



State Medical Board of Ohio

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April 11, 2007

Paul Evan Kelner, M.D.
3906 State Route 546
Lexington, OH 44904

Dear Doctor Kelner:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 11, 2007, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3933 4658 8961
RETURN RECEIPT REQUESTED

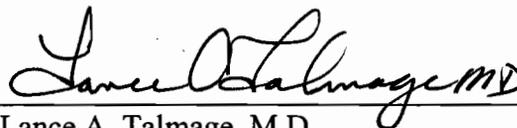
CC: Eric J. Plinke and Kristin E. Matisziw, Esqs.
CERTIFIED MAIL NO. 91 7108 2133 3933 4658 8978
RETURN RECEIPT REQUESTED

Mailed 4-12-07

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 11, 2007, 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 Paul Evan Kelner, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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



Lance A. Talmage, M.D.
Secretary

(SEAL)

April 11, 2007
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

PAUL EVAN KELNER, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on April 11, 2007.

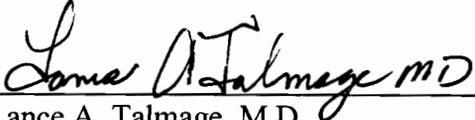
Upon the Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the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

It is hereby ORDERED that:

The certificate of Paul Evan Kelner, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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

(SEAL)



Lance A. Talmage, M.D.
Secretary

April 11, 2007

Date

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**REPORT AND RECOMMENDATION
IN THE MATTER OF PAUL EVAN KELNER, M.D.**

The Matter of Paul Evan Kelner, M.D., was heard by R. Gregory Porter, Hearing Examiner for the State Medical Board of Ohio, on August 21 and 22, 2006.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated June 8, 2005, the State Medical Board of Ohio [Board] notified Paul Evan Kelner, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board based its proposed action upon allegations concerning Dr. Kelner's treatment of one patient identified in a confidential Patient Key. Further, the Board alleged that the alleged conduct constitutes "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code." Accordingly, the Board advised Dr. Kelner of his right to request a hearing in this matter. (State's Exhibit 1A)
- B. By document received by the Board on July 8, 2005, Kevin P. Byers, Esq., requested a hearing on behalf of Dr. Kelner. (State's Exhibit 1B)

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Kyle C. Wilcox and Barbara J. Pfeiffer, Assistant Attorneys General.
- B. On behalf of the Respondent: Eric J. Plinke and Kristin E. Matisziw, Esqs.

EVIDENCE EXAMINED

I. Testimony Heard

- A. Presented by the State
 - 1. Paul Evan Kelner, M.D., as upon cross examination
 - 2. Kristopher R. Brickman, M.D.

B. Presented by the Respondent

1. Bruce D. Janiak, M.D.
2. Paul Evan Kelner, M.D.

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A through 1AA: Procedural exhibits. (Note that State's Exhibit 1S contains patient-identifying information and has been sealed from public disclosure. Further note that a confidential Patient Key was removed from State's Exhibit 1A by the Hearing Examiner post hearing.)
- * 2. State's Exhibit 2: Certified copies of medical records concerning Patient 1 maintained by Marion General Hospital in Marion, Ohio.
- * 3. State's Exhibit 3: Patient Key.
- * 4. State's Exhibit 4: May 10, 2005, report of Kristopher R. Brickman, M.D.
5. State's Exhibit 5: Certified copies of documents maintained by the Board concerning prior Board actions against Dr. Kelner.
6. State's Exhibit 6: Dr. Brickman's curriculum vitae.
7. State's Exhibit 7: Not presented.
8. State's Exhibit 8: Disposable speculum. (Note that this exhibit will be made available for Board member review at the Board's offices.)

B. Presented by the Respondent

1. Respondent's Exhibits A through C: Not presented.
2. Respondent's Exhibits D and E: Copies of letters of support written on behalf of Dr. Kelner.
3. Respondent's Exhibit F: Copy of Dr. Kelner's report.
4. Respondent's Exhibit G: Curriculum vitae of Bruce David Janiak, M.D.
5. Respondent's Exhibit H: Copy of April 22, 2006, report of Dr. Janiak.

* Note: Exhibits marked with an asterisk (*) have been sealed to protect patient confidentiality.

PROFFERED MATERIAL

The following documents are not a part of the hearing record nor were they considered, but were sealed and held as proffered material:

Board Exhibits A and B: Portions of the Hearing Transcript containing the discussions that were stricken from the record at hearing.

SUMMARY OF THE EVIDENCE

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

Background Information

Paul Evan Kelner, M.D.

1. Paul Evan Kelner, M.D., obtained his medical degree in 1989 from the Ohio State University College of Medicine. From 1989 through 1992, Dr. Kelner participated in a family practice residency at Mount Carmel Medical Center in Columbus, Ohio. Following residency, Dr. Kelner opened a private family practice in Bucyrus, Ohio, where he remained until 1996. From 1996 until 1999 or 2000, he practiced in an emergency room in Marion, Ohio. Beginning in 2000, Dr. Kelner worked for one year as the Director of Freedom Hall, a drug and alcohol recovery center in Crestline, Ohio. Finally, beginning in late 2000 or early 2001, Dr. Kelner returned to Marion to work in the emergency department at Marion General Hospital. (State's Exhibit [St. Ex.] 5 at 16; Hearing Transcript [Tr.] at 25-27)

Dr. Kelner testified that he had practiced emergency medicine from 1996 through 2002, except for the one-year period during which he worked at Freedom Hall. Dr. Kelner further testified that, in 2003, his license was suspended by the Board for a minimum of five years, and remains under suspension. (Tr. at 30) (Dr. Kelner's prior disciplinary history with the Board is addressed in more detail below.)

2. Dr. Kelner testified that he had obtained training in emergency medicine during his family practice residency. (Tr. at 252-253)
3. Dr. Kelner testified that he was board certified in family medicine. (Tr. at 253)
4. Dr. Kelner testified that he is currently an Associate Professor at the MedCentral College of Nursing in Mansfield, Ohio, and that he teaches pathology, pharmacology, and diagnosis and assessment. Dr. Kelner further testified that he is also the Director of the Science Department. (Tr. at 273-274)

Kristopher R. Brickman, M.D.

5. Kristopher R. Brickman, M.D., testified as an expert on behalf of the State. Dr. Brickman obtained his medical degree in 1983 from Wright State University Medical School in Dayton, Ohio. From 1983 through 1985, Dr. Brickman participated in a surgical internship and residency at Miami Valley Hospital in Dayton, Ohio; and, from 1985 through 1987, participated in an emergency medicine residency at St. Vincent Medical Center/The Toledo Hospital in Toledo, Ohio. (St. Ex. 6; Tr. at 93-94)

Dr. Brickman testified that he has been licensed to practice medicine in Ohio since 1983. Dr. Brickman was certified by the American College of Emergency Physicians in 1989. (St. Ex. 6; Tr. at 96-97)

Dr. Brickman testified that, following his residency, he continued to work at St. Vincent's Medical Center for approximately 8 months. He then established a corporation and developed his own group, Northwest Ohio Emergency Services, which staffs emergency departments in northwest Ohio. Dr. Brickman testified that his corporation currently employs approximately 40 physicians. In addition, from 1987 through the present, Dr. Brickman has been an Assistant Professor at the University of Toledo, Medical University of Ohio College of Medicine in Toledo, Ohio, and also serves as the Medical Director of the Emergency Department at that institution. (St. Ex. 6; Tr. at 94-95)

Bruce D. Janiak, M.D.

6. Bruce D. Janiak, M.D., testified as an expert on behalf of Dr. Kelner. Dr. Janiak obtained his medical degree in 1969 from the University of Cincinnati College of Medicine in Cincinnati, Ohio. From 1969 through 1972, Dr. Janiak participated in an internship and residency in emergency medicine at Cincinnati General Hospital in Cincinnati, Ohio. Dr. Janiak then entered service in the United States Navy and, from 1972 through 1974, served as the director of emergency medical services at Pensacola Naval Hospital in Pensacola, Florida. From 1974 through 2002, in addition to other positions, Dr. Janiak worked as the Director of the Department of Emergency Medicine at The Toledo Hospital in Toledo, Ohio. Beginning in 2002, Dr. Janiak worked as a consultant for Medical Resource Management, and beginning in 2003, he became the Director of Outreach for the Department of Emergency Medicine at the Medical College of Georgia. Currently, Dr. Janiak works full-time as Professor and Vice Chairman of the Department of Emergency Medicine at the Medical College of Georgia in Augusta, Georgia. (Resp. Ex. G; Tr. at 165-172)

Dr. Janiak was certified by the American Board of Emergency Medicine in 1980, and recertified in 1990 and 2000. In 2001, Dr. Janiak was certified in Pediatric Emergency Medicine by the American Board of Emergency Medicine. (Resp. Ex. G)

Prior Board Actions

7. On March 12, 1991, Dr. Kelner entered into a Consent Agreement with the Board [March 1991 Consent Agreement] in lieu of formal proceedings based upon his violation of Section 4731.22(B)(26), Ohio Revised Code. In the March 1991 Consent Agreement, Dr. Kelner admitted, among other things, that, on or about April 6, 1989, he had been admitted to Shepherd Hill Hospital, a Board-approved treatment provider in Newark, Ohio, for treatment of opioid dependency. Further, Dr. Kelner agreed to certain probationary terms, conditions, and limitations upon his certificate for a period of not less than two years. (St. Ex. 5 at 66-69)

8. On June 12, 1996, Dr. Kelner entered into a Consent Agreement with the Board [June 1996 Consent Agreement] in lieu of formal proceedings based upon his violation of Section 4731.22(B)(26), Ohio Revised Code. In the June 1996 Consent Agreement, Dr. Kelner admitted, among other things, that he had been released from the probationary terms of his March 1991 Consent Agreement in March 1993; that he had self-reported a relapse to Board staff on April 23, 1996; and, by letter submitted to the Board on April 24, 1996, reported that he had resumed using oral opiates for a period of three months prior to notifying the Board that he had relapsed. The June 1996 Consent Agreement suspended Dr. Kelner's certificate to practice medicine and surgery for an indefinite period of time, and set forth requirements for reinstatement of his certificate. (St. Ex. 5 at 61-65)

Subsequently, on August 14, 1996, Dr. Kelner entered into a Consent Agreement with the Board [August 1996 Consent Agreement] under which his certificate was reinstated. In the August 1996 Consent Agreement, Dr. Kelner admitted, among other things, that he had entered into the above-described June 1996 Consent Agreement and that, from April 30, 1996, through May 31, 1996, he had received treatment at Shepherd Hill Hospital and the Central Ohio Recovery Residence, a Board-approved treatment facility. Under the terms of the August 1996 Consent Agreement, the Board reinstated Dr. Kelner's certificate to practice medicine and surgery in Ohio subject to certain probationary terms, conditions, and limitations for a period of not less than five years. (St. Ex. 5 at 52-60)

In August 2001, Dr. Kelner successfully completed the five-year period of probation established in the August 1996 Consent Agreement. (St. Ex. 5 at 45)

9. On March 14, 2002, Dr. Kelner entered into a Step I Consent Agreement with the Board [March 2002 Step I Consent Agreement] in lieu of formal proceedings based upon violations of Sections 4731.22(B)(10), (20), and (26), Ohio Revised Code. In the March 2002 Step I Consent Agreement, Dr. Kelner admitted, among other things, that after entering into the above-described August 1996 Consent Agreement, and successfully completing a five-year period of supervised probation with the Board in August 2001, he had maintained sobriety until he relapsed on hydrocodone in November 2001. Dr. Kelner self-reported this second relapse to the Board on February 26, 2002. Finally, Dr. Kelner admitted that on February 27, 2002, he had entered inpatient treatment for chemical dependence at The Cleveland Clinic, a Board-approved treatment provider. (St. Ex. 5 at 44-51)

The March 2002 Step I Consent Agreement permanently revoked Dr. Kelner's certificate to practice medicine and surgery in Ohio, stayed such revocation, suspended his certificate for a minimum of eighteen months, and established conditions for reinstatement. The agreement also set forth interim monitoring conditions to be effective during Dr. Kelner's suspension period, including a requirement that he 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. Kelner's history of chemical dependency. (St. Ex. 5 at 46)

10. On October 8, 2003, the Board issued an Entry of Order in which it found that urine specimens submitted by Dr. Kelner on February 22, and March 18 and 29, 2003, had each tested positive for the presence of propoxyphene, and had been GC/MS confirmed for the presence of norpropoxyphene, contrary to the terms of Dr. Kelner's March 2002 Step I Consent Agreement. Further, the Board concluded that such conduct had violated Sections 4731.22(B)(15) and (26), Ohio Revised Code. The Board permanently revoked Dr. Kelner's certificate to practice medicine and surgery in Ohio, stayed such revocation, and suspended his certificate for a minimum of five years beginning April 2, 2003, the date that Dr. Kelner had self-reported his relapse to the Board. Further, the Board established interim monitoring conditions, conditions for reinstatement, and subsequent probationary terms, conditions, and limitations for a period of not less than ten years. (St. Ex. 5 at 5-39)

Layout of Emergency Department at Marion General Hospital

11. The events relevant to the present matter occurred in the emergency department at Marion General Hospital. Dr. Kelner testified that the emergency department at Marion General Hospital had been arranged in an "island setup" wherein the nurses' and physicians' station had been in the center of the space, with sixteen examination rooms and three trauma rooms surrounding the space. The examination rooms¹ were separated from the common area by doors. (Tr. at 36-37)
12. Dr. Kelner described the procedural typically followed when a patient presented to the emergency department at Marion General Hospital. The patient would first enter triage and be examined by the triage nurse. The triage nurse then determined how serious the patient's condition was and whether the patient needed to be seen immediately. Next, after the patient was brought back from the waiting area to the emergency room, the emergency room nurse would receive a report from the triage nurse, and the chart would be given to the physician or "be put in the rack." (Tr. at 41)

Patient 1 – Medical Records and Testimony Concerning Background

13. Patient 1 is a female who was born in 1979. Among other things, her medical history includes a liver transplant in January 1986 when she was six years old, and bowel surgery.

¹ Rooms with walls and doors rather than curtained-off areas. (Tr. at 37)

It was noted in the medical record that Patient 1's liver enzymes were normal and that she did not require immunosuppressant medication. She was 4' 7½" tall, and weighed 104 pounds on January 25, 2002. (St. Ex. 2 at 3, 31-33, 39, 43, 131)

14. Dr. Kelner testified that, on January 25, 2002, he had been working in the emergency department at Marion General Hospital. At 10:35 that morning, Patient 1 presented to the emergency department. Dr. Kelner was the only physician on duty at that time,² and he examined her shortly after she presented. (Tr. at 35-36)
15. On an intake form completed on January 22, 2002, the triage nurse recorded that Patient 1 was pregnant, with an estimated date of conception of May 13, 2001.³ Further, Patient 1's temperature was 96.6, pulse 95, respiration rate 10, and blood pressure 114/70. The fetal heart rate was noted to be 148. The form stated that Patient 1 had presented complaining of difficulty having a bowel movement for the previous week, and of lower abdominal and lower back pain. (St. Ex. 2 at 7; Tr. at 42)

The emergency room nurse's note states:

As above. Denies vomiting/nausea. Lower abd. pain / lower back pain started this AM. Denies vag. drainage. Skin warm, dry, pink. Abd. firm [with] bowel sounds present. Denies vaginal drainage/discharge.

(St. Ex. 2 at 7; Tr. at 42)

Information in the space labeled for the physician's note states, among other things: "[No] 'Real' BM x 1 wk. - Yesterday. Knifelike pain in Lower abd & low back. (-)⁴ N[ausea], (-) V[omiting]." Further, on the next line, the note states, "6½ mos. preg; (-) Vag d/c, (-) bleeding." (St. Ex. 2 at 7)

Finally, in the space labeled for the physician's orders, Dr. Kelner noted his orders that Patient 1 be placed on an IV, that she be administered Demerol 50 mg and Phenergan 12.5 mg, and that she be given a soapsuds enema. (St. Ex. 2 at 7)

16. The January 25, 2002, emergency department nurse's notes concerning Patient 1 provide the following information:⁵
 - 11:53—Phenergan and Demerol were given via IV, and Patient 1's abdominal pain was noted to be "10/10."
 - 12:00—"Drowsy. Side rails ↑ x2. Call light within reach."

² Another physician, Dr. Osborn, came in later during Dr. Kelner's shift. (Tr. at 64-65)

³ The note actually gave a date of "5/13/02," which was clearly an error. (St. Ex. 2 at 7)

⁴ This symbol means "negative for."

⁵ Notes appearing on separate pages of the medical record are arranged in chronological order.

- 12:15—”States pain easing 5/10.”
- 12:25—”Soapsuds enema given at 12:25. Pt held until 12:40.”
- 12:52—The note states:

Heard cries of “help” & entered Rm 7 to find infant lying on cloth pad on floor. Mother lying (R) side on bed [with] umbilical cord protruding. Umbilical cord torn between mother & infant. I immediately began drying/warming/stimulating/suctioning infant. Spontaneous respiration noted when infant touched. Dr. Kelner @ bedside [with] infant & moved to Rm 15. OB staff & neonatologist paged.
- 12:55—”Umbilical chord protruding [with] no active bleeding @ present. Dr. Osborn in to care for pt. Placenta delivered. Dr. Osborn assisted by L&D nurse.”
- 13:00—”This nurse arrived from L&D [following] delivery of infant - pre-term (margin cuts off a portion of text) when this nurse arrived - ER doctor was attempting to deliver placenta - cord had already torn off - fundus was firm/midline @ u.”
- 13:05—Among other things, the placenta was delivered and Pitocin was added to the IV bag. Moreover, the note states that Patient 1 was crying and that emotional support was given.
- 13:10—Patient 1 was transferred to the Labor and Delivery Department.

