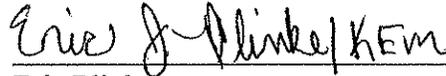




**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing Notice of Dismissal with Prejudice was duly served upon the following by ordinary U.S. Mail, first-class postage prepaid, this 25<sup>th</sup> day of April, 2006:

Kyle Wilcox, Esq.  
Damion Clifford, Esq.  
Assistant Attorney General  
Department of Health and Human Services  
Ohio Attorney General  
30 East Broad Street, 26<sup>th</sup> Floor  
Columbus, OH 43215-3400

  
Eric Plinke

**BEFORE THE TENTH DISTRICT COURT OF APPEALS**

Willie L. Josey, M.D.  
2004 Waller Street  
Portsmouth, OH 45662

Case No. 05CVF-02-1872

Appellant,

Judge Peterson

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 Court of Common Pleas, Franklin  
County, Ohio**

Appellee.

---

**APPELLANT'S NOTICE OF APPEAL**

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Pursuant to Ohio Revised Code § 119.12, notice is hereby given that Appellant, Willie L. Josey, M.D., appeals the State Medical Board of Ohio's Entry of Order dated February 9, 2005, and mailed February 10, 2005 (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)  
PORTER, WRIGHT, MORRIS & ARTHUR, LLP  
41 South High Street  
Columbus, Ohio 43215-6194  
(614) 227-2000 Fax (614) 227-2100  
Attorney for Appellant  
Willie L. Josey, M.D.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21<sup>st</sup> day of March, 2006 the foregoing Notice of Appeal was filed via hand delivery with the Court of Common Pleas of Franklin County, Court of Appeals of Franklin County, Tenth Appellate District, and that a copy was served via ordinary U.S. Mail, postage prepaid, upon:

Kyle Wilcox, Esq.  
Assistant Attorney General  
Health & Human Services Section  
Ohio Attorney General  
30 East Broad Street, 26th Floor  
Columbus, Ohio 43215-3428

  
\_\_\_\_\_  
Eric J. Plinke (0059463)



# 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)

February 9, 2005

Willie L. Josey, M.D.  
204 Waller Street  
Portsmouth, OH 45662

Dear Doctor Josey:

Please find enclosed certified copies of the Entry of Order; the Report of Remand 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 February 9, 2005, including motions approving and confirming the Report of Remand as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO

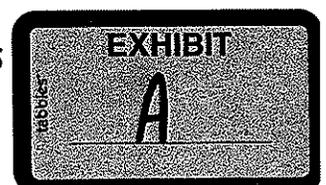
Lance A. Talmage, M.D.  
Secretary

LAT:jam  
Enclosures

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RETURN RECEIPT REQUESTED

Cc: Kevin P. Byers, Esq.  
CERTIFIED MAIL NO. 7000 0600 0024 5150 2303  
RETURN RECEIPT REQUESTED

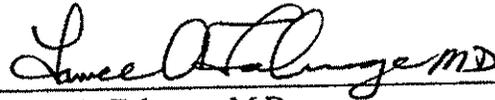
MAILED 2-10-05



CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report of Remand 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 February 9, 2005, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Willie L. Josey, 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)

February 9, 2005

Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF

\*

\*

WILLIE L. JOSEY, M.D.

\*

**ENTRY OF ORDER**

This matter came on for consideration before the State Medical Board of Ohio on February 9, 2005.

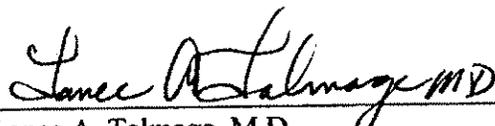
Upon the Report of Remand of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report of Remand is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above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

It is hereby ORDERED that:

The certificate of Willie L. Josey, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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

(SEAL)

  
\_\_\_\_\_  
Lance A. Talmage, M.D.  
Secretary

February 9, 2005  
Date

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

TERMINATION NO. 10  
BY SS 2-17-06

WILLIE LEROY JOSEY, MD,

Appellant,

vs.

OHIO STATE MEDICAL  
BOARD,

Appellee.

CASE NO. 05CVF-02-1872

JUDGE PETERSON

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
FEB 21 AM 11:47  
CLERK OF COURTS

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

Willie Leroy Josey, M.D., appeals, pursuant to R.C. 119.12, a February 9, 2005 order of the Appellee Ohio State Medical Board ("Board"). In the order, the Board permanently revoked Dr. Josey's certificate to practice medicine and surgery in Ohio.

**I. Procedural and Factual Background.**

On November 12, 2003, the Board notified Dr. Josey by letter that it would consider taking action on his certificate to practice medicine and surgery. The letter pointed out that Dr. Josey had been ordered by the Board in March 2002 to abstain completely from the use of alcohol. The Board alleged in the letter that Dr. Josey's July 3, 2003 urine screen tested positive for alcohol and, as a result, the Board accused Dr. Josey of violating R.C. 4731.22 (B), subsections (15) and (26).<sup>1</sup>

The Board's November 2003 letter also discussed Dr. Josey's history before the Board that preceded the March 2002 order, including:

- A consent agreement Dr. Josey and the Board entered into in 1987, under which the doctor was granted a conditional license because of chemical dependency for which he had received treatment;

<sup>1</sup> The terms of these statutes are set forth in Section II, below.

- The November 8, 1989 revocation of Dr. Josey's license due to the doctor's self-administration of an addictive drug, for which Dr. Josey voluntarily sought treatment. This revocation was stayed and Dr. Josey was placed on eight years probation;
- The Board's November 13, 1997 release of Dr. Josey from the terms of the November 8, 1989 order;
- The Board's March 15, 2002 permanent revocation of Dr. Josey's certificate, after Dr. Josey notified the Board he had relapsed by misusing and abusing painkillers, and admitted himself into a hospital for treatment. This revocation was stayed, and Dr. Josey's certificate was indefinitely suspended for not less than one year, and he was placed on probation.

Elsewhere, the record indicates that on February 11, 2004, the Board again permanently revoked Dr. Josey's license, but stayed the revocation. Here, the Board indefinitely suspended Dr. Josey's license for not less than two years from March 15, 2002. This action resulted from the Board's discovery that Dr. Josey had pleaded guilty in Scioto County, Ohio to three counts of deception to obtain a dangerous drug. Three of the criminal counts related to activity in the year 2000. The Board at the time of its March 15, 2002 action had been aware of Dr. Josey's criminal activity that occurred in 2001. However, it had not been aware of the 2000 allegations. Dr. Josey has not practiced medicine since 2002.

On December 10, 2003, Dr. Josey, through his attorney, requested a hearing on the new allegations. The hearing was held on April 2, 2004. At the hearing, the Board called as witnesses: Dr. Josey, as if on cross-examination; Danielle Bickers, a Board compliance officer; and William Closson, Ph.D, the director of toxicology at Bendiner & Schlesinger Medical Laboratories. In his case-in-chief, Dr. Josey again provided testimony, but did not call any other witnesses.

On May 14, 2004, the Board hearing examiner issued a 13-page report and recommendation ("R & R"). The hearing examiner found that, despite Dr. Josey's testimony to the contrary, he "has consumed alcohol, in violation of the Board's order

and in contravention of his recovery program" in violation of R.C. 4731.22 (B), subsections (15) and (26). (R & R, at page 12.) The hearing examiner proposed that the Board permanently revoke Dr. Josey's certificate to practice medicine and surgery.

Dr. Josey, through his attorney, filed objections to the hearing examiner's R & R. Dr. Josey also, on May 26, 2004, filed a motion for the admission of additional evidence regarding the state of Ethylglucuronide (EtG) testing. The motion was fully briefed.

Dr. Josey's case came before the full Board on June 9, 2004. However, the Board declined to address the merits of the proposed disciplinary action. Instead, the Board remanded the matter to the hearing examiner, to allow Dr. Josey to present additional evidence on EtG testing.

The hearing on remand was held before the hearing examiner on October 26, 2004. Dr. Josey provided, by telephone, testimony on EtG testing from Gregory E. Skipper, M.D. Josey also presented an article on EtG testing co-authored by Dr. Skipper and published in *The Journal of Medical Licensure and Discipline*. Dr. Josey also introduced copies of the results of his urine screens for the period of July 8, 2003 through September 30, 2004. Dr. Skipper testified that he reviewed the urine screens, and concluded there was a high probability that Dr. Josey ingested a significant amount of alcohol within 24 hours of July 3, 2003.

On November 17, 2004, the hearing examiner issued a Report of Remand. Again, she concluded that Dr. Josey violated R.C. 4731.22 (B), subsections (15) and (26), and recommended that his license be permanently revoked. Dr. Josey's counsel filed objections to the Report of Remand.

On February 9, 2005, the Board voted 9-0, with two abstentions, to approve and confirm the hearing examiner's findings of fact, conclusions, and order, thus permanently revoking Dr. Josey's certificate to practice medicine and surgery in Ohio.

Dr. Josey filed a Notice of Appeal with this Court on February 18, 2005.

## II. Law.

This court must affirm the order of an administrative agency 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.)

The Charges brought against Dr. Josey allege that he violated R.C. 4731.22 (B)(15) and (B)(26):

(B) 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:

(15) Violation of the conditions of limitation placed by the board upon a certificate to practice;

\*\*\*

(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. \*\*\*\*

## III. Findings of the Court and Conclusion.

The Court has reviewed the administrative record in its entirety, and has appraised the evidence submitted to the Board at the initial record hearing and the remand hearing. The Court concludes that the Board's order was supported by reliable, probative, and substantial evidence, and was in accordance with law.

First, the Court will address the allegation that Dr. Josey violated conditions of limitation placed by the Board upon his certificate to practice. R.C. 4731.22 (B)(15). The aforementioned March 13, 2002 Board order had revoked Dr. Josey's certificate and stayed the revocation in lieu of a suspension. A condition of the suspension was that Dr. Josey must "abstain completely from the use of alcohol." This restriction was in place on July 3, 2003, when Dr. Josey submitted the urine screen at issue in this case.

There was reliable, probative, and substantial evidence to support the Board's finding that Dr. Josey violated this condition. Dr. Closson, the director of toxicology at Bendiner and Schlesinger Medical Laboratories testified that alcohol was detected in Dr. Josey's July 3, 2003 urine sample in a preliminary test. He added that his laboratory then performed a more specific, sensitive test, called a confirmatory test, on a separate portion of urine from the same bottles. Again, the test showed the presence of alcohol.

Evidence was also presented that a third test, known as the EtG test, was performed on the urine specimen at a National Medical Services laboratory in Pennsylvania. The EtG test is considered the best indicator of whether ethyl alcohol has been in an individual's system, and is often used to correct false positive readings from other tests. In this case, the EtG test was used to rule out the possibility that ethanol was produced after the urine was already in Dr. Josey's bladder. The laboratory at which the EtG test was conducted used a conservative guideline to determine whether alcohol was present, and concluded that Dr. Josey's reading significantly exceeded this standard.

Dr. Josey's own expert witness, Dr. Skipper, testified that the high EtG test combined with the positive urine screen:

"makes it even more likely that this is actual consumption of beverage alcohol. In other words, these two things together both are relatively -- I mean, the urine alcohol, it's pretty rare that you get a positive urine alcohol from incidental exposure, because it takes quite a bit to get the urine positive for alcohol." (Remand Hearing Transcript, at 18-19.)

The foregoing demonstrates that there was reliable, probative, and substantial evidence to support the finding that Dr. Josey failed to abstain from the use of alcohol, and thus was in violation of R.C. 4731.22 (B)(15).

Dr. Josey argues, however, that there were defects in the chain of custody of the urine specimens that were tested for alcohol. The Court disagrees. Chain of custody was not seriously contested at the hearing. Dr. Josey's counsel briefly questioned the expert witnesses about chain of custody issues, but did not seriously challenge them on the issue. No evidence was presented to suggest tampering or interference with the urine specimen at any point in time. Dr. Closson, on the other hand, testified that his laboratory adhered to a strict chain of custody protocol. He added that his lab matched documentation on the bottle of Dr. Josey's sample with the paperwork accompanying it, ensured that the signature of the individual who took the sample was present, and made sure that the tape that is used to seal the bottle after the sample was taken remained intact. Thus, the hearing examiner and the Board did not err by failing to give any significant weight to any arguments regarding a break in the chain of custody.

The remainder of Dr. Josey's arguments relate to his own, uncorroborated testimony on matters in support of his argument that he did not and could not have used alcohol on or around July 3, 2003. First, Dr. Josey testifies, without evidentiary support, that there was glucose in his urine when he took the test on July 3, 2003, but glucose was not detected in the tests at the laboratory. Second, he argues that he attended a support group meeting on July 2, 2003. He pointed out that no one had come forward to testify that he appeared impaired on that occasion. Third, he adamantly denied using alcohol, noting that he had no subsequent positive tests, and he has had false positive readings in the past.

All of these issues speak to Dr. Josey's credibility. It was the hearing examiner, and not this Court, who had the opportunity to view Dr. Josey's demeanor and assess his credibility. The Court will not disturb the Board's findings that Dr. Josey's testimony that he did not use alcohol was unconvincing, in light of the state's evidence.

The charge against Dr. Josey under R.C. 4731.22 (B) (26) accuses him of being impaired in the 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. There was reliable, probative, and substantial evidence to support this charge.

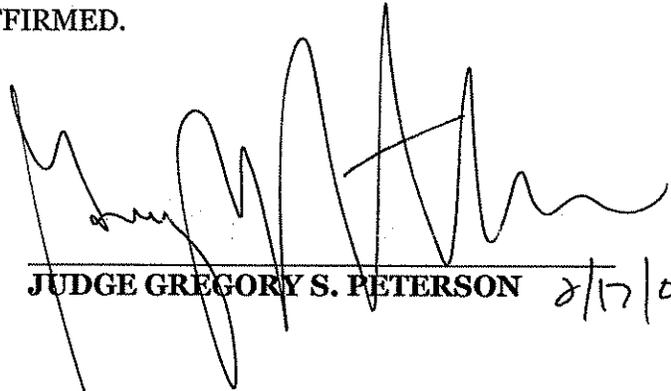
In *Singh v. State Medical Bd.*, (May 14, 1998), Franklin App. No. 97APE09-1245, unreported, the Tenth District Court of Appeals noted that "the State Medical Board is comprised of a panel of knowledgeable professionals who are charged with protecting the public safety and who decide, among other things, whether a physician's license should be the subject of disciplinary action." Since the Board has the necessary knowledge and experience regarding the medical profession, courts must give due deference to the Board's interpretations of the technical and ethical requirements of its profession. *Id.* The *Singh* court specifically noted that that question of whether a doctor with an addiction is able to competently and safely practice medicine "is a determination uniquely within the province of the Board."

The Board's did not abuse its authority to determine whether Dr. Josey was "impaired" within the meaning of R.C. 4731.22 (B) (26). The Board previously found that Dr. Josey was impaired in 1989, 2002, and in February 2004. Prior to the present case, the Board has "revoked" Dr. Josey's medical license three times. Each time, however, the Board saw fit to enforce a lesser sanction, and gave Dr. Josey the opportunity to demonstrate that he was able to abstain from drugs and alcohol. His

positive tests for alcohol in July 2003 support the Board's 9-0 finding that Dr. Josey has a habitual and continuing impairment.

For these reasons, it is ORDERED, ADJUDGED, AND DECREED that the Board's February 9, 2005 order permanently revoking Dr. Josey's certificate to practice medicine and surgery in Ohio is AFFIRMED.

This is a final entry.



**JUDGE GREGORY S. PETERSON** 2/17/06.

Copies to:

Eric J. Plinke, Esq. & Kristin E. Matisziw, Esq.  
Counsel for Appellant

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

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

Willie Leroy Josey, MD,  
2004 Waller Street  
Portsmouth, Ohio 45662  
Appellant,  
v.

05CVF 02 1872

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

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

JUDGE \_\_\_\_\_

STATE MEDICAL BOARD  
OF OHIO  
2005 MAR -2 P 2:38

Appeal from the State Medical Board of Ohio

APPELLANT'S NOTICE OF APPEAL

Pursuant to RC 119.12, notice is hereby given that Appellant, Willie Leroy Josey, MD, appeals the order of the State Medical Board dated February 9, 2005, and mailed February 10, 2005, (copy attached as *Exhibit A*.) The Medical Board order is not supported by the necessary quantum of reliable, probative, and substantial evidence nor is it in accordance with law.

Respectfully submitted,

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

KPB/ELS

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

STATE MEDICAL BOARD  
OF OHIO  
OFFICE OF THE CLERK  
2005 FEB 19 AM 8:56

STATE MEDICAL BOARD  
OF OHIO

2005 FEB 19 A 8:32

Attorney for Willie Leroy Josey, MD

Certificate of Service

I certify that the original of the foregoing document was hand delivered this 18th day of February, 2005, to the State Medical Board, 77 South High Street, 17th Floor, Columbus, Ohio 43215-0315.<sup>1</sup>

*KPBY=RS*

Kevin P. Byers

STATE MEDICAL BOARD  
OF OHIO  
2005 MAR -2 P 2:38

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<sup>1</sup> In accord with Stulz v. Ohio Dept. of Admin. Svcs (Jan. 20, 2005), Tenth District No. 04AP-602, 2005-Ohio-200 which requires that the original notice be filed with the agency and a only copy thereof may be filed with the court of common pleas.



# 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)

February 9, 2005

Willie L. Josey, M.D.  
204 Waller Street  
Portsmouth, OH 45662

Dear Doctor Josey:

Please find enclosed certified copies of the Entry of Order; the Report of Remand 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 February 9, 2005, including motions approving and confirming the Report of Remand as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 7000 0600 0024 5150 2327  
RETURN RECEIPT REQUESTED

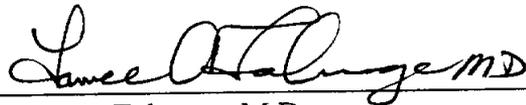
Cc: Kevin P. Byers, Esq.  
CERTIFIED MAIL NO. 7000 0600 0024 5150 2303  
RETURN RECEIPT REQUESTED

MAILED 2-10-05

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report of Remand 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 February 9, 2005, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Willie L. Josey, 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)

February 9, 2005

Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF

\*

\*

WILLIE L. JOSEY, M.D.

\*

**ENTRY OF ORDER**

This matter came on for consideration before the State Medical Board of Ohio on February 9, 2005.

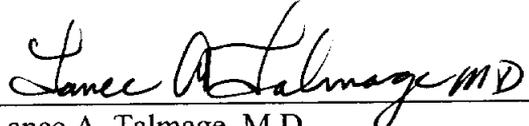
Upon the Report of Remand of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report of Remand is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above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

It is hereby ORDERED that:

The certificate of Willie L. Josey, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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

(SEAL)

  
\_\_\_\_\_  
Lance A. Talmage, M.D.  
Secretary

February 9, 2005  
\_\_\_\_\_  
Date

2004 NOV 16 P 1: 33

**REPORT OF REMAND  
IN THE MATTER OF WILLIE L. JOSEY, M.D.**

The Matter of Willie L. Josey, M.D., was remanded to Sharon W. Murphy, Esq., Hearing Examiner for the State Medical Board of Ohio [Board], by Order of the Board issued on June 9, 2004.

**BASIS FOR REMAND**

A Report and Recommendation in this matter was considered by the Board on June 9, 2004. Willie L. Josey, M.D., appeared before the Board at that time, along with his counsel, Kevin P. Byers, Esq. At that time, Dr. Josey moved to admit additional evidence regarding the current state of Ethylglucuronide (EtG) testing. Counsel for the State objected. Nevertheless, the Board remanded the matter to the Hearing Examiner to take additional evidence consistent with the Respondent's request. (State's Exhibit 1Q, attachments A through D).

**PROCEEDINGS UPON REMAND**

I. Additional Day of Hearing: By agreement of the parties, an additional day of hearing was held on October 26, 2004.

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: Kevin P. Byers, Esq.

III. Testimony Heard

Gregory E. Skipper, M.D.

IV. Remand Exhibits

A. Presented by the State

1. State's Exhibit 1P: Copy of an Interim Agreement between Dr. Josey and the Board, whereby Dr. Josey agreed to refrain from the practice of medicine and surgery in the State of Ohio until the allegations in this matter have been fully resolved by the Board.

2. State's Exhibit 1Q: Copy of a September 10, 2004, Entry scheduling the additional day of hearing, with attached copies of the following: an excerpt from the Board's June 9, 2004, minutes pertaining to Dr. Josey; Dr. Josey's motion for admission of additional evidence; the State's memorandum in opposition to Dr. Josey's motion for admission of additional evidence; and Dr. Josey's reply in support of his motion for admission of additional evidence.
- B. Presented by the Respondent
1. Respondent's Exhibit C: Copy an article entitled, "*Ethylglucuronide (EtG): A New Marker to Detect Alcohol Use in Recovering Physicians,*" written by Gregory E. Skipper, M.D., and others, and published in The Journal of Medical Licensure and Discipline in 2004.
  2. Respondent's Exhibit D: Copies of the results of Dr. Josey's urine screens for specimens provided during the period of July 8, 2003, through September 30, 2004.
- C. Admitted sua sponte by the Hearing Examiner

Remand Exhibit A: Copies of the May 14, 2004, Report and Recommendation in the Matter of Willie L. Josey, M.D., and the associated hearing record.

### **SUMMARY OF THE EVIDENCE ON REMAND**

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 of Remand.

1. The May 13, 2004, Report and Recommendation in the Matter of Willie L. Josey, M.D., and the associated hearing record, are incorporated by reference. (Remand Exhibit A).
2. Gregory E. Skipper, M.D., testified by telephone on behalf of Dr. Josey. Dr. Skipper testified that he had received his medical degree in 1974 from the University of Alabama in Birmingham, Alabama. Thereafter, he completed a residency in internal medicine at the University of California, San Diego. Dr. Skipper was board certified in internal medicine in 1978. (Remand Hearing Transcript [Tr.] at 6-7).

Dr. Skipper practiced in Newberg, Oregon, for twenty-one years. During that time, he received additional training in addiction medicine. In addition, Dr. Skipper served on the faculty in the Department of Psychiatry at the Oregon Health Science University from 1990 to 1999. He also served on the Oregon Medical Association Physician Health Committee and was a member of the supervisory counsel of the Oregon Health Professional Program,

which he stated is similar to the Ohio Physicians Effective Program. In 1999, Dr. Skipper accepted a position as the medical director of the Alabama Physician Health Program. (Tr. at 7-8).

Dr. Skipper testified that he has done research and published various articles on impairment and addiction medicine. He added that he was the lead author of an article entitled, "*Ethylglucuronide (EtG): A New Marker to Detect Alcohol Use in Recovering Physicians*," published in The Journal of Medical Licensure and Discipline in 2004. (Tr. at 8-9; Respondent's Exhibit C).

3. Dr. Skipper testified that Ethylglucuronide [EtG] is a metabolite of ethyl alcohol. Dr. Skipper added that "a significant amount of alcohol must be consumed for EtG to be detected in the urine." He stated that only a small percentage, less than one percent, of alcohol consumed is metabolized by this method which occurs mainly in the liver. (Tr. at 9-11).

Dr. Skipper testified that one advantage of testing for EtG is that it is eliminated from the body at a slower rate than ethanol. Therefore, a test for EtG will be positive after the consumption of alcohol even after a urine screen for alcohol returns to normal. (Tr. at 9-10).

Another advantage is that a test for EtG is less likely to demonstrate false positives than a urine screen for ethyl alcohol. Dr. Skipper explained that EtG will be found only if alcohol is consumed. He explained that, when testing for ethyl alcohol, false positive results can arise from post-voiding fermentation. EtG occurs only in the body, so it is an absolute indicator that alcohol was taken into the body one way or another. (Tr. at 11-12, 19, 20-22).

Dr. Skipper testified that, with a positive EtG test, the only question is whether the alcohol was ingested as a beverage or inadvertently. He explained that one of the problems with testing for alcohol is that it is possible to have an inadvertent exposure to alcohol. He added that many over-the-counter products contain alcohol, such as vanilla extract, mouthwash, and ginko biloba. (Tr. at 13, 17).

4. Dr. Skipper testified that the positive EtG result of 460 nanograms per milliliter found in Dr. Josey's July 3, 2003, urine sample is significant. Dr. Skipper stated that only two laboratories in the United States test for EtG. One uses a cutoff of 100 nanograms per milliliter and the other uses a cutoff of 250 nanograms per milliliter. Dr. Skipper testified that results of over 100 nanograms per milliliter indicate "a pretty good chance" that the individual has consumed beverage alcohol. Results that are over 500 nanograms per milliliter are an "almost certain" indicator that the individual has consumed beverage alcohol. (Tr. at 12-14).

Dr. Skipper acknowledged that any lab test is fallible, and stated that it is important to consider "the whole picture." Nevertheless, Dr. Skipper testified that, in Dr. Josey's case,

there was a positive EtG and a positive urine alcohol. Dr. Skipper stated that with both tests positive, it is highly likely that Dr. Josey consumed beverage alcohol. Dr. Skipper explained that it is “pretty rare” to have a positive urine alcohol from incidental exposure because “quite a bit” of alcohol must be consumed before a urine screen will demonstrate positive results. (Tr. at 18). Dr. Skipper concluded that,

[T]here’s a high probability, just from looking at the lab test, that the person ingested, you know, a significant amount of alcohol that would usually only be found if they were drinking, you know, beverage alcohol in some way or consuming, you know, other things like vanilla extract or mouthwash or consumed a significant amount of alcohol probably, my guess would be, in the range of about 30 grams within the previous 24 hours. That would be about two standard drinks.

(Tr. at 24-25).

### **FINDINGS OF FACT ON REMAND**

1. Based upon a Consent Agreement that became effective in July 1987, the Board issued a certificate to Willie L. Josey, M.D., to practice medicine and surgery in Ohio. In the Consent Agreement, Dr. Josey admitted that he had abused oral oxycodone (Percocet) in 1982, and that he had undergone treatment for chemical dependency at William Beaumont Army Medical Center from February 5, 1983, to March 17, 1983, with a one-year follow-up program. The license issued to Dr. Josey was qualified; he was required to abide by several terms, conditions, and limitations, which were tailored to his impairment.
2. On April 12, 1989, the Board issued a notice of opportunity for hearing to Dr. Josey. In the notice of opportunity for hearing, the Board advised that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio because of alleged violations of Sections 4731.22(B)(15), (B)(26), and (B)(5), Ohio Revised Code.

On November 8, 1989, after an administrative hearing, the Board issued an Order that revoked Dr. Josey’s certificate to practice medicine and surgery in Ohio, but stayed the revocation. The Order further placed Dr. Josey on probation, with conditions tailored to his impairment, for at least eight years. This action was based on the following:

- Dr. Josey admittedly purchased and self-administered the addictive drug hydrocodone in violation of the conditions of limitation set forth in his Consent Agreement with the Board[.] Such acts, conduct, and/or omissions constitute ‘violation[s] 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.

- Dr. Josey's acts, conduct and/or omissions \* \* \* constitute '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[,] as that clause is used in Section 4731.22(B)(26), Ohio Revised Code. Dr. Josey is admittedly a chemically dependent person. He was previously treated for chemical dependency in 1983. Approximately six years later, although he had entered into a Consent Agreement with the State Medical Board of Ohio in 1987, he relapsed into active chemical dependency. Even though the evidence in this Matter indicates that Dr. Josey voluntarily sought treatment and has remained drug-free since his discharge from Willingway Hospital in April[]1989, he must be considered an impaired physician, subject to the monitoring of this Board, until he has demonstrated his ability to maintain sobriety over the long-term.
- At his February[]1989, probationary appearance, Dr. Josey stated to Board representatives that he was doing well and was in compliance with his Consent Agreement. Those statements were admittedly false. In fact, at that time, Dr. Josey had relapsed by self-administering addictive drugs and was not in compliance with his Consent Agreement. Such acts, conduct, and/or omissions constitute 'publishing a false, fraudulent, deceptive, or misleading statement[,] as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Dr. Josey was subject to the terms of the Board's November 8, 1989, Order until the Board granted his petition for release on November 13, 1997.

3. By letter dated September 12, 2001, the Board again notified Dr. Josey that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The action was based on his alleged impairment of ability to practice due to the abuse of drugs, in violation of Section 4731.22(B)(26), Ohio Revised Code.

