, Shepherd Hill Psychiatric Outpatient, Newark, Ohio.

- \* 3. Respondent's Exhibits C and I: Copies of July 15, 2001 [misdated 1999], and January 6, 2003, letters to the Board from Chris Adelman, M.D., Medical Director of St. Vincent Charity Hospital, Rosary Hall, Cleveland, Ohio.
- 4. Respondent's Exhibits D through H, and J: Copies of correspondence between Counsel for Dr. Brindle and the Board.
- \* 5. Respondent's Exhibit M: Copy of a May 25, 2001, Discharge Summary pertaining to Dr. Brindle from University Hospitals of Cleveland.
- \* 6. Respondent's Exhibit N: Copy of a letter pertaining to Dr. Brindle from Philip J. Fischer, M.D., Department of Psychiatry, University Mednet, University Hospitals Health System, Euclid, Ohio.
- \* 7. Respondent's Exhibit O: Copy of a June 21, 2001, Discharge Summary pertaining to Dr. Brindle from Laurelwood Hospital.
- \* 8. Respondent's Exhibit P: Copy of a report of evaluation of Dr. Brindle by Clifford C. Perera, M.D., Clinical Associate Professor of Psychiatry, Northeastern Ohio Universities College of Medicine, Cuyahoga Falls, Ohio.
- 9. Respondent's Exhibit Q: August 25, 2004, letter to the Hearing Examiner from Counsel for the Respondent.

Note: All exhibits marked with an asterisk [\*] have been sealed to protect patient confidentiality. Further note: pages of some exhibits were numbered by the Hearing Examiner post-hearing.

### **PROCEDURAL MATTERS**

The hearing record in this matter was held open until September 14, 2004, to give the Respondent an opportunity to submit additional evidence. The additional evidence was timely submitted and entered into the record as Respondent's Exhibit Q, without objection from the State. (See Hearing Transcript at 142-143).

### **SUMMARY OF THE EVIDENCE**

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

1. Fred Andrew Brindle, M.D., testified that, in 1975, he had received his medical degree from West Virginia Medical School, where he finished at the top of his class. Dr. Brindle

completed one year of an internal medicine residency program at the University of Southern California in Los Angeles. Thereafter, Dr. Brindle served in the military for five years and, during that time, served in VietNam. When he returned, Dr. Brindle entered a general surgery residency at the University of Florida and remained there for two years. Subsequently, Dr. Brindle completed a four-year neurosurgery residency at the University of South Carolina, and a six-month fellowship at the Queens Square National Neurological Institute in London, England. (Hearing Transcript [Tr.] at 17-18).

Dr. Brindle started a practice in San Jose, California, and remained there for four years. Thereafter, he practiced briefly in Virginia and, in 1985, he started a practice in Sandusky, Ohio. Dr. Brindle practiced neurosurgery in Sandusky until 2001. (Tr. at 18).

2. On May 19, 2001, Dr. Brindle was admitted to University Hospitals of Cleveland after attempting suicide. At that time, Dr. Brindle was diagnosed with bipolar disorder, type II, mixed type. Substance abuse was also identified. Accordingly, Dr. Brindle was transferred to Laurelwood Hospital through Rosary Hall, in order that he could partake of the dual diagnosis program offered at Laurelwood Hospital. Dr. Brindle testified that Christopher Adelman, M.D., a Board-approved treatment provider, had supervised his treatment at Laurelwood Hospital. (Respondent's Exhibit [Resp. Ex.] M; Tr. at 81-82, 84) (See also Resp. Exs. B and N through P).

Dr. Brindle remained at Laurelwood Hospital until June 21, 2001. His discharge diagnoses included bipolar disorder, type I, depressed phase, and alcohol dependence. (Resp. Ex. O).

3. Dr. Brindle testified that he had probably been hypomanic all of his life, but he had not recognized it. He stated that he had had periods of exuberant energy buffered by occasional depressive episodes. He stated that he had always thought himself normal, until a bout of very serious depression in 2001. Dr. Brindle testified that his physician had prescribed antidepressants without any mood stabilizers. After a time, Dr. Brindle stopped taking the antidepressants, but started drinking in an attempt to relieve the depression. He stated that the depression ultimately led to his suicide attempt. (Tr. at 85-88).
4. On August 8, 2001, Dr. Brindle entered into a Step I Consent Agreement with the Board in lieu of formal proceedings based upon Dr. Brindle's mental disorder and chemical dependency, which were violations of Sections 4731.22(B)(19) and (B)(26), Ohio Revised Code. (State's Exhibit [St. Ex.] 2 at 6-13).

In his Consent Agreement, Dr. Brindle admitted that, in or about 1988, he had been treated for alcohol dependency at Serenity Hall. Dr. Brindle also admitted that, on or about May 18, 2001, he had entered Providence Hospital in Sandusky, Ohio, suffering from severe depression. In addition, Dr. Brindle admitted that he had been transferred to University Hospitals of Cleveland, where he had been treated by Dr. Adelman and Theodore Parran, M.D., and diagnosed with bipolar disorder and chemical dependency.

Dr. Brindle further admitted he had entered Laurelwood Hospital for inpatient treatment, which continued until on or about June 21, 2001, and that, subsequently, he had received intensive outpatient treatment through Bayshore Counseling Services in Sandusky. (St. Ex. 2 at 7).

In his Consent Agreement, Dr. Brindle also agreed to the suspension of his certificate to practice medicine and surgery in the State of Ohio for an indefinite period of time. Dr. Brindle further agreed to the requirement that he satisfy certain conditions prior to the reinstatement of his certificate. In addition, Dr. Brindle agreed to comply with specified terms, conditions, and limitations during the period in which his certificate was suspended. (St. Ex. 2 at 7-9)

To date, Dr. Brindle's certificate to practice medicine and surgery in the State of Ohio remains under suspension. (Tr. at 84).

5. Paragraph 5 of Dr. Brindle's Consent Agreement provides that he shall submit quarterly declarations, under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of his Consent Agreement. (St. Ex. 2 at 8).

Paragraph 7 of Dr. Brindle's Consent Agreement provides that Dr. Brindle shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. The Consent Agreement further provides that Dr. Brindle shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. (St. Ex. 2 at 8-9).

6. By letter dated September 6, 2001, Philip J. Fischer, M.D., Department of Psychiatry, University Mednet, University Hospitals Health Systems, Euclid, Ohio, advised that he had cared for Dr. Brindle during his hospitalization at Laurelwood Hospital. In the letter, Dr. Fischer advised, in part, as follows:

Throughout the treatment experience, Dr. Brindle was engaging, polite and friendly and invested in the treatment program. He attended all of the required groups and individual sessions and participated fully. Clearly, he is a very bright gentleman who quickly grasped the issues and techniques necessary to bring about recovery. He was fully compliant with the various therapies and medications prescribed. He gave good feedback to others. It is my professional opinion within a reasonable degree of medical certainty that his recovery was quite good and that he was committed to doing whatever it took to fully recover and to get back to productive life.

It was my pleasure to participate in Dr. Brindle's care. He has a lot of strengths in terms of intelligence, humor and compassion. I feel that with ongoing treatment, he should be able to resume work as a physician. I further conclude that his condition is stable at this time. \* \* \*

(Resp. Ex. N).

7. On September 18, 2001, Dr. Brindle completed "aftercare/Continued Care Treatment at Bayshore Counseling Services." (Tr. at 83; Resp. Ex. I). On November 2, 2001, Dr. Brindle entered into a contract with the Ohio Physicians Effectiveness Program [OPEP]. (Tr. at 83; Resp. Ex. I).
8. Dr. Brindle testified that, after he had completed what he had believed to be the requirements for reinstatement, he had requested reinstatement of his certificate. (Tr. at 24).
9. Barbara A. [Rogers] Jacobs, Esq., testified on behalf of the State. Ms. Jacobs testified that she is employed by the Board, and is in charge of the Complaints and Disciplinary Information Sections of the Board. She also handles reinstatement of licenses that have been suspended. Ms. Jacobs testified that, during the course of her duties, she had become aware that Dr. Brindle had contacted the Board requesting reinstatement. (Tr. at 118-120).

By letter dated April 26, 2002, Ms. Jacobs, then Interim Public Services Administrator for the Board, responded to Dr. Brindle's request for reinstatement and advised Dr. Brindle of the requirements for his reinstatement. In the letter, Ms. Jacobs specifically listed those requirements as follows:

- a. Certification from a treatment provider approved by the Board that Dr. Brindle had successfully completed any required inpatient treatment. Ms. Jacobs noted that Dr. Brindle had received treatment at Laurelwood Hospital, but stated that Laurelwood Hospital was not a Board-approved treatment provider. Therefore, Dr. Brindle would need to be evaluated by and receive certification from another provider.
- b. Evidence of continuing compliance with an aftercare contract or consent agreement. Ms. Jacobs stated, "We will need a copy of any aftercare contract you may have entered and a written statement from the medical director of the program indicating whether you have maintained continued compliance with that aftercare contract.
- c. Evidence of continuing compliance with his Consent Agreement.
- d. A written report from the medical director of an approved treatment provider who performed an assessment of Dr. Brindle which states whether he is capable of practicing according to acceptable and prevailing standards of care.

- e. A written report from a psychiatrist approved in advance by the Board assessing Dr. Brindle's ability to practice medicine according to acceptable and prevailing standards of care.

Finally, Ms. Jacobs advised that, once she had received the required documentation, she would forward Dr. Brindle's file to the Enforcement Section for the drafting of a Step II Consent Agreement. (Resp. Ex. A).

10. On June 14, 2002, Eric J. Plinke, Counsel for Dr. Brindle, submitted to the Board a psychiatric evaluation of Dr. Brindle performed by Phillip L. Borders, M.D., of Licking Memorial Health Professionals, Shepherd Hill Psychiatric Outpatient, Newark, Ohio. (Resp. Exs. B and D). In the evaluation, Dr. Borders concluded that Dr. Brindle was stable regarding both chemical dependency and psychiatric issues. Dr. Borders further concluded that,

Regarding [Dr. Brindle's] ability to function as a physician, with [Dr. Brindle's] stable mood and compliance with treatment recommendations for psychiatric and chemical dependency issues, I do believe Dr. Brindle is capable of practicing medicine. I am not able, at this point, to determine his ability to perform surgery because of his [medication-related hand] tremor. As far as mental status and chemical dependency issues go, [Dr. Brindle] is able to function as a physician.

