

# State Medical Board of Ohio

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

(614) 466-3934

med.ohio.gov

January 14, 2015

Case number: 15-CRF- *001*

Mark L. Allen, M.D.  
1703 Daffodil Trail  
Poland, Ohio 44514

Dear Doctor Allen:

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

- (1) On or about November 9, 2011, you entered into a Step II Consent Agreement with the Board based on your admitted violations of Sections 4731.22(B)(10), 4731.22(B)(15), 4731.22(B)(18) and 4731.22(B)(26), Ohio Revised Code, arising from your relapse on cocaine with associated drug-related felonious conduct, violation of your prior Board Order by failing to provide a requested urine specimen for testing, and you having had sexual contact with a patient. To date, you remain subject to the terms, conditions and limitations of the November 2011 Step II Consent Agreement, as subsequently modified by the Board.
- (2) Paragraph 9 of the November 2011 Step II Consent Agreement requires you to abstain completely from the use of alcohol.

Despite the requirements of the November 2011 Step II Consent Agreement, you consumed alcohol on or about November 29, 2014. On or about December 8, 2014, you submitted a blood sample that tested positive for phosphatidyl ethanol. In an e-mail sent on or about December 12, 2014, your counsel acknowledged to a Board representative that you had consumed alcohol. The e-mail and accompanying documents asserted that your consumption of alcohol was unintentional. Subsequently, you submitted statements from your neighbors, in which they stated that they had provided to your significant other a pitcher of punch that also contained alcohol. In statements submitted to the Board, you admitted that you drank some of the punch but did not know it contained alcohol.

*Mailed 1-15-15*

- (3) The November 2011 Step II Consent Agreement includes the following provisions in paragraph 10:

Dr. Allen shall submit to random urine screenings for drugs and alcohol at least two times per month, or as otherwise directed by the Board. Dr. Allen shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board, and shall include Dr. Allen's drug(s) of choice.

\* \* \*

All such urine screenings for drugs and alcohol shall be conducted through a Board-approved drug testing facility and collection site pursuant to the global contract between said facility and the Board, that provides for the Board to maintain ultimate control over the urine screening process and to preserve the confidentiality of all positive screening results in accordance with Section 4731.22(F)(5), Ohio Revised Code, and the screening process shall require a daily call-in procedure.

- (a) Despite the requirements of the November 2011 Step II Consent Agreement, you failed to call in on or about July 30, 2014, and November 8, 2014.
- (b) Further, despite the requirements of the November 2011 Step II Consent Agreement, on or about November 13, 2014, although you timely called in and were scheduled to test, you failed to timely submit a urine sample for testing.

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

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

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

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

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

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



Kim G. Rothermel, M.D.  
Secretary

KGR/CDP/pev  
Enclosures

CERTIFIED MAIL # 91 7199 9991 7034 8392 3872  
RETURN RECEIPT REQUESTED

CC: John R. Irwin, J.D., M.D.  
17458 Lakesedge Trail  
Chagrin Falls, Ohio 44023

CERTIFIED MAIL # 91 7199 9991 7034 8392 3841  
RETURN RECEIPT REQUESTED

**STEP II**  
**CONSENT AGREEMENT**  
**BETWEEN**  
**MARK L. ALLEN, M.D.,**  
**AND**  
**THE STATE MEDICAL BOARD OF OHIO**

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

Dr. Allen 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 a violation of Section 4731.22(B)(26), Ohio Revised Code, 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;” Section 4731.22(B)(10), Ohio Revised Code, for “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed;” Section 4731.22(B)(15), for “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice;” and/or Section 4731.22(B)(18), Ohio Revised Code, for “[v]iolation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule.”
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Sections 4731.22(B)(15), Ohio Revised Code; 4731.22(B)(26), Ohio Revised Code; 4731.22(B)(18), Ohio Revised Code, to wit: Principles I, IV and VIII of the American Medical Association’s Principles of Medical Ethics; and 4731.22(B)(10), Ohio Revised Code, to wit: Possession of Drugs, Section 2925.11, Ohio Revised Code, and expressly reserves the right to institute formal proceedings

based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Consent Agreement.

- C. Dr. Allen is seeking reinstatement of his certificate to practice medicine and surgery, license number 35.063078, which was revoked; the revocation was then stayed and Dr. Allen's certificate was indefinitely suspended, but not less than 18 months, pursuant to the Step I Consent Agreement Between Mark L. Allen, M.D. and the State Medical Board of Ohio [May 2010 Step I Consent Agreement], effective May 12, 2010, a copy of which is attached hereto and incorporated herein.
- D. Dr. Allen states that he is also licensed to practice medicine and surgery in the State of Kansas, but that his Kansas license is currently suspended, based on the suspension of his Ohio certificate. Further, Dr. Allen states that formerly he was licensed to practice medicine and surgery in Missouri, but he allowed his license to lapse in or around 1999.
- E. Dr. Allen admits that, on or about on or about May 9, 2010, while subject to a Board Order that became effective on April 13, 2005 [April 2005 Order], he relapsed on cocaine. Dr. Allen admits that, on or about May 12, 2010, he entered into Step I Consent Agreement [May 2010 Step I Consent Agreement] with the Board, pursuant to which his certificate to practice medicine and surgery was revoked; the revocation was then stayed, and Dr. Allen's certificate was indefinitely suspended, but not less than 18 months. Dr. Allen admits that Step I Consent Agreement was based in part upon his relapse on cocaine, his commission of a felony act, his violation of one or more terms of the April 2005 Order, and his admission that he had engaged in sexual intercourse with a patient.

Dr. Allen admits that, following his relapse on cocaine, he entered treatment at the Cleveland Clinic Foundation on or about May 13, 2010. Dr. Allen states, and the Board acknowledges receipt of information to support that, on or about June 14, 2010, he was discharged to intensive outpatient treatment [IOP] for 18 sessions. Dr. Allen states that he successfully completed IOP, then began aftercare with Dr. Cynthia Downing. Dr. Allen states, and the Board acknowledges receipt of information to support, that he is in compliance with the aftercare contract that he entered into with the Cleveland Clinic Foundation on or about July 27, 2011, and modified on or about October 14, 2011, and October 28, 2011. Dr. Allen admits that such aftercare contract, as amended, remains in effect to date.

Dr. Allen states, and the Board acknowledges receipt of information to support, that Gregory B. Collins, M.D., Section Head of the Alcohol & Drug Recovery Center at the Cleveland Clinic Foundation, provided a written report indicating that Dr. Allen's ability to practice has been assessed and that he has been found capable of practicing medicine according to acceptable and prevailing standards of care, subject to certain conditions. Dr. Allen states, and the Board acknowledges receipt of information to

support, that Anil M. Parikh, a physician who regularly practices addiction medicine and who has been approved by the Board to provide an assessment of Dr. Allen, provided a written report indicating that Dr. Allen's ability to practice has been assessed and that he has been found capable of practicing medicine according to acceptable and prevailing standards of care, subject to certain conditions.

Dr. Allen states, and the Board acknowledges receipt of information to support, that Dr. Allen attended the PBI Professional Boundaries course on or about November 19-21, 2010, in satisfaction of the requirement that he attend a professional boundaries course, as set forth in the May 2010 Step I Consent Agreement. Dr. Allen further states that, on or about November 1, 2011, he submitted a written report to the Board, describing the course, setting forth what he learned from the course, and identifying how he will apply what he has learned to his practice of medicine and surgery.

Dr. Allen states, and the Board acknowledges receipt of information to support, that Dr. Allen has substantially fulfilled the conditions for reinstatement of his certificate to practice medicine and surgery in the State of Ohio, as established in the May 2010 Step I Consent Agreement.

### **AGREED CONDITIONS**

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, the certificate of Dr. Allen to practice medicine and surgery in the State of Ohio shall be REINSTATED effective November 14, 2011, and Dr. Allen knowingly and voluntarily agrees with the Board to the following PROBATIONARY terms, conditions and limitations:

1. Dr. Allen shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
2. Dr. Allen shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the date his quarterly declaration would have been due pursuant to his May 2010 Step I Consent Agreement with the Board, or as otherwise requested by the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
3. Dr. Allen 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 May 2010 Step I Consent Agreement with the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

4. Dr. Allen shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed. Further, the Secretary and Supervising Member of the Board shall have the discretion to grant a waiver of part or all of the probationary terms set forth in this Consent Agreement for occasional periods of absence of fourteen days or less. In the event that Dr. Allen resides and/or is employed at a location that is within fifty miles of the geographic border of Ohio and any of its contiguous states, Dr. Allen may travel between Ohio and that contiguous state without seeking prior approval of the Secretary or Supervising Member provided that Dr. Allen is able to otherwise maintain full compliance with all other terms, conditions and limitations set forth in this Consent Agreement.
5. In the event Dr. Allen is found by the Secretary of the Board to have failed to comply with any provision of this Consent Agreement, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Consent Agreement.

## **MONITORING OF REHABILITATION AND TREATMENT**

### **Drug Associated Restrictions**

6. Dr. Allen shall keep a log of all controlled substances prescribed. Such log shall be submitted, in the format approved by the Board, on the date upon which Dr. Allen's quarterly declaration is due, or as otherwise directed by the Board. Further, Dr. Allen shall make his patient records with regard to such prescribing available for review by an agent of the Board immediately upon request.
7. Dr. Allen shall not, without prior Board approval, administer, personally furnish, or possess (except as allowed under Paragraph 8 below) any controlled substances as defined by state or federal law. In the event that the Board agrees at a future date to modify this Consent Agreement to allow Dr. Allen to administer or personally furnish controlled substances, Dr. Allen shall keep a log of all controlled substances prescribed, administered or personally furnished. Such log shall be submitted in the format approved by the Board and shall be submitted to the Board no later than the date upon which Dr. Allen's quarterly declaration is due, or as otherwise directed by the Board. Further, Dr. Allen shall make his patient records with regard to such prescribing, administering, or personally furnishing available for review by an agent of the Board immediately upon request.

### **Sobriety**

8. Dr. Allen shall abstain completely from the personal use or personal possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. Allen's history of chemical dependency. Further, in the event that Dr. Allen is so prescribed, dispensed or administered any controlled substance, carisoprodol, or tramadol, Dr. Allen shall notify the Board in writing within seven days, providing the Board with the identity of the prescriber; the name of the drug Dr. Allen received; the medical purpose for which he received said drug; the date such drug was initially received; and the dosage, amount, number of refills, and directions for use. Further, within thirty days of the date said drug is so prescribed, dispensed, or administered to him, Dr. Allen shall provide the Board with either a copy of the written prescription or other written verification from the prescriber, including the dosage, amount, number of refills, and directions for use.
9. Dr. Allen shall abstain completely from the use of alcohol.

### **Drug and Alcohol Screens/Drug Testing Facility and Collection Site**

10. Dr. Allen shall submit to random urine screenings for drugs and alcohol at least two times per month, or as otherwise directed by the Board. Dr. Allen shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board, and shall include Dr. Allen's drug(s) of choice.

Dr. Allen shall abstain from the use of any substance and the consumption of poppy seeds or any other food or liquid that may produce a low level positive result in a toxicology screen. Dr. Allen acknowledges that he understands that the consumption or use of such substances, including but not limited to substances such as mouthwash or hand cleaning gel, may cause a positive drug screen that may not be able to be differentiated from intentional ingestion, and therefore such consumption or use is prohibited under this Consent Agreement.

All such urine screenings for drugs and alcohol shall be conducted through a Board-approved drug testing facility and collection site pursuant to the global contract between said facility and the Board, that provides for the Board to maintain ultimate control over the urine screening process and to preserve the confidentiality of all positive screening results in accordance with Section 4731.22(F)(5), Ohio Revised Code, and the screening process shall require a daily call-in procedure. Further, in the event that the Board exercises its discretion, as provided in Paragraph 11 below, to approve urine screenings to be conducted at an alternative drug testing facility and/or collection site or a supervising physician, such approval shall be expressly contingent upon the Board retaining ultimate control over the urine screening process in a

manner that preserves the aforementioned confidentiality of all positive screening results.

Dr. Allen shall submit, at his expense and on the day selected, urine specimens for drug and/or alcohol analysis. All specimens submitted by Dr. Allen shall be negative, except for those substances prescribed, administered, or dispensed to him in conformance with the terms, conditions and limitations set forth in this Consent Agreement. Refusal to submit such specimen, or failure to submit such specimen on the day he is selected or in such manner as the Board may request, shall constitute a violation of this Consent Agreement.

Further, within thirty days of the effective date of this Consent Agreement, Dr. Allen shall enter into the necessary financial and/or contractual arrangements with the Board-approved drug testing facility and/or collection site in order to facilitate the urine screening process in the manner required by this Consent Agreement. Further, Dr. Allen shall promptly provide to the Board written documentation of completion of such arrangements, including a copy of any contract entered into between Dr. Allen and the Board-approved drug testing facility and/or collection site. Dr. Allen's failure to timely complete such arrangements, or failure to timely provide written documentation to the Board of completion of such arrangements, shall constitute a violation of this Consent Agreement. However, Dr. Allen and the Board further agree that in the event Dr. Allen previously entered into the aforementioned financial and contractual agreements pursuant to the requirements of a prior consent agreement with the Board under which Dr. Allen is currently participating in an ongoing urine screening process, then this requirement shall be waived under the instant consent agreement.

Dr. Allen shall ensure that the urine screening process performed through the Board-approved drug testing facility and/or collection site requires a daily call-in procedure; that the urine specimens are obtained on a random basis; and that the giving of the specimen is witnessed by a reliable person. In addition, Dr. Allen and the Board-approved drug testing facility and collection site shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Dr. Allen shall ensure that the Board-approved drug testing facility and/or collection site provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, and whether all urine screens have been negative.

In the event that the Board-approved drug testing facility and/or collection site becomes unable or unwilling to serve as required by this Consent Agreement, Dr. Allen must immediately notify the Board in writing, and make arrangements acceptable to the Board pursuant to Paragraph 11 below, as soon as practicable. Dr.

Allen shall further ensure that the Board-approved drug testing facility and/or collection site also notifies the Board directly of its inability to continue to serve and the reasons therefore.

Dr. Allen acknowledges that the Board expressly reserves the right to withdraw its approval of any drug testing facility and/or collection site in the event that the Secretary and Supervising Member of the Board determine that the drug testing facility and/or collection site has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

11. Dr. Allen and the Board agree that it is the intent of this Consent Agreement that Dr. Allen shall submit his urine specimens to the Board-approved drug testing facility and collection site chosen by the Board. However, in the event that utilizing said Board-approved drug testing facility and/or collection site creates an extraordinary hardship upon Dr. Allen, as determined in the sole discretion of the Board, then subject to the following requirements, the Board may approve an alternate drug testing facility and/or collection site, or a supervising physician, to facilitate the urine screening process for Dr. Allen:
  - a. Within thirty days of the date upon which Dr. Allen is notified of the Board's determination that utilizing the Board-approved drug testing facility and/or collection site constitutes an extraordinary hardship upon Dr. Allen, he shall submit to the Board in writing for its prior approval the identity of either an alternate drug testing facility and collection site, or the name of a proposed supervising physician, to whom Dr. Allen shall submit the required urine specimens. In approving a facility, entity, or an individual to serve in this capacity, the Board will give preference to a facility located near Dr. Allen's residence or employment location, or to a physician who practices in the same locale as Dr. Allen. Dr. Allen shall ensure that the urine screening process performed through the alternate drug testing facility and/or collection site, or through the supervising physician, requires a daily call-in procedure; that the urine specimens are obtained on a random basis; and that the giving of the specimen is witnessed by a reliable person. In addition, Dr. Allen acknowledges that the alternate drug testing facility and collection site, or the supervising physician, shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.
  - b. Dr. Allen shall ensure that the alternate drug testing facility and/or collection site, or the supervising physician, provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, and whether all urine screens have been negative.