On March 13, 2002, after an administrative hearing, the Board issued an Order permanently revoking Dr. Josey's certificate to practice medicine and surgery in Ohio, but staying the revocation. Dr. Josey's certificate was suspended indefinitely, for a period of at least one year. The Board's Order was based on Findings of Fact that included the following:

On August 20, 2001, Dr. Josey notified the Board via telephone that he had relapsed by ingesting drugs. The record does not contain detailed evidence as to the entire content of this telephone conversation concerning specific drugs. Nevertheless, there is sufficient evidence in the record to support a Finding that, on or after August 20, 2001, Dr. Josey informed the Board about his relapse in significant detail. He informed the Board that his primary care physician had prescribed narcotic opiates for his back injury, neuralgia, and

shingles; that he then began taking double doses of these drugs; and that he had obtained drugs, including hydrocodone, Percocet, and oxycodone. He also admitted to abusing MS Contin. Finally, he reported that on August 13, 2001, he admitted himself to Shepherd Hill Hospital for inpatient treatment.

The Order, which became effective on March 15, 2002, also mandated that, upon reinstatement of Dr. Josey's certificate, he would be subject to probationary terms for at least ten years. Dr. Josey was also required to comply with specific terms, conditions, and limitations during the period that his certificate was suspended. In particular, Paragraph (B)(5) of the Order required Dr. Josey to abstain from alcohol and drugs.

4. A urine specimen that Dr. Josey provided on July 3, 2003, tested positive for alcohol and was subsequently GC/FID confirmed for the presence of ethanol.

#### **CONCLUSIONS OF LAW ON REMAND**

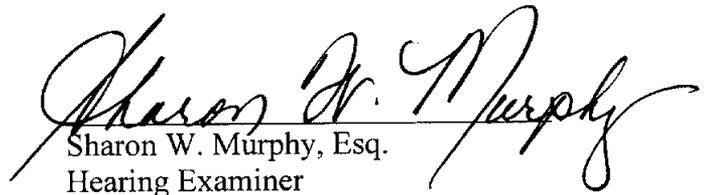
1. The conduct of Willie L. Josey, M.D., as set forth in the Findings of Fact, constitutes "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.
2. Dr. Josey's confirmed positive test for alcohol demonstrates 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.

#### **PROPOSED ORDER ON REMAND**

It is hereby ORDERED that:

The certificate of Willie L. Josey, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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

  
Sharon W. Murphy, Esq.  
Hearing Examiner

2004 MAY 14 P 12: 57

**REPORT AND RECOMMENDATION  
IN THE MATTER OF WILLIE L. JOSEY, M.D.**

The Matter of Willie L. Josey, M.D., was heard by Sharon W. Murphy, Esq., Hearing Examiner for the State Medical Board of Ohio, on April 2, 2004.

**INTRODUCTION**

**I. Basis for Hearing**

- A. By letter dated November 12, 2003, the State Medical Board of Ohio [Board] notified Willie L. Josey, 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 an allegation that Dr. Josey, who has a lengthy history of impairment and Board intervention, had violated a 2002 Board Order by submitting a urine specimen that tested positive for alcohol.

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

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

- B. On December 10, 2003, Kevin P. Byers, Esq., submitted a written hearing request on behalf of Dr. Josey. (State's Exhibit 1B).

**II. Appearances**

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Mary K. Crawford, Assistant Attorney General.
- B. On behalf of the Respondent: Kevin P. Byers, Esq.

## EVIDENCE EXAMINED

### I. Testimony Heard

#### A. Presented by the State

1. Willie L. Josey, M.D., as upon cross-examination
2. Danielle Bickers
3. William Closson, Ph.D.

#### B. Presented by the Respondent

Willie L. Josey, M.D.

### II. Exhibits Examined

#### A. Presented by the State

1. State's Exhibits 1A through 1O: Procedural exhibits.
2. State's Exhibit 2: Certified copies of records maintained by the Board concerning Willie L. Josey, M.D. (Note: Post-hearing, the Hearing Examiner individually numbered the pages of each set of records in this exhibit.)
3. State's Exhibit 3: Curriculum vitae of William J. Closson, Ph.D.
4. State's Exhibit 4: Copy of a July 14, 2003, toxicology report.
5. State's Exhibit 5: Copy of an August 27, 2003, toxicology report.
6. State's Exhibit 6: Copy of a September 19, 2003, toxicology report.

#### B. Presented by the Respondent

1. Respondent's Exhibit A: Copy of a September 23, 2003, letter regarding Dr. Josey from Stan Sateren, M.D., FASAM, President/Medical Director of the Ohio Physicians Effectiveness Program, to Lori Gilbert, Chief Enforcement Attorney for the Board. (Note: This exhibit is sealed to protect patient confidentiality).
2. Respondent's Exhibit B: Copy of an April 14, 2004, letter regarding Dr. Josey from Burns M. Brady, M.D., Medical Director, Kentucky Physicians Health Foundation. (Note: This exhibit is sealed to protect patient confidentiality).

## PROCEDURAL MATTERS

The hearing record in this matter was held open until April 20, 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 B, without objection from the State. (See Hearing Transcript at 86-89).

## 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. Willie L. Josey, M.D., participated in the Reserve Officer Training Corps program while attending college. After graduating from college, Dr. Josey was called to active duty and served four years in the United States Army, including one year in Viet Nam. In 1977, Dr. Josey attained his medical degree from the Medical University of South Carolina in Charleston, South Carolina, while continuing to serve in the army reserves. Thereafter, Dr. Josey completed a one-year rotating internship at Henry Ford Hospital in Detroit before being recalled to active duty. He served two years in Panama and, in 1980, he was transferred to Brooke Army Medical Center at Fort Sam Houston in Texas. While stationed at Brooke Army Medical Center, Dr. Josey completed two and one half years of an internal medicine residency. In 1984, Dr. Josey was transferred to Fort Knox, Kentucky; he remained on active duty until entering private practice in Alliance, Ohio in 1987. Dr. Josey was again recalled to active duty in 1990. While on active duty during 1990 and 1991, Dr. Josey served as Deputy Commander of, and Chief of Medical Services for, a 400-bed evacuation hospital in Saudi Arabia. Dr. Josey retired from the active reserve as a colonel in August 1996. (Hearing Transcript [Tr.] at 15, 75; State's Exhibit [St. Ex.] 2A at 16-17).

When Dr. Josey left the active reserve in 1996, he started a practice in South Shore, Kentucky, and held privileges at the Southern Ohio Medical Center in Portsmouth, Ohio. Most of Dr. Josey's patients were Ohio residents. Currently, however, Dr. Josey is not practicing in Ohio because his license has been suspended by the Board. Dr. Josey testified that he is working towards a Master's degree in health care administration through a program offered by Central Michigan University. (Tr. at 15, 75).

2. Based upon a Consent Agreement that became effective in July 1987, the Board issued a certificate to Willie L. Josey, M.D., to practice medicine and surgery in Ohio.<sup>1</sup> In the

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<sup>1</sup> Dr. Josey stipulated to the history of Board actions against him as set forth in State's Exhibits 2A through 2D. (Tr. at 11).

Consent Agreement, Dr. Josey admitted that he had abused oral oxycodone (Percocet) in 1982, and that he had undergone treatment for chemical dependency at William Beaumont Army Medical Center from February 5, 1983, to March 17, 1983, with a one-year follow-up program. Accordingly, although the Board issued a license to Dr. Josey, Dr. Josey was required to abide by several terms, conditions, and limitations, which were tailored to his impairment. (St. Ex. 2A).

3. On April 12, 1989, the Board issued a notice of opportunity for hearing to Dr. Josey. In the notice of opportunity for hearing, the Board advised that it had proposed to take disciplinary action against Dr. Josey's certificate based on allegations related to Dr. Josey's impairment and his violation of the terms of his Consent Agreement. The Board further alleged that Dr. Josey's conduct had violated Sections 4731.22(B)(15), (B)(26), and (B)(5), Ohio Revised Code. (St. Ex. 2B at 1-3).

On November 8, 1989, after an administrative hearing, the Board issued an Order that revoked Dr. Josey's certificate to practice medicine and surgery in Ohio, but stayed the revocation. The Order further placed Dr. Josey on probation, with conditions tailored to his impairment, for at least eight years. (St. Ex. 2B at 4-7). This action was based upon Findings of Fact that resulted in the following Conclusions:

- Dr. Josey admittedly purchased and self-administered the addictive drug hydrocodone in violation of the conditions of limitation set forth in his Consent Agreement with the Board[.] Such acts, conduct, and/or omissions constitute 'violation[s] 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."
- Dr. Josey's acts, conduct and/or omissions, as set forth in the above Findings of Fact, constitute '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 [.]' as that clause is used in Section 4731.22(B)(26), Ohio Revised Code. Dr. Josey is admittedly a chemically dependent person. He was previously treated for chemical dependency in 1983. Approximately six years later, although he had entered into a Consent Agreement with the State Medical Board of Ohio in 1987, he relapsed into active chemical dependency. Even though the evidence in this Matter indicates that Dr. Josey voluntarily sought treatment and has remained drug-free since his discharge from Willingway Hospital in April [ ]1989, he must be considered an impaired physician, subject to the monitoring of this Board, until he has demonstrated his ability to maintain sobriety over the long-term.

- At his February [] 1989, probationary appearance, Dr. Josey stated to Board representatives that he was doing well and was in compliance with his Consent Agreement. Those statements were admittedly false. In fact, at that time, Dr. Josey had relapsed by self-administering addictive drugs and was not in compliance with his Consent Agreement. Such acts, conduct, and/or omissions constitute ‘publishing a false, fraudulent, deceptive, or misleading statement[,]’ as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

(St. Ex. 2B at 12-13).

4. Dr. Josey was subject to the terms of the Board’s November 8, 1989, Order until the Board granted Dr. Josey’s petition for release on November 13, 1997. (St. Ex. 2C at 18).
5. On September 12, 2001, the Board issued a second notice of opportunity for hearing to Dr. Josey. In the September 2001 notice of opportunity for hearing, the Board again notified Dr. Josey that it had proposed to take disciplinary action against his Ohio certificate based on his alleged impairment of ability to practice due to the abuse of drugs. (St. Ex. 2C at 1-4).

On March 13, 2002, after an administrative hearing, the Board issued an Order permanently revoking Dr. Josey’s certificate to practice medicine and surgery in Ohio, but staying the revocation. Dr. Josey’s certificate was suspended indefinitely, for a period of at least one year. (St. Ex. 2C at 7, 13). The Board’s Order was based on Findings of Fact that included the following:

On August 20, 2001, Dr. Josey notified the Board via telephone that he had relapsed by ingesting drugs. The record does not contain detailed evidence as to the entire content of this telephone conversation concerning specific drugs. Nevertheless, there is sufficient evidence in the record to support a Finding that, on or after August 20, 2001, Dr. Josey informed the Board about his relapse in significant detail. He informed the Board that his primary care physician had prescribed narcotic opiates for his back injury, neuralgia, and shingles; that he then began taking double doses of these drugs; and that he had obtained drugs, including hydrocodone, Percocet, and oxycodone. He also admitted to abusing MS Contin. Finally, he reported that on August 13, 2001, he [had] admitted himself to Shepherd Hill Hospital for inpatient treatment.

(St. Ex. 2C at 24).

The Order, which became effective on March 15, 2002, also mandated that, upon reinstatement of Dr. Josey’s certificate, he would be subject to probationary terms for at least ten years following the reinstatement of his certificate. Dr. Josey was also required

to comply with specific terms, conditions, and limitations during the period that his certificate was suspended. In particular, Paragraph (B)(5) of the Order required Dr. Josey to abstain from alcohol and drugs. The Order also mandated that Dr. Josey submit to random urine screenings for drugs and alcohol on a weekly basis. (St. Ex. 2C at 5, 7-12).

6. On March 7, 2002, in the Court of Common Pleas of Scioto County, Ohio, Dr. Josey was indicted for thirteen counts of Deception to Obtain a Dangerous Drug, in violation of Section 2925.22, Ohio Revised Code. The indictment alleged that Dr. Josey had illegally obtained hydrocodone on three occasions in 2000, and that he had illegally obtained hydrocodone or oxycodone on ten occasions in 2001. (St. Ex. 2D at 3-7, 25).

On November 8, 2002, Dr. Josey pleaded guilty to the charges against him. The court granted his motion for intervention in lieu of conviction, stayed the proceedings, and placed him on a three-year rehabilitation plan, under the control and supervision of the Scioto County Adult Probation Department. (St. Ex. 2D at 12-13, 27).

7. When the Board issued its March 2002 Order, it had been aware of the conduct underlying the ten charges of Deception to Obtain a Dangerous Drug in 2001. However, the Board had not been aware of the facts underlying the three counts of criminal activity in 2000. Accordingly, on May 14, 2003, the Board issued a third notice of opportunity for hearing to Dr. Josey based on his guilty pleas and the judicial finding of eligibility in lieu of conviction. (St. Ex. 2D at 1, 27-28).

On February 11, 2004, after an administrative hearing, the Board permanently revoked Dr. Josey's Ohio certificate to practice medicine and surgery, but stayed the revocation. Dr. Josey's certificate was suspended for a period of at least two years. The Board further ordered a probationary period of ten years, should Dr. Josey's certificate ever be reinstated. (St. Ex. 2D at 16-20). The Report and Recommendation adopted by the Board in issuing this Order explained:

In th[e] March 2002 Order, the Board gave Dr. Josey an opportunity to retain his Ohio certificate subject to a suspension, interim monitoring conditions, and upon reinstatement, probationary monitoring conditions. There is no evidence that Dr. Josey has violated that Order. Accordingly, the Proposed Order in this matter would closely follow the requirements of the earlier Order. However, because of new information concerning additional offenses in 2000, as well as Dr. Josey's failure to advise the Board of those offenses, the period of suspension is extended.

(St. Ex. 2D at 28).

8. The Board's Order requires that Dr. Josey submit urine specimens on a random basis for toxicology screening. Dr. Josey's random urine screenings are submitted to, and monitored by, the Ohio Physicians Effectiveness Program [OPEP]. (Tr. at 19).

On July 3, 2003, while the March 2002 Board Order was still in effect, Dr. Josey submitted a urine specimen to OPEP which tested positive for alcohol. The specimen was subjected to two further tests, each of which confirmed the presence of alcohol. (Tr. at 18-19, 35-36, 39-40; St. Ex. 4, 5).

9. William J. Closson, Ph.D., testified as an expert on behalf of the State. Dr. Closson testified that he is the Director of Toxicology at Bendiner & Schlesinger Medical Laboratories [Bendiner & Schlesinger], located in New York City. Dr. Closson testified that Bendiner & Schlesinger is a full service toxicology laboratory in which more than nine thousand specimens are processed daily. As Director of Toxicology, Dr. Closson is responsible for the overall operation of the Forensic Toxicology and Routine Toxicology Departments. He trains workers, develops procedures, reviews quality assurance issues, and certifies results. Dr. Closson is certified and licensed in New York State as a forensic toxicologist. He is also certified by the American Board of Forensic Examiners. (Tr. at 28-31; St. Ex. 3).

Dr. Closson testified that OPEP is a client of Bendiner & Schlesinger. OPEP submits specimens to Bendiner & Schlesinger for drug testing “under a strict chain of custody protocol.” Dr. Closson detailed the chain of custody protocol that is followed once the specimen reaches Bendiner & Schlesinger. His certification of a report demonstrates that he has verified “all of the quality control associated with the testing, all of the chain of custody documentation associated with the testing, and the actual results themselves\* \* \*.” (Tr. at 31-33, 38, 43-44, 50).

Dr. Closson explained that OPEP generally collects two containers of urine from each individual who is being drug tested. If the results of the initial screen are positive, then a confirmatory test is done. He stated that the second test utilizes another technology which is more specific and more sensitive to the particular drug being tested. (Tr. at 33-35).

Dr. Closson testified about the confirmatory test utilized in this case:

In this case, the confirmatory test for an initial presumptive positive for alcohol is a technology called gas chromatography with flame ionization detection. It is the standard technology that is utilized by certified forensic laboratories in order to confirm the presence of ethanol in a urine sample.

We then conducted this test on a separate portion of the urine from this first bottle, this initial bottle, and upon completion of that testing it was determined that, yes, ethanol was detected in the sample, and the actual amount of the ethanol detected was 63.3 milligrams per deciliter. So that was an actual successful confirmation of the initial screening results.

(Tr. at 35-36) (Note: The positive result is labeled as the “Alcohol GC/FID” test on State’s Exhibit 4.)

Dr. Closson further testified that, in the test employed on Dr. Josey’s specimen, the cutoff level for a positive test for alcohol was fifty milligrams per deciliter, which is a relatively conservative cutoff. Some laboratories, he testified, use a ten-milligrams-per-deciliter cutoff. Dr. Closson described the amount detected in this case to be “a moderate amount of ethanol based on the numbers we see on a daily basis.” (Tr. at 53-54, 60-61; St. Ex. 4).

Dr. Closson continued that, after the second test confirmed the presence of alcohol, the laboratory contacted Stan Sateren, M.D., the Medical Director of OPEP. It was decided that the second specimen of Dr. Josey’s urine would be sent for a more sophisticated procedure, called the ethyl glucuronide [EtG] test. The EtG test is relatively new in the United States, and has been utilized only for about the last twelve to fourteen months, although it has a longer history in Europe. Bendiner & Schlesinger does not conduct this test, because the required instrument is very expensive; thus, Dr. Josey’s second specimen was sent to the only laboratory in the country which was performing EtG tests at that time. (Tr. at 21, 39-40, 45-47; Resp. Ex. A at 2).

Dr. Closson testified that the purpose of the test was to rule out the possibility of the exogenous production of ethanol in the bladder, rather than the presence of alcohol in the urine from the consumption of alcohol. The test performed on Dr. Josey’s specimen detected EtG at the level of 460 nanograms per milliliter. Dr. Closson testified that a sample is considered to test positive if a level of greater than 250 nanograms per milliliter is detected. Although he acknowledged that “nothing is absolute and infallible,” Dr. Closson concluded that a positive finding of EtG is strong evidence of consumption of alcohol. (Tr. at 40, 41, 57; St. Ex. 5).

10. Dr. Josey testified that he does not understand why he had tested positive for alcohol. He steadfastly maintained that he had not used alcohol prior to July 3, 2003. (Tr. at 63-68).

In fact, on July the 2<sup>nd</sup>, I was at Shepherd Hill for my Wednesday [Caduceus] meeting, and the rest of the time, you know, I’ve not been in the presence of anyone drinking or anyone who would even consider drinking. I don’t have alcohol at my house. My wife doesn’t drink. We don’t use alcohol in food. We don’t use any products in restaurants. I haven’t been anyplace where I could have consumed alcohol.

(Tr. at 68, 76).

Dr. Josey testified that he had stopped drinking in 1982, when he learned that he had diabetes, with one exception. On the night before entering inpatient treatment in 2001 for his addiction to opiates, he drank a few beers to ease the symptoms of withdrawal he was experiencing. (Tr. at 63-68).

11. Dr. Josey further testified that he has had two previous false positive drug tests, including one while he was in restrictive inpatient treatment at Shepherd Hill, under circumstances in which he could not have used alcohol. He suggested that he had falsely tested positive for alcohol, in this instance and on the previous occasions, because there had been glucose in his urine resulting from high blood sugar due to his diabetes. (Tr. at 68-75).

Dr. Closson testified that if there were glucose in the urine sample, then the results of the test would be unreliable. Nevertheless, Dr. Closson confirmed that his laboratory had tested Dr. Josey's for glucose and none had been detected. However, Dr. Josey testified that he found this puzzling, because at the time he submitted the specimen to OPEP, a dipstick test revealed 250 milligrams per deciliter of glucose in his urine. (Tr. at 47-48, 52-53, 58-59, 74-75; Resp. Ex. A).

12. Dr. Josey testified that he had passed a breath-alcohol test at the time that he submitted his July 3, 2003, urine specimen. Nevertheless, Dr. Closson stated that this did not discount the later positive alcohol tests as alcohol can be detected in urine for longer than it can be detected from a breath-alcohol test. (Tr. at 59; Resp. Ex. A).
13. Dr. Josey testified that his recovery is very important to him, and that he "absolutely desires" to keep his Ohio license, even though he has been out of practice for the last two years. He stated that he is not only monitored by OPEP, but also primarily by the Kentucky Physicians Health Foundation. Dr. Josey testified that he is in full compliance with his Kentucky recovery contract. He attends meetings four or five times a week, including Caduceus and aftercare meetings. He also submits to random urine samples as a term of his court-ordered treatment program, in addition to those he submits to OPEP. He has had no other positive results, nor has he missed any order to submit a specimen. Aside from the July 3, 2003, specimen testing positive for alcohol, there is no other evidence that he has relapsed. There have been no recommended changes to Dr. Josey's recovery programs following the positive tests. (Tr. at 21-23, 64, 75-78, 84).
14. By letter dated April 14, 2004, Burns M. Brady, M.D., Medical Director for the Kentucky Physicians Health Foundation in Louisville, Kentucky, advised, in part, that,

Dr. Josey continues to follow the stipulated terms of his contract with the Kentucky Physicians Health Foundation. He is in full compliance with all components of his program, and all reports from his AA participation, physicians therapy group and his addiction psychiatrist have been very positive and encouraging.

We received quarterly reports from [OPEP] under the aegis of Dr. Stan Sateren. These deal specifically with Dr. Josey's drug screens and alcohol determinations which are directed by the Ohio program. The results reported

to us are part of his mutual managing by the Ohio and Kentucky physician advocacy programs.

\* \* \*

It is interesting to note that Dr. Josey's level of 460 ng/ml with a cutoff value of 250 ng/ml indicates that alcohol may have been consumed. My personal experience, which has continued to grow since that July drug screen, indicates that it is almost certainly significant, but cutoff values continue to be explored.

\* \* \*

We certainly stand as Dr. Josey's committed advocate. His current progress is very positive, and we stand ready to answer any questions you may have.

(Respondent's Exhibit B).

#### **FINDINGS OF FACT**

1. Based upon a Consent Agreement that became effective in July 1987, the Board issued a certificate to Willie L. Josey, M.D., to practice medicine and surgery in Ohio. In the Consent Agreement, Dr. Josey admitted that he had abused oral oxycodone (Percocet) in 1982, and that he had undergone treatment for chemical dependency at William Beaumont Army Medical Center from February 5, 1983, to March 17, 1983, with a one-year follow-up program. The license issued to Dr. Josey was qualified; he was required to abide by several terms, conditions, and limitations, which were tailored to his impairment.
2. On April 12, 1989, the Board issued a notice of opportunity for hearing to Dr. Josey. In the notice of opportunity for hearing, the Board advised that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio because of alleged violations of Sections 4731.22(B)(15), (B)(26), and (B)(5), Ohio Revised Code.

On November 8, 1989, after an administrative hearing, the Board issued an Order that revoked Dr. Josey's certificate to practice medicine and surgery in Ohio, but stayed the revocation. The Order further placed Dr. Josey on probation, with conditions tailored to his impairment, for at least eight years. (St. Ex. 2B at 4-7). This action was based Findings of Fact that resulted in the following Conclusions:

- Dr. Josey admittedly purchased and self-administered the addictive drug hydrocodone in violation of the conditions of limitation set forth in his Consent Agreement with the Board[.] Such acts, conduct, and/or omissions constitute 'violation[s] 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.

- Dr. Josey's acts, conduct and/or omissions, as set forth in the above Findings of Fact, constitute '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[,] as that clause is used in Section 4731.22(B)(26), Ohio Revised Code. Dr. Josey is admittedly a chemically dependent person. He was previously treated for chemical dependency in 1983. Approximately six years later, although he had entered into a Consent Agreement with the State Medical Board of Ohio in 1987, he relapsed into active chemical dependency. Even though the evidence in this Matter indicates that Dr. Josey voluntarily sought treatment and has remained drug-free since his discharge from Willingway Hospital in April[]1989, he must be considered an impaired physician, subject to the monitoring of this Board, until he has demonstrated his ability to maintain sobriety over the long-term.
- At his February[]1989, probationary appearance, Dr. Josey stated to Board representatives that he was doing well and was in compliance with his Consent Agreement. Those statements were admittedly false. In fact, at that time, Dr. Josey had relapsed by self-administering addictive drugs and was not in compliance with his Consent Agreement. Such acts, conduct, and/or omissions constitute 'publishing a false, fraudulent, deceptive, or misleading statement[,"] as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Dr. Josey was subject to the terms of the Board's November 8, 1989, Order until the Board granted Dr. Josey's petition for release on November 13, 1997.

3. By letter dated September 12, 2001, the Board notified Dr. Josey that it had proposed to take disciplinary action against his Ohio certificate to practice medicine and surgery based on his alleged impairment of ability to practice due to the abuse of drugs, in violation of Section 4731.22(B)(26), Ohio Revised Code.

On March 13, 2002, after an administrative hearing, the Board issued an Order permanently revoking Dr. Josey's certificate to practice medicine and surgery in Ohio, but staying the revocation. Dr. Josey's certificate was suspended indefinitely, for a period of at least one year. The Board's Order was based on Findings of Fact that included the following:

On August 20, 2001, Dr. Josey notified the Board via telephone that he had relapsed by ingesting drugs. The record does not contain detailed evidence as to the entire content of this telephone conversation concerning specific drugs.

Nevertheless, there is sufficient evidence in the record to support a Finding that, on or after August 20, 2001, Dr. Josey informed the Board about his relapse in significant detail. He informed the Board that his primary care physician had prescribed narcotic opiates for his back injury, neuralgia, and shingles; that he then began taking double doses of these drugs; and that he had obtained drugs, including hydrocodone, Percocet, and oxycodone. He also admitted to abusing MS Contin. Finally, he reported that on August 13, 2001, he admitted himself to Shepherd Hill Hospital for inpatient treatment.

The Order, which became effective on March 15, 2002, also mandated that, upon reinstatement of Dr. Josey's certificate, he would be subject to probationary terms for at least ten years. Dr. Josey was also required to comply with specific terms, conditions, and limitations during the period that his certificate was suspended. In particular, Paragraph (B)(5) of the Order required Dr. Josey to abstain from alcohol and drugs.

4. Paragraph (B)(5) of the March 2002 Board Order required Dr. Josey to abstain from alcohol. Nevertheless, a urine specimen that Dr. Josey provided on July 3, 2003, tested positive for alcohol and was subsequently GC/FID confirmed for the presence of ethanol.

### CONCLUSIONS OF LAW

1. The conduct of Willie L. Josey, M.D., as set forth in the Findings of Fact, constitutes "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.
2. Dr. Josey's confirmed positive test for alcohol demonstrates 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.

\* \* \* \* \*

Dr. Josey has a long history of impairment and related Board actions. In fact, in the Board's Order of February 11, 2004, the Board permanently revoked Dr. Josey's certificate to practice, but stayed the revocation. In doing so, the Board sent a clear message that any further violations would result in the permanent revocation of Dr. Josey's certificate.

The evidence presented at hearing demonstrates that Dr. Josey has consumed alcohol, in violation of the Board's Order and in contravention of his recovery program. Although Dr. Josey denies alcohol consumption, his history with the Board has shown that Dr. Josey can be less than honest in dealing with the board. In fact, Dr. Josey he has previously been disciplined for making a false

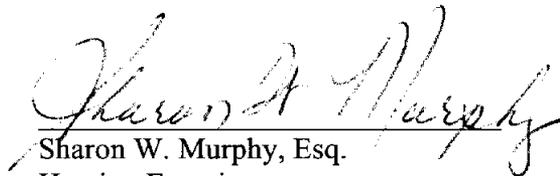
statement to the Board. Therefore, Dr. Josey's denials are not sufficient to refute the State's evidence.

**PROPOSED ORDER**

It is hereby ORDERED that:

The certificate of Willie L. Josey, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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

  
Sharon W. Murphy, Esq.  
Hearing Examiner



# State Medical Board of Ohio

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

## EXCERPT FROM THE DRAFT MINUTES OF FEBRUARY 9, 2005

### REPORTS AND RECOMMENDATIONS

Dr. Davidson 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: Emeka Obinna Ekwulugo, M.D.; Wenshi Gao, M.D.; Mahesh Chand Goel, M.D.; and Willie L. Josey, M.D. A roll call was taken:

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

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

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

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

Dr. Davidson 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.

.....

WILLIE L. JOSEY, M.D.

.....

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF WILLIE L. JOSEY, M.D. DR. BHATI SECONDED THE MOTION.**

.....

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

**INTERIM AGREEMENT  
BETWEEN  
WILLIE JOSEY, M.D.  
AND  
THE STATE MEDICAL BOARD OF OHIO**

**STATE MEDICAL BOARD  
OF OHIO**

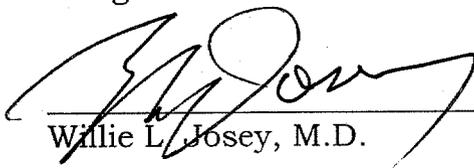
2004 SEP -7 P 3 29

Willie Josey, M.D., hereby agrees that, until the allegations contained in the State Medical Board of Ohio's (hereinafter Board) November 12, 2003 Notice of Opportunity for Hearing have been fully resolved by the Board, he will not practice medicine and surgery in the State of Ohio in any form. Dr. Josey further agrees that any violation of the above-referenced limitation shall subject her to further disciplinary action pursuant to Section 4731.22, Ohio Revised Code.