(St. Ex. 2 at 11-15)

17. A report dictated by Dr. Kelner on January 25, 2002, at 15:40, states, under the section entitled History of Present Illness, that Patient 1 “apparently was a G2 P1 with a spontaneous first trimester AB last year. (The patient did not relate this to us. This was found out later when the patient was up in L&D.”⁶ Dr. Kelner further stated that Patient 1 had presented stating that she had not had a bowel movement for the previous week, and that she felt as though she was “extremely constipated.” Moreover, Dr. Kelner stated:

She has no anterior abdominal or lower abdominal pain. She has no vaginal bleeding, no vaginal discharge, no dysuria or urgency or frequency. She

⁶ Dr. Kelner explained the meaning of the terms, “G2 P1”: “[G]ravidia II and para I; para means she currently has a baby in her uterus, gravida means she’s been pregnant twice.” (Tr. at 74)

Dr. Janiak testified that if the medical record states that Patient 1 was “G2 P1,” it means that patient one had been gravida 2, which means that she had been pregnant twice; and para 1, which means that Patient 1 had one child. Dr. Janiak further testified that if Dr. Kelner had testified that P1 meant that Patient 1 was currently pregnant, that had been incorrect. (Tr. at 221-222)

complains of constipation. She states that she has been constipated before and states that this feels exactly like that. She has had nausea without vomiting. Her p.o. intake has been less than usual.

(St. Ex. 2 at 33)

Under the section entitled Physical Exam, Dr. Kelner stated:

The patient is afebrile. Vital signs are stable. Generally a well-developed, well nourished 22 year-old-white female in moderate distress. HEENT: normocephalic, atraumatic. Extra ocular muscles are intact. Pupils equal round and reactive to light bilaterally. Throat is clear. Neck is supple. Chest is clear to auscultation. Cardiovascular: regular rate and rhythm, no murmurs, rubs or gallops. Abdominal exam reveals tenderness over the lower quadrants and the periumbilical area with a tight abdomen but no peritoneal signs. No colicky type tightness of the abdominal musculature. Pelvic exam was deferred initially. The impression initially was constipation.

(St. Ex. 2 at 33)

Under the section entitled ED Course, Dr. Kelner stated:

An IV was started. She was given Demerol 50 mg and Phenergan 12.5 mg. A soapsuds enema was ordered. I did not feel that the patient was in labor due to the fact that she had not had a bowel movement for a week, that she has been constipated before and stated that this feels "exactly like that." She has been nauseous secondary I [sic] to the constipation. The enema was in progress and apparently when the patient was on the way to the commode she delivered a 24 week infant. I am not sure of the events in the room as I was not there. There was an aide in the room. I am not sure again of the events that occurred while the patient was in the room. The baby was brought up to the bed and suctioned rapidly. The baby was making some respiratory effort and did have pink color. The baby was brought to the front room and the neonatologist came down and intubated the child. The child was brought up to the Neonatal Intensive Care Unit where the baby apparently is doing relatively well. Mom was sent up to L&D where she was evaluated by Dr. Solie.

(St. Ex. 2 at 33)

Finally, in a separate "Addendum Note" dictated on January 25, 2002, at 16:44, Dr. Kelner stated:

As mentioned in my official dictation the patient came in with a chief complaint of constipation. She had no vaginal bleeding, no vaginal discharge.

She did not report any events consistent with the rupture of her membranes. She states that she had had the abdominal pain on and off for about a few days. She states that she had had only two small bowel movements over the last week which partially relieved her discomfort. She stated that she had been constipated previously with this pregnancy and also when she was not pregnant and that this abdominal pain felt "exactly like that." In summary I had minimal suspicion that this patient was in active labor. The patient had an IV inserted. She was given Demerol 50 mg and Phenergan 25 mg IV. A soapsuds enema was performed and the emergency department technician was assisting the patient in going to the commode. Apparently the patient delivered this 24 week infant while walking to the commode. I was not in the room therefore I am not aware of how the child ended up on the floor of the room but when I came in the room the child was indeed on the floor. The child was immediately brought up on the bed and resuscitated as described. The child was displaying respiratory effort. The child did have pink skin considering. When I picked the child up on the bed the umbilical cord was already severed about three centimeters distal to the umbilicus. At that point I accompanied the child to a front room where the neonatologist and Dr. Osborn stayed with patient. The placenta was delivered. The patient was taken up to L&D where further care was administered by the L&D staff and Dr. Solie. She was also given IV Pitocin down in the emergency department. These are the events as I recall them on this day.

(St. Ex. 2 at 37)

Dr. Kelner testified that he had written the addendum note after he had finished with the shift, was able to settle down, and "able to relate the information in less of a hurry * * *." (Tr. at 74)

18. A report dictated on March 6, 2002, by Carol Solie, M.D., Patient 1's OB/GYN, stated, in part:

The patient is a 19-year-old [sic], G2, P0-0-1-0 at 24 weeks gestation who delivered in the emergency department. Her placenta was also delivered by the emergency department physician. I was notified about the delivery after it occurred. * * * Apparently, the patient had been constipated and had not had a bowel movement for two days. She presented to the emergency room describing abdominal pain and sensation of bearing down and feeling like she needed to have a bowel movement and having crampy pain. She was not felt to be in labor and was given analgesics and an enema. Unfortunately, she did delivery [sic] precipitously a pre-term infant and was attended only by an aide in the emergency department.

Considering the circumstances, I advised the patient at the time that I suspected she may have a problem with cervical incompetence and that after

the peripartum period a hysterosalpingogram might be helpful to determine whether she had any uterine abnormalities.

(St. Ex. 2 at 29)

19. Patient 1's infant was female and weighed 1 lb 9 oz. Dr. Kelner testified that the infant died within a few days following her birth. (St. Ex. 2 at 39; Tr. at 65)
20. A progress note dated January 26, 2002, written by an unidentified physician states:

Pt has multiple questions related to Emergency Room care; Pt is still upset Re: the sequence of events & the fact that "people did not seem to be listening to her." I encouraged her to ask for an "inquiry." Wants to be discharged to see her baby. * * *

(St. Ex. 2 at 25)

Testimony of Dr. Kelner

21. Dr. Kelner testified that, prior to Patient 1 being brought back to the emergency room, the triage nurse had approached him and advised that Patient 1 was 24 weeks pregnant, that the Labor and Delivery department was at that time extremely busy, and that it was okay for Patient 1 to be seen by the emergency department because Patient 1 had been seen the previous week for the same complaint. Dr. Kelner acknowledged that that he had not documented that conversation in the medical record. (Tr. at 44-45)

Dr. Kelner further testified that Patient 1 had told him that she was constipated, that she had been seen in the emergency department the previous week for the same complaint, and that she had not had a bowel movement, or much of a bowel movement, for a week. Moreover, Dr. Kelner said that Patient 1 had told him that she felt exactly the same way as she had when she had been seen the week before. Finally, Dr. Kelner testified that Patient 1 had described pain that, in his opinion, had been consistent with constipation. (Tr. at 40-41, 49)

22. Dr. Kelner testified that both he and a nurse had felt Patient 1's uterus for contractions and found no evidence of uterine tightness or contractions. Dr. Kelner stated that, although he could not recall precisely, he believes that he had felt for contractions "for a minute or two." Dr. Kelner further testified that, other than feeling the uterus, the other way to check for contractions would have been to place Patient 1 on a monitor. However, Dr. Kelner testified that the emergency department did not have the necessary equipment. (Tr. at 51-52, 77-78, 263-264)
23. Dr. Kelner testified that he had not performed a pelvic examination on Patient 1. Dr. Kelner stated that a pelvic examination involves putting the patient in stirrups and using a sterile speculum to view the cervix. Dr. Kelner further stated that the purpose of the

examination is to check for the presence of fluid or blood, or for cervical dilation, which could potentially indicate the onset of labor. Finally, Dr. Kelner testified that a pelvic examination would have taken approximately ten minutes. (Tr. at 53-56)

Dr. Kelner testified that he had not performed a pelvic examination because, first, the patient had advised that she had no vaginal discharge or bleeding. Second, Dr. Kelner testified that both a nurse and Patient 1 had told him that Patient 1 had been seen the previous week “with the exact same complaints.” Further, Dr. Kelner testified that an experienced nurse had “laid her hands on the patient’s uterine fundus” and told him that she had not felt any contractions. In addition, Dr. Kelner testified that the nurse had checked the fetal heart tones, and that the fetal heart tones had been good. Dr. Kelner stated that, based on those factors, he had not believed that Patient 1 had been in active labor. Dr. Kelner testified that his goal had been to make her more comfortable “and then potentially move on to other things at that point.” (Tr. at 46, 52, 54-55, 84-86, 262, 272)

24. Dr. Kelner testified that he had asked Patient 1 if she had ever been pregnant before, “and she did not state affirmatively that she had.” Dr. Kelner testified that he had later learned that she had had a previous miscarriage during the first trimester, but that he had not had any medical record of that event. Dr. Kelner further testified that, had he been aware of Patient 1’s previous miscarriage, he may have proceeded differently. Dr. Kelner testified: “My suspicion level would have been higher. * * * I can’t say exactly in retrospect what I would have done, but I did not have all the information when I saw this patient.” (Tr. at 72-73)
25. Dr. Kelner denied having written or seen the note recorded in the section of the emergency room record entitled “Phys Notes” that states that Patient 1 was experiencing “[k]nifelike pain” in her lower abdomen and lower back. Dr. Kelner testified that that note had been written by a physician assistant student/intern⁷ who saw the patient after Dr. Kelner had finished with his examination. Dr. Kelner further testified that Patient 1 had never informed Dr. Kelner that she had had knife-like pains. (St. Ex. 2 at 7; Tr. at 38-39, 84-86, 88-89)
26. Dr. Kelner testified that, approximately one hour after he had examined Patient 1, an aide who had been in the room with Patient 1 called for help. Dr. Kelner went into the room and found that Patient 1 had delivered an infant, who was lying on the floor. Dr. Kelner placed the infant on the bed, suctioned the infant, clamped the severed umbilical cord, called for a neonatologist, and then took the infant to a trauma room. Dr. Kelner testified that a second emergency room physician had attended Patient 1 and the delivery of the placenta. (Tr. at 62-65)
27. Dr. Kelner testified that the allegation in the Board’s notice of opportunity for hearing that Patient 1 had delivered an infant “without any medical personnel in attendance” is not true.

⁷ Based upon noticeable differences in handwriting, the note appears to have been written by a different person than the person who wrote the physician’s orders. (St. Ex. 2 at 7)

Dr. Kelner testified that the aide had administered a soapsuds enema to Patient 1 per his order. At the time the baby was delivered, the aide had been helping Patient 1 from the bed to the chair commode following the enema. Furthermore, Dr. Kelner testified that he had documented in his written report that an aide had been in the room with Patient 1. Finally, Dr. Kelner denied that Patient 1 had been abandoned at any time during her treatment on January 25, 2002. (St. Ex. 2 at 33; Tr. at 83-84, 86-87, 273)

28. Dr. Kelner testified that, hypothetically, had Patient 1 been diagnosed earlier as being in active labor, there are tocolytic medications that could have been administered to try to stop Patient 1's labor. (Tr. at 66-67)

Testimony of Dr. Brickman, Expert Witness for the State

29. Dr. Brickman testified that, in his opinion, Dr. Kelner's care and treatment of Patient 1 had failed to meet the minimal standard of care. (Tr. at 102-103)

Dr. Brickman testified that the job of an emergency physician is to "look at the big picture," and first determine what major or life-threatening problems might be present. Once the potential major problems have been addressed, then the physician can move on to the less serious possibilities. (Tr. at 104-105)

Dr. Brickman noted that Patient 1 had presented with acute abdominal pain. He further testified that, when a pregnant patient presents with acute abdominal pain and/or acute back pain, the "number one priority" for the emergency physician is to determine that the patient is not in labor and is not developing a complication with her pregnancy. (Tr. at 104)

30. In his May 10, 2005, written report, Dr. Brickman stated that he believes that Patient 1 had presented to the emergency department in active labor, and that the diagnosis of constipation had been incorrect. Dr. Brickman further opined that Patient 1's actual condition had not been recognized by the nursing staff or the medical staff in the emergency department. Dr. Brickman also wrote:

Relating to the physical exam by Dr. Kelner, the abdominal exam specifically appears somewhat limited in scope for her presenting problems. In the nursing notes, it is stated that the patient was complaining of knife-like pains in her back and abdomen that would appear to go against the diagnosis of constipation and would be more consistent with active labor with a female patient at 24 weeks gestation. The physician's exam only outlines her pain being periumbilical and lower abdominal of a generalized nature and does not comment on the presence or absence of fetal heart sounds, uterine contractions, rebound tenderness or presence or absence of bowel sounds. With a diagnosis of constipation, I would have at least expected also a rectal exam to be performed to confirm stool in the rectal vault and/or rectal impaction to assist in confirming this diagnosis. More importantly with this patient at 24 weeks gestation, a sterile speculum vaginal exam should have

also been performed at a minimum to verify the patency of the cervical OS, which I believe would have led to the apparent diagnosis of active labor and subsequent cervical dilatation at this point of her emergency evaluation.

Once the delivery of the infant was recognized, I feel that all emergent care to both the preterm infant and to the mother was appropriate, including the delivery of the placenta, resuscitation of the infant and the expedited consultation of Neonatology and Obstetrics to assist with the emergent care of each of these patients. Therefore, I feel once the diagnosis of preterm labor with precipitous delivery was discovered that Dr. Kelner's management was appropriate and met the current standard of emergent medical care in this situation.

My concern though is with the initial assessment by Dr. Kelner that I believe with the information provided should have been more complete, i.e., pelvic exam, rectal exam, fetal heart sounds or bowel sounds in a 22 year old female that is 24 weeks pregnant.⁸ Although her history of constipation and the lack of a history of vaginal discharge, i.e., premature rupture of membranes, might direct you away from the consideration of premature labor, these exam elements, I expect, would have clearly identified [Patient 1's] problem and diagnosis promptly and would have led to an expedited referral to Obstetrics and Neonatology for the impending delivery of this preterm infant. It is my opinion, therefore, that Dr. Kelner departed from the minimal standard of care at the time of this Emergency Department visit by not performing a complete abdominal, pelvic and rectal examination appropriate for this patient. Relating to the medical records documentation, I feel this was adequate and, as stated previously, I feel that Dr. Kelner's care was appropriate in managing the complications that ensued with this preterm delivery.

(St. Ex. 4)

31. At hearing, Dr. Brickman explained that the "cervical OS" is the opening to the uterus, and that it has to remain closed in order for the pregnancy to continue and for the baby to develop. The dilation of the cervical OS⁹ precedes delivery of the infant. Dr. Brickman testified that Patient 1's symptoms had required a pelvic exam to determine whether the cervix had been dilated or had begun to dilate. (Tr. at 106-108)

Dr. Brickman testified that a pelvic examination is a simple procedure that takes very little time. The procedure involves inserting a speculum into the vaginal cavity, opening the speculum, and using a light source to visually examine the cervix. If the patient is known to be pregnant, a sterile speculum is used. By examining the cervix, the physician can

⁸ The information recorded on the emergency room record indicates that the nurse(s) had recorded fetal heart tones and "bowel sounds present." (St. Ex. 2 at 7)

⁹ Note that, for the remainder of this report, the "cervical OS" is referred to simply as the "cervix."

determine whether the cervix is dilated, and thus ascertain if there is an impending delivery. (Tr. at 109-112, 123)

Finally, Dr. Brickman testified that the standard of care in an emergency room setting for Patient 1's presenting symptoms had required that Dr. Kelner rule out, to the greatest extent possible, that Patient 1 had been in active labor, and that the best method for doing that would have been for him to have performed a sterile speculum examination. (Tr. at 112-113)

32. Dr. Brickman testified that the standard of care for a physician to diagnose constipation requires, at a minimum, a rectal examination. The purpose of a rectal examination would be to determine whether the patient was having "motility issues" or if there was hard, impacted stool present in the rectal vault. Dr. Brickman further testified that the treatments for motility problems versus impaction would differ. Accordingly, a rectal exam should have been performed to determine the best course of action to treat the patient. (Tr. at 114)

Dr. Brickman testified that if Patient 1 had had hard, impacted stool in the rectal vault, a soapsuds enema would have been beneficial. However, he further testified that a better way to have managed that would have been for the physician to try to physically remove the hard stool, and then to order a soapsuds enema to soften and remove any remaining impacted stool. Dr. Brickman testified that, in any case, a digital rectal exam should have been performed to determine if impacted stool was there. (Tr. at 114-116)

33. Dr. Brickman testified concerning Dr. Kelner's testimony that Patient 1 had been treated in the emergency department for constipation approximately one week previous to her January 25, 2002, visit. Dr. Brickman testified that "regardless of whether [a patient has] been there the week before, the day before, or two hours earlier, [the physician has] to assess each and every situation as a unique situation." A physician can "never assume that it's the same problem." Moreover, Dr. Brickman testified that Patient 1's prior treatment for constipation had been "totally irrelevant to how she should have been evaluated and assessed in this situation." (Tr. at 122-123)

34. Dr. Brickman testified that he does not regard Patient 1's previous miscarriage as having been critical information concerning her treatment on January 25, 2002. With regard to Patient 1's previous first trimester miscarriage, Dr. Brickman stated that a fetus at that stage of development would have been no larger than a thumb, and the cervix would not have had to dilate very much for the fetus to pass. Dr. Brickman further testified that, at that stage, Patient 1's uterus had not yet gone through the various changes that occur further along during a pregnancy. (Tr. at 118-119)

35. Dr. Brickman testified that feeling a patient's abdomen for contractions would be an ineffective to determine whether the patient is in labor. Dr. Brickman stated that, early in labor, contractions can be brief and spread apart by as long as 20 minutes. (Tr. at 120)

When asked whether a patient who is approximately 1 hour from delivering a baby would have had contractions close enough in time to be detected by manual examination,

Dr. Brickman replied that he believes that they could have been about five minutes apart. (Tr. at 139-140)

Dr. Brickman further testified that he believes that Patient 1 had been in active labor when she was seen by Dr. Kelner. He stated that the fetus had been 24 weeks along, and that a fetus of that size could not be delivered without the patient being in active labor. (Tr. at 140)

36. When asked if measuring fetal heart tones would be relevant to determining if a pregnant patient is in active labor, Dr. Brickman replied, "Not at all." He further testified that the presence or lack of fetal heart tones has nothing to do with abdominal pain. Dr. Brickman stated, "Fetal heart tones are relevant to document that they're present." However, he stated that they do not lead to a specific diagnosis of whether the patient is in labor. (Tr. at 122, 137-138)

37. Dr. Brickman testified that, in his experience, labor pains are commonly described as "knife-like." (Tr. at 123-124)

38. Dr. Brickman was asked on cross-examination to compare the information in his written report with the Board's June 8, 2005, notice of opportunity for hearing [notice]. Dr. Brickman identified a statement in the notice that "[o]n her way to the restroom, without any medical personnel in attendance, Patient 1 precipitously delivered a preterm infant." Whereupon the following exchange took place:

A. [By Dr. Brickman] * * * Just the part regarding, "On her way to the restroom, without any medical personnel in attendance* * *", I don't remember that being the focus of anything I was currently considering. That is a moot issue there, from my perspective. "* * * any medical personnel in attendance * * * precipitously developed [sic] a preterm infant." That just sort of struck me as a little bit off. But, you know, it may have been related to something that I technically omitted, and I'm trying to find it.

