



State Medical Board of Ohio

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April 12, 2006

David A. Rath, M.D.
617 McCorkle Street
Westerville, OH 43086

Dear Doctor Rath:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 12, 2006, 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 an original Notice of Appeal with the State Medical Board of Ohio and a copy of the Notice of Appeal with the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 7003 0500 0002 4329 8234
RETURN RECEIPT REQUESTED

Cc: Michael R. Wintering, Esq.
CERTIFIED MAIL NO. 7003 0500 0002 4329 8210
RETURN RECEIPT REQUESTED

Mailed 4-14-06

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 12, 2006, 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 David A. Rath, 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)

April 12, 2006

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

DAVID A. RATH, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on April 12, 2006.

Upon the Report and Recommendation 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 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. **SUSPENSION:** The certificate of David A. Rath, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than 180 days from the effective date of this Order.
- B. **INTERIM MONITORING:** During the period that Dr. Rath's license is suspended, he shall comply with the following terms, conditions, and limitations:
 - 1. **Obey the Law:** Dr. Rath shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio, and all terms imposed upon him by the Court of Common Pleas for Delaware County, Delaware, Ohio, in Case No. 05-CR-I-08-0406.
 - 2. **Personal Appearances:** Dr. Rath shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Order. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

3. **Quarterly Declarations**: Dr. Rath shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
4. **Evidence of Compliance with the Terms of Criminal Probation**: At the time he submits his quarterly declarations, Dr. Rath shall also submit declarations under penalty of Board disciplinary action or criminal prosecution stating whether he has complied with all the terms, conditions, and limitations imposed upon him by the Court of Common Pleas for Delaware County, Delaware, Ohio, in Case No. 05-CR-I-08-0406.
5. **Abstention from Drugs**: Dr. Rath shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Dr. Rath's history of chemical dependency.
6. **Abstention from Alcohol**: Dr. Rath shall abstain completely from the use of alcohol.
7. **Initiate Drug/Alcohol Treatment**: Within thirty days of the effective date of this Order, or as otherwise approved by the Board, Dr. Rath shall submit to appropriate drug/alcohol treatment, as determined by an informed assessment of his current needs. Such assessment and treatment shall be provided by a treatment provider approved under Section 4731.25 of the Revised Code for treatment of drug and alcohol dependency.

Unless otherwise determined by the Board, prior to the initial assessment, Dr. Rath shall furnish the approved treatment provider copies of the Board's Summary of the Evidence, Findings of Fact, and Conclusions, and any other documentation from the hearing record that the Board may deem appropriate or helpful to the treatment provider. Within ten days after the completion of the initial assessment, or as otherwise determined by the Board, Dr. Rath shall cause a written report to be submitted to the Board from the treatment provider, which report shall include:

- a. A detailed plan of recommended treatment based upon the treatment provider's informed assessment of Dr. Rath's current needs;

- b. A statement indicating that Dr. Rath entered into or commenced the recommended treatment program within forty-eight hours of its determination;
 - c. A copy of a treatment contract signed by Dr. Rath establishing the terms of treatment and aftercare, including any required supervision or restrictions on practice during treatment or aftercare; and
 - d. A statement indicating that the treatment provider will immediately report to the Board any failure by Dr. Rath to comply with the terms of the treatment contract during inpatient or outpatient treatment or aftercare.
8. **Comply with the Terms of Treatment:** Dr. Rath shall maintain continued compliance with the terms of the treatment contract entered into with his treatment provider, provided that, where terms of the treatment contract conflict with terms of this Order, the terms of this Order shall control.
9. **Drug & Alcohol Screens; Supervising Physician:** Dr. Rath shall submit to random urine screenings for drugs and/or alcohol, *including carisoprodol*, on a weekly basis or as otherwise directed by the Board. Dr. Rath shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug-testing panel utilized must be acceptable to the Secretary of the Board.

Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Rath shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Rath shall submit the required specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Rath. Dr. Rath 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. Rath 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. Rath must immediately notify the Board in writing,

and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Rath 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. Rath's quarterly declaration. It is Dr. Rath's responsibility to ensure that reports are timely submitted.

10. **Submission of Blood or Urine Specimens upon Request**: Dr. Rath shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Rath's expense.
 11. **Aftercare Contract**: Dr. Rath shall enter into and maintain continued compliance with the terms of an aftercare contract entered into with Board-approved treatment provider, provided that, where terms of the aftercare contract conflict with terms of this Order, the terms of this Order shall control.
 12. **Rehabilitation Program**: Dr. Rath shall maintain participation in an alcohol and drug rehabilitation program, such as AA, NA, CA, or Caduceus, no less than three times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Dr. Rath 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. Rath's quarterly declarations.
 13. **Contact Impaired Physicians Committee**: Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Rath shall contact an impaired physicians committee, approved by the Board, to arrange for assistance in recovery and/or aftercare. Dr. Rath shall maintain continued compliance with the terms of a contract entered into with the impaired physicians committee, approved by the Board, to assure continuous assistance in recovery and/or aftercare.
- C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION**: The Board shall not consider reinstatement or restoration of Dr. Rath's certificate to practice medicine and surgery until all of the following conditions have been met:
1. **Application for Reinstatement or Restoration**: Dr. Rath shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.

2. **Compliance with Interim Conditions:** Dr. Rath shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order, unless otherwise determined by the Board.
 3. **Demonstration of Ability to Resume Practice:** Dr. Rath shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Rath has successfully completed any required inpatient treatment.
 - b. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
 - c. Evidence of continuing full compliance with this Order.
 - d. Two written reports indicating that Dr. Rath's ability to practice has been evaluated for chemical dependency and/or impairment and that he has been found capable of practicing according to acceptable and prevailing standards of care. The evaluations shall have been performed by individuals or providers approved by the Board for making such evaluations. Moreover, the evaluations shall have been performed within sixty days prior to Dr. Rath's application for reinstatement or restoration. The reports of evaluation shall describe with particularity the bases for the determination that Dr. Rath has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon his practice.
 4. **Absence from Practice:** In the event that Dr. Rath 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. Rath's fitness to resume practice.
- D. **PROBATIONARY CONDITIONS:** Upon reinstatement or restoration, Dr. Rath's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:

1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Rath shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.

2. **Practice Plan:** Prior to commencement of practice in Ohio, or as otherwise determined by the Board, Dr. Rath shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Rath's activities will be directly supervised and overseen by a monitoring physician approved by the Board. Moreover, Dr. Rath's practice shall be limited to no more than forty hours per week, unless otherwise determined by the Board. Dr. Rath shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

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

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

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

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

3. **Controlled Substances Log:** Dr. Rath shall keep a log of all controlled substances he prescribes. Such log shall be submitted in a format approved by the Board thirty days prior to Dr. Rath's personal appearance before the Board

or its designated representative, or as otherwise directed by the Board. Further, Dr. Rath shall make his patient records with regard to such controlled substance prescribing available for review by an agent of the Board upon request.