- c. In the event that the designated alternate drug testing facility and/or collection site, or the supervising physician, becomes unable or unwilling to so serve, Dr. Allen must immediately notify the Board in writing. Dr. Allen shall further ensure that the previously designated alternate drug testing facility and collection site, or the supervising physician, also notifies the Board directly of the inability to continue to serve and the reasons therefore. Further, in order to ensure that there will be no interruption in his urine screening process, upon the previously approved alternate drug testing facility, collection site, or supervising physician becoming unable to serve, Dr. Allen shall immediately commence urine screening at the Board-approved drug testing facility and collection site chosen by the Board, until such time, if any, that the Board approves a subsequent alternate drug testing facility, collection site, or supervising physician, if requested by Dr. Allen.
  - d. The Board expressly reserves the right to disapprove any entity or facility proposed to serve as Dr. Allen's designated alternate drug testing facility and/or collection site, or any person proposed to serve as his supervising physician, or to withdraw approval of any entity, facility or person previously approved to so serve in the event that the Secretary and Supervising Member of the Board determine that any such entity, facility or person has demonstrated a lack of cooperation in providing information to the Board or for any other reason.
  - e. In the event that the Board approved an alternate drug testing facility and/or collection site, or a supervising physician, pursuant to the May 2010 Consent Agreement between Dr. Allen and the Board, Dr. Allen and the Board agree that the entity, facility or person previously approved by the Board to so serve pursuant to the May 2010 Step I Consent Agreement is hereby approved to continue as Dr. Allen's designated alternate drug testing facility and collection site or as his supervising physician under this Consent Agreement.
12. All screening reports required under this Consent Agreement from the Board-approved drug testing facility and/or collection site, or from the alternate drug testing facility and/or collection site or supervising physician, must be received in the Board's offices no later than the due date for Dr. Allen's quarterly declaration. It is Dr. Allen's responsibility to ensure that reports are timely submitted.
13. The Board retains the right to require, and Dr. Allen agrees to submit, blood, urine, breath, saliva and/or hair specimens for screening for drugs and alcohol, for analysis of therapeutic levels of medications that may be prescribed for Dr. Allen, or for any other purpose, at Dr. Allen's expense upon the Board's request and without prior notice. Dr. Allen's refusal to submit a specimen upon request of the Board shall result in a minimum of one year of actual license suspension. Further, the collection of such specimens shall be witnessed by a representative of the Board, or another person acceptable to the Secretary or Supervising Member of the Board.

### **Monitoring Physician**

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

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

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Allen must immediately so notify the Board in writing. In addition, Dr. Allen 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. Allen 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.

The Board expressly reserves the right to disapprove any person proposed to serve as Dr. Allen's designated monitoring physician, or to withdraw approval of any person previously approved to serve as Dr. Allen's designated monitoring physician, in the event that the Secretary and Supervising Member of the Board determine that any such monitoring physician has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

### **Rehabilitation Program**

15. Dr. Allen shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval.

Dr. Allen shall submit acceptable documentary evidence of continuing compliance with this program, including submission to the Board of meeting attendance logs,

which must be received in the Board's offices no later than the due date for Dr. Allen's quarterly declarations.

### **Aftercare**

16. Dr. Allen shall contact an appropriate impaired physicians committee, approved by the Board, to arrange for assistance in recovery or aftercare.
17. Dr. Allen shall maintain continued compliance with the terms of the aftercare contract entered into with a Board-approved treatment provider, provided that, where terms of the aftercare contract conflict with terms of this Consent Agreement, the terms of this Consent Agreement shall control.

### **Releases**

18. Dr. Allen 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. Allen'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. To the extent permitted by law, the above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. Dr. Allen 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.

### **Required Reporting by Licensee**

19. Within thirty days of the effective date of this Consent Agreement, Dr. Allen shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services (including but not limited to third party payors) or is receiving training, and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Allen shall promptly 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. In the event that Dr. Allen provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within thirty days of the effective date of this Consent Agreement Dr. Allen shall provide a copy of this Consent Agreement to the Ohio Department of Public Safety, Division of Emergency Medical Services. Further, Dr.

Allen shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.

20. Within thirty days of the effective date of this Consent Agreement, Dr. Allen shall provide a copy of this Consent Agreement to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Dr. Allen further agrees to provide a copy of this Consent Agreement at time of application to the proper licensing authority of any state in which he applies for any professional license or for reinstatement of any professional license. Further, Dr. Allen shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.
21. Dr. Allen shall promptly provide a copy of this Consent Agreement to all persons and entities that provide Dr. Allen chemical dependency treatment or monitoring. Further, Dr. Allen shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent

Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.

22. Dr. Allen shall notify the Board in writing of any change of principal practice address or residence address within thirty days of such change.

### **FAILURE TO COMPLY**

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

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

### **DURATION/MODIFICATION OF TERMS**

Dr. Allen shall not request termination of this Consent Agreement for a minimum of five years. In addition, Dr. Allen shall not request modification to the probationary terms, limitations, and conditions contained herein for at least one year, except that Dr. Allen may make such request with the mutual approval and joint recommendation of the Secretary and Supervising Member. Otherwise, the above-described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties.

In the event that the Board initiates future formal proceedings against Dr. Allen, including but not limited to issuance of a Notice of Opportunity for Hearing, this Consent Agreement shall continue in full force and effect until such time that it is superseded by ratification by the Board of a subsequent Consent Agreement or issuance by the Board of a final Board Order.

In the event that any term, limitation, or condition contained in this Consent Agreement is determined to be invalid by a court of competent jurisdiction, Dr. Allen and the Board agree that all other terms, limitations, and conditions contained in this Consent Agreement shall be unaffected.

**ACKNOWLEDGMENTS/LIABILITY RELEASE**

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

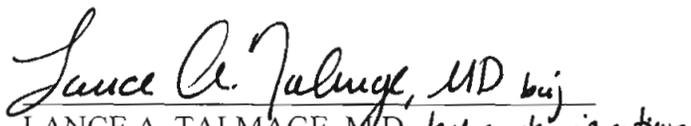
This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. Dr. Allen acknowledges that his social security number will be used if this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

**EFFECTIVE DATE**

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

  
\_\_\_\_\_  
MARK L. ALLEN, M.D.

11/4/2011  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
LANCE A. TALMAGE, M.D. by authorization  
Secretary

Nov. 9, 2011  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
JOHN R. IRWIN, J.D., M.D.  
Attorney for Dr. Allen

11/4/11  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
JACK C. AMATO, M.D.  
Supervising Member

11-9-11  
\_\_\_\_\_  
DATE

*Cheryl D. Pokorny*  
CHERYL D. POKORNY  
Enforcement Attorney

11-7-11  
DATE

**STEP I  
CONSENT AGREEMENT  
BETWEEN  
MARK L. ALLEN, M.D.,  
AND  
THE STATE MEDICAL BOARD OF OHIO**

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

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

**BASIS FOR ACTION**

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

- A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4731.22(B)(26), Ohio Revised Code, 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;" Section 4731.22(B)(10), Ohio Revised Code, for "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed;" Section 4731.22(B)(15), for "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice;" and/or Section 4731.22(B)(18), Ohio Revised Code, for "[v]iolation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule."
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violations of Sections 4731.22(B)(15), Ohio Revised Code; 4731.22(B)(26), Ohio Revised Code; 4731.22(B)(18), Ohio Revised Code, to wit: Principles I, IV and VIII of the American Medical Association's Principles of Medical Ethics; and 4731.22(B)(10), Ohio Revised Code, to wit: Possession of Drugs, Section 2925.11, Ohio Revised Code, as specifically set forth in Paragraph E herein, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement. Such express reservation includes, but is not limited to, violations based upon any

STEP I CONSENT AGREEMENT  
MARK L. ALLEN, M.D.  
PAGE 2

methods used by Dr. Allen to obtain controlled substances for self-use and/or any criminal acts or ethical violations committed by Dr. Allen other than those specifically admitted in Paragraph (E) below. Dr. Allen acknowledges he understands that the Board intends to pursue such violations by separate action, including but not limited to, any violations of Sections 4731.22(B)(5), 4731.22(B)(9), and/or 4731.22(B)(10), Ohio Revised Code, even if such violations arise from the same common nucleus of operative fact as outlined within this Consent Agreement. Dr. Allen further states and acknowledges he understands that subsequent Board Orders may supersede this Step I Consent Agreement and may result in further discipline, up to and including permanent revocation of his license to practice medicine in Ohio.

- C. Dr. Allen is licensed to practice medicine and surgery in the State of Ohio, License number 35.063078.
- D. Dr. Allen states that he is also licensed to practice medicine and surgery in the State of Kansas. Further, Dr. Allen states that formerly he was licensed to practice medicine and surgery in Missouri, but he allowed his license to lapse in or around 1999.
- E. Dr. Allen admits that, on or about January 14, 2004, the Board issued an order suspending his certificate to practice medicine and surgery for an indefinite period of time [January 2004 Order]. The January 2004 Order affirmed a finding by the Board's Hearing Examiner that Dr. Allen was impaired in his ability to practice medicine and surgery according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice. Dr. Allen admits that he was diagnosed as having chemical dependency, with alcohol being his drug of choice. Dr. Allen admits that he appealed the Board's January 2004 Order.

Following remand by the court, Dr. Allen admits that, on or about April 13, 2005, the Board issued an order suspending his certificate to practice medicine and surgery for an indefinite period of time [April 2005 Order]. Dr. Allen also admits that, on or about June 9, 2005, his certificate to practice medicine and surgery was reinstated, and that his compliance with the April 2005 Order continued to be subject to monitoring by the Board for a period of five years [Probationary Period]. Dr. Allen further admits that, under the terms of the April 2005 Order, during the Probationary Period, he was to "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. Allen's history of chemical dependency." Dr. Allen also admits that, under the terms of the April 2005 Order, during the Probationary Period, he was required to "submit blood and urine specimens for analysis without prior notice at such times as the Board may request, as Dr. Allen's expense." Additionally, Dr. Allen admits that, under the terms of the April 2005 Order, he was required to "obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio."

STEP I CONSENT AGREEMENT  
MARK L. ALLEN, M.D.  
PAGE 3

Dr. Allen admits that, on or about Sunday, May 9, 2010, he attended a party with friends. While there, Dr. Allen admits that he used cocaine. Dr. Allen admits that his use of cocaine violates the terms of the Board's April 2005 Order and that it also constitutes a relapse, rendering him impaired in his ability to practice medicine and surgery according to acceptable and prevailing standards of care. Dr. Allen states that his use of cocaine on or about Sunday, May 9, 2010, is his first relapse under the Board's April 2005 Order. Dr. Allen also admits that his use and possession of cocaine was illegal.

Dr. Allen also admits that, on or about Monday, May 10, 2010, a Board investigator visited him at his office for the express purpose of obtaining a sample of urine, as authorized by the terms of the April 2005 Order. Dr. Allen admits that, although the Board investigator waited for approximately one hour, Dr. Allen did not provide a sample of his urine. Dr. Allen admits that his failure to provide a sample of urine violates the Board's April 2005 Order.

Further, Dr. Allen admits that, in or around 2001, he began treating a patient [Patient 1]. Dr. Allen also admits that, in or around March 2002, he began seeing Patient 1 outside of his medical practice and that in or around April 2002, he began having sexual intercourse with Patient 1. Dr. Allen further admits that he continued to treat Patient 1 until in or around July 2002, at which time he transferred her care and treatment to another physician. Dr. Allen states that his sexual contact with Patient 1 was consensual and that he and Patient 1 currently live together. Dr. Allen admits that his sexual contact with Patient 1 while she was his patient violates the American Medical Association's Principles of Medical Ethics, specifically Principles I, IV and VIII.

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

### **SUSPENSION OF CERTIFICATE**

1. The certificate of Dr. Allen to practice medicine and surgery in the State of Ohio shall be REVOKED. Said revocation shall be STAYED, and certificate of Dr. Allen to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than 18 months. Further, the probationary terms of the aforementioned April 2005 Order shall terminate and be superseded by the terms, limitations, and conditions set forth in this Consent Agreement.

### Obey all Laws

2. Dr. Allen shall obey all federal, state, and local laws.

STEP I CONSENT AGREEMENT  
MARK L. ALLEN, M.D.  
PAGE 4

Sobriety

3. Dr. Allen shall abstain completely from the personal use or personal possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. Allen's history of chemical dependency. Further, in the event that Dr. Allen is so prescribed, dispensed or administered any controlled substance, carisoprodol, or tramadol, Dr. Allen shall notify the Board in writing within seven days, providing the Board with the identity of the prescriber; the name of the drug Dr. Allen received; the medical purpose for which he received said drug; the date such drug was initially received; and the dosage, amount, number of refills, and directions for use. Further, within thirty days of the date said drug is so prescribed, dispensed, or administered to him, Dr. Allen shall provide the Board with either a copy of the written prescription or other written verification from the prescriber, including the dosage, amount, number of refills, and directions for use.
4. Dr. Allen shall abstain completely from the use of alcohol.

Absences from Ohio

5. Dr. Allen shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed. Further, the Secretary and Supervising Member of the Board shall have the discretion to grant a waiver of part or all of the monitoring terms set forth in this Consent Agreement for occasional periods of absence of fourteen days or less. In the event that Dr. Allen resides and/or is employed at a location that is within fifty miles of the geographic border of Ohio and any of its contiguous states, Dr. Allen may travel between Ohio and that contiguous state without seeking prior approval of the Secretary or Supervising Member provided that Dr. Allen is able to otherwise maintain full compliance with all other terms, conditions and limitations set forth in this Consent Agreement.

Releases: Quarterly Declarations and Appearances

6. Dr. Allen 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. Allen'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. To the extent permitted by law, the above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of

STEP I CONSENT AGREEMENT  
MARK L. ALLEN, M.D.  
PAGE 5

the Ohio Revised Code and are confidential pursuant to statute. Dr. Allen 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.

7. Dr. Allen 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, or as otherwise requested by the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
8. Dr. Allen 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; Drug Testing Facility and Collection Site

9. Dr. Allen shall submit to random urine screenings for drugs and alcohol at least four times per month, or as otherwise directed by the Board. Dr. Allen shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board, and shall include Dr. Allen's drug(s) of choice.

Dr. Allen shall abstain from the use of any substance and the consumption of poppy seeds or any other food or liquid that may produce a low level positive result in a toxicology screen. Dr. Allen acknowledges that he understands that the consumption or use of such substances, including but not limited to substances such as mouthwash or hand cleaning gel, may cause a positive drug screen that may not be able to be differentiated from intentional ingestion, and therefore such consumption or use is prohibited under this Consent Agreement.

All such urine screenings for drugs and alcohol shall be conducted through a Board-approved drug testing facility and collection site pursuant to the global contract between said facility and the Board, that provides for the Board to maintain ultimate control over the urine screening process and to preserve the confidentiality of all positive screening results in accordance with Section 4731.22(F)(5), Ohio Revised Code, and the screening process shall require a daily call-in procedure. Further, in the event that the Board exercises its discretion, as provided in Paragraph 10 below, to approve urine screenings

STEP I CONSENT AGREEMENT  
MARK L. ALLEN, M.D.  
PAGE 6

to be conducted at an alternative drug testing facility and/or collection site or a supervising physician, such approval shall be expressly contingent upon the Board retaining ultimate control over the urine screening process in a manner that preserves the aforementioned confidentiality of all positive screening results.

Dr. Allen shall submit, at his expense and on the day selected, urine specimens for drug and/or alcohol analysis. All specimens submitted by Dr. Allen shall be negative, except for those substances prescribed, administered, or dispensed to him in conformance with the terms, conditions and limitations set forth in this Consent Agreement. Refusal to submit such specimen, or failure to submit such specimen on the day he is selected or in such manner as the Board may request, shall constitute a violation of this Consent Agreement.