The State Medical Board of Ohio, by its acceptance of this Interim Agreement, hereby agrees not to object, through its counsel, to scheduling the remand hearing on the above-referenced allegations until October 26, 2004.

This Interim Agreement shall not be construed as an admission by Willie L. Josey, M.D., to the allegations contained in the November 12, 2003 Notice of Opportunity for Hearing.

This Interim Agreement shall become effective immediately upon the last date of signature below.



Willie L. Josey, M.D.

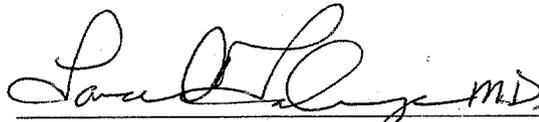
8/31/04

Date

  
Kevin P. Byers  
Attorney for Dr. Josey

9/3/04

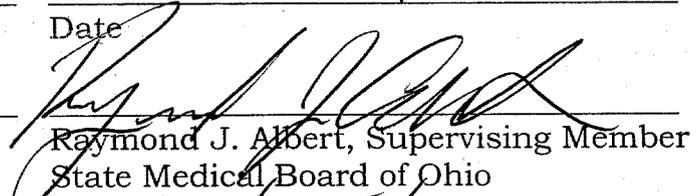
Date



Lance Talmage, M.D., Secretary  
State Medical Board of Ohio

8-25-04

Date

  
Raymond J. Albert, Supervising Member  
State Medical Board of Ohio

8/25/04

Date



# 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/)

February 11, 2004

Willie L. Josey, M.D.  
2004 Willie Street  
Portsmouth, OH 45662

Dear Doctor Josey:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on February 11, 2004, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 7000 0600 0024 5150 0644  
RETURN RECEIPT REQUESTED

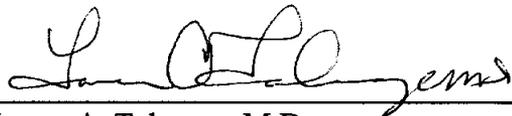
Cc: Kevin P. Byers, Esq.  
CERTIFIED MAIL NO. 7000 0600 0024 5150 0651  
RETURN RECEIPT REQUESTED

*Mailed 2-12-04*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on February 11, 2004, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Willie L. Josey, 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)

February 11, 2004  
Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF

\*

\*

WILLIE L. JOSEY, M.D.

\*

**ENTRY OF ORDER**

This matter came on for consideration before the State Medical Board of Ohio on February 11, 2004.

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

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Willie L. Josey, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Josey's certificate shall be SUSPENDED for an indefinite period of time, but not less than two years. The minimum suspension period shall be calculated from March 15, 2002, the effective date of the previous Order that suspended Dr. Josey's certificate.
- B. **INTERIM MONITORING:** During the period that Dr. Josey's certificate to practice medicine and surgery in Ohio is suspended, Dr. Josey shall comply with the following terms, conditions, and limitations:
1. **Obey the Law and Terms of Intervention in Lieu of Conviction:** Dr. Josey shall obey all federal, state and local laws; all rules governing the practice of medicine and surgery in Ohio; and all terms of intervention in lieu of conviction imposed by the Scioto County Court of Common Pleas in criminal case number 02-CR-140.
  2. **Quarterly Declarations:** Dr. Josey 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 the date his quarterly declaration would have been due pursuant to the Board's Order of March 2002 concerning Dr. Josey. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. **Personal Appearances:** Dr. Josey shall appear in person for an interview before the full Board or its designated representative. The first such appearance shall take place on the date his appearance would have been scheduled pursuant to the Board's Order of March 2002 concerning Dr. Josey. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
4. **Abstention from Drugs:** Dr. Josey shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. Josey's history of chemical dependency.
5. **Abstention from Alcohol:** Dr. Josey shall abstain completely from the use of alcohol.
6. **Rehabilitation Program:** Dr. Josey shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than four times per week. Substitution of any other specific program must receive prior Board approval. Dr. Josey 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. Josey's quarterly declarations.
7. **Drug & Alcohol Screens; Supervising Physician:** Dr. Josey shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Josey 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, unless otherwise determined by the Board, Dr. Josey shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Josey shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Josey. Dr. Josey's current supervising physician may be considered to serve in this capacity. Dr. Josey 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. Josey 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. Josey must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Josey 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. Josey's quarterly declarations. It is Dr. Josey's responsibility to ensure that reports are timely submitted.

8. **Provision of Blood or Urine for Screening without Prior Notice**: Dr. Josey shall submit blood and/or urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Josey's expense.
9. **Aftercare**: Dr. Josey shall maintain continued compliance with the terms of the aftercare contract entered into with Shepherd Hill Hospital, with the terms of his advocacy contracts with the Ohio Physicians Effectiveness Program and the Kentucky Physicians Health Foundation, provided that where terms of the aftercare contract and/or advocacy contracts conflict with terms of this Order, the terms of this Order shall control.

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

1. **Application and Fees**: Dr. Josey shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Continued Compliance with Interim Monitoring Conditions**: Dr. Josey shall have maintained continuing compliance with all terms of Paragraph B of this Order, unless otherwise determined by the Board.
3. **Demonstration of Ability to Resume Practice**: Dr. Josey 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, the following:
  - a. Evidence of continuing full compliance with this Order.



after the effective date of this Order. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.

Dr. Josey shall also provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Order.

**G. REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, unless otherwise determined by the Board, Dr. Josey 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. Josey 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.

**H. REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, unless otherwise determined by the Board, Dr. Josey 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. Josey 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. Josey shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board.

**I. PREVIOUS BOARD ORDERS SUPERSEDED:** This Order supersedes and replaces the March 2002 Order of the Board concerning Dr. Josey.

**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

February 11, 2004  
Date

2003 DEC 30 P 2-10

**REPORT AND RECOMMENDATION  
IN THE MATTER OF WILLIE L. JOSEY, M.D.**

The Matter of Willie L. Josey, M.D., was heard by R. Gregory Porter, Esq., Hearing Examiner for the State Medical Board of Ohio, on October 1, 2003.

**INTRODUCTION**

I. Basis for Hearing

- A. By letter dated May 14, 2003, the State Medical Board of Ohio [Board] notified Willie L. Josey, 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 Dr. Josey's November 7, 2002, guilty plea in the Scioto County, Ohio, Court of Common Pleas to thirteen felony counts of Deception to Obtain a Dangerous Drug, for which the court granted intervention in lieu of conviction.

The Board alleged that Dr. Josey's guilty plea and/or the judicial finding of eligibility for intervention in lieu of conviction constitute "[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."

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

- B. By document received by the Board on June 11, 2003, Kevin P. Byers, Esq., requested a hearing on behalf of Dr. Josey. (State's Exhibit 1[B][2])

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Mark A. Michael, Assistant Attorney General.
- B. On behalf of the Respondent: Kevin P. Byers, Esq.

**EVIDENCE EXAMINED**

I. Testimony Heard

Willie L. Josey, M.D.

## II. Exhibits Examined

### A. Presented by the State

1. State's Exhibits 1A through 1J: Procedural exhibits.
2. State's Exhibit 2: Certified copies of documents maintained by the Board concerning Dr. Josey.
3. State's Exhibit 3: Certified copies of documents from the Scioto County Court of Common Pleas, filed in *State of Ohio v. Dr. Willie Josey*, Case Number 02-CR-140.

### B. Presented by the Respondent

1. Respondent's Exhibit A: Copy of a September 10, 2003, letter to Judge William T. Marshall, Scioto County Court of Common Pleas, Portsmouth, Ohio, from Richard N. Whitney, M.D., Shepherd Hill, Newark, Ohio.
2. Respondent's Exhibit B: Copy of an August 29, 2003, letter to Judge Marshall from Burns M. Brady, M.D., Medical Director, Kentucky Physicians Health Foundation, Louisville, Kentucky.
3. Respondent's Exhibit C: Copy of an August 14, 2003, letter to Stephen Rodeheffer, from Denny D. Lipscombe, CADC, The Morton Center, Louisville, Kentucky.

## SUMMARY OF THE EVIDENCE

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

### Background Information

1. Willie L. Josey, M.D., obtained his medical degree in 1977 from the University of South Carolina. Following graduation, Dr. Josey completed a one-year rotating internship at Henry Ford Hospital in Detroit, Michigan. He then entered active service in the United States Army, and spent two years in Panama. In 1980, Dr. Josey was transferred to Brooke Army Medical Center [Brooke], Fort Sam Houston in San Antonio, Texas. While stationed at Brooke, Dr. Josey completed two and one-half years of residency training in internal medicine. Dr. Josey later completed the remaining six months of his residency in 1983. (State's Exhibit [St. Ex.] 2 at 13-14; Hearing Transcript [Tr.] at 25-28)

In July 1987, Dr. Josey left active military service, and entered the private practice of medicine in Alliance, Ohio. Subsequently, in November 1990, Dr. Josey was again called to active duty in the United States Army, and served in Saudi Arabia during Operation Desert Storm from January through May 1991. Dr. Josey then returned to his practice in Alliance. Dr. Josey retired from the active reserve of the United States Army in 1996 with the rank of Colonel. (St. Ex. 2 at 14, 77-78; Tr. at 28-30)

Dr. Josey continued to practice in Alliance during the remainder of 1991 and through December 1992. In December 1992, at the invitation of Southern Ohio Medical Center [SOMC] in Portsmouth, Ohio, Dr. Josey moved to South Shore, Kentucky, which is directly across the state border from Portsmouth. At a December 11, 2001, Board hearing, Dr. Josey testified that he has continued to practice as a solo practitioner at his family practice clinic in South Shore since December 1992. (St. Ex. 2 at 78-81; Tr. at 30-31)

### **Dr. Josey's History with the Board**

2. In June 1987, pursuant to a Consent Agreement between the Board and Dr. Josey, the Board issued to Dr. Josey a certificate to practice medicine and surgery in Ohio. In that Consent Agreement, Dr. Josey admitted "that he has abused oral Oxycodone (Percocet) in 1982." Dr. Josey further admitted "that he suffers from a chemical dependency problem for which he underwent treatment at William Beaumont Army Medical Center from February 5, 1983, to March 17, 1983, with a one year follow-up program with Dr. Peter Montgomery, at [Brooke]." (St. Ex. 2 at 50)

The Board placed a number of probationary terms, conditions, and limitations on Dr. Josey's certificate to practice in Ohio, including requiring him to "abstain completely from the use of oxycodone (Percocet) and any addictive drug," as well as abstaining "completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by his personal physician who has full knowledge of DOCTOR JOSEY'S history of chemical dependency." Moreover, the Consent Agreement required Dr. Josey to obtain a supervising physician and "ensure that his supervising physician submits quarterly reports to the BOARD which indicate DOCTOR JOSEY'S status and progress and any medication prescribed." (St. Ex. 2 at 50-51) (Emphases in original)

3. By letter dated April 12, 1989, the Board notified Dr. Josey that it had proposed to take disciplinary action against his certificate to practice in Ohio. A hearing was held on September 15, 1989. On November 8, 1989, the Board met and considered the Report and Recommendation filed as a result of that hearing. On November 17, 1989, an Entry of Order was signed that revoked Dr. Josey's certificate to practice in Ohio, stayed that revocation, and placed Dr. Josey on probation for a period of at least eight years, based on Dr. Josey's violations of Sections 4731.22(B)(5), 4731.22(B)(15), and 4731.22(B)(26), Ohio Revised Code. (St. Ex. 2 at 34-49)

In taking its November 1989 action against Dr. Josey, the Board found that Dr. Josey had relapsed by ingesting Anexsia and Vicodin. The Board further found that, during a February 23, 1989, probationary appearance—approximately six weeks after Dr. Josey’s relapse—he had falsely reported to the Board’s Secretary that he was in compliance with the terms of his July 1987 Consent Agreement. Moreover, the Board found that Dr. Josey had failed to bring with him to that probationary conference the quarterly report of Dr. Josey’s supervising physician. Furthermore, the Board found that, on March 6, 1989, Dr. Josey’s supervising physician had notified the Board of Dr. Josey’s relapse. Finally, the Board found that Dr. Josey had obtained inpatient treatment for his chemical dependency from March 3 through April 14, 1989, at Willingway Hospital in Statesboro, Georgia. (St. Ex. 2 at 34-46)

4. On or about November 13, 1997, the Board released Dr. Josey from the terms of its November 1989 Order. (St. Ex. 2 at 21)
5. By letter dated September 12, 2001, the Board notified Dr. Josey that it had proposed to take disciplinary action against his certificate to practice in Ohio. A hearing was held on December 11, 2001. On March 13, 2002, the Board met and considered the Report and Recommendation filed as a result of that hearing. In its Entry of Order, which became effective on March 15, 2002, the Board revoked Dr. Josey’s certificate to practice in Ohio, stayed that revocation, and suspended Dr. Josey’s certificate for at least one year. The Board established interim monitoring conditions and requirements for reinstatement. Following reinstatement of Dr. Josey’s certificate, he was to be placed on probation for a period of at least ten years. The Board based its action on Dr. Josey’s violation of Section 4731.22(B)(26), Ohio Revised Code. (St. Ex. 2 at 2-33)

In taking its March 2002 action, the Board found that, on August 20, 2001, Dr. Josey had notified the Board that he had relapsed by ingesting medication such as hydrocodone, Percocet, oxycodone, and MS Contin, and that, around August 13, 2001, he had admitted himself to Shepherd Hill Hospital in Newark, Ohio, for treatment. (St. Ex. 2 at 21)

6. During the December 11, 2001, hearing, Dr. Josey testified, in part, as follows:
  - Dr. Josey’s relapse had begun in early 2001 when he developed neuralgia. Dr. Josey testified that, in March 2001, he and his primary care physician, Dr. Patel, had believed that Dr. Josey was suffering from shingles. Dr. Josey further testified that Dr. Patel first prescribed Neurontin to Dr. Josey, but that Dr. Josey had been unable to tolerate that medication. Dr. Josey testified that Dr. Patel next prescribed Percocet. (St. Ex. 2 at 70-71)
  - Dr. Josey testified that Dr. Patel had been aware of Dr. Josey’s addiction to narcotics; however, Dr. Josey did not believe that Dr. Patel had “fully understood the nature of” Dr. Josey’s addiction. (St. Ex. 2 at 71)

- Dr. Josey testified that, during June, July, and early August 2001, he had visited an emergency department and received Percocet from “at least half a dozen” physicians. Dr. Josey further testified that he was taking larger amounts of Percocet than had been prescribed. Moreover, Dr. Josey testified that the emergency department physicians had not been aware of Dr. Josey’s history of chemical dependency. Furthermore, Dr. Josey testified that the emergency department physicians had not been aware that Dr. Josey had been obtaining medication from multiple sources. Finally, Dr. Josey testified that he had “called in a couple prescriptions” in his wife’s name to a pharmacy in South Shore, Kentucky, for his own use. (St. Ex. 2 at 72-73, 81-82, 104)

### **Dr. Josey’s November 8, 2002, Guilty Plea and Intervention in Lieu of Conviction**

7. On March 7, 2002, in the Scioto County Common Pleas Court, an Indictment was filed charging Dr. Josey with thirteen counts of Deception to Obtain a Dangerous Drug, in violation of Section 2925.22, Ohio Revised Code. Counts One, Two and Three alleged that Dr. Josey had obtained hydrocodone by deception on February 4, July 25, and August 2, 2000. Counts Four through Thirteen alleged that Dr. Josey had obtained hydrocodone or oxycodone by deception during a period from May 26 through August 2, 2001. (St. Ex. 3 at 1-5)

On November 8, 2002, Dr. Josey appeared before the court and entered pleas of guilty to all counts. Upon accepting Dr. Josey’s pleas of guilty, the court granted Dr. Josey’s request for intervention in lieu of conviction, stayed the criminal proceedings, and placed him on a court-approved three-year plan of rehabilitation. (St. Ex. 3)

8. Dr. Josey testified that he recalls having testified in December 2001 that his relapse had begun in March 2001. Dr. Josey further acknowledged that he had related the timing of his relapse solely to the summer of 2001. When asked about Counts One, Two and Three of the Indictment, which concerned dates in 2000, Dr. Josey testified that he had not considered those episodes to be a relapse. Moreover, Dr. Josey testified, “I was receiving care from physicians at that time. The one in—in February 2000, I had the flu and I had pleuritis and I was treated just very briefly with hydrocodone.” Dr. Josey further testified that he had not taken medication in 2000 “during an active period of relapse.” Finally, Dr. Josey acknowledged that he is an addict, and that once a person is addicted to a substance, he or she is addicted to that substance forever. (Tr. at 17-21) However, Dr. Josey further testified:

[A]s far as taking drugs for the purpose of treating an addiction as opposed to treating pain or treating a legitimate medical problems, without taking them on a regular basis—and I was not taking them on a regular basis during that time frame, just sporadically during the time frame, and for very small quantities during that time frame.

(Tr. at 21) Dr. Josey also testified that he had been under the care of a physician during the 2000 time period. Moreover, Dr. Josey testified, “[that physician] knew me; however,

at that particular time, I don't recall discussing my prior history with him of chemical dependency, but I think it was 20 or 30 hydrocodone that he called in along with a Medrol dose pack, which is a steroid." (Tr. at 19-20; 32)

Nevertheless, Dr. Josey acknowledged that he had pled guilty to all counts in the Indictment, including Counts One, Two, and Three. Dr. Josey further testified that he had pled guilty to the Indictment based on the advice of his attorney. Moreover, Dr. Josey testified that "[i]t didn't come to mind" for him to negotiate Counts One, Two, and Three out of his intervention in lieu agreement. (Tr. at 21-22, 32-33)

### **Additional Information**

9. Dr. Josey testified that he had obtained treatment at Shepherd Hill Hospital, and is currently in aftercare with that facility. Dr. Josey further testified that he is also being followed by the Ohio Physicians Effectiveness Program [OPEP], and by the Kentucky Physicians Health Foundation. (Tr. at 14-15)

Further, Dr. Josey testified that he is active in a 12-step program, and goes to four meetings per week. Moreover, Dr. Josey testified that he attends a professional group in Lexington, Kentucky, which he attends weekly except for the first week of the month; during the first week of the month, he attends a Caduceus meeting and an aftercare meeting at Shepherd Hill Hospital. In addition, Dr. Josey testified that he submits to random, weekly urine screens, which are done through OPEP. (Tr. at 24, 33-34)

10. Dr. Josey testified that he has not consumed alcohol since his Board hearing in December 2001. (Tr. at 39)
11. Dr. Josey testified that, if the Board allows him to regain active licensure in Ohio, he does not intend to return to primary care medicine. Dr. Josey testified that he would like to enter an administrative field. Dr. Josey further testified that he is currently enrolled in a master's degree program in health care administration, which he expects to complete in August 2005. (Tr. at 38)
12. Dr. Josey testified that, in November 2003, he will have completed one year of his court-ordered intervention in lieu of conviction. Dr. Josey further testified that he plans to petition the court for release from that agreement. (Tr. at 14)
13. Dr. Josey testified that he had required surgery to repair a torn rotator cuff in April 2003. Dr. Josey further testified that he had received oxycodone for five days during the surgical recovery period. Moreover, Dr. Josey testified that both the Kentucky and Ohio Boards had been apprised of the necessity of his surgery. (Tr. at 36)
14. Dr. Josey testified that his Kentucky medical license is currently suspended, and that he will be eligible for reinstatement in June 2004. (Tr. at 15, 38)

15. Dr. Josey submitted copies of letters written on his behalf from Richard N. Whitney, M.D., Shepherd Hill Hospital; Burns M. Brady, Medical Director, Kentucky Physicians Health Foundation; and Denny D. Lipscombe, CADC, The Morton Center, Lexington, Kentucky. (Respondents Exhibits A, B, and C)
16. The Board did not allege substance abuse impairment in its May 14, 2003, Notice of Immediate Suspension and Opportunity for Hearing. During a telephone conference with the parties' representatives on December 30, 2003, Counsel for the Respondent informed the Hearing Examiner that the Respondent would not object if the Board should decide to impose sanctions that include requirements for substance abuse treatment, despite case law that may support such an objection.<sup>1</sup> Counsel for the State also indicated that he did not object.

### FINDINGS OF FACT

On November 8, 2002, in the Court of Common Pleas of Scioto County, Ohio, Willie L. Josey, M.D., entered pleas of guilty to thirteen felony counts of Deception to Obtain a Dangerous Drug, in violation of Section 2925.22, Ohio Revised Code. Upon accepting Dr. Josey's pleas of guilty, the court granted Dr. Josey's request for intervention in lieu of conviction, stayed the criminal proceedings, and placed him on a three-year period of rehabilitation.

### CONCLUSIONS OF LAW

The pleas of guilty of Willie L. Josey, M.D., and/or the judicial finding of his eligibility for intervention in lieu of conviction, as set forth in the Findings of Fact, constitute "[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.

\* \* \* \* \*

The evidence indicates that Dr. Josey pled guilty to and received intervention in lieu of conviction for thirteen felony counts of Deception to Obtain a Dangerous Drug. The evidence further indicates that most of those counts related to Dr. Josey's mid-2001 relapse, and that the Board had been aware of that relapse prior to its March 2002 action. However, three of those counts related

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<sup>1</sup> In *In re Eastway* (1994), 95 Ohio App.3d 516, 642 N.E.2d 1135, cert. denied, the Franklin County Court of Appeals held that the Board could not require psychiatric treatment as a condition of probation when it had not charged a physician with being mentally impaired. Therefore, a Board order that includes such sanctions is not supported by reliable, probative, and substantial evidence and is not in accordance with the law. See also *Lawrence S. Krain, M.D. v. State Medical Board of Ohio* (Oct. 29, 1998), Franklin App. No. 97APE08-981, unreported.

to Dr. Josey illegally obtaining medication approximately one year prior to the mid-2001 relapse. Dr. Josey testified at hearing that those medications had actually been legally obtained for legitimate medical conditions. Nevertheless, the Board's rules state that a certified copy of a plea of guilty to a crime is conclusive proof of the commission of all of the elements of that crime. Ohio Adm.Code 4731-13-24. Accordingly, the State has conclusively proven that Dr. Josey obtained medication on three occasions in 2000 by deception. Moreover, the evidence indicates that the Board had not been aware of those episodes prior to issuing its March 2002 Order.

In that March 2002 Order, the Board gave Dr. Josey an opportunity to retain his Ohio certificate subject to a suspension, interim monitoring conditions, and, upon reinstatement, probationary monitoring conditions. There is no evidence in this case that Dr. Josey has violated that Order. Accordingly, the Proposed Order in this matter would closely follow the requirements of the earlier Order. However, because of the new information concerning additional offenses in 2000, as well as Dr. Josey's failure to advise the Board of those offenses, the period of suspension is extended.

### **PROPOSED ORDER**

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Willie L. Josey, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Josey's certificate shall be SUSPENDED for an indefinite period of time, but not less than two years. The minimum suspension period shall be calculated from March 15, 2002, the effective date of the previous Order that suspended Dr. Josey's certificate.
- B. **INTERIM MONITORING:** During the period that Dr. Josey's certificate to practice medicine and surgery in Ohio is suspended, Dr. Josey shall comply with the following terms, conditions, and limitations:
  1. **Obey the Law and Terms of Intervention in Lieu of Conviction:** Dr. Josey shall obey all federal, state and local laws; all rules governing the practice of medicine and surgery in Ohio; and all terms of intervention in lieu of conviction imposed by the Scioto County Court of Common Pleas in criminal case number 02-CR-140.
  2. **Quarterly Declarations:** Dr. Josey 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 the date his quarterly declaration would have been due pursuant to the Board's Order of March 2002 concerning Dr. Josey. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. **Personal Appearances**: Dr. Josey shall appear in person for an interview before the full Board or its designated representative. The first such appearance shall take place on the date his appearance would have been scheduled pursuant to the Board's Order of March 2002 concerning Dr. Josey. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
4. **Abstention from Drugs**: Dr. Josey shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. Josey's history of chemical dependency.
5. **Abstention from Alcohol**: Dr. Josey shall abstain completely from the use of alcohol.
6. **Rehabilitation Program**: Dr. Josey shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than four times per week. Substitution of any other specific program must receive prior Board approval. Dr. Josey 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. Josey's quarterly declarations.
7. **Drug & Alcohol Screens; Supervising Physician**: Dr. Josey shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Josey 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, unless otherwise determined by the Board, Dr. Josey shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Josey shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Josey. Dr. Josey's current supervising physician may be considered to serve in this capacity. Dr. Josey 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. Josey 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. Josey must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Josey 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. Josey's quarterly declarations. It is Dr. Josey's responsibility to ensure that reports are timely submitted.

8. **Provision of Blood or Urine for Screening without Prior Notice**: Dr. Josey shall submit blood and/or urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Josey's expense.
9. **Aftercare**: Dr. Josey shall maintain continued compliance with the terms of the aftercare contract entered into with Shepherd Hill Hospital, with the terms of his advocacy contracts with the Ohio Physicians Effectiveness Program and the Kentucky Physicians Health Foundation, provided that where terms of the aftercare contract and/or advocacy contracts conflict with terms of this Order, the terms of this Order shall control.

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

1. **Application and Fees**: Dr. Josey shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Continued Compliance with Interim Monitoring Conditions**: Dr. Josey shall have maintained continuing compliance with all terms of Paragraph B of this Order, unless otherwise determined by the Board.
3. **Demonstration of Ability to Resume Practice**: Dr. Josey 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, the following:
  - a. Evidence of continuing full compliance with this Order.

- b. Two written reports indicating that Dr. Josey's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the Board for making such assessments and shall describe the basis for this determination.
  4. **Absence from Practice:** In the event that Dr. Josey 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 application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Josey's fitness to resume practice.
- D. **PROBATIONARY TERMS:** Upon reinstatement or restoration, Dr. Josey's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least ten years:
1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Josey shall continue to be subject to the terms, conditions, and limitations specified in paragraph B of this Order.
  2. **Absence from Ohio:** In the event that Dr. Josey should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Josey 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.
  3. **Violation of Probation; Discretionary Sanction Imposed:** If Dr. Josey violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
  4. **Tolling of Probationary Period while Out of Compliance:** In the event Dr. Josey 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.
- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Josey's certificate will be fully restored.
- F. **RELEASES:** Dr. Josey shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Josey's chemical

dependency and/or related conditions, or for purposes of complying with this Order, whether such treatment or evaluation occurred before or after the effective date of this Order. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.

Dr. Josey shall also provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Order.

- G. REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, unless otherwise determined by the Board, Dr. Josey 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. Josey 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.
- H. REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, unless otherwise determined by the Board, Dr. Josey 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. Josey 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. Josey shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board.
- I. PREVIOUS BOARD ORDERS SUPERSEDED:** This Order supersedes and replaces the March 2002 Order of the Board concerning Dr. Josey.

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



R. Gregory Porter  
Hearing Examiner



# State Medical Board of Ohio

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

## EXCERPT FROM THE DRAFT MINUTES OF FEBRUARY 11, 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 record, the proposed findings, conclusions, and order, and any objections filed in the matters of: Miles J. Jones, M.D.; Willie L. Josey, M.D.; Benton Matthew Maslyk, M.T.; Robert S. Reeves, Jr., M.D.; Joel H. Rubin, D.O.; and Vladimir Vasic, M.D.; and the Report of Remand in the Matter of Joseph W. Fischkelta, P.A. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- 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:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye

Dr. Robbins	- aye
Dr. Garg	- 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.

.....

WILLIE L. JOSEY, M.D.

.....

**DR. BHATI MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF WILLIE L. JOSEY, M.D. DR. BUCHAN SECONDED THE MOTION.**

.....

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- nay
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- nay
	Dr. Garg	- abstain
	Ms. Sloan	- aye

The motion carried.



# 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/)

November 12, 2003

Willie Leroy Josey, M.D.  
2004 Waller Street  
Portsmouth, Ohio 45662

Dear Doctor Josey:

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 July 2, 1987, you entered into a Consent Agreement, a copy of which is attached hereto and fully incorporated herein, with the Board. In this Consent Agreement, the Board agreed to issue to you a license to practice medicine and surgery in the State of Ohio subject to certain terms, conditions, and limitations. In addition, you admitted to having suffered "from a chemical dependency problem for which [you] underwent treatment at William Beaumont Army Medical Center from February 5, 1983, to March 17, 1983, with a one year follow-up program...at Brooke Army Medical Center, Fort Sam Houston, Texas," and that you had "abused oral oxycodone (Percocet) in 1982."
- (2) By letter dated April 12, 1989, the Board notified you that it proposed to take disciplinary action against your certificate to practice medicine and surgery in the State of Ohio based on alleged violations of Sections 4731.22(B)(15), (B)(26), and (B)(5), Ohio Revised Code.