When [Dr. Brindle] does receive his medical license, I do recommend continued psychiatric care and chemical dependency treatment.

(Resp. Ex. B at 6).

11. On July 15, 2002, Dr. Adelman, Medical Director of St. Vincent Charity Hospital, Rosary Hall, Cleveland, Ohio, submitted to the Board a chemical dependency evaluation of Dr. Brindle. In the evaluation, Dr. Adelman found that Dr. Brindle was "capable of practicing medicine according to the acceptable and prevailing standards of care." Dr. Adelman stated that Dr. Brindle's bipolar disorder was "well controlled by medication and therapy with [his psychiatrist] and he exhibits no psychiatric symptoms." Dr. Adelman recommended that Dr. Brindle continue with his chemical dependency and psychiatric treatment program, continue monitoring by OPEP, and be reassessed by his psychiatrist "before returning to the operating room." (Resp. Ex. C; Tr. at 76-77).

In that letter, Dr. Adelman did not certify that Dr. Brindle had completed a thirty-day residential chemical dependency treatment program at a treatment provider approved by the Board. (Resp. Ex. C).

12. By letter dated June 17, 2002, Ms. Jacobs requested that Mr. Plinke provide her a copy of Dr. Borders' curriculum vitae and a request for the Board to approve Dr. Borders to conduct the psychiatric assessment. (Resp. Ex. E). By July 11, 2002, Mr. Plinke had submitted both to Ms. Jacobs. (Resp. Exs. F and G). Ms. Jacobs submitted the documents to the Board at the next Board meeting, in August 2002. (Tr. at 122).

In the June 17, 2002, letter, Ms. Jacobs did not notify Mr. Plinke that Dr. Brindle also needed to submit certification that he had completed a residential chemical dependency treatment program at a treatment provider approved by the Board or evidence of compliance with an aftercare contract. (Resp. Ex. E).

By letter dated August 19, 2002, Ms. Jacobs notified Mr. Plinke that the Board had approved Dr. Borders to perform the psychiatric evaluation of Dr. Brindle. Again, Ms. Jacobs did not notify Mr. Plinke that Dr. Brindle also needed to submit certification that he had completed a residential chemical dependency treatment program at a treatment provider approved by the Board or evidence of compliance with an aftercare contract. She did advise, however, that, "[o]nce Dr. Brindle has completed all of the condition for reinstatement," an enforcement attorney would draft a Step II Consent Agreement and present it to Dr. Brindle for approval. (Resp. Ex. H).

13. Danielle Bickers testified on behalf of the State. Ms. Bickers testified that she is the Compliance Officer for the Board and, in that capacity, she monitors licensees who are subject to the terms of Board Orders or Consent Agreements. (Tr. at 38).

Ms. Bickers testified that, in August 2002, Dr. Brindle had failed to submit a required urine specimen for screening. Ms. Bickers testified that Board staff had confronted Dr. Brindle during a quarterly probationary office conference. Ms. Bickers testified that Dr. Brindle had explained the missing urine screening by stating that no one had called and that he had forgotten to submit the urine. Ms. Bickers testified that she had specifically told Dr. Brindle that it is his responsibility to ensure that he submits a urine for screening once each week. Ms. Bickers further testified that, despite his violation of the terms of the Consent Agreement, the Secretary and Supervising Member of the Board had decided not to take action against Dr. Brindle at that time. (Tr. at 42, 55-56, 66-68).

14. On January 6, 2003, Dr. Adelman submitted to the Board a letter certifying that, in June 2001, Dr. Brindle had completed a thirty-day residential chemical dependency treatment program at Laurelwood Hospital under the care of Dr. Adelman. In addition, Dr. Adelman reiterated what he had said in his earlier evaluation letter. (Resp. Ex. I).
15. By letter dated April 16, 2003, John P. Carney, Counsel for Dr. Brindle, wrote a letter to Ms. Jacobs acknowledging that Ms. Jacobs had told him that a Step II Consent Agreement had not been drafted for Dr. Brindle because Dr. Brindle had not completed an aftercare

contract. Mr. Carney further advised that Dr. Brindle's Step I Consent Agreement did not require that Dr. Brindle enter into an aftercare contract. Mr. Carney urged that the Board facilitate the process of reinstatement because the continued delay was causing undue hardship for Dr. Brindle. (Resp. Ex. J).

Regarding an aftercare contract, Paragraph 8 of Dr. Brindle's Step I Consent Agreement specifically states,

The Board shall not consider reinstatement of Doctor Brindle's certificate to practice medicine and surgery unless and until all of the following conditions are met:

\* \* \*

- b. Doctor Brindle 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:

\* \* \*

- ii. Evidence of continuing full compliance with an aftercare contract **or** consent agreement.

(St. Ex. 2 at 9-10) (emphasis added).

Ms. Jacobs testified that the Board interprets the language of Paragraph 8.b.ii of the Consent Agreement to mean that Dr. Brindle must comply with **both** an aftercare contract **and** a consent agreement. Ms. Jacobs explained that the Board's rules require that, prior to reinstatement, an impaired licensee must enter into and comply with an aftercare contract with a Board-approved treatment provider. She added that these rules had been enacted prior to the time Dr. Brindle signed his Consent Agreement. Therefore, Dr. Brindle was also required to abide by those provisions. (Tr. at 123-124).

Ms. Jacobs testified that she had contacted Mr. Carney to discuss the matter, and realized that Dr. Brindle would not be submitting an aftercare contract. Therefore, Ms. Jacobs turned the matter over to the Enforcement Section of the Board's staff. (Tr. at 124-125).

On cross-examination, Mr. Plinke asked Ms. Jacobs if the plain meaning of the word "or" would not lead to a conclusion that Dr. Brindle's Consent Agreement required only that he comply with **either** a Consent Agreement **or** an aftercare contract. Ms. Jacobs

responded that, "I think you could read it that way, but that would not be what the Board's position would be, obviously." (Tr. at 126-128).

Ms. Jacobs testified that the Board did not offer reinstatement to Dr. Brindle with a Step II Consent Agreement because he had not completed an aftercare contract. (Tr. at 129). Ms. Jacobs acknowledged that the Consent Agreement provides that either a Step II Consent Agreement or a Chapter 119 hearing would be held to establish the terms and conditions of reinstatement but that neither had occurred. (Tr. at 131-132).

16. Dr. Brindle testified that he believes he had completed all of the requirements for reinstatement by late 2002, but the Board has not yet presented him a Step II Consent Agreement to allow him to return to practice. (Tr. at 102, 104-108).
17. Ms. Bickers testified that Dr. Brindle had failed to submit urine specimens for drug and alcohol screening, and/or failed to ensure that all screening reports were forwarded directly to the Board, during the weeks beginning June 1, June 15, July 20, July 27, August 3, and August 10, 2003. Dr. Brindle advised the Board that the reason he had failed to provide urine specimens during those weeks was that he had been out of the state. Dr. Brindle reported that he had been in Argentina from May 28 through June 12, 2003; camping in Michigan from June 16 through June 22, 2003; and in Mexico from July 20 through August 10, 2003. (Tr. at 20-21, 42, 44-46, 48).
18. On August 11, 2003, Dr. Brindle attended a probationary office conference with representatives of the Board. At the August 2003 probationary office conference, Dr. Brindle was specifically advised that failure to submit random, weekly urine specimens for drug and alcohol screening was a violation of his Consent Agreement. Dr. Brindle was further advised that the Board could grant a waiver for a weekly screening if a prior request was made and the circumstances warranted a waiver. Additionally, Dr. Brindle was advised that, absent a Board-approved waiver, he was required to make alternative arrangements for submitting a urine specimen if he was going to be out of town. (Tr. at 21, 28, 44-45, 55).
19. Dr. Brindle submitted a Declaration of Compliance on August 11, 2003, claiming that he had been, and continued to be, compliant with the terms of his Consent Agreement. (St. Ex. 4). Dr. Brindle testified that he had signed the Declaration of Compliance during his probationary conference. He stated that he had signed it, despite the fact that he had not been in compliance, because he had been told to sign it by Ms. Bickers and Raymond Albert, the Supervising Member of the Board. Dr. Brindle testified that, to him, it had been "just another piece of paper that everyone is required to sign so I signed it." He stated that he had not had any idea that he would later be accused of fraud for signing it. He stated that Ms. Bickers and Mr. Albert had been fully aware that he had not been in compliance when they asked him to sign it. (Tr. at 26, 28-29).

Ms. Bickers testified that, during the office conference, Dr. Brindle had told her that he had mailed the Declaration of Compliance to OPEP. Ms. Bickers explained to Dr. Brindle that the Declaration of Compliance should be sent to her rather than OPEP. Therefore, Ms. Bickers gave Dr. Brindle another Declaration of Compliance to sign, and she asked him to sign it "if he was in compliance." She stated that Dr. Brindle signed the Declaration of Compliance. (Tr. at 48-50).

Ms. Bickers testified that, at the time she gave Dr. Brindle the Declaration of Compliance to sign, everyone in the room had been aware that Dr. Brindle had missed urine screens. Therefore, no one had been led to believe that Dr. Brindle had been in compliance when he signed the Declaration of Compliance. Ms. Bickers testified that no one had been "duped" by Dr. Brindle's signing the Declaration of Compliance. She added that, "Whether or not that was appropriate to sign at that time, that was not discussed further in that office conference." (Tr. at 50, 55-61).

Ms. Bickers further testified that, in general, when she knows that a licensee is not in compliance, she gives the licensee a blank form and instructs the licensee to take it home and discuss it with his or her attorney. Alternatively, someone will document on the Declaration of Compliance the specific instances of non-compliance. Ms. Bickers acknowledged that these measures had not been done in this case. (Tr. at 50, 58-59-60).