Further, within thirty days of the effective date of this Consent Agreement, Dr. Allen shall enter into the necessary financial and/or contractual arrangements with the Board-approved drug testing facility and/or collection site in order to facilitate the urine screening process in the manner required by this Consent Agreement. Further, Dr. Allen shall promptly provide to the Board written documentation of completion of such arrangements, including a copy of any contract entered into between Dr. Allen and the Board-approved drug testing facility and/or collection site. Dr. Allen's failure to timely complete such arrangements, or failure to timely provide written documentation to the Board of completion of such arrangements, shall constitute a violation of this Consent Agreement.

Dr. Allen shall ensure that the urine screening process performed through the Board-approved drug testing facility and/or collection site requires a daily call-in procedure; that the urine specimens are obtained on a random basis; and that the giving of the specimen is witnessed by a reliable person. In addition, Dr. Allen and the Board-approved drug testing facility and collection site shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Dr. Allen shall ensure that the Board-approved drug testing facility and/or collection site provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, and whether all urine screens have been negative.

In the event that the Board-approved drug testing facility and/or collection site becomes unable or unwilling to serve as required by this Consent Agreement, Dr. Allen must immediately notify the Board in writing, and make arrangements acceptable to the Board, pursuant to Paragraph 10 below, as soon as practicable. Dr. Allen shall further ensure that the Board-approved drug testing facility and/or collection site also notifies the Board directly of its inability to continue to serve and the reasons therefore.

STEP I CONSENT AGREEMENT  
MARK L. ALLEN, M.D.  
PAGE 7

Dr. Allen acknowledges that the Board expressly reserves the right to withdraw its approval of any drug testing facility and/or collection site in the event that the Secretary and Supervising Member of the Board determine that the drug testing facility and/or collection site has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

10. Dr. Allen and the Board agree that it is the intent of this Consent Agreement that Dr. Allen shall submit his urine specimens to the Board-approved drug testing facility and collection site chosen by the Board. However, in the event that utilizing said Board-approved drug testing facility and/or collection site creates an extraordinary hardship upon Dr. Allen, as determined in the sole discretion of the Board, then subject to the following requirements, the Board may approve an alternate drug testing facility and/or collection site, or a supervising physician, to facilitate the urine screening process for Dr. Allen:
  - a. Within thirty days of the date upon which Dr. Allen is notified of the Board's determination that utilizing the Board-approved drug testing facility and/or collection site constitutes an extraordinary hardship upon Dr. Allen, he shall submit to the Board in writing for its prior approval the identity of either an alternate drug testing facility and collection site, or the name of a proposed supervising physician, to whom Dr. Allen shall submit the required urine specimens. In approving a facility, entity, or an individual to serve in this capacity, the Board will give preference to a facility located near Dr. Allen's residence or employment location, or to a physician who practices in the same locale as Dr. Allen. Dr. Allen shall ensure that the urine screening process performed through the alternate drug testing facility and/or collection site, or through the supervising physician, requires a daily call-in procedure; that the urine specimens are obtained on a random basis; and that the giving of the specimen is witnessed by a reliable person. In addition, Dr. Allen acknowledges that the alternate drug testing facility and collection site, or the supervising physician, shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.
  - b. Dr. Allen shall ensure that the alternate drug testing facility and/or collection site, or the supervising physician, provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, and whether all urine screens have been negative.
  - c. In the event that the designated alternate drug testing facility and/or collection site, or the supervising physician, becomes unable or unwilling to so serve, Dr. Allen must immediately notify the Board in writing. Dr. Allen shall further ensure that the previously designated alternate drug testing facility and collection site, or the supervising physician, also notifies the Board directly of the inability to continue to

STEP I CONSENT AGREEMENT  
MARK L. ALLEN, M.D.  
PAGE 8

serve and the reasons therefore. Further, in order to ensure that there will be no interruption in his urine screening process, upon the previously approved alternate drug testing facility, collection site, or supervising physician becoming unable to serve, Dr. Allen shall immediately commence urine screening at the Board-approved drug testing facility and collection site chosen by the Board, until such time, if any, that the Board approves a subsequent alternate drug testing facility, collection site, or supervising physician, if requested by Dr. Allen.

- d. The Board expressly reserves the right to disapprove any entity or facility proposed to serve as Dr. Allen's designated alternate drug testing facility and/or collection site, or any person proposed to serve as his supervising physician, or to withdraw approval of any entity, facility or person previously approved to so serve in the event that the Secretary and Supervising Member of the Board determine that any such entity, facility or person has demonstrated a lack of cooperation in providing information to the Board or for any other reason.
11. All screening reports required under this Consent Agreement from the Board-approved drug testing facility and/or collection site, or from the alternate drug testing facility and/or collection site or supervising physician, must be received in the Board's offices no later than the due date for Dr. Allen's quarterly declaration. It is Dr. Allen's responsibility to ensure that reports are timely submitted.
12. The Board retains the right to require, and Dr. Allen agrees to submit, blood, urine, breath, saliva and/or hair specimens for screening for drugs and alcohol, for analysis of therapeutic levels of medications that may be prescribed for Dr. Allen, or for any other purpose, at Dr. Allen's expense upon the Board's request and without prior notice. Dr. Allen's refusal to submit a specimen upon request of the Board shall result in a minimum of one year of actual license suspension. Further, the collection of such specimens shall be witnessed by a representative of the Board, or another person acceptable to the Secretary or Supervising Member of the Board.

Rehabilitation Program

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

STEP I CONSENT AGREEMENT  
MARK L. ALLEN, M.D.  
PAGE 9

14. Immediately upon completion of any required treatment for chemical dependency, Dr. Allen shall enter into an aftercare contract with a Board-approved treatment provider and shall maintain continued compliance with the terms of said aftercare contract, provided that, where the terms of the aftercare contract conflict with the terms of this Consent Agreement, the terms of this Consent Agreement shall control.

### CONDITIONS FOR REINSTATEMENT

15. The Board shall not consider reinstatement or restoration of Dr. Allen's certificate to practice medicine and surgery until all of the following conditions are met:
- a. Dr. Allen shall submit an application for reinstatement or restoration, as appropriate, accompanied by appropriate fees, if any.
  - b. Dr. Allen shall provide acceptable documentation of successful completion of a course or courses dealing with professional boundaries. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee.

In addition, at the time Dr. Allen submits the documentation of successful completion of the course or courses dealing with professional boundaries, he also shall submit to the Board a written report describing the course, setting forth what he learned from the course, and identifying with specificity how he will apply what he has learned to his practice of medicine and surgery in the future.

- c. Dr. Allen 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. Allen has successfully completed any required inpatient treatment, including at least twenty-eight days of inpatient or residential treatment for chemical abuse/dependence, as set forth in Rules 4731-16-02 and 4731-16-08, Ohio Administrative Code, completed consecutively.
  - ii. Evidence of continuing full compliance with, or successful completion of, 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, and must commence on a date on or after the effective date of this Consent Agreement.

STEP 1 CONSENT AGREEMENT  
MARK L. ALLEN, M.D.  
PAGE 10

- iii. Evidence of continuing full compliance with this Consent Agreement.
- iv. Two written reports indicating that Dr. Allen's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by physicians knowledgeable in the area of addictionology and who are either affiliated with a current Board-approved treatment provider or otherwise have been approved in advance by the Board to provide an assessment of Dr. Allen. Further, the two aforementioned physicians shall not be affiliated with the same treatment provider or medical group practice. Prior to the assessments, Dr. Allen shall provide the evaluators with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The reports from the evaluators shall include any recommendations for treatment, monitoring, or supervision of Dr. Allen, and any conditions, restrictions, or limitations that should be imposed on Dr. Allen's practice. The reports shall also describe the basis for the evaluator's determinations.  
  
All reports required pursuant to this paragraph shall be based upon examinations occurring within the three months immediately preceding any application for reinstatement. Further, at the discretion of the Secretary and Supervising Member of the Board, the Board may request an updated assessment and report if the Secretary and Supervising Member determine that such updated assessment and report is warranted for any reason.
- v. In the event that the Board initiates future formal proceedings against Dr. Allen, including but not limited to issuance of a Notice of Opportunity for Hearing, Dr. Allen shall be ineligible for reinstatement until such proceedings are fully resolved by ratification by the Board of a subsequent Consent Agreement or issuance by the Board of a final Board Order.
- d. Dr. Allen shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the Board within 180 days of the date upon which all the above-specified conditions for reinstatement or restoration have been completed or, if the Board and Dr. Allen are unable to agree on the terms of a written Consent Agreement, then Dr. Allen 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. The Board shall provide notice to Dr. Allen that said hearing has been scheduled, advising Dr. Allen of his hearing rights, and stating the date, time, and location of the hearing at which the Board will present its evidence, after which the Board will make a determination of the matter by Board Order.

Further, upon reinstatement of Dr. Allen's certificate to practice medicine and

STEP I CONSENT AGREEMENT  
MARK L. ALLEN, M.D.  
PAGE 11

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. Allen 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. Allen has maintained sobriety.

16. In the event that Dr. Allen 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. Allen's fitness to resume practice.

#### REQUIRED REPORTING BY LICENSEE

17. Within thirty days of the effective date of this Consent Agreement, Dr. Allen shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services (including but not limited to third party payors) or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Allen shall promptly 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. In the event that Dr. Allen provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within thirty days of the effective date of this Consent Agreement Dr. Allen shall provide a copy of this Consent Agreement to the Ohio Department of Public Safety, Division of Emergency Medical Services. Further, Dr. Allen shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.
18. Within thirty days of the effective date of this Consent Agreement, Dr. Allen shall provide a copy of this Consent Agreement to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Dr. Allen further agrees to provide a

STEP I CONSENT AGREEMENT  
MARK L. ALLEN, M.D.  
PAGE 12

copy of this Consent Agreement 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. Allen shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.

19. Dr. Allen shall promptly provide a copy of this Consent Agreement to all persons and entities that provide Dr. Allen chemical dependency treatment or monitoring. Further, Dr. Allen shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.
20. Dr. Allen shall notify the Board in writing of any change of principal practice address or residence address within thirty days of such change.

#### DURATION/MODIFICATION OF TERMS

The above-described terms, conditions and limitations may be amended or terminated in writing at any time upon the agreement of both parties. In the event that the Board initiates future formal proceedings against Dr. Allen, including but not limited to issuance of a Notice of Opportunity for Hearing, this Consent Agreement shall continue in full force and effect until such time that it is superseded by ratification by the Board of a subsequent Consent Agreement or issuance by the Board of a final Board Order.

In the event that any term, limitation, or condition contained in this Consent Agreement is determined to be invalid by a court of competent jurisdiction, Dr. Allen and the Board agree that all other terms, limitations, and conditions contained in this Consent Agreement shall be unaffected.

STEP I CONSENT AGREEMENT  
MARK L. ALLEN, M.D.  
PAGE 13

**FAILURE TO COMPLY**

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Allen 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. Allen 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. Allen hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

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

**EFFECTIVE DATE**

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

  
\_\_\_\_\_  
MARK L. ALLEN, M.D.

  
\_\_\_\_\_  
LANCE A. TALMAGE, M.D.  
Secretary

5/12/10  
\_\_\_\_\_  
DATE

5-12-10  
\_\_\_\_\_  
DATE

STEP I CONSENT AGREEMENT  
MARK L. ALLEN, M.D.  
PAGE 14

*John R. Irwin*

JOHN R. IRWIN, M.D., J.D.  
Attorney for Dr. Allen

*5/12/10*  
DATE

*Jack C. Amato*

JACK C. AMATO  
Acting Supervising Member

*5/12/10*  
DATE

*Cheryl D. Pokorny*  
CHERYL D. POKORNY  
Enforcement Attorney

*May 12, 2010*  
DATE



# State Medical Board of Ohio

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

April 13, 2005

Mark L. Allen, M.D.  
5500 Laurent Drive, #617  
Parma, OH 44129

Dear Dr. Allen:

Please find enclosed a certified copy of the Order and Entry in the above referenced matter, approved and confirmed by the State Medical Board of Ohio meeting in regular session on April 13, 2005. This Order and Entry documents the Medical Board's reconsideration of the penalty in this matter in accordance with the instruction of the Franklin County Court of Common Pleas.

Section 119.12, Ohio Revised Code, may, but does not necessarily, authorize an appeal from this Order. 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 with the Franklin County Court of Common Pleas within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

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

LAT:baj  
Enclosures

CERTIFIED MAIL RECEIPT NO. 7003 0500 0002 4332 5787  
RETURN RECEIPT REQUESTED

Cc: John R. Irwin, M.D., Esq.

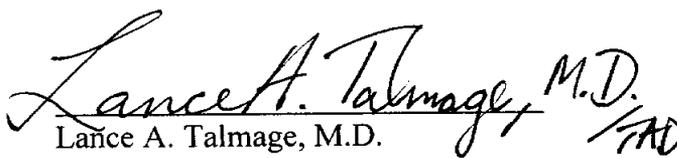
CERTIFIED MAIL RECEIPT NO. 7003 0500 0002 4332 5794  
RETURN RECEIPT REQUESTED

MAILED 4-22-05

**CERTIFICATION**

I hereby certify that the attached copy of the Order and Entry of the State Medical Board of Ohio; attached copy of the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board; April 13, 2005, Entry of Order in the matter of Mark L. Allen, M.D.; and attached excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 13, 2005, including a Motion approving and amending the Findings of Fact, amending the Conclusions of Law, and adopting an amended Order, constitute a true and complete copy of the Order and Entry of the State Medical Board in the Matter of Mark L. Allen, 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 13, 2005

\_\_\_\_\_  
Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

In the Matter of :  
:  
Mark L. Allen, M.D. :

**ORDER AND ENTRY**

On January 14, 2004, the State Medical Board of Ohio issued its Findings and Order in the Matter of Mark L. Allen, M.D., whereby Dr. Allen's license to practice medicine and surgery in the State of Ohio was suspended for an indefinite period of time. The Order further set out interim monitoring conditions, conditions for reinstatement, and established a period of probation of not less than five years. A copy of those Findings and Order are attached hereto and incorporated herein.

Pursuant to 119.12, Ohio Revised Code, Dr. Allen appealed the Medical Board's Order to the Franklin Court of Common Pleas, which affirmed the Medical Board's decision in February 2005, but remanded the matter to the Board to reconsider the sanctions imposed against Dr. Allen, based upon the Court's finding that certain testimony produced at the hearing was not credible and that such testimony must be disregarded.

WHEREFORE, pursuant to the instructions of the Franklin County Court of Common Pleas and upon approval and confirmation by vote of the Board on April 13, 2005, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for that date.

It is hereby ORDERED that:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Mark L. Allen, M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time.
- B. **INTERIM MONITORING:** During the period that Dr. Allen's certificate to practice medicine and surgery in Ohio is suspended, Dr. Allen shall comply with the following terms, conditions, and limitations:
  - 1. **Obey the Law:** Dr. Allen shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.

2. **Personal Appearances**: Dr. Allen shall appear in person for quarterly interviews before the Board or its designated representative, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
3. **Quarterly Declarations**: Dr. Allen shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
4. **Abstention from Drugs**: Dr. Allen 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. Allen's history of chemical dependency.
5. **Abstention from Alcohol**: Dr. Allen shall abstain completely from the use of alcohol.
6. **Drug & Alcohol Screens; Supervising Physician**: Dr. Allen shall submit to random urine screenings for drugs and/or alcohol on a weekly basis or as otherwise directed by the Board. Dr. Allen 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. Allen shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Allen 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. Allen. Dr. Allen 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. Allen 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. Allen must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Allen 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. Allen's quarterly declaration. It is Dr. Allen's responsibility to ensure that reports are timely submitted.

7. **Submission of Blood or Urine Specimens upon Request:** Dr. Allen shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Allen's expense.
8. **Rehabilitation Program:** Dr. Allen 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. Allen 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. Allen's quarterly declarations.
9. **Contact Impaired Physicians Committee:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Allen shall contact an impaired physicians committee, approved by the Board, to arrange for assistance in recovery and/or aftercare.