Q. [By Mr. Plinke] Because it's documented in the record that there were medical personnel.

A. Yeah. I don't—That was—I just knew there was something that struck me strange and that was it. There was nothing about my assessment or a concern of abandonment is what I thought the implication might have been here and that was in no way my opinion.

(Tr. at 135-136)

Testimony of Dr. Janiak, Expert Witness for the Respondent

39. Dr. Janiak testified that, in his opinion, Dr. Kelner had complied with the minimal standard of care in his treatment of Patient 1. Dr. Janiak testified concerning the factors that led him to that opinion:
- Patient 1 complained of feeling as though she were constipated, indicated that she had been constipated before, and stated that it felt “‘exactly like that.’” (Tr. at 177-178)
 - Patient 1 had been at a stage in her pregnancy during which one “‘wouldn’t expect a patient to normally go into labor, although admittedly [with] complaints of abdominal pain, the differential diagnosis could be labor.’” (Tr. at 177-178)
 - Dr. Kelner and a nurse had both felt Patient 1’s abdomen and did not feel contractions. (Tr. at 178)
 - The fetal heart tones were normal. Dr. Janiak testified, “‘During contractions, fetal heart tones or a fetus in distress will have markedly decreased fetal heart tones.’” (Tr. at 178)
 - Patient 1 was not having vaginal bleeding or discharge. (Tr. at 178)
 - Patient 1 had experienced a miscarriage in the past, and therefore “‘would have known what her body felt like when that was happening. You would expect the normal patient to say, ‘Gosh, this feels like labor,’ rather than ‘feels like constipation.’ This patient said it felt like constipation.’” (Tr. at 179)
 - A rectal exam might have revealed “‘either a fecal impaction, which would support Dr. Kelner’s diagnosis, or no fecal impaction, which would have no bearing whatsoever on a diagnosis.’” Accordingly, Dr. Janiak does not believe that a rectal examination had been required. (Tr. at 179)

Dr. Janiak testified that he does not believe that labor would have been a “‘reasonable diagnosis at that time.’” Finally, Dr. Janiak testified it had been reasonable and within the minimal standard of care for Dr. Kelner to treat Patient 1 for constipation. (Tr. at 179-180)

40. Dr. Janiak testified that he disagrees with Dr. Brickman that one of the principles of emergency medicine is to first rule out the worst-case scenario. Dr. Janiak testified: “[T]hat’s not a principle of emergency medicine. It’s a— it’s a commonly articulated, misunderstood principle, but it isn’t that principle.” When asked what he believes to be the primary principle for an emergency room physician, Dr. Janiak replied that the primary principle is to do an appropriate history and physical examination. He further testified:

[I]n terms of what you were alluding to, you have to put likelihood in there because if you just, in a legal sense, say rule out the most life-threatening

cause of a patient's presentation, there is no way that could be done on every patient.

You might have fallen and bumped your chest, but you have a lung cancer. You're not going to rule that out even though that's more life threatening than bumping the chest.

So it is, from the medical world to the legal world, a different—different way of using words, that's all.

(Tr. at to 218-219)

41. Dr. Janiak testified that Dr. Kelner's decision not to perform a sterile speculum examination had not violated the minimal standards of care. Dr. Janiak further testified:

[T]here were multiple points that pointed to constipation. History of it; the fact that the patient had been in recently with a similar problem; that she had no contractions; that she was in her sixth month or in—near her sixth month of pregnancy; that she had normal fetal heart tones; that she did not give a history of having a previous spontaneous abortion.

Put all those things together and ask yourself: What is the most likely issue I'm dealing with here? The answer is: Constipation is certainly the most likely.

Therefore, doing a pelvic examination, I don't know for sure what you would be—be looking for there. I do [it] later in pregnancy, for sure, but not at this point in pregnancy.

(Tr. at 190-191)

42. Dr. Janiak disagreed with Dr. Brickman's testimony that Patient 1's previous treatment for constipation had been irrelevant with regard to her treatment on January 25, 2002. Dr. Janiak stated that information that Patient 1 had felt as though she were constipated and felt the way she had previously is "extremely relevant and supportive of the diagnosis of constipation." Finally, Dr. Janiak testified that it had been within the minimal standard of care for Dr. Kelner to have relied upon that information. (Tr. at 181)
43. Dr. Janiak disagreed with Dr. Brickman's opinion that "knifelike pains" are more consistent with labor than with other intra-abdominal conditions. Dr. Janiak further testified that labor pains are more often described as pressure or crampy pain. (Tr. at 193-194)
44. Dr. Janiak disagreed with Dr. Brickman's opinion that fetal heart tones had not provided relevant information concerning Patient 1's treatment. Dr. Janiak further testified that he

believes that the data concerning fetal heart had been relevant information, and that it had indicated that the fetus had not been “reacting as if there were contractions going on.” Moreover, Dr. Janiak testified that it had been within the minimal standards of care for Dr. Kelner to have relied on fetal heart tones in his diagnosis of Patient 1. (Tr. at 180-182)

Dr. Janiak acknowledged that, although fetal heart tones may decrease during contractions, during a normal labor they would return to normal between contractions. Dr. Janiak qualified his answer by stating that he is not certain whether that would be true for a fetus at 24 weeks of gestation. (Tr. at 249-250)

45. Dr. Janiak stated that he does not believe that it would have been necessary for Dr. Kelner to place his hands on Patient 1’s uterus for more than five minutes in order to detect uterine contractions. Dr. Janiak testified that he normally would expect that they would have been coming more frequently than every five minutes. (Tr. at 196-197)
46. Dr. Janiak testified that Dr. Kelner’s failure to document any discussion with Patient 1 concerning her prior pregnancy did not fall below the minimal standards of care. When asked if it would have been important for Dr. Kelner to have had a discussion with or obtain a history from Patient 1 concerning her previous pregnancy, Dr. Janiak replied:

I would say you don’t need to have that unless you find out that at six months she loses every baby. But I don’t think that was what we were dealing with here. So I would say yeah, no, it’s not—it would meet the standard of care, minimally accepted, to—to not have that discussion or document it.

(Tr. at 229-230) When asked how a physician could know about such a problem without having asked the patient, Dr. Janiak replied, “You wouldn’t know that, but you would expect the patient to give you that information since that is such an unbelievably rare thing to have.” (Tr. at 230)

47. Dr. Janiak testified that a soapsuds enema is useful in loosening impacted stool, and also is a mild irritant that can stimulate “some contractions of the wall of the colon to move stool along.” (Tr. at 224)
48. Dr. Janiak testified that if Patient 1 had had an incompetent cervix, as her OB/GYN had alluded to in a written report, “almost anything can precipitate the baby to come out as it did in this case * * *.” Dr. Janiak testified that an incompetent cervix is a weakness in the muscles surrounding the opening to the uterus. In a normal patient, those muscles have enough tone and thickness to prevent anything from coming through the cervix until certain hormones are released and the cervix is subjected to muscular contractions over a period of time. However, Dr. Janiak stated that, if those muscles are weak, labor becomes much easier. Moreover, he testified that if the cervix is totally incompetent, labor can be instantaneous. (Tr. at 182-184)

[Note, however, that there is no evidence in the medical record that Patient 1 had been diagnosed as having cervical incompetence. Dr. Solie, Patient 1's OB/GYN, indicated in a January 25, 2002, report that, based upon what had occurred, she suspected that Patient 1 may have had that condition, and had recommended that Patient 1 have a hysterosalpingogram to determine whether Patient 1 had any uterine abnormalities. However, the results of any testing that may have been performed are not a part of the hearing record. (St. Ex. 2 at 29)]

Additional Testimony of Dr. Kelner

49. Dr. Kelner disagreed with Dr. Brickman's testimony that he would have had to have laid hands on Patient 1's uterus for five minutes to determine whether the patient was having contractions. Dr. Kelner testified that, if a patient is going to deliver within an hour and a half, her uterus would be rigid. Moreover, Dr. Kelner testified that, in a normal term pregnancy there are periods of time between contractions, but that in preterm labor the uterus is contracting almost continuously. Further, Dr. Kelner testified, "[I]n a precipitous delivery, if she indeed was in labor when I first saw her, her uterus would have been tight when I * * * palpated it." (Tr. at 265)
50. Dr. Kelner testified that he did not deviate from the standard of care by not performing a sterile speculum examination on Patient 1. Dr. Kelner stated that based upon the data he had had at the time, along with Patient 1's history, and taking into account that she was only 24 weeks pregnant, he had believed that her chances of being in active labor had been minimal. (Tr. at 261)
51. Dr. Kelner testified that he had performed a complete abdominal examination on Patient 1 that had included listening to her abdomen, auscultation and palpation of her abdomen, and checking her abdomen for peritoneal signs, such as rebound tenderness, which could be indicative of appendicitis. He testified that she had not exhibited peritoneal signs. (Tr. at 49-50, 265-266)
52. Dr. Kelner further testified that he does not believe that the standard of care had required him to perform a rectal examination, and that the results of a rectal examination would not have altered his treatment plan. He further testified that he would have administered a soapsuds enema whether or not he had felt stool in the rectal vault. Moreover, Dr. Kelner testified that there is no point in performing a test when the results of that test are not going to change his approach. (Tr. at 59-60, 68, 259-260)
53. Dr. Kelner disagreed with Dr. Brickman's testimony that information concerning Patient 1's previous miscarriage had been irrelevant. Dr. Kelner further testified that he would have considered that to be relevant had he known about it at the time he was treating the patient. Dr. Kelner also stated that any information that he can obtain is relevant, and that "[i]ts relevance needs to be judged and used appropriately in the given situation." Moreover, Dr. Kelner testified:

Patients often, when asked questions, do not give accurate answers. And it's not because they're trying to be malicious; it's because they're in pain and

they're in an unusual situation. And I did ask this patient, you know, "Have you been pregnant before?" And she said "No." But that's no fault of hers. I have asked people if they have had heart attacks before and they've said, "No," and I look in the chart and they've had seven of them.

(Tr. at 267-268)

In addition, Dr. Kelner testified that a nurse's note indicates that, prior to the administration of Demerol, Patient 1's level of abdominal pain had been 10 on a scale of 1 to 10. Finally, Dr. Kelner testified that, in his opinion, Patient 1's pain had been so great that she had been unable to accurately answer his questions. (St. Ex. 2 at 9; Tr. at 76-77, 298)

54. Dr. Kelner disagreed with Dr. Brickman's opinion that Patient 1's past history of constipation had been irrelevant to her treatment on January 25, 2002. (Tr. at 256-257)
55. Dr. Kelner disagreed with Dr. Brickman's opinion that the measurement of fetal heart tones had been irrelevant to Patient 1's situation. Dr. Kelner acknowledged that that had just been a snapshot of the fetus' condition at a particular moment in time; however, normal fetal heart tones reassured the healthcare team that the fetus was doing well at that moment. (Tr. at 257)
56. When asked if he had made an incorrect diagnosis in Patient 1's case, Dr. Kelner indicated that it is difficult to say. Dr. Kelner testified that Patient 1's delivery "was extremely precipitous and we don't know at what point the labor process began." Dr. Kelner further testified that a speculum examination may not have revealed active labor: "The patient could have started—if I had done the sterile speculum exam and there was no fluid and, say, no dilation, I would have proceeded with the same—the same process. The patient could have gone into labor immediately after that." Moreover, Dr. Kelner testified that the only thing that would have changed his treatment of the patient would have been if the speculum examination revealed "fluid in the vaginal vault" or "a significant amount of dilation." (Tr. at 56-57)
57. Dr. Kelner testified that Patient 1's delivery of her infant in the emergency room was tragic. However, Dr. Kelner believes that Patient 1 was going to deliver the infant no matter what he did. Dr. Kelner testified: "My belief is that if I did the sterile speculum exam and saw evidence, fluid, blood, and sent her upstairs, she was going to—there was nothing that could be done—this is my opinion in retrospect, of course—there is nothing that could be done to halt the progression of events that occurred that day." Dr. Kelner further testified that the pathology report concerning the placenta showed abnormalities, and that "the placenta had some focal hemorrhage." Dr. Keller indicated that that information would not have been obtainable via sterile speculum examination. Moreover, Dr. Kelner testified that he wishes that the events of that day he turned out differently. However, he does not believe that he is a physician who practices below the minimal standard of care. (Tr. at 278-279)

Hospital Records of Patient 1's January 8, 2002, Visit to Marion General Hospital

58. A Marion General Hospital form dated January 8, 2002, labeled "OB Patient/Health History & Physical Date Tool," indicates that Patient 1 had presented at 10:30 p.m. that evening complaining of cramping in her lower abdomen that had started around 6:00 p.m. that day; milky white vaginal discharge over the last few weeks; nausea all day; and diarrhea over the previous two days. The Labor and Delivery Nurse's Notes further indicated that the abdominal cramping had been so severe that "at times she had to sit down" and that she experienced pressure and burning with urination. (St. Ex. 2 at 131-133)

The records state that, when asked to provide "Frequency/Date Of Last BM," Patient 1 had indicated "2-3 diarrhea." She further indicated, "BM today." (St. Ex. 2 at 127)

The physician's orders state, among other things, that Patient 1 should be observed, a urinalysis performed, and an IV started. Moreover, at 11:55 p.m., the physician noted that Patient 1 would be allowed to go home following infusion of one liter of IV fluid. It appears that Patient 1 was discharged around 3:15 a.m. on January 9, 2002. (St. Ex. 2 at 115)

59. Dr. Janiak acknowledged that the medical records for Patient 1's January 8, 2002, visit did not indicate that Patient 1 had been constipated. (Tr. at 214-215)
60. The Hearing Examiner notes that Dr. Kelner had attempted to subpoena additional records concerning Patient 1 from Marion General Hospital prior to the hearing; however, the Hearing Examiner granted the State's motion to quash that subpoena. (St. Exs. 1S through 1X, 1Z, and 1AA; Tr. at 11-15)

Additional Information

61. Dr. Kelner testified that his career goals are to continue working at MedCentral College of Nursing. Dr. Keller further testified that the college is trying to start a graduate program to teach nurse practitioners. In addition, he testified that the college intends to open a clinic, and, if he is able to have his license reinstated in 2008, he would like to be the medical director of that clinic. (Tr. at 275-276)

With regard to his personal life, Dr. Kelner testified that he plans to continue being active in his community and in his church. He further testified that he is going on mission work in 2007. (Tr. at 276)

62. With regard to his history of providing quality medical care, Dr. Kelner testified that on many occasions, "if an important patient came into the emergency—we often had two docs working—and if an important VIP in town came in, they¹⁰ came and got me. Many

¹⁰ Dr. Kelner subsequently testified that the word "they" had referred to the nursing staff, and that he had brought the subject up as evidence that the nursing staff had confidence in his abilities. Dr. Kelner further stated that he had not meant that he believes that some patients are more important than others. Dr. Kelner testified that all patients are important and that he treats them all equally. (Tr. at 300-301)

patients would ask for me.” He further testified, “I have had letters written to be saying, you know, ‘I was passing through town when I had my heart attack. Thank God I stopped at Marion General.’” (Tr. at 280)

Finally, Dr. Kelner testified:

Do I always perform exemplarily? No. But I do not believe that my actions were below the minimum standards of care. And I am sorrowful for the events that happened to Patient No. 1, truly, but I don’t think that I could have prevented them no matter what events had occurred previously.

And I know that my goal was simply to, number one, cause no harm; and number two, to treat her discomfort.

And I would hope that the Board looks at that and that they don’t just see my name and say, “Hey, Kelner again,” and bam.

My goals are, as I said before, I don’t want to go back and be a hotshot ER doc and do all that stuff. I want to simply teach, and to nurses, nurse practitioners. That’s what I want to do. And hopefully the Medical Board and [the Hearing Examiner] will see this for what it is and I can get to that point where those goals can be achieved.