Following a hearing in this matter, the Board entered an Order dated November 8, 1989 [1989 Board Order], a copy of which is attached hereto and fully incorporated herein. The 1989 Board Order revoked your certificate to practice medicine and surgery in the State of Ohio, stayed said revocation and made your certificate subject to certain probationary terms, conditions and limitations for a period of at least eight years. The stayed revocation of your certificate and the subsequent placement of probationary terms, conditions, and limitations on your certificate were based on Findings of Fact which resulted in the following Conclusions:

*Mailed 11-13-03*

- (a) Dr. Josey admittedly purchased and self-administered the addictive drug hydrocodone in violation of the conditions of limitation set forth in his Consent Agreement with the Board. Such acts, conduct, and/or omissions constitute “violation of the conditions of limitation placed by the Board upon a certificate to practice”, [sic] as that clause is used in Section 4731.22(B)(15), Ohio Revised Code;
- (b) Dr. Josey’s acts, conduct, and/or omissions, as set forth in the above Findings of Fact, constitute “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”, [sic] as that clause is used in Section 4731.22(B)(26), Ohio Revised Code. Dr. Josey is admittedly a chemically dependent person. He was previously treated for chemical dependency in 1983. Approximately six years later, although he had entered into a Consent Agreement with the State Medical Board of Ohio in 1987, he relapsed into active chemical dependency. Even though the evidence in this Matter indicates that Dr. Josey voluntarily sought treatment and has remained drug-free since his discharge from Willingway Hospital in April, [sic] 1989, he must be considered an impaired physician, subject to the monitoring of this Board, until he has demonstrated his ability to maintain sobriety over the long-term; and
- (c) At [Dr. Josey’s] February, 1989 [sic], probationary appearance, Dr. Josey stated to Board representatives that he was doing well and was in compliance with his Consent Agreement. Those statements were admittedly false. In fact, at that time, Dr. Josey had relapsed by self-administering addictive drugs and was not in compliance with his Consent Agreement. Such acts, conduct, and/or omissions constitute “publishing a false, fraudulent, deceptive or misleading statement”, [sic] as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Subsequently, on or about November 13, 1997, the Board granted your petition for release from the terms of the 1989 Board Order.

- (3) By letter dated September 12, 2001, the Board notified you that it proposed to take disciplinary action against your certificate to practice medicine and surgery in the State of Ohio based on the alleged violation of Section 4731.22(B)(26), Ohio Revised Code.

Following a hearing in this matter, the Board entered an Order dated March 13, 2002 [2002 Board Order], a copy of which is attached hereto and fully incorporated herein. The 2002 Board Order permanently revoked your certificate to practice medicine and surgery in the State of Ohio, stayed said permanent

revocation and suspended your certificate for an indefinite period of time, but not less than one year. The Board's actions were based on Findings of Fact that included the following:

- On August 20, 2001, Dr. Josey notified the Board via telephone that he had relapsed by ingesting drugs. ... He informed the Board that his primary care physician had prescribed narcotic opiates for his back injury, neuralgia, and shingles; that he then began taking double doses of these drugs; and that he had obtained drugs, including hydrocodone, Percocet, and oxycodone. He also admitted to abusing MS Contin. Finally, he reported that on August 13, 2001, he admitted himself to Shepherd Hill Hospital for inpatient treatment.

The 2002 Board Order, which became effective on March 15, 2002, also made your certificate subject to certain probationary terms, conditions and limitations for a period of at least ten years following the reinstatement or restoration of your certificate and required that you comply with specified terms, conditions and limitations during the period that your certificate is suspended, including requirements that you abstain from the personal use of alcohol and drugs. On or about March 22, 2002, you obtained a stay of the 2002 Board Order pending an appeal. Said stay was revoked on or about June 18, 2002, when you dismissed the appeal.

- (4) Paragraph (B)(5) of the 2002 Board Order requires you to abstain completely from the use of alcohol. Nevertheless, a urine specimen that you provided on or about July 3, 2003, tested positive for the presence of alcohol and was subsequently GC/FID confirmed for the presence of ethanol.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) through (4) above, individually and/or collectively, constitute "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (4) above, individually and/or collectively, constitute a "[v]iolation of the conditions of limitation placed by the Board upon a certificate to practice," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

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

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

In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand 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 5847  
RETURN RECEIPT REQUESTED

Kevin P. Byers, Esq.  
21 E. State Street, Suite 220  
Columbus, Ohio 43215

CERTIFIED MAIL # 7000 0600 0024 5150 5854  
RETURN RECEIPT REQUESTED



# 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/)

May 14, 2003

Willie L. Josey, M.D.  
2004 Waller Street  
Portsmouth, OH 45662

Dear Doctor Josey:

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

- (1) On or about November 8, 2002, in the Court of Common Pleas of Scioto County, Ohio, you entered pleas of guilty to thirteen felony counts of Deception to Obtain a Dangerous Drug, in violation of Section 2925.22, Ohio Revised Code; and the Court of Common Pleas for Scioto County, upon accepting your pleas of guilty, granted your request for intervention in lieu of conviction, stayed the aforementioned criminal proceedings and placed you on a three year period of rehabilitation. Copies of the Scioto County Criminal Indictment, Defendant's Motion for Intervention in Lieu of Conviction and Judgment Entry on Defendant's Request for Treatment in Lieu of Conviction in Scioto County Case No. 02-CR-140 are attached hereto and incorporated herein.

Your plea of guilty and/or the judicial finding of eligibility for intervention in lieu of conviction, as alleged in paragraph (1) above, individually and/or collectively, constitute "[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

*Mailed 5/15/03*

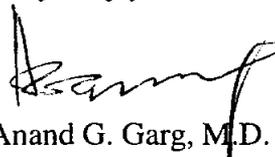
permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

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,



Anand G. Garg, M.D.  
Secretary

AGG/blt  
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5148 1264  
RETURN RECEIPT REQUESTED

cc: Kevin P. Byers, Esq.  
21 E. State Street, Suite 220  
Columbus, Ohio 43215

CERTIFIED MAIL # 7000 0600 0024 5148 1257  
RETURN RECEIPT REQUESTED

INDICTMENT  
Criminal Rule 6, 7

SCIOTO COUNTY  
OHIO  
FILED

02 MAR -7 PM 1:42

*Michael C. Thompson*  
CLERK OF COURTS  
COURT OF COMMON PLEAS

THE STATE OF OHIO  
SCIOTO COUNTY, SS:

of the January Term, in the year two thousand and two (2002).

COUNT ONE

THE JURORS OF THE GRAND JURY of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that on or about the 4<sup>th</sup> day of February, 2000, at Scioto County, Ohio, Dr. Wille Josey did:

by deception, procure the administration of, prescription for or the dispensing of Hydrocodone, a schedule III controlled substance, being a dangerous drug, or possess an uncompleted preprinted prescription blank use for writing a prescription for a dangerous drug in violation of O.R.C. Section 2925.22, Deception to Obtain a Dangerous Drug.

F- 5 (6 to 12 months)

COUNT TWO

THE JURORS OF THE GRAND JURY of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that on or about the 25<sup>th</sup> day of July, 2000, at Scioto County, Ohio, Dr. Wille Josey did:

by deception, procure the administration of, prescription for or the dispensing of Hydrocodone, a schedule III controlled substance, being a dangerous drug, or possess an uncompleted preprinted prescription blank use for writing a prescription for a dangerous drug in violation of O.R.C. Section 2925.22, Deception to Obtain a Dangerous Drug.

F- 5 (6 to 12 months)

COUNT THREE

THE JURORS OF THE GRAND JURY of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that on or about the 2<sup>nd</sup> day of August, 2000, at Scioto County,

Ohio, Dr. Wille Josey did:

by deception, procure the administration of, prescription for or the dispensing of Hydrocodone, a schedule III controlled substance, being a dangerous drug, or possess an uncompleted preprinted prescription blank use for writing a prescription for a dangerous drug in violation of O.R.C. Section 2925.22, Deception to Obtain a Dangerous Drug.

F- 5 (6 to 12 months)

#### COUNT FOUR

THE JURORS OF THE GRAND JURY of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that on or about the 26<sup>th</sup> day of May, 2001, at Scioto County, Ohio, Dr. Wille Josey did:

by deception, procure the administration of, prescription for or the dispensing of Oxycodone, a schedule II controlled substance, being a dangerous drug, or possess an uncompleted preprinted prescription blank use for writing a prescription for a dangerous drug in violation of O.R.C. Section 2925.22, Deception to Obtain a Dangerous Drug.

F- 4 (6 to 18 months)

#### COUNT FIVE

THE JURORS OF THE GRAND JURY of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that on or about the 16<sup>th</sup> day of May, 2001, at Scioto County, Ohio, Dr. Wille Josey did:

by deception, procure the administration of, prescription for or the dispensing of Oxycodone, a schedule II controlled substance, being a dangerous drug, or possess an uncompleted preprinted prescription blank use for writing a prescription for a dangerous drug in violation of O.R.C. Section 2925.22, Deception to Obtain a Dangerous Drug.

F- 4 (6 to 18 months)

#### COUNT SIX

THE JURORS OF THE GRAND JURY of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that on or about the 15<sup>th</sup> day of June, 2001, at Scioto County, Ohio, Dr. Wille Josey did:

by deception, procure the administration of, prescription for or the dispensing of Oxycodone, a schedule II controlled substance, being a dangerous drug, or possess an uncompleted preprinted prescription blank use for writing a prescription for a dangerous drug in violation of O.R.C. Section 2925.22, Deception to Obtain a Dangerous Drug.

F- 4 (6 to 18 months)

#### COUNT SEVEN

THE JURORS OF THE GRAND JURY of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that on or about the 2<sup>nd</sup> day of August, 2001, at Scioto County, Ohio, Dr. Wille Josey did:

by deception, procure the administration of, prescription for or the dispensing of Oxycodone, a schedule II controlled substance, being a dangerous drug, or possess an uncompleted preprinted prescription blank use for writing a prescription for a dangerous drug in violation of O.R.C. Section 2925.22, Deception to Obtain a Dangerous Drug.

F- 4 (6 to 18 months)

#### COUNT EIGHT

THE JURORS OF THE GRAND JURY of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that on or about the 15<sup>th</sup> day of July, 2000, at Scioto County, Ohio, Dr. Wille Josey did:

by deception, procure the administration of, prescription for or the dispensing of Hydrocodone, a schedule III controlled substance, being a dangerous drug, or possess an uncompleted preprinted prescription blank use for writing a prescription for a dangerous drug in violation of O.R.C. Section 2925.22, Deception to Obtain a Dangerous Drug.

F- 5 (6 to 12 months)

#### COUNT NINE

THE JURORS OF THE GRAND JURY of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that on or about the 22<sup>nd</sup> day of May, 2001, at Scioto County, Ohio, Dr. Wille Josey did:

by deception, procure the administration of, prescription for or the dispensing of Oxycodone, a schedule II controlled substance, being a dangerous drug, or possess an uncompleted preprinted prescription blank use for writing a prescription for a dangerous drug in violation of O.R.C. Section 2925.22, Deception to Obtain a Dangerous Drug.

F- 4 (6 to 18 months)

#### COUNT TEN

THE JURORS OF THE GRAND JURY of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that on or about the 21<sup>st</sup> day of July, 2001, at Scioto County, Ohio, Dr. Wille Josey did:

by deception, procure the administration of, prescription for or the dispensing of Oxycodone, a schedule II controlled substance, being a dangerous drug, or possess an uncompleted preprinted prescription blank use for writing a prescription for a dangerous drug in violation of O.R.C. Section 2925.22, Deception to Obtain a Dangerous Drug.

F- 4 (6 to 18 months)

#### COUNT ELEVEN

THE JURORS OF THE GRAND JURY of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that on or about the 8<sup>th</sup> day of June, 2001, at Scioto County, Ohio, Dr. Wille Josey did:

by deception, procure the administration of, prescription for or the dispensing of Oxycodone, a schedule II controlled substance, being a dangerous drug, or possess an uncompleted preprinted prescription blank use for writing a prescription for a dangerous drug in violation of O.R.C. Section 2925.22, Deception to Obtain a Dangerous Drug.

F- 4 (6 to 18 months)

#### COUNT TWELVE

THE JURORS OF THE GRAND JURY of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that on or about the 27<sup>th</sup> day of July, 2001, at Scioto County, Ohio, Dr. Wille Josey did:

by deception, procure the administration of, prescription for or the dispensing of Oxycodone, a schedule II controlled substance, being a dangerous drug, or possess an uncompleted preprinted prescription blank use for writing a prescription for a dangerous

drug in violation of O.R.C. Section 2925.22, Deception to Obtain a Dangerous Drug.

F- 4 (6 to 18 months)

COUNT THIRTEEN

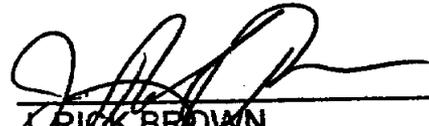
THE JURORS OF THE GRAND JURY of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that on or about the 1<sup>st</sup> day of June, 2001, at Scioto County, Ohio, Dr. Wille Josey did:

by deception, procure the administration of, prescription for or the dispensing of Oxycodone, a schedule II controlled substance, being a dangerous drug, or possess an uncompleted preprinted prescription blank use for writing a prescription for a dangerous drug in violation of O.R.C. Section 2925.22, Deception to Obtain a Dangerous Drug.

F- 4 (6 to 18 months)

---

LYNN ALAN GRIMSHAW  
Prosecuting Attorney



---

J. RICK BROWN  
Asst. Prosecuting Attorney

SCIOTO COUNTY  
OHIO  
FILED

COURT OF COMMON PLEAS,  
SCIOTO COUNTY, OHIO

2002 SEP -6 PM 11:20

*Michael S. Thompson*  
CLERK OF COURTS

STATE OF OHIO

Plaintiff

Case No. 02-CR-140

vs.

JUDGE WALTER C. LYTEN

DR. WILLIE JOSEY

Defendant

**DEFENDANT'S MOTION FOR INTERVENTION  
IN LIEU OF CONVICTION**

Comes now the Defendant and moves this Court to grant the Defendant relief under Section 2951.041 of the Ohio Revised Code, to wit: *Intervention in Lieu of Conviction*. The Defendant represents that:

- (1) The Defendant has not been previously convicted of or pleaded guilty to a felony, and has not previously been through the intervention program or a program similar in intent.
- (2) The offense for which the Defendant currently stands charged under the indictment is not an offense proscribed by Section 2951.041(B)(2), and does not involve a mandatory prison term.
- (3) The offense for which the Defendant currently stands charged under the indictment is not an offense proscribed by Section 2951.041(B)(3).
- (4) The Defendant is not charged with a violation of Section 2925.11 of the Ohio Revised Code.
- (5) The Defendant has already been assessed by an agency that falls within the description of Section 2951.041(B)(5) of the Ohio Revised Code and that agency is willing to recommend the Defendant for the relief requested herein.



*[Handwritten signature]*

(6) The Defendant's addiction to prescription pain medication was a factor leading to the offense which forms the subject matter of the indictment.

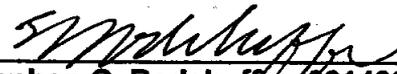
(7) There is no victim in this case that comes within the description of Section 2951.041(7).

(8) The Defendant is willing to comply with whatever terms and conditions the Court may impose relative to the relief requested in this Motion.

The Defendant, by and through his counsel, waives all rights to a speedy trial as provided by statute and the constitutions of both this State and the United States.

The Defendant further moves that the Court conduct a hearing on this request and that all criminal proceedings be stayed pending the Court's ruling on this Motion.

Respectfully submitted,

  
Stephen C. Rodeheffer, 0014992  
Attorney for Defendant  
630 Sixth Street  
Portsmouth, Ohio 45662  
(740) 354-1300  
(740) 354-1301 (FAX)

#### PROOF OF SERVICE

Copy of the foregoing served upon the Prosecuting Attorney of Scioto County, Ohio, by leaving a copy at his office, and Kevin R. Connors, co-counsel for Defendant, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43216-1008, this 6th day of September, 2002.

  
Stephen C. Rodeheffer, 0014992



STEPHEN C. RODEHEFFER  
ATTORNEY AT LAW  
630 SIXTH STREET  
PORTSMOUTH, OHIO 45662  
(740) 354-1300

IN THE COURT OF COMMON PLEAS, SCIOTO COUNTY, OHIO  
GENERAL DIVISION

SCIOTO COUNTY  
OHIO  
FILED

02 NOV 12 AM 9:29

CLERK OF COURTS

STATE OF OHIO

CASE NO. 02-CR-140

Plaintiff

vs.

JUDGE WALTER C. LYTEN

DR. WILLIE JOSEY

Defendant

JUDGMENT ENTRY ON DEFENDANT'S  
REQUEST FOR TREATMENT IN LIEU  
OF CONVICTION

This cause came on for hearing on the 8th day of November, 2002, upon the defendant's request for intervention in lieu of conviction.

The Court having heard the evidence offered by the defendant finds that the defendant's drug dependence was a factor leading to the criminal activity with which the defendant is charged, intervention in lieu of conviction would not demean the seriousness of the offense, and intervention would substantially reduce the likelihood of additional criminal activity. Further, the Court finds that the defendant has been accepted into an appropriate drug treatment facility or program for his drug dependence. Further, the Court finds that the defendant, is otherwise eligible for intervention in lieu of conviction pursuant to R.C. 2951.04(B).

Therefore the Court finds that the defendant is a person eligible for intervention in lieu of conviction and if the

defendant enters a plea of guilty or no contest, this Court will stay all criminal proceedings and Order the offender to a period of rehabilitation.

It appearing to the Court that on a former day of court, said defendant pled not guilty to Counts 1,2,3 and 8: Deception to Obtain Dangerous Drug, violations of Section 2925.22, of the Ohio Revised Code, felonies of the fifth degree; and Counts 4,5,6,7,9,10,11,12 and 13: Deception to Obtain Dangerous Drug, violations of Section 2925.22, of the Ohio Revised Code, felonies of the fourth degree, and appeared this day before the court and by and through his counsel, asked permission to withdraw his former plea of not guilty which permission was granted by this court.

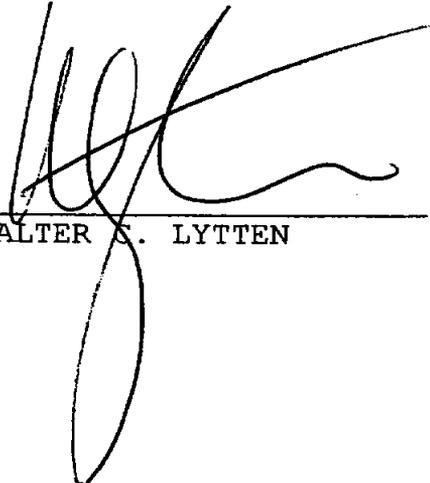
This cause came on further to be heard this 8th day of November, 2002, upon the request of the defendant by and through his counsel, to enter a plea of guilty to Counts 1,2,3 and 8: Deception to Obtain Dangerous Drug, Section 2925.22, O.R.C., felonies of the fifth degree; and Counts 4,5,6,7,9,10,11,12 and 13: Deception to Obtain Dangerous Drug, Section 2925.22, O.R.C., felonies of the fourth degree. Whereupon the court advised the defendant of the charge against him, and the penalty provided by law, that he was presumed innocent and that such presumption continues until proven guilty beyond a reasonable doubt, the right to a jury trial with representation by counsel,

the right to confront his accusers, his privilege against self-incrimination and the right to compulsory process for obtaining witnesses which rights the defendant waived orally and in writing in open court. Whereupon the court inquired of the defendant if his appearing in court to waive his rights and his entering a plea of guilty was his free and voluntary act and was not the result of any promises, threats or inducements by anyone. In answer thereto, the defendant said that his acts were free and voluntary, that no promises, threats or inducements had been made to him, whereupon the court found the rejection of his rights and the plea of guilty was voluntarily, intelligently and knowingly made by the defendant. Upon recommendation of the Prosecuting Attorney, the court finds said request to be well taken and said plea of guilty to Counts 1,2,3 and 8: Deception to Obtain Dangerous Drug, Section 2925.22; and Counts 4,5,6,7,9,10,11,12 and 13: Deception to Obtain Dangerous Drug, Section 2925.22, is hereby made and accepted.

The Court having found that the defendant is a person eligible for intervention in lieu of conviction and the defendant having pled guilty, the Court hereby Orders that further criminal proceedings are stayed and the defendant is ordered to a 3 year period of rehabilitation. The Court has approved the rehabilitation plan of the defendant. The defendant shall comply with the rehabilitation plan. Further, the defendant is to be under the control and supervision of the Scioto County Adult

Probation Department under the usual rules of probation. It is specifically Ordered that the defendant abstain from illegal use of drugs and alcohol. The defendant is to submit to random testing for substance use. Bond is hereby continued.

ENTER:



\_\_\_\_\_  
JUDGE WALTER S. LYTTEN

\_\_\_\_\_  
Anita Mathew (0067212)  
Assistant Prosecuting Attorney

\_\_\_\_\_  
Stephen C. Rodeheffer  
Attorney for the Defendant

# HEALTH & HUMAN

TERMINATION NO. 8  
BY 6-18-02

JUN 19 2002

8-5996

STATE MEDICAL BOARD OF OHIO  
IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
SERVICES SECTION  
CIVIL DIVISION

2002 JUN 19 P 3:51

Willie L. Josey, MD,  
Appellant,  
v.

CASE NO. 02CVF03-3115

The State Medical Board of Ohio,  
Appellee.

JUDGE BRUNNER

Appeal from the State Medical Board of Ohio

### APPELLANT'S VOLUNTARY DISMISSAL

Appellant, Willie L. Josey, MD, hereby voluntarily dismisses this appeal with prejudice.

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

KPB/ELS

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

Attorney for Willie L. Josey, MD

FILED  
COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO  
02 JUN 18 AM 9:49  
CLERK OF COURTS-CV

### Certificate of Service

I certify that a true copy of the foregoing document was deposited this <sup>18th</sup> day of June, 2002, in first class U.S. Mail, postage prepaid, addressed to Assistant Attorney General Mark A. Michael, Health & Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3428.

KPB/ELS

Kevin P. Byers

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

Willie L. Josey, MD,	1	
Appellant,	1	CASE NO. 02CVF03-3115
v.	1	JUDGE BRUNNER
State Medical Board of Ohio,	1	
Appellee.	1	

ENTRY

On March 22, 2002, Appellant, Willie L. Josey, MD, moved for a stay order pursuant to RC 119.12. Assistant Attorney General Mark A. Michael was unavailable for conference. Based upon the need for immediate relief, the motion is hereby TEMPORARILY GRANTED and the Medical Board order of March 15, 2002, is STAYED.

The State may have until April 5, 2002, to file a written opposition to Appellant's March 22, 2002, stay motion. Appellant may file a reply by April 12, 2002. As of 5:00 PM on April 12, 2002, the stay motion shall be considered submitted and a final decision on continuing the stay order shall be rendered forthwith.

  
JENNIFER L. BRUNNER, JUDGE

Mar. 22, 2002

Copies:  
Kevin P. Byers for appellant  
AAG Mark Michael for appellee

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
02 MAR 22 AM 11:24  
CLERK OF COURTS

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

Willie L. Josey, MD,  
Appellant,

v.

The State Medical Board of Ohio,  
Appellee.

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\*

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CASE NO. 02CVF03-3115

JUDGE BRUNNER

*Appeal from the State Medical Board of Ohio*

---

APPELLANT'S MOTION FOR SUSPENSION OF AGENCY ORDER

---

By Notice of Appeal filed March 20, 2002, Appellant, Willie L. Josey, MD, has appealed the one year suspension of his Ohio medical license. The Order was served upon Appellant by mailing on March 15, 2002, was received March 16, 2002, and purports to be effective "immediately upon mailing," ie., March 15, 2002.

For the reasons which follow in the *Memorandum in Support* and pursuant to RC 119.12, ¶5, Appellant now moves for judicial suspension of the Medical Board order pending resolution of the instant appeal. In accord with RC 119.12, ¶12, the Court is respectfully urged to give the instant motion preference over all other civil matters.

Respectfully submitted,

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

*KPB/EJS*

---

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

Attorney for Willie L. Josey, MD

MEMORANDUM IN SUPPORT

The controlling statute, RC 119.12, ¶5, provides in pertinent part that:

[i]n the case of an appeal from the state medical board or chiropractic examining 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.

The foregoing provision of law evidences the clear legislative intent that the remedial suspension provision of RC 119.12 should be considered a meaningful counterpart to a civil TRO, as decided through the Court's exercise of its sound discretion. However, unlike some preliminary civil remedies, there is no requirement under RC 119.12 that a movant must show the probability of likelihood of success on the merits. Rather, the two-pronged statutory test is clear:

1. Is the Appellant facing "unusual hardship?"  
And;
2. Is the health, safety and welfare of the public put at risk if the stay motion is granted?

By action taken by the Medical Board, Dr. Josey's Ohio medical license has been suspended "indefinitely" with a minimum term of one year, effective on March 15, 2002. If the Board order is allowed to stand during the pendency of the instant appeal, it is entirely foreseeable that Dr. Josey's fifteen-year medical career in Ohio will be destroyed due to the hardship of the license suspension, even if *he eventually prevails in this appeal.*

Moreover, if the stay motion is denied, Dr. Josey will be forced to cease treating his Ohio patients. Although his office is located across the Ohio river in Kentucky, he resides in Portsmouth, Ohio, and approximately 60% of his patients are Ohio residents who are enrolled in Medicare, Medicaid or Workers Compensation programs. Without a valid Ohio medical license, he cannot bill the Ohio public programs for treating these many patients. Thus, he may very well suffer the loss and closure of his practice even while the merits of the Board order are argued since the Board's order levies the penalty before the instant appeal would ripen under the usual briefing schedule in RC 119 appeals. Dr. Josey would thereby be placed in the unenviable position of pursuing an appeal which offers no meaningful relief because his "sentence" of at least a one year suspension from practice may be satisfied by the time the merits of the appeal are properly before the Court.

The two statutory criteria under RC 119.12 for suspension of an agency order, "unusual hardship" and "health, safety, and welfare of the public" are analyzed *seriatim*.

#### I. UNUSUAL HARDSHIP

Because time is of the essence in obtaining a ruling on this motion, it is incumbent upon Dr. Josey to proactively anticipate and meet the expected opposition by the State. The State will likely rely upon *State Medical Board v. Alsleben* (March 17, 1980), Summit Co. CPC Case No. CV80-3-0614, unreported, (*Exhibit A* attached hereto), in support of its opposition to Appellant's instant motion.

*Alsleben* is generally considered to be the seminal Ohio case on this point. Under the rationale of *Alsleben*, it is presumed that administrative medical licensure discipline naturally creates difficulty for a licensee and the legislative use of the adjective "unusual" requires proof of something beyond "mere" financial hardship. *Id. at 1*. Unfortunately, it seems this twenty-two year-old case has been overly cited and unduly relied upon by both administrative agencies and trial courts.

Careful analysis of the *Alsleben* opinion reveals an important factor under the "unusual hardship" prong which was unproven in that case. The court noted that "probability of disastrous financial loss" would indeed serve as a basis to find the necessary "unusual hardship" and grant the requested stay order. *Id. at 2*. As explained herein, Dr. Josey is indisputably facing "disastrous financial loss" precisely as contemplated under the enunciated *Alsleben* test.

If the Board order stands intact during the appeal, Dr. Josey will be unable to continue treating Ohio patients while the merits of the appeal are briefed, argued and decided. Dr. Josey's attached affidavit in support of this motion is incorporated herein as *Exhibit B*. Beyond the "usual" hardships expected in such a scenario, Dr. Josey may very well be forced into bankruptcy should he be required to incur the Ohio suspension before the appeal is decided. Because of the "immediate" language of the Board order, Dr. Josey has already ceased billing the Ohio Medicaid, Medicare and Workers' Compensation programs for his care rendered to these patients. However, most of these patient refuse to seek healthcare elsewhere since they trust and

respect Dr. Josey. As such, they are either now self-paying for his care (rendered in the state of Kentucky where he has an unrestricted license) or he is simply not collecting for his professional services since he refuses to turn away his patients because of his own difficulties. Either way, it is an untenable situation forced upon the doctor and his patients by virtue of the "immediate" implementation of the suspension period. Every day that passes means there are additional Ohio citizens being hindered in their access to their treating doctor.