4. **Ban on Administering, Furnishing, or Possessing Controlled Substance;**

Log: Dr. Rath shall not, without prior Board approval, administer, personally furnish, or possess (except as allowed under Paragraph B4, above) any controlled substances as defined by state or federal law. In the event that the Board agrees at a future date to modify this Order to allow Dr. Rath to administer or personally furnish controlled substances, Dr. Rath shall keep a log of all controlled substances administered or personally furnished. Such log shall be submitted in a format approved by the Board thirty days prior to Dr. Rath's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Rath shall make his patient records with regard to such administering, or personally furnishing available for review by an agent of the Board upon request.

5. **Tolling of Probationary Period While Out of State:** Dr. Rath shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.

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

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

G. **RELEASES:** Dr. Rath shall provide continuing authorization, through appropriate written consent forms, for disclosure by his treatment providers of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Rath's chemical dependency, psychiatric condition and/or related conditions, or for purposes of complying with this Order, whether such treatment or evaluations 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.

- H. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Dr. Rath 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 to the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Rath 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 to the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. Further, Dr. Rath shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt. This requirement shall continue until Dr. Rath receives from the Board written notification of his successful completion of probation.
- I. **REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, Dr. Rath 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. Rath 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. Rath shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt. This requirement shall continue until Dr. Rath receives from the Board written notification of his successful completion of probation.

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

April 12, 2006

Date

2006 MAR -1 P 2: 30

**REPORT AND RECOMMENDATION
IN THE MATTER OF DAVID A. RATH, M.D.**

The Matter of David A. Rath, M.D., was heard by Sharon W. Murphy, Esq., Hearing Examiner for the State Medical Board of Ohio, on January 20, 2006.

INTRODUCTION

I. Basis for Hearing

- A. In a Notice of Summary Suspension and Opportunity for Hearing dated September 14, 2005, the State Medical Board of Ohio [Board] notified David A. Rath, M.D., that, pursuant to Section 4731.22(G), Ohio Revised Code, the Board had adopted an Order of Summary Suspension of Dr. Rath's certificate to practice medicine and surgery in Ohio. The Board further advised that continued practice would be considered practicing medicine and surgery without a certificate, in violation of Section 4731.41, Ohio Revised Code.

Moreover, the Board notified Dr. Rath that it had proposed to take disciplinary action against his certificate. The Board based its proposed action on events relating to Dr. Rath's alleged history of impairment, and his motion for treatment in lieu of conviction filed in the Court of Common Pleas for Delaware County, Delaware, Ohio, in Case No. 05-CR-I-08-0406, related to a pending felony charge for Theft, in violation of Section 2913.02(A), Ohio Revised Code. Further, the Board alleged that Dr. Rath's conduct constitutes "'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." Accordingly, the Board advised Dr. Rath of his right to request a hearing in this matter.
(State's Exhibit 1A)

- B. On October 7, 2005, the Board received a written hearing request submitted by Michael R. Wintering, Esq., on behalf of Dr. Rath. (State's Exhibit 1B)

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Kyle C. Wilcox, Assistant Attorney General.
- B. On behalf of the Respondent: Michael R. Wintering, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State

1. David A. Rath, M.D., as upon cross-examination
2. Richard Whitney, M.D.
3. Rebecca Jean Marshall, Esq.

B. Presented by the Respondent

David A. Rath, M.D.

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A through 1L: Procedural exhibits.
2. State's Exhibit 2: Copy of September 6, 2005, letter to Rebecca J. Marshall, Esq., from Richard N. Whitney, M.D. (Note: This exhibit is sealed to protect patient confidentiality.)
3. State's Exhibit 3: Copy of a Motion for Treatment in Lieu of Conviction, filed September 12, 2005, in the Court of Common Pleas of Delaware County, Ohio, in *State of Ohio v. Dr. David A. Rath*, Case No. 05CR-I-08-0406.
4. State's Exhibit 4: Copy of September 7, 2005, letter to Michael R. Wintering, Esq., from Ms. Marshall.
5. State's Exhibit 5: Copy of September 12, 2005, letter to Ms. Marshall from Mr. Wintering.¹

B. Presented by the Respondent

1. Respondent's Exhibit 1: Copy of a January 16, 2006, letter to Mr. Wintering from John Shealy, M.S.W., M.A., LICDC, L.S.W., recovery therapist at Recovery and Prevention Resources of Delaware and Morrow Counties.

¹ The letter is actually dated September 7, 2005, but the parties stipulated that the correct date is September 12, 2005. (See hearing transcript at 101-102)

2. Respondent's Exhibit 2: A copy of Dr. Rath's Alcoholics Anonymous [AA] attendance logs. (Note: This exhibit is sealed to protect AA participants' confidentiality).

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. David A. Rath, M.D., testified that he had obtained his medical degree of in 1982 from the American University of the Caribbean School of Medicine, and then completed a residency in internal medicine at Michigan State University in June 1985. Thereafter, Dr. Rath practiced clinical medicine through October 1986 in Pennsylvania. He described his practice as an "ambulatory practice." (Hearing Transcript [Tr.] at 13-14)

Beginning in late 1986, Dr. Rath accepted his first in a series of positions as a clinical research physician with a pharmaceutical company. In his first position, he wrote study protocols for assessing drugs that have been filed with the Food and Drug Administration [FDA] as investigational new drugs. Thereafter, Dr. Rath monitored the progress of the trials, and then analyzed and compiled the data from those trials. Finally, he prepared reports that were submitted to the FDA. (Tr. at 14-15)

In 1989, Dr. Rath began working for the Bureau of Disability Determination reviewing applications for disability insurance and allegations of impairment which had been submitted to the Social Security Administration. Dr. Rath testified that he had continued in that role until August 2005. (Tr. at 15-16) In addition, Dr. Rath was elected Coroner of Delaware County, Ohio, in January 2005. He resigned that position in August 2005. (Tr. at 16-20, 40)

Dr. Rath testified that he currently holds two part-time jobs. He performs maintenance and custodial services for a small printing company, and he assists the owner of a precious metal reclamation business in obtaining gold, silver, and aluminum from printing and electronics companies. (Tr. at 128)