(Tr. at 280-281)

63. Dr. Kelner presented two letters of support written on his behalf by senior staff at MedCentral College of Nursing.¹¹ One of the letters was written by Walter E. Zielinski, Ph.D., President and CEO of the College. Dr. Zielinski praised Dr. Kelner for his academic, administrative, and leadership abilities. Dr. Zielinski further stated that Dr. Kelner is active in research and community service. The other letter was written by June Hart Romeo, Ph.D., NP-C, Academic Dean of the College. Dr. Romeo wrote that she had hired Dr. Kelner in 2004. She stated that Dr. Kelner had been “open and frank about his past,” and that she has never regretted hiring him. She also praised his academic and leadership abilities, and noted that he volunteers his time for such things as student orientations and information days. Moreover, she noted that she plans to involve Dr. Kelner in the graduate program that they plan to offer in 2007. (Resp. Exs. D and E)

FINDINGS OF FACT

1. On January 25, 2002, in the routine course of his practice as an emergency physician, Paul Evan Kelner, M.D., undertook the care of an individual identified for purposes of patient confidentiality as Patient 1. Patient 1, who at that time was a 22-year-old female and 24

¹¹ Note that the State did not have an opportunity to cross-examine the authors of these letters.

weeks pregnant, presented to the emergency department with complaints of constipation, lower abdominal pain, and lower back pain. Dr. Kelner diagnosed Patient 1 with constipation, and ordered a soapsuds enema and IV administration of Demerol and Phenergan. However, Dr. Kelner failed to perform, and/or failed to document the performance of, a pelvic examination to determine if Patient 1 was in active labor, or a rectal examination to determine if Patient 1 had impacted stool in the rectal vault.

Following the administration of the soapsuds enema by an aide, and while in the examination room and being assisted by the aide to a chair commode, Patient 1 precipitously delivered a preterm infant. Someone, either Patient 1 or the aide, cried out for help, and when hospital staff responded they found the infant on the floor with the umbilical cord severed from the placenta.

2. The Board's June 8, 2005, notice of opportunity for hearing stated that Patient 1 had precipitously delivered an infant "[o]n her way to the restroom, without any medical personnel in attendance." No evidence was presented to support this allegation.
3. The evidence is insufficient to support the allegation that Dr. Kelner had failed to perform a complete abdominal examination. It is not clear from the evidence what was missing from Dr. Kelner's abdominal examination of Patient 1.

CONCLUSIONS OF LAW

The conduct of Paul Evan Kelner, M.D., as set forth in Findings of Fact 1 constitutes "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

Conflicting testimony was presented from two highly qualified experts concerning the issue of whether the standard of care had required Dr. Kelner to perform a pelvic examination and/or a rectal examination on Patient 1 prior to diagnosing and treating her. However, as discussed below, the evidence supports a conclusion that the standard of care required that both a pelvic examination and rectal examination be performed under these circumstances.

The State's expert witness, Dr. Brickman, testified persuasively that, when a pregnant patient presents to an emergency room with acute abdominal pain and/or acute back pain, the standard of care requires the physician to perform a pelvic examination to ascertain whether the patient is in active labor. Testimony to the contrary offered by Dr. Kelner's expert witness, Dr. Janiak, and by Dr. Kelner is unpersuasive because it would require the physician to rely on assumptions that may prove untrue, such as: 1) the patient has the same condition that she had previously; 2) the patient knows the difference between labor pain and other abdominal pain; and 3) a patient who is 24 weeks pregnant would not be expected to go into labor. A pelvic examination is a simple and quick procedure that provides the physician with the information necessary to determine whether the patient is in active labor, and it is reasonable that the standard of care

would require it. Therefore, the evidence is sufficient to support a conclusion that Dr. Kelner's failure to perform a pelvic examination fell below the minimal standard of care.

In addition, Dr. Brickman testified persuasively that, in order to diagnose constipation, the standard of care requires that the physician perform a rectal examination to determine whether there is hard, impacted stool present in the rectal vault or whether the patient is suffering from motility issues. Dr. Brickman also testified convincingly that the treatments for motility problems versus impaction would differ, and that if a rectal examination was performed and the physician found impacted stool, the physician may be able to physically remove the impaction. Testimony to the contrary offered by Dr. Janiak and Dr. Kelner is unpersuasive because it requires the physician to rely on an assumption regarding the cause of the patient's constipation. Therefore, the evidence is sufficient to support a conclusion that Dr. Kelner's failure to perform a rectal examination fell below the minimal standard of care.

* * * * *

Dr. Kelner has a lengthy disciplinary history with the Board that includes chemical impairment and several relapses. Dr. Kelner is now before the Board for a practice-related violation.

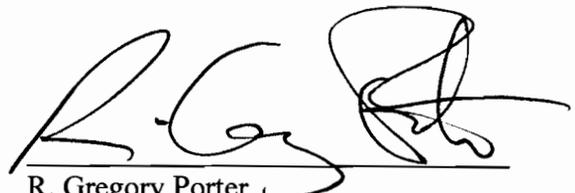
Although the Board's previous disciplinary actions were related to Dr. Kelner's chemical impairment, the Board may consider his previous disciplinary history as an aggravating factor. The current matter is the fifth disciplinary action that the Board has brought against Dr. Kelner, and is itself a serious violation. Based upon the foregoing, a permanent revocation of Dr. Kelner's license is proposed.

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Paul Evan Kelner, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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



R. Gregory Porter
Hearing Examiner



State Medical Board of Ohio

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

EXCERPT FROM THE DRAFT MINUTES OF APRIL 11, 2007

REPORTS AND RECOMMENDATIONS

Dr. Kumar announced that the Board would now consider the Reports and Recommendations appearing on its agenda. He asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Irina Aleksandrovna Gendler, M.D.; Eileen C. Golden, M.D.; Paul Evan Kelner, M.D.; Alla Mikhli, D.P.M.; and David Herbert Procter, M.D. A roll call was taken:

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

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Madia	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Amato	- aye
	Dr. Robbins	- aye

Dr. Steinbergh - aye
Dr. Kumar - aye

Dr. Kumar 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. They may, however, participate in the matter of Dr. Gendler, as that case is not disciplinary in nature and concerns only the doctor’s qualifications for licensure. . In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

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

PAUL EVAN KELNER, M.D.

.....

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER’S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER IN THE MATTER OF PAUL EVAN KELNER, M.D. MR. BROWNING SECONDED THE MOTION.

.....

A vote was taken on Dr. Buchan’s motion to approve and confirm:

ROLL CALL: Mr. Albert - abstain
Dr. Egner - aye
Dr. Talmage - abstain
Dr. Varyani - aye
Dr. Buchan - nay
Dr. Madia - abstain
Mr. Browning - aye
Ms. Sloan - aye
Dr. Amato - abstain
Dr. Robbins - aye
Dr. Steinbergh - aye

The motion carried.



State Medical Board of Ohio

57 S. High St., 17th Fl., Columbus, OH 43215-4107 • (614) 466-3954 • Website: www.med.ohio.gov

June 8, 2005

Paul Evan Kelner, M.D.
79 West Main Street
Lexington, Ohio 44904

Dear Doctor Kelner:

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

- (1) On or about January 25, 2002, in the routine course of your practice as an emergency physician, you undertook the care of Patient 1, as identified on the attached confidential Patient Key. [Patient Key to be withheld from public disclosure.] Patient 1, a then twenty-two-year-old female, was twenty-four weeks pregnant and presented to the emergency department with complaints of lower abdominal pain, back pain, and constipation. Despite Patient 1's complaints, as documented in the nursing notes, of "knife-like" pains in her back and abdomen, symptoms more consistent with active labor, you diagnosed Patient 1 with constipation, and ordered a soapsuds enema and an intramuscular injection of Demerol and Phenergan. You failed to perform, and/or failed to document the performance of, a complete abdominal examination, pelvic examination, or rectal examination. On her way to the restroom, without any medical personnel in attendance, Patient 1 precipitously delivered a preterm infant. Upon hearing Patient 1 cry out for help, hospital staff found the infant on the floor with the umbilical cord severed from the placenta.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), 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.

*Mailed 6-9-05
Second mailing 6-16-05*

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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.
Secretary

LAT/blt
Enclosures

CERTIFIED MAIL # 7003 0500 0002 4340 7223
RETURN RECEIPT REQUESTED

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

CERTIFIED MAIL # 7003 0500 0002 4340 7216
RETURN RECEIPT REQUESTED

PAUL EVAN KELNER, M.D.
Page 3

Second mailing: 1808 Sawmill Place
Mansfield, OH 44904
CERTIFIED MAIL NO. 7002 2410 0002 3141 4298
RETURN RECEIPT REQUESTED

Eric J. Plinke, Esq.
CERTIFIED MAIL NO. 7002 2410 0002 3141 4304
RETURN RECEIPT REQUESTED



State Medical Board of Ohio

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

October 8, 2003

Paul Evan Kelner, M.D.
1808 Sawmill Place
Mansfield, OH 44904

Dear Doctor Kelner:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on October 8, 2003, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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

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

THE STATE MEDICAL BOARD OF OHIO

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

LAT:jam
Enclosures

CERTIFIED MAIL NO. 7000 0600 0024 5150 9869
RETURN RECEIPT REQUESTED

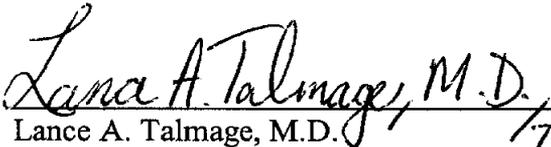
Cc: Eric J. Plinke and David K. Orensten, Esqs.
CERTIFIED MAIL NO. 7000 0600 0024 5150 9852
RETURN RECEIPT REQUESTED

Mailed 10-28-03

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on October 8, 2003, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and Paul Evan Kelner, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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


Lance A. Talmage, M.D. /TAD
Secretary

(SEAL)

October 8, 2003

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

PAUL EVAN KELNER, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on October 8, 2003.

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

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Paul E. Kelner, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Kelner's certificate shall be SUSPENDED for an indefinite period of time, but not less than five years. The minimum suspension period shall be calculated from April 2, 2003, the date that Dr. Kelner reported his relapse to the Board.
- B. **INTERIM MONITORING:** During the period that Dr. Kelner's certificate to practice medicine and surgery in Ohio is suspended, Dr. Kelner shall comply with the following terms, conditions, and limitations:
1. **Obey the Law:** Dr. Kelner shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 2. **Personal Appearances:** Dr. Kelner 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 March 14, 2002, 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.

3. **Quarterly Declarations:** Dr. Kelner shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on the date his quarterly declaration would have been due pursuant to his March 14, 2002, 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.
4. **Abstention from Drugs:** Dr. Kelner shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Dr. Kelner's history of chemical dependency.
5. **Abstention from Alcohol:** Dr. Kelner shall abstain completely from the use of alcohol.
6. **Drug & Alcohol Screens; Supervising Physician:** Dr. Kelner shall submit to random urine screenings for drugs and/or alcohol on a weekly basis or as otherwise directed by the Board. Dr. Kelner shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Kelner shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Kelner shall submit the required specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Kelner. Dr. Kelner 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. Kelner shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Order,

whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

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

7. **Submission of Blood or Urine Specimens upon Request**: Dr. Kelner shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Kelner's expense.
 8. **Rehabilitation Program**: Dr. Kelner shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than four times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Dr. Kelner 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. Kelner's quarterly declarations.
- C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION**: The Board shall not consider reinstatement or restoration of Dr. Kelner's certificate to practice medicine and surgery until all of the following conditions have been met:
1. **Application for Reinstatement or Restoration**: Dr. Kelner shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
 2. **Compliance with Interim Conditions**: Dr. Kelner shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order.
 3. **Demonstration of Ability to Resume Practice**: Dr. Kelner shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his

certificate. Such demonstration shall include but shall not be limited to the following:

- a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Kelner has successfully completed any required inpatient treatment.
 - b. Evidence of continuing full compliance, if applicable, with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
 - c. Evidence of continuing full compliance with this Order.
 - d. Two written reports indicating that Dr. Kelner's ability to practice has been evaluated for chemical dependency and/or impairment and that he has been found capable of practicing according to acceptable and prevailing standards of care. The evaluations shall have been performed by individuals or providers approved by the Board for making such evaluations. Moreover, the evaluations shall have been performed within sixty days prior to Dr. Kelner's application for restoration. The reports of evaluation shall describe with particularity the bases for the determination that Dr. Kelner has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon his practice.
4. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Kelner has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.
- D. **PROBATION:** Upon reinstatement or restoration, Dr. Kelner's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least ten years:
1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Kelner shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order, and shall continue to comply with the terms of any aftercare contract as specified in Paragraph C.3.b of this Order.

2. **Practice Plan:** Prior to Dr. Kelner's commencement of practice in Ohio, or as otherwise determined by the Board, Dr. Kelner 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. Kelner's activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Kelner shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

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

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

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

3. **Tolling of Probationary Period While Out of State:** In the event that Dr. Kelner should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Kelner must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise

determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.

4. **Violation of Terms of Probation:** If Dr. Kelner violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

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

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

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

- G. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Dr. Kelner shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Kelner shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

- H. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, Dr. Kelner shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Kelner shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or

reinstatement or restoration of any professional license. Further, Dr. Kelner shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

- I. **PREVIOUS BOARD ORDERS SUPERSEDED:** This Order supersedes and replaces the March 14, 2002, Step I Consent Agreement between Dr. Kelner and the Board.

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

(SEAL)

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

October 8, 2003
Date

**REPORT AND RECOMMENDATION
IN THE MATTER OF PAUL EVAN KELNER, M.D.**

The Matter of Paul Evan Kelner, M.D., was heard by R. Gregory Porter, Hearing Examiner for the State Medical Board of Ohio, on August 7, 2003.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated June 11, 2003, the State Medical Board of Ohio [Board] notified Paul Evan Kelner, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board based its proposed action upon allegations concerning Dr. Kelner's history of impairment, previous actions taken against his certificate by the Board, and February and March 2003, toxicology screens that tested positive for propoxyphene.

The Board alleged that Dr. Kelner's conduct constitutes "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code; and/or "[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." (State's Exhibit 1A)

- B. By document received by the Board on June 20, 2003, Eric J. Plinke and John P. Carney, Esqs., requested a hearing on behalf of Dr. Kelner. (State's Exhibit 1B)

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Kyle C. Wilcox, Assistant Attorney General.
- B. On behalf of the Respondent: Eric J. Plinke and David K. Orensten, Esqs.

EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State

1. Paul Evan Kelner, M.D., as upon cross-examination
2. Danielle Bickers

B. Presented by the Respondent

1. Paul Evan Kelner, M.D.
2. Robert Reeves, M.D.
3. William Noble, D.O.

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A through 1J: Procedural exhibits.
2. State's Exhibit 2: Certified copies of documents concerning Dr. Kelner maintained by the Board.
3. State's Exhibit 3: May 5, 2003, Affidavit of Paul E. Kelner.

B. Presented by the Respondent

1. Respondent's Exhibit A: Copy of a May 13, 2003, letter to Board staff from Mr. Plinke, with attached copy of a May 5, 2003, Affidavit of Paul E. Kelner. (Note that the attachment is a duplicate of State's Exhibit 3.)
2. Respondent's Exhibit C: Copy of an August 3, 2003, letter to Board staff from Todd R. Jaros.
3. Respondent's Exhibit D: Copy of an April 16, 2003, letter to Board staff from Joseph W. Janesz, Ph.D., and Gregory B. Collins, M.D.

PROFFERED MATERIALS

The following document was neither admitted to the hearing record nor considered by the Hearing Examiner, but is being sealed and held as proffered material for the Respondent:

Respondent's Exhibit B: Copy of a May 29, 2003, letter to Board staff from Mr. Plinke with attached May 20, 2003, letter to the Board from a recovering individual identified at hearing as Renea W. (See Hearing Transcript at 88-89)

SUMMARY OF THE EVIDENCE

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

1. Paul Evan Kelner, M.D., testified that he had started college in 1978. Dr. Kelner further testified that he left college after two years, took three years off, and then returned. Following his junior year, Dr. Kelner entered medical school, where, in 1989, he obtained his medical degree and a bachelor degree in human nutrition from the Ohio State University. Dr. Kelner further testified that, from 1989 through 1992, he completed a family practice residency at Mount Carmel Hospital in Columbus, Ohio. (Hearing Transcript [Tr.] at 10-11)

Dr. Kelner testified that, from 1992 through 1996, he had practiced family medicine in Bucyrus, Ohio. Dr. Kelner further testified that, from 1996 until 1999 or 2000, he had practiced in an emergency room in Marion, Ohio. Additionally, Dr. Kelner testified that, in 2000, he took a position for one year as the Director of Freedom Hall, a drug and alcohol recovery center in Crestline, Ohio. Finally, Dr. Kelner testified that, in late 2000 or 2001, he had returned to Marion to work in an emergency room. (Tr. at 11-13)

Dr. Kelner currently resides in Mansfield, Ohio. (Tr. at 4) At the present time, his certificate to practice medicine and surgery in Ohio is suspended under the terms of a March 2002 Step I Consent Agreement. (State's Exhibit [St. Ex.] 2 at 1-8)

2. Dr. Kelner testified that he had begun abusing opioid medication in 1989, near the end of his medical education. However, Dr. Kelner later testified that, prior to that time, he had been abusing drugs, primarily opiates, for some years on an intermittent basis. Dr. Kelner noted that he had primarily abused codeine and hydrocodone. Moreover, Dr. Kelner testified that he rarely obtained these drugs from prescriptions, but usually obtained them "from the street." Dr. Kelner denied that he had abused alcohol. (Tr. at 13-15)

3. On March 12, 1991, Dr. Kelner entered into a Consent Agreement with the Board [March 1991 Consent Agreement] in lieu of formal proceedings based upon his violation of Section 4731.22(B)(26), Ohio Revised Code. In the March 1991 Consent Agreement, Dr. Kelner admitted, among other things, that, on or about April 6, 1989, he had been admitted to Shepherd Hill Hospital in Newark, Ohio, for treatment of opioid dependency. Further, Dr. Kelner agreed to certain probationary terms, conditions, and limitations upon his certificate for a period of not less than two years. (St. Ex. 2 at 23-26)
4. On June 12, 1996, Dr. Kelner entered into a Consent Agreement with the Board [June 1996 Consent Agreement] in lieu of formal proceedings based upon his violation of Section 4731.22(B)(26), Ohio Revised Code. In the June 1996 Consent Agreement, Dr. Kelner admitted, among other things, that he had been released from the probationary terms of his March 1991 Consent Agreement in March 1993, and that he had resumed using oral opiates for a period of three months before notifying the Board in April 1996 that he had relapsed. The June 1996 Consent Agreement suspended Dr. Kelner's certificate to practice medicine and surgery for an indefinite period of time, and set forth requirements for reinstatement of his certificate. (St. Ex. 2 18-22)
5. On August 14, 1996, Dr. Kelner entered into a Consent Agreement with the Board [August 1996 Consent Agreement] in lieu of formal proceedings based upon his violation of Section 4731.22(B)(26), Ohio Revised Code. In the August 1996 Consent Agreement, Dr. Kelner admitted, among other things, that from April 30, 1996, through May 31, 1996, he had received treatment at Shepherd Hill Hospital, a Board-approved treatment provider. The August 1996 Consent Agreement reinstated Dr. Kelner's certificate to practice medicine and surgery in Ohio subject to certain probationary terms, conditions, and limitations for a period of not less than five years. (St. Ex. 2 at 9-17)

In August 2001, Dr. Kelner successfully completed the five-year period of probation established in the August 1996 Consent Agreement. (St. Ex. 2 at 2)

6. On March 14, 2002, Dr. Kelner entered into a Step I Consent Agreement with the Board [March 2002 Step I Consent Agreement] in lieu of formal proceedings based upon the following statutory violations:
 - Section 4731.22(B)(26), Ohio Revised Code;
 - Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.22, Deception to Obtain a Dangerous Drug, Section 2913.02, Theft, and Section 2913.31(A), Forgery; and
 - Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-08, Ohio Administrative Code, Utilizing Controlled Substances for Self and Family Members.