20. Ms. Bickers testified that Dr. Brindle had contacted the Board to ask for a waiver the week of August 24, 2003. He reported that he would be out of town due to a sick grandchild. Ms. Bickers testified that the Board had granted the waiver. (Tr. at 47).
21. Ms. Bickers testified that Dr. Brindle had failed to submit urine specimens for drug and alcohol screening and/or failed to ensure that all screening reports were forwarded directly to the Board for the weeks beginning September 21 and October 12, 2003. (Tr. at 47-48, 51-52).
22. Dr. Brindle submitted a Declaration of Compliance, on or about October 15, 2003, claiming that he had been, and continued to be, compliant with the terms of his Consent Agreement. (St. Ex. 5). Dr. Brindle testified that he had signed the Declaration of Compliance on October 15, 2003, despite the fact that he had missed the urine screen during the week of October 12, 2003. Dr. Brindle testified that he cannot recall the date he had been called to provide a urine specimen during the week of October 12, 2003. Therefore, he cannot be sure that he had missed the screen at the time he signed the Declaration of Compliance. Nevertheless, the Declaration of Compliance is date-stamped as being submitted to the Board on October 24, 2003. (Tr. at 29-31, 35; St. Ex. 5).

23. Ms. Bickers testified that Dr. Brindle had failed to submit urine specimens for drug and alcohol screening and/or failed to ensure that all screening reports were forwarded directly to the Board for the week beginning October 19, 2003. (Tr. at 48).
24. Ms. Bickers testified that, on or about November 21, 2003, she had had a telephone conversation with Dr. Brindle. During that conversation, Dr. Brindle advised Ms. Bickers that he had failed to submit a urine specimen for the week of October 12, 2003, because he had been out of town hunting with his son. Dr. Brindle further advised that he had “forgotten” to request a waiver for that week. Ms. Bickers testified that she was “probably fed up” with Dr. Brindle at that point, because she had already explained to him on numerous occasions how to request a waiver. Ms. Bickers further testified that Dr. Brindle had told her that he was “bored” with having to comply with the terms of his Consent Agreement. (Tr. at 31-32, 47-48).

Dr. Brindle testified that he had told Ms. Bickers that he was bored with the submission of weekly urine samples, and that it had seemed ridiculous to him. (Tr. at 23).

25. On November 6, 2003, E.J. Poczekaj, M.Ed. CEAP, CCDC III-E, of OPEP submitted a Status Report regarding Dr. Brindle. The Status Report addressed the period of August through October 2003. In the Status Report, Mr. Poczekaj advised that OPEP had not received results from urine screening from July 20 through August 10, 2003, or for the weeks of August 10, August 24, and September 21. He added that one, reportedly, had been excused by the Board. Mr. Poczekaj added that, “Client reported being in Mexico from 07/20/03 – 08/10/03 and that no AA attendance or toxicology tests took place. We have no reason to believe that the client is not maintaining abstinence and remission/recovery.” (St. Ex. 3).
26. By letter dated August 4, 2004, Clifford C. Perera, M.D., Clinical Associate Professor of Psychiatry, Northeastern Ohio Universities College of Medicine, Cuyahoga Falls, Ohio, advised Mr. Plinke and Mr. Carney that he had performed a psychiatric evaluation of Dr. Brindle. Dr. Perera concluded that Dr. Brindle “is not an imminent danger to himself or others.” Dr. Perera recommended that Dr. Brindle continue with his psychiatric treatment. He further noted that, due to Dr. Brindle’s medication related tremor, he may have difficulty performing surgery; nevertheless, Dr. Perera advised that Dr. Brindle is otherwise able to function as a physician. (Resp. Ex. P).
27. Dr. Brindle testified that he has maintained his sobriety. He noted, however, that he is no longer having his urine screened. He stated that he had spent \$7,000.00 on urine screens and that, for 2½ years, every one had been negative. He added, “I want you to realize how terribly inconvenient it is to carry a beeper and a cell phone and be on call to have to urinate within four hours.” Dr. Brindle further testified that he had asked for a reduction in his urine screens, but that his request had been denied. Dr. Brindle stated that it had

seemed “very unreasonable” to him, so he had stopped submitting urine samples. (Tr. at 21-22, 113-115).

Dr. Brindle further testified that he had attended 12-Step meetings regularly for more than two years, but attends only rarely now. He stated that, since his bipolar disorder is under control, he no longer has any desire to drink. (Tr. at 114-115).

28. Dr. Brindle testified that, since his suspension, he has not been working. He stated that he has been engaged in recreational activities. He stated that he is a fly fisherman, and travels around the world fishing. Dr. Brindle is also a hunter; each year he travels to Argentina to hunt and he often hunts in Africa. Dr. Brindle testified that he also reads extensively. (Tr. at 32-33).
29. Dr. Brindle testified that, when he entered into the Step I Consent Agreement, he had intended to return to practice upon reinstatement. Nevertheless, since it has taken so long for reinstatement, he no longer wishes to return to practice. He asked that the Board reinstate his license without monitoring conditions, but impose those conditions should he ever return to a clinical practice. (Tr. at 32-33, 89-90, 94-95).

Dr. Brindle testified that he hopes to regain his certificate to practice, in part, to clear his name. Dr. Brindle testified that, once people discover that a physician’s certificate has been suspended, they believe that the physician is a bad doctor. Dr. Brindle testified that he had never had a malpractice case settled against him in thirty-three years of practice. However, after his license was suspended, nine malpractice cases were filed. He added that most had been dismissed by the courts. (Tr. at 33-34).

Dr. Brindle further testified that one of the reasons he hopes to have his license reinstated is that he would like to be recertified in neurosurgery. He stated that he had been certified in neurosurgery for more than twenty years, but that his certification had been taken from him when his license was suspended. He further stated that he would like to work overseas, in both volunteer medicine and in expeditionary medicine when in Africa or the Amazon, such as treating tropical infections, management of malaria, and other things with which he has become familiar over the years. Dr. Brindle believes that he would be allowed to do so even if he had a license which does not permit him to practice. (Tr. at 90-91).

Finally, Dr. Brindle testified that he can no longer practice neurosurgery because he has developed a medication-related hand tremor. He stated that he is no longer able to operate with the precision he once had. Nevertheless, he stated that, if he was a board-certified neurosurgeon, he would be able to provide legal consultation and evaluate neurosurgical records. (Tr. at 94).

30. In an August 25, 2004, letter to the Hearing Examiner, Mr. Plinke advised that he had reviewed the American Board of Neurological Surgery Bylaws concerning certification. After that review, Mr. Plinke determined that, regardless of limitations on his license, “as long as Dr. Brindle is licensed to practice in Ohio, he shall be eligible for certification with the American Board of Neurological Surgery.” (Resp. Ex. Q).

### **FINDINGS OF FACT**

1. On August 8, 2001, Fred Andrew Brindle, M.D., entered into a Step I Consent Agreement with the Board in lieu of formal proceedings based upon Dr. Brindle’s violations of Sections 4731.22(B)(19) and (B)(26), Ohio Revised Code.

In the August 2001 Step I Consent Agreement, Dr. Brindle admitted that, in or about 1988, he had been treated for alcohol dependency at Serenity Hall. Dr. Brindle also admitted that, on or about May 18, 2001, he had entered Providence Hospital in Sandusky, Ohio, suffering from severe depression, and that he had been transferred to University Hospitals of Cleveland, where he was diagnosed with bipolar disorder and chemical dependency. Dr. Brindle further admitted that he had entered Laurelwood Hospital for inpatient treatment, which continued until on or about June 21, 2001, and that, subsequently, he had received intensive outpatient treatment through Bayshore Counseling Services in Sandusky.

In his Consent Agreement, Dr. Brindle also agreed to the suspension of his certificate to practice medicine and surgery in the State of Ohio for an indefinite period of time. Dr. Brindle further agreed to the requirement that he satisfy certain conditions prior to the reinstatement of his certificate. In addition, Dr. Brindle agreed to comply with specified terms, conditions and limitations during the period that his certificate was suspended.

To date, Dr. Brindle’s certificate to practice medicine and surgery in the State of Ohio remains under suspension.

2. Paragraph 7 of Dr. Brindle’s Consent Agreement provides that Dr. Brindle shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. The Consent Agreement further provides that Dr. Brindle shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis.
  - a. Despite the requirements of Paragraph 7 of his Consent Agreement, Dr. Brindle failed to submit urine specimens for drug and alcohol screening during the weeks beginning on June 1, June 15, July 20, July 27, and August 3, 2003. Dr. Brindle

advised the Board that the reason he had failed to provide urine specimens during those weeks was that he had been out of the state. Dr. Brindle reported that he had been in Argentina from May 28 through June 12, 2003; camping in Michigan from June 16 through June 22, 2003; and in Mexico from July 20 through August 10, 2003. Nevertheless, Dr. Brindle had not requested or received a waiver of the requirement that he submit to random urine screenings on a weekly basis during the weeks that he reported that was out of the state.

- b. On August 11, 2003, Dr. Brindle attended a probationary office conference with representatives of the Board. At the August 2003 probationary office conference, Dr. Brindle was specifically advised that the failure to submit random, weekly urine specimens for drug and alcohol screening was a violation of his Consent Agreement. Dr. Brindle was further advised that the Board could grant a waiver for a weekly screening if a prior request was made and the circumstances warranted a waiver. Additionally, Dr. Brindle was advised that, absent a Board-approved waiver, he was required to make alternative arrangements for submitting a urine specimen if he was going to be out of town. Accordingly, Dr. Brindle requested and received a waiver of the requirement that he submit a urine specimen for screening during the week of August 24, 2003, based upon his report that he had to travel out of town to be with a sick grandchild.

Nevertheless, Dr. Brindle failed to submit a urine specimen for drug and alcohol screening during the week beginning on October 12, 2003. He did so despite the requirements of Paragraph 7 of his Consent Agreement and despite the fact that he had been advised specifically at the August 11, 2003, probationary office conference that failure to submit random, weekly urine specimens for drug and alcohol screening was a violation of his Consent Agreement.

On or about November 21, 2003, Dr. Brindle advised a representative of the Board that he had failed to submit a urine specimen for the week of October 12, 2003, because he had been out of town hunting with his son. Dr. Brindle further advised that he had “forgotten” to request a waiver for that week. Finally, Dr. Brindle advised the representative of the Board that he was “bored” with having to comply with the requirement of his Consent Agreement that he provide weekly urine specimens.

- c. Despite the requirements of Paragraph 7 of his Consent Agreement, Dr. Brindle failed to submit urine specimens for drug and alcohol screening and/or failed to ensure that all screening reports were forwarded directly to the Board for the weeks beginning August 10, September 21, and October 19, 2003.