Also of interest in the *Alsleben* case is the fact that the cited ruling was preceded by an order which granted a stay order under Civ. R. 65. It is actually the outcome from the preliminary hearing which is so often cited by the State in defense of stay motions in administrative appeals even though it was not rendered in a RC 119 proceeding. Moreover, it must be remembered that since 1987 this Court has been vested with exclusive original jurisdiction over appeals from the Medical Board and there are numerous cases, some discussed *infra*, wherein this Court has granted the preliminary stay to maintain the status quo while the appeal proceeded.

Finally, even under the most restrictive interpretation of *Alsleben*, other obvious elements of the unusual hardship include damage or destruction of Dr. Josey's reputation among his medical colleagues and the community as a whole with little chance for meaningful rehabilitation or repair. Dr. Josey's seven employees certainly will suffer inordinately as will his many Ohio family practice patients should he be required to cease practicing while he

prosecutes this appeal. Finally, it is also entirely foreseeable that he will suffer embarrassment, humiliation and severe emotional distress absent the requested temporary relief.

## II. HEALTH, SAFETY, AND WELFARE OF THE PUBLIC

The second prong for court consideration under RC 119.12 is the apparent threat to the public health, safety, and welfare if a suspension of the agency order is granted. The Board endeavors to bar Dr. Josey from practicing because he suffers from the disease of drug addiction.

Dr. Josey is a fifty-five year-old physician who received his medical degree from the Medical University of South Carolina in 1977. Prior to that, in 1969, he received his undergraduate degree in Chemistry and joined the active service of the United States Army. He served in Vietnam and eventually entered medical school while on active duty. After receiving his medical degree and training at the Brooke Army Medical Center he served as an active duty Army physician until 1987. While in active service he was the Chief of the General Medical Clinics for over four years. In 1987 Dr. Josey entered the active Army reserves and remained until 1994 when he retired with twenty-five years of service to his country. After his move to the Army reserve in 1987 he entered a family practice in Alliance, Ohio. During this time Dr. Josey was called to active duty and served in Saudi Arabia during Operation Desert Storm. Upon his release from active duty he relocated to a family practice in South Shore, Kentucky, where he has practiced for the past nine years. In the Kentucky practice he has worked in the local indigent clinic and has

served as preceptor for the Ohio University College of Medicine as well as for nursing students from Marshall University. He is Board Certified in General Practice and served for over five years as the Chairman of the Southern Ohio Medical Center Medical Care Foundation.

As the record will show, in 1983 while active duty in Texas, Dr. Josey was treated for oxycodone abuse. He fully and freely disclosed this information when applying for Ohio licensure in 1987. In order to acquire his Ohio license, he was required to enter into a Consent Agreement by which he admitted his "chemical dependency problem" and accepted various conditions and limitations. Around February 1989 Dr. Josey relapsed while the terms of the June 1987 Board Consent Agreement were effective. Dr. Josey voluntarily sought inpatient treatment and the Board's April 1989 allegation of relapse was heard by a hearing examiner in September 1989 with a final order issued in November 1989. The 1989 order did not suspend Dr. Josey's but rather extended the probationary period for an eight year term. Dr. Josey served the full eight years under direct scrutiny of the Board without further incident, relapse or suspicion thereof. He was released from the terms of the Board order on November 13, 1997.

Unfortunately, during the summer of 2001, after nearly twelve years of abstinence and sobriety, Dr. Josey began abusing the analgesics which were prescribed to him by his physical medicine attending and his primary care attending. Dr. Josey's medical records reveal that he suffered from a number of painful, documented conditions including a back injury, shingles and neuropathic chest pain secondary to diabetes. Although Dr. Josey experienced these

objectively-verified conditions, he did not assert them before the Board as an excuse for his relapse. He is responsible for his conduct and he failed in his duty to ensure that his treating physicians understood the significance of his disclosed history of medication addiction.

After a thorough and painful self-evaluation, Dr. Josey ceased practicing and admitted himself to Shepherd Hill on August 13, 2001. Shepherd Hill is a Board-approved treatment provider. Dr. Josey fully cooperated with treatment and was discharged to his home on November 9, 2001, after ninety days of intensive inpatient treatment.

Since his release from inpatient treatment, Dr. Josey has attended weekly Caduceus meetings (twelve-step meetings of recovering healthcare professionals) and monthly individual follow-ups at Shepherd Hill. He has also engaged in the standard aftercare protocol utilized by Shepherd Hill so that his continuing abstinence will be shown by objective, verifiable means such as random body fluid analysis. He has also established an aftercare program through the Kentucky impaired physicians group as well as entering an aftercare contract with the Ohio Physicians Effectiveness Program.

Further, of extreme importance is the fact that Dr. Josey self-reported his relapse to the Board in August 2000 even though he had been released from the Board order almost four years earlier. There is no legal requirement that required this self-report and he did this in recognition of the Board's mission to protect the public and in an effort to fully come to grips with his brief relapse. Unfortunately,



rather than credit Dr. Josey with this responsible and difficult act, the Board took the information and used it to prosecute Dr. Josey.

Dr. Josey resumed practicing in December 2001 and his care has been unquestioned. He is monitored, counseled, supervised and supported by his peers and recovery professionals. Given his medical history, his acceptance of responsibility, his self-reporting to the Board and immediate, effective measures to combat his disease, there is simply no justification for the Board to now, after the fact, levy a suspension which becomes effective even before judicial review can be accomplished. There is no threat of public harm as the doctor is under intense scrutiny and monitoring which will detect any impropriety or misstep. Further, there is not a hint in this record that Dr. Josey put any patient at risk during his brief period of relapse in the summer of 2001.

### III. CASELAW

While the State will undoubtedly counter with citations to local cases where RC 119.12 stays were denied, a small sampling of recent rulings from this Court indicate that the stay order available under RC 119.12 is to be liberally granted.

In *Nelson v. State Medical Board* (June 10, 1992), Franklin Co. CPC Case No. 92CVF-06-4561, unreported, (*Exhibit C*), Judge Close granted the motion and required that the appellant comply with certain restrictions and conditions of practice. In *Fattah v. State Medical Board* (July 15, 1992), Franklin Co. CPC Case No. 92CVF-05-4202, unreported, (*Exhibit D*), Judge Stratton balanced the competing interests when she granted a conditional stay order while the appeal

progressed. In *Hill v. State Medical Board* (June 9, 1995), Franklin Co. CPC Case No. 95CVF05-3379, unreported, (*Exhibit E*) the Court stayed the Board-ordered six-month suspension with conditions. The foregoing cases are clear examples of the Court carefully studying the underlying facts and balancing the competing public and private interests.

In *Ramey v. Ohio State Board of Chiropractic Examiners* (December 17, 1993), Franklin Co. CPC Case No. 93CVF-11-8353, unreported, (copy of "Order" attached as *Exhibit F*), Judge Connor found that Dr. Ramey would suffer unusual hardship and also found no threat to the public health, safety, and welfare. The proposed four-month suspension was thus stayed while the parties briefed the merits of the discipline. *Id.* Dr. Ramey eventually prevailed in his appeal.

Another recent case of note is *Allen v. State Medical Board* (March 21, 1996), Franklin Co. CPC Case No. 96CVF03-1713, unreported, (*Exhibit G*) wherein Judge Bessey found that imposition of the one-year suspension would pose an "unusual hardship" to Dr. Allen and thus stayed the Board order during the life of the appeal. Upon further appeal, the Franklin County Court of Appeals also granted Dr. Allen's stay motion pending the decision. *Allen v. State Medical Board* (October 1, 1996), Tenth District Court of Appeals Case No. 96APE09-1212, unreported, (*Exhibit H*).

In *Garwood v. State Medical Board* (April 10, 1996), Franklin Co. CPC Case No. 96CVF03-2339, unreported, Judge Fais stayed the one-year suspension while the merits were briefed and argued (*Exhibit I*). In *Guanzon v. State Medical Board* (July 15, 1996), Franklin Co. CPC Case

No. 96CVF06-4799, unreported, (*Exhibit J*), Judge Connor found "unusual hardship" and no public risk in staying the disciplinary sanction imposed by the Board. *Brewer v. State Medical Board* (September 3, 1996), Franklin Co. CPC Case No. 96CVF-07-5471, unreported (*Exhibit K*), is another example of a judicial stay wherein Judge Cain granted the motion to block the implementation of the Board discipline while the appeal was pending.

An enlightening ruling may be found in *Krain v. State Medical Board* (January 24, 1996), Franklin Co. CPC Case No. 96CVF01-0290, unreported, (*Exhibit L*). Dr. Krain was sanctioned by the Ohio Board even though he had not practiced in Ohio for many years. A prime basis for the stay motion was the harmful "spin-off" effects of the Ohio adverse action, including the potential loss of Dr. Krain's board-certified status. Although a license suspension in Ohio had no direct immediate impact on the doctor's practice in Chicago, the compounding negative consequences of the adverse action were of sufficient magnitude to convince Judge Johnson that "unusual hardship" existed and the Court thereby stayed the Board order pending a merit decision.

Another recent ruling worthy of note may be found in *Larach v. State Medical Board* (June 5, 1996), Franklin Co. CPC Case No. 96CVF05-3566, unreported, (*Exhibit M*). *Larach* involved an allegation by the Ohio Board that Dr. Larach had not accurately completed his Ohio renewal application after he received an administrative sanction from the Florida Board where he lives and practices. The Florida Board did not report the underlying sanction to the National Practitioner Data



Bank (NPDB) but the Ohio Board eventually did and it is this type of detrimental fallout from the Ohio order which Judge Miller found disproportionate and the source of "unusual hardship" under RC 119.12. The Court correctly surmised that proof of actual hardship to the doctor need not be shown when it observed that the purpose of RC 119.12 is "to put a stay in place, if warranted, before the damage occurs." *Id.* at 3 (emphasis added).

Dr. Josey will suffer irreparable harm should the Ohio Board be permitted to impose the indefinite suspension even while the merits of the case are judicially reviewed. Without a judicial stay order, his reputation will be besmirched with no recourse or remedy to effectively repair the damage after the fact.

Many other, even more recent, rulings where the stay motion was granted may be analyzed should the Court desire, *Exhibit M*. These rulings clearly indicate that this Court rightfully and routinely exercises its sound discretion in weighing the competing public and private interests when deciding stay motions under RC 119.12.

#### IV. SUMMARY

Dr. Josey is striving at this time to contain the damage inflicted by the onerous Board order until this Court has the opportunity to fully review the factual and legal bases for the order. In this regard the function of the stay is analogous to a temporary restraining order in that it will prevent irreparable harm and preserve the status quo pending the merit decision. There is absolutely no evidence in the record indicating that staying the Board order would jeopardize the public good. Dr. Josey resumed practicing

three months ago and is willing to abide by any terms, conditions or limitations attached to the stay order. See Exhibit B. Moreover, there is irrefutable evidence that Dr. Josey will suffer unusual hardship as contemplated under RC 119.12.

Pursuant to its authority under RC 119.12 the Court is respectfully urged to grant the instant motion and suspend the execution of the March 15, 2002, State Medical Board order under any terms it deems just.

Respectfully submitted,

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

*KPB/EMS*

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

Attorney for Willie L. Josey, MD

Certificate of Service

I certify that a true copy of the foregoing document was **HAND DELIVERED** deposited this 22nd day of March, 2002, in ~~first class U.S. Mail,~~ ~~postage prepaid,~~ addressed to Assistant Attorney General Mark A. Michael, Health & Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3428.

*KPB/EMS*

Kevin P. Byers

- 12 of 13 -



every case. The question is whether there has been a showing that it is an unusual one.

The appellant argues that a hardship will result to the patients of the appellant if the order is not stayed. A reading of the statute shows this to be an invalid consideration. Section 119.12, O.R.C. provides in pertinent part:

"If it appears to the Court that an unusual hardship to the appellant will result--" (Emphasis added).

Therefore, the statute is not intended to cover hardship except to the appellant.

In addition, the statements of counsel during argument reveal that the appellant is associated with at least one other doctor who can service any emergency needs of patients. For non-emergency cases, there are many other doctors available in the community for medical services.

The Court finds that there just has not been a concrete showing of an unusual hardship. There is nothing on which to judge whether the appellant will suffer a disastrous financial loss or just undergo an economic and financial readjustment. For example, there is no knowledge of what his financial arrangement may be with his associate. He may very well be entitled to some income from that arrangement. The appellant may have other sources of income which could sustain him with some adjustment in lifestyle.

license to practice his chosen profession constitutes a hardship, it is equally clear that something more and unusual is required to satisfy the statute.

Accordingly, the motion is overruled. The appellant's companion motion to permit additional evidence, argued also on March 14, 1980, is taken under advisement by the Court until such time as the hearing transcript is filed and can be reviewed by the Court.

The temporary restraining order issued by the Court originally on March 7, 1980, is hereby ordered dissolved.

It is so ordered.

---

Judge John W. Reece

cc: Joseph C. Winner  
Jeffrey Jurca

IN THE COMMON PLEAS COURT OF FRANKLIN COUNTY, OHIO

Willie L. Josey, MD,  
Appellant  
v.

\* CASE NO. 02 CVF03-3115  
\*

The State Medical Board of Ohio  
Appellee.  
\*

AFFIDAVIT OF WILLIE L. JOSEY, MD

STATE OF OHIO )  
COUNTY OF SCIOTO ) ss

The undersigned, being first duly sworn, deposes and says:

1. I am Willie Leroy Josey, MD, a duly licensed physician in the State of Ohio and I make this affidavit based upon personal knowledge. I am over eighteen years of age and have held an Ohio medical license continuously for over fifteen years. I have engaged in the fulltime practice of medicine and surgery since attaining licensure and currently hold an active Kentucky medical license as well as my Ohio license.

2. I received my Chemistry undergraduate degree in 1969 and entered active duty with the United States Army. While on active duty I completed medical school in 1977 and then practiced as a U.S. Army physician from 1978 through 1987 when I entered the reserve branch of the military. I served in both Vietnam and the Gulf and retired from the Army in 1994 as a Colonel.

3. In July 1987 I began practicing in Alliance, Ohio. I stayed in this practice until I was called to active duty for Operation Desert Storm. When I returned from active duty I found my practice was not maintained well by the doctor I left in

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charge so I relocated to a practice near Portsmouth, Ohio. I was recruited by the local hospital for this practice which is physically located across the Ohio River in Kentucky. The majority of my patients are Ohio residents who are under the Medicare or Medicaid programs. I also treat a large number of Ohio Workers' Compensation cases.

4. My relapse on controlled substances in 2001 was clearly the product of objectively-verified medical conditions which were being treated by my attending family physician and a rehabilitation and physical medicine specialist. Once my relapse became evident in August 2001, I immediately withdrew from practicing, entered a Medical Board-approved inpatient program and successfully completed the treatment regimen. I also voluntarily reported myself to the Medical Board. Since my inpatient release in November 2001 I have maintained a rigorous schedule of meetings, therapy, and body fluid monitoring to ensure my continued abstinence and sobriety. I also have thorough and complete documentation of my ongoing recovery. I am actively monitored and supervised by physician effectiveness groups in both Ohio and Kentucky. I gradually resumed practicing medicine in December 2001 and have now once again become a full-time physician.

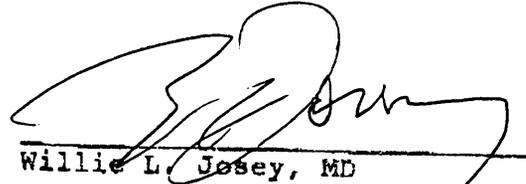
5. Income from my medical practice is the sole support for myself and my family. I presently employ four full-time people in my office and three part-time workers.

6. It has taken significant effort, diligence and personal sacrifice for my family and I to build my practice. I have invested substantial time, effort and resources in remaining informed as to health trends and current treatment modalities. I have also developed symbiotic relationships with other local healthcare providers and believe I enjoy broad support from the medical community and my patients in both Ohio and Kentucky.

7. The Ohio Medical Board order which immediately suspends my medical license for at least one year will cause me disastrous financial loss. Foreseeable components of this catastrophic event may include the loss of my home, loss of my office space, loss of owned, leased and rented medical equipment, and the forced, sudden unemployment of my seven employees -- in essence, the total destruction of my practice. My reputation will be irreparably harmed and the potential devastation appears uncontrollable. Additionally, implementation of the Board's suspension order will put my patients at risk by the sudden, unnecessary deprivation of my medical care, particularly in the many Medicare, Medicaid and Workers' Compensation cases for which I am the only locally-available physician.

8. I stand ready, willing and able to comply with any restrictions, conditions or mandates from the Court which may be ordered should my petition for a stay order be granted. I simply plead for a chance to maintain the status quo until this Court has the opportunity to review the merits and lawfulness of the Board's onerous and unsupported suspension order.

FURTHER AFFIANT SAYETH NAUGHT.

  
Willie L. Josey, MD

Sworn to and subscribed in my presence this 18<sup>th</sup> day of March, 2002.

SEAL

  
NOTARY PUBLIC

ALLISON M. SMITH  
Notary Public, State of Ohio  
My Commission Expires 8-18-2006

My commission expires \_\_\_\_\_

COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

THE STATE MEDICAL BOARD OF OHIO :  
 Appellee, :  
 v. : Case No.92CVF-06-4561  
 SELDON R. NELSON, D.O. : Judge Close  
 Appellant. :

92 JUN 11 PM 1:57

DECISION

Rendered this 10 day of June, 1992.

CLOSE, J.

This cause is before the Court upon the motion of the Appellant, herein, to stay the Order of the State Medical Board of Ohio, pending the resolution of this appeal. It is ORDERED that his suspension shall be stayed, conditioned however on the following.

Dr. Nelson's practice shall be monitored by another physician as approved by the Board.

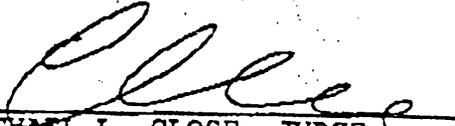
Dr. Nelson shall not administer nor order urine injections for patients.

Dr. Nelson shall have a third party present when examining any female patient.

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FRANKLIN COUNTY, OHIO  
THOMAS J. ENRIEN  
CLERK OF COURTS  
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Dr. Nelson shall post a bond of \$5,000.00 with securities sufficient for this Court to insure his compliance with this Order.

  
MICHAEL L. CLOSE, JUDGE

Copies to:

Keith A. Savidge  
Gregory D. Seeley  
Attorneys for Appellant  
Susan C. Walker  
Asst. Attorney General

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

CIVIL DIVISION

SHAKIR M. FATTAH, M.D. :

PLAINTIFF :

vs. :

STATE MEDICAL BOARD :

DEFENDANT :

Case No. 92CVF05-

JUDGE STRATTON

(92CVF05-4202)

FRANKLIN COUNTY, OHIO  
THOMAS J. FERGUSON  
CLERK OF COURTS

92 JUL 15 AM 11:29

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DECISION

Rendered this 13th day of July, 1992.

STRATTON, J.

This matter is before the Court on a review of the Objections filed to the Referee's Report. The Court has reviewed this matter extensively, held a further conference with the parties, and has considered additional materials now submitted by the parties.

This is an extremely difficult decision for this Court. In reading the case summaries provided by the State Medical Board, the Court is appalled at the lack of quality of care as alleged in the summaries. If even one of the thirteen summaries is accurate, it is one too many. Dr. Fattah's very own statements clearly demonstrate his unorthodox view of the standard of care. The Court is unimpressed by Appellant's claim that the Board waited too long to act and a few more months won't hurt anybody, because if it was serious, the Board would have acted sooner. To allow the quality of care as alleged to continue a day longer could result in another

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STATE MEDICAL BOARD  
OF OHIO

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misdiagnosis and yet another death, if the Board's claims are well founded. Can this Court afford to take that risk with the lives of individuals?

On the other hand, Dr. Fattah argues that he would lose his livelihood, staff and office if there is no stay. Under the case law and statute prevailing, which require the Court to do a balancing act, this argument has little weight when weighed against the risk to human health and life. Dr. Fattah has failed to demonstrate the "unusual hardship" standard that goes beyond mere contemplation of loss of one's license to practice. State Medical Board v. Alsleben (March 27, 1980, Suminin CP, No. CV80-3-0614, unreported), Haky v. State (AP 12, 1979), Franklin Co. CP, No. 79CV-03-1326.

Of far greater concern to this Court is Appellant's argument that he serves a large, uninsured population that would receive no health care without his services. The Court has received countless letters from patients. However, these letters only serve to persuade the Court that Dr. Fattah has a selfless devotion to his patients, a good bedside manner which builds patient loyalty, or a good P.R. campaign coordinator. It does nothing to address the issue of quality of care and diagnosis. These letters fail utterly to recognize that while that patient believes in Dr. Fattah, another patient is alleged to have died as a result of a similar faith and belief. Perhaps if his bedside manner were deficient, these patients would have sought help elsewhere sooner.

In addition, the huge volume Dr. Fattah claims to have mitigates against the time and care necessary to devote to each individual case. Too many with too little time spells short cuts and missed diagnoses.

The Board has presented evidence that in fact there are ample other physicians to service these areas, and who are, in fact, advertising for such patients. Yet this Court is not persuaded that the uninsured poor would still be reached by the other physicians available. Dr. Fattah may indeed serve a unique class and it is this very issue that so concerns this Court.

Therefore, the Court amends the Referee's Report as follows:

1. Dr. Fattah shall not be permitted to accept or treat new patients that he has not previously treated.
2. That Dr. Fattah be permitted to see up to only 25 patients per day to allow for more time and attention to be paid to the care and diagnosis of each patient.
3. That Dr. Fattah, at the conclusion of each patient visit (not at the end of a day where all details blend together and the physician is weary), chart in detail all complaints of the patient, and his analysis and prescribed course of action, so that a reviewing physician can carefully review and understand each patient's history and Dr. Fattah's diagnosis.
4. That Dr. Fattah, at his expense, meet twice a week,

for a minimum of six (6) hours a week with Dr. Kamel, in person, for patient chart and review, so that Dr. Kamel can fully review and probe each patient chart, considering the 150-175 charts that must be reviewed.

5. That Dr. Fattah, in consultation with Dr. Kamel, vigorously recommend specialist consultations or second opinions in appropriate cases to his patients.

6. That Dr. Fattah shall cooperate fully with the physician approved by the Medical Board to review and monitor his medical charts, and in cases of a difference of professional opinion, defer to Dr. Kamel's recommendation or refer the patient to another physician or specialist for a second opinion, and

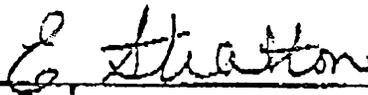
7. That Dr. Fattah prepare a notice which is to be handed to each patient advising that patient that Dr. Fattah's license has been suspended and is under appeal and that the patient has the right to consider other health care alternatives. The Court will approve the content of such a notice before dissemination. Counsel for Dr. Fattah shall prepare such notice with 24 hours of this Decision.

The Court recognizes that these measures are strict and invasive. However, Dr. Fattah's counsel has already advised the Court it would abide by any such restrictions as opposed to being shut down. The Court feels that without such restrictions the alternative is a risk that this Court is unwilling to take.

\*\* 000 3988 7101 \*\*

The parties shall prepare and file a briefing schedule within five (5) days of this Decision.

Counsel for the State Medical Board shall prepare a judgment entry in accordance with this Decision.



EVELYN J. STRATTON, JUDGE

Copy to:

Richard S. Lovering  
Jack Rosati, Jr.  
Ericker & Eckler  
Thomas V. Ferrero  
Attorneys for Appellant

Odella Lampkin  
Assistant Attorney General  
Attorney for Appellee

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

JUN 1 1995

Sam Hill, D.O.,

Appellant

- vs -

Case No. 95CVF-05-3379 (Millard, J.)

State Medical  
Board of Ohio,

Appellee

DECISION ON MOTION TO SUSPEND AGENCY ORDER PENDING  
APPEAL AND ORDER CONDITIONALLY SUSPENDING THE ORDER  
OF THE STATE MEDICAL BOARD OF OHIO PENDING APPEAL

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COMMON PLEAS COURT  
FRANKLIN COUNTY, OHIO  
95 JUN -9 AM 9:01  
CLERK OF COURT

Upon consideration of the record and following hearing on Tuesday, 6-6-1995 and consideration of the arguments of counsel and the authorities submitted in support and opposition, Appellant's 5-12-1995 Motion to suspend the 4-12-1995 Order of the State Medical Board of Ohio pending this appeal is, conditionally as noted hereafter, SUSTAINED. On this record, the court finds Appellant has established he would suffer unusual hardship, and that public safety, health, and welfare will not be threatened by suspension of the Board's Order pending this appeal. O.R.C. § 119.12 specifies that the provisions requiring these elements to be proved shall not limit the factors considered in reaching this decision. The terms of this Suspension Order specifically include Dr. Hill's full and continuing compliance with all four sub-paragraphs (i, ii, iii, and iv) of paragraph c of the Board's Order; if such compliance is not proper, then upon notification and after expedited hearing, this Suspension Order may be vacated. It is SO ORDERED.

It is also Ordered that the briefing schedule is modified so that the record shall be promptly filed. Appellant's brief shall be filed by 7-14-1995; Appellee's brief, by 7-28-1995; Appellant's reply brief, by 8-4-1995, which date is also set as the non-oral hearing date. The Board's Order is, with these conditions, STAYED pending decision on the merits of the appeal here.

Copies to:  
Kevin P. Byers, counsel for Appellant  
Lili C. Kaczmarek, AAC, for Appellee

*W. Millard*  
W. Millard, Judge

EXHIBIT  
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IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

CHRISTOPHER D. RAMEY, D.C., :  
 Appellant, :  
 v. : Case No. 93CVF-11-8353  
 OHIO STATE BOARD OF CHIROPRACTIC :  
 EXAMINERS, : Judge J. Connor  
 Appellee. :

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 FRANKLIN COUNTY, OHIO  
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ORDER

This matter came before the Court pursuant to Appellant Christopher D. Ramey, D.C.'s Motion for Suspension of The November 18, 1993 Adjudication Order of Appellee Ohio State Board of Chiropractic Examiners. The Appellee's Adjudication Order suspended Appellant's certificate to practice chiropractic for six months beginning December 18, 1993. The Court has considered this matter and finds that the suspension of Appellant's certificate to practice chiropractic pending the determination of Appellant's appeal will result in an unusual hardship to Appellant. The Court also finds that suspending the Appellee's Adjudication Order will not result in a threat of the public's health, safety, and welfare.

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THEREFORE, this Court GRANTS the Appellant's Motion and SUSPENDS the Appellee's Adjudication Order of November 18, 1993 pending the resolution of this appeal.

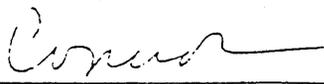
  
 \_\_\_\_\_  
 John Connor, Judge

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F

Copies to:

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Christopher D. Ramey, D.C.

Gregg B. Thornton, Esq.  
Assistant Attorney General  
for Appellee  
Ohio State Board of Chiropractic Examiners

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

WILLIAM H. ALLEN, M.D., :  
Appellant, :  
vs. : CASE NO. 96CVF03-1713  
THE STATE MEDICAL BOARD OF OHIO, : JUDGE BESSEY  
Appellee. :

**DECISION AND ENTRY STAYING  
SUSPENSION PENDING APPEAL  
FILED ON MARCH 6, 1996**

Rendered this 20<sup>th</sup> day of March, 1996.

BESSEY, J.

Appellant's Motion for Suspension of Agency Order is hereby GRANTED.

It is hereby ordered that the suspension of Appellant's medical license effective March 23, 1996 is hereby STAYED pending final disposition of the within cause of action.

  
JUDGE JOHN P. BESSEY

Copies to:

Kevin P. Byers  
Attorney for Appellant

Mary K. Crawford, A.A.G.  
Attorney for Appellant



CLERK OF COURTS  
FRANKLIN COUNTY  
OHIO

(2)

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

William H. Allen, M.D., :  
 Appellant-Appellant, :  
 v. : No. 96APE09-1212  
 The State Medical Board of Ohio, : (ACCELERATED CALENDAR)  
 Appellee-Appellee. :

JOURNAL ENTRY

Upon appellant's motion for a stay of execution prohibiting enforcement of the February 22, 1996 order of the State Medical Board of Ohio suspending appellant's medical license pending disposition of the within appeal, it is hereby ordered that said motion is granted and the suspension of appellant's medical license is hereby stayed pending this appeal.