(St. Ex. 2 at 1-8)

In the March 2002 Step I Consent Agreement, Dr. Kelner made certain admissions. Among these admissions, Dr. Kelner provided additional details concerning his first course of treatment for chemical dependence in April 1989. With regard to that issue, Dr. Kelner advised that, prior to completing his medical training and after abusing drugs for approximately eight years, he had been admitted to treatment for diagnoses of opioid dependence, marijuana dependence in partial remission, and cocaine dependence in remission. Dr. Kelner further admitted that he had entered into a Consent Agreement with the Board in March 1991. In March 1993, he successfully completed a two-year period of supervised probation with the Board. Moreover, Dr. Kelner admitted that, on April 23, 1996, after having maintained sobriety for a period of approximately seven years, he had self-reported his first relapse on hydrocodone to the Board. Furthermore, Dr. Kelner admitted that, after entering into a subsequent Consent Agreement in June 1996, and successfully completing a five-year period of supervised probation with the Board in August 2001, he had maintained sobriety until he relapsed on hydrocodone in November 2001. Dr. Kelner self-reported this second relapse to the Board on February 26, 2002. Finally, Dr. Kelner admitted that he had entered inpatient treatment for chemical dependence at The Cleveland Clinic, a Board-approved treatment provider, on February 27, 2002. (St. Ex. 2 at 1-2)

The March 2002 Step I Consent Agreement permanently revoked Dr. Kelner's certificate to practice medicine and surgery in Ohio, stayed such revocation, and suspended his certificate for an indefinite period of time, but not less than 18 months. It also set forth certain prerequisites for any future reinstatement of his certificate, including a requirement that he enter into a subsequent Consent Agreement or Board Order with a monitoring period of not less than ten years. Further, Dr. Kelner agreed to certain probationary terms, conditions, and limitations upon his certificate, including a requirement that he 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. Kelner's history of chemical dependency. (St. Ex. 2 at 3-8)

7. Dr. Kelner acknowledged that his license is currently suspended subject to the terms of the March 2002 Step I Consent Agreement. (St. Ex. 2 at 1-8; Tr. at 16) Dr. Kelner further testified that, among the terms of that consent agreement, he is required to submit to random, weekly urine toxicology screens. (Tr. at 18-19)
8. In early 2003, the Board received reports of positive urine toxicology screens for Dr. Kelner:
 - a. A urine specimen provided by Dr. Kelner on February 22, 2003, for drug screening pursuant to the requirements of the March 2002 Step I Consent Agreement tested

- positive for the presence of propoxyphene, and was GC/MS confirmed for the presence of the drug norpropoxyphene. (St. Ex. 2 at 28-30)
- b. A urine specimen provided by Dr. Kelner on March 18, 2003, for drug screening pursuant to the requirements of the March 2002 Step I Consent Agreement tested positive for the presence of propoxyphene, and was GC/MS confirmed for the presence of the drug norpropoxyphene. (St. Ex. 2 at 32-33)
 - c. A urine specimen provided by Dr. Kelner on March 29, 2003, for drug screening pursuant to the requirements of the March 2002 Step I Consent Agreement tested positive for the presence of propoxyphene, and was GC/MS confirmed for the presence of the drug norpropoxyphene. (St. Ex. 2 at 34-37)
9. Danielle Bickers testified that she is the Compliance Officer for the Board. Ms. Bickers noted that her job duties include monitoring the Board's licensees who are subject to probationary terms. Among other things, Ms. Bickers collects urine screen results and documentation of AA meeting attendance, and schedules quarterly office conferences with probationers. (Tr. at 37-38)
 10. Ms. Bickers testified that Dr. Kelner had called her on April 2, 2003, to report a relapse. Ms. Bickers further testified that, prior to Dr. Kelner's call, she had received a call from Joseph Janesz, Ph.D., a psychologist who works at the Alcohol and Drug Recovery Center at The Cleveland Clinic, who reported Dr. Kelner's positive urine screen. Ms. Bickers testified that Dr. Kelner called at the same time that she had been typing a report concerning Dr. Janesz' call. (Tr. at 38-40)

Ms. Bickers testified that, when Dr. Kelner called to report the relapse, he denied use. Ms. Bickers further testified, "Dr. Kelner said that the only explanation that he could offer was that he had just gotten out of a relationship with a woman he called unstable, and that knowing he dropped weekly urine specimens for the Board, maybe she had slipped him something." Ms. Bickers testified that she had interpreted this statement to imply that the woman had tried to get Dr. Kelner into trouble with the Board. (Tr. at 40-41)

Ms. Bickers testified that, prior to the positive urine screens, Dr. Kelner had been in compliance with the March 2002 Step I Consent Agreement. (Tr. at 47)
 11. Concerning the positive urine screens for samples submitted by Dr. Kelner in February and March, 2003, Dr. Kelner testified that he had not been notified of those positive results until early April 2003. Dr. Kelner further testified that, after he learned of the positive screens, he had called Ms. Bickers to notify her. Dr. Kelner could not recall if he had offered any reason for the positive screens at that time. (Tr. at 21-25)

12. By affidavit dated May 5, 2003, and submitted to the Board on or about May 13, 2003, Dr. Kelner provided his explanation for the positive urine screens. That affidavit states:

I am providing this affidavit as an explanation for the positive results on my drug screens. I realize that the results are not in question but the manner in which the propoxyphene was obtained and taken should be accounted for.

From late December of 2002 until late March of 2003, I became involved in a relationship with [a] woman named Renea W. She was in recovery and seemed to be working a solid program. Our relationship intensified and we began to spend a significant amount of time together. We would often go to 12 step meetings together. On a few occasions, I asked Renea for aspirin for a headache. She would reach into her purse and give me two beige oblong tablets. I never questioned her as to what these were. I assumed that she would not give me anything other [than] acetaminophen or ibuprofen. She apparently had generic Darvocet in her purse and either did not look carefully at what she was giving me or thought that the propoxyphene was innocuous. This is how the propoxyphene ended up in my system. I did not take propoxyphene or any other medication with the intention of altering my mood or my sobriety. My recovery is the most important thing in my life. Having said that, I am not abdicating my responsibility for taking the medication. It is MY responsibility to protect my sobriety. It is MY responsibility to monitor what goes into my system. It is MY responsibility to avoid situations that may be a threat to my sobriety. I have learned a lot over the last several weeks.

I am no longer involved in that or any other relationship. I am spending my time working on myself. I go to meetings on a daily basis and I am working a solid recovery program. It is my hope that this information will allow the members of the board to view this event for the error in judgment that it was and not a conscious attempt to sabotage my sobriety.

(St. Ex. 3)

13. At hearing, Dr. Kelner acknowledged that he had ingested pills given to him by a recovering addict with whom he had had a romantic relationship. Dr. Kelner further testified that he did not knowingly take Darvocet. Moreover, Dr. Kelner acknowledged that the March 2002 Step I Consent Agreement does not contain any provision that would excuse Dr. Kelner from using drugs if not done in a knowing manner. Finally, Dr. Kelner testified that he understands that the positive urine screens and the conduct that led to the positive urine screens constitute a violation of the March 2002 Step I Consent Agreement. (Tr. at 35-36)

14. At hearing, Dr. Kelner reaffirmed the statements made in his May 5, 2003, affidavit. Dr. Kelner testified that he had met Renea through Alcoholics Anonymous [AA]. Dr. Kelner further testified that he believes that Renea had suffered from polysubstance abuse, but that her primary drug of choice had been alcohol. Moreover, Dr. Kelner testified that Renea had also used cocaine and opiates. (Tr. at 25-27)

Dr. Kelner testified that his relationship with Renea ended in late March or early April 2003. (Tr. at 63-64)

15. Dr. Kelner testified that, because he had been upset when he learned of the positive urine screens, he had at first suspected that Renea had intentionally given him Darvocet to get him into trouble. However, Dr. Kelner testified that he no longer believes that she had given it to him intentionally. (Tr. at 65-66)

Dr. Kelner testified that, during the time period that he had been seeing Renea, he had been making frequent trips between his home in Mansfield and Cleveland, where Renea lives and where Dr. Kelner's parents live. Dr. Kelner further testified that he had not been getting enough sleep, and had suffered from headaches. Dr. Kelner testified that he had on some occasions asked Renea for something for his headache. (Tr. at 28-29)

Dr. Kelner testified that the tablets that Renea had handed to him did not have any "obvious writing" or look in any way suspicious. Dr. Kelner further testified that she obtained the tablets from a bottle that she carried in her purse that had appeared to be generic Walgreen's acetaminophen. (Tr. at 30)

Dr. Kelner testified that he had not noticed any change in his mood after taking Renea's tablets. Dr. Kelner testified that medication had been effective in treating his headache. (Tr. at 30)

Dr. Kelner testified that he no longer suffers from headaches, and that he believes that the headaches had been a result of "the life that [he] was living at that time, lack of sleep." (Tr. at 29)

Dr. Kelner testified that he had had Motrin and Tylenol at home, but that he did not carry any with him. When asked why he did not do so, Dr. Kelner replied that Renea had had a purse and he did not. (Tr. at 29)

16. Dr. Kelner testified that, after he had been notified of the positive urine screen results, he had brought the issue up at a Caduceus meeting. Dr. Kelner testified that, during this meeting, the group had discussed Dr. Kelner's relationship with Renea. Dr. Kelner further testified that, during this discussion, he had realized that the only thing that he had ingested that he had not identified with certainty had been the tablets given to him by Renea. (Tr. at 31)

Dr. Kelner testified that, shortly thereafter, he had called Renea and asked her “what’s the deal?” Dr. Kelner further testified,

[A]pparently she took care of her mother who is ill, and she had in that bottle—I knew that there were more than one kind of pill in that bottle. I mean, she had her Claritin there, which is an antihistamine, and she said, you know, that [she] could have grabbed the generic Darvocet by mistake.

(Tr. at 31) Dr. Kelner acknowledged that he had been aware that Renea’s bottle had contained at least three different types of medication. (Tr. at 32)

Dr. Kelner testified that Darvocet is a mixture of acetaminophen and propoxyphene. Dr. Kelner further testified that it is a controlled substance, that he believes it to be Schedule IV, and that it requires a prescription. Dr. Kelner acknowledged that, as a prescription medication, generic Darvocet is required to be kept in a prescription bottle. (Tr. at 32-33)

17. Dr. Kelner testified that he had taken the pills that Renea had handed to him, and had assumed that they had been innocuous. Dr. Kelner testified that he had not suspected that Renea would give him an inappropriate drug because he had believed that she was clean and sober and in a solid program of recovery. (Tr. at 61)

Dr. Kelner testified that he had not felt any mood-altering effects from the Darvocet. Dr. Kelner testified that, even though he is in recovery, he continues to have an elevated tolerance for opioids. Dr. Kelner further testified that Darvocet is a weak inebriant. In addition, Dr. Kelner testified that he had not been expecting a high; accordingly, the psychological component of taking a medication with an expectation of getting high had not been present. (Tr. at 62)

18. Dr. Kelner acknowledged that the Board has given him multiple opportunities to overcome his addiction, and that he is currently “under the gun.” Dr. Kelner was asked why, under those circumstances, he would have ingested something without being absolutely certain what it was. (Tr. at 33)

Dr. Kelner replied that his addiction “has many manifestations. One of these manifestations is the opioid use and another manifestation is becoming involved in relationships that are not necessarily in [his] best interest.” Dr. Kelner testified that he is currently seeking counseling for those issues. (Tr. at 33-34)

Dr. Kelner testified that relationships can cause problems for someone in recovery because of the emotions involved. Nevertheless, Dr. Kelner testified that the “allure of being in a relationship outweighed [his] better judgment and the counsel of [his] friends[.]” Dr. Kelner further testified, “I’ve learned from this experience that my illness, my

dependency illness is not limited to opiates. It also involves relationships. It also involves anything that I use external to me to fill the spiritual hole that's within me." Finally, Dr. Kelner testified that he does not deny responsibility for the positive urine screens, and stated that he "should not have put [himself] in that position." (Tr. at 34-35)

Dr. Kelner testified that he has not previously engaged in relationships with recovering addicts. (Tr. at 35)

- 19 Dr. Kelner testified that the relationship component to his impairment had first manifested following his divorce in 1999. Dr. Kelner testified that his behavior in relationships became similar to his behavior in his active addiction. Dr. Kelner testified that he "would become kind of fixated on the relationship over [his] own well being at times." Dr. Kelner further testified,

My person, my self, became identified with the relationship, and I kind of lost who I was. * * * That's the same thing that happens during active drug use. You become—the addiction overrules any sense of self that you might have, and it's the same process, I was just filling, as I said before, filling the spiritual hole with the relationship versus the addiction to opiates.

(Tr. at 57-59)

Dr. Kelner testified that the allure of being in a relationship had led him to make bad decisions. Dr. Kelner testified that, first, he should not have been involved in any relationship at all during that period of his recovery. Dr. Kelner testified that he should have instead focused his energy toward improving himself and his relationship with his children. Second, Dr. Kelner testified that he should not have engaged in a relationship with a woman who had also been in recovery. Finally, Dr. Kelner testified that members of his support network had advised him not to engage in the relationship, but that he had not followed their advice. (Tr. at 59-61)

20. Dr. Kelner testified that he has learned that he needs to work on his relationship with himself and his higher power, and with his children. Dr. Kelner further testified that he has learned that his recovery is more important than having a romantic relationship or satisfying other desires. (Tr. at 67-68)

Dr. Kelner testified that he knows that he is a good physician, and that he knows that "a lot of patients were very hurt when [he] wasn't practicing anymore." (Tr. at 68-69)

21. Dr. Kelner testified that he is active in the recovering community. Dr. Kelner testified that he usually attends five or six meetings per week, chairs AA meetings, talks daily with his sponsor, and acts as an individual counselor. (Tr. at 57)

22. Dr. Kelner testified that he is currently undergoing counseling every other week for the core issues concerning his addiction and relationship problems. (Tr. at 71)
23. Dr. Kelner testified that, from 1989 through 2001, he had had only one relapse. (Tr. at 54-57)
24. Robert S. Reeves Jr., M.D., testified on behalf of Dr. Kelner. Dr. Reeves testified that he is a family practitioner, that he has been practicing family medicine since 1985, and that he practices in Norwalk, Ohio. Dr. Reeves testified that he knows Dr. Kelner, and that he and Dr. Kelner had met while in treatment together at the Cleveland Clinic in February 2002. Dr. Reeves further testified that he and Dr. Kelner attend many of the same aftercare activities and are part of the same support network. Accordingly, Dr. Reeves testified that he is familiar with Dr. Kelner's recovery progress since February 2002. (Tr. at 73-74)

Dr. Reeves testified that Dr. Kelner had told him and their group about the positive urine screen, and "at the time he was surprised, upset, confused. He didn't know how—initially how it happened." Dr. Reeves further testified that Dr. Kelner had later related his suspicion that his girlfriend had given him some pills that he had taken believing them to be Tylenol. (Tr. at 74)

Dr. Reeves testified that Dr. Kelner had discussed at group meetings his relationship with Renea, and eventually acknowledged that he had made a mistake by getting involved with her. (Tr. at 75-76)

Dr. Reeves testified that he believes, from his dealings with Dr. Kelner, that Dr. Kelner is capable of maintaining sobriety. (Tr. at 76-77)

25. William H. Noble III, D.O., testified on behalf of Dr. Kelner. Dr. Noble testified that he practices radiology in Marion, Ohio. Dr. Noble testified that he is in recovery, and has attained about four and one-half years of sobriety. Dr. Noble testified that he is familiar with Dr. Kelner, and that he and Dr. Kelner had had the same physician sponsor when Dr. Noble came out of treatment in 1999. Dr. Noble testified that he sees Dr. Kelner about once per week and talks to him every day. (Tr. at 79-80)

Dr. Noble testified that Dr. Kelner had informed him of Dr. Kelner's suspicion that the positive urine screens had resulted from medication that Renea had given him for a headache. (Tr. at 80-81)

26. Dr. Noble testified that he had been aware of Dr. Kelner's relationship with Renea prior to the positive urine screens. Dr. Noble further testified that he had told Dr. Kelner then that he did not believe that the relationship was a good idea, that it was not a healthy relationship, and that it would lead Dr. Kelner into difficulty. (Tr. at 81-82)

Dr. Noble testified that, other than Dr. Kelner's relationship with Renea, Dr. Kelner had been doing very well in recovery. Dr. Noble further testified,

I looked up to him. I called him frequently about situations that came up in my life for counsel. I always looked up to Paul because he had been in recovery before I was coming out of Shepherd Hill. His comments at meetings were fantastic. I'm practicing in Marion now and his reputation there was great. He was a great E.R. doctor. So I held him in the highest esteem, I'll be honest with you. He was really—I looked up to him. So I was really sickened to hear about this situation.

