

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
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February 11, 2009

David Carl Ernst, M.D.
12817 West Lake Road
Vermillion, OH 44089

RE: Case No. 08-CRF-062

Dear Doctor Ernst:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Gretchen L. Petrucci, Esq., 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, 2009, 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. *rw*
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3934 3683 6477
RETURN RECEIPT REQUESTED

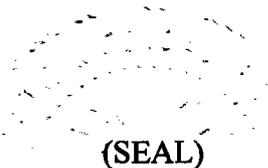
Cc: James M. McGovern, Esq.
CERTIFIED MAIL NO. 91 7108 2133 3934 3683 6484
RETURN RECEIPT REQUESTED

Mailed 2-13-09

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Gretchen L. Petrucci, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on February 11, 2009, 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 Carl Ernst, M.D., Case No. 08-CRF-062, as it appears in the Journal of the State Medical Board of Ohio.

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



(SEAL)

Lance A. Talmage, M.D.

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

February 11, 2009

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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CASE NO. 08-CRF-062

DAVID CARL ERNST, M.D.

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ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on February 11, 2009.

Upon the Report and Recommendation of Gretchen L. Petrucci, 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 OF CERTIFICATE:** The certificate of David Carl Ernst, M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than 90 days from November 18, 2008.
- B. **INTERIM MONITORING:** During the period that Dr. Ernst's certificate to practice medicine and surgery in Ohio is suspended, Dr. Ernst shall comply with the following terms, conditions, and limitations:
 1. **Obey the Law:** Dr. Ernst shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 2. **Quarterly Appearances:** Dr. Ernst 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, or as otherwise requested 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.

3. **Quarterly Declarations:** Dr. Ernst 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, or as otherwise requested by the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

4. **Sobriety**
 - a. **Abstention from Drugs:** Dr. Ernst 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. Ernst's history of chemical dependency. Further, in the event that Dr. Ernst is so prescribed, dispensed or administered any controlled substance, carisoprodol, or tramadol, Dr. Ernst shall notify the Board in writing within seven days, providing the Board with the identity of the prescriber; the name of the drug Dr. Ernst received; the medical purpose for which he received the drug; the date the drug was initially received; and the dosage, amount, number of refills, and directions for use. Further, within 30 days of the date said drug is so prescribed, dispensed, or administered to him, Dr. Ernst shall provide the Board with either a copy of the written prescription or other written verification from the prescriber, including the dosage, amount, number of refills, and directions for use.

 - b. **Abstention from Alcohol:** Dr. Ernst shall abstain completely from the use of alcohol.

5. **Drug & Alcohol Screens; Drug Testing Facility and Collection Site**
 - a. Dr. Ernst shall submit to random urine screenings for drugs and alcohol at least four times per month, or as otherwise directed by the Board. Dr. Ernst 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, and shall include Dr. Ernst's drug(s) of choice.

 - b. Dr. Ernst shall submit, at his expense and on the day selected, urine specimens for drug and/or alcohol analysis. (The term "toxicology screen" is also used herein for "urine screen" and/or "drug screen.")

All specimens submitted by Dr. Ernst shall be negative, except for those substances prescribed, administered, or dispensed to him in conformance with the terms, conditions and limitations set forth in this Order.

Refusal to submit such specimen, or failure to submit such specimen on the day he is selected or in such manner as the Board may request, shall constitute a violation of this Order.

- c. Dr. Ernst shall abstain from the use of any substance that may produce a positive result on a toxicology screen, including the consumption of poppy seeds or other food or liquid that may produce a positive result on a toxicology screen.

Dr. Ernst shall be held to an understanding and knowledge that the consumption or use of various substances, including but not limited to mouthwashes, hand-cleaning gels, and cough syrups, may cause a positive toxicology screen and that unintentional ingestion of a substance is not distinguishable from intentional ingestion on a toxicology screen, and that, therefore, consumption or use of substances that may produce a positive result in a toxicology screen is prohibited under this Order.

- d. All screenings for drugs and alcohol shall be conducted through a Board-approved drug-testing facility and a Board-approved collection site, except as provided in Paragraph 6 below ("Alternative Drug-testing and/or Collection Site"). Further, the screening process shall require a daily call-in procedure.
- e. Within 30 days of the effective date of this Order, Dr. Ernst shall enter into the necessary financial and/or contractual arrangements with the Board-approved drug-testing facility and/or collection site ("DFCS") in order to facilitate the screening process in the manner required by this Order.

Further, within 30 days of making such arrangements, Dr. Ernst shall provide to the Board written documentation of completion of such arrangements, including a copy of any contract entered into between Dr. Ernst and the Board-approved DFCS. Dr. Ernst's failure to timely complete such arrangements, or failure to timely provide written documentation to the Board of completion of such arrangements, shall constitute a violation of this Order.

- f. Dr. Ernst shall ensure that the urine-screening process performed through the Board-approved DFCS requires a daily call-in procedure; 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, Dr. Ernst and the Board-approved DFCS shall ensure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

- g. Dr. Ernst shall ensure that the Board-approved DFCS provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Order, and whether all urine screens have been negative.

- h. In the event that the Board-approved DFCS becomes unable or unwilling to serve as required by this Order, Dr. Ernst must immediately notify the Board in writing, and make arrangements acceptable to the Board, pursuant to Paragraph 6 below, as soon as practicable. Dr. Ernst shall further ensure that the Board-approved DFCS also notifies the Board directly of its inability to continue to serve and the reasons therefor.

- i. Dr. Ernst acknowledges that the Board expressly reserves the right to withdraw its approval of any DFCS in the event that the Secretary and Supervising Member of the Board determine that the DFCS has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

- 6. **Alternative Drug-testing Facility and/or Collection Site:** It is the intent of this Order that Dr. Ernst shall submit urine specimens to the Board-approved DFCS chosen by the Board. However, in the event that using the Board-approved DFCS creates an extraordinary hardship on Dr. Ernst, as determined in the sole discretion of the Board, then, subject to the following requirements, the Board may approve an alternative DFCS or a supervising physician to facilitate the urine-screening process for Dr. Ernst.

- a. Within 30 days of the date on which Dr. Ernst is notified of the Board's determination that utilizing the Board-approved DFCS constitutes an extraordinary hardship on Dr. Ernst, he shall submit to the Board in writing for its prior approval the identity of either an alternative DFCS or the name of a

proposed supervising physician to whom Dr. Ernst shall submit the required urine specimens.

In approving a facility, entity, or an individual to serve in this capacity, the Board will give preference to a facility located near Dr. Ernst's residence or employment location, or to a physician who practices in the same locale as Dr. Ernst. Dr. Ernst shall ensure that the urine-screening process performed through the alternative DFCS or through the supervising physician requires a daily call-in procedure; 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, Dr. Ernst acknowledges that the alternative DFCS or the supervising physician shall ensure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

- b. Dr. Ernst shall ensure that the alternative DFCS or the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Order, and whether all urine screens have been negative.
- c. In the event that the designated alternative DFCS or the supervising physician becomes unable or unwilling to so serve, Dr. Ernst must immediately notify the Board in writing. Dr. Ernst shall further ensure that the previously designated alternative DFCS or the supervising physician also notifies the Board directly of the inability to continue to serve and the reasons therefor. Further, in the event that the approved alternative DFCS or supervising physician becomes unable to serve, Dr. Ernst shall, in order to ensure that there will be no interruption in his urine-screening process, immediately commence urine screening at the Board-approved DFCS chosen by the Board, until such time, if any, that the Board approves a different DFCS or supervising physician, if requested by Dr. Ernst.
- d. The Board expressly reserves the right to disapprove any entity or facility proposed to serve as Dr. Ernst's designated alternative DFCS or any person proposed to serve as his supervising physician, or to withdraw approval of any entity, facility or person previously approved to so serve in the event that the Secretary and Supervising Member of the Board determine that any such entity, facility or person has

demonstrated a lack of cooperation in providing information to the Board or for any other reason.

7. **Reports Regarding Drug & Alcohol Screens:** All screening reports required under this Order from the Board-approved DFCS, the alternative DFCS and/or supervising physician must be received in the Board's offices no later than the due date for Dr. Ernst's quarterly declaration. It is Dr. Ernst's responsibility to ensure that reports are timely submitted.
8. **Additional Screening without Prior Notice:** On the Board's request and without prior notice, Dr. Ernst must provide a specimen of his blood, breath, saliva, urine, and/or hair for screening for drugs and alcohol, for analysis of therapeutic levels of medications that may be prescribed for Dr. Ernst, or for any other purpose, at Dr. Ernst's expense. Dr. Ernst's refusal to submit a specimen on request of the Board shall result in a minimum of one year of actual license suspension. Further, the collection of such specimens shall be witnessed by a representative of the Board, or another person acceptable to the Secretary or Supervising Member of the Board.
9. **Rehabilitation Program:** Dr. Ernst shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., or C.A., no less than three times per week, or as otherwise ordered by the Board. Substitution of any other specific program must receive prior Board approval.

Dr. Ernst shall submit acceptable documentary evidence of continuing compliance with this program, including submission to the Board of meeting attendance logs, which must be received in the Board's offices no later than the due date for Dr. Ernst's quarterly declarations.

10. **Releases:** Dr. Ernst 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. Ernst's chemical dependency, impairment, 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. To the extent permitted by law, 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. Ernst further shall 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.

11. **Absences from Ohio:** Dr. Ernst 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.

Further, the Secretary and Supervising Member of the Board shall have the discretion to grant a waiver of part or all of the monitoring terms set forth in this Order for occasional periods of absence of fourteen days or less. In the event that Dr. Ernst resides and/or is employed at a location that is within fifty miles of the geographic border of Ohio and a contiguous state, Dr. Ernst may travel between Ohio and that contiguous state without seeking prior approval of the Secretary or Supervising Member provided that Dr. Ernst is otherwise able to maintain full compliance with all other terms, conditions and limitations set forth in this Order.

12. **Required Reporting of Change of Address:** Dr. Ernst shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.
13. **Comply with the Terms of Treatment and Aftercare Contract:** Dr. Ernst shall maintain continued compliance with: (a) the terms of the advocacy contract entered into with Ohio Physicians Health Program; and (b) the aftercare contract entered into with The Cleveland Clinic Foundation, provided that, where terms of the advocacy and aftercare 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. Ernst's certificate to practice medicine and surgery in Ohio until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration:** Dr. Ernst shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Compliance with Interim Conditions:** Dr. Ernst shall have maintained compliance with all the terms, conditions and limitations set forth in Paragraph B of this Order.
3. **Evidence of Unrestricted Licensure in Other States:** At the time he submits his application for reinstatement or restoration, Dr. Ernst shall provide written documentation acceptable to the Board verifying that Dr. Ernst otherwise holds a full and unrestricted license to practice medicine and surgery in all other states in which he is licensed at the time

of application or has been in the past licensed, or that he would be entitled to such license but for the nonpayment of renewal fees.

4. **Demonstration of Ability to Resume Practice:** Dr. Ernst 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, Ohio Revised Code, that Dr. Ernst has successfully completed any required inpatient treatment, including at least 28 days of inpatient or residential treatment (completed consecutively) for chemical abuse/dependence at a treatment provider approved by the Board. In accordance with Rule 4731-16-02(B)(4)(a), Ohio Administrative Code, the required inpatient treatment must extend a minimum of 28 days, with the following exception: If the practitioner has previously completed an inpatient or residential treatment program of at least 28 days and was able to maintain sobriety for at least one year following completion of that inpatient or residential treatment, the treatment required shall be determined by the treatment provider.
- b. Evidence of continuing full compliance with an aftercare contract with a treatment provider approved under Section 4731.25, Ohio 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, Ohio Administrative Code.
- c. Evidence of continuing full compliance with this Order.
- d. Two written reports indicating that Dr. Ernst'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 have been made by physicians knowledgeable in the area of addictionology and who are either affiliated with a current Board-approved treatment provider or otherwise have been approved in advance by the Board to provide an assessment of Dr. Ernst. Further, the two aforementioned physicians shall not be affiliated with the same treatment provider or medical group practice. Prior to the assessments, Dr. Ernst shall provide the

evaluators with copies of patient records from any evaluation and/or treatment that he has received, and a copy of this Order. The reports of the evaluators shall include any recommendations for treatment, monitoring, or supervision of Dr. Ernst, and any conditions, restrictions, or limitations that should be imposed on Dr. Ernst's practice. The reports shall also describe the basis for the evaluator's determinations.