2. Dr. Rath testified that, in July 2005, while acting as the Coroner for Delaware County, he had been called to the scene of a police investigation of a resident who had died of a drug overdose. In the house of the decedent, Dr. Rath had found several bottles of medications, one of which was a small vial containing morphine tablets. Dr. Rath took the vial of morphine tablets and placed it into an evidence bag, which he kept. He stated that it had been "a spur of the moment impulse." At some point, someone discovered that the morphine was missing. A Delaware police officer questioned Dr. Rath about the missing

morphine. After first denying any knowledge of its disappearance, Dr. Rath later admitted that he had taken it. (Tr. at 20-21, 31)

Dr. Rath explained that he had taken the vial of morphine because he had become addicted to opiates. He stated that, for a period of nine years, he had been self-administering hydrocodone tablets. Dr. Rath testified that the addiction had begun when he suffered back pain, but did not have health insurance. Dr. Rath further explained that he had obtained the hydrocodone from a wholesale distributor in his capacity as a physician. Dr. Rath testified that he had been using approximately seventy to eighty milligrams of hydrocodone on a daily basis. (Tr. at 21-24)

Dr. Rath testified that he had only abused hydrocodone when in the confines of his residence. Moreover, he testified that he had never left his residence while under the influence of hydrocodone. He explained that, when he finished work each day, he had taken his total daily dose of hydrocodone all at one time, up to eighty milligrams at a time. In addition, Dr. Rath testified that he had never used hydrocodone when he was on call as the Delaware County Coroner. (Tr. at 42-44)

Dr. Rath stated that he had not ingested any of the morphine tablets that he had taken from the decedent's home. Instead, after his theft had been discovered, he returned the vial to the Delaware Police Department. He stated that he had decided to return the pills because, prior to that incident, he had never had any legal problems or committed any crime, and he did not want to compound his initial transgression. (Tr. at 29-31)

Dr. Rath testified that he had been charged with theft, a felony offense, and that, later, he had been granted treatment in lieu of conviction. (Tr. at 31-32)

Dr. Rath testified that his last use of opiates was August 13 or 14, 2005. (Tr. at 42)

3. By letter dated September 6, 2005, Richard Whitney, M.D., Medical Director of Shepherd Hill, a Board-approved treatment provider in Newark, Ohio, notified a representative of the Board that Dr. Rath had been admitted to the Shepherd Hill detoxification unit on August 17, 2005. The following day, Dr. Rath transitioned to the Residential Day Treatment Program, with a diagnosis of Opiate and Sedative-Hypnotic Dependence. (State's Exhibit [St. Ex.] 2)

On August 31, 2005, Dr. Rath advised Shepherd Hill staff that he did not have adequate funding to complete the recommended course of treatment. Dr. Rath was advised that the Ohio Medical Practice Act required that he complete treatment at a Board-approved treatment facility. Although Dr. Rath was granted a therapeutic leave to secure funding to complete treatment, he did not return. On September 5, 2005, he left a voicemail for Shepherd Hill staff indicating that he had not been able to obtain funding and that he would not be returning to Shepherd Hill. Dr. Whitney further advised that he was not

aware that Dr. Rath had entered any other Board-approved treatment program. Dr. Whitney concluded that Dr. Rath was impaired and incapable of practicing medicine at current and acceptable levels. (St. Ex. 2)

4. Dr. Whitney testified at hearing on behalf of the State. Dr. Whitney testified that he is employed by Licking Memorial Health Professionals as the Medical Director of the addiction department at Shepherd Hill. Dr. Whitney testified that he has held that position for approximately four and one half years. Dr. Whitney testified that he is certified by the American Society of Addiction Medicine, the American Academy of Pain Management, and the American Board of Emergency Medicine. He added that, since completing a fellowship in addiction medicine in 1991, he has been practicing addiction medicine. (Tr. at 52-54)

Dr. Whitney testified that he had assessed Dr. Rath upon Dr. Rath's admission to the detoxification unit at Shepherd Hill in August 2005. Dr. Whitney testified that he had sent Dr. Rath to the detoxification unit initially to observe him for any withdrawal symptoms. Dr. Whitney explained: "At that time I had a history from Dr. Rath of having used hydrocodone somewhere between 70 to 100 mg per day for a number of years, and in addition to that, 5 to 7 of the 350 mg size Soma, or carisoprodol, which are muscle relaxers." Dr. Whitney explained that it had been Dr. Rath who provided this information. (Tr. at 55-57)

Dr. Whitney further testified:

Dr. Rath was quite ill. He was very pale. Very quiet. He looked very fatigued and worn down. I was very concerned about him. His pallor or paleness significantly worried me, but he had looked like someone who was physically ill, very weak, slow thinking, speech was slow, was slow to respond when I asked him questions or gave him directions, which is not uncommon at all in the patients that we see, especially those who have been using mood-altering drugs for an extended period of time.

(Tr. at 57) Dr. Whitney explained that both hydrocodone and Soma depress the central nervous system. Symptoms include fatigue; difficulty with mentation, understanding, and decision-making; drowsiness; interference with new memory formation; constipation; reduced capacity to breathe; and decreased eye-hand coordination. (Tr. at 59-60)

Dr. Whitney stated that he had been so concerned about Dr. Rath's overall physical and mental health that he had arranged consultations with a gastroenterologist for constipation and anemia, and with a psychiatrist for severe depression. Dr. Whitney also prescribed an antidepressant, Wellbutrin. (Tr. at 62-64, 88-90)

Dr. Whitney testified that he had diagnosed Dr. Rath with opioid dependence based on his use of hydrocodone. Moreover, he had diagnosed Dr. Rath with sedative-hypnotic

dependence, due to his overuse of self-administered Soma for nontherapeutic purposes, for mood altering purposes, and for sleep. (Tr. at 67)

Dr. Whitney testified that, after close monitoring the first day, Dr. Rath had been well enough to transfer to residential treatment the following day. (Tr. at 61) Dr. Whitney continued:

I remember speaking with Dr. Rath again at that point that he was voicing some hesitancy about beginning treatment, and I sat him down and explained in great detail the importance of him obtaining treatment, that the Medical Practice Act in Ohio is very explicit and very clear that in order to maintain licensure in Ohio you have to complete a minimum of 28 days at a Board-approved facility* * *.