(Tr. at 83-84)

27. By letter dated August 3, 2003, Todd R. Jaros addressed the Board. Mr. Jaros stated that he is a pharmacist, and is in recovery. Mr. Jaros further stated that he sees Dr. Kelner every Monday night. Moreover, Mr. Jaros stated that he does not believe that Dr. Kelner had taken any medication for the purpose of getting high. (Respondent's Exhibit C) (Note that the State did not have an opportunity to cross-examine Mr. Jaros.)

FINDINGS OF FACT

1. On March 12, 1991, Paul Evan Kelner, M.D., entered into a Consent Agreement with the Board [March 1991 Consent Agreement] in lieu of formal proceedings based upon his violation of Section 4731.22(B)(26), Ohio Revised Code. In the March 1991 Consent Agreement, Dr. Kelner admitted, among other things, that, on or about April 6, 1989, he had been admitted to Shepherd Hill Hospital in Newark, Ohio, for treatment of opioid dependency. Further, Dr. Kelner agreed to certain probationary terms, conditions, and limitations upon his certificate for a period of not less than two years.
2. On or about June 12, 1996, Dr. Kelner entered into a Consent Agreement with the Board [June 1996 Consent Agreement] in lieu of formal proceedings based upon his violation of Section 4731.22(B)(26), Ohio Revised Code. In the June 1996 Consent Agreement, Dr. Kelner admitted, among other things, that in March 1993 he had been released from the probationary terms of his March 1991 Consent Agreement, and that he had resumed using oral opiates for a period of three months before notifying the Board in April 1996 that he had relapsed. The June 1996 Consent Agreement suspended Dr. Kelner's certificate to practice medicine and surgery for an indefinite period of time, and set forth requirements for reinstatement of his certificate.
3. On August 14, 1996, Dr. Kelner entered into a Consent Agreement with the Board [August 1996 Consent Agreement] in lieu of formal proceedings based upon his violation of Section 4731.22(B)(26), Ohio Revised Code. In the August 1996 Consent Agreement,

Dr. Kelner admitted, among other things, that from April 30, 1996, through May 31, 1996, he had received treatment at Shepherd Hill Hospital, a Board-approved treatment provider. The August 1996 Consent Agreement reinstated Dr. Kelner's certificate to practice medicine and surgery in Ohio subject to certain probationary terms, conditions, and limitations for a period of not less than five years.

In August 2001, Dr. Kelner successfully completed the five-year period of probation established in the August 1996 Consent Agreement.

4. On March 14, 2002, Dr. Kelner entered into a Step I Consent Agreement with the Board [March 2002 Step I Consent Agreement] in lieu of formal proceedings based upon violations of Section 4731.22(B)(26), Ohio Revised Code; Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.22, Deception to Obtain a Dangerous Drug, Section 2913.02, Theft, and Section 2913.31(A), Forgery; and Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-08, Ohio Administrative Code, Utilizing Controlled Substances for Self and Family Members.

In the March 2002 Step I Consent Agreement, Dr. Kelner made certain admissions. Among these admissions, Dr. Kelner provided additional details concerning his first course of treatment for chemical dependence in April 1989. With regard to that issue, Dr. Kelner advised that, prior to completing his medical training and after abusing drugs for approximately eight years, he had been admitted to treatment for diagnoses of opioid dependence, marijuana dependence in partial remission, and cocaine dependence in remission. Dr. Kelner further admitted that he had entered into a Consent Agreement with the Board in March 1991. In March 1993, he successfully completed a two-year period of supervised probation with the Board. Moreover, Dr. Kelner admitted that, on April 23, 1996, after having maintained sobriety for a period of approximately seven years, he had self-reported his first relapse on hydrocodone to the Board. Furthermore, Dr. Kelner admitted that, after entering into a subsequent Consent Agreement in June 1996, and successfully completing a five-year period of supervised probation with the Board in August 2001, he had maintained sobriety until he relapsed on hydrocodone in November 2001. Dr. Kelner self-reported this second relapse to the Board on February 26, 2002. Finally, Dr. Kelner admitted that he had entered inpatient treatment for chemical dependence at The Cleveland Clinic, a Board-approved treatment provider, on February 27, 2002.

The March 2002 Step I Consent Agreement permanently revoked Dr. Kelner's certificate to practice medicine and surgery in Ohio, stayed such revocation, and suspended his certificate for an indefinite period of time, but not less than 18 months. It also set forth certain prerequisites for any future reinstatement of his certificate, including a requirement that he enter into a subsequent Consent Agreement or Board Order with a monitoring period of not less than ten years. Further, Dr. Kelner agreed to certain probationary terms, conditions, and limitations upon his certificate, including a requirement that he 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. Kelner's history of chemical dependency.

5. A urine specimen provided by Dr. Kelner on February 22, 2003, for drug screening pursuant to the requirements of the March 2002 Step I Consent Agreement tested positive for the presence of propoxyphene, and was GC/MS confirmed for the presence of the drug norpropoxyphene.
6. A urine specimen provided by Dr. Kelner on March 18, 2003, for drug screening pursuant to the requirements of the March 2002 Step I Consent Agreement tested positive for the presence of propoxyphene, and was GC/MS confirmed for the presence of the drug norpropoxyphene.
7. A urine specimen provided by Dr. Kelner on March 29, 2003, for drug screening pursuant to the requirements of the March 2002 Step I Consent Agreement tested positive for the presence of propoxyphene, and was GC/MS confirmed for the presence of the drug norpropoxyphene.

CONCLUSIONS OF LAW

1. The conduct of Paul Evan Kelner, M.D., as set forth in Findings of Fact 1 through 7, constitutes "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.
2. The conduct of Dr. Kelner as set forth in Findings of Fact 5 though 7 constitutes a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

* * * * *

Dr. Kelner has a lengthy history of chemical impairment that has resulted in multiple actions taken by this Board. In the current case, while under the terms of a March 14, 2002, Step I Consent Agreement with the Board, Dr. Kelner ingested medication, possibly generic Darvocet, which was forbidden by the terms of his agreement. This resulted in three urine screens in February and March 2003 that tested positive for propoxyphene. Moreover, this constitutes Dr. Kelner's third relapse during or following treatment. Such conduct merits a severe sanction. In fact, permanent revocation has already been stayed under the terms of Dr. Kelner's March 2002 Step I Consent Agreement.

However, the record does contain mitigating evidence. Dr. Kelner has always self-reported the violations that gave rise to the Board's actions, including this action. Moreover, although Dr. Kelner became involved in a romantic relationship that was ill advised, and did so against the advice of members of his support network, he appears to have gained further insight into his impairment through that experience. Furthermore, until this episode, Dr. Kelner had always been compliant with Board orders. Accordingly, the Board may wish to extend to Dr. Kelner a final opportunity to prove to the Board that he is worthy to hold a license to practice medicine and surgery in Ohio.

PROPOSED ORDER

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Paul E. Kelner, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Kelner's certificate shall be SUSPENDED for an indefinite period of time, but not less than three years. The minimum suspension period shall be calculated from April 2, 2003, the date that Dr. Kelner reported his relapse to the Board.
- B. **INTERIM MONITORING:** During the period that Dr. Kelner's certificate to practice medicine and surgery in Ohio is suspended, Dr. Kelner shall comply with the following terms, conditions, and limitations:
1. **Obey the Law:** Dr. Kelner shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 2. **Personal Appearances:** Dr. Kelner 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 March 14, 2002, 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.
 3. **Quarterly Declarations:** Dr. Kelner shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on the date his quarterly declaration would have been due pursuant to his March 14, 2002, 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.

4. **Abstention from Drugs**: Dr. Kelner shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Dr. Kelner's history of chemical dependency.
5. **Abstention from Alcohol**: Dr. Kelner shall abstain completely from the use of alcohol.
6. **Drug & Alcohol Screens; Supervising Physician**: Dr. Kelner shall submit to random urine screenings for drugs and/or alcohol on a weekly basis or as otherwise directed by the Board. Dr. Kelner shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Kelner shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Kelner shall submit the required specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Kelner. Dr. Kelner 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. Kelner shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Order, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

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

7. **Submission of Blood or Urine Specimens upon Request**: Dr. Kelner shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Kelner's expense.
 8. **Rehabilitation Program**: Dr. Kelner shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than four times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Dr. Kelner 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. Kelner's quarterly declarations.
- C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION**: The Board shall not consider reinstatement or restoration of Dr. Kelner's certificate to practice medicine and surgery until all of the following conditions have been met:
1. **Application for Reinstatement or Restoration**: Dr. Kelner shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
 2. **Compliance with Interim Conditions**: Dr. Kelner shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order.
 3. **Demonstration of Ability to Resume Practice**: Dr. Kelner shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Kelner has successfully completed any required inpatient treatment.
 - b. Evidence of continuing full compliance, if applicable, with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
 - c. Evidence of continuing full compliance with this Order.
 - d. Two written reports indicating that Dr. Kelner's ability to practice has been evaluated for chemical dependency and/or impairment and that he has been found capable of practicing according to acceptable and prevailing standards of

care. The evaluations shall have been performed by individuals or providers approved by the Board for making such evaluations. Moreover, the evaluations shall have been performed within sixty days prior to Dr. Kelner's application for restoration. The reports of evaluation shall describe with particularity the bases for the determination that Dr. Kelner has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon his practice.

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

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

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

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

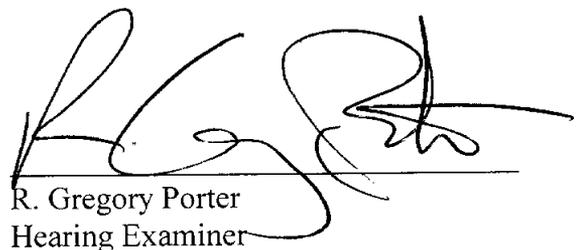
3. **Tolling of Probationary Period While Out of State**: In the event that Dr. Kelner should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Kelner must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.
 4. **Violation of Terms of Probation**: If Dr. Kelner violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- E. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Kelner's certificate will be fully restored.
- F. **RELEASES**: Dr. Kelner shall provide continuing authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Kelner's chemical dependency and/or related conditions, or for purposes of complying with this Order, whether such treatment or evaluations occurred before or after the effective date of this Order. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.

Dr. Kelner shall also provide the Board written consent permitting any treatment provider from whom Dr. Kelner obtains treatment to notify the Board in the event he fails to agree to or comply with any recommended treatment or with any treatment or aftercare contract.

Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Order.

- G. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Dr. Kelner shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Kelner shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
- H. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, Dr. Kelner shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Kelner shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Kelner shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
- I. **PREVIOUS BOARD ORDERS SUPERSEDED:** This Order supersedes and replaces the March 14, 2002, Step I Consent Agreement between Dr. Kelner and the Board.

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



R. Gregory Porter
Hearing Examiner



State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF OCTOBER 8, 2003

REPORTS AND RECOMMENDATIONS

Mr. Browning announced that the Board would now consider the findings and orders appearing on the Board's agenda. He asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Paul Evan Kelner, M.D., and Virginia K. Winter, M.D. A roll call was taken:

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

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

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

Dr. Garg - aye
Dr. Steinbergh - aye
Mr. Browning - aye

Mr. Browning 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.

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

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

PAUL EVAN KELNER, M.D.

Mr. Browning directed the Board's attention to the matter of Paul Evan Kelner, M.D. He advised that objections were filed to Hearing Examiner Porter's Report and Recommendation and were previously distributed to Board members.

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

Dr. Kelner was accompanied to the meeting by his attorney, Eric J. Plinke.

Mr. Plinke stated that he appreciates the time and energy the Board put into reviewing this matter. He at this time introduced Dr. Kelner.

Dr. Kelner stated that he is 43 years old, and he has traveled a long road. He's fought with the disease of chemical dependency and he has made some poor decisions along the way. Dr. Kelner asked the Board for mercy and understanding. He stated that he has relapsed before, and a reasonable question would certainly be: what has changed? The answer to that question is that he has a personal relationship with God that he did not have before. He has faith today that was not present previously, and was particularly not present during the events that led him to coming before the Board today.

Dr. Kelner continued that, despite making some mistakes in judgment, he has worked hard at his recovery since last February. He has two twelve-step sponsors. He goes to multiple AA meetings per week. He's a caring, attentive father to his three children, and he is currently working three jobs to try to make ends meet. He will continue to do whatever it takes to maintain his sobriety and feed his children.

Dr. Kelner stated that practicing medicine is a privilege. He advised that he is a competent, empathetic

physician. He has treated many patients who would attest to that. Dr. Kelner again asked for the Board's compassion and understanding, and he asked to be allowed to return to the practice of medicine in the not-too-distant future. In doing so, he will employ his spiritual growth, humility and lessons learned in the treatment of the patients that he serves. He will not let himself, the Board or God down.

Mr. Browning asked whether the Assistant Attorney General wished to respond.

Ms. Albers stated that, as the Board members have read in the Report and Recommendation, Dr. Kelner has a very long history of impairment before the Board. He had his first consent agreement in 1991, was released in 1993, relapsed for three months before he reported that to the Board in April 1996. He was in another consent agreement in June 1996, and then entered into a Step II agreement in August 1996. He completed his probation in August 2001, but relapsed again in November and didn't report the relapse to the Board until February 2002. In March 2002 he entered another Step I consent agreement. This time Dr. Kelner came to the hearing and told the Board that the reason that he had positive drug screens had been because he had taken medication given to him by a recovering girlfriend. Ms. Albers stated that for Dr. Kelner, a recovering addict, to associate with another recovering addict and take medicine given out of an unmarked bottle speaks volumes about this physician's judgment.

Ms. Albers noted that the Report and Recommendation stays a permanent revocation and suspends Dr. Kelner's license for three years. Ms. Albers stated that she thinks that this Board needs to consider how many chances it will give this physician.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF PAUL EVAN KELNER, M.D. DR. BHATI SECONDED THE MOTION.

Mr. Browning stated that he would now entertain discussion in the above matter.

Dr. Steinbergh stated that Dr. Kelner suffers from severe impairment. This was his third consent agreement with the Board. He's currently in a Step I agreement, and his license was suspended. This was his third relapse. The issue before the Board is whether it should permanently revoke his license or continue to allow him at some point to practice again. Dr. Steinbergh stated that she supports the Report and Recommendation, which allows Dr. Kelner to be suspended for three years, calculated from April 2, 2003, which is when he reported his relapse to the Board. Dr. Kelner then has the standard Order with regards to impairment, with a five-year period of probation upon reinstatement and probationary terms to meet. This Order would supersede the March 14, 2002 Step 1 Consent Agreement. Dr. Steinbergh stated that she agrees with this Order.

Dr. Buchan stated that Dr. Kelner is a severely impaired physician, and he doesn't believe Dr. Kelner's story. He doesn't believe that a man would take medicine out of an unmarked bottle. Because he doesn't believe he heard the truth in this case, he would be in favor of this Proposed Order, if not a more severe Order. At what point do you say, "This is it?" Dr. Buchan stated that he could and would be in favor of

permanent revocation in this case. Dr. Buchan stated that Dr. Kelner was already operating under a stayed permanent revocation. He had an opportunity and he didn't take advantage of it. Dr. Buchan again stated that he doesn't believe Dr. Kelner's story, adding that the Board has heard too many stories over the years. This one is just not credible. Dr. Buchan stated that consistency is important. He would vote for this Report and Recommendation as the very least sanction, but he spoke in favor of a five-year suspension or permanent revocation.

Dr. Kumar stated that he doesn't want to repeat what has been said. He is troubled by the fact that this is a repeated occurrence for Dr. Kelner. How many strikes can the Board give him? He would be in favor of adding an automatic permanent revocation with a relapse.

Mr. Dilling reminded Dr. Kumar that due process requires that Dr. Kelner be given notice of charges and an opportunity to be heard. The "stay" part of the Proposed Order should be a message to Dr. Kelner that a violation of the terms leads him to permanent revocation of his license, but that Dr. Kelner would still be afforded an opportunity for a hearing.

Dr. Steinbergh stated that she agrees with Dr. Buchan, but she does question whether or not permanent revocation is appropriate for an impaired individual. If the Board takes a physician out of practice for a prolonged period of time, he will either come back or he won't. A long suspension is appropriate. She added that permanent revocation is devastating, but at some point it's clear that he's inappropriate to practice medicine. She is very doubtful that Dr. Kelner will be able to maintain his sobriety and return to the practice of medicine. Dr. Steinbergh added that she will go along with the majority of the Board on this case, but the length of the suspension is the answer. Being out for a long period of time is the answer. At least the Board hasn't permanently closed the door, although the March 2002 Consent Agreement was also a stayed permanent revocation. If the Board means what it says, that is what the Board would do.