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

1. **Application for Reinstatement or Restoration:** Dr. Allen shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Compliance with Interim Conditions:** Dr. Allen 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. Allen 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. Allen has successfully completed any required inpatient treatment.
    - b. Evidence of continuing full compliance, for at least ninety days prior to submitting an application for reinstatement or restoration, 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. Allen'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. Allen's application for reinstatement. The reports of evaluation shall describe with particularity the bases for the determination that Dr. Allen 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. Allen 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. Allen's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:

1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Allen 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. **Tolling of Probationary Period While Out of State:** In the event that Dr. Allen should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Allen 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.
3. **Violation of Terms of Probation:** If Dr. Allen 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. Allen's certificate will be fully restored.

F. **RELEASES:** Dr. Allen 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. Allen'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. Allen shall also provide the Board written consent permitting any treatment provider from whom Dr. Allen 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.

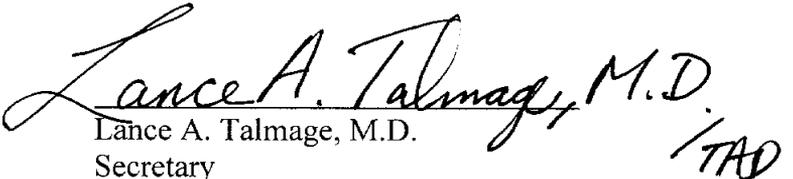
G. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Dr. Allen shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Allen 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. Allen 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. Allen 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. Allen shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

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

  
Lance A. Talmage, M.D.  
Secretary

(SEAL)

April 13, 2005

Date



# State Medical Board of Ohio

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

## EXCERPT FROM THE MINUTES OF APRIL 13, 2005

### REMAND IN THE MATTER OF MARK L. ALLEN, M.D.

Dr. Davidson directed the Board's attention to the matter of Mark L. Allen, M.D. She advised that this matter was previously considered by the Board at its meeting of January 14, 2004. The Franklin County Court of Common Pleas remanded this matter to the Board for reconsideration of the original Order in light of the Court's decision of March 19, 2004. In that decision, the Court held that the testimony of Roy Nichols, Certified Chemical Dependency Counselor at Glenbeigh Health Services, should not be given weight and should be disregarded as unreliable. Further, the Court held that the Board should reconsider the sanction it imposed and enter an Order without regard for Mr. Nichols' testimony. The Board's Order issued January 14, 2004 suspended Dr. Allen's license for an indefinite period, but not less than ninety days and established conditions for interim monitoring, reinstatement, and probation.

Dr. Robbins stated that, even after disregarding Mr. Nichols' testimony at hearing, the Order adopted on January 14, 2004 is appropriate in this case.

### **DR. ROBBINS MOVED TO REAFFIRM THE ORDER OF JANUARY 14, 2004, IN THE MATTER OF MARK L. ALLEN, M.D. DR. STEINBERGH SECONDED THE MOTION.**

Dr. Steinbergh agreed with Dr. Robbins. She stated that she has read the hearing record and has disregarded Mr. Nichols' testimony. She noted that the testimony of both Chester J. Prusinski, D.O., and Gregory B. Collins, M.D., state that Dr. Allen is an impaired physician. The original Proposed Order in this case is appropriate for an impaired physician.

A vote was taken:

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

The motion carried.

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

TERMINATION NO. 70  
BY: al 2-10-05

IN THE MATTER OF: :  
: CASE NO. 04-CVF-02-1214  
MARK L. ALLEN, M.D. :  
: JUDGE REECE

**JUDGMENT ENTRY AFFIRMING THE STATE MEDICAL BOARD'S  
JANUARY 14, 2004 ORDER BUT REMANDING CASE FOR THE STATE MEDICAL  
BOARD TO RECONSIDER SANCTIONS AND SUSPENDING ORDER UNTIL SUCH  
RECONSIDERATION**

This case is before the Court upon the appeal, pursuant to R.C. 119.12, of the January 14, 2004 Order of the State Medical Board of Ohio which indefinitely suspended Mark L. Allen, M.D.'s license to practice medicine and surgery in Ohio, imposed conditions for reinstatement or restoration and subsequent probationary terms, conditions and limitations for at least five years. For the reasons stated in the decision of this Court rendered on January 25, 2005, and filed January 27, 2005, which decision is incorporated by reference as if fully rewritten herein, it is hereby

ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of Appellee, State Medical Board of Ohio, and the January 14, 2004 Order of the State Medical Board in the matter of Mark L. Allen, M.D. is hereby AFFIRMED. The case is REMANDED for the State Medical Board to reconsider its sanction in light of the Court's findings and the Order is SUSPENDED until the Board enters an Order reflecting such reconsideration. Cost to Appellant.

IT IS SO ORDERED.

STATE MEDICAL BOARD  
OF OHIO

Date

Judge Guy L. Reece

JUDGE REECE

FILED  
COMMON PLEAS COURT  
FRANKLIN COUNTY, OHIO  
2005 FEB 10 PM 3:34  
CLERK OF COURTS

2005 FEB 14 A 11:22

APPROVED:

**JIM PETRO** (0022096)  
Attorney General

*Leonard W. Yelsky* *Rebecca J. Albers* *Sam Weiner*

**LEONARD W. YELSKY** (0034277)  
Yelsky & Lonardo  
526 Superior Avenue, East, Suite 1050  
Cleveland, Ohio 44114  
(216) 781-2550

*per phone  
attorney  
2/7/05*

**REBECCA J. ALBERS** (0059203)  
Senior Assistant Attorney General  
Health and Human Services Section  
30 East Broad Street, 26<sup>th</sup> Floor  
Columbus, Ohio 43215-3400  
(614) 644-8856  
Facsimile (614) 466-6090

*Sam Weiner*

**SAM WEINER** (0003070)  
743 South Front Street  
Columbus, Ohio 43206  
(614) 443-6581

*per phone  
attorney  
2/7/05*

Counsel for the State Medical Board

Counsel for Mark L. Allen, M.D

STATE MEDICAL BOARD  
OF OHIO

2005 FEB 14 A 11: 22

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

MARK L. ALLEN, M.D., ] CASE NO. 04CVF02-1214  
Appellant, ] JUDGE REECE  
vs. ]  
STATE MEDICAL BOARD OF OHIO, ]  
Appellee. ]

**DECISION ON MERITS OF REVISED CODE 119.12 APPEAL, AFFIRMING ORDER  
ISSUED BY STATE MEDICAL BOARD OF OHIO ON JANUARY 14, 2004, BUT  
REMANDING CASE FOR BOARD TO RECONSIDER SANCTIONS, AND SUSPENDING  
ORDER UNTIL SUCH TIME AS BOARD RECONSIDERS SANCTIONS**

Rendered this 25<sup>th</sup> day of January 2005.

REECE, J.

This case is a Revised Code 119.12 appeal, by Mark L. Allen, M.D. ("Appellant"), from an Order that the State Medical Board of Ohio ("Medical Board" or "Board") issued on January 14, 2004, indefinitely suspending Appellant's certificate to practice medicine and surgery in Ohio, with conditions for reinstatement or restoration. On November 18, 2004, the Court heard oral arguments. Having considered the parties' oral arguments and written briefs, and having reviewed the certified record of the Board's proceedings, the Court hereby renders the following decision on the merits of this appeal, affirming the Board's Order but remanding the case for the Board to reconsider the sanctions it has imposed upon Appellant.

**I. Procedural History**

Appellant is an anesthesiologist who has held a certificate to practice medicine and surgery in Ohio since 1992. On August 27, 1999, in the Bedford (Ohio) Municipal Court, Appellant pled no contest to and was found guilty of Driving While Under the Influence of Alcohol ("DUI"), arising out of his operation of a motor vehicle on June 7, 1999, in Moreland

FILED IN COURT  
2005 JAN 27 11:33  
CLERK OF COURTS

Hills, Ohio. On May 9, 2001, in Solon, Ohio, Appellant was arrested for and charged with a second DUI offense. On November 7, 2001, again in the Bedford Municipal Court, Appellant pled guilty to and was found guilty of an amended charge of Reckless Operation.

By letter dated September 3, 2003, the Medical Board notified Appellant that the Board had reason to believe that Appellant was in violation of R.C. 4731.22(B)(26), which provides:

§ 4731.22. Grounds for discipline \*\*\*

\*\*\*

(B) The board \*\*\* shall \*\*\* limit, revoke, or suspend an individual's certificate to practice, \*\*\* or reprimand or place on probation the holder of a certificate for one or more of the following reasons:

\*\*\*

(26) Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of \*\*\* alcohol \*\*\*.

\*\*\*

If it has reason to believe that any individual authorized to practice by this chapter \*\*\* suffers such impairment, the board may compel the individual to submit to a mental or physical examination, or both. \*\*\* Any mental or physical examination required under this division shall be undertaken by a treatment provider or physician who is qualified to conduct the examination and who is chosen by the board.

In its September 3, 2003 letter, the Board ordered Appellant to submit to a three-day, inpatient, chemical-dependency evaluation, at Glenbeigh Hospital of Rock Creek, Ohio ("Glenbeigh Hospital" or "Glenbeigh"), in order to determine whether Appellant was in violation of R.C. 4731.22(B)(26). On October 6, 2003, Appellant reported to Glenbeigh Hospital for the evaluation.

In a letter dated November 4, 2003, Glenbeigh's Medical Director, Dr. Chester Prusinski, reported to the Medical Board:

Mark Allen, M.D., was referred to Glenbeigh Hospital by the Ohio State Medical Board for an inpatient chemical dependency assessment.

While at Glenbeigh, I saw him on October 7, 2003 for a complete history and physical examination, which was followed by a comprehensive biopsychsocial [*sic*] assessment that included a thorough chemical usage history. As a result of my review of this information, my findings are that Mark Allen, M.D., is not qualified, by impairment due to alcohol dependence, to perform his duties as a physician in accordance to acceptable prevailing standards of care because of habitual and excessive abuse that has impaired his ability to practice.

We therefore recommend residential treatment of twenty-eight days duration at a facility acceptable to the Ohio State Medical Board.

On October 27, 2003, Appellant admitted himself to The Cleveland Clinic Foundation ("Cleveland Clinic") for a second three-day, inpatient, chemical-dependency evaluation. Appellant's attorney then forwarded to the Board a letter dated November 7, 2003, from the Section Head of the Cleveland Clinic's Alcohol and Drug Recovery Center, Dr. Gregory Collins. In the letter, Dr. Collins reported:

Your client, the above-mentioned Dr. Mark Allen was seen and thoroughly evaluated at The Cleveland Clinic Foundation, as an inpatient beginning on October 27, 2003. This evaluation included attention to substance abuse, physical issues, and psychiatric fitness. The final diagnosis reached upon the conclusion of the evaluation was alcohol dependence in remission, based on a finding that Dr. Allen has been free of alcohol since May 9, 2001, the day of his DUI. \*\*\*

On the basis of the three day assessment done at The Cleveland Clinic Foundation, commencing on October 27, 2003, it was recommended by this State Medical Board of Ohio approved provider that Dr. Allen complete a 28 day residential treatment stay for his diagnosis of alcohol dependence in remission. Dr. Allen has willingly agreed to do so and is in the midst of completing the 28 day recommended residential treatment requirement. He is fully prepared to participate actively in required aftercare as well. Dr. Allen has demonstrated a solid commitment to sobriety, full acceptance of the reality of his dependence on alcohol, full compliance with the terms and conditions of our recommended treatment program. \*\*\* Based on our thorough assessment of Dr. Allen, there is no psychiatric medical or substance abuse contraindication to his returning to active medical practice upon completion of his required 28 day residential treatment at The Cleveland Clinic Foundation. I would be in strong support of board action to allow Dr. Allen to promptly resume active medical practice at the time of his discharge from The Cleveland Clinic residential program.

Revised Code 4731.22(G) provides:

§ 4731.22. Grounds for discipline\*\*\*

\*\*\*

(G) If the secretary and supervising member [of the Medical Board] determine that there is clear and convincing evidence that an individual has violated division (B) of this section and that the individual's continued practice presents a danger of immediate and serious harm to the public, they may recommend that the board suspend the individual's certificate to practice without a prior hearing. Written allegations shall be prepared for consideration by the board.

The board, upon review of those allegations \*\*\*, may suspend a certificate without a prior hearing. \*\*\*

By letter dated November 12, 2003, the Medical Board notified Appellant that the Board was summarily suspending his certificate to practice medicine and surgery in Ohio, pursuant to R.C. 4731.22(G). By letter dated November 12, 2003, the Board also notified Appellant that the Board proposed to take further disciplinary action against Appellant's certificate pursuant to R.C. 4731.22(B)(26).

Appellant requested and was granted an evidentiary hearing on the Medical Board's charges. A Hearing Examiner conducted the hearing on December 4 and 5, 2003. By the time of the hearing, Appellant had completed twenty-eight days of inpatient treatment at the Cleveland Clinic. Appellant had not, however, entered into the required aftercare program recommended by Dr. Collins in his letter of November 7, 2003.

In a Report and Recommendation issued on December 19, 2003, the Hearing Examiner recommended that the Medical Board indefinitely suspend Appellant's certificate to practice medicine and surgery in Ohio, with conditions for reinstatement or restoration. In the Report and Recommendation, the Hearing Examiner rendered the following findings of fact, which the Board ultimately adopted as its own, and which Appellant has never challenged:

1. The Board notified Mark L. Allen, M.D., by letter, of its determination that it had reason to believe that he was in violation of Section 4731.22(B)(26), Ohio Revised Code, and ordered him to a three-day evaluation, beginning on October 6, 2003, at Glenbeigh Health Sources of Rock Creek [Glenbeigh], a Board-approved treatment provider in Rock Creek, Ohio, in order to determine whether Appellant was in violation of Section 4731.22(B)(26), Ohio Revised Code. On October 6, 2003, Dr. Allen reported to Glenbeigh for purposes of the evaluation ordered by the Board.

Based upon the Glenbeigh treatment team's evaluation, Appellant was diagnosed as having chemical dependency, with alcohol being his drug of choice. In addition, Chester J. Prusinski, D.O., Medical Director of Glenbeigh, concluded that Appellant has an impairment of his ability to practice according to acceptable and prevailing standards of care because of habitual and excessive abuse of alcohol, and recommended that he undergo 28 days of residential treatment.

2. Beginning on October 27, 2003, Dr. Allen was admitted to The Cleveland Clinic Foundation, a Board-approved treatment provider, for an additional three-day assessment. Thereafter, Dr. Allen's attorney forwarded to the Board a letter dated November 7, 2003, from Gregory B. Collins, M.D., Section Head of the Alcohol and Drug Recovery Center of The Cleveland Clinic Foundation. In his letter, Dr. Collins stated, in part, as follows:

On the basis of the three day assessment done at The Cleveland Clinic Foundation, commencing on October 27, 2003, it was recommended by this State Medical Board of Ohio approved provider that Dr. Allen complete a 28 day residential treatment stay for his diagnosis of alcohol dependence in remission. Dr. Allen has willingly agreed to do so and is in the midst of completing the 28 day recommended residential treatment requirement.

The Hearing Examiner concluded that Appellant's conduct, as described in the foregoing findings of fact, constituted an "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of \*\*\* alcohol," as that clause is used in R.C. 4731.22(B)(26).

The Medical Board considered this matter at its January 14, 2004 meeting. Following discussion, the Board voted unanimously to adopt the Hearing Examiner's Report and Recommendation. On January 16, 2004, the Board mailed a copy of its Order to Appellant.

This appeal followed.

## **II. Facts of the Case**

At the Medical Board hearing on December 4 and 5, 2003, the State presented the testimony of Dr. Prusinski, Roy Nichols, and Appellant as if on cross-examination. Appellant testified and presented the testimony of Dr. Collins, Dr. Jerome B. Yokiell, Dr. Charles V. Barrett, and Dr. Jill H. Mushkat. The following is a synopsis of the witnesses' testimony.