3. Paragraph 5 of Dr. Brindle's Consent Agreement provides that he shall submit quarterly declarations, under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of his Consent Agreement.
  - a. Although Dr. Brindle submitted a Declaration of Compliance on August 11, 2003, claiming that he had been, and continued to be, compliant with the terms of his Consent Agreement, Dr. Brindle was not in compliance with the terms of his Consent Agreement. Dr. Brindle had failed to submit urine specimens for drug and alcohol screening during weeks beginning June 1, June 15, July 20, July 27, and August 3, 2003. It should be noted, however, that Board staff were aware that Dr. Brindle was not in compliance at the time he signed the Declaration of Compliance.
  - b. Although Dr. Brindle submitted a Declaration of Compliance on or about October 15, 2003, claiming that he had been, and continued to be, compliant with the terms of his Consent Agreement, he was not in compliance with the terms of his Consent Agreement. Dr. Brindle had failed to submit urine specimens for drug and alcohol screening and/or failed to ensure that all screening reports were forwarded directly to the Board for the weeks beginning on August 10, September 21, and October 12, 2003.

### **CONCLUSIONS OF LAW**

1. The conduct of Fred Andrew Brindle, M.D., as set forth in the Findings of Fact 2 and 3.b, constitutes "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.
2. The conduct of Dr. Brindle, as set forth in Findings of Fact 3.b, constitutes "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.
3. There is no violation resulting from Findings of Fact 3.a., which states that, despite the fact that Dr. Brindle was not in compliance with the terms of his Consent Agreement, on August 11, 2003, Dr. Brindle submitted a Declaration of Compliance claiming that he had been, and continued to be, compliant with the terms of his Consent Agreement. The testimony of Dr. Brindle and Ms. Bickers demonstrates that Dr. Brindle signed the Declaration of Compliance at the request of Board staff despite the fact that everyone present realized that Dr. Brindle had not been in compliance with his Consent

Agreement. Moreover, precautions that Board staff generally take in such situations were not taken on that date. Consequently, it appears that Dr. Brindle did not intend to deceive the Board and, therefore, it would be inequitable to find against him with regard to this allegation.

\* \* \* \* \*

At hearing, the State argued that the sole basis for this hearing was Dr. Brindle's non-compliance with the terms of his Consent Agreement. Dr. Brindle, on the other hand, urged the Board to look at the entire transaction between Dr. Brindle and the Board to gain understanding as to why, after two years of compliance, Dr. Brindle eventually violated his Consent Agreement.

It is clear that the relationship has been long and frustrating for both parties. Nevertheless, it appears that, for two years, Dr. Brindle made a sincere attempt to comply with the terms of the Consent Agreement. Moreover, Dr. Brindle continuously responded to the Board's requests to submit additional documentation in support of his reinstatement. Although the documents he submitted did not fully comply with those requirements, it appears that Dr. Brindle did not understand that at the time. For example, Dr. Brindle thought that he had provided certification that he had received treatment from a Board-approved treatment provider when he submitted his medical records from Laurelwood Hospital. Dr. Brindle did not realize that he needed also to submit a statement to that effect from Dr. Adelman. Moreover, the Board did not specifically advise Dr. Brindle until April 2003 that he could not be reinstated because he had not entered into an aftercare contract. Dr. Brindle's frustration with the reinstatement process is not difficult to comprehend.

The State's position that, despite the language of the Consent Agreement, Dr. Brindle should have known he needed to enter into and comply with an aftercare contract in addition to the Consent Agreement, is not sustainable. Even if the Board interprets the word "OR" to mean "AND," no reasonable person would have understood this at the time of signing the Consent Agreement if it had not been specifically explained. There is no evidence that the Board provided such an explanation in this case. Moreover, the only evidence that an aftercare contract was mentioned prior to April 2003 is Ms. Jacob's April 26, 2002, letter which advised that Dr. Brindle would need "a copy of ANY aftercare contract [he] MAY have entered \* \* \*." (emphasis added). This is not a clear notice that an aftercare contract was a necessary requirement. Additionally, there is evidence of frequent correspondence between the Board and Dr. Brindle's Counsel, and at no time was the aftercare contract mentioned as a specific requirement prior to April 2003. Therefore, it should not be held against Dr. Brindle that he did not know that the Board required an aftercare contract before he was so advised by Ms. Jacobs in or about April 2003, more than eighteen months after the Consent Agreement was signed.

Furthermore, as a result of this confusion, Dr. Brindle's certificate has been suspended for more than three years for what appears to be a mental illness with chemical dependency overtones.

Additionally, there is no evidence that Dr. Brindle is not still in recovery. Accordingly, although Dr. Brindle should have resolved these issues in a manner other than abandoning his Consent Agreement, the extended duration of his suspension may be sufficient punishment for his violation of the Consent Agreement.

Finally, Dr. Brindle requested that his license be reinstated but that he be limited from practicing. He further requested that monitoring not be required unless he decides to return to practice. Under these very unusual circumstances, Dr. Brindle's request seems to be a reasonable means of resolving the current impasse.

### **PROPOSED ORDER**

It is hereby ORDERED that:

- A. **RESTORATION; CONDITIONS:** The request of Fred Andrew Brindle, M.D., for restoration of his certificate to practice medicine and surgery in Ohio is GRANTED, provided that he otherwise meets all statutory and regulatory requirements, other than any aftercare contract requirement, and subject to the following terms conditions and limitations.
- B. **LIMITATION AND RESTRICTION OF CERTIFICATE:** The certificate of Dr. Brindle to practice medicine and surgery in the State of Ohio shall be LIMITED and RESTRICTED as follows:
  1. **Refrain from Commencing Practice in Ohio:** Dr. Brindle shall not commence practice in Ohio without prior Board approval.
  2. **Conditions for Approval of Commencement of Practice in Ohio:** The Board shall not consider granting approval for Dr. Brindle to commence practice in Ohio unless all of the following minimum requirements have been met:
    - a. **Hold Current Certificate to Practice in Ohio:** Dr. Brindle shall hold a current certificate to practice medicine and surgery in the State of Ohio.
    - b. **Notify Board in Writing:** Dr. Brindle shall notify the Board in writing that he intends to commence practice in Ohio.
    - c. **Psychiatric Assessment/Treatment:** At least six months prior to notifying the Board that he intends to commence practice in Ohio, or as otherwise determined by the Board, Dr. Brindle shall submit to the Board for its prior approval the name and curriculum vitae of a psychiatrist of Dr. Brindle's choice. Upon approval by the Board, Dr. Brindle shall obtain from the approved psychiatrist

an assessment of Dr. Brindle's current psychiatric status. Prior to the initial assessment, Dr. Brindle shall furnish the approved psychiatrist copies of the Board's Order, including the Summary of the Evidence, Findings of Fact, and Conclusions, and any other documentation from the hearing record which the Board may deem appropriate or helpful to that psychiatrist.

Upon completion of the initial assessment, Dr. Brindle shall cause a written report to be submitted to the Board from the approved psychiatrist. The written report shall include:

- i. A detailed report of the evaluation of Dr. Brindle's current psychiatric status and condition;
- ii. A detailed plan of recommended psychiatric treatment, if any, based upon the psychiatrist's informed assessment of Dr. Brindle's current needs;
- iii. A statement regarding any recommended limitations upon his practice;  
and
- iv. Any reports upon which the treatment recommendation is based, including reports of physical examination and psychological or other testing.

Should the Board-approved psychiatrist recommend psychiatric treatment, and upon approval by the Board, Dr. Brindle shall undergo and continue psychiatric treatment weekly or as otherwise directed by the Board. The sessions shall be in person and may not be conducted by telephone or other electronic means. Dr. Brindle shall comply with his psychiatric treatment plan, including taking medications as prescribed for his psychiatric disorder.

Dr. Brindle shall continue in psychiatric treatment until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require reports from the approved treating psychiatrist. The psychiatric reports shall contain information describing Dr. Brindle's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Brindle's compliance with the treatment plan; Dr. Brindle's psychiatric status; Dr. Brindle's progress in treatment; and results of any laboratory or other studies that have been conducted since the prior report. Dr. Brindle shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Brindle's quarterly declaration.

In addition, Dr. Brindle shall ensure that his treating psychiatrist immediately notifies the Board of Dr. Brindle's failure to comply with his psychiatric

treatment plan and/or any determination that Dr. Brindle is unable to practice due to his psychiatric disorder.

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

- d. **Reports of Psychiatric Evaluation:** Upon submission of his notice that he intends to commence practice in Ohio, Dr. Brindle shall provide the Board with written reports of evaluation by two psychiatrists acceptable to the Board indicating that Dr. Brindle's ability to practice has been assessed and that he has been found capable of practicing in accordance with acceptable and prevailing standards of care. Such assessment shall have been performed within sixty days prior to his application for reinstatement. Each report shall describe with particularity the bases for this determination and shall set forth any recommended limitations upon Dr. Brindle's practice.
- e. **Reports of Chemical Dependency Evaluation:** Upon submission of his notice that he intends to commence practice in Ohio, Dr. Brindle shall provide the Board with a written report indicating that Dr. Brindle's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The report shall be made by an individual or provider approved by the Board for making such assessments and shall describe the basis for this determination.
- f. **Demonstration of Ability to Resume Practice:** Dr. Brindle shall demonstrate to the satisfaction of the Board that he can practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include, but not be limited to, evidence of continuing full compliance, for at least six months immediately prior to submission of Dr. Brindle's application to commence practice in Ohio, with the following:
  - i. **Personal Appearances:** Dr. Brindle shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Order. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

- ii. **Quarterly Declarations:** Dr. Brindle shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
- iii. **Certification of Compliance with Psychiatric Treatment Plan:** Certification from a psychiatrist approved by the Board that Dr. Brindle has been in continuing full compliance with the plan of recommended psychiatric treatment, if one is recommended, for a period of at least six months immediately preceding the submission of Dr. Brindle's notice that he intends to commence practice in Ohio.
- iv. **Abstention from Drugs:** Dr. Brindle 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. Brindle's history of chemical dependency.
- v. **Abstention from Alcohol:** Dr. Brindle shall abstain completely from the use of alcohol.
- vi. **Drug & Alcohol Screens; Supervising Physician:** Dr. Brindle shall submit to random urine screenings for drugs and/or alcohol on a twice monthly basis or as otherwise directed by the Board. Dr. Brindle 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.