All reports required pursuant to this paragraph shall be based upon examinations occurring within the three months immediately preceding any application for reinstatement or restoration. Further, at the discretion of the Secretary and Supervising Member of the Board, the Board may request an updated assessment and report if the Secretary and Supervising Member determine that such updated assessment and report is warranted for any reason.

5. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Ernst has not been engaged in active practice of medicine and surgery for a period in excess of two year prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.
- D. **PROBATION:** Upon reinstatement or restoration, Dr. Ernst's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years:
1. **Obey the Law:** Dr. Ernst shall obey all federal, state, and local laws, and all rules governing the practice medicine and surgery in Ohio.
 2. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Ernst shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
 3. **Practice Plan:** Prior to Dr. Ernst's commencement of practice in Ohio, or as otherwise determined by the Board, Dr. Ernst 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. Ernst's activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Ernst shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

At the time Dr. Ernst 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. Ernst and who is engaged in the same or similar practice specialty.

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

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Ernst must immediately so notify the Board in writing. In addition, Dr. Ernst shall make arrangements acceptable to the Board for another monitoring physician within 30 days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Ernst shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

4. **Tolling of Probationary Period while Out of Compliance:** In the event Dr. Ernst 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 under this Order.
- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Ernst's certificate will be fully restored.
- F. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Ernst 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.
- G. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER**
 1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. Ernst shall provide a copy of this Order to

all employers or entities with which he is under contract to provide health-care services (including but not limited to third-party payors), or is receiving training, and the chief of staff at each hospital or health-care center where he has privileges or appointments.

In the event that Dr. Ernst provides any health-care services or health-care direction or medical oversight to any emergency medical services organization or emergency medical services provider, Dr. Ernst shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

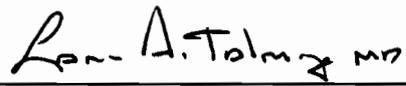
2. **Required Reporting To Other Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Ernst shall provide a copy of this Order to the proper licensing authority of any State or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate.

Dr. Ernst further shall provide a copy of this Order at the time of application to the proper licensing authority of any State or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license. This requirement shall continue until Mr. Schwartz received from the Board written notification of the successful completion of the probation.

3. **Required Reporting to Treatment Providers/Monitors:** Within 30 days of the effective date of this Order, Dr. Ernst shall promptly provide a copy of this Order to all persons and entities that provide chemical-dependency treatment to or monitoring of Dr. Ernst.
4. **Required Documentation of the Reporting Required by Paragraph G:** Dr. Ernst shall provide the Board with one of the following documents as proof of each required notification within 30 days of the date of each such notification: (1) the return receipt of certified mail within 30 days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

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


(SEAL)



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

February 11, 2009

Date

2009 JAN 15 P 3: 52

**REPORT AND RECOMMENDATION
IN THE MATTER OF DAVID CARL ERNST, M.D.
CASE NO. 08-CRF-062**

The Matter of David Carl Ernst, M.D., was heard by Gretchen L. Petrucci, Hearing Examiner for the State Medical Board of Ohio, on November 18, 2008.

INTRODUCTION

Basis for Hearing

By letter dated May 14, 2008, the State Medical Board of Ohio [Board] notified David Carl Ernst, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board's action was based on allegations that Dr. Ernst had submitted a urine sample in February 2008, which had tested positive for tramadol, and he had thus violated the terms of a May 2005 Step II Consent Agreement. The Board further alleged that Dr. Ernst's acts constitute:

- (a) "[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 set forth in Section 4731.22(B)(26), Ohio Revised Code.
- (b) "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as set forth in Section 4731.22(B)(15), Ohio Revised Code.

Accordingly, the Board advised Dr. Ernst of his right to request a hearing. (State's Exhibit 1 at 1-3) On May 15, 2008, Dr. Ernst's counsel filed a written hearing request. (State's Exhibit 1 at 27)

Appearances at the Hearing

Nancy H. Rogers, Attorney General, by Karen A. Unver, Assistant Attorney General, on behalf of the State of Ohio.

James M. McGovern, Esq., on behalf of Dr. Ernst.

EVIDENCE EXAMINED

Testimony Heard

David Carl Ernst, M.D.
Danielle Bickers
Gregory B. Collins, M.D.
Lynn M. Klimo, M.D.
Melissa McCutcheon, M.A.
Michael L. Herman, M.D.
Christine Barry, Ph.D.

Exhibits Examined

State's Exhibit 1: Procedural exhibits.

State's Exhibit 2: August 11, 2004, Step I Consent Agreement between Dr. Ernst and the Board.

State's Exhibit 3: May 19, 2005, Step II Consent Agreement between Dr. Ernst and the Board.

State's Exhibit 4: Toxicology report regarding a urine sample provided by Dr. Ernst on February 25, 2008.

State's Exhibit 5: October 18, 2004, Advocacy Agreement between Dr. Ernst and the Ohio Physicians Health Program. [Admitted under seal.]

State's Exhibit 6: October 29, 2004, letter from Danielle Bickers to Dr. Ernst, and his completed Compliance Review Form.

Respondent's Exhibit A: April 2008 transmission cover memorandum and letter from Lynn M. Klimo, M.D. [Admitted under seal.]

Respondent's Exhibit B: April 2008 letter from Melissa McCutcheon, M.A. [Admitted under seal.]

Respondent's Exhibit C: May 6, 2008, letter from Gregory B. Collins, M.D. [Admitted under seal.]

Respondent's Exhibit D: May 15, 2008, letter from David W. Stroom, M.D., with May 2008 Aftercare contract and Dr. Ernst's patient record from May 2008 inpatient treatment. [Redacted in part to obscure a social security number, and admitted under seal.]

Respondent's Exhibit E: List of the Board's approved treatment providers from September 2008.

Respondent's Exhibit F: List of the Board's approved reinstatement evaluators from September 2008.

Respondent's Exhibit G: Rules 4731-16-01 and 4731-16-02, Ohio Administrative Code, effective June 30, 2007.

Respondent's Exhibit H: Urine specimen collection forms from February 12 and 25, and March 17 and 30, 2008.

Respondent's Exhibit I: November 12, 2008, affidavit of Stan Sateren, M.D., and five attachments. [Redacted in part to remove stricken portions and to obscure a social security number. Post-hearing, the Hearing Examiner numbered this exhibit.]

Respondent's Exhibit J: Quarterly status reports from the Ohio Physicians Health Program regarding Dr. Ernst's compliance from October 2004 through July 2008. [Admitted under seal.]

PROFFERED EXHIBIT

Respondent's Exhibit I: November 12, 2008, affidavit of Stan Sateren, M.D., and five attachments. [Redacted to obscure a social security number. Post-hearing, the Hearing Examiner numbered this exhibit.]

PROCEDURAL MATTERS

At the completion of the hearing, the Hearing Examiner held the record open to allow Dr. Ernst to provide additional exhibits. (Hearing Transcript [Tr.] at 327-329) One additional exhibit, which was marked as Respondent's Exhibit J, was proposed by Dr. Ernst. During a conference call on November 25, 2008, the State noted that it has no objection to that exhibit. The Hearing Examiner admitted Respondent's Exhibit J under seal.

Additionally, the Hearing Examiner noted, upon review of the record, that Respondent's Exhibit D should have been admitted under seal because it pertains to chemical dependency treatment and it contains a patient record. Accordingly, the Hearing Examiner, *sua sponte*, modified her earlier ruling, and admitted Respondent's Exhibit D under seal. The Hearing Examiner closed the record on November 25, 2008.

SUMMARY OF THE EVIDENCE

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

Background

1. David Carl Ernst, M.D., obtained his undergraduate degree from the University of Cincinnati and his medical degree from the Medical College of Ohio. He completed an emergency medicine residency at Akron City Hospital. He obtained an Ohio certificate in 1990, and he practiced emergency medicine in Ohio until July 26, 2004. Additionally, he held clinical assistant professor positions at the Medical College of Ohio and the Ohio University College of Medicine. He also was a flight surgeon at Metro Life Flight in Cleveland, Ohio, for four or five years. (Hearing Transcript [Tr.] at 32, 256)
2. A Board investigator spoke with Dr. Ernst in July 2004. Dr. Ernst admitted that he began using Vicodin (a brand of hydrocodone) in February 2001 to treat severe pain from a knee injury following a skiing accident. Dr. Ernst stated that he had first obtained the Vicodin via prescription from an orthopedist. After obtaining a second prescription of Vicodin, he ordered the medication himself. He noted that he had become tolerant to and dependent on the medication. He became addicted. Dr. Ernst entered treatment for chemical dependency shortly after the conversation with the Board investigator in July 2004, and completed the 28-day inpatient treatment program at Glenbeigh Hospital. (State's Exhibit [St. Ex.] 2 at 2; St. Ex. 3 at 2; Tr. at 33, 259-260)
3. Effective August 11, 2004, the Board entered into a Step I Consent Agreement with Dr. Ernst, indefinitely suspending his Ohio certificate for at least a period of 180 days, due to his chemical dependency. (St. Ex. 2 at 3; Tr. at 37)
4. The Step I agreement reflects the following admissions by Dr. Ernst:

Dr. Ernst further admits that he is chemically dependent, and his drug of choice is hydrocodone (Vicodin). Dr. Ernst further admits that he began using hydrocodone during or about February 2001 in an effort to self-treat severe pain from a knee injury, and that he gradually became tolerant to and dependent on the medication.

Dr. Ernst further admits that, during the time period from in or about February 2001 through in or about July 2004, he obtained hydrocodone for self-use exclusively by ordering it through a wholesale pharmacy, Moore Medical, which filled the orders and sent the medication to him. In addition to hydrocodone, Dr. Ernst states that, approximately one year ago, he also ordered Librium, tramadol, and Metoclopramide from Moore Medical, with the intent of taking these medications as a means of weaning himself off the hydrocodone. Dr. Ernst further represents that he did not take these other medications, but instead flushed them down the toilet prior to entering treatment at Glenbeigh Hospital. Dr. Ernst specifically denies obtaining any controlled substances for self-use by any other methods, and he further states that at no time did he ever divert, sell, or give any controlled substances to anyone else. Dr. Ernst further states that he never directly or indirectly

involved patients or other individuals in any of his efforts to obtain controlled substances for self-use.

* * * Dr. Ernst further admits that he developed a physical dependence on the hydrocodone, and, before entering inpatient treatment on or about July 26, 2004, his monthly requirement/intake was 1,500 tablets of hydrocodone containing acetaminophen (10/650).

(St. Ex. 2 at 2; see also Tr. at 34-35, 259)

5. On October 18, 2004, Dr. Ernst entered into a five-year advocacy agreement with the Ohio Physicians Health Program [OPHP]. Under that agreement, OPHP agreed to act in an advocacy role and conduct random drug screens for Dr. Ernst, and he agreed to abstain from all mood-altering drugs and have all medication prescribed by a physician who has knowledge of his recovering status. (St. Ex. 5; Respondent's Exhibit [Resp. Ex.] I at 6; Tr. at 43)
6. Effective May 19, 2005, the Board entered into a Step II Consent Agreement with Dr. Ernst, reinstating Dr. Ernst's Ohio certificate subject to probationary terms, conditions and limitations [probationary terms] for at least five years. (Tr. at 32; St. Ex. 3) The Step II agreement includes the following paragraph 8:

Dr. Ernst 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. Ernst's history of chemical dependency.