**Testimony of Chester J. Prusinski, D.O.**

Chester J. Prusinski, D.O., has been the Medical Director of Glenbeigh Hospital since 1992. (Tr. 52, 55-56.) Dr. Prusinski graduated from the Kansas City College of Osteopathic Medicine and Surgery in 1964, and has been a practicing physician for thirty-nine years. (Tr. 53-54.) After completing a residency at Richmond Heights General Hospital in Richmond Heights, Ohio, Dr. Prusinski engaged in private practice from 1965 until 1992, in northeast Ohio. (Tr. 53-54.) Dr. Prusinski has been board-certified in the specialty of family medicine since 1977 and, since approximately 1997, he has been certified in the specialty of addictionology, by the American Society of Addiction Medicine. (Tr. 55-56.) Dr. Prusinski is a recovering alcoholic who last consumed alcohol on February 19, 1988. (Tr. 54, 69-70, 72.)

Dr. Prusinski met with Appellant on October 7, 2003, the second day of Appellant's three-day evaluation at Glenbeigh. (Tr. 57, 59-60.) At that time, Dr. Prusinski took Appellant's medical history, including Appellant's chemical dependency history, performed a physical examination of Appellant, and reviewed Appellant's blood work. (Tr. 57-60.) Appellant reported to Dr. Prusinski that Appellant had last consumed alcohol on May 9, 2001, the date of Appellant's most recent DUI arrest. (Tr. 72.) When Dr. Prusinski reviewed Appellant's blood work, Dr. Prusinski concluded that Appellant's results were typical of alcohol abuse, specifically macrocytosis, or the presence of enlarged red blood cells. (Tr. 60-61.) Dr. Prusinski also concluded that the deficiency of vitamin B-12 in Appellant's system could be related to alcohol abuse, because it is difficult for an alcoholic to absorb vitamin B-12. (Tr. 61-62.)

After Appellant was examined by Dr. Prusinski, Appellant met with intake counselor Roy Nichols, who interviewed Appellant, performed a test on Appellant, and interviewed persons whom Appellant had authorized Mr. Nichols to interview. (Tr. 62.) Mr. Nichols then discussed his findings with Dr. Prusinski, at which time Dr. Prusinski and Mr. Nichols concluded that Appellant was a chronic alcoholic. (Tr. 62, 84-85.)

At the hearing below, without objection, the Hearing Examiner declared Dr. Prusinski to be an expert witness on the subject of addiction. (Tr. 59.) Based upon Dr. Prusinski's education, training, and experience, and his examination of Appellant, Dr. Prusinski rendered the opinion, to a reasonable degree of medical probability, that Appellant's ability to practice medicine was impaired by his use of alcohol. (Tr. 68, 82.)

Appellant did not receive a psychiatric examination during his stay at Glenbeigh Hospital, and Dr. Prusinski was able to render his opinion regarding Appellant's impairment without one. (Tr. 63-64, 66, 74-75, 77.) When Dr. Prusinski initially reported his findings to the Medical Board, in a letter dated November 4, 2003, he incorrectly stated that a psychiatric examination had been performed at Glenbeigh. (State's Exhibit 2.) Dr. Prusinski thereafter sent a corrected letter to the Board, omitting the reference to a psychiatric examination. (State's Exhibit 3.) The lack of a psychiatric examination did not cause Dr. Prusinski to change his opinion that Appellant was an impaired physician. (Tr. 84.)

Dr. Prusinski and Mr. Nichols devised a treatment plan for Appellant. (Tr. 59.) They determined that Appellant required twenty-eight days of inpatient treatment to address his alcohol impairment. (Tr. 66-67.)

#### **Testimony of Roy V. Nichols**

Roy V. Nichols has been employed by Glenbeigh Hospital since 1998, as a certified intake chemical-dependency counselor. (Tr. 86-87, 139-140.) Mr. Nichols received a bachelor's degree in comprehensive sciences from Wittenberg University in 1959, a mortuary degree from the Cincinnati College of Mortuary Science in 1963, and a master's degree in education from Wittenberg University in 1967. (Tr. 86.) Mr. Nichols completed graduate work in substance abuse at Ursuline University in Pepper Pike, Ohio, and has received a significant amount of in-service training in substance abuse. (Tr. 88.) Before Mr. Nichols became employed by Glenbeigh, he was a chemical-dependency counselor at Alcoholism Services of Cleveland. (Tr. 87.) Under the supervision of a clinical psychologist,

Mr. Nichols is qualified to diagnose patients for chemical dependency. (Tr. 140-142.) Mr. Nichols is a recovering alcoholic who last consumed alcohol on July 26, 1984. (Tr. 142-143, 159-160.)

Mr. Nichols evaluated Appellant on October 8, 2003. (Tr. 92.) It was Mr. Nichols's responsibility to determine whether Appellant was chemically impaired and, if so, to what extent. (Tr. 193.) In order to make that determination, Mr. Nichols reviewed Appellant's chart and correspondence from the Medical Board, interviewed Appellant, spoke with individuals whom Appellant had authorized Mr. Nichols to contact, and administered a test called the "Substance Abuse Subtle Screening Inventory," or "SASSI." (Tr. 88-90.) Appellant told Mr. Nichols that Appellant was a recovering alcoholic who had not consumed alcohol since his second DUI arrest in May 2001. (Tr. 114, 142-143.)

With Appellant's permission, Mr. Nichols conducted telephone interviews of several significant persons in Appellant's life. (Tr. 162.)

Mr. Nichols interviewed Appellant's sponsor in Alcoholics Anonymous ("AA"), Dion Howells. Mr. Howells's account of Appellant was so "glowing" that Mr. Nichols doubted that it was possible for Appellant to work the number of hours that Appellant reported he worked, and also participate so extensively in an AA program. (Tr. 111-112, 181.)

Mr. Nichols interviewed Appellant's wife, Elizabeth, who did not believe that Appellant was an alcoholic. (Tr. 113-114.) Appellant's wife reported to Mr. Nichols, however, that there were times when Appellant admitted that he could not remember some of his conversations with her. (Tr. 114, 124.) To Mr. Nichols, Appellant's lack of memory suggested the possibility of blackouts, which is a strong symptom of alcoholism. (Tr. 114.) Appellant's wife reported to Mr. Nichols that, when Appellant received the September 3, 2003 letter from the Medical Board, he took a drink. (Tr. 114, 145, 163.)

Mr. Nichols spoke with Cynthia Downing, Ph.D., who reported to Mr. Nichols that Appellant had been involved in her aftercare program while on probation for his second DUI-related offense, but that, after his probation was terminated, he quit aftercare and did not

return to aftercare until he received the September 3, 2003 letter from the Medical Board. (Tr. 116-117.) Dr. Downing reported heavier drinking than what Appellant admitted to Mr. Nichols. (Tr. 124-125.)

Mr. Nichols interviewed Dr. Kurt W. Jensen, a clinical psychologist, but did not make notes of that conversation because Mr. Nichols determined that Dr. Jensen's work with Appellant was not pertinent to Mr. Nichols's assessment, inasmuch as Appellant told Mr. Nichols that Appellant was not seeing Dr. Jensen for alcoholism. (Tr. 156-158, 183.)

The "Diagnostical and Statistical Manual of Mental Disorders" sets forth seven criteria by which a diagnosis of alcoholism is made. (Tr. 132-133.) That diagnosis requires at least three positive responses out of a possible seven in order to render a diagnosis of alcoholism. (Tr. 132-133.) Appellant had a positive response to four of the seven criteria. (Tr. 132-133.) Those four criteria were: his increased tolerance for alcohol; he consumed the alcohol in larger amounts or over a longer period of time than he intended; his persistent desire or unsuccessful attempts to cut down or control his use of alcohol; and he used the alcohol despite his knowledge that he had a persistent or recurrent physical or psychological problem that was likely to have been caused or exacerbated by the alcohol. (Tr. 133-134.) On the strength of those four criteria, Mr. Nichols arrived at a formal diagnosis of alcoholism. (Tr. 134.)

As part of the evaluation process, as stated above, Mr. Nichols administered a test called the "Substance Abuse Subtle Screening Inventory," or "SASSI," to Appellant. (Tr. 89, 94-95, 149-150.) When Mr. Nichols scored Appellant's answers to the SASSI, the scores reflected a low probability that Appellant had a substance dependence disorder. (Tr. 95-98.) However, the scores also reflected a high "defensive" score, which caused Mr. Nichols concern. (Tr. 98.) Appellant's high defensive score served as a "red flag" that alerted Mr. Nichols that Appellant was in denial and/or trying to manipulate the test results. (Tr. 108.) Because of Appellant's high defensive score, Mr. Nichols doubted the truth of Appellant's answers to the SASSI, and he believed that Appellant might, in fact, be a substance-

dependent person. (Tr. 99, 103.) In addition to Appellant's high defensive score on the SASSI, the alcohol use that Appellant reported to Mr. Nichols suggested to Mr. Nichols that Appellant "should have" had a higher score on the SASSI. (Tr. 103-104.)

On the SASSI test form, the company that prepares the test provides a toll-free telephone number that the test giver may call to obtain a free consultation regarding the test results. (Tr. 99, 184.) Because Mr. Nichols doubted the accuracy of Appellant's test results, Mr. Nichols called that number, on November 7, 2003, to obtain the free consultation. (Tr. 101, 184.) Mr. Nichols spoke with a male employee, and Mr. Nichols admitted that, although he does not know that person's identity or qualifications to interpret the test results, Mr. Nichols nevertheless trusted that the unidentified person was qualified to offer an interpretation of Appellant's test scores. (Tr. 99-101, 150-156, 158, 184-185, 187.) This unidentified employee told Mr. Nichols that Appellant's high defensive score suggested that Appellant had "attempted to conceal his problems" and to "employ external blame of responsibility," and that Appellant was "much less aware of his problems than would be defined by his behavior." (Tr. 101-102; State's Exhibit 8.)

Having concluded, with the assistance of the unidentified test consultant, that Appellant's answers to the SASSI may not have been truthful, Mr. Nichols then "re-took" the SASSI, providing the answers that Appellant "could have" provided, based upon the information that Mr. Nichols gathered from Appellant and the persons whom Appellant had authorized Mr. Nichols to contact. (Tr. 104-105, 177-180.) In other words, Mr. Nichols re-took Appellant's test, providing the answers that Mr. Nichols thought Appellant should have given. (Tr. 104-105, 177-180.) Mr. Nichols then re-scored the SASSI, and those scores helped persuade Mr. Nichols that Appellant was, in fact, an alcohol-dependent person. (Tr. 185-187; State's Exhibit 9.)

Based upon Mr. Nichols's evaluation of Appellant, Mr. Nichols prepared an eighteen-page "Biopsychosocial Assessment," in which he rendered a diagnosis and made recommendations for Appellant's treatment. (Tr. 92-94.) Mr. Nichols prepared that

document on a computer, with Appellant sitting next to him, making corrections to the information that Mr. Nichols was typing. (Tr. 122-123.) Appellant approved the following language: "I am an alcoholic. The fact of DUIs brings me to that conclusion. With my first DUI, I thought I could control it; with the second DUI, I knew I could not." (Tr. 122-124.) Therefore, Mr. Nichols testified, Appellant admits that he is an alcoholic. (Tr. 124.)

At the hearing below, without objection, the Hearing Examiner declared Mr. Nichols to be an expert witness on the subject of addiction. (Tr. 91.) Based upon Mr. Nichols's education, training, and experience, including his personal experience as an alcoholic, and his evaluation of Appellant, it is Mr. Nichols's opinion that, at the time of the evaluation, Appellant was impaired in his ability to practice medicine by untreated alcoholism. (Tr. 132, 138, 142-143, 152, 158, 184-185.) Mr. Nichols recommended that Appellant return to Glenbeigh Hospital for twenty-eight days of inpatient treatment, followed by an aftercare program. (Tr. 132, 134-136.)

**Testimony of Gregory B. Collins, M.D.**

Gregory B. Collins, M.D., has been employed for twenty-three years as the Section Head of the Cleveland Clinic's Alcohol and Drug Recovery Center. (Tr. 188-190.) Dr. Collins, who is licensed to practice medicine in Ohio, graduated from The Ohio State University College of Medicine in 1970. (Tr. 189.) He completed a psychiatry residency at The Ohio State University Hospitals in 1973. (Tr. 189.) Dr. Collins is board-certified in the specialty of psychiatry with added qualifications in addiction psychiatry. (Tr. 190.) Dr. Collins's thirty-year practice has been devoted to the rehabilitation of chemically dependent persons. (Tr. 190.)

Dr. Collins evaluated and treated Appellant when Appellant admitted himself to the Cleveland Clinic in late October 2003. (Tr. 192-193, 201-204.) Dr. Collins thinks that Appellant disagreed with Dr. Prusinski's conclusions and recommendations regarding Appellant's impairment, and that is why Appellant sought a second opinion from the

Cleveland Clinic. (Tr. 201.) Appellant reported to Dr. Collins that Appellant last consumed alcohol on May 9, 2001. (Tr. 203-204.)

Dr. Collins concluded that Appellant met the criteria for alcohol dependence "in remission," meaning that Appellant had abstained from alcohol since May 2001 and was doing very well. (Tr. 192-193.) It is Dr. Collins's opinion that Appellant does not need to receive counseling in order to successfully recover from alcoholism. (Tr. 210-211.)

Dr. Collins testified that, although he recommended that Appellant complete a twenty-eight-day residential treatment program, he made that recommendation, not because Appellant was a danger to the public, but because Dr. Collins knew that the Medical Board "would expect that." (Tr. 194, 211.) Dr. Collins testified that there was no evidence that Appellant was a threat to anyone. (Tr. 195.) In the opinion of Dr. Collins, Appellant is a fit and competent physician. (Tr. 195.) It is Dr. Collins's opinion, based upon a reasonable degree of medical certainty, that Appellant would act in compliance with acceptable and prevailing standards of care in the field of medicine. (Tr. 195-198.)

During Dr. Collins's evaluation of Appellant, he asked Appellant about Appellant's wife's statement that Appellant took a drink when he received the September 3, 2003 letter from the Medical Board. (Tr. 204.) Appellant denied having taken a drink. (Tr. 204.) Appellant told Dr. Collins that, when Appellant received the letter from the Board, Appellant commented to his wife that receiving the letter was enough to make a person take a drink, and that Appellant's wife may have inferred, from that comment, that Appellant intended to take a drink. (Tr. 205-206.)

Since Appellant's release from the Cleveland Clinic on November 30, 2003, he has not entered the recommended aftercare program at the Cleveland Clinic. (Tr. 211-213.)

**Testimony of Jerome B. Yokiell, M.D.**

Jerome B. Yokiell, M.D., and Charles Barrett, M.D., are Appellant's partners at the Centers for Comprehensive Pain Care, in Beachwood, Ohio, which serves approximately 5,000 patients. (Tr. 230, 232, 234.) Dr. Yokiell received his medical degree from Wright

State University in 1988. (Tr. 230-231.) He is licensed to practice medicine in Ohio, having completed an internship and a residency in anesthesiology at the Cleveland Clinic in 1993. (Tr. 230-231, 233.) Dr. Yokiel is board-certified in the specialty of anesthesiology and in the subspecialty of pain management. (Tr. 231, 233.)

Since 1993, when Dr. Yokiel began practicing medicine with Appellant, Dr. Yokiel has observed Appellant's professional proficiency on a daily basis, in both anesthesia and pain management, and feels capable of judging Appellant's proficiency as a fellow practitioner. (Tr. 234-235, 242-245.) It is Dr. Yokiel's opinion that Appellant practices safe and competent medicine. (Tr. 236-237.) No patient has ever complained to Dr. Yokiel about Appellant being alcohol-impaired. (Tr. 237.) Dr. Yokiel has never observed any impairment that would preclude Appellant from practicing medicine. (Tr. 237.)

Appellant did not disclose his DUI arrests to either of his partners before the Medical Board hearing. (Tr. 238-239.) Dr. Yokiel expressed concern that Appellant had been charged with those offenses. (Tr. 241.) Dr. Yokiel learned about Appellant's alcoholism just before the Board hearing. (Tr. 239.)