(Tr. at 61) Dr. Whitney also explained to Dr. Rath that, if he did not complete the necessary inpatient treatment at that time, Dr. Whitney would be required to notify the Board of Dr. Rath's impairment and failure to complete treatment. (Tr. at 64) Nevertheless, on September 5, 2005, Dr. Rath advised that he would not be returning to Shepherd Hill to complete treatment. Dr. Whitney testified that he had contacted Rebecca J. Marshall, Chief Enforcement Attorney for the Board, to advise her of the situation concerning Dr. Rath. (Tr. at 65-66)

5. On September 12, 2005, Michael R. Wintering, Esq., counsel for Dr. Rath, filed a Motion for Treatment in Lieu of Conviction in the Court of Common Pleas of Delaware County, Ohio, in *State of Ohio v. Dr. David A. Rath*, Case No. 05CR-I-08-0406. (St. Ex. 3)
6. On September 12, 2005, Mr. Wintering advised Ms. Marshall that Dr. Rath had been scheduled for an assessment at Recovery and Prevention Resources of Delaware and Morrow Counties [Recovery and Prevention Resources] through the Delaware County Adult Court Services. (St. Ex. 5; Respondent's Exhibit [Resp. Ex.] 1) Mr. Wintering further advised:

Again, Dr. Rath [h]as not engaged in clinical practice for a very long time, and has no plans to be so engaged. The sole medical endeavors in the past dealt with review of existing medical records. He is no longer employed in that capacity either. Of course, Dr. Rath is no longer the Coroner for Delaware County. * * *

(St. Ex. 5)

7. By letter dated January 16, 2006, John Shealy, M.S.W., M.A., LICDC, L.S.W., recovery therapist at Recovery and Prevention Resources, advised Mr. Wintering of Dr. Rath's progress in the program. (Resp. Ex. 1)

Mr. Shealy advised that Dr. Rath had been involved with Recovery and Prevention Resources since September 2005, upon referral by the court after being charged with theft of drugs and falsification of a police report while serving as the Delaware County Coroner. Mr. Shealy stated that Dr. Rath had been evaluated on September 13 and September 15, 2005. Mr. Shealy stated that Dr. Rath had been open, cooperative, and responsive to all questions. Mr. Shealy also stated that Dr. Rath had reported having been addicted to Vicodin and opined that Dr. Rath was committed to recovery. Finally, Mr. Shealy reported that Dr. Rath had denied the use or abuse of any other mood altering substance, but for alcohol. Consequently, Mr. Shealy found that Dr. Rath met the criteria for a diagnosis of opioid dependence, pursuant to the DSM-IV. (Resp. Ex. 1 at 1-2)

Mr. Shealy further testified that Dr. Rath had complied with all treatment recommendations. These included requirements of that he abstain from the use of all mood altering chemicals not prescribed for him during the course of medical treatment. Moreover, Dr. Rath had completed eighteen sessions of an intensive outpatient program, and had entered the second phase of an aftercare program. In addition, Dr. Rath had been required to attend a minimum of three Alcoholics Anonymous or Narcotics Anonymous meetings per week, to develop a home group, and obtain a 12-step sponsor. Furthermore, Dr. Rath had completed a series of individual counseling sessions. Mr. Shealy concluded that Dr. Rath's prognosis for recovery was "very good." (Resp. Ex. 1 at 2-3; Resp. Ex. 2)

Finally, in support of Dr. Rath, Mr. Shealy advised:

When I first met Mr. Rath, I anticipated that he would use his medical background/expertise in an intimidating, controlling, or manipulating fashion to minimize the seriousness of his addiction and related life costs, but this never occurred. From then up to now, Mr. Rath has consistently demonstrated being an honest, very reserved, introspective man, of high intelligence, who was and still is stunned that his abuse of Vicodin could have progressed into an addiction.

(Resp. Ex. 1 at 1)

8. Rebecca Jean Marshall, Esq., testified at hearing on behalf of the State. Ms. Marshall testified that she is employed as the Chief Enforcement Attorney for the Board. Moreover, during the course of her employment, she had been involved in the investigation of Dr. Rath. (Tr. at 97-99)

Ms. Marshall testified that, on or about September 6, 2005, Dr. Whitney had contacted her by telephone to inform her that Dr. Rath had abandoned treatment at Shepherd Hill. She further stated that Dr. Whitney had been required to do so by Ohio law. Thereafter, Dr. Whitney also notified her by letter. (Tr. at 99-100; St. Ex. 2)

Subsequently, by facsimile letter dated September 7, 2005, Ms. Marshall notified Dr. Rath's counsel, Mr. Wintering, that if the Board did not receive information indicating that Dr. Rath had entered residential treatment for chemical dependency at a Board-approved treatment facility, the Board would be required to take action in this matter. Dr. Wintering later advised that Dr. Rath had been scheduled for an assessment at Recovery and Prevention Resources through the Delaware County Adult Court Services. Ms. Marshall explained that Recovery and Prevention Resources is not a Board-approved treatment provider. (Tr. at 100-103; St. Exs. 4, 5)

On September 12, 2005, Ms. Marshall met with the Board Secretary and Supervising Member and presented to them the pertinent information regarding Dr. Rath. At that point, the Secretary and Supervising Member made a determination that there was clear and convincing evidence that Dr. Rath's continued practice of medicine presented a threat of immediate and serious harm to the public. They instructed Ms. Marshall to prepare a proposed Order of Summary Suspension to be presented to the full Board. (Tr. at 103-104, 109)

Ms. Marshall explained that, when there is evidence that a licensee is impaired, the Board is required to suspend the licensee's certificate to practice. Moreover, she testified that there are specified requirements that the licensee must meet before the Board may consider reinstatement or restoration of that certificate. Among those requirements, the licensee must complete a minimum of twenty-eight days of inpatient treatment at a Board-approved treatment facility. (Tr. at 105, 113) Ms. Marshall noted that these requirements are no different regardless of whether an impaired physician practices in a clinical setting. (Tr. at 106, 109-111)

9. Dr. Rath testified that he has not participated in any inpatient or residential treatment program since leaving Shepherd Hill. Instead, he participated in an outpatient program, entitled Recovery and Prevention Resources, which had been arranged by the Delaware County Court of Common Pleas. He explained that the program is accredited by the Ohio Department of Drug and Alcohol Abuse Services. (Tr. at 28-29, 33-39) Dr. Rath described the program, and stated that it was "virtually identical" to the program at Shepherd Hill other than the residential requirement at Shepherd Hill. (Tr. at 117-123)

Dr. Rath testified that, since completing the Recovery and Prevention Resources program, he has been abiding by the terms of his aftercare program. Among those terms, he is not permitted to possess any type of controlled substance, and must submit to random drug testing. He stated that, in the beginning, the testing had been approximately weekly, but more recently he has been tested every week and a half to two weeks. Dr. Rath testified that every test has been negative. Dr. Rath further testified that he has complied with, and continues to comply with, every requirement of his aftercare program. (Tr. at 33-35, 124-126)