At least six months prior to submission of his request to commence practice in Ohio, or as otherwise determined by the Board, Dr. Brindle shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Brindle shall submit the required specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Brindle. Dr. Brindle and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Dr. Brindle shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this 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. Brindle must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Brindle shall further ensure that the previously designated supervising physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

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

- vii. **Submission of Blood or Urine Specimens upon Request:** Dr. Brindle shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Brindle's expense.
- viii. **Rehabilitation Program:** Dr. Brindle shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than two times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Dr. Brindle shall submit acceptable documentary evidence of continuing compliance with this program, which must be received in the Board's offices no later than the due date for Dr. Brindle's quarterly declarations.
- ix. **Practice Plan; Monitoring Physician:** Upon submission of his notice that he intends to commence practice in Ohio, Dr. Brindle shall submit to the Board a plan of practice in Ohio which, until otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Brindle's activities will be directly supervised and overseen by a monitoring physician approved in advance by the Board. Dr. Brindle must receive the Board's approval for such a plan prior to his commencement of practice in Ohio.

- x. **Compliance with Board Order**: Evidence of continuing full compliance with this Order.
  - xi. **Absence from Practice**: In the event that Dr. Brindle has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to the submission of his notice that he intends to commence practice in Ohio, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Brindle's fitness to resume practice.
- C. **PROBATIONARY CONDITIONS**: Upon commencing practice in Ohio, Dr. Brindle's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
1. **Obey Laws in Ohio**: Dr. Brindle shall obey all federal, state, and local laws; and all rules governing the practice of medicine in Ohio.
  2. **Terms, Conditions, and Limitations Continued from Paragraph B.2.f**: Dr. Brindle shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B.2.f of this Order.
  3. **Continue Psychiatric Treatment**: Dr. Brindle shall continue to receive psychiatric treatment, if recommended prior to commencing practice in Ohio, with a psychiatrist approved by the Board, at such intervals as are deemed appropriate by the treating psychiatrist, but not less than once per month unless otherwise determined by the Board. The sessions shall be in person and may not be conducted by telephone or other electronic means.  
  
Dr. Brindle shall continue in psychiatric treatment until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the approved treating psychiatrist. Dr. Brindle shall ensure that psychiatric reports are forwarded by his treating psychiatrist to the Board on a quarterly basis, or as otherwise directed by the Board. It is Dr. Brindle's responsibility to ensure that the quarterly reports are received in the Board's offices no later than the due date for Dr. Brindle's quarterly declaration.
  4. **Comply with Practice Plan**: Dr. Brindle shall practice in accordance with the plan of practice approved by the Board prior to commencement of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Brindle's activities will be directly supervised and overseen by a monitoring physician approved by the Board. The monitoring physician shall monitor Dr. Brindle and provide the Board with reports on

Dr. Brindle's progress and status on a quarterly basis. All monitoring physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Brindle's quarterly declaration. It is Dr. Brindle's responsibility to ensure that the reports are timely submitted.

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

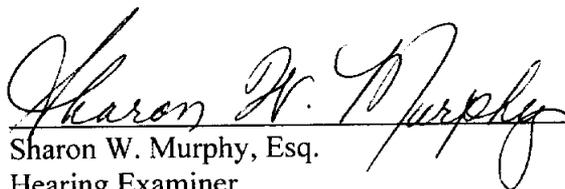
Dr. Brindle shall obtain the Board's prior approval for any alteration to the practice plan which was approved by the Board prior to the reinstatement or restoration of his certificate.

5. **Absence from Ohio:** In the event that Dr. Brindle should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Brindle 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 Order, unless otherwise determined by the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
6. **Tolling of Probationary Period while Out of Compliance:** In the event Dr. Brindle is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period.

- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Brindle's certificate will be fully restored.
- E. **RELEASES:** Dr. Brindle shall provide continuing 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. Brindle's psychiatric, chemical dependency, and/or related conditions, to the Board, to treating and monitoring physicians, and to others involved in the monitoring process. 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.

- F. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Dr. Brindle shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Brindle shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. Further, Dr. Brindle shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
- G. **REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, Dr. Brindle shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Brindle shall also provide a copy of this Order 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 or restoration of any professional license. Further, Dr. Brindle shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
- H. **VIOLATION OF BOARD ORDER; DISCRETIONARY SANCTION IMPOSED:** If Dr. Brindle violates this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- I. **SUPERSEDE PREVIOUS CONSENT AGREEMENT:** This Order shall supersede the terms and conditions set forth in the August 8, 2001, Step I Consent Agreement between Dr. Brindle and the Board.

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

  
Sharon W. Murphy, Esq.  
Hearing Examiner



# State Medical Board of Ohio

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## EXCERPT FROM THE DRAFT MINUTES OF NOVEMBER 10, 2004

### REPORTS AND RECOMMENDATIONS

Ms. Sloan announced that the Board would now consider the findings and orders appearing on the Board's agenda. She asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Fred Andrew Brindle, M.D.; William W. Hunter, Jr., M.D.; Alberto Leon, M.D.; Jack E. Slingluff, D.O.; Peter Steven Stanos, D.O.; and Hsiang Lee Tseng, M.D. A roll call was taken:

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

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

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

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

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

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

FRED ANDREW BRINDLE, M.D.

Ms. Sloan directed the Board's attention to the matter of Fred Andrew Brindle, M.D. She advised that objections to Hearing Examiner Murphy's Report and Recommendation were filed by both the State and Dr. Brindle, and were previously distributed to Board members. Ms. Sloan noted that Dr. Garg served as Secretary in this case.

Ms. Sloan continued that a request to address the Board has been timely filed on behalf of Dr. Brindle and by the State. Five minutes would be allowed for each address.

Dr. Brindle was accompanied by his attorney, Eric J. Plinke.

Mr. Plinke stated that the case before the Board in regard to Dr. Brindle is one that requires, as reflected in the record, an examination of the relationship between Dr. Brindle and the Board during his consent agreement. The allegations made by the Board were that Dr. Brindle had missed some urine screens and signed some declarations of compliance that were false. When Dr. Brindle testified at the hearing, he gave free and full disclosure as to what had transpired relating to those urine screens that occurred while he was on vacation and the circumstances under which the declarations of compliance were signed.

Mr. Plinke stated that, in addition to that, Dr. Brindle provided testimony relative to his request for reinstatement of his certificate. He commented that the whole purpose of the Step I Consent Agreement was to provide for monitoring and terms of conditions for reinstatement. As Dr. Brindle testified, and as the evidence he presented showed, Dr. Brindle had met those requirements prior to any of these alleged violations. In light of that, and in light of the testimony provided, and despite their objections, they agree with the Hearing Examiner's conclusion. They think that the common sense solution to this situation is to go back and examine the material submitted by Dr. Brindle, and determine if he met the requirements for reinstatement. Mr. Plinke stated that he submits to the Board that Dr. Brindle plainly did meet the requirements. For reasons that were testified to in the record, and that still do not clearly make sense to him, he was not given that opportunity.

Mr. Plinke stated that he thinks that the Hearing Examiner's response is a fair one. He added that he would

say that it is unusual, but it also reflects that Dr. Brindle has had a longstanding pending request to have his license reinstated. It's nothing new to the Board that he would come before it and ask to be reinstated. That's what he's been requesting for years. He added that Dr. Brindle would give the Board some further insight into what had transpired.

Dr. Brindle thanked the Board for giving him the opportunity to address the Board. He stated that he does agree with the findings and recommendations of the Hearing Examiner. In 2001 he signed a consent agreement. By sometime in 2002 he had completed all the things required for reinstatement. He requested reinstatement several times. His attorney sent letters to the Board requesting reinstatement, but for some reason no one ever got back to him. Dr. Brindle stated that he continued to comply with the conditions of the agreement for quite some time. His level of frustration mounted as his requests were ignored. He submitted weekly random urine samples for two and a half years, and all of those screens were negative. Dr. Brindle stated that, when his lawyers asked for a reduction from weekly to monthly sampling, he was censored. He had missed a few screens while he was on vacation. Dr. Brindle stated that the record shows that those were few in number.

Dr. Brindle stated that there came a time when it was clear to him that the Board was not going to reinstate him no matter what he did. He's tried to be a good doctor all of his life. He's maintained the highest standards. He was first in his class in medical school. He's a board-certified neurosurgeon. There have never been any allegations of substandard medical care or inappropriate behavior at the hospital or his office. He practiced medicine for 33 years without a malpractice judgment.

Dr. Brindle stated that he wants his license back just so that he can end his career with dignity. He doesn't plan on taking care of any patients. If, as indicated in the Hearing Examiner's recommendations, he did want to practice clinical medicine, he would have to submit a practice plan to the Board. The Board would have to approve that plan. He would then be subject to monitoring and compulsory meeting attendance and certain other conditions.

Dr. Brindle asked that the Board reinstate his license. He asked that the Board accept the findings and the recommendations of the Hearing Examiner.

Ms. Sloan advised that Ms. Albers may now address the Board.

Ms. Albers stated that this whole matter before the Board has become somewhat murky, and she feels that it is imperative to stress that the only issue before the Board is whether or not Dr. Brindle violated his consent agreement. She believes that the evidence at the hearing was very clear that he did. He missed urine screens. Even after he was called in and told how he could make arrangements to be on vacation and miss screens, he continued to do that over the last few months of 2003.

Ms. Albers commented that she stated in her objections to the Board her feeling that there was one wrong Finding of Fact and Conclusion of Law in the Hearing Examiner's Report, in that, while the Board had set out background information relating to an August declaration of compliance, Dr. Brindle was not charged

with a violation for signing that August declaration of compliance. He was, however, charged with falsely signing a declaration of compliance saying that he was in compliance, dropping his screens, in October, when he was not.

Ms. Albers noted that Dr. Brindle's counsel cited in his objections many arguments that deal with contract law, and his counsel stated to the Board today is that the purpose of the Step I Consent Agreement was to monitor Dr. Brindle and to get him back into practice. Ms. Albers stated that she doesn't believe that that is the purpose of the Step I Consent Agreement. She believes that the first purpose of the Step I Agreement is to take an impaired physician out of practice. Monitoring then comes along, and then at such time as the physician has met the terms of the Consent Agreement and has followed along with the monitoring and the required screens, he can be reinstated. She added that the Board has only the self-serving statements of Dr. Brindle at the hearing that he had met all the requirements for reinstatement. Ms. Albers stated that she called Ms. Jacobs as a witness in an attempt at some sort of rebuttal when this hearing became a hearing on the reinstatement. She noted that the notice of opportunity for hearing clearly stated that the issue was whether or not Dr. Brindle filed false declarations of compliance and whether or not he violated his Consent Agreement.