**Testimony of Charles V. Barrett, D.O.**

Charles V. Barrett, D.O., who is licensed to practice medicine in Ohio, received his osteopathic degree from Ohio University in 1989, then completed an internship and residency at Meridia Huron Hospital, in Cleveland, Ohio, in 1993. (Tr. 247-248.) Dr. Barrett is board-certified in the specialty of anesthesia and in the subspecialty of pain management. (Tr. 248.)

Dr. Barrett has practiced anesthesia and pain management with Appellant and Dr. Jerome Yokiel for approximately ten years. (Tr. 249-250.) During that time, Dr. Barrett has observed Appellant's professional proficiency as an anesthesiology and pain-management practitioner. (Tr. 250, 252-255.) According to Dr. Barrett, Appellant is well known in his field and exceeds the expectations of any anesthesiologist and pain physician. (Tr. 251.)

Dr. Barrett has never received any complaints from patients about Appellant's care of patients or his abuse of alcohol. (Tr. 251-252.) Dr. Barrett has never received any complaints from patients that Appellant improperly cared for them due to inebriation. (Tr. 252.)

Dr. Barrett did not know about Appellant's DUI arrests before the Medical Board hearing. (Tr. 255.) Dr. Barrett did not know that Appellant was being treated for alcoholism until November 30, 2003, the Sunday before the Board hearing. (Tr. 255.) In a telephone conversation on November 30, 2003, Appellant told Dr. Barrett that Appellant was in treatment and that the Board had suspended Appellant's medical license. (Tr. 257-258.) Dr. Barrett was "not very excited" to receive that news. (Tr. 258.)

**Testimony of Jill H. Mushkat, Ph.D.**

Jill H. Mushkat, Ph.D., a licensed psychologist, is employed as the Director of Pain Management Psychology for the Cleveland Clinic Eastern Region. (Tr. 260-261, 269.) Dr. Mushkat received her Ph.D. in psychology from The Ohio State University in 1978. (Tr. 261.)

Dr. Mushkat has worked closely with Appellant since approximately 1995. (Tr. 261-263.) She has never observed Appellant in a state of inebriation, and she has never observed him act inappropriately with any patient. (Tr. 263-264.) Approximately two and one-half years ago, Appellant told Dr. Mushkat about his DUI offenses, but she did not conclude that Appellant had a problem with alcohol. (Tr. 267-268.) Dr. Mushkat has never observed anything that led her to conclude that Appellant had a problem with alcohol vis-à-vis his practice. (Tr. 268.) When Appellant asked Dr. Mushkat for help regarding his use of alcohol, she contacted another psychologist accustomed to working with drug and alcohol counseling, and that psychologist referred Appellant to Dr. Cynthia Downing. (Tr. 268, 270.)

In Dr. Mushkat's opinion, it is improper and unethical for a psychological tester, such as Mr. Nichols, to re-take a psychological test by supplying answers that the subject of the

test, in this case Appellant, could have given. (Tr. 264-265.) Dr. Mushkat is familiar with the issue of defensiveness in addiction, and she does not necessarily believe that, if an addict is highly defensive, he has not realized that he has an addiction problem. (Tr. 266-267.)

**Testimony of Mark L. Allen, M.D.**

Appellant graduated from the University of Kansas medical school in 1980. (Tr. 16, 272-273.) He completed an internship and residency in anesthesiology at St. Luke's Hospital in Kansas City, Missouri, in 1983, followed by a rotating residency in anesthesiology at the University of Kansas in 1990. (Tr. 16, 273.) Appellant is board-certified by the American Board of Anesthesiology, the American Academy of Pain Medicine, and the American Board of Pain Management. (Tr. 16, 19.) He is board-certified in the specialty of anesthesiology and in the subspecialty of pain management. (Tr. 18-19, 273-274.)

Appellant's practice consists of approximately ninety percent pain management and ten percent operating-room anesthesiology. (Tr. 16-17.) He practices at South Pointe Hospital in Warrensville Heights, Ohio, a surgical center in Beachwood, Ohio, and Union Hospital in Dover, Ohio. (Tr. 17-18.) Appellant sees approximately one hundred patients per week. (Tr. 18.) He works sixty to seventy hours per week, and he takes call for pain management and to perform anesthesia. (Tr. 19-20.)

Appellant has a history of alcoholism in his family. (Tr. 26.)

In 1999, in the Bedford Municipal Court, Appellant was convicted of DUI. (Tr. 20.) In May 2001, Appellant was arrested for a second DUI offense. (Tr. 22.) He pled guilty to a reduced charge of Reckless Operation. (Tr. 23.)

In July or August 2001, before Appellant was sentenced for the Reckless Operation, he began treating with Dr. Cynthia Downing on a weekly basis, and he began attending AA meetings. (Tr. 23-25, 31-32.) He also participated in an aftercare program with Dr. Downing, which consisted of weekly meetings with a group of professionals under her direction. (Tr. 25-26.)

In November 2001, in the Bedford Municipal Court, Appellant was sentenced on the Reckless Operation offense. (Tr. 23.) He was placed on probation and ordered to provide random urine screens. (Tr. 23-24.) After Appellant was placed on probation, he attended one AA meeting per week, saw Dr. Downing once a week, and attended her aftercare session once a week. (Tr. 31.)

In November 2002, when Appellant's probation for the Reckless Operation ended, he stopped treating with Dr. Downing but continued to attend one AA meeting per week. (Tr. 26-29.) For approximately six months after Appellant stopped treating with Dr. Downing, he was not in an aftercare program. (Tr. 28.)

In early 2003, Appellant began treating with another psychologist, Dr. Kurt Jensen, for what Appellant describes as "alcohol and relationship issues." (Tr. 27.) In September 2003, after the Medical Board ordered Appellant to be evaluated at Glenbeigh Hospital, he returned to Dr. Downing for aftercare. (Tr. 27-28.)

At Glenbeigh Hospital, Appellant reported that he had not consumed alcohol in two and one-half years. (Tr. 29.) Appellant is aware that the written history taken at Glenbeigh says that his wife reported that he had a drink when he received the September 3, 2003 letter from the Medical Board. (Tr. 29.)

After Mr. Nichols administered the SASSI to Appellant, Mr. Nichols reviewed the test results with Appellant and told Appellant that Appellant had a low probability of having a substance dependence disorder. (Tr. 278-280, 285.) Appellant did not know, until the Medical Board hearing, that Mr. Nichols had re-taken and re-scored the test. (Tr. 280.)

Appellant is an insulin-dependent diabetic. (Tr. 289-290.) Alcohol generally does not raise Appellant's blood sugar. (Tr. 287.) Appellant acknowledges that it is unwise for a diabetic to consume alcohol, and that the treatment for his diabetes is more effective when he is sober. (Tr. 289.)

Appellant's AA sponsor is Dion Howells, whom Appellant sees at least once a week and speaks to almost daily. (Tr. 29-30.) Appellant attends AA meetings in Parma. (Tr.

30.) Mr. Howells has been Appellant's friend for approximately three years. (Tr. 282-283.) There is another impaired physician in Appellant's aftercare program whom he also considers a sponsor, and they speak at weekly aftercare meetings. (Tr. 30-31.)

When Appellant's probation for the Reckless Operation ended in November 2002, he sent a letter to the Bedford Municipal Court asking to be released from probation. (Tr. 32.) In that letter, Appellant told the court that he was attending two AA meetings per week. (Tr. 32.) One of those meetings was actually Appellant's aftercare meeting, which he considers to be an AA meeting. (Tr. 32.)

Appellant admits that his decision whether to participate in Dr. Collins's aftercare program depends on the results of these proceedings. (Tr. 49-50.) Dr. Collins recommended that Appellant contact the Ohio Physicians Effectiveness Program ("OPEP"), but Appellant told Dr. Collins that he had to complete these proceedings and then he would be happy to follow that recommendation. (Tr. 50.)

Appellant denies that he has ever been inebriated when practicing medicine. (Tr. 274.) No patient has ever lodged a complaint against Appellant for treating a patient while inebriated. (Tr. 274, 283.) No hospital has ever lodged a complaint against Appellant for reporting to work while inebriated. (Tr. 274, 283.) Appellant asserts that at no time during his medical career has he ever been unfit to care for patients. (Tr. 283.) Appellant believes that he is qualified to practice anesthesiology and pain management, and that he has been so qualified for his entire professional career. (Tr. 274-275.)

Appellant is an alcoholic who last consumed alcohol on May 9, 2001, the date of his second DUI arrest. (Tr. 295-296.)

### **III. Findings and Conclusions of the Medical Board**

In the Hearing Examiner's thirty-page Report and Recommendation, he reviewed the evidence in great detail and concluded that Appellant's conduct constituted an "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of \*\*\* alcohol," as that clause is used in R.C.

4731.22(B)(26). The Hearing Examiner recommended that the Medical Board indefinitely suspend Appellant's medical certificate, stating as follows:

The evidence indicates that, on November 30, 2003, Dr. Allen completed twenty-eight days of inpatient treatment from a treatment provider approved by the Board. Nevertheless, at the time of the hearing, Dr. Allen had not yet entered into an aftercare program that requires monitoring and supervision. In order to insure the safety of the public, Dr. Allen must demonstrate that he is in recovery before he can be permitted to return to practice. Accordingly, the Proposed Order provides that the minimum requirements for reinstatement include evidence of full compliance with a post-discharge aftercare contract \*\*\* for ninety days prior to submission of an application for reinstatement.

When the Medical Board considered this matter at its January 14, 2004 meeting, the comments of the Board members included the following:

Dr. Steinbergh stated that, although she would agree that there is conflicting testimony in this case, it is clear that the Board is dealing with an impaired physician who has recently completed a 28-day program, as required. Dr. Allen is not yet doing an appropriate aftercare program. Dr. Steinbergh stated that she does support the Proposed Order, adding that it is a minimal order. Dr. Allen will be suspended for an indefinite period of time, during which he has to meet stipulations. Essentially, he has to be in a program for 90 days prior to submission of an application for reinstatement. The rest of it is a standard Board order for impairment. Dr. Allen will be under probationary terms, which are appropriate, for the next five years, at least.

Dr. Buchan stated that the Order was very well written, and it is the Board's position that, if there is an impaired physician, however he comes to the Board, the Board set up appropriate safeguards. He thought the Order was well done. Dr. Buchan added that he believes that if Dr. Allen gets into an aftercare program, he'll have a license 90 days later. Instead of looking at this as a penalty, Dr. Allen should look at it as an opportunity to start over and get this alcoholism issue off his back so he can return to practice and do what he's trained to do. Dr. Buchan stated that he is in full support of the Order, as written.

Dr. Egner stated that she believes that Dr. Allen's presentation before the Board supports her need to see these physicians address the Board. She believes these addresses are rather revealing. Dr. Egner stated that during the whole time Dr. Allen spoke he never once addressed, or even mentioned, that he is an impaired physician. She believes that Dr. Allen needs time to come to grips with his impairment and what that means in relationship to the practice of medicine. Dr. Egner stated that she believes that there was controversial evidence as to what Dr. Allen's true date of sobriety is. Dr. Allen says that he had not had a drink since May 2001, and, yet, there was testimony from his spouse that Dr. Allen drank after getting the Board's letter. That makes a huge difference. Dr. Allen needs to understand how serious this is. She would have preferred to hear Dr. Allen talk about his

impairment and what he's going to do. This will give him time to address those issues. Dr. Egner stated that Dr. Allen definitely needs the time out.

Dr. Bhati stated that he doesn't think that Dr. Allen has a full understanding of his problem. It's unfortunate. Dr. Bhati stated that if Dr. Allen doesn't get a hold of his problems and take care of them, he may not have a license next time. The Proposed Order allows him to get treatment and to get back to work. If it doesn't happen, and if he doesn't pay attention to it, he might not be that lucky the next time.

\*\*\*

Dr. Kumar stated that somehow Dr. Allen continues to go back and say that test was given incorrectly, etc. Regardless of whether that was done or not, it is quite clear that Dr. Allen is impaired. He may not have hurt any patients as of this time, but if a person is impaired, there is always a danger for that until they have taken treatment. Dr. Kumar spoke in support of the Report and Recommendation, as written.

At the conclusion of the Board's discussion, the Board voted, nine to zero, to adopt the Report and Recommendation of the Hearing Examiner and indefinitely suspend Appellant's certificate to practice medicine and surgery in Ohio, with conditions for reinstatement or restoration.

#### **IV. Standards of Appellate Review**

When considering an appeal from an order of the Medical Board, this Court must uphold the order if it is supported by reliable, probative, and substantial evidence, and is in accordance with law. R.C. 119.12; *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St. 3d 619, 621; *Landefeld v. State Med. Bd. of Ohio* (June 15, 2000), Franklin App. No. 99AP-612, unreported.

The Ohio Supreme Court has recognized that the General Assembly granted the Medical Board a broad measure of discretion. See *Arlen v. State* (1980), 61 Ohio St. 2d 168, 174. In *Farrand v. State Med. Bd. of Ohio* (1949), 151 Ohio St. 222, 224, the Ohio Supreme Court stated:

\*\*\* The purpose of the General Assembly in providing for administrative hearings in particular fields was to facilitate such matters by placing the decision on facts with boards or commissions composed of [persons] equipped with the necessary knowledge and experience pertaining to a particular field. \*\*\*

"Accordingly, when courts review a medical board order, they are obligated to accord due deference to the board's interpretation of the technical and ethical requirements of the medical profession." *Landefeld, supra*.

**V. Court's Findings and Conclusions**

Appellant has asserted, in this appeal, that the Medical Board's January 14, 2004 Order is not supported by reliable, probative, and substantial evidence. Specifically, Appellant contends that, of the three expert witnesses who offered opinion testimony, Dr. Collins is a highly credible witness and Dr. Prusinski and Mr. Nichols are simply not credible. Appellant asserts that the Hearing Examiner should have believed Dr. Collins's testimony that Appellant is not an impaired physician, and that the Hearing Examiner should not have believed Dr. Prusinski's and Mr. Nichols's testimony that Appellant is an impaired physician. In other words, according to Appellant, Dr. Collins is the better witness, and his testimony should have carried the day before the Medical Board.

The State argues, in opposition, that it was the Hearing Examiner's responsibility to assess the credibility of the expert witnesses, and that, even if Dr. Prusinski's and Mr. Nichols's testimony is disregarded, nevertheless, the November 7, 2003 letter from Dr. Collins in and of itself supports the Medical Board's Order.

The Court finds the State's position to be well taken. In *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St. 2d 108, 111, the Ohio Supreme Court held:

In undertaking this [R.C. 119.12] hybrid form of review, the Court of Common Pleas must give due deference to the administrative resolution of evidentiary conflicts. For example, when the evidence before the court consists of conflicting testimony of approximately equal weight, the court should defer to the determination of the administrative body, which, as the fact-finder, had the opportunity to observe the demeanor of the witnesses and weigh their credibility.

In *Arlen v. State* (1980), 61 Ohio St. 2d 168, 174, the Ohio Supreme Court held:

\*\*\* Expert opinion testimony can be presented in a medical board proceeding, but the board is not required to reach the same conclusion as the expert witness. The weight to be given to such expert opinion testimony depends upon the board's estimate as to the propriety and reasonableness,

but such testimony is not binding upon such an experienced and professional board.

In the instant case, the Hearing Examiner was in the unique position to observe the demeanor of the expert witnesses and to assess their credibility. Furthermore, the members of the Medical Board, independently of the Hearing Examiner, were entitled to rely on their own expertise to determine the weight to be assigned to the testimony of Dr. Collins, Dr. Prusinski, and Mr. Nichols.

Having said as much, however, the Court is troubled by, and cannot disregard, the unconventional conduct of Mr. Nichols in performing his evaluation of Appellant. Not only did Mr. Nichols rely upon the opinions of an unidentified SASSI test consultant whose qualifications are unknown, Mr. Nichols also re-took Appellant's test by supplying Mr. Nichols's own answers to the test questions. Such conduct, on the part of Mr. Nichols, damaged whatever credibility he may have had, and his testimony, that Appellant is an impaired physician, must be disregarded as unreliable.