10. Dr. Rath testified that he had not been aware that, in accordance with Ohio law, the Board requires twenty-eight days of inpatient or residential treatment prior to reinstatement of an impaired physician's license. He admitted, however, that Dr. Whitney had mentioned something about Board-approved treatment providers, but Dr. Rath had not investigated further. (Tr. at 41, 45-46)
11. Early in the hearing, Dr. Rath adamantly testified that he has never in his life abused any substance other than hydrocodone, but for an occasional over-consumption of alcohol in college. He stated that, over the past twenty years, he has probably consumed alcohol no more than two or three times per year. Moreover, he testified that he had occasionally used drugs other than hydrocodone, but had never abused them. When questioned, Dr. Rath described these drugs as Motrin for joint pain or headache, and corticosteroid creams for poison ivy. (Tr. at 36-37)

Later during the hearing, after Dr. Whitney's testimony about Dr. Rath's abuse of Soma and his diagnosis of Sedative-Hypnotic Dependence, Dr. Rath admitted his use of Soma. When questioned about his earlier testimony during which he had denied abuse of any drug other than Vicodin, Dr. Rath seemed somewhat befuddled. (Tr. at 132-135)

12. Dr. Rath testified that he is not currently taking any antidepressant medications. He stated that he had taken a few samples provided by Dr. Whitney in August 2005, before his symptoms resolved. He stated that he attributed his depression to his substance abuse. (Tr. at 128-129)
13. Dr. Whitney testified that medical literature supports the conclusion that outpatient treatment is inadequate for licensed health care professionals. He reasoned that "the amount of enabling that goes on for physicians, because of the depth of the illness, because of the consequences both of their own health and to patient health, physicians do better with and deserve longer duration and more intense treatment than simple outpatient treatment." (Tr. at 69)

Dr. Whitney stated that, at Shepherd Hill, an impaired physician will complete, at a minimum, ten weeks of treatment. He added that, at Talbot Recovery Center in Georgia, a physician generally remains for twelve to sixteen weeks. Dr. Whitney testified that, even though ten or sixteen weeks is greater than that required by the Board, he believes treatment for that length of time provides the greatest support for long term at recovery. (Tr. at 70-71) Dr. Whitney explained:

We at Shepherd Hill have modeled our program * * * after Doug Talbot's program, Talbot Treatment Program at Talbot Recovery Center in Atlanta, Georgia. That is considered the father of medical model addiction treatment centers and treatment programs and is a board-approved treatment center.

With longer treatment periods and intense monitoring, longer aftercare, physicians can have a very excellent long-term prognosis and excellent recovery rate. But with those caveats—a longer duration, more intense treatment by a knowledgeable group of health care providers knowledgeable about treating physicians, and long-term monitoring and follow-up, which in our state generally includes a five-year monitoring contract with the Ohio Physicians Health Program.

(Tr. at 70)

Dr. Whitney testified that he is not familiar with Recovery and Prevention Resources. (Tr. at 71, 75) Nevertheless, Dr. Whitney concluded that the program at Recovery and Prevention Resources was inadequate to treat Dr. Rath because it is not a Board-approved facility and because outpatient treatment was not sufficient to address Dr. Rath's problems. (Tr. at 70)

Dr. Whitney concluded that, at the time he evaluated Dr. Rath, Dr. Whitney had determined that Dr. Rath was impaired in his ability to practice medicine and surgery. Moreover, Dr. Whitney testified that he is still of the opinion that Dr. Rath is impaired because Dr. Rath has not yet completed the minimum required treatment at a Board-approved treatment facility. (Tr. at 73-79)

14. Dr. Whitney testified that Vicodin or hydrocodone is detectable with most standard drug screens. Nevertheless, Soma or carisoprodol is not something that most standard drug screens would detect. He stated that one must specifically request testing for Soma. (Tr. at 87, 96)
15. Dr. Rath testified that he would be willing to comply with the Board in order to obtain reinstatement of his license. (Tr. at 47-51) He stated that, if licensed, he hopes to engage in pharmaceutical research and insurance medicine. (Tr. at 129-130)

FINDINGS OF FACT

1. By letter dated September 6, 2005, Richard Whitney, M.D., Medical Director of Shepherd Hill, a Board-approved treatment provider in Newark, Ohio, notified a representative of the Board that David A. Rath, M.D., had been admitted to the Shepherd Hill detoxification unit on August 17, 2005, with a diagnosis of Opiate and Sedative-Hypnotic Dependence. Dr. Whitney further advised that residential treatment for chemical dependency had been recommended, and that Dr. Rath had been advised that the Ohio Medical Practice Act required that he complete treatment at a Board-approved treatment facility. Nevertheless, after two weeks, Dr. Rath abandoned such treatment after two weeks, stating that he did not

have sufficient funds to continue. Dr. Whitney concluded that Dr. Rath was impaired and incapable of practicing medicine at current and acceptable levels.

2. On September 12, 2005, in the Court of Common Pleas for Delaware County, Delaware, Ohio, Court of Common Pleas for Delaware County, Delaware, Ohio, in Case No. 05-CR-I-08-0406, Dr. Rath filed a motion requesting treatment in lieu of conviction based on a felony charge of Theft pending against Dr. Rath.
3. Section 4731.22(B)(26), Ohio Revised Code, provides that if the Board determines that an individual's ability to practice is impaired, the Board shall suspend the individual's certificate. Moreover, the statutes requires that the individual, as a condition for continued, reinstated, or renewed certification to practice, submit to treatment and, before being eligible to apply for reinstatement, to demonstrate to the Board the ability to resume practice in compliance with acceptable and prevailing standards of care. Such demonstration includes completing required treatment, providing evidence of compliance with an appropriate aftercare contract or written consent agreement, and providing written reports indicating that the individual's ability to practice has been assessed by individuals or providers approved by the Board and that the individual has been found capable of practicing according to acceptable and prevailing standards of care. Dr. Rath has not complied with any of these requirements.
4. Rule 4731-16-02(B)(3), Ohio Administrative Code, provides that if an examination discloses impairment, or if the Board has other reliable, substantial, and probative evidence demonstrating impairment, the Board shall initiate proceedings to suspend the licensee, and may issue an order of summary suspension as provided in Section 4731.22(G), Ohio Revised Code. The rule further provides that, if an individual has applied for or requested treatment in lieu of conviction of a criminal charge, that request shall constitute independent proof of impairment and shall support license suspension or denial without the need for an examination.

CONCLUSIONS OF LAW

The conduct of David A. Rath, M.D., as set forth in Findings of Fact 1 through 4, 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.

* * * * *

Ohio law leaves no alternative but to require that Dr. Rath complete twenty-eight days of inpatient or residential treatment followed by aftercare and monitoring. Even so, imposition of these requirements would be appropriate in this case since Dr. Rath has not demonstrated good

faith in his recovery program thus far. Dr. Rath has not been forthcoming with the Board or with his current treatment provider, as he either minimizes or misrepresents his abuse of Soma. In fact, since Dr. Rath has not been monitored for use of Soma, the Board has no way of knowing if Dr. Rath actually has maintained abstinence. Therefore, even if not required by Ohio law, the following Proposed Order would be appropriate in this case.