*Donna Bowman*

\_\_\_\_\_  
Judge Donna Bowman

*Dana A. Deshler*

\_\_\_\_\_  
Judge Dana A. Deshler

*Michael L. Close*

\_\_\_\_\_  
Judge Michael L. Close

cc: Kevin P. Byers  
 Betty D. Montgomery, AG  
 Mary K. Crawford, AAG

**EXHIBIT**  
H

*M 7*

81:1 11:18

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

Richard M. Garwood, DO,  
Appellant

v.

The State Medical Board of Ohio  
Appellee.

\*

CASE NO. 96CVF03-2339

\*

\*

JUDGE D. FAIS

\*

*Appeal from the State Medical Board of Ohio*

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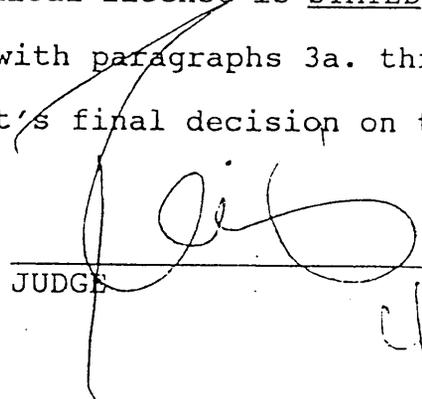
DECISION AND ENTRY STAYING SUSPENSION  
PENDING APPEAL FILED ON MARCH 28, 1996

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Rendered this \_\_\_\_ day of April, 1996.

This matter came on for review of Appellant's *Motion for Suspension of Agency Order* filed at the time of the Notice of Appeal on March 28, 1996. This Court finds that the imminent one year suspension of Appellant's medical license pending determination of the appeal will cause an unusual hardship to Appellant. Further, suspending the Medical Board adjudication order will not pose a threat to the public health, safety and welfare.

THEREFORE, the motion for suspension of the Medical Board order effective on or around April 25, 1996, is GRANTED and the suspension of Appellant's osteopathic medical license is STAYED, provided that, Appellant shall fully comply with paragraphs 3a. through 3f. of the Board order pending this Court's final decision on the appeal.

JUDGE 

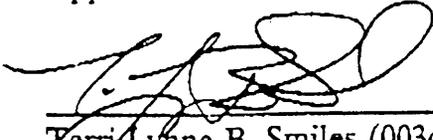
Copies to:

Kevin P. Byers, Attorney for Dr. Garwood, Appellant  
Lili C. Kaczmarek, AAG for the Medical Board, Appellee

EXHIBIT

I

Approved:



Terri-Lynne B. Smiles (0034481)  
Hahn Loeser & Parks  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215  
(614) 221-0240

*submitted 7/10/96 but not approved HBS*

Rebecca Albers, Esq.  
Assistant Attorney general  
Health and Human Services Section  
30 East Broad Street, 26th Floor  
Columbus, Ohio 43215-3428  
(614) 466-8600

FILED FILED  
COMMON PLEAS COURT  
FRANKLIN CO., OHIO

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

E. Allan Brewer, M.D.,

96 SEP -3 PM 3:22

Plaintiff,

JESSE B. DODD  
CLERK OF COURTS

vs.

Case No. 96CVF-07-5471

State Medical Board of Ohio,

JUDGE CAIN

Defendant.

DECISION GRANTING MOTION FOR SUSPENSION OF AGENCY ORDER,  
FILED JULY 23, 1996

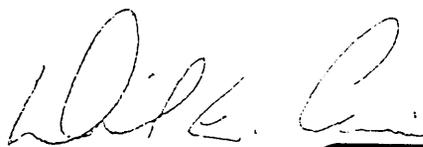
Rendered this 30th day of August 1996.

CAIN, J.

This matter is before the Court on motion of Appellant E. Allan Brewer, M.D., for a suspension of the agency order against him. There was no opposition to the motion. The Court finds it well-taken and GRANTS it. The order against Appellant immediately suspends his license to practice medicine for an indefinite term (minimum term three months) beginning July 15, 1996.

The Court finds that the suspension of Appellant's license will result in an unusual hardship to Appellant. The Court also finds that the suspension of the agency's order pending the determination of Appellant's appeal will not result in a threat to the public's health, safety, and welfare.

Therefore, the Court grants Appellant's motion. Counsel for Appellant shall prepare, circulate, and submit to the Court an appropriate judgment entry within ten (10) days of the receipt of this decision, pursuant to Loc. R. 25.01.



David E. Cain, Judge

EXHIBIT

K

Copies to:

Kevin P. Byers  
Attorney for Appellant

State Medical Board  
Appellee

Lawrence D. Pratt  
Assistant Attorney General

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

IN THE MATTER OF :  
LAWRENCE S. KRAIN, M.D. :  
Appellant, :  
vs. :  
STATE MEDICAL BOARD :  
OF OHIO :  
Appellee. :

CASE NO. 96CVF01 290  
JUDGE DAVID JOHNSON

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COMMON PLEAS COURT  
FRANKLIN COUNTY, OHIO  
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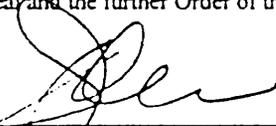
ENTRY AND ORDER SUSPENDING THE DECEMBER 28, 1995 ORDER  
THE STATE MEDICAL BOARD OF OHIO

Pursuant to Section 119.12 of the Revised Code of Ohio, this Court finds that the execution of the December 28, 1995 Order of the State Medical Board of Ohio will result in unusual hardship to the appellant, Lawrence S. Krain, M.D., and that the health, safety and welfare of the public will not be threatened by a suspension of that Order.

Therefore, it is hereby ordered that the Order of the State Medical Board of Ohio entered and mailed to the appellant on December 28, 1995, is hereby stayed and suspended pending the determination of this appeal and the further Order of this Court.

IT IS SO ORDERED.

Dated: 24 Jan 96

  
\_\_\_\_\_  
Judge David Johnson

52030F008

  
EXHIBIT  
  L

Franklin County Court of Common Pleas Case No. 95CVF01 290  
Entry and Order Suspending the December 28, 1995 Order of the State Medical  
Board of Ohio  
Page 2 of 2

Approved:

By Clifford R. Cloud  
Clifford R. Cloud (0022916)

By [Signature]  
James D. Owen (0003525)  
Cloud, Koehig & Owen  
5354 North High Street  
Suite 3D  
Columbus, Ohio 43214  
(614) 221-3621  
Attorneys for Appellant

By Anne Berry Strait by JCO per 1/24/96 "AS to Form" only  
Anne Berry Strait  
Assistant Attorney General  
Health & Human Services Section  
30 East Broad Street, 26th Floor  
Columbus, Ohio 43215-3428  
(614) 466-8600  
Attorney for Appellee

95 JAN 24 1996  
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IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

COMMON PLEAS COURT  
FRANKLIN COUNTY, OHIO

CIVIL DIVISION

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CLERK OF COURTS

FERNANDO C. LARACH, M.D. :

Appellant, :

CASE NO. 96CVF05-8566

v. :

JUDGE MILLER

STATE MEDICAL BOARD OF OHIO :

Appellee. :

**DECISION AND ENTRY GRANTING**  
**THE MOTION OF APPELLANT FOR SUSPENSION**  
**OF THE STATE MEDICAL BOARD'S ORDER**  
**FILED MAY 13, 1996**

Rendered this 4<sup>th</sup> day of June, 1996.

MILLER, J.

Appellant, Fernando C. Larach, M.D. has moved this Court for an order staying execution of the State Medical Board's May 8, 1996 order suspending Dr. Larach's license to practice in the state of Ohio. The Board voted to suspend Dr. Larach's license after determining he made a misrepresentation of material fact on his application for license renewal.

Dr. Larach is also licensed in Florida, where on October 14, 1992, the Florida Board of Medicine filed a complaint against him. The specific allegations against Dr. Larach in Florida are not contained in the present record. Dr. Larach claims he was not informed of the complaint. On April 4, 1994, Dr. Larach signed the Ohio renewal application. That form contained the following question: "At any time since signing your last application for renewal of your certificate have you . . . Had any disciplinary action taken or initiated against you by any state licensing board other than the State Medical Board of Ohio?" Dr. Larach answered "no."

**EXHIBIT**  
**M**

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

COMMON PLEAS COURT  
FRANKLIN COUNTY, OHIO

CIVIL DIVISION

96 JUN -5 AM 10:52

FERNANDO C. LARACH, M.D. :

CLERK OF COURTS

Appellant, :

CASE NO. 96CVF05-3566

v. :

JUDGE MILLER

STATE MEDICAL BOARD OF OHIO :

Appellee. :

DECISION AND ENTRY GRANTING  
THE MOTION OF APPELLANT FOR SUSPENSION  
OF THE STATE MEDICAL BOARD'S ORDER  
FILED MAY 13, 1996

Rendered this 4<sup>th</sup> day of June, 1996.

MILLER, J.

Appellant, Fernando C. Larach, M.D. has moved this Court for an order staying execution of the State Medical Board's May 8, 1996 order suspending Dr. Larach's license to practice in the state of Ohio. The Board voted to suspend Dr. Larach's license after determining he made a misrepresentation of material fact on his application for license renewal.

Dr. Larach is also licensed in Florida, where on October 14, 1992, the Florida Board of Medicine filed a complaint against him. The specific allegations against Dr. Larach in Florida are not contained in the present record. Dr. Larach claims he was not informed of the complaint. On April 4, 1994, Dr. Larach signed the Ohio renewal application. That form contained the following question: "At any time since signing your last application for renewal of your certificate have you . . . Had any disciplinary action taken or initiated against you by any state licensing board other than the State Medical Board of Ohio?" Dr. Larach answered "no."

EXHIBIT  
M

On May 4, 1994, Dr. Larach signed a consent agreement presented by the Florida Board. He maintains that he only learned of the proceedings against him in the days or weeks immediately preceding his signing of the consent agreement. That agreement included a stipulation that Dr. Larach had in fact been properly served with the complaint. Because Dr. Larach entered into that stipulation, the Ohio Board concluded he must have lied on his renewal form, and lied again when he denied knowledge of the Florida proceedings.

O.R.C. §119.12 sets the guidelines for consideration of appeals from the State Medical Board.

[T]he court may grant a suspension (of the Board's order) and fix its terms if it appears to the court that an unusual hardship 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.

The inclusion of the adjective "unusual" means the appellant must demonstrate the harm will be greater than merely loss of income, which is attendant on the suspension of every professional license. State Medical Board v. Alsleben, (Mar. 17, 1980) Summit Cnty. No. CV80-3-0614, unreported.

Dr. Larach is concerned that the Medical Board may now report his suspension to the National Practitioners Data Bank (NPDB). The NPDB's information is available to countless hospitals, insurance carriers, residential care facilities, and other health care providers, all of whom may elect to cut ties with Dr. Larach on the basis of that report. It appears that certain insurance plans, HMO's and PPO's **require** the termination of any suspended physician from their reimbursement policies. This would clearly amount to an unusual hardship.

In its memorandum contra the motion to suspend the order, filed May 22, 1996, the State describes these possible injuries as "speculation . . . [which] does not rise to

the level of actual hardship." The State seems to assume that the statute requires a showing of actual injury. This is not the case. The Court reviews these cases in order to put a stay in place, if warranted, before the damage occurs. Dr. Larach's concerns are not far-fetched. Moreover, if they came true, the results would be disproportionately harmful, given the nature of the alleged offense.

The State Medical Board did not find Dr. Larach guilty of a deviation from the accepted standard of care. The Board found that he made a misrepresentation on his forms. That conclusion was based on an alleged admission in the consent decree. The boiler-plate language of a consent agreement is a slender reed upon which to balance a significant legal conclusion. Dr. Larach's administrative sin, if true, does not make him a danger to the health, safety, or welfare of the Ohio community, especially since he does not regularly practice in the state.

The Court hereby orders that the Board's suspension of Dr. Larach's license be STAYED. This stay will remain in effect until there is a final adjudication of this matter on the merits.

**IT IS SO ORDERED.**

*Miller 6-9-96*  
\_\_\_\_\_  
NODINE MILLER, JUDGE

COPIES TO:

Terri Lynee B. Smiles  
Kevin P. Byers  
Attorneys for Appellant

Patrick W. Beatty  
Attorney for Appellee

Landefeld v. State Medical Board, 97CV11154, J. Bessey  
Gladieux v. State Medical Board, 97CV10388, J. Crawford  
Vidu v. State Medical Board, 98CV2392, J. Bessey  
Hayes v. State Medical Board, 99CV2007, J. Bender  
Smith v. State Medical Board, 99CV5481, J. Watson  
Steinberg v. State Medical Board, 99CV5511, J. O'Grady  
Webb v. State Medical Board, 00CV3449, J. Fais  
Royder v. State Medical Board, 00CV7084, J. Johnson  
Rossiter v. State Medical Board, 00CV3515, J. Hogan  
Urban v. State Medical Board, 01CV12353, J. Miller

EXHIBIT

N

STATE MEDICAL BOARD  
OF OHIO

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

*Brunner*

Willie L. Josey, MD,  
2004 Waller Street  
Portsmouth, Ohio 45662  
Appellant,

v.

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

\*  
02 CV F O  
\*  
CASE NO. \_\_\_\_\_  
\*  
JUDGE \_\_\_\_\_  
\*  
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FILED COURT

Appeal from the State Medical Board of Ohio

APPELLANT'S NOTICE OF APPEAL

Pursuant to RC 119.12, notice is hereby given that Appellant, Willie L. Josey, MD, appeals the order of the State Medical Board dated March 13, 2002, mailed March 15, 2002, and received by Appellant on March 16, 2002, (copy attached as Exhibit A.) The Medical Board order is not supported by the necessary quantum of reliable, probative and substantial evidence nor is it in accordance with law.

Respectfully submitted,

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

*KPB:LS*

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

Attorney for Willie L. Josey, MD

2002 APR - 4 - 11 19

STATE MEDICAL BOARD  
OF OHIO

Certificate of Service

I certify that the original of the foregoing document was hand delivered this 20th day of March, 2002, to the State Medical Board of Ohio, 77 South High Street, 17th Floor, Columbus, Ohio 43215 and also a copy was deposited in first class U.S. Mail this same date addressed to Assistant Attorney General Mark A. Michael, Health & Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3428.

KPB-E-S

Kevin P. Byers

STATE MEDICAL BOARD  
OF OHIO  
2002 APR -11 P 1:19

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

Willie L. Josey, MD, \*  
Appellant \*  
v. \*  
The State Medical Board of Ohio \*  
Appellee. \*

STATE MEDICAL BOARD  
OF OHIO  
2002 APR -U P : 19

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PRAECIPE TO MEDICAL BOARD

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To: Thomas A. Dilling, Ex. Dir.  
State Medical Board of Ohio  
77 South High Street, 17th Floor  
Columbus, Ohio 43215

Willie L. Josey, MD, Appellant herein hereby requests the State Medical Board to certify and transmit the original papers and exhibits thereto filed before the Board; the transcript of proceedings and record certified by Appellee, including hearing exhibits thereto; and a certified copy of the docket and journal entries prepared by the Board to the Clerk of the Court of Common Pleas of Franklin County pursuant to RC 119.12.

Respectfully submitted,

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

*KPB/ELS*

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

Attorney for Appellant,  
Willie L. Josey, MD

Certificate of Service

I certify that the original of the foregoing *Praecepta* to Medical Board was hand delivered this 20th day of March, 2002, to the State Medical Board, 77 South High Street, 17th Floor, Columbus, Ohio 43215 and a true copy was placed in first class U.S. Mail addressed to Assistant Attorney General Mark A. Michael, Health & Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3428.

KPB/LS  
Kevin P. Byers

STATE MEDICAL BOARD  
OF OHIO  
2002 APR -4 P 1:19



# 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/)

March 13, 2002

Willie L. Josey, M.D.  
2004 Waller Street  
Portsmouth, OH 45662

Dear Doctor Josey:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Daniel Roberts, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on March 13, 2002, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO

Anand G. Garg, M.D.  
Secretary

AGG:jam  
Enclosures

CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5146 4458  
RETURN RECEIPT REQUESTED

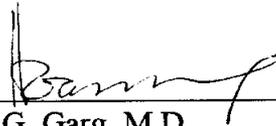
Cc: Kevin P. Byers, Esq.  
CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5146 4441  
RETURN RECEIPT REQUESTED

*Mailed 3.15.02*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Daniel Roberts, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on March 13, 2002, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Willie L. Josey, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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



\_\_\_\_\_  
Anand G. Garg, M.D.  
Secretary

(SEAL)

March 13, 2002  
\_\_\_\_\_  
Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF

\*

\*

WILLIE L. JOSEY, M.D.

\*

**ENTRY OF ORDER**

This matter came on for consideration before the State Medical Board of Ohio on March 13, 2002.

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

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Willie L. Josey, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Josey's certificate shall be SUSPENDED for an indefinite period of time, but not less than one year.
- B. **INTERIM MONITORING:** During the period that Dr. Josey's certificate to practice medicine and surgery in Ohio is suspended, Dr. Josey shall comply with the following terms, conditions, and limitations:
1. **Obey Laws in Ohio:** Dr. Josey shall obey all federal, state, and local laws; and all rules governing the practice of medicine in Ohio.
  2. **Quarterly Declarations:** Dr. Josey shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first

quarterly declaration must be received in the Board's offices on 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.

3. **Appearances**: Dr. Josey shall appear in person for quarterly interviews before the Board or its designated representative, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
4. **Abstention from Drugs**: Dr. Josey shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. Josey's history of chemical dependency.
5. **Abstention from Alcohol**: Dr. Josey shall abstain completely from the use of alcohol.
6. **Rehabilitation Program**: Dr. Josey shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than four times per week. Substitution of any other specific program must receive prior Board approval. Dr. Josey 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. Josey's quarterly declarations.
7. **Drug & Alcohol Screens; Supervising Physician**: Dr. Josey shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Josey 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, unless otherwise determined by the Board, Dr. Josey shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Josey shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Josey. Dr. Josey 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. Josey 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. Josey must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Josey 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. Josey's quarterly declarations. It is Dr. Josey's responsibility to ensure that reports are timely submitted.

8. **Provision of Blood or Urine for Screening without Prior Notice:** Dr. Josey shall submit blood and/or urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Josey's expense.
9. **Aftercare:** Dr. Josey shall maintain continued compliance with the terms of the aftercare contract entered into with Shepherd Hill Hospital, with the terms of his advocacy contracts with the Ohio Physicians Effectiveness Program and the Kentucky Physicians Health Foundation, provided that where terms of the aftercare contract and/or advocacy contracts conflict with terms of this Order, the terms of this Order shall control.
10. **Releases:** Dr. Josey shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Josey's chemical dependency or related conditions, or for purposes of complying with this Order, whether such treatment or evaluation occurred before or after the effective date of this Order. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.

Dr. Josey shall also provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Order.

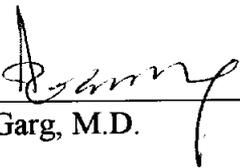
- C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Josey's certificate to practice medicine and surgery unless all of the following conditions are met:
1. **Application and Fees:** Dr. Josey shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  2. **Continued Compliance with Interim Monitoring Conditions:** Dr. Josey shall have maintained continuing compliance with all terms of Paragraph B of this Order, unless otherwise determined by the Board.
  3. **Demonstration of Ability to Resume Practice:** Dr. Josey 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, the following:
    - a. Evidence of continuing full compliance with this Order.
    - b. Two written reports indicating that Dr. Josey's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the Board for making such assessments and shall describe the basis for this determination.
  4. **Absence from Practice:** In the event that Dr. Josey 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 application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Josey's fitness to resume practice.
- D. **PROBATIONARY TERMS:** Upon reinstatement or restoration, Dr. Josey's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least ten years:

1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Josey shall continue to be subject to the terms, conditions, and limitations specified in paragraph B of this Order.
  2. **Absence from Ohio:** In the event that Dr. Josey should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Josey 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.
  3. **Violation of Probation; Discretionary Sanction Imposed:** If Dr. Josey violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
  4. **Tolling of Probationary Period while Out of Compliance:** In the event Dr. Josey 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.
- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Josey's certificate will be fully restored.
- F. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, unless otherwise determined by the Board, Dr. Josey 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. Josey 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.
- G. **REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, unless otherwise determined by the Board, Dr. Josey 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. Josey 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. Josey shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board.

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

(SEAL)

  
\_\_\_\_\_  
Anand G. Garg, M.D.  
Secretary

March 13, 2002  
\_\_\_\_\_  
Date

**REPORT AND RECOMMENDATION  
IN THE MATTER OF WILLIE L. JOSEY, M.D.**

The Matter of Willie L. Josey, M.D., was heard by Daniel Roberts, Attorney Hearing Examiner for the State Medical Board of Ohio, on December 11, 2001.

**INTRODUCTION**

I. Basis for Hearing

- A. By letter dated September 12, 2001, the State Medical Board of Ohio [Board] notified Willie L. Josey, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in this state based on the following allegations:
1. On or about July 2, 1987, Dr. Josey entered into a Consent Agreement with the Board. In this Consent Agreement, the Board agreed to issue to Dr. Josey a license to practice medicine and surgery in the State of Ohio subject to certain terms, conditions, and limitations. In addition, Dr. Josey admitted to having suffered "from a chemical dependency problem for which he underwent treatment at William Beaumont Army Medical Center from February 5, 1983, to March 17, 1983, with a one year follow-up program...at Brooke Army Medical Center, Fort Sam Houston, Texas," and that he had "abused oral oxycodone (Percocet) in 1982."
  2. By letter dated April 12, 1989, the Board notified Dr. Josey that it proposed to take disciplinary action against his certificate to practice medicine and surgery in the State of Ohio based on alleged violations of Sections 4731.22(B)(15), (B)(26), and (B)(5), Ohio Revised Code, as then in effect.

Following a hearing, the Board, by Order dated November 8, 1989, revoked Dr. Josey's certificate to practice medicine and surgery in the State of Ohio; such revocation was stayed, and his certificate was made subject to certain probationary terms, conditions, and limitations for an indefinite period of time, but not less than eight years. The stayed revocation of his certificate and the subsequent placement of probationary terms, conditions, and limitations on his certificate were based on Findings of Fact which resulted in the following Conclusions:

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- a. Dr. Josey admittedly purchased and self-administered the addictive drug hydrocodone in violation of the conditions of limitation set forth in his Consent Agreement with the Board.
- b. Dr. Josey suffered from an “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.” Dr. Josey voluntarily sought treatment and, as of the date of the 1989 hearing, had remained drug-free since his discharge from Willingway Hospital in April 1989.
- c. At his February 1989, probationary appearance, Dr. Josey stated to Board representatives that he was doing well and was in compliance with his Consent Agreement. Those statements were false. In fact, at that time, Dr. Josey had relapsed by self-administering addictive drugs and was not in compliance with his Consent Agreement.

On or about November 13, 1997, the Board granted Dr. Josey’s petition for release from the terms of the November 8, 1989, Order.

3. On or about August 20, 2001, Dr. Josey notified the Board that he had relapsed by ingesting drugs such as Hydrocodone, Percocet, and Oxycodone. He informed the Board that his primary care physician had prescribed narcotic opiates for his back injury, neuralgia, and shingles; that he then began taking double doses of these drugs; and that he had obtained drugs, including Hydrocodone, Percocet, and Oxycodone, from the emergency room of the Southern Ohio Medical Center. He also admitted to abusing MS Contin prescribed by his rehabilitation physician. Finally, he reported that, on or about August 13, 2001, he had admitted himself to Shepherd Hill Hospital for inpatient treatment.

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

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

- B. On October 10, 2001, Kevin P. Byers, Esq., submitted a written hearing request on behalf of Dr. Josey. (State's Exhibit 1B)

## II. Appearances

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

## EVIDENCE EXAMINED

### I. Testimony Heard

- A. Presented by the State:
  - 1. Danielle Bickers
  - 2. Willie L. Josey, M.D., as on cross-examination.
- B. Presented by the Respondent:

Willie L. Josey, M.D.

### II. Exhibits Examined

- A. Presented by the State:
  - 1. State's Exhibits 1A-1K: Procedural exhibits.
  - 2. State's Exhibit 2: Certified copies of Board records concerning Dr. Josey.
- B. Presented by the Respondent:
  - 1. Respondent's Exhibit A: December 1, 2001, letter addressed "To Whom it May Concern" from Terrence B. Welsh, M.D.

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2. Respondent's Exhibit B: December 5, 2001, letter to Mr. Byers from Cindy Barbour, R.N., B.S.N., CARN., Shepherd Hill Hospital.
3. Respondent's Exhibit C: November 29, 2001, letter to the Board from James R. Mullins, M.D.
4. Respondent's Exhibit D: December 6, 2001, letter to Mr. Byers from Barron Farrier, CCDC III, Ohio Physicians Effectiveness Program.
5. Respondent's Exhibit E: December 1, 2001, letter to the Board from the Reverend Clarence M. Parker.
6. Respondent's Exhibit F: November 30, 2001, letter addressed "To Whom it May Concern" from Jitendra K. Patel, M.D.

### **PROCEDURAL MATTERS**

The record in this matter was held open to allow the Respondent to submit one additional document. This document was never received and the record closed on December 27, 2001.

### **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.

#### **General Background**

1. Willie L. Josey, M.D., testified that he had received a chemistry degree from South Carolina State College in 1969. Having participated in the Reserve Officer Training Corps program, Dr. Josey was called to active duty in the United States Army upon graduation and served for four years, including one year in Vietnam. He entered medical school at the University of South Carolina in 1973, graduating in 1977. He completed a one-year rotating internship at Henry Ford Hospital in Detroit before being recalled to active duty. He served two years in Panama before being transferred to Brooke Army Medical Center [Brooke], Fort Sam Houston, Texas, in 1980. (Hearing Transcript [Tr.] at 23-25)

While stationed at Brooke, Dr. Josey completed two and one half years in an internal medicine residency. He was subsequently transferred to Fort Knox, Kentucky in 1984.