Dr. Bhati stated that the issue is simple. Does the Board believe that Dr. Kelner is going to get better and function normally? Dr. Bhati stated that he's not sure, with all of the long history the Board has seen. If you look at the history, the Board has permanently revoked the licenses of physicians with three strikes against them. Dr. Kelner definitely does qualify for that decision. Dr. Buchan stated that he would be in favor of a five-year suspension in this matter, rather than three years.

Dr. Egner stated that she has a difficult time with this case because she doesn't know whether Dr. Kelner is telling the truth or not. It seems like an unlikely scenario; however, the Board doesn't have anything to say that Dr. Kelner is lying. Dr. Egner stated that she's not in favor of prolonged suspensions. A three-year suspension is a very difficult suspension for anybody, because it will automatically require him to take the SPEX for reinstatement. He'll be far away from medicine. If he can't make it three years without a relapse, that tells the tale. Dr. Egner stated that this just wasn't clear-cut enough for her to find that permanent revocation is appropriate. Dr. Egner stated that she is in favor of the Report and Recommendation, and she spoke against a long suspension because she doesn't think it does what the Board is trying to do. If the Board feels that Dr. Kelner can be rehabilitated and returned to medicine, it ought to let him do so in a reasonable amount of time.

Dr. Steinbergh stated that the issue of whether or not to believe Dr. Kelner is somewhat inconsequential to her. She doesn't believe anything like that. Her discussion or decision does not hinge on that. The bottom line is that Dr. Kelner relapsed. If the Board is to believe that he'll be a responsible physician at some point, it has to believe that he will take responsibility for this.

Dr. Bhati referred to the mitigating circumstances mentioned in the Report and Recommendation, stating that he's not quite sure that Dr. Kelner's reporting six months after the relapse is a credible situation.

Dr. Robbins agreed with Dr. Egner. He stated that he can't be sure about the truth of Dr. Kelner's explanation, adding that, to say the least, he's pretty skeptical. He added that, if Dr. Kelner maintains sobriety for three years and then passes the SPEX and is able to do what the Proposed Order requires, he would be in favor of Dr. Kelner's returning to the practice of medicine. Dr. Robbins stated that he's not 100 percent sure that some of these actions and some of the excuses are not potentially true, and he would therefore be against the revocation, and would support the Proposed Order.

Dr. Kumar stated that one of his problems is that three years should be enough for someone to recognize what he should, but in the past Dr. Kelner relapsed five years out. That's why he has a problem with a three-year suspension. It has to be something more severe.

Dr. Bhati agreed with Dr. Kumar.

Dr. Buchan stated that he's troubled with the fact that the Board has a physician who relapsed under a stayed permanent revocation and the Board isn't going to respond as it said it would. It's troubling that the Board doesn't mean what it says.

DR. BUCHAN MOVED TO AMEND THE MINIMUM SUSPENSION PERIOD OF THE PROPOSED ORDER TO FIVE YEARS. DR. STEINBERGH SECONDED THE MOTION.

Dr. Buchan stated that he feels that Dr. Kelner is a bright fellow, and there is hope and a possibility for Dr. Kelner. Based upon that possibility and the hope he has for Dr. Kelner that he would go with this longer suspension and not permanently revoke his license. He believes that Dr. Kelner can succeed, but he has taken this to the last bit of grace that Dr. Buchan can offer.

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- nay
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye

Ms. Sloan	- aye
Dr. Davidson	- aye
Dr. Robbins	- aye
Dr. Garg	- abstain
Dr. Steinbergh	- aye

The motion carried.

Dr. Steinbergh asked whether the five years will be calculated from April 2, 2003. Dr. Buchan stated that it would.

DR. BHATI MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF PAUL EVAN KELNER, M.D. DR. BUCHAN SECONDED THE MOTION. A vote was taken:

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

The motion carried.



State Medical Board of Ohio

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June 11, 2003

Paul Evan Kelner, M.D.
79 West Main Street
Lexington, Ohio 44904

Dear Doctor Kelner:

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

- (1)(A) On or about March 12, 1991, you entered into a Consent Agreement with the Board [March 1991 Consent Agreement] in lieu of formal proceedings based upon your violation of Section 4731.22(B)(26), Ohio Revised Code. You made certain admissions in the March 1991 Consent Agreement, including that you had been admitted to Shepherd Hill Hospital in Newark, Ohio, on or about April 6, 1989, for treatment of opioid dependency. Further, in the March 1991 Consent Agreement, you agreed to certain probationary terms, conditions, and limitations upon your certificate for a period of not less than two years. A copy of the March 1991 Consent Agreement is attached hereto and fully incorporated herein.
- (B) On or about June 12, 1996, you entered into a Consent Agreement with the Board [June 1996 Consent Agreement] in lieu of formal proceedings based upon your violation of Section 4731.22(B)(26), Ohio Revised Code. You made certain admissions in the June 1996 Consent Agreement, including that you had been released from the probationary terms of your March 1991 Consent Agreement in March 1993, and that you resumed using opiates for a period of three months before notifying the Board in April 1996 that you had relapsed. The June 1996 Consent Agreement suspended your certificate to practice medicine and surgery for an indefinite period of time, and set forth certain requirements for reinstatement of your certificate. A copy of the June 1996 Consent Agreement is attached hereto and fully incorporated herein.
- (C) On or about August 14, 1996, you entered into a Consent Agreement with the Board [August 1996 Consent Agreement] in lieu of formal proceedings based upon your violation of Section 4731.22(B)(26), Ohio Revised Code. You made certain admissions in the August 1996 Consent Agreement, including that you

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had received treatment at Shepherd Hill Hospital, a Board-approved treatment provider, from April 30, 1996, through May 31, 1996. The August 1996 Consent Agreement reinstated your certificate to practice medicine and surgery in Ohio subject to certain probationary terms, conditions, and limitations for a period of not less than five years. A copy of the August 1996 Consent Agreement is attached hereto and fully incorporated herein.

On or about August 8, 2001, the Board granted your request for termination of the probationary terms, conditions, and limitations that had been placed upon your certificate pursuant to the aforementioned August 1996 Consent Agreement.

- (D) On or about March 14, 2002, you entered into a Step I Consent Agreement with the Board [March 2002 Step I Consent Agreement] in lieu of formal proceedings based upon your violations of Sections 4731.22(B)(26), Ohio Revised Code; Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.22, Deception to Obtain a Dangerous Drug, Section 2913.02, Theft, and Section 2913.31(A), Forgery; and Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-08, Ohio Administrative Code, Utilizing Controlled Substances for Self and Family Members.

You made certain admissions in the March 2002 Step I Consent Agreement, including additional details related to your first course of treatment for chemical dependence in April 1989, specifically, that prior to completing your medical training and after abusing drugs for approximately eight years, you had been admitted for diagnoses of opioid dependence, marijuana dependence in partial remission, and cocaine dependency in remission. You further admitted that you had entered into a Consent Agreement with the Board in March 1991, thereafter successfully completing a two-year period of supervised probation with the Board in March 1993. You further admitted that after maintaining sobriety for a period of approximately seven years, you had self-reported your first relapse on hydrocodone to the Board on April 23, 1996. You further admitted that after entering into a subsequent Consent Agreement in June 1996, and successfully completing a five-year period of supervised probation with the Board in August 2001, you had maintained sobriety until you relapsed in November 2001, self-reporting this second relapse on hydrocodone to the Board on February 26, 2002. You further admitted that you had entered inpatient treatment for chemical dependence at The Cleveland Clinic, a Board approved treatment provider, on February 27, 2002.

The March 2002 Step I Consent Agreement provided that your certificate to practice medicine and surgery was permanently revoked, stayed such revocation, and suspended your certificate for an indefinite period of time, but not less than 18 months. It also set forth certain prerequisites for any future reinstatement of

your license, including the requirement that you enter into a subsequent Consent Agreement or Board Order with a monitoring period of not less than ten years. Further, in the March 2002 Step I Consent Agreement, you agreed to certain probationary terms, conditions, and limitations upon your certificate, including the requirement that you 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. A copy of the March 2002 Step I Consent Agreement is attached hereto and fully incorporated herein.

- (2) On or about February 22, 2003, the urine specimen you provided for drug screening pursuant to the requirements of the March 2002 Step I Consent Agreement tested positive for the presence of the narcotic propoxyphene, and was GC/MS confirmed for the presence of the drug norpropoxyphene.
- (3) On or about March 18, 2003, the urine specimen you provided for drug screening pursuant to the requirements of the March 2002 Step I Consent Agreement tested positive for the presence of the narcotic propoxyphene, and was GC/MS confirmed for the presence of the drug norpropoxyphene.
- (4) On or about March 29, 2003, the urine specimen you provided for drug screening pursuant to the requirements of the March 2002 Step I Consent Agreement tested positive for the presence of the narcotic propoxyphene, and was GC/MS confirmed for the presence of the drug norpropoxyphene.

Your acts, conduct, and/or omissions as alleged in paragraphs (1), (2), (3), and (4) above, individually and/or collectively, constitute “[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,” as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (2), (3), and (4) above, individually and/or collectively, constitute a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

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

You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments,

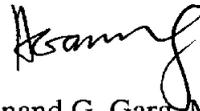
or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Anand G. Garg, M.D.
Secretary

AGG/blt
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5148 0779
RETURN RECEIPT REQUESTED

CC: Eric Plinke, Esq
Porter, Wright, Morris & Arthur
41 South High Street
Columbus, Ohio 43215

CERTIFIED MAIL # 7000 0600 0024 5148 0762
RETURN RECEIPT REQUESTED

STEP I
CONSENT AGREEMENT
BETWEEN
PAUL EVAN KELNER, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO

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

Dr. Kelner 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 violations 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;" and Section 4731.22(B)(20), Ohio Revised Code, "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board."
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violations of Section 4731.22(B)(26), Ohio Revised Code; Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.22, Deception to Obtain a Dangerous Drug, Section 2913.02, Theft, and Section 2913.31(A), Forgery; and Section 4731.22(B)(20), Ohio Revised Code, to wit: Section 4731-11-08, Ohio Administrative Code, Utilizing Controlled Substances for Self and Family Members, as these violations are set forth in Paragraphs (E) and (F) below. The Board expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement. Such express reservation includes, but is not limited to, the right to institute formal proceedings based

upon any violations related to patient care, regardless of whether the acts underlying such additional violations are related to the violations of Section 4731.22(B)(26), (B)(20), or (B)(10), Ohio Revised Code, as are set forth in this Consent Agreement, and/or the right to institute formal proceedings for violations, including those associated with criminal charges or proceedings, related to any methods used by Dr. Kelner to obtain controlled substances for self-use other than those specifically referenced in Paragraph (F) below.

- C. Dr. Kelner is licensed to practice medicine and surgery in the State of Ohio, License #35-061460.
- D. Dr. Kelner states that he is not licensed to practice medicine and surgery in any other state or jurisdiction.
- E. Dr. Kelner admits that in or about April 1989, after abusing drugs for approximately eight years, he was admitted to Shepherd Hill Hospital, a Board approved treatment provider, for treatment of opioid dependence, marijuana dependence in partial remission, and cocaine dependency in remission, at that time completing an inpatient treatment program of more than 28 days. Dr. Kelner admits that based upon his prior history of treatment at Shepherd Hill, he entered into a Consent Agreement with the Board in or about March 1991 related to the issuance of his initial certificate to practice medicine and surgery in Ohio, and that he thereafter successfully completed a two-year period of supervised probation with the Board in or about March 1993. Dr. Kelner admits that after maintaining sobriety for a period of approximately seven years, he self-reported his first relapse on hydrocodone to the Board on or about April 23, 1996. Dr. Kelner admits that after entering into a subsequent Consent Agreement in or about June 1996, and successfully completing a five-year period of supervised probation with the Board in or about August 2001, he maintained sobriety until he relapsed on hydrocodone in or about November 2001. Dr. Kelner admits that he thereafter self-reported his second relapse on hydrocodone to the Board on or about February 26, 2002. Dr. Kelner further admits that shortly before reporting his second relapse, he had been confronted by a colleague who suspected that Dr. Kelner was an impaired physician, and further admits that he had been arrested in Richland County, Ohio, for criminal activity arising from his acts to obtain hydrocodone prescriptions for self-use. Dr. Kelner further admits that he entered inpatient treatment for chemical dependence at The Cleveland Clinic, a Board approved treatment provider, on or about February 27, 2002.
- F. Dr. Kelner admits that he obtained controlled substances for self-use, as described in Paragraph (E) above, by deception and illegal processing of drug documents exclusively by three methods: (1) writing medically unfounded prescriptions for controlled substances in the names of real or fictitious persons who were not his patients, thus enabling him to retain the controlled substances for his own use, (2) falsely representing to other physicians that a family member had a medical condition that required such controlled substances and requesting a prescription for such medications, enabling him to

retain the drugs for self-use, and (3) involving other health care professionals by asking them either to telephone in prescriptions or pick up prescriptions for controlled substances that he then retained for self-use. Further, Dr. Kelner specifically denies obtaining controlled substances for self-use by any method other than the three particularly described in this paragraph, and attests that he never directly or indirectly involved patients in any of his efforts to obtain controlled substances for self-use.

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. Kelner knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

REVOCATION / SUSPENSION OF CERTIFICATE

1. The certificate of Dr. Kelner to practice medicine and surgery in the State of Ohio shall be permanently REVOKED. Such revocation is stayed, and Dr. Kelner's certificate is hereby SUSPENDED for an indefinite period of time, but not less than eighteen (18) months.

Sobriety

2. Dr. Kelner shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him/her by another so authorized by law who has full knowledge of Dr. Kelner's history of chemical dependency.
3. Dr. Kelner shall abstain completely from the use of alcohol.

Releases; Quarterly Declarations and Appearances

4. Dr. Kelner 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. Kelner'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. Kelner 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. Kelner 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 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
6. Dr. Kelner 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. Kelner shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Kelner shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

Within thirty days of the effective date of this Consent Agreement, Dr. Kelner shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Kelner 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. Kelner. Dr. Kelner 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. Kelner 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. Kelner must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Kelner 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. Kelner's quarterly declaration. It is Dr. Kelner's responsibility to ensure that reports are timely submitted.

Rehabilitation Program

8. Within thirty days of the effective date of this Consent Agreement, Dr. Kelner 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. Kelner 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. Kelner's quarterly declarations.

CONDITIONS FOR REINSTATEMENT

9. The Board shall not consider reinstatement of Dr. Kelner's certificate to practice medicine and surgery until all of the following conditions are met:
 - a. Dr. Kelner shall submit an application for reinstatement, accompanied by appropriate fees, if any.
 - b. Dr. Kelner 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. Kelner has successfully completed any required inpatient treatment.
 - 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. Kelner's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the Board for making such assessments and shall describe the basis for this determination.
- c. Dr. Kelner shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the Board or, if the Board and Dr. Kelner are unable to agree on the terms of a written Consent Agreement, then Dr. Kelner 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. Regardless of whether Dr. Kelner enters into such a written Consent Agreement, or in the alternative, is subject to a Board Order subsequent to hearing, Dr. Kelner expressly agrees that the terms of such Consent Agreement or Board Order shall include, inter alia, a provision that Dr. Kelner shall not request termination of such written Consent Agreement or Board Order for a minimum of ten (10) years.

Further, upon reinstatement of Dr. Kelner'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. Kelner 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. Kelner has maintained sobriety.

10. In the event that Dr. Kelner 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. Kelner's fitness to resume practice.

REQUIRED REPORTING BY LICENSEE

11. Within thirty days of the effective date of this Consent Agreement, Dr. Kelner 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. Kelner 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. Kelner 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. Kelner 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. Kelner 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. Kelner 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. Kelner 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.

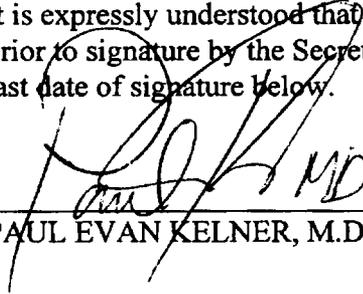
Dr. Kelner hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code, and may be reported to appropriate organizations, data banks, and

governmental bodies. Dr. Kelner agrees to provide his social security number to the Board and hereby authorizes the Board to utilize that number in conjunction with that reporting.

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.



PAUL EVAN KELNER, M.D.



ANAND G. GARG, M.D.
Secretary

3/11/02

DATE

3/13/02

DATE



ERIC PLINKE, ESQ.
Attorney for Dr. Kelner



RAYMOND J. ALBERT
Supervising Member

3/12/02

DATE

3/12/02

DATE



REBECCA J. ALBERS, ESQ.
Assistant Attorney General

3/14/02

DATE

**CONSENT AGREEMENT
BETWEEN
PAUL E. KELNER, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO**

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

PAUL E. KELNER, M.D. enters into this CONSENT AGREEMENT being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

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

- A. THE STATE MEDICAL BOARD OF OHIO is empowered by Section 4731.22(B)(26), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice."
- B. THE STATE MEDICAL BOARD OF OHIO enters into this CONSENT AGREEMENT in lieu of formal proceedings based upon the violation of Section 4731.22(B)(26), Ohio Revised Code, as set forth in Paragraph(s) D and 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.
- C. PAUL E. KELNER, M.D., is applying for reinstatement of his certificate to practice medicine and surgery in the State of Ohio.
- D. PAUL E. KELNER, M.D., ADMITS that on June 12, 1996, he entered into a Consent Agreement (a copy of which is attached hereto and fully

incorporated herein) with the State Medical Board of Ohio that was based upon his violation of Section 4731.22(B)(26), Ohio Revised Code.

The Consent Agreement suspended DOCTOR KELNER'S certificate to practice medicine and surgery in the State of Ohio for an indefinite period of time, and required that DOCTOR KELNER meet certain terms and conditions prior to applying for reinstatement of his certificate. In the Consent Agreement, DOCTOR KELNER admitted that he self-reported a relapse on Hydrocodone to the BOARD on April 23, 1996.