PROPOSED ORDER

It is hereby ORDERED that:

- A. **SUSPENSION:** The certificate of David A. Rath, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than 180 days from the effective date of this Order.
- B. **INTERIM MONITORING:** During the period that Dr. Rath's license is suspended, he shall comply with the following terms, conditions, and limitations:
 1. **Obey the Law:** Dr. Rath shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio, and all terms imposed upon him by the Court of Common Pleas for Delaware County, Delaware, Ohio, in Case No. 05-CR-I-08-0406.
 2. **Personal Appearances:** Dr. Rath shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Order. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
 3. **Quarterly Declarations:** Dr. Rath shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
 4. **Evidence of Compliance with the Terms of Criminal Probation:** At the time he submits his quarterly declarations, Dr. Rath shall also submit declarations under penalty of Board disciplinary action or criminal prosecution stating whether he has complied with all the terms, conditions, and limitations imposed upon him by the

Court of Common Pleas for Delaware County, Delaware, Ohio, in Case No. 05-CR-I-08-0406.

5. **Abstention from Drugs**: Dr. Rath shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Dr. Rath's history of chemical dependency.
6. **Abstention from Alcohol**: Dr. Rath shall abstain completely from the use of alcohol.
7. **Initiate Drug/Alcohol Treatment**: Within thirty days of the effective date of this Order, or as otherwise approved by the Board, Dr. Rath shall submit to appropriate drug/alcohol treatment, as determined by an informed assessment of his current needs. Such assessment and treatment shall be provided by a treatment provider approved under Section 4731.25 of the Revised Code for treatment of drug and alcohol dependency.

Unless otherwise determined by the Board, prior to the initial assessment, Dr. Rath shall furnish the approved treatment provider copies of the Board's Summary of the Evidence, Findings of Fact, and Conclusions, and any other documentation from the hearing record that the Board may deem appropriate or helpful to the treatment provider. Within ten days after the completion of the initial assessment, or as otherwise determined by the Board, Dr. Rath shall cause a written report to be submitted to the Board from the treatment provider, which report shall include:

- a. A detailed plan of recommended treatment based upon the treatment provider's informed assessment of Dr. Rath's current needs;
 - b. A statement indicating that Dr. Rath entered into or commenced the recommended treatment program within forty-eight hours of its determination;
 - c. A copy of a treatment contract signed by Dr. Rath establishing the terms of treatment and aftercare, including any required supervision or restrictions on practice during treatment or aftercare; and
 - d. A statement indicating that the treatment provider will immediately report to the Board any failure by Dr. Rath to comply with the terms of the treatment contract during inpatient or outpatient treatment or aftercare.
8. **Comply with the Terms of Treatment**: Dr. Rath shall maintain continued compliance with the terms of the treatment contract entered into with his treatment provider, provided that, where terms of the treatment contract conflict with terms of this Order, the terms of this Order shall control.

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

Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Rath shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Rath shall submit the required specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Rath. Dr. Rath 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. Rath 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. Rath must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Rath 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. Rath's quarterly declaration. It is Dr. Rath's responsibility to ensure that reports are timely submitted.

10. **Submission of Blood or Urine Specimens upon Request:** Dr. Rath shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Rath's expense.
11. **Aftercare Contract:** Dr. Rath shall enter into and maintain continued compliance with the terms of an aftercare contract entered into with Board-approved treatment

provider, provided that, where terms of the aftercare contract conflict with terms of this Order, the terms of this Order shall control.

12. **Rehabilitation Program**: Dr. Rath shall maintain participation in an alcohol and drug rehabilitation program, such as AA, NA, CA, or Caduceus, no less than three times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Dr. Rath 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. Rath's quarterly declarations.
13. **Contact Impaired Physicians Committee**: Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Rath shall contact an impaired physicians committee, approved by the Board, to arrange for assistance in recovery and/or aftercare. Dr. Rath shall maintain continued compliance with the terms of a contract entered into with the impaired physicians committee, approved by the Board, to assure continuous assistance in recovery and/or aftercare.

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

1. **Application for Reinstatement or Restoration**: Dr. Rath shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Compliance with Interim Conditions**: Dr. Rath shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order, unless otherwise determined by the Board.
3. **Demonstration of Ability to Resume Practice**: Dr. Rath shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Rath has successfully completed any required inpatient treatment.
 - b. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare

contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.

- c. Evidence of continuing full compliance with this Order.
 - d. Two written reports indicating that Dr. Rath's ability to practice has been evaluated for chemical dependency and/or impairment and that he has been found capable of practicing according to acceptable and prevailing standards of care. The evaluations shall have been performed by individuals or providers approved by the Board for making such evaluations. Moreover, the evaluations shall have been performed within sixty days prior to Dr. Rath's application for reinstatement or restoration. The reports of evaluation shall describe with particularity the bases for the determination that Dr. Rath has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon his practice.
4. **Absence from Practice:** In the event that Dr. Rath 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. Rath's fitness to resume practice.

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

1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Rath shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
2. **Practice Plan:** Prior to commencement of practice in Ohio, or as otherwise determined by the Board, Dr. Rath shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Rath's activities will be directly supervised and overseen by a monitoring physician approved by the Board. Moreover, Dr. Rath's practice shall be limited to no more than forty hours per week, unless otherwise determined by the Board. Dr. Rath shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

At the time Dr. Rath submits his practice plan, he shall also submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary

or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary or Supervising Member will give preference to a physician who practices in the same locale as Dr. Rath and who is engaged in the same or similar practice specialty.

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

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

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

3. **Controlled Substances Log:** Dr. Rath shall keep a log of all controlled substances he prescribes. Such log shall be submitted in a format approved by the Board thirty days prior to Dr. Rath's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Rath shall make his patient records with regard to such controlled substance prescribing available for review by an agent of the Board upon request.
4. **Ban on Administering, Furnishing, or Possessing Controlled Substance; Log:** Dr. Rath shall not, without prior Board approval, administer, personally furnish, or possess (except as allowed under Paragraph B4, above) any controlled substances as defined by state or federal law. In the event that the Board agrees at a future date to modify this Order to allow Dr. Rath to administer or personally furnish controlled substances, Dr. Rath shall keep a log of all controlled substances administered or personally furnished. Such log shall be submitted in a format approved by the Board thirty days prior to Dr. Rath's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Rath shall make his patient records with regard to such administering, or personally furnishing available for review by an agent of the Board upon request.

5. **Tolling of Probationary Period While Out of State:** Dr. Rath shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.