Ms. Albers stated that she doesn't believe that the issue of reinstatement is before the Board. If the Board does feel that reinstatement is before it, she asked that the matter be remanded to the Hearing Examiner so that the State can present evidence as to whether or not Dr. Brindle has actually met the conditions for reinstatement.

**DR. EGNER MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF FRED ANDREW BRINDLE, M.D. DR. STEINBERGH SECONDED THE MOTION.**

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

Dr. Steinbergh stated that she's not comfortable with the Report and Recommendation in this case. She stated that she feels it is very unorthodox. It does not satisfy her that the Board has fulfilled its mission of public protection.

Dr. Steinbergh stated that one of the pertinent lines that got to her was contained in the Conclusions of Law and the five star comments of the Hearing Examiner. It states, "(a)dditionally, there is no evidence that Dr. Brindle is not still in recovery." Dr. Steinbergh stated that the Board doesn't have any evidence that he is in recovery. Dr. Brindle has clearly violated the conditions of his Step I Consent Agreement, and he's not been offered a Step II because he did not meet all the stipulations. The Board has no evidence that Dr. Brindle has fulfilled his consent agreement. Dr. Steinbergh stated that, with that in mind, there are some changes that she would propose.

**DR. STEINBERGH MOVED THAT THE CONCLUSIONS OF LAW IN THE MATTER OF FRED ANDREW BRINDLE, M.D., BE AMENDED AS FOLLOWS:**

- 1) **BY DELETING THE LETTER “b” FOLLOWING THE NUMBER “3” IN CONCLUSION #1.**
- 2) **BY DELETING CONCLUSION #3 IN ITS ENTIRETY.**
- 3) **BY SUBSTITUTING THE FOLLOWING FOR THE LANGUAGE THAT APPEARS FOLLOWING THE FIVE ASTERISKS ON PAGE 17 OF THE REPORT AND RECOMMENDATION:**

At hearing, the State argued that the sole basis for this proceeding was Dr. Brindle’s non-compliance with the interim monitoring terms of his Consent Agreement. Dr. Brindle did not contest the State’s allegations; rather, he attempted to defend his overt violations by arguing that his non-compliance was justified because the Board had failed to fulfill its obligation under the consent agreement to consider reinstatement of his license in a timely manner. Dr. Brindle’s defensive maneuver succeeded in taking the hearing off course, resulting in the issuance of a Proposed Order that would, if adopted, excuse Dr. Brindle’s non-compliance and, via rhetorical gymnastics, reinstate his “color of license” but not his ability to practice.

The defense Dr. Brindle has offered to the Board raises several questions under contract law. First, would the Board’s failure to consider a reinstatement application that Dr. Brindle perceived to be complete constitute a material breach by the Board of its obligations under the consent agreement “contract?” If so, what would be the legal impact of that material breach? Would it, as Dr. Brindle suggests, render the consent agreement “contract” null and void, permitting him to cease complying with its monitoring terms and stripping the Board of its authority to protect the public by confirming Dr. Brindle’s on-going sobriety?

Public policy argues against Dr. Brindle’s exercise of self-help when the contract in question serves to keep health care consumers safe. Reasonableness argues against self-help as well. If, as Dr. Brindle contends, the Board failed to timely take up a reinstatement application that was ripe for consideration, it would have been more reasonable—and seemingly proper legally—for him to notify the Board of his belief that a material breach had occurred, give the Board an opportunity to cure the alleged breach, and, if the Board refused, demand the hearing authorized by the consent agreement or ask a court to issue a mandamus order compelling the Board to act on his application. Dr. Brindle, however, did none of those things. He simply stopped complying.

Dr. Brindle would have the Board believe that, prior to taking matters into his own hands, he made a good faith effort to comply with the terms of his Step I agreement.

Yet, his statements at hearing show that compliance was not a matter that Dr. Brindle took very seriously. At page 26 of the transcript, for example, Dr. Brindle explains why he signed Declarations of Compliance that he knew to be inaccurate: "I signed them because I was told to sign them.... It was just another piece of paper to me." Further, at page 21 of the transcript, Dr. Brindle discusses missed urine screens: "...I think I had missed some screens. I don't deny that. But I want you to realize how terribly inconvenient it is to carry a beeper and a cell phone and be on call to have to urinate within four hours. And it seemed to me that two years or two-and-a-half years of negative screens was sufficient to demonstrate that I was not using drugs or alcohol." Dr. Brindle's testimony and his admitted violations support disciplinary action against him based on Sections 4731.22(B)(15) and (B)(5), O.R.C.

With respect to testimony involving Dr. Brindle's failure to provide documentation of his compliance with an aftercare contract, that issue would properly be addressed in a hearing following issuance of a proposal to deny reinstatement, should such notice be issued. However, it is not relevant to the matter before the Board at this time.

**DR. BHATI SECONDED THE MOTION.**

Dr. Steinbergh stated that her comments go to contract law. She noted that none of the Board members are experts on contract law, but she has real concerns that, in terms of contract law, it can apply to certain things if someone is selling something or if it's anything but a Medical Board, but by no means should the Board be concerned with the question of contract law at this particular time. Dr. Brindle certainly had the right to come to another hearing, or he certainly has legal rights to take it to the courts if he feels that the Medical Board has not fulfilled its obligation. Dr. Steinbergh stated that, as far as she knows, the Board has never been notified that it has not fulfilled its part of the contract. On the other hand, in terms of his consent agreement, Dr. Brindle continued to disregard it and, basically, went to the model of self-help. The Consent Agreement wasn't meeting his needs, he didn't like it and he just wasn't going to do it. Dr. Steinbergh expressed concern that, with that type of approach with all of the Board's chemically dependent probationers, there would be chaos.

Dr. Egner agreed with Dr. Steinbergh, stating that the amended conclusions are correct. Dr. Brindle had a Step I Consent Agreement. He did not comply with the terms of the Agreement. Dr. Egner stated that this Board has disciplined many physicians for being non-compliant with their Consent Agreements. This is not at all unusual for the Board. Concerning Dr. Brindle's testimony that he had everything ready to be reinstated, Dr. Egner stated that she still doesn't know the answer to that question today. Dr. Brindle can comply with the Step I and then the Board will know whether he's ready for reinstatement, just like everybody else does.

Dr. Bhati stated that, after listening to Dr. Brindle, it becomes obvious that the issue in his mind is a little

bit unfocused in comparison to what the real problem is. Dr. Brindle is thinking that he's board-certified, the first in his class, his quality's great and all that. Dr. Bhati stated that that's not the issue here. Here the Board is talking about Dr. Brindle not fulfilling his part of the Consent Agreement that he signed. That's why he's being sanctioned. Dr. Bhati stated that Dr. Brindle is lucky to be getting away with this, adding that it could be more severe than this. He should be happy that he's getting some chance in the future.

A vote was taken on Dr. Steinbergh's motion to amend the Conclusions of Law:

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

The motion carried.

**DR. EGNER MOVED THAT THE PROPOSED ORDER IN THE MATTER OF FRED ANDREW BRINDLE, M.D., BE AMENDED BY SUBSTITUTING THE FOLLOWING:**

It is hereby ORDERED that:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Fred Andrew Brindle, 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 90 days.
- B. **INTERIM MONITORING:** During the period that Dr. Brindle's certificate to practice medicine and surgery in Ohio is suspended, Dr. Brindle shall comply with the following terms, conditions, and limitations:
  1. **Obey the Law:** Dr. Brindle shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
  2. **Personal Appearances:** Dr. Brindle shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Order. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally

scheduled.

3. **Quarterly Declarations**: Dr. Brindle shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
4. **Abstention from Drugs**: Dr. Brindle shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him/her by another so authorized by law who has full knowledge of Dr. Brindle's history of chemical dependency.
5. **Abstention from Alcohol**: Dr. Brindle shall abstain completely from the use of alcohol.
6. **Drug & Alcohol Screens; Supervising Physician**: Dr. Brindle shall submit to random urine screenings for drugs and/or alcohol on a weekly basis or as otherwise directed by the Board. Dr. Brindle shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

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

Dr. Brindle shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this 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. Brindle must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Brindle shall further ensure that the previously designated supervising physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

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

7. **Submission of Blood or Urine Specimens upon Request:** Dr. Brindle shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Brindle's expense.
8. **Rehabilitation Program:** Dr. Brindle shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Dr. Brindle shall submit acceptable documentary evidence of continuing compliance with this program, which must be received in the Board's offices no later than the due date for Dr. Brindle's quarterly declarations.

C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Brindle's certificate to practice medicine and surgery until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration:** Dr. Brindle shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Compliance with Interim Conditions:** Dr. Brindle shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order.
3. **Demonstration of Ability to Resume Practice:** Dr. Brindle 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:

- a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Brindle has successfully completed any required inpatient treatment.
- b. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract entered into no later than thirty days following the effective date of this Order. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
- c. Evidence of continuing full compliance with this Order.
- d. Two written reports indicating that Dr. Brindle's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care.

One report shall be made by a provider approved by the Board under Section 4731.25, O.R.C., for making such assessments. Prior to the assessment, Dr. Brindle shall provide the evaluator with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this Order. The report from the evaluator shall include all recommendations for treatment, monitoring, and supervision of Dr. Brindle, and all conditions, restrictions and limitations that should be imposed on Dr. Brindle's practice. The report shall also describe the basis for the evaluator's determinations.

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

The reports required under this section shall not be made by the same individual. The evaluations shall have been performed within ninety days prior to Dr. Brindle's reinstatement or restoration.

For purposes of this paragraph, the Board may consider, upon specific written request from Dr. Brindle, documentation previously submitted to the Board by Dr. Brindle for the purpose of meeting the reinstatement requirements established by his August 8, 2001 Step I consent agreement, provided that all required assessments and evaluations have been properly updated.

4. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Brindle has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.
- C. **PROBATIONARY CONDITIONS:** Upon reinstatement or restoration, Dr. Brindle's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
1. **Obey Laws in Ohio:** Dr. Brindle shall obey all federal, state, and local laws; and all rules governing the practice of medicine in Ohio.
  2. **Terms, Conditions and Limitations Continued from Paragraph B:** Dr. Brindle shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
  3. **Psychiatric Treatment:** Dr. Brindle shall undertake and maintain psychiatric treatment, with a psychiatrist approved in advance by the Board, at such intervals as are deemed appropriate by the treating psychiatrist, but not less than once per month unless otherwise determined by the Board. The sessions shall be in person and may not be conducted by telephone or other electronic means.  
  
Dr. Brindle shall continue in psychiatric treatment until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the approved treating psychiatrist. Dr. Brindle shall ensure that psychiatric reports are forwarded by his treating psychiatrist to the Board on a quarterly basis, or as otherwise directed by the Board. It is Dr. Brindle's responsibility to ensure that the quarterly reports are received in the Board's offices no later than the due date for Dr. Brindle's quarterly declaration.
  4. **Practice Plan:** Within thirty days of the effective date of Dr. Brindle's

reinstatement or restoration, or as otherwise determined by the Board, Dr. Brindle shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Brindle's activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Brindle shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

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

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

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Brindle and his/her medical practice, and on the review of Dr. Brindle's patient charts. Dr. Brindle shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Brindle's quarterly declaration.

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

5. **Absence from Ohio**: In the event that Dr. Brindle should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Brindle 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 Order, unless otherwise determined by the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.

6. **Tolling of Probationary Period while Out of Compliance:** In the event Dr. Brindle is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period.
- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Brindle's certificate will be fully restored.
- E. **RELEASES:** Dr. Brindle shall provide continuing 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. Brindle's psychiatric, chemical dependency, and/or related conditions, to the Board, to treating and monitoring physicians, and to others involved in the monitoring process. 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.
- F. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Dr. Brindle shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Brindle shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. Further, Dr. Brindle shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
- G. **REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, Dr. Brindle shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Brindle shall also provide a copy of this Order 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 or restoration of any professional license. Further, Dr. Brindle shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

- H. **VIOLATION OF BOARD ORDER; DISCRETIONARY SANCTION IMPOSED:** If Dr. Brindle violates this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- I. **SUPERSEDE PREVIOUS CONSENT AGREEMENT:** This Order shall supersede the terms and conditions set forth in the August 8, 2001, Step I Consent Agreement between Dr. Brindle and the Board.

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

**DR. BHATI SECONDED THE MOTION.**

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

Dr. Kumar referred to paragraph C.3., noting that it contains standard language that seems to cover everything; however, Dr. Brindle is a neurosurgeon and he has demonstrated that he has developed tremors, due to medication. Dr. Kumar stated that he's not sure whether the Board needs to put any additional language that would prohibit Dr. Brindle from performing surgery should he come back for reinstatement.

Dr. Egner commented that that is not something the Board needs to consider today.

Dr. Steinbergh agreed. She noted that the proposed amended order requires him to submit a practice plan for Board approval. She remarked that Dr. Brindle does know his limitations, and when it comes to neurosurgery, she feels that any credentialing body would put a stop to that.

Dr. Kumar stated that he just wants it on the record that when Dr. Brindle does apply for reinstatement, the Board will have to keep that condition in mind.

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

Vote:	Dr. Egner	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye

Dr. Garg	- abstain
Dr. Steinbergh	- aye

The motion carried.

**DR. BHATI MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF FRED ANDREW BRINDLE, M.D. DR. ROBBINS SECONDED THE MOTION. A vote was taken:**

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

The motion carried.

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF

\*

\*

FRED A. BRINDLE, M.D.

\*

**ORDER AND ENTRY**

On July 14, 2004, the State Medical Board of Ohio issued a Notice of Opportunity for Hearing to Fred A. Brindle, M.D., based on Dr. Brindle having been found guilty in the Erie County (Ohio) Court of Common Pleas of one count of illegal conveyance or possession of a deadly ordnance in a school safety zone, a felony.

It was subsequently reported to the Board that, on August 10, 2004, the Erie County Court of Common Pleas entered a Judgment of Acquittal on all counts in the original indictment and released Dr. Brindle from all conditions and obligations of his bond and of the Court.

In that the above referenced July 14, 2004, Notice of Opportunity for Hearing was based entirely on the fact of the conviction and that the Court has since acquitted the Respondent of same, it is hereby ORDERED that such Notice of Opportunity for Hearing be and is hereby DISMISSED WITHOUT PREJUDICE to future action.

This Order is entered by the State Medical Board of Ohio and on its behalf.

So ORDERED this 7th day of September 2004.

(SEAL)

  
Lance A. Talmage, M.D.  
Secretary

September 7, 2004

Date

CERTIFIED MAIL NO. 7000 0600 0024 5144 2920  
RETURN RECEIPT REQUESTED

Eric J. Plinke, Esq.  
CERTIFIED MAIL NO. 7000 0600 0024 5144 2890  
RETURN RECEIPT REQUESTED



# State Medical Board of Ohio

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

July 14, 2004

Fred Andrew Brindle, M.D.  
4215 Walnut Creek Lane  
Sandusky, OH 44870

Dear Doctor Brindle:

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 you or place you on probation for one or more of the following reasons:

- (1) On or about June 10, 2004, in Erie County Court of Common Pleas, Sandusky, Ohio, following a trial by jury, you were found guilty of illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone in violation of Section 2923.122, Ohio Revised Code, a felony of the fifth degree. A redacted copy of the journal entry of verdict is attached hereto and fully incorporated herein.

The judicial finding of guilt as alleged in paragraph (1) above, individually and/or collectively, constitutes "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention 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 days of the time of mailing of this notice.

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

In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently

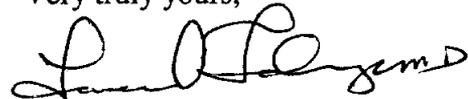
*Mailed 7-15-04*

revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand you or place you on probation.

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.  
Secretary

LAT/blt  
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5144 8502  
RETURN RECEIPT REQUESTED

John P. Carney, Esq.  
Porter, Wright, Morris & Arthur  
41 South High Street  
Columbus, OH 43215

CERTIFIED MAIL # 7000 0600 0024 5144 8519  
RETURN RECEIPT REQUESTED

Eric Plinke, Esq.  
Porter, Wright, Morris & Arthur  
41 South High Street  
Columbus, OH 43215

CERTIFIED MAIL # 7000 0600 0024 5144 8526  
RETURN RECEIPT REQUESTED

REDACTED

IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

State of Ohio : Case No. 2003-CR-077  
 -vs- : Judge Lawrence Grey  
 Fred A. Brindle : JUDGMENT ENTRY  
 Defendant :

FILED  
 COMMON PLEAS COURT  
 ERIE COUNTY, OHIO  
 2004 JUN 25 PM 4:36  
 BARBARA J. JOHNSON  
 CLERK OF COURTS

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On the 7th day of June, 2004, came the Assistant Prosecuting Attorney on behalf of the State of Ohio and also came the defendant in person and represented by counsel, Mark DeVan and Robert Reno; and came the following named persons as jurors, to wit:

- |                        |                          |
|------------------------|--------------------------|
| 1. Edward DuFresne     | 7. Marlene Boulis        |
| 2. Joshua Golliver     | 8. Maurice P. Fenton Jr. |
| 3. Lynne L. Daugherty  | 9. Sidney Aaron Jr.      |
| 4. James Arnold Sr.    | 10. Michael F. Balek     |
| 5. Rachel Hamilton     | 11. Dorothy Aaron        |
| 6. Terrence J. Hillery | 12. Vernon R. Brant Jr.  |

who were duly sworn according to law.

This cause proceeded to trial on June 8, 2004 and the jury heard the opening statements of counsel and the testimony adduced by the parties. On June 10, 2004, the jury heard the final arguments of counsel and the charge of the Court. Thereupon, the jury retired to the jury room in charge of the Bailiff for deliberation; whereupon, they deliberated on June 10, 2004, and they returned the following verdict, to wit:

J477/39  
 6.25.04

(2) "We the jury find the defendant, Fred Brindle, guilty of Illegal Conveyance or Possession of a Deadly Weapon or Dangerous Ordnance into a School Safety Zone as to Count No. 3 of the indictment."

DATED: June 10, 2004

/s/ Edward DuFresne	/s/ Marlene Boulis
/s/ Joshua Golliver	/s/ Maurice P. Fenton Jr.
/s/ Lynne L. Daugherty	/s/ Sidney Aaron Jr.
/s/ James Arnold Sr.	/s/ Michael F. Balek
/s/ Rachel Hamilton	/s/ Dorothy Aaron
/s/ Terrence J. Hillery	/s/ Vernon R. Brant Jr.

IT IS HEREBY ORDERED that the bond heretofore set is continued and this cause is hereby continued pending a presentence investigation by the Erie County Adult Probation

Department.

IT IS FURTHER ORDERED that the above-captioned case is scheduled for sentencing on the 26th day of July, 2004, at 1:45 p.m.

  
\_\_\_\_\_  
JUDGE LAWRENCE GREY

Approved,

  
\_\_\_\_\_  
Christopher Stallkamp  
Assistant Prosecuting Attorney

see facsimile attached

\_\_\_\_\_  
Mark DeVan  
Attorney for Defendant

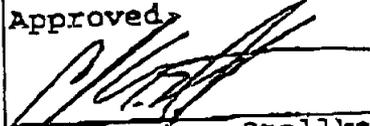
Department.

IT IS FURTHER ORDERED that the above-captioned case is  
scheduled for sentencing on the 26th day of July, 2004, at 1:45  
p.m.

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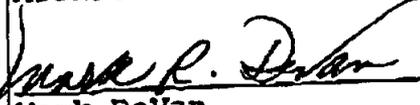
JUDGE LAWRENCE GREY

Approved >

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Christopher Stallkamp  
Assistant Prosecuting Attorney

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Mark DeVan  
Attorney for Defendant



# 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/)

December 10, 2003

Fred Andrew Brindle, M.D.  
4215 Walnut Creek Lane  
Sandusky, OH 44870

Dear Doctor Brindle:

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

- (1) On or about August 8, 2001, you entered into a Consent Agreement with the Board in lieu of formal proceedings based upon your violations of Sections 4731.22(B)(19) and (B)(26), Ohio Revised Code. A copy of the Consent Agreement is attached hereto and fully incorporated herein.