DOCTOR KELNER STATES that this relapse occurred after approximately seven (7) years of sobriety.

- E. DOCTOR KELNER STATES and THE STATE MEDICAL BOARD OF OHIO ACKNOWLEDGES that he received treatment at Shepherd Hill Hospital and the Central Ohio Recovery Residence, a BOARD approved treatment facility, from April 30, 1996, to May 31, 1996.

DOCTOR KELNER further STATES and THE STATE MEDICAL BOARD OF OHIO ACKNOWLEDGES that Shepherd Hill Hospital has submitted documentation certifying that he successfully completed any required inpatient treatment.

DOCTOR KELNER further STATES and THE STATE MEDICAL BOARD OF OHIO ACKNOWLEDGES that Linda S. Cole, M.D., Medical Director of Shepherd Hill Hospital, and Edward J. Poczekaj, CEAP, CCDC III, of the Ohio Physicians Effectiveness Program, have submitted documentation certifying that he has maintained full compliance with his aftercare and physician monitoring contracts.

DOCTOR KELNER further STATES and THE STATE MEDICAL BOARD OF OHIO ACKNOWLEDGES that he has been evaluated by Craig T. Pratt, M.D., Medical Director of Riverside Hospital's alcohol and drug program, a BOARD approved treatment facility, and Fred Karrafa, M.D., previous Medical Director of Shepherd Hill Hospital, a BOARD approved treatment facility, and that Dr. Pratt and Dr. Karrafa have affirmed that he is capable of practicing medicine according to acceptable and prevailing standards of care.

DOCTOR KELNER further STATES and THE STATE MEDICAL BOARD OF OHIO ACKNOWLEDGES that Linda S. Cole, M.D., Medical Director of Shepherd Hill Hospital, has assessed DOCTOR

KELNER's post-treatment compliance and recovery plan and has opined that DOCTOR KELNER may safely resume the practice of medicine in accordance with acceptable and prevailing standards of care.

DOCTOR KELNER further STATES and THE STATE MEDICAL BOARD OF OHIO ACKNOWLEDGES that he has not engaged in the practice of medicine since April 22, 1996.

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 PAUL E. KELNER, M.D., to practice medicine and surgery in the State of Ohio shall be reinstated, and DOCTOR KELNER knowingly and voluntarily agrees with THE STATE MEDICAL BOARD OF OHIO, (hereinafter BOARD), to the following PROBATIONARY terms, conditions and limitations:

1. DOCTOR KELNER shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio;
2. DOCTOR KELNER shall submit quarterly declarations under penalty of BOARD disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this CONSENT AGREEMENT. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which the consent agreement becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the BOARD's offices on or before the first day of every third month;
3. DOCTOR KELNER shall appear in person for quarterly interviews before the BOARD or its designated representative, or as otherwise directed by the BOARD.

If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. (Example: The first quarterly appearance is scheduled for February, but based upon the doctor's serious personal illness he is permitted to delay appearance until April. The next appearance will still be scheduled for May, three months after the appearance as originally scheduled.) Although the BOARD will normally give DOCTOR KELNER written notification of scheduled

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

4. In the event that DOCTOR KELNER should leave Ohio for three (3) continuous months, or reside or practice outside the State, DOCTOR KELNER must notify the BOARD in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this period under the CONSENT AGREEMENT, unless otherwise determined by motion of the BOARD in instances where the BOARD can be assured that probationary monitoring is otherwise being performed;
5. In the event DOCTOR KELNER 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 the CONSENT AGREEMENT;
6. DOCTOR KELNER shall keep a log of all controlled substances prescribed, dispensed or administered. Such log shall be submitted in the format approved by the BOARD thirty (30) days prior to DOCTOR KELNER's personal appearance before the BOARD or its designated representative, or as otherwise directed by the BOARD;
7. DOCTOR KELNER shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of DOCTOR KELNER's history of chemical dependency;
8. DOCTOR KELNER shall abstain completely from the use of alcohol;
9. DOCTOR KELNER shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the BOARD. DOCTOR KELNER shall ensure that all screening reports are forwarded directly to the BOARD on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board;

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

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

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

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

10. The BOARD retains the right to require, and DOCTOR KELNER agrees to submit, blood or urine specimens for analysis upon request and without prior notice. DOCTOR KELNER'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;
11. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR KELNER shall submit for the BOARD's prior approval the name of a monitoring physician, who shall monitor DOCTOR KELNER and provide the BOARD with quarterly reports on the doctor's progress and status. DOCTOR KELNER shall ensure that such reports are forwarded to the BOARD on a quarterly basis. In the

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

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

12. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR KELNER shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., or Caduceus, no less than three (3) times per week. Substitution of any specific program must receive prior BOARD approval;

DOCTOR KELNER shall submit with each quarterly declaration required under Paragraph 2 of this CONSENT AGREEMENT acceptable documentary evidence of continuing compliance with this program;

13. DOCTOR KELNER 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;
14. DOCTOR KELNER 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;
15. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR KELNER shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he is under contract to provide physician services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, DOCTOR KELNER shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he

contracts to provide physician services, or applies for or receives training, and the chief of staff at each hospital where he applies for or obtains privileges or appointments; and,

16. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR KELNER 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 a license to practice. DOCTOR KELNER 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 licensure or reinstatement of licensure. Further, DOCTOR KELNER shall provide this BOARD with a copy of the return receipt as proof of notification within thirty (30) days of receiving that return receipt.
17. Any violation of Paragraph 7 or Paragraph 8 of this Agreement shall constitute grounds to revoke or permanently revoke DOCTOR KELNER's certificate. DOCTOR KELNER agrees that the minimum discipline for such a violation shall include actual license suspension. This paragraph does not limit the BOARD's authority to suspend, revoke or permanently revoke DOCTOR KELNER's certificate based on other violations of this Consent Agreement.
18. DOCTOR KELNER AGREES that if any declaration or report required by this agreement is not received in the BOARD'S offices on or before its due date, DOCTOR KELNER shall cease practicing beginning the day next following receipt from the BOARD of notice of non-receipt, either by writing, by telephone, or by personal contact until the declaration or report is received in the BOARD offices. Any practice during this time period shall be considered unlicensed practice in violation of Section 4731.41 of the Revised Code.
19. DOCTOR KELNER AGREES that if, without prior permission from the BOARD, he fails to submit to random screenings for drugs and alcohol at least as frequently as required by Paragraph 9 of this CONSENT AGREEMENT, he shall cease practicing immediately upon receipt from the BOARD of notice of the violation and shall refrain from practicing for thirty (30) days for the first instance of a single missed screen. Practice during this time period shall be considered unlicensed practice in violation of Section 4731.41 of the Revised Code.

20. DOCTOR KELNER AGREES that if he fails to participate in an alcohol and drug rehabilitation program at least as frequently as required by Paragraph 12 of this CONSENT AGREEMENT, he shall cease practicing immediately upon receipt from the BOARD of notice of the violation, and shall refrain from practicing for fifteen (15) days following a first missed meeting. Practice during this time period shall be considered unlicensed practice in violation of Section 4731.41 of the Revised Code.

This CONSENT AGREEMENT shall remain in force for a minimum of five (5) years prior to any request for termination of said CONSENT AGREEMENT. Otherwise, the above described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties.

If, in the discretion of the Secretary and Supervising Member of the BOARD, DOCTOR KELNER 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 Agreement.

If the Secretary and Supervising Member of the BOARD determine that there is clear and convincing evidence that DOCTOR KELNER has violated any term, condition or limitation of this CONSENT AGREEMENT, DOCTOR KELNER 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(D), Ohio Revised Code.

DOCTOR KELNER acknowledges that he has had an opportunity to ask questions concerning the terms of this CONSENT AGREEMENT and that all questions asked have been answered in a satisfactory manner.

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

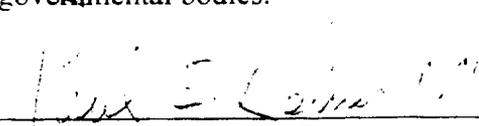
DOCTOR KELNER hereby releases THE STATE MEDICAL BOARD OF OHIO, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

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

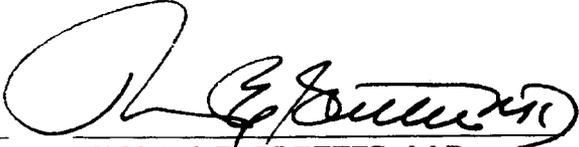
CONSENT AGREEMENT
PAUL E. KELNER, M.D.
PAGE 9

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

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



PAUL E. KELNER, M.D.



THOMAS E. GRETTER, M.D.
Secretary

3/9/96
DATE

8/14/96
DATE



RAYMOND J. ALBERT
Supervising Member

8/14/96
DATE



ANNE C. BERRY STRAIT, ESQ.
Assistant Attorney General

8/14/96
DATE

**CONSENT AGREEMENT
BETWEEN
PAUL KELNER, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO**

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

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

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

- A. THE STATE MEDICAL BOARD OF OHIO is empowered by Section 4731.22(B)(26), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice."
- B. THE STATE MEDICAL BOARD OF OHIO enters into this CONSENT AGREEMENT in lieu of formal proceedings based upon the violations of Section 4731.22(B)(26), Ohio Revised Code, as detailed in paragraph C below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement.
- C. PAUL KELNER, M.D., ADMITS that in March 1991, he entered into a Consent Agreement with THE STATE MEDICAL BOARD OF OHIO in lieu of formal proceedings based upon his violation of Section 4731.22(B)(26), Ohio Revised Code. A copy of the 1991 Consent Agreement is attached hereto and fully incorporated herein.

DOCTOR KELNER further ADMITS that pursuant to his request, THE STATE MEDICAL BOARD OF OHIO released him from the terms of the March 1991 Consent Agreement in March 1993.

DOCTOR KELNER further ADMITS that on April 23, 1996, he notified Ms. Jan Sussex, Compliance Officer for THE STATE MEDICAL BOARD OF OHIO, that he had suffered a relapse.

DOCTOR KELNER further ADMITS that he submitted a letter to the BOARD on April 24, 1996, reporting that he relapsed on oral opiates, specifically Hydrocodone, for a period of three months.

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

1. The certificate of DOCTOR KELNER to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time.
2. DOCTOR KELNER shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of DOCTOR KELNER's history of chemical dependency;
3. DOCTOR KELNER shall abstain completely from the use of alcohol;
4. DOCTOR KELNER shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for DOCTOR KELNER's chemical dependency or related conditions, or for purposes of complying with the CONSENT AGREEMENT, whether such treatment or evaluation occurred before or after the effective date of this CONSENT AGREEMENT. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. DOCTOR KELNER 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. The BOARD shall not consider reinstatement of DOCTOR KELNER's certificate to practice medicine and surgery unless and until all of the following conditions are met:
 - a. DOCTOR KELNER shall submit an application for reinstatement, accompanied by appropriate fees, if any;
 - b. DOCTOR KELNER shall demonstrate to the satisfaction of the BOARD that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - i. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that DOCTOR KELNER has successfully completed any required inpatient treatment;
 - ii. Evidence of continuing full compliance with an aftercare contract or consent agreement;
 - iii. Two written reports indicating that DOCTOR KELNER's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the BOARD for making such assessments and shall describe the basis for this determination.
 - c. DOCTOR KELNER shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the BOARD or, if the BOARD and DOCTOR KELNER are unable to agree on the terms of a written CONSENT AGREEMENT, then DOCTOR KELNER further agrees to abide by any terms, conditions and limitations imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code.

Further, upon reinstatement of DOCTOR KELNER's certificate to practice medicine and surgery in this state, the BOARD shall require continued monitoring which shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by Board

Order after a hearing conducted pursuant to Chapter 119. of the Revised Code and, upon termination of the consent agreement or Board Order, submission to the BOARD for at least two years of annual progress reports made under penalty of BOARD disciplinary action or criminal prosecution stating whether DOCTOR KELNER has maintained sobriety.

6. In the event that DOCTOR KELNER has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement, the BOARD may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of DOCTOR KELNER's fitness to resume practice.
7. Within thirty (30) days of the effective date of this Agreement, DOCTOR KELNER 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 a license to practice. DOCTOR KELNER 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 licensure or reinstatement of licensure. Further, DOCTOR KELNER shall provide this BOARD with a copy of the return receipt as proof of notification within thirty (30) days of receiving that return receipt.
8. Within thirty (30) days of the effective date of this Agreement, DOCTOR KELNER shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he is under contract to provide physician services or is receiving training; and the Chief of Staff at each hospital where he has 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.

If, in the discretion of the Secretary and Supervising Member of THE STATE MEDICAL BOARD OF OHIO, DOCTOR KELNER appears to have violated or breached any term or condition of this Agreement, THE STATE MEDICAL BOARD OF OHIO reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Agreement.

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

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

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

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

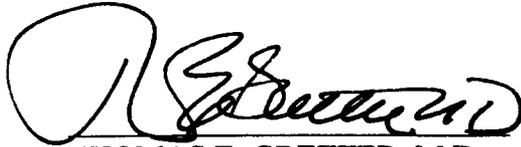
Further, this information may be reported to appropriate organizations, data banks and governmental bodies.



PAUL KELNER, M.D.

6/11/96

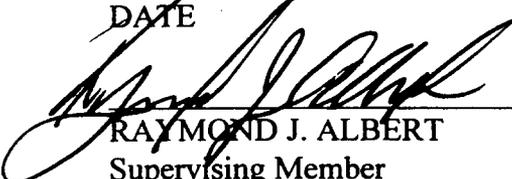
DATE



THOMAS E. GRETER, M.D.
Secretary

6/12/96

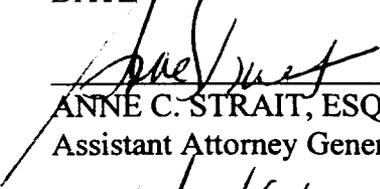
DATE



RAYMOND J. ALBERT
Supervising Member

6/12/96

DATE



ANNE C. STRAIT, ESQ.
Assistant Attorney General

6/12/96

DATE

91 MAR -8 AM 11:52

**CONSENT AGREEMENT
BETWEEN
PAUL E. KELNER, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO**

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

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

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

- A. THE STATE MEDICAL BOARD OF OHIO is empowered by Section 4731.22(B) (26), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice.
- B. THE STATE MEDICAL BOARD OF OHIO enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Section 4731.22(B) (26), and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement.
- C. PAUL E. KELNER, M.D. is licensed to practice medicine and surgery in the State of Ohio.
- D. On April 6, 1989 PAUL E. KELNER, M.D. was voluntarily admitted to Shepherd Hill Hospital, Newark, Ohio for treatment of opioid dependency.

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

1. DOCTOR KELNER shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio;
2. DOCTOR KELNER shall submit quarterly declarations under penalty of perjury stating whether there has been compliance with all the conditions of this Consent Agreement.

3. DOCTOR KELNER shall appear in person for interviews before the full BOARD or its designated representatives at three month intervals, or as otherwise directed by the BOARD;
4. In the event that DOCTOR KELNER should leave Ohio for three continuous months, or reside or practice outside the State, DOCTOR KELNER must notify the BOARD in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this period under the Consent Agreement;
5. DOCTOR KELNER shall keep a log of all controlled substances prescribed, dispensed, or administered. Such log shall be submitted in the format approved by the BOARD thirty (30) days prior to DOCTOR KELNER'S personal appearance before the BOARD or its designated representative, or as otherwise directed by the BOARD.
6. DOCTOR KELNER shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of DOCTOR KELNER'S history of chemical dependency;
7. DOCTOR KELNER shall abstain completely from the use of alcohol
8. DOCTOR KELNER shall submit to random urine screenings for drugs on a weekly basis or as otherwise directed by the BOARD. DOCTOR KELNER is to ensure that all screening reports are forwarded directly to the BOARD on a quarterly basis;

DOCTOR KELNER shall submit the required urine specimens to a supervising physician to be approved by the BOARD. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the BOARD of any positive screening results.

The supervising physician shall monitor DOCTOR KELNER and provide the BOARD with reports on the doctor's progress and status.

In the event that the designated supervising physician becomes unable or unwilling to so serve, DOCTOR KELNER must immediately notify the BOARD in writing, and make arrangements acceptable to the BOARD for another supervising physician as soon as practicable;

CONSENT AGREEMENT
PAUL E. KELNER
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11. The BOARD retains the right to require, and DOCTOR KELNER agrees to submit, blood or urine specimens for analysis upon request and without prior notice.
12. Within 30 days of the effective date of this Consent Agreement, DOCTOR KELNER shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., or Caduceus, acceptable to the BOARD no less than three (3) times per week. At his appearances before the BOARD or its designated representative, DOCTOR KELNER shall submit documentary evidence of continuing compliance with this program;
13. DOCTOR KELNER shall provide all employers and the Chief of Staff at each hospital where he has, applies for, or obtains privileges with a copy of this Consent Agreement.

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

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

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

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

DOCTOR KELNER hereby releases THE STATE MEDICAL BOARD OF OHIO, its Members, Employees, Agents, Officers and Representatives jointly and severally from any and all liability arising from the within matter.

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

This information may be reported to appropriate organizations, data banks and governmental bodies. This Consent Agreement shall become effective upon the last date of signature below. Further, this information may be reported to appropriate organizations, data banks, and governmental bodies.

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CONSENT AGREEMENT
PAUL E. KELNER
PAGE FOUR

Paul Kelner MD
PAUL E. KELNER, M.D.
2/22/91
DATE

Henry G. Cramblett
HENRY G. CRAMBLETT, M.D.
Secretary 3/11/91
DATE

Tim
TIMOTHY S. JOST, ESQ.
Supervising Member
3/11/91
DATE

John C. Dowling
JOHN C. DOWLING, ESQUIRE
Assistant Attorney General
3/12/91
DATE