(St. Ex. 3 at 4) Dr. Ernst continues to be subject to the requirements of the Step II agreement.¹

7. Dr. Ernst currently holds an Ohio certificate to practice medicine, subject to his probationary terms. He is employed, as president of EPOWERdoc, a company that provides computerized documentation services for emergency departments. His position involves no clinical patient care, and he has not been employed as a physician since 2004. However, Dr. Ernst provides, on a volunteer basis, clinical patient care at a shelter for the homeless in Lorain, Ohio. Dr. Ernst explained that, twice per month, the homeless shelter provides free primary medical care and he has been the shelter's physician for approximately three years. Some of the treatment that he provides is episodic care, and some is chronic care. Also, he does prescribe medicine for the patients there. (Tr. at 32, 170, 285, 302-303)

¹Dr. Ernst's Step II Consent Agreement required him to obtain a monitoring physician approved by the Board. (St. Ex. 3 at 5-6) The Board's Compliance Supervisor, Danielle Bickers, testified that, because Dr. Ernst was practicing medicine only on a volunteer basis, the Board did not require him to obtain approval of a monitoring physician, and no patient chart reviews or reporting have occurred. (Tr. at 80)

Dr. Ernst's Late February 2008 Activities

8. On February 24, 2008, there was a snowfall in Dr. Ernst's area. Dr. Ernst's children were playing in the snow. Dr. Ernst testified that he had shoveled snow that day and had helped his children build an igloo. (Tr. at 52-53, 174, 272)
9. Dr. Ernst testified that, later that night, he awoke and his back muscles were very sore. He stated that he had thought that he would not be able to get up in the morning because of the soreness in his back, so he had decided to take medication at that time. Dr. Ernst testified that, when he had opened a Motrin bottle, he had found Motrin and Ultram (a brand of tramadol).² Dr. Ernst consumed Motrin and two Ultram pills to alleviate his discomfort. He then went to back to sleep. Dr. Ernst confirmed that the Ultram pills were not ones that he had previously ordered from the wholesale pharmacy because he had disposed of those pills prior to entering treatment in 2004. (Tr. at 36, 52, 272, 299-300; see also Tr. at 174) The following exchange addressed the source of the Ultram that he had consumed in February 2008:

Q. When did you first learn that you had tramadol in the house?

A. I actually didn't even realize it until the day that I went to take Motrin for my back pain and they were – must have been samples in the same bottle as the Motrin that I had. I saw them there and thought they would be an adjunct to the Motrin because I felt they were non-narcotic medication for pain and used them.

Q. Where did those tramadol pills come from that were in the Motrin bottle?

A. They were samples from probably seven to eight years even prior to addiction that I didn't even remember were in the house that – * * * – that came, I'm sure, from the emergency room.

(Tr. at 36; see also Tr. at 268-269)

10. Dr. Ernst stated that, in February 2008, he had not recognized that Ultram was contrary to the terms of his Step II agreement. He testified that he had considered Ultram to be akin to taking aspirin, Tylenol or ibuprofen. He explained that he had held that belief because, when he was a practicing emergency physician, he had been told by representatives of the drug companies that tramadol has no euphoric effects, is not addictive, and is a medication that

²Tramadol is not an opiate and is not a controlled substance. Tramadol is an opiate-like drug that is an analgesic and that is available only via prescription. In comparison with Vicodin, tramadol is roughly 10 times weaker in potency. (Tr. at 106, 113, 203-204, 231, 235)

can be given to “drug seekers.”³ In addition, Dr. Ernst stated that he had not taken the Ultram to alter his mood. (Tr. at 40-41, 45, 270, 272-273, 300-301)

11. In particular, Dr. Ernst testified as follows:

I didn't view tramadol as anything more potentially addictive or even that the Board would test for than Motrin. It had no – I had no inkling in my mind. The thought of even relating to a drug test wasn't even in my mind at the time. It was strictly I'm taking the medication for pain and that was it. There wasn't anything else to it.

(Tr. at 51-52)

12. However, Dr. Ernst admitted that he had known that tramadol is prescription medication and that, since August 2004, he has been permitted to receive prescription medications only from someone who had full knowledge of his chemical dependency history. (Tr. at 38-41, 45, 60)

13. Dr. Ernst stated that he had taken no other Ultram because he had had no need to – his backache had subsided a day or two later. Dr. Ernst disposed of the remaining Ultram when he was notified of the positive drug screen. (Tr. at 52-54)

February 25, 2008, Drug Screen

14. On February 25, 2008, Dr. Ernst provided a urine specimen for drug testing. (Tr. at 50)

15. The urine specimen was sent to Bendiner & Schlesinger, Inc., for testing, which found that the specimen contained tramadol. A second, higher-level test called “GC/MS”⁴ was conducted to confirm the drug's presence in the urine and to measure its level. The level of tramadol found was 2,882 nanograms per milliliter, which is above the GC/MS detection level of 300 nanograms per milliliter. (St. Ex. 4)

March 26, 2008, Conversation with OPHP

16. On March 26, 2008, OPHP received the toxicology results from Bendiner & Schlesinger, Inc., for the February 25, 2008, urine specimen. Stan Sateren, M.D., President/Medical

³Consistent with that characterization of tramadol, Dr. Ernst's sponsor, Michael L. Herman, M.D., noted that the medical community's views on the potential for abuse of tramadol has heightened since it was first marketed. (Tr. at 113) The Board's Compliance Supervisor, Danielle Bickers, similarly noted that, over the last six years, the compliance section of the Board has increasingly monitored the use of tramadol because of abuse. (Tr. at 76) However, the Medical Director of the Alcohol and Drug Recovery Center of the Cleveland Clinic Foundation, Gregory B. Collins, M.D., stated that he, personally, had worried about the abuse potential of tramadol when it was first available, and he had seen abuse of tramadol at that time. Additionally, he stated that currently there are many more potent drugs available today and, therefore, tramadol is not currently popular for abuse. (Tr. at 204-205)

⁴“GC/MS” stands for gas chromatography/mass spectrometry.

Director of OPHP contacted Dr. Ernst that same day and informed him of the results. Dr. Sateren's notes from that conversation reflect that Dr. Ernst had stated that he believed the test was positive "due to taking medications that he had kept in a drawer, possibly after gall bladder surgery 2-3 yrs. ago." (St. Ex. 4 at 1; Resp. Ex. I at 1-2)

17. In an affidavit, Dr. Sateren stated the following regarding his March 2008 conversation with Dr. Ernst:

Dr. Ernst's initial reaction appeared to me to be one of surprise. As I reviewed with Dr. Ernst his activities around the time the specimen was collected, I learned that: a) Dr. Ernst recalled he had strained his back while shoveling snow a day or two prior to February 25, 2008 and when he did not obtain relief from the use of over-the-counter pain relievers, he took a couple of samples of Ultram (tramadol) that he came across in the drawer where he keeps medications; b) following his use of the Ultram, Dr. Ernst did not think about his Ultram use again until trying to recall with me his activities leading up to the [Urine Drug Test] specimen collected February 25, 2008; c) Dr. Ernst was unsure whether the Ultram had been prescribed after gall bladder surgery two or three years ago or if it was a sample medication from his previous work as an Emergency Physician; and d) Dr. Ernst knew that Ultram was not a controlled substance and, therefore, it did not dawn on him this might pose a threat to his sobriety or create problems relating to compliance with his five-year agreement with OPHP and/or his Consent Agreement with the [Board.]

(Resp. Ex. I at 2)

18. Dr. Ernst described his conversation with Dr. Sateren, noting that he had not been aware that the drug screens even tested for the presence of Ultram. (Tr. at 274-275) Dr. Ernst acknowledged that he had thought, during that telephone conversation, that perhaps he had obtained the Ultram following a gall bladder surgery, testifying as follows:

I'm trying to think in my head where in the heck did I get Ultram and, you know, why did I take it? So I identified the day that I took it based on thinking back when the drug screen was, uh, and then I remembered in the past I had had gallbladder surgery. I think this was way pre-recovery and I thought, well, maybe I was prescribed some then.

(Tr. at 270-271; see also Tr. at 301) However, Dr. Ernst further testified that, as he had thought about it further, he had realized that he had not received Ultram following that surgery because it was accomplished laproscopically. In addition, he stated that he does not recall ever filling a prescription for Ultram. (Tr. at 271, 300)

March 26, 2008, Conversation with the Board's Compliance Supervisor

19. Dr. Ernst and Danielle Bickers, the Board's Compliance Supervisor, both testified that Dr. Ernst had called the Board's offices on March 26, 2008, to self-report the positive drug screen. During that conversation, Dr. Ernst informed her that he had woken up during the night with back pain in late February 2008, and he had taken two Motrin and two Ultram tablets. Ms. Bickers recalled that, at that time, Dr. Ernst did not definitively recall how he had originally obtained the Ultram. (Tr. at 54, 61-62, 77, 276)
20. Dr. Ernst stated that, probably, he had told Ms. Bickers that the Ultram were samples obtained from the hospital when he was a practicing emergency physician. (Tr. at 302)

Dr. Ernst's Subsequent Activities in March and April 2008

21. Dr. Ernst testified that, after learning of the positive drug screen, he had quickly taken a number of steps to determine why he had taken the Ultram in February 2008. He noted that he had discussed the matter with his wife to determine if she had observed any changes in his behavior or his thoughts. (Tr. at 55-56, 277-278)
22. Moreover, Dr. Ernst spoke with his two recovery sponsors. He explained the event, how he was feeling about it, and sought their opinions and advice to prevent another problem with his judgment. (Tr. at 55, 278-279)
23. Dr. Ernst contacted his psychiatrist, Lynn M. Klimo, M.D, and obtained an appointment with her.⁵ Dr. Ernst was not required by the Step I or Step II agreements to see a psychiatrist; he is doing so on his own. He met with Dr. Klimo on March 31, 2008, and disclosed his use of Ultram and the circumstances leading up to it. Dr. Ernst further explained that he sought to determine how he had missed the fact that he should not have taken the Ultram, and to create a plan for not letting it happen again. (Tr. at 54, 79-80, 282-283)
24. Similarly, Dr. Ernst contacted his counselor, Melissa McCutcheon, M.A., and obtained an appointment with her. He met with her on April 3, 2008, and disclosed his use of Ultram and the circumstances leading up to it. He noted that they had discussed steps that he could take to avert similar actions in the future. (Tr. at 283-284)
25. Dr. Ernst also contacted Gregory B. Collins, M.D., and obtained an appointment with him. Dr. Collins is the Medical Director and Section Head of the Alcohol and Drug Recovery Center at The Cleveland Clinic Foundation [Cleveland Clinic], a Board-approved treatment

⁵Dr. Klimo obtained her undergraduate and medical degrees from Case Western Reserve University. She completed a residency in 2004 at Summa Health System. She became board-certified in psychiatry in 2005. She was previously the Medical Director at Fremont Memorial Hospital. Also, she worked in private practice for one year, and then, in June 2006, joined Summa Health System. (Tr. at 117-118, 134)

provider.⁶ Dr. Ernst met with Dr. Collins on April 30, 2008, and disclosed his use of Ultram and the circumstances leading up to it. He noted that he has voluntarily complied with Dr. Collins' suggestions—he completed five days of partial hospitalization at the Cleveland Clinic, is attending weekly aftercare meetings through the Cleveland Clinic (since May 2008), and has increased his drug screens from twice per month to weekly. Dr. Ernst stated that all of those screens have been negative. (Tr. at 194; Resp. Ex. E at 1; Resp. Ex. D at 7)

Testimony of Lynn M. Klimo, M.D.

26. Dr. Klimo first saw Dr. Ernst in June 2007. During the office visits, they address addiction issues, discussing his sobriety, maintenance of that sobriety, maintenance of his mental health, and compliance with his Step II agreement. Between June 2007 and March 2008, Dr. Ernst saw Dr. Klimo five times, on a quarterly basis. She stated that she had believed that he had been very compliant with his recovery, he was making sure his thinking was on a “solid path,” and he was doing what he needed to do. Dr. Klimo further stated that she continues to believe that Dr. Ernst is in compliance. (Tr. at 119, 121, 123, 135, 137)
27. Dr. Klimo wrote to the Board in April 2008, after meeting with Dr. Ernst on March 31, 2008. In her letter, she expressed her opinions regarding Dr. Ernst's use of Ultram. She stated:

At that visit we reviewed in detail the specifics of this slip, which in my opinion does not constitute a relapse since this was a one time isolated use. I do believe he is truthful about this. I believe that he did take samples of Ultram not knowing that this would show up as a positive in a urine drug screen[,] also not even thinking about the drug screen or whether or not this would be positive.
* * * He has taken all the steps required of him since that time to be in compliance with his consent agreement as well as his recovery program. * * *
During our discussion on March 31, 2008, we did talk at length about his recovery program and the 12-steps. We did isolate some areas for him to continue to work on specifically steps 1 through 3, which are foundation steps, which he continues to work on. Again, in my opinion this was not actually a relapse, but a “slip.” This is a fine line and can be argued from either direction; however, I believe that he has taken all steps needed to not have an ongoing situation.