Nevertheless, Dr. Prusinski's testimony does constitute reliable, probative, and substantial evidence supporting the Medical Board's Order. The Court "will not substitute its judgment for the board's where there is some evidence supporting the board's order." *Harris v. Lewis* (1982), 69 Ohio St. 2d 577, 578.

Moreover, even if Dr. Prusinski's testimony did not constitute reliable, probative, and substantial evidence supporting the Board's Order, the letter from Dr. Collins, standing alone, supports the Board's Order. In the letter, Dr. Collins reported:

On the basis of the three day assessment done at The Cleveland Clinic Foundation, commencing on October 27, 2003, it was recommended by this State Medical Board of Ohio approved provider that Dr. Allen complete a 28 day residential treatment stay for his diagnosis of alcohol dependence in remission. Dr. Allen has willingly agreed to do so and is in the midst of completing the 28 day recommended residential treatment requirement. He is fully prepared to participate actively in required aftercare as well. Dr. Allen has demonstrated a solid commitment to sobriety, full acceptance of the reality of his dependence on alcohol, full compliance with the terms and conditions of our recommended treatment program. \*\*\*

\*\*\* Based on our thorough assessment of Dr. Allen, there is no psychiatric medical or substance abuse contraindication to his returning to active medical practice upon completion of his required 28 day residential treatment at The Cleveland Clinic Foundation. \*\*\*

Ohio Adm. Code 4731-16-01(A) provides:

4731-16-01 Definitions.

As used in this chapter of the Administrative Code:

(A) "Impairment" means impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice. Impairment includes \*\*\* inability to practice in accordance with such standards without appropriate treatment, monitoring or supervision.

Dr. Collins recommended that Appellant complete twenty-eight days of residential treatment and that he participate in an aftercare program. Dr. Collins recommended that Appellant be permitted to return to active medical practice, but only after he completed the twenty-eight-day residential treatment program. If a physician requires treatment in order to return to medical practice, he is, by definition, impaired.

Revised Code 4731.22(B)(26) provides:

§ 4731.22. Grounds for discipline \*\*\*

\*\*\*

(B) The board \*\*\* shall \*\*\* limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:

\*\*\*

(26) Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of \*\*\* alcohol \*\*\*.

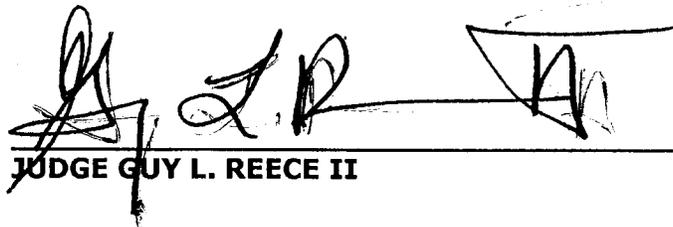
Dr. Prusinski's testimony and Dr. Collins's letter, independently of each other, constitute reliable, probative, and substantial evidence that Appellant is impaired in his ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of alcohol. Pursuant to the authority granted by R.C. 4731.22(B)(26), the Medical Board was authorized to suspend Appellant's certificate.

**VI. Conclusion**

Having considered the record that the Medical Board has certified to this Court, as well as the parties' arguments as set forth in their briefs and oral arguments, the Court finds that the Medical Board's January 14, 2004 Order, indefinitely suspending Appellant's certificate to practice medicine and surgery in Ohio, with conditions for reinstatement or restoration, is supported by reliable, probative, and substantial evidence, and is in accordance with law. Although the Court would impose a more lenient sanction, were the Court so empowered, if the Board's action is within its statutory authority, this Court has no authority to reverse or modify it. *In re Vaughn* (Nov. 30, 1995), Franklin App. No. 95APE05-645, unreported.

However, in light of the Court's conclusion that Mr. Nichols's testimony must be disregarded as unreliable, the Court has determined that the Medical Board should reconsider the sanctions it has imposed upon Appellant. Accordingly, the Board's January 14, 2004 Order is **AFFIRMED**, but the case is **REMANDED** to the Board to reconsider the sanctions it has imposed upon Appellant, and the Board's Order is hereby **SUSPENDED** until such time as the Board reconsiders the sanctions it has imposed upon Appellant, and issues a decision or order reflecting the results of that reconsideration.

Counsel for Appellee shall prepare, circulate, and submit an appropriate journal entry, in accordance with Local Rule 25.



**JUDGE GUY L. REECE II**

Copies mailed to:

SAM WEINER, ESQ. (0003970), Counsel for Appellant  
LEONARD W. YELSKY, ESQ. (0034277), Counsel for Appellant  
REBECCA J. ALBERS, AAG (0059203), Counsel for Appellee

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

IN THE MATTER OF:

MARK L. ALLEN, M.D.

:  
:  
CASE NO. 04CVF-02-1214  
:  
:  
JUDGE REECE

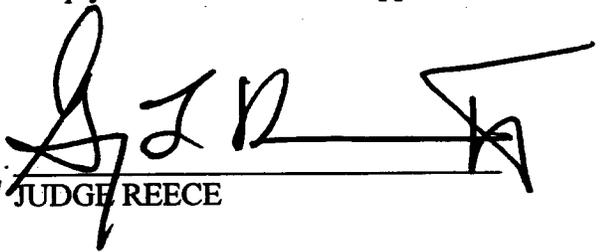
FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
2004 APR 28 PM 2:4  
CLERK OF COURT

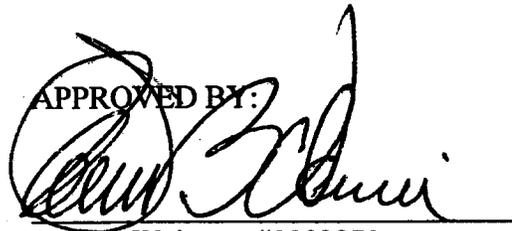
AGREED ENTRY

This matter came on for consideration pursuant to agreement of the Counsel for the respective parties regarding an extension of time until May 15, 2004 for Appellant's Reply to the Brief of the Appellee, State Medical Board of Ohio.

The Court, being fully advised in the premises and for good cause shown, finds the parties agreement well-taken and grants same.

IT IS, THEREFORE, ORDERED, ADJUDGED and DECREED, that the Appellant, Dr. Mark L. Allen, is granted until May 15, 2004 to reply to the Brief of the Appellee, State Medical Board of Ohio.

  
JUDGE REECE

APPROVED BY:  


Sam B. Weiner #0003970  
Samuel B. Weiner Co., L.P.A.  
743 South Front Street  
Columbus, Ohio 43206  
Phone: (614) 443-6581  
Fax: (614) 443-9978  
Attorney for Mark L. Allen, M.D.

  
Rebecca J. Albers #0059203  
Senior Assistant Attorney General  
Health and Human Services Section  
30 East Broad Street, 26<sup>th</sup> Floor  
Columbus, Ohio 43215-3428  
Phone: (614) 644-8856  
Attorney for State Medical Board

SAMUEL B. WEINER CO., L.P.A.  
743 SOUTH FRONT STREET  
COLUMBUS, OHIO 43206

(614) 443-6581  
FAX (614) 443-9978  
e-mail: sbwesq@ameritech.net

STATE MEDICAL BOARD OF OHIO

2004 MAR 27 10:48 AM IN THE COURT OF COMMON PLEAS FRANKLIN COUNTY, OHIO

IN THE MATTER OF

CASE NO. 04CVF-02-1214

MARK L. ALLEN, M.D.

JUDGE REECE

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
2004 MAR 19 4:10:00 PM  
CLERK OF COURTS - GAY

JUDGMENT ENTRY

This matter came on for hearing on the 26<sup>th</sup> day of February, 2004, pursuant to Appellant Mark L. Allen, M.D.'s Motion to Grant Medical Privileges Prior to Hearing, Appellee State Medical Board of Ohio's Memorandum in Opposition and Appellant's Reply.

WHEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that the January 14, 2004 Order of the State Medical is stayed during the pendency of this appeal, provided that Mark L. Allen, M.D., shall comply with and continue to comply with the following:

- A. Conditions for Return to Practice: Before Dr. Allen may resume the practice of medicine and surgery in Ohio, Dr. Allen shall provided the Court and the Board with satisfactory documentation of the following:
  1. Application: Dr. Allen shall submit an application, accompanied by appropriate fees, if any.
  2. Compliance with Interim Monitoring Conditions: Dr. Allen shall maintain compliance with all terms and conditions as set forth in Paragraph B, below.
  3. Demonstration of Ability to Resume Practice: Dr. Allen shall demonstrate to the satisfaction of the Court and 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. Allen has successfully completed any required inpatient treatment.

STATE MEDICAL BOARD  
OF OHIO

2004 MAR 22 A 8

- b. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
- c. Two written reports indicating that Dr. Allen'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. Allen's application for reinstatement. The reports of evaluation shall describe with particularity the bases for the determination that Dr. Allen has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon his practice.
- d. Evidence of continuing full compliance with the interim monitoring terms set forth in Paragraph-B, below.

**B. Interim Monitoring:** Prior to and following Dr. Allen's return to practice under this stay order, Dr. Allen shall comply with the following:

1. **Obey the Law:** Dr. Allen shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
2. **Personal Appearances:** Dr. Allen shall appear in person for quarterly interviews before the Board or its designated representative, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
3. **Quarterly Declarations:** Dr. Allen shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all of the conditions of this Order. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
4. **Abstinence from Drugs:** Dr. Allen 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. Allen's history of chemical dependency.

STATE MEDICAL BOARD  
OF OHIO

2004 MAR 22 A 8 21

5. Abstinence from Alcohol: Dr. Allen shall abstain completely from the use of alcohol.

6. Drug & Alcohol Screens; Supervising Physician: Dr. Allen shall submit to random urine screenings for drugs and/or alcohol on a weekly basis or as otherwise directed by the Board. Dr. Allen 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. Allen shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Allen 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. Allen. Dr. Allen 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. Allen 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. Allen must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Allen 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. Allen's quarterly declaration. It is Dr. Allen's responsibility to ensure that reports are timely submitted.

7. Submission of Blood or Urine Specimens upon Request: Dr. Allen shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Allen's expense.

STATE MEDICAL BOARD OF OHIO

2004 MAR 22 A 8

Rehabilitation Program: Dr. Allen 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. Allen 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. Allen's quarterly declarations.

9. Contact Impaired Physicians Committee: Within thirty days of the effective date of this Order, or as otherwise directed by the Board, Dr. Allen shall contact an impaired physicians committee, approved by the Board, to arrange for assistance in recovery and/or aftercare.

IT IS SO ORDERED.

*[Signature]*  
JUDGE G. REECE  
15 Mar 04

APPROVED:

JIM PETRO (0022096)  
ATTORNEY GENERAL

*Rebecca Albers per authority 3-20-04*  
REBECCA J. ALBERS (0059203)  
Senior Assistant Attorney General  
Health and Human Services Section  
30 East Broad Street, 26<sup>th</sup> Floor  
Columbus, Ohio 43215-3400  
(614) 466-8600  
Counsel for State Medical Board

*Leonard W. Yelsky per authority 3-11-04*  
LEONARD W. YELSKY (0034277)  
Yelsky & Leonardo  
526 Superior Avenue, East, Suite 1050  
Cleveland, Ohio 44114  
(216) 781-2550  
*[Signature]*  
SAM WEINER (0003970)  
743 South Front Street  
Columbus, Ohio 43206  
(614) 443-6581  
Counsel for Mark L. Allen, M.D.

THE STATE OF OHIO  
Franklin County, ss

JOHN O'GRADY, Clerk  
OF THE COURT OF COMMON  
PLEAS, WITHIN AND FOR  
SAID COUNTY.

HEREBY CERTIFY THAT THE ABOVE AND FORE-  
GOING IS TRULY TAKEN AND COMES FROM THE  
ORIGINAL Judgment Entry  
NOW ON FILE IN MY OFFICE.

WITNESS MY HAND AND SEAL OF SAID COUNTY  
THIS 19<sup>th</sup> DAY OF March, A.D. 2004

JOHN O'GRADY, Clerk

By sm Deputy

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

TERMINATION NO. 7  
BY PB 2-13-04

IN THE MATTER OF: : CASE NO. 03-CVF-11-12844  
MARK L. ALLEN, M.D. : JUDGE TRAVIS

**AGREED ENTRY OF DISMISSAL**

Pursuant to the joint motion of Mark L. Allen, M.D., and the State Medical Board, it is hereby

ORDERED that this case is DISMISSED with prejudice.

Costs to Appellant, Mark L. Allen, M.D.

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
2004 FEB 13 PM 4:00  
CLERK OF COURTS-CV

**TRAVIS**  
JUDGE TRAVIS

**JIM PETRO (0022096)**  
Attorney General

*Rebecca Albers*  
**REBECCA J. ALBERS (0059203)**  
Senior Assistant Attorney General  
Health and Human Services Section  
30 East Broad Street, 26<sup>th</sup> Floor  
Columbus, Ohio 43215-3400  
(614) 466-8600  
Counsel for State Medical Board

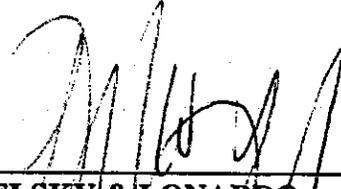
*Leonard W. Yelsky by Rebecca Albers*  
**LEONARD W. YELSKY (0034277)** *per phone*  
Yelsky & Lonardo *attorney*  
526 Superior Avenue, East, Suite 1050  
Cleveland, Ohio 44114  
(216) 781-2550  
*2/10/04*

*Sam Weiner by Rebecca Albers*  
**SAM WEINER (0003970)** *per phone*  
743 South Front Street *attorney*  
Columbus, Ohio 43206  
(614) 443-6581  
Counsel for Mark L. Allen, M.D.  
*2/11/04*

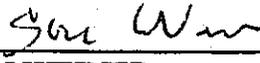


and Convincing Evidence". See O.R.C. 4731.22.

Respectfully submitted,

  
\_\_\_\_\_  
**YELSKY & LONARDO**  
**BY: LEONARD W. YELSKY, ESQ.**  
Ohio Reg. No. #0034277  
526 Superior Avenue, East  
Suite 1050  
Cleveland, Ohio 44114

216-781-2550

  
\_\_\_\_\_  
**SAM WEINER**  
Ohio Reg. #. #0003970  
743 South Front Street  
Columbus, Ohio 43206

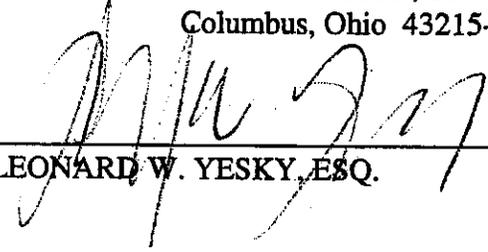
614-443-6581

### CERTIFICATE OF SERVICE

The following was served a copy of this Notice via hand delivery to the State  
Medical Board of Ohio and mailed to the following this 2 day of ~~January~~<sup>FEB</sup>, 2004:

The State Medical Board  
77 South High Street  
17<sup>th</sup> Floor  
Columbus, Ohio 43215

Rebecca J. Albers, Esq.  
Senior Assistant Attorney General  
Health and Human Services Section  
30 E. Broad Street, 26<sup>th</sup> Floor  
Columbus, Ohio 43215-3400

  
\_\_\_\_\_  
LEONARD W. YESKY, ESQ.



and Convincing Evidence". See O.R.C. 4731.22.