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

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

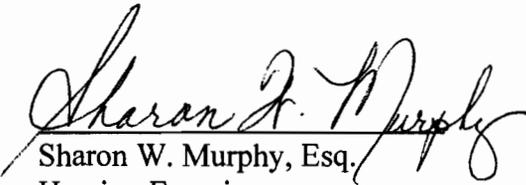
- G. **RELEASES:** Dr. Rath shall provide continuing authorization, through appropriate written consent forms, for disclosure by his treatment providers of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Rath's chemical dependency, psychiatric condition and/or related conditions, or for purposes of complying with this Order, whether such treatment or evaluations 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.

- H. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Dr. Rath 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 to the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Rath 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 to the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. Further, Dr. Rath shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt. This requirement shall continue until Dr. Rath receives from the Board written notification of his successful completion of probation.

- I. **REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, Dr. Rath 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. Rath 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. Rath shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt. This requirement shall continue until Dr. Rath receives from the Board written notification of his successful completion of probation.

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


Sharon W. Murphy, Esq.
Hearing Examiner



State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF APRIL 12, 2006

REPORTS AND RECOMMENDATIONS

Dr. Robbins announced that the Board would now consider the findings and orders appearing on the Board's agenda. He noted that the case of Gary Ray Lutz, D.O., which was scheduled for this meeting, would be considered at a later time due to the inability to achieve timely service of the Report and Recommendation on Dr. Lutz.

Dr. Robbins 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: Amy J. Chaho, M.D.; Jeffrey James Fierra, M.D.; and David A. Rath, M.D.; A roll call was taken:

ROLL CALL:

Mr. Albert	- aye
Dr. Egner	- aye
Dr. Talmage	- aye
Dr. Varyani	- aye
Dr. Buchan	- aye
Dr. Kumar	- aye
Mr. Browning	- aye
Dr. Davidson	- aye
Dr. Robbins	- aye

Dr. Robbins 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. Varyani	- aye
Dr. Buchan	- aye
Dr. Kumar	- aye
Mr. Browning	- aye
Dr. Davidson	- aye
Dr. Robbins	- aye

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

Dr. Robbins 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.

.....

DAVID A. RATH, M.D.

.....

DR. KUMAR MOVED TO APPROVE AND CONFIRM MS. MURPHY'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER IN THE MATTER OF DAVID A. RATH, M.D. MR. BROWNING SECONDED THE MOTION.

.....

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye

The motion carried.



State Medical Board of Ohio

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

September 14, 2005

David A. Rath, M.D.
617 McCorkle Street #2999
Westerville, OH 43086

Dear Doctor Rath:

Enclosed please find certified copies of the Entry of Order, the Notice of Summary Suspension and Opportunity for Hearing, and an excerpt of the Minutes of the State Medical Board, meeting in regular session on September 14, 2005, including a Motion adopting the Order of Summary Suspension and issuing the Notice of Summary Suspension and Opportunity for Hearing.

You are advised that continued practice after receipt of this Order shall be considered practicing without a certificate, in violation of Section 4731.41, Ohio Revised Code.

Pursuant to Chapter 119, Ohio Revised Code, you are hereby advised that you are entitled to a hearing on the matters set forth in the Notice of Summary Suspension and Opportunity for Hearing. If you wish to request such hearing, that request must be made in writing and be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice. Further information concerning such hearing is contained within the Notice of Summary Suspension and Opportunity for Hearing.

THE STATE MEDICAL BOARD OF OHIO


Lance A. Talmage, M.D., Secretary

LAT:blt
Enclosures

MAILED 9-15-05



State Medical Board of Ohio

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

CERTIFICATION

I hereby certify that the attached copies of the Entry of Order of the State Medical Board of Ohio and the Motion by the State Medical Board, meeting in regular session on September 14, 2005, to Adopt the Order of Summary Suspension and to Issue the Notice of Summary Suspension and Opportunity for Hearing, constitute true and complete copies of the Motion and Order in the Matter of David A. Rath, M.D., as they appear in the Journal of the State Medical Board of Ohio.

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


Lance A. Talmage, M.D., Secretary

(SEAL)

September 14, 2005

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :
 :
 :
 DAVID A. RATH, M.D. :

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 14th day of September, 2005.

Pursuant to Section 4731.22(G), Ohio Revised Code, and upon recommendation of Lance A. Talmage, M.D., Secretary, and Raymond J. Albert, Supervising Member; and

Pursuant to their determination, based upon their review of the information supporting the allegations as set forth in the Notice of Summary Suspension and Opportunity for Hearing, that there is clear and convincing evidence that David A. Rath, M.D., has violated Section 4731.22(B)(26), Ohio Revised Code, as alleged in the Notice of Summary Suspension and Opportunity for Hearing that is enclosed herewith and fully incorporated herein; and,

Pursuant to their further determination, based upon their review of the information supporting the allegations as set forth in the Notice of Summary Suspension and Opportunity for Hearing, that Dr. Rath's continued practice presents a danger of immediate and serious harm to the public;

The following Order is hereby entered on the Journal of the State Medical Board of Ohio for the 14th day of September, 2005:

It is hereby ORDERED that the certificate of David A. Rath, M.D., to practice medicine or surgery in the State of Ohio be summarily suspended.

It is hereby ORDERED that David A. Rath, M.D., shall immediately cease the practice of medicine and surgery in Ohio and immediately refer all active patients to other appropriate physicians.

This Order shall become effective immediately.

(SEAL)


Lance A. Talmage, M.D., Secretary

September 14, 2005

Date



State Medical Board of Ohio

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

EXCERPT FROM DRAFT MINUTES OF SEPTEMBER 14, 2005

CITATIONS, PROPOSED DENIALS AND ORDERS OF SUMMARY SUSPENSION

.....

DAVID A. RATH, M.D. – ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

.....

DR. STEINBERGH MOVED TO ENTER AN ORDER OF SUMMARY SUSPENSION IN THE MATTER OF DAVID A. RATH, M.D., IN ACCORDANCE WITH SECTION 4731.22(G), OHIO REVISED CODE, AND TO ISSUE THE NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING. DR. VARYANI SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

The motion carried.



State Medical Board of Ohio

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

NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING

September 14, 2005

David A. Rath, M.D.
617 McCorkle Street #2999
Westerville, OH 43086

Dear Doctor Rath:

The Secretary and the Supervising Member of the State Medical Board of Ohio [Board] have determined that there is clear and convincing evidence that you have violated Section 4731.22(B)(26), Ohio Revised Code, and have further determined that your continued practice presents a danger of immediate and serious harm to the public, as set forth in paragraphs (1) through (4), below.