He and I have also talked about his ongoing work [as a physician]. He works 2 days per month. I do not believe that he has any impairment ongoing from

⁶Dr. Collins received his undergraduate degree and his medical degree from The Ohio State University in 1966 and 1970, respectively. Also, he obtained his psychiatric residency training there in 1973. He entered the U.S. Navy, where he was a Navy psychiatrist from 1973 to 1975. During that time, he received special training in substance abuse rehabilitation. Then, he returned to Ohio, running the alcohol and drug program at Metropolitan General Hospital in northern Ohio for five years. In 1980, he found the Cleveland Clinic's substance abuse program and has remained the director of that program for the past 28 years. (Tr. at 192-193)

this one isolated situation. It is in my opinion that he remains safe to practice his 2 days per month at the homeless clinic as a clinician.

(Resp. Ex. A at 2-3)

28. At hearing, Dr. Klimo described Dr. Ernst's demeanor at his March 31, 2008, office visit and her impressions of what had occurred in February 2008:

At that time when he came in, he was actually quite distressed * * * that he had taken these Ultram samples, thinking that he was treating some back pain, not thinking that it was something that was going to be a problem for his sobriety, and when we found out from a drug test that this was going to be a problem, he contacted a lot of the people that he was supposed to contact immediately, me being one of them.

* * *

I spent a lot of time at that visit trying to figure out if this was intentional or not intentional, if this was a relapse in his thinking that he was attempting to use that medication to actually get high or to have some kind of secondary gain to, as many addicts will, to find a way to get some sort of high off of the medication. I did not find any evidence at that visit that that was his intention.

I felt at that visit he was very surprised and he was also very concerned that it was even in his realm of possibility to even take that without thinking and that he had to double his efforts in his recovery so that it did not happen again. So I found that this was a very useful thing for him to actually continue his recovery * * * and I don't see that this was a relapse at all.

(Tr. at 124-125; see also Tr. at 128, 130, 141-142) Dr. Klimo explained that "relapse" involves: an intention to use for secondary gain, multiple uses, and a continuing desire to want to use or a continuing action to seek out the substance. She testified that Dr. Ernst had none of that premeditated or addictive-type thinking and, for that reason, she stated that Dr. Ernst was not and is not currently impaired in his ability to practice according to acceptable and prevailing standards of care, so long as he does not practice in the emergency room environment. In Dr. Klimo's view, as long as Dr. Ernst is not in the high-pressured emergency room environment around narcotics, he is not impaired to work, including at the homeless shelter. However, he is impaired to carry out the duties associated with an emergency room physician. (Tr. at 127-130, 139, 142)

29. Dr. Klimo confirmed that Dr. Ernst has made a number of extra efforts at recovery since March 2008, including more frequent appointments with Dr. Klimo. (Tr. at 125-126, 129-130) She explained why those changes have taken place:

I actually was not concerned about him using. I was more concerned actually about his Consent Agreement and what the Board was going to view as reasonable and I wanted you to know that he was getting all the support necessary; that this was not going to happen again. However, I actually am not concerned that he is going to have another slip or relapse or however you want to call it. * * * But we wanted to make sure that everyone was aware that he is doing everything in his power to be sure that he is clear that this is never going to happen again.

(Tr. at 140-141)

Testimony of Melissa McCutcheon

30. Melissa McCutcheon, M.A., is Dr. Ernst's counselor.⁷ Ms. McCutcheon first saw Dr. Ernst in October 2007. They have addressed spirituality issues and personality issues as a means to help him be compliant and to understand his drug use. Between October 2007 and April 2008, they had met nine times. She stated that he had seemed to be extremely honest regarding his activities and his attempts to say away from prescription medications, alcohol, and other substances. Also, she testified that she had not noticed any change in Dr. Ernst's behavior prior to meeting with him on April 3, 2008. Further, Ms. McCutcheon noted that she still holds the same view of Dr. Ernst's recovery efforts. (Tr. at 151-152, 154, 155-156, 158, 162)
31. Ms. McCutcheon also wrote to the Board. She noted that Dr. Ernst had met with her on April 3, 2008, because of his use of Ultram, told her what had happened, and told her of his concern that he needed to work on his recovery and to understand what could put him at risk. (Resp. Ex. B) She noted the following regarding Dr. Ernst's demeanor at the April 3 appointment:

He was very upset with himself. He felt guilty that he had not done a more thorough clean out search of the house to make sure that there was absolutely nothing around that could be problematic for him. Hoped that he would be able to get his license back * * * but knew that there would be a penalty because of what had happened. He was very realistic, remorseful, not overly so, but in a way that you would expect to be normal.

(Tr. at 160-161)

⁷Ms. McCutcheon received a master's degree in Pastoral Counseling from Ashland Theological Seminary in 1996. Since 1998, she has been licensed by the Counselor, Social Worker, Marriage and Family Therapist Board in Ohio. She focuses on mood disorders, couples therapy, and post-traumatic stress disorder. Additionally, she noted that she helps people in spirituality, and trying to find balance following traumas. (Tr. at 151)

Testimony of Gregory B. Collins, M.D.

32. Dr. Ernst explained that, upon advice, he had sought an evaluation from Dr. Collins. Dr. Ernst testified that, "I'll be very honest with you. I was not excited about spending five days, 11 hours a day, at a treatment facility at all, but at that point I was certainly not going to question his judgment * * * and if it resulted in a better comfort level for me and for him, then that was certainly appropriate." (Tr. at 293-294)

33. Dr. Collins met Dr. Ernst in April 2008. (Resp. Ex. C; Resp. Ex. D at 3-8) He described his impressions of Dr. Ernst:

[H]e appeared to be open, honest, candid, cooperative, described his story which made good sense as far as describing, as he put it, the week that included I would say an inadvertent use of substance that he indicated that he was not aware it was not allowed.

* * *

I don't think he knew that this was a substance that was not allowed. It's not a controlled drug. That would be something that not everybody would necessarily be aware of that this was not an allowed drug.

(Tr. at 207-208)

34. Moreover, Dr. Collins explained that Dr. Ernst had made a favorable impression. Dr. Collins was impressed with his sincerity, motivation, willingness, and compulsivity with respect to satisfying the requirements of his contracts. Dr. Collins noted that Dr. Ernst had looked good, and that there was no evidence of impairment. However, he wanted to take more time, and, therefore, he had recommended that Dr. Ernst attend the Cleveland Clinic's Partial Hospitalization Program, which he did on May 5, 7, 8, 9 and 13, 2008. (Resp. Ex. D; Tr. at 214, 220)

The Partial Hospitalization Program is an 11-hour residential evaluation program that starts at 9 a.m. and concludes at 8 p.m. It includes meetings, therapy sessions, group therapy, counseling and a psychiatric assessment. Dr. Ernst was diagnosed with opioid dependence. He successfully completed that program and executed a two-year aftercare contract with the Cleveland Clinic. Dr. Collins noted that no additional information came to light that caused him to think that Dr. Ernst's use of Ultram in February 2008 was an intentional relapse. A report of the evaluation was sent to the Board. (Resp. Ex. D at 1-2, 7; Tr. at 215, 218, 220-221, 245-246)

35. In May 2008, Dr. Collins wrote a letter regarding the evaluation of Dr. Ernst. He stated the following:

[Dr. Ernst] said that he hurt his back shoveling snow and took Motrin for the pain, but when the pain continued he ingested two old Ultram samples that he had at home. Dr. Ernst states that he did not realize that Ultram was a substance he needed to avoid as it is not a controlled drug. There was no attempt to alter his mood in any way. In my opinion this was an inadvertent, brief breach of his abstinence requirement, and no harm was done. This ingestion appears not to have triggered a relapse to further abuse of medication or alcohol. During the assessment Dr. Ernst did acknowledge that it was wrong for him to self treat.

The urine toxicology screen done on 4/20/08, which included a tramadol assay was negative. As a precautionary measure it was recommended that Dr. Ernst attend (5) sessions of our Partial Hospitalization Program, [provide] urine toxicology screens weekly for one year, and attend [the] Dr. J. Janesz Caduceus Group [meeting] weekly.

It is my opinion that Dr. Ernst is capable of practicing according to acceptable standards of safe care.

(Resp. Ex. C; see also Tr. at 211-212, 235, 244)

36. Dr. Collins distinguished a “relapse” from what transpired with Dr. Ernst in February 2008:

A relapse is a clinical process that we see that occurs often within the context of the long term course of this disorder. By no means is it expected, but I would say it is commonly seen, let’s put it that way, something that we try to avoid. But a relapse often is something that we see precipitated by craving or compulsion, thinking about the drug, uh, and more or less corresponding with a weakening of the support system that we put in place to prevent the person from going back to the drug. So often they’re drifting away from their meetings, they’re not in touch with their sponsor, they’re not in touch with us, they’re getting more back [into] isolating themselves, perhaps getting back into old habit patterns that predispose drug use, uh, like overworking or being depressed or hang[ing] out with certain people or circumstances that might predispose to eventual reusing of the substance, putting themselves back in an exposure to that substance, perhaps seeking physicians who are going to medicate them for, you know, some ailment that they might complain about or something like that.

So usually there’s sort of a cognitive premorbid phase leading up to the actual use again of the forbidden substance, let’s say. Then of course the relapse itself occurs when the person actually does succumb and uses the substance I

would say in a way that they're aware of and realizing that they're doing that they shouldn't be doing and then there's usually an attempt to disguise or hide the use, conceal the use from the spouse or lawful authority user, partners, business associates or, you know, doctors, hospitals, patients, fellow staff members, nurses, et cetera.

(Tr. at 196-197) Dr. Collins further explained that a preceding prodrome will occur before the actual use; a recurrence of the illness, which involves a reactivation of the addictive cycle of craving, thinking, behavioral changes and attitude changes. In Dr. Ernst's case, Dr. Collins found no reactivation of the disease process and, therefore, no relapse. (Tr. at 228, 231-232, 236, 237)

37. Dr. Collins noted that, in his work at the Cleveland Clinic with chemically dependent physicians, approximately 20 percent have had a relapse. He noted that most return to the same type of drug that they had used before. He stated further that he has observed that the pattern of behavior for those who relapse can include: backing away from required meetings, being more negligent about follow-up visits with supervisors or therapists, missing urine drops, sabotaging the urine testing, and lying or covering up. (Tr. at 200-201)
38. Moreover, Dr. Collins stated that Dr. Ernst's situation also does not constitute a relapse under the Board's definition of "relapse" because the use did not arise "from the neurological excitement that these substances produce, * * * and personality changing that arises from that." Dr. Collins stated that, if Dr. Ernst's situation violated his Consent Agreement, it still would not constitute a relapse. (Tr. at 230, 236)
39. In addition, Dr. Collins pointed out that, since May 2008, Dr. Ernst has been an active and consistent participant in the Cleveland Clinic's Caduceus group on a weekly basis, and he followed up with Dr. Collins in mid-September (as is required by his aftercare contract) and at that time he looked very good. Dr. Collins considers Dr. Ernst's status to be excellent, with no evidence of impairment or relapsing. Dr. Collins also stated that Dr. Ernst is getting his urine checks through OPEP, too. Dr. Collins restated that there is still no evidence to satisfy his criteria of a relapse (psychologically or behaviorally) and Dr. Ernst is, at the time of the hearing, fit and able to practice medicine according to acceptable standards of practice. (Tr. at 218-220, 224)
40. Lastly, Dr. Collins summarized his thoughts:

Well, every now and then these things come up where you have these physicians on a Consent Agreement for years, they're being monitored by their urines for years. There is such a thing as unintentional or unknowing use. It does happen, not frequently, but it does happen. In my mind, this satisfies criteria to me anyway that this is what happened in this case. I think this doctor was doing a good job with his recovery program. In my mind, this was an inadvertent use and I would think that – I would hope that the Board

would see it that way. In my mind, I think that's a just and reasonable conclusion.

(Tr. at 225)

Testimony of Michael L. Herman, M.D.

41. Michael L. Herman, M.D., has known Dr. Ernst for five years and he is one of Dr. Ernst's two sponsors in recovery.⁸ Dr. Herman learned of Dr. Ernst's use of Ultram in February 2008 shortly after it took place, when Dr. Ernst had described his backache and complained of getting older. (Tr. at 90, 94, 96, 105, 110)
42. Dr. Herman stated that, in January or February 2008, there was "absolutely nothing" in the way of signs or symptoms or outside factors that would have prompted Dr. Ernst into addictive thinking and potentially setting up a relapse. Dr. Herman reached that conclusion because Dr. Ernst shares honestly with Dr. Herman about his feelings and what is taking place in his life. (Tr. at 95-96, 111)
43. Dr. Herman described Dr. Ernst's reaction to the positive drug screen as shock, dismay, concern and fear that it would be misinterpreted as though he had relapsed. (Tr. at 97)
44. Dr. Herman does not believe that Dr. Ernst's use of Ultram in February 2008 was a relapse. He testified that "relapse" is not an event, but rather, a process whereby thinking and behavior lead to eventual use. (Tr. at 87, 89, 100, 106-107) With regard to Dr. Ernst's compliance with his consent agreements and advocacy agreement, Dr. Herman stated:

I am of the firm belief that [Dr. Ernst] has maintained his sobriety since he signed those agreements. I am aware that we are here today because of a positive toxicology test which does not in my mind speak to whether or not he has relapsed or not.