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Dr. Josey remained on active duty until entering private practice in Alliance, Ohio in 1987. Dr. Josey was again recalled to active duty in 1990. While on active duty during 1990 and 1991, Dr. Josey served as Deputy Commander of, and Chief of Medical Services for, a 400-bed evacuation hospital in Saudi Arabia. Dr. Josey testified that he retired from the active reserve as a colonel in August 1996. (Tr. 23-25)

Dr. Josey testified that, upon obtaining licensure in Ohio in 1987, he had entered solo family practice in Alliance Ohio. Dr. Josey explained that, when he had been recalled to active duty in 1990, he had left his Alliance practice in the care of another physician. He had not been pleased with the condition of that practice when he returned from active duty. Thus, he decided to relocate to Portsmouth Ohio. (Tr. 25-26)

2. Dr. Josey testified that he currently has a solo family practice clinic in South Shore Kentucky. South Shore is directly across the Ohio River from Portsmouth. Dr. Josey testified that he has admitting privileges at Southern Ohio Medical Center [SOMC] in Portsmouth, Ohio. The next closest hospital is about thirty-five miles away. Dr. Josey noted that about seventy percent of his patients are Ohio residents. (Tr. 26-28)

### **Substance Abuse and Disciplinary History**

3. Dr. Josey had abused Percocet, which contains oxycodone, in 1982. He was treated for chemical dependency at William Beaumont Army Medical Center from February 5 through March 17, 1983. He subsequently completed a one-year aftercare program at Brooke. (State's Exhibit [St. Ex.] 2; Tr. 20-21)

Dr. Josey testified that he had been licensed to practice medicine and surgery in Ohio under the terms of a Consent Agreement which became effective on July 2, 1987. That Consent Agreement had been based on his history of addiction. (St. Ex. 2; Tr. 20-21)

4. In January and February 1989, Dr. Josey relapsed. He obtained and consumed drugs containing hydrocodone by means of prescription from a physician unaware of his chemical dependency history, and by directly purchasing and self-administering hydrocodone in violation of the conditions of limitation set forth in his Consent Agreement with the Board. (St. Ex. 2; Tr. 20-21)

On February 23, 1989, Dr. Josey appeared at a probationary conference with the Secretary of the Board. At that time Dr. Josey asserted that he was doing well and was in full compliance with the terms of the July 2, 1987, Consent Agreement. (St. Ex. 2; Tr. 20-21)

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On March 2, 1989, Dr. Josey informed his supervising physician, George E. Ewing, M.D., that he had relapsed. On March 3, 1989, Dr. Josey voluntarily entered Willingway Hospital, Statesville, Georgia to seek treatment for his relapsed addiction. On March 6, 1989, Dr. Ewing advised the Board that Dr. Josey had relapsed and violated the terms of his 1987 Consent Agreement. On April 14, 1989, Dr. Josey transferred from Willingway to the Central Ohio Recovery Residence [CORR], a unit of Shepherd Hill Hospital. In July 1989, Dr. Josey was released from CORR. (St. Ex. 2)

5. By letter dated April 12, 1989, the Board notified Dr. Josey that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in this State. At a Board hearing arising out of the April 12, 1989, Notice of Opportunity for Hearing, Dr. Ewing advised the Board that he had had almost daily contact with Dr. Josey during the 1989 relapse and had never observed any outward signs of impairment. He further advised that there had never been any quality of care concerns raised since Dr. Josey had joined the staff at Alliance Community Hospital in July 1987. (St. Ex. 2)

Following the 1989 hearing, the Board, by Order dated November 8, 1989, found that Dr. Josey had violated Sections 4731.22(B)(15), (B)(26), and (B)(5), Ohio Revised Code, as then in effect. The Board revoked Dr. Josey's certificate to practice medicine and surgery in the State of Ohio; stayed the revocation, and made his certificate subject to certain probationary terms, conditions, and limitations for an indefinite period of time, but not less than eight years. (St. Ex. 2; Tr. 20-21)

The Board also found that Dr. Josey's acts, conduct, and/or omissions constituted "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." The Board further found that Dr. Josey had remained drug-free since his discharge from Willingway Hospital in April 1989. (St. Ex. 2; Tr. 20-21)

6. On November 13, 1997, the Board granted Dr. Josey's petition for release from the terms of the November 8, 1989, Order. (St. Ex. 2)

### **The 2001 Relapse**

7. Dr. Josey testified that, in March 2001, he had developed neuropathy in his chest as a result of diabetes. He explained that, while he had been diagnosed with diabetes in 1986, it had taken some time to diagnose the diabetes as the cause of the neuropathy. Dr. Josey stated that his condition had been very painful. Initially he had been treated with Neurontin. Dr. Josey explained that Neurontin is an anti-seizure medication that is used for treating neuropathy and neuritis. However, Dr. Josey explained that he had developed double vision and had been convinced that this condition was a side effect of the use of the

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Neurontin. Subsequently, Jitendra Patel, M.D., his primary care physician and a board certified family practitioner, prescribed Percocet for Dr. Josey. (Respondent's Exhibit [Resp. Ex.] B; Tr. 16-17, 29-32, 38, 47)

Dr. Josey testified that Dr. Patel had referred him to Terrence Welsh, M.D., for physical rehabilitation treatment. Dr. Josey testified that he had started to receive drugs from Dr. Welsh in June or July 2001. Dr. Josey further testified that he had probably started taking double the prescribed dosage of his medications during June 2001. Dr. Josey also testified that he did not believe he had received pain drugs from both Dr. Welsh and Dr. Patel at the same time. However, he had visited the SOMC emergency department on several occasions and obtained Percocet prescriptions from physicians there during June, July and August 2001. Dr. Josey testified that the physicians treating him had not been aware that he was obtaining narcotics from other physicians. (Resp. Ex. A; Tr. 18-20, 28, 36, 47)

Dr. Josey testified that he had advised both Dr. Welsh and Dr. Patel upon first being seen by them that he had a problem with chemical dependency. Dr. Josey further testified that he had not hidden any of the facts about his prior addiction and conduct from Dr. Patel or Dr. Welsh. However, he made no effort to educate these physicians, who are not specifically training in addiction medicine, about the treatment of addicted patients. Dr. Josey testified that he now believes that Dr. Patel and Dr. Welsh did not fully understand the nature of the problem. (Tr. 18, 49-50, 52)

Dr. Josey testified that he believed that one of the emergency medicine physicians at SOMC had been aware of his addiction history but that none of the other emergency medicine physicians there had been aware of this history, and Dr. Josey did not provide them with this information. Dr. Josey testified that there was no reason for him to go to the SOMC emergency department except to obtain drugs. When other physicians suggested using narcotic analgesics to treat Dr. Josey's pain he did not remind them of his addiction and the risks that using these drugs entailed. Dr. Josey did not refuse to use the prescribed drugs. (Tr. 28-29, 50-51)

Dr. Josey testified that, during the summer of 2001, he had believed that he was obtaining additional narcotics to treat his pain. However, in retrospect, he believes that his addiction was leading his behavior in obtaining the narcotics. Dr. Josey testified that, when one is addicted to alcohol or drugs, any subsequent use of the addictive substance could lead to a relapse. (Tr. 20, 50)

Dr. Josey testified that, on six occasions, he obtained additional hydrocodone by telephoning prescriptions, purportedly for his wife, to a pharmacy in Kentucky. He had then picked up these prescriptions himself. (Tr. 51, 54-55)

8. Dr. Josey testified that the medical director at SOMC became aware of his repeated visits to the emergency department and confronted him about them. Dr. Josey further testified that he had agreed with the medical director that the visits had been inappropriate. Dr. Josey then sought inpatient treatment. (Tr. 34-35)
9. Dr. Josey was admitted to Shepherd Hill Hospital on August 13, 2001. (Resp. Ex. B; Tr. 20-21, 35, 38)
10. Danielle Bickers, Compliance Officer for the Board, testified at hearing. Ms. Bickers stated that her responsibilities include monitoring licensees on probation with the Board. She is responsible for collecting various reports on probationers. In addition she receives self-reports from physicians who have relapsed with a substance abuse problem. (Tr. 9-10)

Ms. Bickers testified that she received a telephone call from Dr. Josey on August 20, 2001. Dr. Josey reported to her that he had recently entered inpatient treatment at Shepherd Hill Hospital. Ms. Bickers stated that Dr. Josey had reported that he had been prescribed medications for neuralgia, back pain and shingles. He further reported that he had obtained and taken additional amounts of the drugs, including MS Contin and other narcotic opiates. Ms. Bickers testified that Dr. Josey might have provided additional information, which she no longer recalls. (Tr. 10-11)

Ms. Bickers testified that she had been aware that Dr. Josey had previously been on probation with the Board. However, she had not had any previous personal contact with Dr. Josey. She testified that she was unaware of any report that Dr. Josey had relapsed prior to his self-report on August 20, 2001. (Tr. 14-15)

11. At hearing, Dr. Josey testified that he had made the telephone call, described by Ms. Bickers in her testimony, at the direction of the medical director and staff at Shepherd Hill. Dr. Josey testified that he had provided Ms. Bickers with as much detail as he could. (Tr. 15-16, 28, 35)
12. Dr. Josey testified that he successfully completed inpatient treatment at Shepherd Hill and was released on November 9, 2001. (Resp. Ex. B; Tr. 35)
13. By letter dated December 5, 2001, Cindy Barbour, RN, BSN, CARN, addressed the Board on behalf of Shepherd Hill. She summarized the treatment Dr. Josey received at Shepherd Hill. Ms. Barbour also reported that Dr. Josey's recovery plan includes abstinence, monitoring by the Ohio Physicians Effectiveness Program [OPEP], monthly aftercare meetings at Shepherd Hill, and additional aftercare with the Kentucky Physicians Health Program [KPHF]. Dr. Josey is required by his aftercare contract with Shepherd Hill to attend at least four Alcoholics Anonymous [AA] meetings per week. (Resp. Ex. B)

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14. Dr. Welsh addressed the Board by letter dated December 1, 2001. Dr. Welsh practices in the areas of pain management, rehabilitation, occupational health, and electromyography. Dr. Welsh stated that Dr. Josey had been referred to him by Dr. Patel and later by Richard Whitney, M.D. Dr. Welsh summarized his treatment of Dr. Josey by stating that during 2001 he had treated Dr. Josey for "well-documented painful conditions." Dr. Welsh opined that Dr. Josey's prognosis for pain treatment without the use of opioids or mood altering drugs is good. (Resp. Ex. A)

Dr. Welsh stated that, with the exception of the relapse at issue in this hearing, Dr. Josey has been compliant with his treatment program. (Resp. Ex. A)

Dr. Welsh stated that he had had professional contact with Dr. Josey over the last ten years. He noted that he has found Dr. Josey to be hard working, stable, caring, and well-respected clinician, who is valued in the community. (Resp. Ex. A)

#### **Additional Information**

15. Dr. Josey testified that no treatment provider has recommended that he not practice medicine. However, Dr. Josey testified that he had chosen not to go directly back into practice after leaving Shepherd Hill because he wanted to be firmly reestablished in the aftercare community at home and be sure he was ready before resuming any practice. (Tr. 42, 53)

Dr. Josey testified that his first day back in his office was December 7, 2001. He worked a half day that Friday and full day on Monday December 10. Dr. Josey noted that he had retained a locum tenens physician to cover his office while he was at Shepherd Hill. (Tr. 47-48)

Dr. Josey stated that SOMC had placed him on restriction while he was at Shepherd Hill. However, he had been reinstated as a member of the medical staff upon completion of inpatient treatment. (Tr. 48)

16. Dr. Josey testified that the painful condition when led to his renewed abuse of pain medications persists to a lesser degree. Dr. Josey testified that he is currently receiving insulin and oral medication for his diabetes. He is also using diet and exercise to control the condition. Dr. Josey testified that he is now treating the chest neuropathy with Neurontin and physical therapy. He stated that the double vision side effect has not returned. Dr. Josey testified that he is not currently taking any narcotic analgesics or other mood altering drugs. (Tr. 30-32, 37-38, 51)

17. At hearing, Dr. Josey testified that the understanding and treatment of substance abuse has evolved significantly over the past ten years. He stated that he had understood after his earlier inpatient treatment that mood-altering medications were not in his best interest. However, he also stated that he had not become totally convinced that this was the case until he had been treated at Shepherd Hill in 2001. (Tr. 32-34)

Dr. Josey testified that he has a recovery plan in place with Shepherd Hill, OPEP and KPHF. This plan includes, Caduceus aftercare meetings once a month at Shepherd Hill, and aftercare meetings three times a month in Lexington, Kentucky. In addition, Dr. Josey has attended one or two other meetings per day since returning home. These include AA, Narcotics Anonymous, and a small Caduceus group in Portsmouth. Dr. Josey noted that he would likely attend fewer meetings once he returns to full time practice. (Tr. 38, 42-44, 46)

18. By letter dated December 6, 2001, and addressed to Dr. Josey's counsel, Barron Farrier, CCDC III, advised the Board that Dr. Josey entered into an OPEP Advocacy Contract on November 8, 2001. Mr. Farrier noted that OPEP has a good working relationship with KPHF. He explained that KPHF was supervising Dr. Josey's aftercare and OPEP was supervising the toxicology screens. (Resp. Ex. D; Tr. 41-42)

19. Dr. Josey testified that James R. Mullins, M.D., had been his monitoring physician when he had been on probation to the Board. Dr. Mullins practices in Portsmouth. Dr. Josey testified that, pursuant to his agreement with OPEP, he provides weekly random urine screens. He explained that Dr. Mullins will contact him and that he must report within six hours to provide a urine drop. Dr. Mullins observes the urine drop and forwards the sample to a laboratory which provides the results to OPEP. OPEP shares the results with Burns Brady, M.D., of KPHF. Dr. Brady is also in contact with Dr. Josey's recovery group sponsor (Tr. 38-42, 46-47)

Dr. Josey testified that he believes the Kentucky Board of Medical Licensure [Kentucky Board] is aware of his relapse because Dr. Burns had told him that Dr. Burns was required to notify the Kentucky Board. (Tr. 48-49)

20. Dr. Mullins addressed the Board by letter dated November 29, 2001. Dr. Mullins stated that he had previously served as physician monitor when Dr. Josey had been on probation with the Board. Dr. Mullins advised that he attends weekly Caduceus meetings with Dr. Josey and that he has agreed to serve as Dr. Josey's OPEP monitor. Dr. Mullins described the toxicology screening routine that he supervises for Dr. Josey. Dr. Mullins advised that he was willing to play any role the Board would ask of him in assisting Dr. Josey's recovery program. (Resp. Ex. C)

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21. At hearing, Dr. Josey discussed why he believes that dealing with this relapse is different from his previous experiences with substance abuse treatment. He explained that this time is that he is older and wiser. He noted that he had been trying to treat himself for pain and is now fully aware that self-treating was a bad idea. Dr. Josey believes that this time around he does not have another chance and thus is willing to go to any length to preserve his life and to do the best he can for his patients and his family. Dr. Josey testified that he is willing to cooperate with any monitoring the Board deems appropriate. (Tr. 45-46)

### **Additional Letters of Support**

22. By letter dated November 30, 2001, Dr. Patel stated that he had known Dr. Josey for over five years. He described Dr. Josey as a man of good character and integrity. Dr. Patel stated that Dr. Josey is well liked by patients and colleagues and possess a good fund of medical knowledge. (Resp. Ex. F; Tr. 45)
23. By letter dated December 1, 2001, the Reverend Clarence M. Parker addressed the Board. Rev. Parker advised the Board that he had known Dr. Josey, as his patient and friend, for the last eight to ten years, and as his pastor for about one and a half years. (Resp. Ex. E; Tr. 44-45)

Rev. Parker advised that he was very aware of Dr. Josey's present addiction to pain medication. He noted that Dr. Josey has always demonstrated character, professionalism, and dedication. Rev. Parker stated that he has never known Dr. Josey's addiction to affect his professional manner in providing medical care to Rev. Parker. He further stated that it has not adversely affected his service to the church. Rev. Parker stated that Dr. Josey is a dedicated and highly professional medical caregiver and a tremendous asset to the community. (Resp. Ex. E; Tr. 44-45)

### **FINDINGS OF FACT**

1. On July 2, 1987, Dr. Josey entered into a Consent Agreement with the Board. In this Consent Agreement, the Board agreed to issue to Dr. Josey a license to practice medicine and surgery in the State of Ohio subject to certain terms, conditions, and limitations. In addition, Dr. Josey admitted to having suffered "from a chemical dependency problem for which he underwent treatment at William Beaumont Army Medical Center from February 5, 1983, to March 17, 1983, with a one year follow-up program...at Brooke Army Medical Center, Fort Sam Houston, Texas," and that he had "abused oral oxycodone (Percocet) in 1982."

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2. By letter dated April 12, 1989, the Board notified Dr. Josey that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in the State of Ohio based on alleged violations of Sections 4731.22(B)(15), (B)(26), and (B)(5), Ohio Revised Code, as then in effect.

Following a hearing, the Board, by Order dated November 8, 1989, revoked Dr. Josey's certificate to practice medicine and surgery in the State of Ohio; such revocation was stayed, and his certificate was made subject to certain probationary terms, conditions, and limitations for an indefinite period of time, but not less than eight years. This action was based on Findings of Fact, which resulted in the following Conclusions:

- a. Dr. Josey admittedly purchased and self-administered the addictive drug hydrocodone in violation of the conditions of limitation set forth in his Consent Agreement with the Board.
- b. Dr. Josey's suffered from an "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." Dr. Josey voluntarily sought treatment and, as of the date of the 1989 hearing, had remained drug-free since his discharge from Willingway Hospital in April 1989.
- c. At his February 1989, probationary appearance, Dr. Josey stated to Board representatives that he was doing well and was in compliance with his Consent Agreement. Those statements were false. In fact, at that time, Dr. Josey had relapsed by self-administering addictive drugs and was not in compliance with his Consent Agreement.

On or about November 13, 1997, the Board granted Dr. Josey's petition for release from the terms of the November 8, 1989, Order.

3. On August 20, 2001, Dr. Josey notified the Board via telephone that he had relapsed by ingesting drugs. The record does not contain detailed evidence as to the entire content of this telephone conversation concerning specific drugs. Nevertheless, there is sufficient evidence in the record to support a Finding that, on or after August 20, 2001, Dr. Josey informed the Board about his relapse in significant detail. He informed the Board that his primary care physician had prescribed narcotic opiates for his back injury, neuralgia, and shingles; that he then began taking double doses of these drugs; and that he had obtained drugs, including hydrocodone, Percocet, and oxycodone. He also admitted to abusing MS Contin. Finally, he reported that on August 13, 2001, he admitted himself to Shepherd Hill Hospital for inpatient treatment.

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### CONCLUSIONS OF LAW

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

\* \* \* \* \*

The Proposed Order concerning Willie L. Josey, M.D., is similar to Orders placed on other physicians who have suffered two relapses subsequent to inpatient treatment.

However, the Board may wish to strongly consider an Order with a reduced period of suspension or no suspension. Such consideration is justified by the following mitigating factors:

- The length of time between Dr. Josey’s original inpatient treatment and the relapses.
  - His original abuse had been in 1982.
  - His first inpatient treatment had been in early 1983.
  - His first relapse and second inpatient treatment had been in early 1989.
  - His second relapse and third inpatient treatment had been in mid to late 2001.
- Dr. Josey’s self reporting.
- The absence of any evidence of harm to patients.
- Dr. Josey’s significant efforts to move forward with treatment and aftercare prior to Board intervention.

### PROPOSED ORDER

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Willie L. Josey, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Josey’s certificate shall be SUSPENDED for an indefinite period of time, but not less than one year.

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B. **INTERIM MONITORING:** During the period that Dr. Josey's certificate to practice medicine and surgery in Ohio is suspended, Dr. Josey shall comply with the following terms, conditions, and limitations:

1. **Obey Laws in Ohio:** Dr. Josey shall obey all federal, state, and local laws; and all rules governing the practice of medicine in Ohio.
2. **Quarterly Declarations:** Dr. Josey shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on 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.
3. **Appearances:** Dr. Josey shall appear in person for quarterly interviews before the Board or its designated representative, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
4. **Abstention from Drugs:** Dr. Josey shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. Josey's history of chemical dependency.
5. **Abstention from Alcohol:** Dr. Josey shall abstain completely from the use of alcohol.
6. **Rehabilitation Program:** Dr. Josey shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than four times per week. Substitution of any other specific program must receive prior Board approval. Dr. Josey 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. Josey's quarterly declarations.
7. **Drug & Alcohol Screens; Supervising Physician:** Dr. Josey shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Josey 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 days of the effective date of this Order, unless otherwise determined by the Board, Dr. Josey shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Josey shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Josey. Dr. Josey 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. Josey 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. Josey must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Josey 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. Josey's quarterly declarations. It is Dr. Josey's responsibility to ensure that reports are timely submitted.

8. **Provision of Blood or Urine for Screening without Prior Notice**: Dr. Josey shall submit blood and/or urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Josey's expense.
9. **Aftercare**: Dr. Josey shall maintain continued compliance with the terms of the aftercare contract entered into with Shepherd Hill Hospital, with the terms of his advocacy contracts with the Ohio Physicians Effectiveness Program and the Kentucky Physicians Health Foundation, provided that where terms of the aftercare contract and/or advocacy contracts conflict with terms of this Order, the terms of this Order shall control.

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

Dr. Josey shall also provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Order.

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

1. **Application and Fees:** Dr. Josey shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Continued Compliance with Interim Monitoring Conditions:** Dr. Josey shall have maintained continuing compliance with all terms of Paragraph B of this Order, unless otherwise determined by the Board.
3. **Demonstration of Ability to Resume Practice:** Dr. Josey 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, the following:
  - a. Evidence of continuing full compliance with this Order.
  - b. Two written reports indicating that Dr. Josey's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the Board for making such assessments and shall describe the basis for this determination.
4. **Absence from Practice:** In the event that Dr. Josey has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to the

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submission of his application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Josey's fitness to resume practice.

- D. **PROBATIONARY TERMS:** Upon reinstatement or restoration, Dr. Josey's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least ten years:
1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Josey shall continue to be subject to the terms, conditions, and limitations specified in paragraph B of this Order.
  2. **Absence from Ohio:** In the event that Dr. Josey should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Josey 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.
  3. **Violation of Probation; Discretionary Sanction Imposed:** If Dr. Josey violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
  4. **Tolling of Probationary Period while Out of Compliance:** In the event Dr. Josey 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.
- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Josey's certificate will be fully restored.
- F. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, unless otherwise determined by the Board, Dr. Josey 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. Josey 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.

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**G. REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING**

**AUTHORITIES:** Within thirty days of the effective date of this Order, unless otherwise determined by the Board, Dr. Josey 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. Josey 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. Josey shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board.

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



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Daniel Roberts  
Attorney Hearing Examiner



# State Medical Board of Ohio

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

## EXCERPT FROM THE DRAFT MINUTES OF MARCH 13, 2002

### REPORTS AND RECOMMENDATIONS

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

Dr. Somani advised that the Board has been unable to achieve service of the Report and Recommendation in the Matter of Rosemarie Fernandez, M.D. This matter will be rescheduled for April 2002.

Dr. Somani asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matter of Richard De La Flor, M.D.; Stephen N. Fisher, M.D.; James Harold Gray, Jr., D.O.; Thomas A. Hunter, P.A.; and Willie L. Josey, M.D. A roll call was taken:

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

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye

Dr. Stienecker	- aye
Dr. Agresta	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye
Dr. Somani	- aye

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

Dr. Somani 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.

.....

WILLIE L. JOSEY, M.D.

.....

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. ROBERTS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF WILLIE L. JOSEY, M.D. MS. SLOAN SECONDED THE MOTION.**

.....

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

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

The motion carried.



# 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/)

September 12, 2001

William L. Josey, M.D.  
2004 Waller Street  
Portsmouth, Ohio 45662

Dear Doctor Josey:

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

- (1) On or about July 2, 1987, you entered into a Consent Agreement, a copy of which is attached hereto and fully incorporated herein, with the State Medical Board of Ohio (hereinafter Board). In this Consent Agreement, the Board agreed to issue to you a license to practice medicine and surgery in the State of Ohio subject to certain terms, conditions, and limitations. In addition, you admitted to having suffered "from a chemical dependency problem for which [you] underwent treatment at William Beaumont Army Medical Center from February 5, 1983, to March 17, 1983, with a one year follow-up program...at Brooke Army Medical Center, Fort Sam Houston, Texas," and that you had "abused oral oxycodone (Percocet) in 1982."
- (2) By letter dated April 12, 1989, the Board notified you that it proposed to take disciplinary action against your certificate to practice medicine and surgery in the State of Ohio based on alleged violations of Sections 4731.22(B)(15), (B)(26), and (B)(5), Ohio Revised Code.

Following a hearing in this matter, the Board, by Order dated November 8, 1989, a copy of which is attached hereto and fully incorporated herein, revoked your certificate to practice medicine and surgery in the State of Ohio; such revocation was stayed, and your certificate was made subject to certain probationary terms, conditions, and limitations for an indefinite period of time, but not less than eight (8) years. The stayed revocation of your certificate and

*Mailed 9.13.01*

the subsequent placement of probationary terms, conditions, and limitations on your certificate were based on Findings of Fact which resulted in the following Conclusions:

- (a) Dr. Josey admittedly purchased and self-administered the addictive drug hydrocodone in violation of the conditions of limitation set forth in his Consent Agreement with the Board. Such acts, conduct, and/or omissions constitute "violation of the conditions of limitation placed by the Board upon a certificate to practice", [sic] as that clause is used in Section 4731.22(B)(15), Ohio Revised Code;
- (b) Dr. Josey's acts, conduct, and/or omissions, as set forth in the above Findings of Fact, constitute "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", [sic] as that clause is used in Section 4731.22(B)(26), Ohio Revised Code. Dr. Josey is admittedly a chemically dependent person. He was previously treated for chemical dependency in 1983. Approximately six years later, although he had entered into a Consent Agreement with the State Medical Board of Ohio in 1987, he relapsed into active chemical dependency. Even though the evidence in this Matter indicates that Dr. Josey voluntarily sought treatment and has remained drug-free since his discharge from Willingway Hospital in April, [sic] 1989, he must be considered an impaired physician, subject to the monitoring of this Board, until he has demonstrated his ability to maintain sobriety over the long-term; and
- (c) At [Dr. Josey's] February, 1989 [sic], probationary appearance, Dr. Josey stated to Board representatives that he was doing well and was in compliance with his Consent Agreement. Those statements were admittedly false. In fact, at that time, Dr. Josey had relapsed by self-administering addictive drugs and was not in compliance with his Consent Agreement. Such acts, conduct, and/or omissions constitute "publishing a false, fraudulent, deceptive or misleading statement", [sic] as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Subsequently, on or about November 13, 1997, the Board granted your petition for release from the terms of this Order.

- (3) On or about August 20, 2001, you notified the Board's Compliance Officer that you relapsed by ingesting drugs such as Hydrocodone, Percocet, and Oxycodone. You informed the Compliance Officer that your primary care physician prescribed narcotic opiates to you for your back injury, neuralgia, and

shingles; that you then began taking double doses of these drugs; and that you obtained drugs, including Hydrocodone, Percocet, and Oxycodone, from the emergency room of the Southern Ohio Medical Center. Further, you also admitted to abusing prescriptions of MSContin prescribed by your rehabilitation physician. Finally, you reported that on or about August 13, 2001, you admitted yourself to Shepherd Hill Hospital for inpatient treatment.

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

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

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

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

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

Copies of the applicable sections are enclosed for your information.

WILLIAM L. JOSEY, M.D.

Page 4

Very truly yours,

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

Anand G. Garg, M.D.  
Secretary

AGG/bjs  
Enclosures

CERTIFIED MAIL #7000 0600 0024 5147 0725  
RETURN RECEIPT REQUESTED

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

\*

\*

WILLIE L. JOSEY, M.D.

\*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on the 8th day of November, 1989.

Upon the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, Medical Board, in this matter designated pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on November 8, 1989, the following Order is hereby entered on the Journal of the State Medical Board for the 8th day of November, 1989.

It is hereby ORDERED that:

1. The certificate of Willie L. Josey, M.D., to practice medicine and surgery in the State of Ohio shall be revoked. Such revocation shall be stayed, and Dr. Josey's certificate shall be subject to the following probationary terms, conditions, and limitations for an indefinite period of time, but not less than eight (8) years:
  - a. Dr. Josey shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
  - b. Dr. Josey shall submit quarterly declarations under penalty of perjury stating whether or not there has been compliance with all the conditions of probation.
  - c. Dr. Josey shall appear in person for interviews before the full Board or its designated representative at three (3) month intervals, or as otherwise requested by the Board.
  - d. In the event that Dr. Josey should leave Ohio for three (3) continuous months, or reside or practice outside the state, Dr. Josey must notify the Board in writing of the dates of departure and return. Periods of times spent outside of Ohio will not apply to the reduction of this probationary period.

- e. Dr. Josey shall immediately surrender his United States Drug Enforcement Administration certificate. He shall be ineligible to hold, and shall not apply for, registration with D.E.A. to prescribe, dispense, or administer controlled substances without prior Board approval. Dr. Josey shall not seek such Board approval for a minimum of six (6) months from the effective date of this Order. Upon reinstatement of his D.E.A. registration, Dr. Josey shall keep a log of all controlled substances prescribed, dispensed, or administered. Such log shall be submitted in the format approved by the Board thirty (30) days prior to Dr. Josey's personal appearances before the Board or its designated representative, or as otherwise directed by the Board.
- f. Dr. Josey shall abstain completely from the personal use or possession of drugs, except for those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Dr. Josey's history of chemical dependency.
- g. Dr. Josey shall abstain completely from the personal use or consumption of alcohol.
- h. Dr. Josey shall submit urine specimens for random screenings for drugs on a weekly basis, or as otherwise directed by the Board. Dr. Josey shall ensure that all screening reports are forwarded directly to the Board on a monthly basis. Within thirty (30) days of the effective date of this Order, Dr. Josey shall submit to the Board for its prior approval the name of a supervising physician who shall ensure that the urine specimens are obtained on a random basis and without prior notice, 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. In the event that the designated supervising physician for this purpose becomes unable or unwilling to so serve, Dr. Josey must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable.
- i. Dr. Josey shall submit blood or urine specimens for analysis without prior notice at such times as the Board may request.
- j. Dr. Josey shall have a monitoring physician, approved by

the Board, who shall monitor him and provide the Board with reports on Dr. Josey's progress and status. Dr. Josey shall ensure that said reports are forwarded to the Board on a quarterly basis. In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Josey must immediately so notify the Board in writing, and make arrangements acceptable to the Board for another physician to monitor his progress and status as soon as practicable.

- k. Dr. Josey shall provide all employers and the Chief of Staff at each hospital where he has, applies for, or obtains privileges with a copy of this Order.
1. Dr. Josey shall maintain participation in an alcohol and drug rehabilitation program, such as AA, NA, or Caduceus, acceptable to the Board, no less than four (4) times per week. Dr. Josey shall submit documentary evidence of his continuing compliance with such program thirty (30) days in advance of each personal appearance before the Board, or as otherwise directed by the Board.
2. If Dr. Josey violates probation in any respect, the Board, after giving Dr. Josey notice and the opportunity to be heard, may set aside the stay order and impose the revocation of his certificate.
3. Upon successful completion of probation, as evidenced by a written release by the Board, Dr. Josey's certificate will be fully restored.