In said Consent Agreement, you admitted that, in or about 1988, you were treated for alcohol dependency at Serenity Hall. You also admitted that, on or about May 18, 2001, you entered Providence Hospital in Sandusky, Ohio, suffering from severe depression, and that you were subsequently transferred to University Hospitals of Cleveland, where you were diagnosed with bipolar disorder and chemical dependency. You further admitted that you entered Laurelwood Hospital for inpatient treatment, which continued until on or about June 21, 2001, and that you subsequently received intensive outpatient treatment through Bayshore Counseling Services in Sandusky.

In said Consent Agreement, you agreed to the suspension of your certificate to practice medicine and surgery in the State of Ohio for an indefinite period of time and to the requirement that you satisfy certain conditions prior to the reinstatement of your certificate. You further agreed to comply with specified terms, conditions and limitations during the period that your certificate is suspended. To date, your certificate to practice medicine and surgery in the State of Ohio remains under suspension.

- (2) Paragraph 7 of your Consent Agreement provides that you shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed

*Mailed 12-11-03*

by the Board and that you shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis.

- (a) Despite the requirements of Paragraph 7 of your Consent Agreement, you failed to submit urine specimens for drug and alcohol screening during the weeks beginning on June 1, 2003, June 15, 2003, July 20, 2003, July 27, 2003, and August 3, 2003. You advised the Board that the reason you failed to provide urine specimens during those weeks was that you were out of the state. You reported that you were in Argentina from May 28, 2003, through June 12, 2003, camping in Michigan from June 16, 2003, through June 22, 2003, and in Mexico from July 20, 2003, through August 10, 2003. At no time did you request or receive a waiver of the Consent Agreement requirement that you submit to random urine screenings on a weekly basis during the weeks that you reported you were out of the state.
- (b) On August 11, 2003, you attended a probationary office conference with representatives of the Board. At said probationary office conference, you were specifically advised that failure to submit random, weekly urine specimens for drug and alcohol screening was a violation of your Consent Agreement. You were further advised that the Board could grant a waiver for a weekly screening if a prior request was made and the circumstances warranted a waiver. Additionally, you were advised that, absent a Board-approved waiver, you were required to make alternative arrangements for submitting a urine specimen if you were going to be out of town. On August 25, 2003, you requested and received a waiver of the requirement that you submit a urine specimen for screening during the week of August 24, 2003, based upon your report that you had to travel out of town to be with a sick grandchild.

Despite the requirements of Paragraph 7 of your Consent Agreement and despite the fact that you were specifically advised at the August 11, 2003, probationary office conference that failure to submit random, weekly urine specimens for drug and alcohol screening was a violation of your Consent Agreement, you failed to submit a urine specimen for drug and alcohol screening during the week beginning on October 12, 2003. In fact, on or about November 21, 2003, you advised a representative of the Board that you failed to submit a urine specimen for the week of October 12, 2003, because you were out of town hunting with your son and that you had "forgotten" to request a waiver for that week. You further advised the representative of the Board that you were "bored" with having to comply with the terms, conditions and limitations of your Consent Agreement.

- (c) Despite the requirements of Paragraph 7 of your Consent Agreement, you failed to submit urine specimens for drug and alcohol screening and/or failed

to ensure that all screening reports were forwarded directly to the Board for the weeks beginning on August 10, 2003, September 21, 2003, and October 19, 2003.

- (3) Paragraph 5 of your Consent Agreement provides that you shall submit quarterly declarations, under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of your Consent Agreement.
- (a) Although, you submitted a Declaration of Compliance, on or about August 11, 2003, claiming that you had been, and continued to be, compliant with the terms of your Consent Agreement, you, in fact, were not in compliance with the terms of your Consent Agreement, because you failed to submit urine specimens for drug and alcohol screening during weeks beginning on June 1, 2003, June 15, 2003, July 20, 2003, July 27, 2003, and August 3, 2003.
- (b) Although, you submitted a Declaration of Compliance, on or about October 15, 2003, claiming that you had been, and continued to be, compliant with the terms of your Consent Agreement, you, in fact, were not in compliance with the terms of your Consent Agreement, because you failed to submit urine specimens for drug and alcohol screening and/or failed to ensure that all screening reports were forwarded directly to the Board for the weeks beginning on August 10, 2003, September 21, 2003, and October 12, 2003.

Your acts, conduct, and/or omissions as alleged in paragraphs (2) and (3) above, individually and/or collectively, constitute a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (3)(b) above, individually and/or collectively, constitute “[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,” as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

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

You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is

permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

  
Lance A. Talmage, M.D.  
Secretary

LAT/blt  
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5150 6769  
RETURN RECEIPT REQUESTED

John P. Carney, Esq.  
Porter, Wright, Morris & Arthur  
41 South High Street  
Columbus, Ohio 43215

CERTIFIED MAIL # 7000 0600 0024 5150 6776  
RETURN RECEIPT REQUESTED

**STEP I**  
**CONSENT AGREEMENT**  
**BETWEEN**  
**FRED A. BRINDLE, M.D.**  
**AND**  
**THE STATE MEDICAL BOARD OF OHIO**

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

FRED A. BRINDLE, 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), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violations of Section 4731.22(B)(26), "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," and Section 4731.22(B)(19), "inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills."
- B. THE STATE MEDICAL BOARD OF OHIO enters into this CONSENT AGREEMENT in lieu of formal proceedings based upon violation of Sections 4731.22(B)(26) and 4731.22(B)(19), Ohio Revised Code, as set forth in Paragraph D below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement.
- C. FRED A. BRINDLE, M.D., is licensed to practice medicine and surgery in the State of Ohio.

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- D. FRED A. BRINDLE, M.D., ADMITS that he was treated for alcohol dependency in or about 1988 at Serenity Hall. DOCTOR BRINDLE further ADMITS that on or about May 18, 2001, he was suffering from severe depression and was admitted to Providence Hospital in Sandusky, Ohio. DOCTOR BRINDLE further ADMITS that he was subsequently transferred to University Hospitals of Cleveland where he was seen by Doctors Christopher Adelman and Theodore Parran, was diagnosed with Bipolar Disorder and Chemical Dependency, and was admitted to Laurelwood Hospital for inpatient treatment. DOCTOR BRINDLE further STATES that he was discharged from Laurelwood Hospital on or about June 21, 2001, and is now receiving intensive outpatient treatment through Bayshore Counseling Services in Sandusky, Ohio.

### AGREED CONDITIONS

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

### SUSPENSION OF CERTIFICATE

1. The certificate of DOCTOR BRINDLE to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time;

#### Sobriety

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

#### Releases; Quarterly Declarations and Appearances

4. DOCTOR BRINDLE 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 BRINDLE's chemical dependency or related conditions, or for purposes of complying with the CONSENT AGREEMENT, whether such treatment or evaluation occurred before or after the effective date of this CONSENT AGREEMENT. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code

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and are confidential pursuant to statute. DOCTOR BRINDLE 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 BRINDLE 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 BRINDLE 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 BRINDLE written notification of scheduled appearances, it is DOCTOR BRINDLE's responsibility to know when personal appearances will occur. If he does not receive written notification from the BOARD by the end of the month in which the appearance should have occurred, DOCTOR BRINDLE shall immediately submit to the BOARD a written request to be notified of his next scheduled appearance;

Drug & Alcohol Screens; Supervising Physician

7. DOCTOR BRINDLE shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the BOARD. DOCTOR BRINDLE 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;

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Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR BRINDLE shall submit to the BOARD for its prior approval the name of a supervising physician to whom DOCTOR BRINDLE 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 BRINDLE. 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 BRINDLE 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 BRINDLE must immediately notify the BOARD in writing, and make arrangements acceptable to the BOARD for another supervising physician as soon as practicable. DOCTOR BRINDLE 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 BRINDLE's quarterly declaration. It is DOCTOR BRINDLE's responsibility to ensure that reports are timely submitted;

#### CONDITIONS FOR REINSTATEMENT

8. The BOARD shall not consider reinstatement of DOCTOR BRINDLE's certificate to practice medicine and surgery unless and until all of the following conditions are met:
  - a. DOCTOR BRINDLE shall submit an application for reinstatement, accompanied by appropriate fees, if any;
  - b. DOCTOR BRINDLE shall demonstrate to the satisfaction of the BOARD that he can resume practice in compliance with acceptable

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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 BRINDLE 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 BRINDLE's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care.

One report shall be made by individuals or providers approved by the BOARD under Section 4731.25, Ohio Revised Code, for making such assessments. Prior to the assessments, DOCTOR BRINDLE shall provide the evaluators with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The reports from the evaluators shall include any recommendations for treatment, monitoring, or supervision of DOCTOR BRINDLE, and any conditions, restrictions, or limitations that should be imposed on DOCTOR BRINDLE's practice. The reports shall also describe the basis for the evaluator's determinations.

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

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The reports required under this section shall not be made by the same individual.

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

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

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

#### REQUIRED REPORTING BY LICENSEE

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

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11. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR BRINDLE 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 BRINDLE 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 BRINDLE 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 BRINDLE 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 BRINDLE 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.

**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.

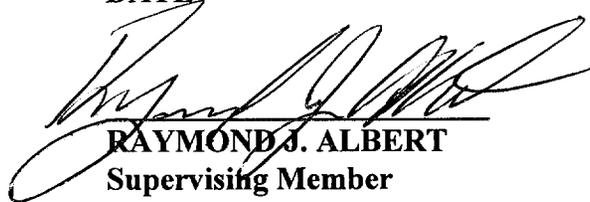
  
\_\_\_\_\_  
FRED A. BRINDLE, M.D.

  
\_\_\_\_\_  
ANAND G. GARG, M.D. <sup>ITAD</sup>  
Secretary

8-3-2001  
DATE

8/8/01  
DATE

  
\_\_\_\_\_  
RICHARD COOPER, ESQ.  
Attorney for Dr. Brindle

  
\_\_\_\_\_  
RAYMOND J. ALBERT  
Supervising Member

8-1-2001  
DATE

8/8/01  
DATE

  
\_\_\_\_\_  
REBECCA J. ALBERS, ESQ.  
Assistant Attorney General

8/8/01  
DATE

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