(Tr. at 94)

45. Dr. Herman acknowledged that Dr. Ernst should have spoken with a physician prior to self-medicating, but there was nothing in his thought-process or behavior that convinces Dr. Herman that Dr. Ernst had relapsed. (Tr. at 100, 110)
46. Dr. Herman further stated that the fact that Dr. Ernst mentioned the use of Ultram to him before Dr. Ernst was aware of the toxicology results signifies that Dr. Ernst "is being

⁸Dr. Herman earned his medical degree from Northeast Ohio University, completed a transitional residency year at St. Thomas Hospital in Akron, completed an anesthesiology residency at Case Western Reserve/University Hospitals in Cleveland, and completed a fellowship at the University of Miami, in Florida. He practiced medicine in Ohio for a period of time, and he left clinical medicine in 1997, following a second relapse on an opiate. Dr. Herman stated that his Ohio certificate had been suspended, and was ultimately revoked by the Board. Dr. Herman owns his own company, called MedMal Consulting, Inc. (Tr. at 84-86, 90, 105, 265)

accountable for his actions and didn't believe that he did anything wrong." Moreover, Dr. Herman contends that Dr. Ernst has since taken additional actions to ensure that his recovery remains intact and Dr. Herman believes that Dr. Ernst has done "everything possible" to protect himself from relapsing. (Tr. at 98-99, 102, 104)

Testimony of Christine Barry, Ph.D.

47. Christine Barry, Ph.D., is Dr. Ernst's wife. They have been married for 16 years and have two children. She is a pediatric neuropsychologist. Ms. Barry noted that, when Dr. Ernst was working as an emergency room physician, it was highly stressful, and his life became mostly work and sleep. She explained that, since entering treatment in 1994, his life has changed to focus on recovery, his family and a new career. She stated that he is emotionally present with his family and actively living in the moment. (Tr. at 167, 169, 171-172)
48. Ms. Barry testified that, since his treatment, Dr. Ernst has the mind-set and desire to be healthy and sober. To that end, she believes that he has followed the 12-step recovery program, attended recovery group meetings, exercised, worked with a therapist and a psychiatrist, and given lectures on addiction to medical residents. (Tr. at 170)
49. With regard to the Ultram, Ms. Barry testified that she had not been aware that there was Ultram in their home in February 2008. Also, she did not recall Dr. Ernst taking medication for a sore back that February day. However, she recalled that he had shoveled snow for "quite a while" that day, and later had complained of being sore. (Tr. at 181, 183-184, 253)
50. Ms. Barry stated that Dr. Ernst was surprised when he had learned of the positive drug screen. She testified that he told her that "when he took [the Ultram], he didn't even think anything of it. He didn't think twice about it. He just was thinking of it more sort of like Motrin." When she asked him how or why there was Ultram in the house, Dr. Ernst replied that it was a sample. (Tr. at 173, 185, 250-251)
51. Ms. Barry testified that, looking back to the time surrounding the February 2008 incident, she noticed no change in Dr. Ernst's behavior and noticed no return to the addictive behaviors he had exhibited when in active addiction. Moreover, she noticed no alteration in his mood during the period of time immediately following his consumption of Ultram. Ms. Barry confirmed that Dr. Ernst has increased his recovery efforts after the positive drug screen. She described his recovery efforts in 2008 as "excellent" and "stable." In addition, she considers his support system to be excellent. (Tr. at 174-177)
52. Ms. Barry further explained the extent of her concern about Dr. Ernst's use of the medication:
 - Q. Did it concern you at all that Dr. Ernst had taken something other than Tylenol for his back pain that you didn't know about?

- A. It concerned me but I didn't look at it as he was reverting to any sort of behavior. There had been absolutely no incident. I guess I looked at it more as he was in pain, he took something for his pain, but I didn't see any evidence of – I didn't see any evidence of change in behavior, any change in functioning. Honestly, that night of his complaining of his pain, I couldn't have told you that there was – there was absolutely nothing different about him. It wasn't as if he had become distant or sleepy or anything. I didn't even give it another thought.

(Tr. at 186)

53. Furthermore, Ms. Barry noted that, after the positive drug screen, she had looked through all the drawers in their home and there are no prescription medications in their home. (Tr. at 185, 187)

Dr. Ernst's Thoughts about His Recovery

54. Dr. Ernst commented on the importance of his recovery, stating the following:

This is going to sound maybe odd to you, but for me this whole addiction thing is the best thing that's ever happened to me in my life. I was able to recalibrate where I was going and readjust my priorities in life and center it more around my family and my kids. I take this very seriously and * * * I feel nothing like the life I had previous and as a result, you know, I don't want to jeopardize that in any fashion.

(Tr. at 56)

55. Similarly, Dr. Ernst explained why he has chosen to see a psychiatrist and a counselor, as additional measures in pursuit of recovery:

But for me, I started to realize that I wasn't in a place that I felt I could be in my head and in life. I don't mean that in a negative sense of having psychiatric issues or what have you. I mean it in a philosophical and spiritual place.

So the first thing I did was to go see a doctor by the name of Dr. Sanelli who is an addictionologist in Akron. I saw her regularly about every two months up until the time she left Akron, at which time I was transferred from her to Dr. Klimo. Dr. Sanelli was an addictionologist. So the purpose of that was mainly to monitor my head, uh, to see if I was drifting back into the old thought process.

Once I started seeing Dr. Klimo, then I felt as though after about three years of recovery that I knew I could reach a higher plain, both spiritually and just

in my life. I asked her for a reference to really a life coach, for the proper term, in which Ms. McCutcheon is. She is a counselor, but her main purpose is spiritual growth and growth in recovery, uh, and taking it to the next level where you apply everything now to your family and your outward interactions with the public and the people around you, rather than just the selfish motive of staying sober. So that's how I've gotten involved with her.

(Tr. at 262-263)

56. Dr. Ernst expressed his regret for consuming Ultram in February 2008. He stated:

* * * This was a serious lapse in judgment that, you know, I deeply regret. It really is. You know, regardless of the outcome of this hearing today, you know, ultimately it's all for my benefit. It's for my benefit of, you know, making me stronger, making me more vigilant and making me more aware. It's just – It's just disheartening that it had to come to this level, but maybe that's what it took for me. I don't know. You know, things happen for a reason. But I think I just want everyone to know that I understand. I get the idea that I had a serious lack of judgment. It will not happen again. * * *

(Tr. at 298-299)

57. Moreover, Dr. Ernst stated that he has continued to protect himself in recovery and taken extra measures to ensure his recovery, pointing to the fact that he has declined to be employed as a physician. Also, Dr. Ernst acknowledged that he had volunteered at the homeless shelter in Lorain, Ohio, on April 7, 2008, but only after Dr. Klimo and Ms. McCutcheon had concluded that he was capable of practicing medicine. Additionally, he stated that he did not perform any further clinical practice at the homeless shelter until he had obtained a positive report from Dr. Collins. (Tr. at 287-288) Further, Dr. Ernst stated that, since September 2008, he voluntarily stopped his volunteer practice at the homeless shelter. Thus, in Dr. Ernst's view, there is no risk to himself or the public from his consumption of Ultram in February 2008. (Tr. at 297-298)

58. Dr. Ernst's current recovery-related activities are:

- Weekly AA meetings
- Weekly Caduceus meetings
- Weekly Aftercare meetings
- Weekly drug screens
- Visits to psychiatrist
- Visits to counselor
- 2 sponsors
- Supervising/monitoring physician with OPHP
- Quarterly visits to Dr. Collins

- Periodic field visits by OPHP

(Tr. at 262-266, 295-296; Resp. Ex. I at 1; Resp. Ex. J at 20-21)

Other Information

59. Dr. Ernst noted that, as a result of a surgical procedure in the summer of 2008, he was prescribed certain medications. He pointed out that he had contacted the Board and OPEP to inform them of the prescriptions and the medications did not negatively impact his recovery at all. (Tr. at 294-295)
60. Dr. Sateren conducted a field visit with Dr. Ernst in July 2008. He found him to appear physically and mentally healthy, and his recovery appeared intact. (Resp. Ex. I at 4)

RELEVANT OHIO LAW

Dr. Ernst contends that the circumstances of his consumption of Ultram in February 2008 do not constitute a relapse and do not justify discipline, based upon the “slip exception” set forth in Rule 4731-16-02(D), Ohio Administrative Code. In contract, the State argues that Dr. Ernst’s use of Ultram does constitute a relapse following treatment and does not qualify for the so-called “slip exception,” and thus, a 90-days suspension is appropriate, based upon Rule 4731-16-02(D), Ohio Administrative Code. The relevant regulatory provisions are set forth below in this section.

Rule 4731-16-01(A), Ohio Administrative Code, defines “impairment” as “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.” Impairment includes “inability to practice in accordance with such standards, and inability to practice in accordance with such standards without appropriate treatment, monitoring or supervision.”

Rule 4731-16-01(B), Ohio Administrative Code, defines “relapse” as “any use of, or obtaining for the purpose of using, alcohol or a drug or substance that may impair ability to practice, by someone who has received a diagnosis of and treatment for chemical dependency or abuse, except pursuant to the directions of a treating physician who has knowledge of the patient’s history and of the disease of addiction, or pursuant to the direction of a physician in a medical emergency. An instance of use that occurs during detoxification treatment or inpatient or residential treatment before a practitioner’s disease of addiction has been brought into remission does not constitute a relapse.”

Rule 4731-16-02(D), Ohio Administrative Code, states in relevant part:

- (D) Except as provided in this paragraph, a practitioner who has relapsed during or following treatment shall be ineligible to apply for reinstatement for at least ninety days following the date of license suspension for a first relapse * * *. A practitioner who suffers a relapse, as that term is defined in paragraph (B) of rule 4731-16-01 of

the Administrative Code, will not be subjected to suspension or other board discipline based on that relapse if all of the following conditions are met:

- (1) The relapse was the first ever suffered by the practitioner;
- (2) The relapse occurred under circumstances that the board finds minimized the probability that the practitioner would either provide patient care while under the influence of alcohol or drugs or leave patients without necessary care while under the influence of alcohol or drugs;
- (3) The relapse involved a single occasion of use for less than one day;
- (4) The practitioner self-reported the relapse within forty-eight hours in accordance with rule 4731-15-01 of the Administrative Code;
- (5) The practitioner does not thereafter suffer another relapse;
- (6) The board does not obtain evidence of acts, conduct or omissions that would support the imposition of discipline, apart from the relapse itself;
- (7) The relapse does not lead to the practitioner being charged with any criminal offense;
- (8) The practitioner reported the relapse to an approved treatment provider within forty-eight hours, submitted to evaluation as requested by the approved treatment provider, and obtained any additional treatment recommended;
- (9) The practitioner suspended practice until the approved treatment provider reported in writing to the board that it had made a clear determination that the practitioner was capable of practicing according to acceptable and prevailing standards of care; and
- (10) The approved treatment provider provides the board a full report of the evaluation, and the board's secretary and supervising member decide that there are no circumstances warranting the initiation of disciplinary action.

FINDINGS OF FACT

1. On August 11, 2004, David Carl Ernst, M.D., entered into a Step I Consent Agreement with the Board in lieu of formal proceedings based upon his violation of Sections 4731.22(B)(26),

(10) and (12), Ohio Revised Code. This agreement suspended his certificate to practice medicine and surgery in Ohio for an indefinite period of time, but not less than for 180 days.

2. Pursuant to the Step II Consent Agreement between Dr. Ernst and the Board, effective May 19, 2005, his certificate to practice medicine and surgery in Ohio was reinstated subject to the probationary terms, conditions and limitations contained therein.

To date, Dr. Ernst remains subject to the May 2005 Step II Consent Agreement.

3. Paragraph 8 of the May 2005 Step II Consent Agreement requires that Dr. Ernst “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. Ernst’s history of chemical dependency.”