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

(SEAL)

  
Henry G. Cramblett, M.D.  
Secretary

November 17, 1989  
Date

OCT 13 1989

REPORT AND RECOMMENDATION  
IN THE MATTER OF WILLIE L. JOSEY, M.D.

The Matter of Willie L. Josey, M.D., came on for hearing before me, Wanita J. Sage, Esq., Hearing Examiner for the State Medical Board of Ohio, on September 15, 1989.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

A. By letter of April 12, 1989 (State's Exhibit #4), the State Medical Board notified Willie L. Josey, M.D., that it proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board alleged that, although Dr. Josey had represented to Dr. Henry G. Cramblett, Secretary of the State Medical Board, at a February 23, 1989, probationary appearance that he was in compliance with the terms of his July 2, 1987, Consent Agreement with the State Medical Board, in fact, he had suffered a relapse of his addiction approximately six weeks prior to that probationary appearance by self-prescribing Hycodan. At the time of his February 23, 1989, probationary appearance, Dr. Josey had not brought with him the quarterly report of his supervising physician, Dr. George E. Ewing. On or about March 2, 1989, Dr. Ewing notified the Board staff of Dr. Josey's relapse. On or about March 3, 1989, Dr. Josey entered Willingway in Statesville, Georgia, to seek help for his self-prescribing of Hycodan, a Schedule III controlled substance with Codeine. The Board alleged that Dr. Josey's acts, conduct, and/or omissions constituted:

1. "Violation of the conditions of limitation placed by the Board upon a certificate to practice", as that clause is used in Section 4731.22(B)(15), Ohio Revised Code;
2. "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", as that clause is used in Section 4731.22(B)(26), Ohio Revised Code; and/or
3. "Publishing a false, fraudulent, deceptive, or misleading statement", as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Dr. Josey was advised of his right to request a hearing in this Matter.

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- B. By letter received by the State Medical Board on April 25, 1989 (State's Exhibit #3), as clarified by a May 2, 1989, telephone conversation (see State's Exhibit #2), Dr. Josey requested a hearing in this Matter.

II. Appearances

- A. On behalf of the State of Ohio: Anthony J. Celebrezze, Jr., Attorney General, by Rachel L. Belenker, Assistant Attorney General
- B. Dr. Josey, having been duly advised of his right to representation, appeared on his own behalf without counsel.

III. Testimony Heard

- A. Presented by the State
1. Willie L. Josey, M.D., as on cross-examination
- B. Presented by the Respondent
1. Willie L. Josey, M.D.
  2. George E. Ewing, M.D., Dr. Josey's supervising physician under the terms of his Consent Agreement
  3. Paul C. Redmond, M.D., Medical Director and Program Director, Shepherd Hill Hospital
  4. Donald P. Bowermaster, D.D.S., Director, Health Care Professionals' Re-Entry and Advocacy Program, Shepherd Hill Hospital

IV. Exhibits Examined

In addition to those listed above, the following exhibits were identified by the State and admitted into evidence in this Matter:

- A. State's Exhibit #1: July 27, 1989, letter to Dr. Josey from the State Medical Board scheduling the hearing for September 15, 1989.
- B. State's Exhibit #2: May 3, 1989, letter to Dr. Josey from the State Medical Board advising that the hearing initially set for May 9, 1989, was postponed pursuant to Section 119.09, Ohio Revised Code.
- C. State's Exhibit #5: Consent Agreement between Willie Leroy Josey, M.D., and the State Medical Board of Ohio, effective July 2, 1987.
- D. State's Exhibit #6: March 3, 1989, State Medical Board File Memorandum, prepared by Cecilia A. Ash, Secretary, Enforcement Division, regarding Dr. Josey's February 23, 1989, probationary appearance.

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- E. State's Exhibit #7: March 6, 1989, State Medical Board File Memorandum, prepared by John W. Rohal, Assistant Director, regarding a March 6, 1989, telephone call from Dr. George E. Ewing, Dr. Josey's supervising physician.
- F. State's Exhibit #8: April 7, 1989, State Medical Board File Memorandum, prepared by Thomas A. Dilling, Enforcement Coordinator, regarding a telephone call to Dr. Ewing.
- \* G. State's Exhibit #9: Records from Dr. Josey's treatment at Willingway Hospital, Statesboro, Georgia, from March 3 to April 14, 1989.

\* NOTE: THE EXHIBIT MARKED WITH AN ASTERIK (\*) ABOVE HAS BEEN SEALED DUE TO FEDERAL CONFIDENTIALITY REQUIREMENTS.

#### FINDINGS OF FACT

1. Effective July 2, 1987, Willie L. Josey, M.D., entered into a Consent Agreement with the State Medical Board of Ohio in which he admitted suffering from a "chemical dependency problem for which he underwent treatment at William Beaumont Army Medical Center from February 5, 1983, to March 17, 1983, with a one year follow-up program...at Brooke Army Medical Center, Fort Sam, Houston, Texas." He further admitted that he had abused oral Oxycodone (Percocet) in 1982.

These facts are established by State's Exhibit #5, and by the admissions of Dr. Josey (Tr. at 17).

2. By the terms of the July 2, 1987, Consent Agreement, the State Medical Board agreed to issue a license to practice medicine and surgery to Dr. Josey, subject to certain specified terms, conditions, and limitations, including the following:
  - a. Numbered paragraph 1 required Dr. Josey to obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio.
  - b. Numbered paragraph 3 required Dr. Josey to appear in person for interviews before the full Board or its designated representative at three-month intervals, or as otherwise requested by the Board.
  - c. Numbered paragraph 6 required Dr. Josey to abstain completely from the personal use or possession of drugs, except for those prescribed, administered, or dispensed to him by his personal physician who has full knowledge of his history of chemical dependency.

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- d. Numbered paragraph 7 required Dr. Josey to abstain completely from the use of oral Oxycodone (Percocet) and any addictive drugs.
- e. Numbered paragraph 9 required Dr. Josey to submit the name of a supervising physician for Board approval within 30 days of the effective date of the Agreement, and to ensure that this supervising physician submitted quarterly reports to the Board indicating Dr. Josey's status and progress and any medication prescribed.

These facts are established by State's Exhibit #5 and by the admissions of Dr. Josey (Tr. at 17-18).

- 3. On February 23, 1989, pursuant to paragraph 3 of his Consent Agreement, Dr. Josey appeared in person before Dr. Henry G. Cramblett, Secretary of the State Medical Board, and members of the Board staff. At that time, Dr. Josey represented that everything was going pretty good with him and that he was abiding by the terms of his Consent Agreement. Dr. Josey was advised that no report had been received from Dr. Ewing, his supervising physician, since July, 1988. Dr. Josey indicated that he would have Dr. Ewing send a report.

These facts are established by State's Exhibit #6 and by the admissions of Dr. Josey (Tr. at 18-19).

- 4. In fact, at least six weeks prior to this February 23, 1989, probationary appearance, Dr. Josey had reactivated his chemical dependency by ingesting narcotic analgesics. At hearing, Dr. Josey admitted that he had been taking Anexsia, a Schedule III opioid analgesic containing hydrocodone bitartrate, which he had purchased in bottles of 100 each for his personal use in both January and February. Prior to those purchases, he had obtained prescriptions for Vicodin, a Schedule III narcotic analgesic containing hydrocodone, from another physician who had not had full knowledge of his chemical dependency. Dr. Josey stated that he had discontinued seeing his personal physician for treatment of his hypertension and diabetes. As a consequence, he had suffered from headaches and had requested Percocet from another physician. That physician, knowing that Dr. Josey had had problems with Percocet in the past, had provided Vicodin instead.

These facts are established by the testimony of Dr. Josey (Tr. at 20-24, 30-32).

- 5. Dr. Josey testified that, at the time of his probationary appearance in February, he had been in total denial with regard to his chemical dependency problem. He had indicated that he had been doing well because he had felt his medical practice had been going well. Although he had felt ashamed of the fact that he had been self-prescribing in violation of his Consent Agreement, he had felt unable to be honest about it. His professional, rather than personal, well-being had been his primary concern. However, after that meeting, he had realized he would have to change. During the last few days of February, he had felt that he was losing control and had known that he couldn't safely continue taking drugs and seeing patients.

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These facts are established by the testimony of Dr. Josey (Tr. at 18-20, 24-28, 37-38).

6. On March 3, 1989, Dr. Josey entered Willingway Hospital in Statesboro, Georgia, to seek help for his self-administration of hydrocodone. He remained there as an inpatient until April 14, 1989, when he was discharged to the Central Ohio Recovery Residence (CORR), a halfway house under the auspices of Shepherd Hill Hospital, Newark, Ohio.

Although the admission history taken at Willingway indicates that Dr. Josey had been taking hydrocodone since November, 1988, Dr. Josey claimed at hearing that he had been taking it only approximately six weeks, rather than six months, prior to admission. Although the admission history also states that he had been using 10 to 12 tablets daily, Dr. Josey testified, in response to the State's question, that he had used only approximately 10 mgs. of hydrocodone every four to six hours.

These facts are established by State's Exhibit #9 and by the testimony of Dr. Josey (Tr. at 26-27, 39).

7. On March 6, 1989, Dr. Josey's supervising physician, Dr. George E. Ewing, telephoned the State Medical Board to report that Dr. Josey had admitted his relapse on March 2 and had entered Willingway on March 3, 1989. Both at that time and during an April 7, 1989, telephone conversation with Board staff, Dr. Ewing indicated that Dr. Josey's relapse had occurred approximately six weeks prior to his admission.

Dr. Ewing testified at hearing that he had learned of Dr. Josey's relapse through another physician whom Dr. Josey had called for help. Dr. Ewing stated that he had seen Dr. Josey almost daily, but had never observed any actions that had suggested that Dr. Josey was impaired. Further, as a member of the Quality Assurance Committee at Alliance Community Hospital, Dr. Ewing knew that Dr. Josey had never had a quality issue of any kind since joining that hospital's staff in July, 1987. Although Dr. Josey had been suspended from hospital staff during his rehabilitation, he was reinstated as of June, 1989, upon the recommendation of Shepherd Hill staff.

These facts are established by State's Exhibits #7 and #8 and by the testimony of Dr. Ewing (Tr. 41-56).

8. Since Dr. Josey's release from CORR in July, 1989, he has maintained full compliance with his aftercare and monitoring contract. This contract involves his participation in a weekly meeting at Shepherd Hill, random urine screens on a weekly basis, and attending Caduceus and 12-step meetings. Dr. Josey stated that he has attended Caduceus, AA, and NA meetings three to four times per week and has an NA sponsor. Dr. Josey stated that his recent treatment, unlike his prior treatment in 1983, has taught him to accept the disease concept of chemical dependency and to understand its nature. He now knows what he must do to stay clean.

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These facts are established by the testimony of Dr. Donald P. Bowermaster (Tr. at 73-74) and the testimony of Dr. Josey (Tr. at 28-30, 33-39).

9. In the opinion of Dr. Paul C. Redmond, Program Director, Shepherd Hill Hospital, Dr. Josey has demonstrated commitment to recovery, has no current impairment which would interfere with his ability to provide appropriate patient care, and is capable of safely continuing his practice of medicine with appropriate monitoring.

With regard to Dr. Josey's representations at his February probationary appearance, Dr. Redmond explained that it was not unusual for a person with the active disease of chemical dependency to deny problems or to be unable to admit that problems exist. When that disease is active, various defense mechanisms, such as minimization, rationalization, or justification, which are often subconscious, become pathologically exaggerated. However, even with his defense mechanisms active, Dr. Josey had voluntarily sought help and submitted to treatment because he had had trouble with his value system after his February meeting with the Board representatives.

Dr. Redmond testified that Dr. Josey had undergone neuropsychological testing at the request of Shepherd Hill. Neuropsychological problems, typical of an individual taking mood-altering drugs, had been detected. While the tests indicated that Dr. Josey's judgment had been impaired at the time he had met with the Board representatives, the impairment had probably not been to the degree where it had interfered with his professional practice, which is typically the last area of a professional's life to be influenced. Follow-up testing, done after a period of abstinence, had shown Dr. Josey to have improved in all areas. There is no current problem which would interfere with Dr. Josey's ability to practice medicine.

These facts are established by the testimony of Dr. Redmond (Tr. at 57-72).

#### CONCLUSIONS

1. Dr. Josey admittedly purchased and self-administered the addictive drug hydrocodone in violation of the conditions of limitation set forth in his Consent Agreement with the Board. Such acts, conduct, and/or omissions constitute "violation of the conditions of limitation placed by the Board upon a certificate to practice", as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

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2. Dr. Josey's acts, conduct, and/or omissions, as set forth in the above Findings of Fact, constitute "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", as that clause is used in Section 4731.22(B)(26), Ohio Revised Code. Dr. Josey is admittedly a chemically dependent person. He was previously treated for chemical dependency in 1983. Approximately six years later, although he had entered into a Consent Agreement with the State Medical Board of Ohio in 1987, he relapsed into active chemical dependency. Even though the evidence in this Matter indicates that Dr. Josey voluntarily sought treatment and has remained drug-free since his discharge from Willingway Hospital in April, 1989, he must be considered an impaired physician, subject to the monitoring of this Board, until he has demonstrated his ability to maintain sobriety over the long-term.
3. At his February, 1989, probationary appearance, Dr. Josey stated to Board representatives that he was doing well and was in compliance with his Consent Agreement. Those statements were admittedly false. In fact, at that time, Dr. Josey had relapsed by self-administering addictive drugs and was not in compliance with his Consent Agreement. Such acts, conduct, and/or omissions constitute "publishing a false, fraudulent, deceptive or misleading statement", as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

\* \* \* \* \*

Dr. Josey's violation of his Consent Agreement and his misrepresentations to this Board cannot be taken lightly. Dr. Josey violated the Board's trust. His acts compromised this Board's obligation to ensure the safe and effective practice of medicine and surgery by physicians who have, by their past actions, proven themselves to be a potential danger to Ohio health care consumers.

Nevertheless, this Board is well-acquainted with the concept that denial is a common symptom of the disease of chemical dependency. Further, the fact that Dr. Josey voluntarily sought treatment shortly after his misrepresentations to the Board may be considered as a mitigating factor. There is no evidence of harm to patients. The testimony presented in this Matter indicated that Dr. Josey has taken responsibility for his actions, is committed to maintaining sobriety, and is currently practicing in a capable manner. Under such circumstances, this Board has in the past shown willingness to encourage the rehabilitation of impaired physicians after relapse. However, in view of Dr. Josey's past misrepresentations to the Board, it would seem particularly imperative in this case to institute objective measures of Dr. Josey's compliance with any conditions imposed by the Board.

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PROPOSED ORDER

It is hereby ORDERED that:

1. The certificate of Willie L. Josey, M.D., to practice medicine and surgery in the State of Ohio shall be revoked. Such revocation shall be stayed, and Dr. Josey's certificate shall be subject to the following probationary terms, conditions, and limitations for an indefinite period of time, but not less than eight (8) years:
  - a. Dr. Josey shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
  - b. Dr. Josey shall submit quarterly declarations under penalty of perjury stating whether or not there has been compliance with all the conditions of probation.
  - c. Dr. Josey shall appear in person for interviews before the full Board or its designated representative at three (3) month intervals, or as otherwise requested by the Board.
  - d. In the event that Dr. Josey should leave Ohio for three (3) continuous months, or reside or practice outside the state, Dr. Josey must notify the Board in writing of the dates of departure and return. Periods of times spent outside of Ohio will not apply to the reduction of this probationary period.
  - e. Dr. Josey shall immediately surrender his United States Drug Enforcement Administration certificate. He shall be ineligible to hold, and shall not apply for, registration with D.E.A. to prescribe, dispense, or administer controlled substances without prior Board approval. Dr. Josey shall not seek such Board approval for a minimum of six (6) months from the effective date of this Order. Upon reinstatement of his D.E.A. registration, Dr. Josey shall keep a log of all controlled substances prescribed, dispensed, or administered. Such log shall be submitted in the format approved by the Board thirty (30) days prior to Dr. Josey's personal appearances before the Board or its designated representative, or as otherwise directed by the Board.
  - f. Dr. Josey shall abstain completely from the personal use or possession of drugs, except for those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Dr. Josey's history of chemical dependency.
  - g. Dr. Josey shall abstain completely from the personal use or consumption of alcohol.

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- h. Dr. Josey shall submit urine specimens for random screenings for drugs on a weekly basis, or as otherwise directed by the Board. Dr. Josey shall ensure that all screening reports are forwarded directly to the Board on a monthly basis. Within thirty (30) days of the effective date of this Order, Dr. Josey shall submit to the Board for its prior approval the name of a supervising physician who shall ensure that the urine specimens are obtained on a random basis and without prior notice, 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. In the event that the designated supervising physician for this purpose becomes unable or unwilling to so serve, Dr. Josey must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable.
  - i. Dr. Josey shall submit blood or urine specimens for analysis without prior notice at such times as the Board may request.
  - j. Dr. Josey shall have a monitoring physician, approved by the Board, who shall monitor him and provide the Board with reports on Dr. Josey's progress and status. Dr. Josey shall ensure that said reports are forwarded to the Board on a quarterly basis. In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Josey must immediately so notify the Board in writing, and make arrangements acceptable to the Board for another physician to monitor his progress and status as soon as practicable.
  - k. Dr. Josey shall provide all employers and the Chief of Staff at each hospital where he has, applies for, or obtains privileges with a copy of this Order.
  1. Dr. Josey shall maintain participation in an alcohol and drug rehabilitation program, such as AA, NA, or Caduceus, acceptable to the Board, no less than four (4) times per week. Dr. Josey shall submit documentary evidence of his continuing compliance with such program thirty (30) days in advance of each personal appearance before the Board, or as otherwise directed by the Board.
2. If Dr. Josey violates probation in any respect, the Board, after giving Dr. Josey notice and the opportunity to be heard, may set aside the stay order and impose the revocation of his certificate.
  3. Upon successful completion of probation, as evidenced by a written release by the Board, Dr. Josey's certificate will be fully restored.

Report and Recommendation  
In the Matter of Willie L. Josey, M.D.  
Page 10

OCT 19 1900

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

*Wanita J. Sage*

Wanita J. Sage  
Attorney Hearing Examiner

OCT 19 1900

STATE OF OHIO  
THE STATE MEDICAL BOARD  
77 SOUTH HIGH STREET  
17TH FLOOR  
COLUMBUS OH 43215

April 12, 1989

Willie L. Josey, M.D.  
712 South Union  
Alliance, OH 44601

Dear Doctor Josey:

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

- (1) On or about July 2, 1987 you entered into a Consent Agreement with the State Medical Board of Ohio in which you admitted having suffered "from a chemical dependency problem for which (you) underwent treatment at William Beaumont Army Medical Center from February 5, 1983 to March 17, 1983, with a one year follow-up program ... at Brooke Army Medical Center, Fort Sam Houston, Texas." Further, you admitted that you had "abused oral Oxycodone (Percocet) in 1982."
- (2) On or about July 2, 1987, you entered into a Consent Agreement with the State Medical Board of Ohio which placed terms, conditions and limitations on you in regard to your license to practice medicine and surgery in the State of Ohio, which included the following:
  - (a) DOCTOR JOSEY shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio.
  - (b) DOCTOR JOSEY shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by his personal physician who has full knowledge of DOCTOR JOSEY's history of chemical dependency.
  - (c) DOCTOR JOSEY shall abstain completely from the use of oral oxycodone (Percocet) and any addictive drug.

April 12, 1989

- (d) DOCTOR JOSEY shall submit the name of a supervising physician for BOARD approval within thirty (30) days of the effective date of this Agreement. DOCTOR JOSEY shall ensure that his supervising physician submits quarterly reports to the BOARD which indicate DOCTOR JOSEY'S status and progress and any medication prescribed.
- (3) On or about March 3, 1989 you entered Willingway in Statesville, Georgia to seek help for your self-prescribing of Hycodan, a Schedule III Controlled Substance which is a derivative of Codeine. This conduct evidences your failure to fully comply with the terms of the Consent Agreement mentioned in paragraph (1) above.
- (4) On or about February 23, 1989, you met with Henry G. Cramblett, M.D., Secretary of the State Medical Board and members of the Board staff at the Board offices as one of your probationary appearances pursuant to the terms of your July 1987 Consent Agreement.
- (a) At that time, you represented to Dr. Cramblett that everything was going pretty good with yourself and that you were abiding by the terms of the Consent Agreement.
- (b) At that time, you did not bring with you the quarterly report of your supervising physician, George E. Ewing, M.D. by which he indicates your status and progress and any medication prescribed. You stated that you would have Dr. Ewing send that letter.
- (c) On or about March 2, 1989, your supervising physician Dr. Ewing notified the Board's staff that in fact, you had suffered a relapse of your addiction by self-prescribing Hycodan. Apparently, this relapse began approximately six (6) weeks prior to you entering Willingway in Statesville, Georgia on March 3, 1989 for treatment. Thus, you had relapsed prior to your February 23, 1989 probationary appearance before Dr. Cramblett at which you made representations as to your compliance with the terms of your Consent Agreement mentioned in paragraph (1) above.

Your acts, conduct, and/or omissions, as alleged in the above paragraphs (3) and (4), individually and/or collectively, constitute a "violation of the conditions of limitation placed by the board upon a certificate to practice or violation of the conditions of limitation upon which a limited or temporary registration or certificate to practice is issued," as that clause is used in Section 4731.22(B)(15) of the Revised Code.

April 12, 1989

Further, your acts, conduct, and/or omissions, as alleged in the above paragraphs (1) through (4), individually and/or collectively, constitute "(i)mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

Further, your acts, conduct and/or omissions, as alleged in the above paragraph (4), individually and/or collectively, constitute "publishing a false, fraudulent, deceptive, or misleading statement," 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, that request must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Henry G. Cramblett, M.D.  
Secretary

HGC:jmb  
Encls.

CERTIFIED MAIL #P 746 510 066  
RETURN RECEIPT REQUESTED

STATE OF OHIO  
THE STATE MEDICAL BOARD

CONSENT AGREEMENT  
BETWEEN  
WILLIE LEROY JOSEY, M.D.  
AND  
THE STATE MEDICAL BOARD OF OHIO

87 JUN 25 11:55

OFFICE OF THE CLERK OF THE BOARD

THIS CONSENT AGREEMENT is entered into by and between WILLIE LEROY JOSEY, M.D., and THE STATE MEDICAL BOARD OF OHIO, a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

WILLIE LEROY JOSEY, M.D. enters into this 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.

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

1. THE STATE MEDICAL BOARD OF OHIO is empowered by Section 4731.29, Ohio Revised Code, to issue a certificate to practice medicine and surgery to a Diplomate of the National Board of Medical Examiners who meet the licensure requirements set forth in Section 4731.08, 4731.09, and 4731.11, Ohio Revised Code.
2. The BOARD may refuse to issue a certificate to an applicant who fails to furnish proof satisfactory to the BOARD that he is of good moral character, as required by Section 4731.08, Ohio Revised Code, and may further limit, reprimand, revoke, a certificate on the grounds of 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, as provided by Section 4731.22(B)(26), Ohio Revised Code.
3. WILLIE LEROY JOSEY, M.D. ADMITS that he suffers from a chemical dependency problem for which he underwent treatment at William Beaumont Army Medical Center from February 5, 1983 to March 17, 1983, with a one year follow-up program with Dr. Peter Montgomery, at Brooke Army Medical Center, Fort Sam Houston, Texas.
4. WILLIE LEROY JOSEY, M.D. ADMITS that he has abused oral Oxycodone (Percocet) in 1982.

WHEREFORE, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, it is hereby AGREED that THE STATE MEDICAL BOARD OF OHIO shall issue a license to practice medicine and surgery to WILLIE LEROY JOSEY, M.D., subject to the following terms, conditions and limitations:

1. DOCTOR JOSEY shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio.
2. DOCTOR JOSEY shall submit quarterly declarations under penalty of perjury stating whether there has been compliance with all the conditions of this Consent Agreement.
3. DOCTOR JOSEY shall appear in person for interviews before the full BOARD or its designated representative at three month intervals, or as otherwise requested by the BOARD.
4. In the event that DOCTOR JOSEY should leave Ohio for three continuous months, or reside or practice outside the State, DOCTOR JOSEY must notify THE STATE MEDICAL BOARD OF OHIO in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of this period under the Consent Agreement.

STATE OF OHIO  
THE STATE MEDICAL BOARD

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OHIO  
MEDICAL BOARD

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Willie Leroy Josey, M.D.  
Consent Agreement

5. DOCTOR JOSEY shall be eligible to hold a registration with the United States Drug Enforcement Administration to prescribe, dispense or administer all controlled substances. DOCTOR JOSEY must maintain a log of all controlled substances he prescribes, dispenses or administers and this log is to be presented at each appearance before the BOARD or its representative.
6. DOCTOR JOSEY shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by his personal physician who has full knowledge of DOCTOR JOSEY's history of chemical dependency.
7. DOCTOR JOSEY shall abstain completely from the use of oral Oxycodone(Percocet) and any addictive drugs.
8. DOCTOR JOSEY shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., Caduceus, ALANON, or ACOA, acceptable to the BOARD no less than ~~one~~ times per week. In the Quarterly reports to the BOARD, DOCTOR JOSEY shall provide documentary evidence of continuing compliance with this program.
9. DOCTOR JOSEY shall submit the name of a supervising physician for BOARD approval within thirty (30) days of the effective date of this Agreement. DOCTOR JOSEY shall ensure that his supervising physician submits quarterly reports to the BOARD which indicate DOCTOR JOSEY's status and progress and any medication prescribed.
10. The BOARD retains the right to require, and DOCTOR JOSEY agrees to submit, blood or urine specimens for analysis without prior notice.
11. DOCTOR JOSEY shall provide all employers and the Chief of Staff at each hospital where he has or obtains privileges with a copy of this Consent Agreement.
12. DOCTOR JOSEY does hereby agree to sign, upon the request of THE STATE MEDICAL BOARD, any and all forms necessary for the release of patient records relating to his evaluation and/or treatment.

*Note Change  
of E.C.C.  
7/1/87*

*off  
JAC  
6/21  
[Signature]*

The above described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties. Upon the request of either party, the STATE MEDICAL BOARD OF OHIO shall schedule an appearance of WILLIE LEROY JOSEY, M.D., before the BOARD at its formal meeting to discuss the appropriateness of modifying or terminating the above stated terms or conditions. This Agreement shall remain in effect as long as DOCTOR JOSEY holds a certificate to practice medicine and surgery.

WILLIE LEROY JOSEY, M.D. hereby released the STATE MEDICAL BOARD, its Members, employees, agents and officers jointly and severally from any and all liability arising from the within matter.

If, in the discretion of the Secretary of THE STATE MEDICAL BOARD OF OHIO, WILLIE LEROY JOSEY, M.D., appears to have violated or breached any terms or conditions of this Agreement, the STATE MEDICAL BOARD OF OHIO reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Agreement.

STATE OF OHIO  
THE STATE MEDICAL BOARD

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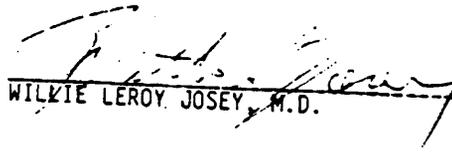
OHIO  
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Willie Leroy Josey, M.D.  
Consent Agreement

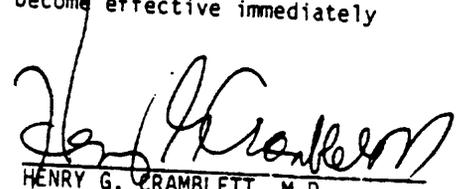
Any action initiated by the BOARD based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

It is AGREED AND UNDERSTOOD by and between both parties that this CONSENT AGREEMENT shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code.

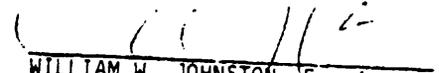
The terms and conditions of this Agreement shall become effective immediately upon the parties' signature hereto.

  
WILLIE LEROY JOSEY, M.D.

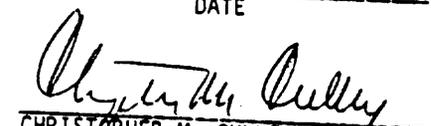
23 June 87  
DATE

  
HENRY G. CRAMBLETT, M.D.  
Secretary

6/29/87  
DATE

  
WILLIAM W. JOHNSTON, Esquire  
Supervising Member

1. 1. 87  
DATE

  
CHRISTOPHER M. CULLEY, Esquire  
Assistant Attorney General

7/1/87  
DATE