Therefore, pursuant to Section 4731.22(G), Ohio Revised Code, and upon recommendation of Lance A. Talmage, M.D., Secretary, and Raymond J. Albert, Supervising Member, you are hereby notified that, as set forth in the attached Entry of Order, your certificate to practice medicine or surgery in the State of Ohio is summarily suspended. Accordingly, at this time, you are no longer authorized to practice medicine and surgery in Ohio.

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

- (1) On or about September 6, 2005, Richard Whitney, M.D., Medical Director of Shepherd Hill, a Board-approved treatment provider in Newark, Ohio, notified a representative of the Board that you had been participating in residential treatment for chemical dependency for approximately two weeks, that you had been granted a therapeutic leave over the Labor Day weekend, and that upon his arrival at Shepherd Hill on September 6, 2005, Dr. Whitney had received a message from you, in which you stated that you would not be returning to Shepherd Hill for treatment. Further, on or about September 6, 2005, Dr. Whitney additionally provided a letter to the Board in which he opined that you

had been diagnosed with Opiate and Sedative-Hypnotic Dependence, and that you were impaired in your ability to practice.

- (2) Although you entered treatment at Shepherd Hill, you abandoned such treatment, and/or you have not completed the recommended/required treatment and entered into an aftercare contract with a Board-approved treatment provider. Further, the Board has not received information indicating that you have resumed treatment at any Board-approved treatment provider subsequent to your abandonment of treatment at Shepherd Hill. In addition, the Board has not received information that you have been determined to be capable of practicing in accordance with acceptable and prevailing standards of care.
- (3) On or about September 12, 2005, in the Court of Common Pleas for Delaware County, Delaware, Ohio, through your legal counsel, you filed a motion requesting treatment in lieu of conviction in Case 05-CR-I-08-0406, related to a criminal charge pending against you for Theft, in violation of Section 2913.02(A), Ohio Revised Code, a felony. A copy of the aforementioned motion is attached hereto and fully incorporated herein.
- (4) Section 4731.22(B)(26), Ohio Revised Code, provides that if the Board determines that an individual's ability to practice is impaired, the Board shall suspend the individual's certificate and shall require the individual, as a condition for continued, reinstated, or renewed certification to practice, to submit to treatment and, before being eligible to apply for reinstatement, to demonstrate to the Board the ability to resume practice in compliance with acceptable and prevailing standards of care, including completing required treatment, providing evidence of compliance with an aftercare contract or written consent agreement, and providing written reports indicating that the individual's ability to practice has been assessed by individuals or providers approved by the Board and that the individual has been found capable of practicing according to acceptable and prevailing standards of care.

Further, Rule 4731-16-02(B)(3), Ohio Administrative Code, provides that if an examination discloses impairment, or if the Board has other reliable, substantial and probative evidence demonstrating impairment, the Board shall initiate proceedings to suspend the licensee, and may issue an order of summary suspension as provided in Section 4731.22(G), Ohio Revised Code.

Further, Rule 4731-16-02(B)(3), Ohio Administrative Code, additionally provides that if an individual has applied for or requested treatment in lieu of conviction of a criminal charge or intervention in lieu of conviction of a criminal charge, or has applied for or requested entry into a similar diversion or drug

intervention program, the presence of such circumstances shall constitute independent proof of impairment and shall support license suspension or denial without the need for an examination.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) through (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, and Chapter 4731., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice.

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

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

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

Notice of Summary Suspension
& Opportunity for Hearing
David A. Rath, M.D.
Page 4

Copies of the applicable sections are enclosed for your information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lance A. Talmage, M.D.", written in a cursive style.

Lance A. Talmage, M.D.
Secretary

LAT/blt
Enclosures

CERTIFIED MAIL # 7003 0500 0002 4333 4581
RETURN RECEIPT REQUESTED

cc: Michael R. Wintering, Esq.
Suite 209
1103 Schrock Road
Columbus, OH 43229-1179

CERTIFIED MAIL # 7003 0500 0002 4333 4567
RETURN RECEIPT REQUESTED

MC

Scanned: 09/12/05 10:07:26

IN THE COURT OF COMMON PLEAS DELAWARE COUNTY, OHIO

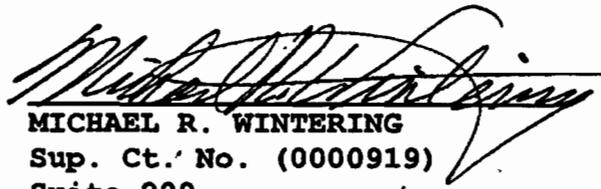
STATE OF OHIO, :
 Plaintiff : Case No.: 05CR-I-08-0406
 vs. : Judge: Krueger
 DR. DAVID A. RATH : ORAL HEARING REQUESTED
 Defendant :

MOTION FOR TREATMENT IN LIEU OF CONVICTION

Defendant moves the Court for an Order pursuant to R.C. \$2951.041 permitting treatment in lieu of conviction. Defendant is otherwise eligible and qualified for the reasons to be more particularly stated at the hearing set for September 2005.

COMMON PLEAS COURT
 DELAWARE COUNTY, OHIO
 FILED
 2005 SEP 12 AM 9:53
 JAN ANTONOPLOS
 CLERK

Respectfully submitted,

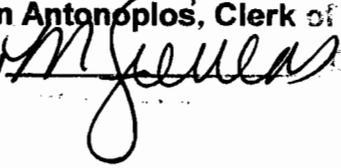


MICHAEL R. WINTERING
 Sup. Ct. No. (0000919)
 Suite 209
 1103 Schrock Road
 Columbus, Ohio 43229-1179
 (614) 888-8611
 (Fax) 888-8651
 winlaw2@sbcglobal.net
 Attorney For: Defendant
 Dr. David A. Rath

Common Pleas Court
 Delaware Co., Ohio

I hereby certify the within be a true copy of the original on file in this office.

Jan Antonoplos, Clerk of Courts

By  Deputy

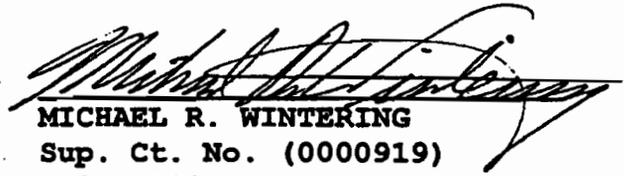


05 CR I 08
 0406
 00048183645
 MOTN

CERTIFICATE OF SERVICE

A true copy of the foregoing Motion was served upon the below listed counsel by handing a copy to him at the hearing of this cause on September 12, 2005.

Mr. David A. Yost, Esq. (0056290)
Delaware County Prosecuting Attorney
140 North Sandusky Street
Delaware, OH 43015
740-833-2690



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winlaw2@sbcglobal.net
Attorney For: Defendant
Dr. David A. Rath