Despite this provision, on March 26, 2008, Dr. Ernst informed the Board’s Compliance Supervisor that he had been notified by the Ohio Physician Health Program that a urine specimen collected from him on February 25, 2008, tested positive and was subsequently GC/MS confirmed for tramadol. Dr. Ernst further stated to the Board’s Compliance Supervisor that, after waking up during the night with back pain in late February 2008, Dr. Ernst took two Motrin and two Ultram tablets from a pill bottle, and that he did not definitely recall where he had originally gotten the Ultram.

4. After March 26, 2008, Dr. Ernst undertook additional efforts at maintaining sobriety, including:
 - Seeking evaluation by a Board-approved treatment provider
 - Successfully completing the five-day Partial Hospitalization Program at The Cleveland Clinic Foundation
 - Executing a two-year aftercare contract with The Cleveland Clinic Foundation
 - Increasing his random urine screens from twice monthly to once a week
 - Attending a weekly Caduceus meeting, in addition to other recovery group meetings

CONCLUSIONS OF LAW

1. The acts, conduct, and/or omissions of David Carl Ernst, M.D., as set forth above in Findings of Fact 1 through 3, establish “[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 set forth in Section 4731.22(B)(26), Ohio Revised Code.
2. The acts, conduct, and/or omissions of Dr. Ernst, as set forth above in Findings of Fact 1 through 3, constitute a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” as set forth in Section 4731.22(B)(15), Ohio Revised Code.

3. Dr. Ernst's consumption of Ultram in February 2008 fits within the Board's definition of "relapse" as set forth in Rule 4731-16-01(B), Ohio Administrative Code. He had received a diagnosis of and treatment for chemical dependency in 2004, and then he used a drug (Ultram) in February 2008 that can impair his ability to practice. Dr. Ernst's use of Ultram was not pursuant to the directions of a treating physician who had knowledge of his history and of the disease of addiction, or pursuant to the direction of a physician in a medical emergency. While some clinicians or other professionals may define "relapse" differently, Dr. Ernst's consumption of Ultram satisfies the Board's definition.

4. The "slip exception" set forth in Rule 4731-16-02(D), Ohio Administrative Code, does not apply to Dr. Ernst' case. The evidence supports a conclusion that six of the 10 conditions are met (numbers 1-3 and 5-7), but the evidence does not support a conclusion that conditions 4, 8, 9, and 10 are met:
 - Dr. Ernst did not self-report the relapse within 48 hours of the Ultram consumption (condition 4), although he did self-report the positive drug screen upon learning of it in March 2008.
 - Dr. Ernst did not report the relapse to an approved treatment provider within 48 hours (condition 8), although Dr. Ernst did submit to an evaluation within roughly two months of the Ultram consumption and obtained the additional treatment recommended by the approved treatment provider.
 - Dr. Ernst did not suspend practice until the approved treatment provider reported in writing to the Board that it had made a clear determination that the practitioner was capable of practicing according to acceptable and prevailing standards of care (condition 9), although Dr. Ernst did suspend his volunteer practice for a period of time after April 7, 2008 until sometime in May 2008.
 - Although the approved treatment provider provided the Board with a full report of the evaluation, the Board's Secretary and Supervising Member decided that there are circumstances warranting the initiation of disciplinary action (condition 10).

* * * * *

The Hearing Examiner found that Dr. Ernst was sincere, forthright and credible. His testimony convinced the Hearing Examiner that he took the Ultram simply to relieve temporary, minor back pain, and his actions were not part of a reactivation of his addiction. Moreover, multiple physicians and professionals were in regular contact with Dr. Ernst during the relevant period of time, and they opined persuasively that the consumption of Ultram was not a reactivation of his addiction. The Hearing Examiner found that Dr. Ernst stood out among respondents in impairment cases as being one of the strongest practitioners in recovery, despite the underlying incident. He made a serious error, but the evidence was abundant that his recovery, since that time, has been strengthened and that he can practice according to acceptable and prevailing standards of care as long as he maintains compliance with the Board's monitoring and reporting terms and conditions.

The Board is entitled to discipline Dr. Ernst because he breached the terms of his Step II agreement by self-treating with a drug that was not prescribed to him by a physician with knowledge of his addiction/chemical dependency. Rule 4731-16-02(D), Ohio Administrative Code, states that a licensee's certificate shall be suspended for at least 90 days when the licensee relapses for the first time following treatment. However, in this case, the Board should give consideration to the fact that Dr. Ernst ceased practicing medicine voluntarily as of September 10, 2008, as part of an agreement that was reached in order to obtain postponement of his hearing (after his attorney sustained a significant injury that was temporarily disabling). The Hearing Examiner believes that, although the Board is required to impose a 90-day suspension, the Board may commence the suspension as of the date of hearing on November 18, 2008.

The following proposed order includes interim conditions to be in effect during the suspension, conditions for reinstatement, and only three years of probation due to the evidence that the recovery program is unusually strong.

PROPOSED ORDER

It is hereby **ORDERED** that:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of David Carl Ernst, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than 90 days from November 18, 2008.
- B. **INTERIM MONITORING:** During the period that Dr. Ernst's certificate to practice medicine and surgery in Ohio is suspended, Dr. Ernst shall comply with the following terms, conditions, and limitations:
 1. **Obey the Law:** Dr. Ernst shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 2. **Quarterly Appearances:** Dr. Ernst 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, or as otherwise requested 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.
 3. **Quarterly Declarations:** Dr. Ernst 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, or as otherwise requested

by the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

4. **Sobriety**

- a. **Abstention from Drugs:** Dr. Ernst 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. Ernst's history of chemical dependency. Further, in the event that Dr. Ernst is so prescribed, dispensed or administered any controlled substance, carisoprodol, or tramadol, Dr. Ernst shall notify the Board in writing within seven days, providing the Board with the identity of the prescriber; the name of the drug Dr. Ernst received; the medical purpose for which he received the drug; the date the drug was initially received; and the dosage, amount, number of refills, and directions for use. Further, within 30 days of the date said drug is so prescribed, dispensed, or administered to him, Dr. Ernst shall provide the Board with either a copy of the written prescription or other written verification from the prescriber, including the dosage, amount, number of refills, and directions for use.
- b. **Abstention from Alcohol:** Dr. Ernst shall abstain completely from the use of alcohol.

5. **Drug & Alcohol Screens; Drug Testing Facility and Collection Site**

- a. Dr. Ernst shall submit to random urine screenings for drugs and alcohol at least four times per month, or as otherwise directed by the Board. Dr. Ernst 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, and shall include Dr. Ernst's drug(s) of choice.
- b. Dr. Ernst shall submit, at his expense and on the day selected, urine specimens for drug and/or alcohol analysis. (The term "toxicology screen" is also used herein for "urine screen" and/or "drug screen.")

All specimens submitted by Dr. Ernst shall be negative, except for those substances prescribed, administered, or dispensed to him in conformance with the terms, conditions and limitations set forth in this Order.

Refusal to submit such specimen, or failure to submit such specimen on the day he is selected or in such manner as the Board may request, shall constitute a violation of this Order.

- c. Dr. Ernst shall abstain from the use of any substance that may produce a positive result on a toxicology screen, including the consumption of poppy seeds or other food or liquid that may produce a positive result on a toxicology screen.

Dr. Ernst shall be held to an understanding and knowledge that the consumption or use of various substances, including but not limited to mouthwashes, hand-cleaning gels, and cough syrups, may cause a positive toxicology screen and that unintentional ingestion of a substance is not distinguishable from intentional ingestion on a toxicology screen, and that, therefore, consumption or use of substances that may produce a positive result in a toxicology screen is prohibited under this Order.

- d. All screenings for drugs and alcohol shall be conducted through a Board-approved drug-testing facility and a Board-approved collection site, except as provided in Paragraph 6 below (“Alternative Drug-testing and/or Collection Site”). Further, the screening process shall require a daily call-in procedure.
- e. Within 30 days of the effective date of this Order, Dr. Ernst shall enter into the necessary financial and/or contractual arrangements with the Board-approved drug-testing facility and/or collection site (“DFCS”) in order to facilitate the screening process in the manner required by this Order.

Further, within 30 days of making such arrangements, Dr. Ernst shall provide to the Board written documentation of completion of such arrangements, including a copy of any contract entered into between Dr. Ernst and the Board-approved DFCS. Dr. Ernst’s failure to timely complete such arrangements, or failure to timely provide written documentation to the Board of completion of such arrangements, shall constitute a violation of this Order.

- f. Dr. Ernst shall ensure that the urine-screening process performed through the Board-approved DFCS requires a daily call-in procedure; 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, Dr. Ernst and the Board-approved DFCS shall ensure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

- g. Dr. Ernst shall ensure that the Board-approved DFCS provides quarterly reports to the Board, in a format acceptable to the Board, verifying

whether all urine screens have been conducted in compliance with this Order, and whether all urine screens have been negative.

- h. In the event that the Board-approved DFCS becomes unable or unwilling to serve as required by this Order, Dr. Ernst must immediately notify the Board in writing, and make arrangements acceptable to the Board, pursuant to Paragraph 6 below, as soon as practicable. Dr. Ernst shall further ensure that the Board-approved DFCS also notifies the Board directly of its inability to continue to serve and the reasons therefor.
 - i. Dr. Ernst acknowledges that the Board expressly reserves the right to withdraw its approval of any DFCS in the event that the Secretary and Supervising Member of the Board determine that the DFCS has demonstrated a lack of cooperation in providing information to the Board or for any other reason.
6. **Alternative Drug-testing Facility and/or Collection Site:** It is the intent of this Order that Dr. Ernst shall submit urine specimens to the Board-approved DFCS chosen by the Board. However, in the event that using the Board-approved DFCS creates an extraordinary hardship on Dr. Ernst, as determined in the sole discretion of the Board, then, subject to the following requirements, the Board may approve an alternative DFCS or a supervising physician to facilitate the urine-screening process for Dr. Ernst.
- a. Within 30 days of the date on which Dr. Ernst is notified of the Board's determination that utilizing the Board-approved DFCS constitutes an extraordinary hardship on Dr. Ernst, he shall submit to the Board in writing for its prior approval the identity of either an alternative DFCS or the name of a proposed supervising physician to whom Dr. Ernst shall submit the required urine specimens.

In approving a facility, entity, or an individual to serve in this capacity, the Board will give preference to a facility located near Dr. Ernst's residence or employment location, or to a physician who practices in the same locale as Dr. Ernst. Dr. Ernst shall ensure that the urine-screening process performed through the alternative DFCS or through the supervising physician requires a daily call-in procedure; 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, Dr. Ernst acknowledges that the alternative DFCS or the supervising physician shall ensure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

- b. Dr. Ernst shall ensure that the alternative DFCS or the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Order, and whether all urine screens have been negative.
 - c. In the event that the designated alternative DFCS or the supervising physician becomes unable or unwilling to so serve, Dr. Ernst must immediately notify the Board in writing. Dr. Ernst shall further ensure that the previously designated alternative DFCS or the supervising physician also notifies the Board directly of the inability to continue to serve and the reasons therefor. Further, in the event that the approved alternative DFCS or supervising physician becomes unable to serve, Dr. Ernst shall, in order to ensure that there will be no interruption in his urine-screening process, immediately commence urine screening at the Board-approved DFCS chosen by the Board, until such time, if any, that the Board approves a different DFCS or supervising physician, if requested by Dr. Ernst.
 - d. The Board expressly reserves the right to disapprove any entity or facility proposed to serve as Dr. Ernst's designated alternative DFCS or any person proposed to serve as his supervising physician, or to withdraw approval of any entity, facility or person previously approved to so serve in the event that the Secretary and Supervising Member of the Board determine that any such entity, facility or person has demonstrated a lack of cooperation in providing information to the Board or for any other reason.
7. **Reports Regarding Drug & Alcohol Screens:** All screening reports required under this Order from the Board-approved DFCS, the alternative DFCS and/or supervising physician must be received in the Board's offices no later than the due date for Dr. Ernst's quarterly declaration. It is Dr. Ernst's responsibility to ensure that reports are timely submitted.
 8. **Additional Screening without Prior Notice:** On the Board's request and without prior notice, Dr. Ernst must provide a specimen of his blood, breath, saliva, urine, and/or hair for screening for drugs and alcohol, for analysis of therapeutic levels of medications that may be prescribed for Dr. Ernst, or for any other purpose, at Dr. Ernst's expense. Dr. Ernst's refusal to submit a specimen on request of the Board shall result in a minimum of one year of actual license suspension. Further, the collection of such specimens shall be witnessed by a representative of the Board, or another person acceptable to the Secretary or Supervising Member of the Board.
 9. **Rehabilitation Program:** Dr. Ernst shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., or C.A., no less than three times per

week, or as otherwise ordered by the Board. Substitution of any other specific program must receive prior Board approval.

Dr. Ernst shall submit acceptable documentary evidence of continuing compliance with this program, including submission to the Board of meeting attendance logs, which must be received in the Board's offices no later than the due date for Dr. Ernst's quarterly declarations.

10. **Releases:** Dr. Ernst 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. Ernst's chemical dependency, impairment, 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. To the extent permitted by law, 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. Ernst further shall 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.
11. **Absences from Ohio:** Dr. Ernst 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.

Further, the Secretary and Supervising Member of the Board shall have the discretion to grant a waiver of part or all of the monitoring terms set forth in this Order for occasional periods of absence of fourteen days or less. In the event that Dr. Ernst resides and/or is employed at a location that is within fifty miles of the geographic border of Ohio and a contiguous state, Dr. Ernst may travel between Ohio and that contiguous state without seeking prior approval of the Secretary or Supervising Member provided that Dr. Ernst is otherwise able to maintain full compliance with all other terms, conditions and limitations set forth in this Order.
12. **Required Reporting of Change of Address:** Dr. Ernst shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.
13. **Comply with the Terms of Treatment and Aftercare Contract:** Dr. Ernst shall maintain continued compliance with: (a) the terms of the advocacy contract entered into with Ohio Physicians Health Program; and (b) the aftercare contract entered into with The Cleveland Clinic Foundation, provided that, where terms of the advocacy

and aftercare 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. Ernst's certificate to practice medicine and surgery in Ohio until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration:** Dr. Ernst shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Compliance with Interim Conditions:** Dr. Ernst shall have maintained compliance with all the terms, conditions and limitations set forth in Paragraph B of this Order.
3. **Evidence of Unrestricted Licensure in Other States:** At the time he submits his application for reinstatement or restoration, Dr. Ernst shall provide written documentation acceptable to the Board verifying that Dr. Ernst otherwise holds a full and unrestricted license to practice medicine and surgery in all other states in which he is licensed at the time of application or has been in the past licensed, or that he would be entitled to such license but for the nonpayment of renewal fees.
4. **Demonstration of Ability to Resume Practice:** Dr. Ernst 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, Ohio Revised Code, that Dr. Ernst has successfully completed any required inpatient treatment, including at least 28 days of inpatient or residential treatment (completed consecutively) for chemical abuse/dependence at a treatment provider approved by the Board. In accordance with Rule 4731-16-02(B)(4)(a), Ohio Administrative Code, the required inpatient treatment must extend a minimum of 28 days, with the following exception: If the practitioner has previously completed an inpatient or residential treatment program of at least 28 days and was able to maintain sobriety for at least one year following completion of that inpatient or residential treatment, the treatment required shall be determined by the treatment provider.
 - b. Evidence of continuing full compliance with an aftercare contract with a treatment provider approved under Section 4731.25, Ohio 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, Ohio Administrative Code.
 - c. Evidence of continuing full compliance with this Order.

- d. Two written reports indicating that Dr. Ernst'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 have been made by physicians knowledgeable in the area of addictionology and who are either affiliated with a current Board-approved treatment provider or otherwise have been approved in advance by the Board to provide an assessment of Dr. Ernst. Further, the two aforementioned physicians shall not be affiliated with the same treatment provider or medical group practice. Prior to the assessments, Dr. Ernst shall provide the evaluators with copies of patient records from any evaluation and/or treatment that he has received, and a copy of this Order. The reports of the evaluators shall include any recommendations for treatment, monitoring, or supervision of Dr. Ernst, and any conditions, restrictions, or limitations that should be imposed on Dr. Ernst's practice. The reports shall also describe the basis for the evaluator's determinations.

All reports required pursuant to this paragraph shall be based upon examinations occurring within the three months immediately preceding any application for reinstatement or restoration. Further, at the discretion of the Secretary and Supervising Member of the Board, the Board may request an updated assessment and report if the Secretary and Supervising Member determine that such updated assessment and report is warranted for any reason.

5. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Ernst has not been engaged in active practice of medicine and surgery for a period in excess of two year prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.
- D. **PROBATION:** Upon reinstatement or restoration, Dr. Ernst's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years:
1. **Obey the Law:** Dr. Ernst shall obey all federal, state, and local laws, and all rules governing the practice medicine and surgery in Ohio.
 2. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Ernst shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
 3. **Practice Plan:** Prior to Dr. Ernst's commencement of practice in Ohio, or as otherwise determined by the Board, Dr. Ernst 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. Ernst's activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Ernst shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

At the time Dr. Ernst 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. Ernst and who is engaged in the same or similar practice specialty.

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

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Ernst must immediately so notify the Board in writing. In addition, Dr. Ernst shall make arrangements acceptable to the Board for another monitoring physician within 30 days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Ernst shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

4. **Tolling of Probationary Period while Out of Compliance:** In the event Dr. Ernst 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 under this Order.
- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Ernst's certificate will be fully restored.
- F. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Ernst 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.

G. REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER

1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. Ernst shall provide a copy of this Order to all employers or entities with which he is under contract to provide health-care services (including but not limited to third-party payors), or is receiving training, and the chief of staff at each hospital or health-care center where he has privileges or appointments.

In the event that Dr. Ernst provides any health-care services or health-care direction or medical oversight to any emergency medical services organization or emergency medical services provider, Dr. Ernst shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

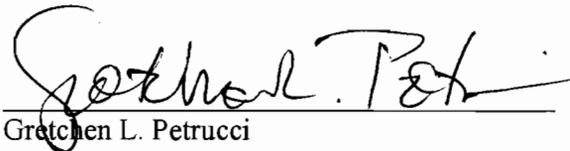
2. **Required Reporting To Other Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Ernst shall provide a copy of this Order to the proper licensing authority of any State or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate.

Dr. Ernst further shall provide a copy of this Order at the time of application to the proper licensing authority of any State or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license. This requirement shall continue until Mr. Schwartz received from the Board written notification of the successful completion of the probation.

3. **Required Reporting to Treatment Providers/Monitors:** Within 30 days of the effective date of this Order, Dr. Ernst shall promptly provide a copy of this Order to all persons and entities that provide chemical-dependency treatment to or monitoring of Dr. Ernst.

4. **Required Documentation of the Reporting Required by Paragraph G:** Dr. Ernst shall provide the Board with one of the following documents as proof of each required notification within 30 days of the date of each such notification: (1) the return receipt of certified mail within 30 days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

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



Gretchen L. Petrucci
Hearing Examiner

State Medical Board of Ohio

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



Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

EXCERPT FROM THE DRAFT MINUTES OF FERUARY 11, 2009

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDER

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

Dr. Madia asked whether each member of the Board had received, read and considered the hearing record; the Findings of Fact, Conclusions of Law and Proposed Orders, and any objections filed in the matters of David Carl Ernst, M.D.; Gary Charles Gelesh, D.O.; Mark Stephen McAllister, M.D.; and Kerrie Van Wagoner, P.A. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Varyani	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Madia	- aye

Dr. Madia 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. Suppan	- aye
	Dr. Varyani	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye

Dr. Madia - aye

Dr. Madia 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.

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

DAVID CARL ERNST, M.D.

.....

DR. VARYANI MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF DAVID CARL ERNST, M.D. DR. STEINBERGH SECONDED THE MOTION.

.....

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

VOTE:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Suppan	- aye
	Dr. Varyani	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Madia	- aye

The motion carried.



State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

May 14, 2008

Case number: 08-CRF-062

David Carl Ernst, M.D.
12817 West Lake Rd.
Vermilion, OH 44089

Dear Doctor Ernst:

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

- (1) On or about August 11, 2004, you entered into a Step I Consent Agreement [August 2004 Step I Consent Agreement] with the Board in lieu of formal proceedings based upon your violations of Sections 4731.22(B)(26), (B)(10) and (B)12), Ohio Revised Code. This August 2004 Step I Consent Agreement suspended your certificate to practice medicine and surgery for an indefinite period of time, but not less than 180 days.
- (2) Pursuant to the Step II Consent Agreement between David Carl Ernst, M.D., and the State Medical Board, effective May 19, 2005 [May 2005 Step II Consent Agreement], your certificate to practice medicine and surgery in Ohio was reinstated subject to the probationary terms, conditions and limitations contained therein. A copy of the May 2005 Step II Consent Agreement is attached hereto and fully incorporated herein.

To date, you remain subject to all terms, conditions and limitations of the May 2005 Step II Consent Agreement.

- (3) Paragraph 8 of the May 2005 Step II Consent Agreement provides that you "shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to [you] by another so authorized by law who has full knowledge of [your] history of chemical dependency."

Mailed 5-15-08

Despite this provision, on or about March 26, 2008, you informed the Board's Compliance Supervisor that you had been notified by Ohio Physicians Health Program that a urine specimen collected from you on or about February 25, 2008, tested positive and was subsequently GC/MS confirmed for Tramadol. You further stated to the Board's Compliance Supervisor that, after waking up during the night with back pain in late February 2008, you took two Motrin and two Ultram tablets from a pill bottle you kept in a desk, and that you did not recall where you originally got the Ultram.

Pursuant to Rule 4731-16-02(B)(3), Ohio Administrative Code, an individual's relapse following treatment constitutes independent proof of impairment and shall support license suspension without the need for an examination.

Your acts, conduct, and/or omissions as alleged in paragraph (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.

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

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

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

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

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant,

David Carl Ernst, M.D.

Page 3

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/MRB/flb

Enclosures

CERTIFIED MAIL #91 7108 2133 3934 3690 6156
RETURN RECEIPT REQUESTED

cc: James M. McGovern, Esq.
Hammonds Sowards and Williams
556 E. Town St.
Columbus, OH 43215

CERTIFIED MAIL #91 7108 2133 3934 3690 6163
RETURN RECEIPT REQUESTED

2005 MAY 11 A 9:49

**STEP II
CONSENT AGREEMENT
BETWEEN
DAVID CARL ERNST, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO**

This Consent Agreement is entered into by and between David Carl Ernst, M.D., and the State Medical Board of Ohio [Board], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

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

BASIS FOR ACTION

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

- A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4731.22(B)(26), Ohio Revised Code, "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;" Section 4731.22(B)(10), Ohio Revised Code, "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed," to wit: Possession of Drugs, Section 2925.11, Ohio Revised Code, and/or Deception to Obtain a Dangerous Drug, Section 2925.22, Ohio Revised Code; and/or Section 4731.22(B)(12), Ohio Revised Code, "[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed," to wit: Records of Controlled Substances, Section 3719.07, Ohio Revised Code.
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violations of Sections 4731.22(B)(26), Ohio Revised Code, 4731.22(B)(10), Ohio Revised Code, to wit: Sections 2925.11 and 2925.22, Ohio Revised Code, and 4731.22(B)(12), Ohio Revised Code, to wit: Section 3719.07, Ohio Revised Code, as set forth in the Paragraph E of the August 2004 Step I Consent Agreement between Dr. Ernst and the Board, a copy of which is attached hereto and incorporated herein, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Consent Agreement. Such express reservation includes, but is not limited to,

violations based on any methods used by Dr. Ernst to obtain controlled substances for self-use other than those particularly described in Paragraph E of the above-referenced August 2004 Step I Consent Agreement and/or criminal acts other than those specifically referenced in Paragraph E of the aforesaid August 2004 Step I Consent Agreement.

- C. Dr. Ernst is applying for reinstatement of his license to practice medicine and surgery in the State of Ohio, License # 35-060456, which was suspended pursuant to the terms of the above-referenced August 2004 Step I Consent Agreement.
- D. Dr. Ernst states that he is not licensed to practice medicine and surgery in any other state or jurisdiction.
- E. Dr. Ernst admits that after voluntarily entering residential treatment for chemical dependency on or about July 26, 2004, at Glenbeigh Hospital [Glenbeigh], a Board-approved treatment provider in Rock Creek, Ohio, he successfully completed twenty-eight days of residential treatment concerning his chemical dependence and, on August 23, 2004, he was discharged from Glenbeigh.

Dr. Ernst states, and the Board acknowledges receipt of information to support, that since being discharged from Glenbeigh, he has remained compliant with the aftercare contract he entered into with Glenbeigh on August 22, 2004, including attending and participating in three or more 12-step meetings per week, one of which may be a Caduceus meeting, attending one aftercare group meeting per week, and submitting to random blood or urine screens. In addition, Dr. Ernst states, and the Board acknowledges receipt of information to support, that Dr. Ernst has remained compliant with the terms of the advocacy contract he entered into with Ohio Physicians Health Program on October 18, 2004. Further, Dr. Ernst admits that the aforementioned advocacy and aftercare contracts remain in effect to date.

Dr. Ernst states, and the Board acknowledges, that Victoria L. Sanelli, M.D., and Robert A. Liebelt, PhD., M.D., of St. Thomas Medical Center Summa Health, a Board-approved treatment provider in Akron, Ohio, have each provided written reports indicating that Dr. Ernst's ability to practice has been assessed and he has been found capable of practicing medicine and surgery according to acceptable and prevailing standards of care, so long as certain treatment and monitoring conditions are in place.

Accordingly, Dr. Ernst states, and the Board acknowledges receipt of information to support, that Dr. Ernst has fulfilled the conditions for reinstatement of his certificate to practice medicine and surgery in the State of Ohio, as established in the above-referenced August 2004 Step I Consent Agreement between Dr. Ernst and the Board.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, the certificate of Dr. Ernst to practice medicine and surgery in the

State of Ohio shall be reinstated, and Dr. Ernst knowingly and voluntarily agrees with the Board to the following PROBATIONARY terms, conditions and limitations:

1. Dr. Ernst shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
2. Dr. Ernst shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the date his quarterly declaration would have been due pursuant to his August 2004 Step I Consent Agreement with the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
3. Dr. Ernst shall appear in person for an interview before the full Board or its designated representative. The first such appearance shall take place on the date his appearance would have been scheduled pursuant to his August 2004 Step I Consent Agreement with the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
4. Dr. Ernst shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.
5. In the event Dr. Ernst is found by the Secretary of the Board to have failed to comply with any provision of this Consent Agreement, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Consent Agreement.

MONITORING OF REHABILITATION AND TREATMENT

Drug Associated Restrictions

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

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

Sobriety

8. Dr. Ernst 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. Ernst's history of chemical dependency.
9. Dr. Ernst shall abstain completely from the use of alcohol.

Drug and Alcohol Screens/Supervising Physician

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

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

Dr. Ernst and the Board agree that the person or entity previously approved by the Board to serve as Dr. Ernst's supervising physician pursuant to the August 2004 Step I Consent Agreement is hereby approved to continue as Dr. Ernst's designated supervising physician under this Consent Agreement, unless within thirty days of the effective date of this Consent Agreement, Dr. Ernst submits to the Board for its prior approval the name and curriculum vitae of an alternative supervising physician to whom Dr. Ernst 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. Ernst. Dr. Ernst and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

The Board expressly reserves the right to disapprove any person or entity proposed to serve as Dr. Ernst's designated supervising physician, or to withdraw approval of

any person or entity previously approved to serve as Dr. Ernst's designated supervising physician, in the event that the Secretary and Supervising Member of the Board determine that any such supervising physician has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

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

In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Ernst must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Ernst 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. Ernst's quarterly declaration. It is Dr. Ernst's responsibility to ensure that reports are timely submitted.

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

Monitoring Physician

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

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

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Ernst must immediately so notify the Board in writing. In addition, Dr. Ernst 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. Ernst shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

Rehabilitation Program

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

Dr. Ernst 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. Ernst's quarterly declarations.

Physician Health Program/Aftercare

14. Dr. Ernst shall maintain continued compliance with the terms of the agreement entered into with the Ohio Physicians Health Program, or, if approved in advance by the Board, another physician health program, provided that, where the terms of the advocacy contract conflict with the terms of this Consent Agreement, the terms of this Consent Agreement shall control.
15. Dr. Ernst shall maintain continued compliance with the terms of the aftercare contract entered into with his treatment provider, provided that, where terms of the aftercare contract conflict with terms of this Consent Agreement, the terms of this Consent Agreement shall control.

Releases

16. Dr. Ernst shall provide continuing authorization, through appropriate written consent forms, for disclosure by his treatment provider to the Board, to treating and monitoring physicians, and to others involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations.

Required Reporting by Licensee

17. Within thirty days of the effective date of this Consent Agreement, Dr. Ernst shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at

each hospital where he has privileges or appointments. Further, Dr. Ernst shall provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

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

FAILURE TO COMPLY

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

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

DURATION/MODIFICATION OF TERMS

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

ACKNOWLEDGMENTS/LIABILITY RELEASE

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

Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply

with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

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

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

EFFECTIVE DATE

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



DAVID CARL ERNST, M.D.



LANCE A. TALMAGE, M.D.
Secretary

5/7/05

DATE

5-19-05

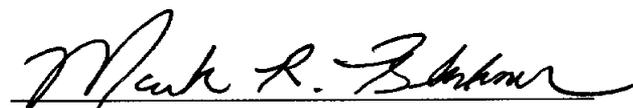
DATE



RAYMOND J. ALBERT
Supervising Member

5/19/05

DATE



MARK R. BLACKMER
Enforcement Attorney

May 12, 2005

DATE

2004 AUG 10 P 4: 17

**STEP I
CONSENT AGREEMENT
BETWEEN
DAVID CARL ERNST, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO**

This Consent Agreement is entered into by and between David Carl Ernst, M.D., and the State Medical Board of Ohio [Board], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

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

BASIS FOR ACTION

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

- A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation(s) of Section 4731.22(B)(26), Ohio Revised Code, "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;" Section 4731.22(B)(10), Ohio Revised Code, "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed," to wit: Possession of Drugs, Section 2925.11, Ohio Revised Code, and/or Deception to Obtain a Dangerous Drug, Section 2925.22, Ohio Revised Code; and/or Section 4731.22(B)(12), Ohio Revised Code, "[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed," to wit: Records of Controlled Substances, Section 3719.07, Ohio Revised Code.
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violations of Sections 4731.22(B)(26), Ohio Revised Code, 4731.22(B)(10), Ohio Revised Code, to wit: Sections 2925.11 and 2925.22, Ohio Revised Code, and 4731.22(B)(12), Ohio Revised Code, to wit: Section 3719.07, Ohio Revised Code, as set forth in Paragraph E below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement. Such express reservation includes, but is not limited to, violations based on any methods used by

Dr. Ernst to obtain controlled substances for self-use other than those particularly described in Paragraph E herein and/or criminal acts other than those specifically referenced in Paragraph E herein.

- C. Dr. Ernst is licensed to practice medicine and surgery in the State of Ohio, License # 35-060456.
- D. Dr. Ernst states that he is not licensed to practice medicine and surgery in any other state or jurisdiction.
- E. Dr. Ernst admits that after an Investigator for the Board met with him on or about July 15, 2004, he voluntarily entered treatment on or about July 26, 2004, for chemical dependency at Glenbeigh Hospital, a Board-approved treatment provider in Rock Creek, Ohio. Dr. Ernst further admits that he is chemically dependent, and his drug of choice is hydrocodone (Vicodin). Dr. Ernst further admits that he began using hydrocodone during or about February 2001 in an effort to self-treat severe pain from a knee injury, and that he gradually became tolerant to and dependent on the medication.

Dr. Ernst further admits that, during the time period from in or about February 2001 through in or about July 2004, he obtained hydrocodone for self-use exclusively by ordering it through a wholesale pharmacy, Moore Medical, which filled the orders and sent the medication to him. In addition to hydrocodone, Dr. Ernst states that, approximately one year ago, he also ordered Librium, Tramadol and Metroclopramide from Moore Medical, with the intent of taking these medications as a means of weaning himself off the hydrocodone. Dr. Ernst further represents that he did not take these other medications, but instead flushed them down the toilet prior to entering treatment at Glenbeigh Hospital. Dr. Ernst specifically denies obtaining any controlled substances for self-use by any other methods, and he further states that at no time did he ever divert, sell, or give any controlled substances to anyone else. Dr. Ernst further states that he never directly or indirectly involved patients or other individuals in any of his efforts to obtain controlled substances for self-use.

Dr. Ernst further admits that he failed to maintain patient records for himself reflecting the utilization of controlled substances, and he failed to maintain records of controlled substances administered, dispensed, or used other than by prescription, for his self-use. Dr. Ernst further admits that he developed a physical dependence on the hydrocodone, and, before entering inpatient treatment on or about July 26, 2004, his monthly requirement/intake was 1,500 tablets of hydrocodone containing acetaminophen (10/650). Dr. Ernst further admits that such inpatient treatment at Glenbeigh Hospital continues to date.

AGREED CONDITIONS

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

SUSPENSION OF CERTIFICATE

1. The certificate of Dr. Ernst 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.

Sobriety

2. Dr. Ernst 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. Ernst's history of chemical dependency.
3. Dr. Ernst shall abstain completely from the use of alcohol.

Releases; Quarterly Declarations and Appearances

4. Dr. Ernst 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. Ernst's chemical dependency or related conditions, or for purposes of complying with this Consent Agreement, whether such treatment or evaluation occurred before or after the effective date of this Consent Agreement. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. Dr. Ernst further agrees to provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Consent Agreement.
5. Dr. Ernst shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective, provided that if the effective date is on or after the sixteenth day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
6. Dr. Ernst shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this

Consent Agreement. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

Drug & Alcohol Screens; Supervising Physician

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

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

Within thirty days of the effective date of this Consent Agreement, Dr. Ernst shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Ernst 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. Ernst. Dr. Ernst 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. Ernst shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Ernst must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Ernst 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. Ernst's quarterly declaration. It is Dr. Ernst's responsibility to ensure that reports are timely submitted.

Rehabilitation Program

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

Dr. Ernst 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. Ernst's quarterly declarations.

CONDITIONS FOR REINSTATEMENT

9. The Board shall not consider reinstatement of Dr. Ernst's certificate to practice medicine and surgery until all of the following conditions are met:
 - a. Dr. Ernst shall submit an application for reinstatement, accompanied by appropriate fees, if any.
 - b. Dr. Ernst shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - i. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Ernst has successfully completed any required inpatient treatment, including at least twenty-eight days of inpatient or residential treatment for chemical dependence, as set forth in Rules 4731-16-02(B)(4)(a) and 4731-16-08(A)(13), Ohio Administrative Code.
 - ii. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
 - iii. Evidence of continuing full compliance with this Consent Agreement.
 - iv. Two written reports indicating that Dr. Ernst's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by physicians knowledgeable in the area of addictionology and who are either affiliated with a current Board-approved treatment provider or otherwise have been approved in advance by the Board to provide an assessment of Dr. Ernst. Prior to the assessments, Dr. Ernst shall provide the evaluators with copies of patient records from any evaluations and/or treatment that

he has received, and a copy of this Consent Agreement. The reports from the evaluators shall include any recommendations for treatment, monitoring, or supervision of Dr. Ernst, and any conditions, restrictions, or limitations that should be imposed on Dr. Ernst's practice. The reports shall also describe the basis for the evaluator's determinations.

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

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

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

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

REQUIRED REPORTING BY LICENSEE

11. Within thirty days of the effective date of this Consent Agreement, Dr. Ernst shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Ernst further agrees to provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Ernst shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

12. Within thirty days of the effective date of this Consent Agreement, Dr. Ernst shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Ernst shall provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

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

FAILURE TO COMPLY

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

ACKNOWLEDGMENTS/LIABILITY RELEASE

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

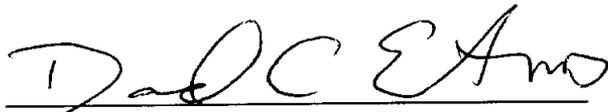
Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

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

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

EFFECTIVE DATE

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



DAVID CRAIG ERNST, M.D.
Carl



LANCE A. TALMAGE, M.D.
Secretary

8/6/04
DATE

8-11-04
DATE



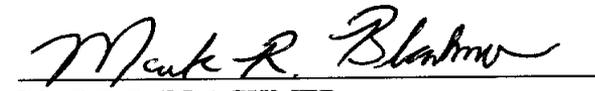
JAMES M. MCGOVERN
Attorney for Dr. Ernst



RAYMOND J. ALBERT
Supervising Member

8/9/04
DATE

8/11/04
DATE



MARK R. BLACKMER
Enforcement Attorney

August 10, 2004
DATE