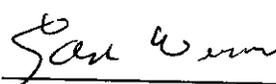
STATE MEDICAL BOARD  
OF OHIO

Respectfully submitted,

2004 JAN 29 A 11:05

  
\_\_\_\_\_  
**YELSKY & LONARDO**  
**BY: LEONARD W. YELSKY, ESQ.**  
Ohio Reg. No. #0034277  
526 Superior Avenue, East  
Suite 1050  
Cleveland, Ohio 44114

216-781-2550

  
\_\_\_\_\_  
**SAM WEINER**  
Ohio Reg. #. #0003970  
743 South Front Street  
Columbus, Ohio 43206

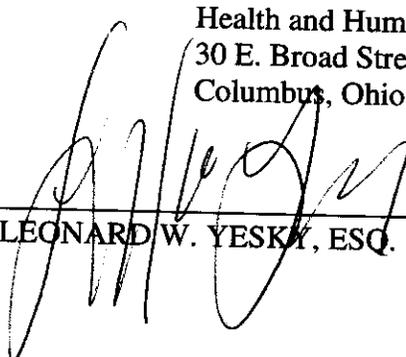
614-443-6581

### CERTIFICATE OF SERVICE

The following was served a copy of this Notice via hand delivery to the State  
Medical Board of Ohio and mailed to the following this \_\_\_\_ day of January, 2004:

The State Medical Board  
77 South High Street  
17<sup>th</sup> Floor  
Columbus, Ohio 43215

Rebecca J. Albers, Esq.  
Senior Assistant Attorney General  
Health and Human Services Section  
30 E. Broad Street, 26<sup>th</sup> Floor  
Columbus, Ohio 43215-3400

  
\_\_\_\_\_  
LEONARD W. YESKY, ESQ.

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

**IN THE MATTER OF:**

2004 JAN 29 A 11:05

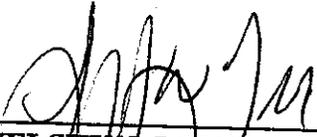
**MARK L. ALLEN, MD**

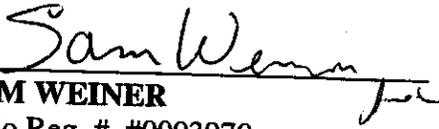
**NOTICE OF APPEAL FROM ORDER OF THE STATE MEDICAL BOARD OF OHIO (§119.12 ORC)**

Now comes **MARK L. ALLEN, MD**, and hereby gives his Notice of Appeal of the January 14, 2004, Order of the State Medical Board of Ohio. The Order of the State Medical Board of Ohio indefinitely suspends **DR. MARK L. ALLEN'S** right to practice medicine and surgery in the State of Ohio. Said Order contains various other matters. A copy of said Order of the State Medical Board of Ohio is annexed hereto labeled Exhibit "A" and made a part hereof as if fully rewritten herein.

The grounds upon which Dr. Allen relies upon for his appeal are that the evidence brought before the State Medical Board of Ohio to support his suspension does not meet the legal requirements necessary to sustain a license suspension. The burden of proof necessary to suspend a medical license before the State Medical Board of Ohio is "Clear and Convincing Evidence". See O.R.C. 4731.22.

Respectfully submitted,

  
**YELSKY & LONARDO**  
**BY: LEONARD W. YELSKY, ESQ.**  
Ohio Reg. No. #0034277  
526 Superior Avenue, East  
Suite 1050  
Cleveland, Ohio 44114  
216-781-2550

  
**SAM WEINER**  
Ohio Reg. #. #0003970  
743 South Front Street  
Columbus, Ohio 43206  
614-443-6581



STATE MEDICAL BOARD  
OF OHIO

**CERTIFICATE OF SERVICE**

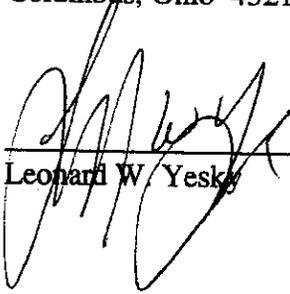
2004 JAN 29 A 11:05

The following was served a copy of this Notice via hand delivery to the State

Medical Board of Ohio and mailed to the following this \_\_\_\_ day of January, 2004:

The State Medical Board  
77 South High Street  
17<sup>th</sup> Floor  
Columbus, Ohio 43215

Rebecca J. Albers, Esq.  
Senior Assistant Attorney General  
Health and Human Services Section  
30 E. Broad Street, 26<sup>th</sup> Floor  
Columbus, Ohio 43215-3400

  
\_\_\_\_\_  
Leonard W. Yesky



# State Medical Board of Ohio

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

January 14, 2004

Mark L. Allen, M.D.  
156 South Franklin Street  
Chagrin Falls, OH 44022

Dear Doctor Allen:

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 January 14, 2004, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 7000 0600 0024 5150 0958  
RETURN RECEIPT REQUESTED

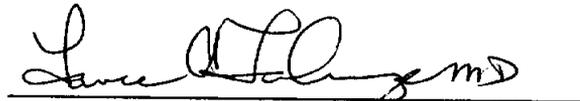
Cc: Leonard W. Yelsky, Esq.  
CERTIFIED MAIL NO. 7000 0600 0024 5150 0941  
RETURN RECEIPT REQUESTED

*Mailed 1-16-04*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on January 14, 2004, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Mark L. Allen, 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)

January 14, 2004  
Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF

\*

\*

MARK L. ALLEN, M.D.

\*

**ENTRY OF ORDER**

This matter came on for consideration before the State Medical Board of Ohio on January 14, 2004.

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

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Mark L. Allen, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time.
- B. **INTERIM MONITORING:** During the period that Dr. Allen's certificate to practice medicine and surgery in Ohio is suspended, Dr. Allen shall comply with the following terms, conditions, and limitations:
1. **Obey the Law:** Dr. Allen shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
  2. **Personal Appearances:** Dr. Allen shall appear in person for quarterly interviews before the Board or its designated representative, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
  3. **Quarterly Declarations:** Dr. Allen shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on the first day

of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

4. **Abstention from Drugs**: Dr. Allen 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. Allen's history of chemical dependency.
5. **Abstention from Alcohol**: Dr. Allen shall abstain completely from the use of alcohol.
6. **Drug & Alcohol Screens; Supervising Physician**: Dr. Allen shall submit to random urine screenings for drugs and/or alcohol on a weekly basis or as otherwise directed by the Board. Dr. Allen 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. Allen shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Allen 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. Allen. Dr. Allen 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. Allen 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. Allen must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Allen 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. Allen's quarterly declaration. It is Dr. Allen's responsibility to ensure that reports are timely submitted.

7. **Submission of Blood or Urine Specimens upon Request:** Dr. Allen shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Allen's expense.
  8. **Rehabilitation Program:** Dr. Allen 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. Allen 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. Allen's quarterly declarations.
  9. **Contact Impaired Physicians Committee:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Allen shall contact an impaired physicians committee, approved by the Board, to arrange for assistance in recovery and/or aftercare.
- C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Allen's certificate to practice medicine and surgery until all of the following conditions have been met:
1. **Application for Reinstatement or Restoration:** Dr. Allen shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  2. **Compliance with Interim Conditions:** Dr. Allen 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. Allen 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. Allen has successfully completed any required inpatient treatment.
    - b. Evidence of continuing full compliance, for at least ninety days prior to submitting an application for reinstatement or restoration, 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. Allen'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. Allen's application for reinstatement. The reports of evaluation shall describe with particularity the bases for the determination that Dr. Allen 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. Allen 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. Allen's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Allen 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. **Tolling of Probationary Period While Out of State:** In the event that Dr. Allen should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Allen 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.
  3. **Violation of Terms of Probation:** If Dr. Allen 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. Allen's certificate will be fully restored.

- F. **RELEASES:** Dr. Allen 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. Allen'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.

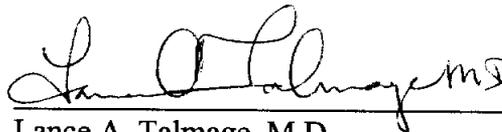
Dr. Allen shall also provide the Board written consent permitting any treatment provider from whom Dr. Allen obtains treatment to notify the Board in the event he fails to agree to or comply with any recommended treatment or with any treatment or aftercare contract. Failure to provide such consent, or 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. Allen 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. Allen 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. Allen 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. Allen 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. Allen shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

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

(SEAL)



Lance A. Talmage, M.D.  
Secretary

January 14, 2004

Date

2003 DEC 19 A 10: 03

**REPORT AND RECOMMENDATION  
IN THE MATTER OF MARK L. ALLEN, M.D.**

The Matter of Mark L. Allen, M.D., was heard by R. Gregory Porter, Hearing Examiner for the State Medical Board of Ohio, on December 4 and 5, 2003.

**INTRODUCTION**

I. Basis for Hearing

- A. In a Notice of Summary Suspension and Opportunity for Hearing dated November 12, 2003, the State Medical Board of Ohio [Board] notified Mark L. Allen, M.D., that, pursuant to Section 4731.22(G), Ohio Revised Code, the Board had adopted an Order of Summary Suspension of his certificate to practice medicine and surgery in Ohio. The Board further advised that continued practice of medicine and surgery would be considered practicing without a certificate, in violation of Section 4731.41, Ohio Revised Code. (State's Exhibit 1A)

Moreover, the Board notified Dr. Allen that the Board had proposed to take disciplinary action against his certificate based upon a determination by a Board-approved treatment provider that Dr. Allen is an impaired physician, upon the determination by another Board-approved treatment provider that Dr. Allen suffers from alcohol dependence in remission, and upon the recommendation of both treatment providers that Dr. Allen complete a 28-day residential treatment program.

The Board alleged that Dr. Allen'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."

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

- B. By document received by the Board on November 21, 2003, Leonard W. Yelsky and Sam Weiner, Esqs., requested a hearing on behalf of Dr. Allen. (State's Exhibit 1B)

II. Appearances

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

- B. On behalf of the Respondent: Leonard W. Yelsky, Esq.

## EVIDENCE EXAMINED

### I. Testimony Heard

A. Presented by the State

1. Mark L. Allen, M.D., as upon cross-examination
2. Chester J. Prusinski, D.O.
3. Roy Nichols

B. Presented by the Respondent

1. Gregory B. Collins, M.D.
2. Jerome B. Yokiel, M.D.
3. Charles V. Barrett, D.O.
4. Jill H. Mushkat, Ph.D.
5. Mark L. Allen, M.D.

### II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A through 1L: Procedural exhibits.
2. State's Exhibits 2 and 3: November 4, 2003, letters to Board staff from Chester Prusinski, D.O., Medical Director, Glenbeigh Health Sources of Rock Creek, Rock Creek, Ohio, [Glenbeigh] concerning the results of Dr. Allen's evaluation at Glenbeigh.
- \* 3. State's Exhibit 4: Certified copy of the assessment of Dr. Allen by Glenbeigh. (Note: The Hearing Examiner numbered pages of this exhibit post-hearing.)
- \* 4. State's Exhibit 5: Certified copy of Glenbeigh's October 9, 2003, Discharge Plan for Dr. Allen.
5. State's Exhibits 6 and 7: Certified copies of documents maintained by the Bedford Municipal Court, Bedford, Ohio, concerning Dr. Allen's 1999 conviction for OMVI, and his 2001 conviction for Reckless Operation, respectively.

- \* 6. State's Exhibit 8: Copy of the notes of Roy Nichols, M.Ed., L.S.W., CCDCIII E, Counselor, Glenbeigh, concerning a telephone call to the Substance Abuse Subtle Screening Inventory [SASSI].
- \* 7. State's Exhibit 9: Copy of Mr. Nichols' re-scoring of Dr. Allen's SASSI results.
- 8. State's Exhibit 10: Certified copies of documents maintained by the Board, consisting of a November 7, 2003, Fax Transmittal Sheet; November 7, 2003, letter to Board staff from Leonard W. Yelsky, Esq.; and November 7, 2003, letter to Mr. Yelsky from Gregory B. Collins, Section Head, Alcohol and Drug Recovery Center, The Cleveland Clinic Foundation.
- \* 9. State's Exhibit 11: Certified copy of treatment records maintained by Cynthia Downing, Ph.D., LPCC, concerning Dr. Allen.
- 10. State's Exhibit 13: Resume of Mr. Nichols.
- 11. State's Exhibit 14: Curriculum Vitae of Dr. Prusinski.

B. Presented by the Respondent

- 1. Respondent's Exhibit H: Curriculum Vitae of Dr. Collins. (Note: The Hearing Examiner redacted a Social Security number from this document post-hearing.)
- 2. Respondent's Exhibit I: Copy of November 7, 2003, fax cover sheet from Glenbeigh to Mr. Yelsky, with attached copy of Authorization for Release of Information.
- \* 3. Respondent's Exhibit J: Copy of an October 13, 2003, Biopsychosocial Assessment Report from Glenbeigh concerning Dr. Allen.
- \* 4. Respondent's Exhibits J1 and J2: Copy of evaluation records from Glenbeigh concerning Dr. Allen.
- 5. Respondent's Exhibit L: Curriculum vitae of Dr. Downing
- \* 6. Respondent's Exhibit M: Copy of an October 20, 2003, letter addressed to To Whom It May Concern from Dr. Downing, with handwritten addendum.
- 7. Respondent's Exhibit P: Curriculum Vitae of Charles V. Barrett, D.O. (Note: The Hearing Examiner redacted a Social Security number from this document post-hearing.)

8. Respondent's Exhibit Q: Curriculum Vitae of Jerome Bernard Yokiell, M.D.
9. Respondent's Exhibit S: Curriculum Vita of Jill Helene Mushkat, Ph.D.
10. Respondent's Exhibit T: Curriculum Vitae of Mark Lynn Allen, M.D. (Note: The Hearing Examiner redacted a Social Security number from this document post-hearing.)

C. Admitted by the Hearing Examiner Post Hearing

Board Exhibit A: Copy of a December 9, 2003, letter to Ms. Albers from Mr. Yelsky.

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

### PROFFERED MATERIALS

The following documents were neither admitted to the hearing record nor considered by the Hearing Examiner, but are being sealed and held as proffered material:

- A. Respondent's Exhibit A: Copy of Memorandum in Support of Granting Medical Privileges Prior to Hearing O.R.C. 119.12, filed in the Franklin County Court of Common Pleas in *In the Matter of Mark L. Allen, M.D.*, Case No. 03CVF11-12844.
- B. Respondent's Exhibit C: Copy of a November 19, 2003, Affidavit of Mark L. Allen, M.D.
- C. Respondent's Exhibit E: Copy of an undated Affidavit of Kim Shifkoski.
- D. Respondent's Exhibit K: Copy of an October 21, 2003, Affidavit of Cynthia Downing, Ph.D.
- E. Respondent's Exhibit N: Rule 3793:3-1-01, Ohio Administrative Code, effective May 13, 2001.
- F. Respondent's Exhibit O: Copy of an October 21, 2003, Affidavit of Kurt Jensen, Psy.D.
- G. Respondent's Exhibit R: Copy of a November 12, 2003, letter to Mr. Yelsky from Dr. Mushkat.
- H. Board Exhibit B: Copy of Dr. Allen's evaluation and treatment records maintained by The Cleveland Clinic Foundation. (Note: These documents had not yet been received at the time this Report and Recommendation was filed. See Procedural Matters below.)

## **PROCEDURAL MATTERS**

The hearing record in this matter was held open in order to give the State an opportunity to obtain a copy of Dr. Allen's evaluation and treatment records from The Cleveland Clinic Foundation. However, because this matter concerns a summary suspension, time constraints prevented delaying the filing of this Report and Recommendation until those records could be obtained. Accordingly, when those records are received, they will be marked as Board Exhibit B and held as proffered material.

## **SUMMARY OF THE EVIDENCE**

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

### **Background Information**

1. Mark L. Allen, M.D., testified that he had obtained his medical degree in 1980 from the University of Kansas Medical School in Kansas City, Kansas. From 1980 through 1981, Dr. Allen completed a rotating internship at St. Luke's Hospital in St. Louis, Missouri. From 1981 through 1983, Dr. Allen completed a residency in anesthesiology at that same institution. Subsequently, from December 1989 through September 1990, Dr. Allen participated in a fellowship in operating room anesthesia at the University of Kansas Medical Center. Dr. Allen is board certified by the American Board of Anesthesia, and is a diplomate of the American Board of Pain Medicine and the American Academy of Pain Medicine. (Hearing Transcript [Tr.] at 15-16; Respondent's Exhibit [Resp. Ex.] T)

Dr. Allen testified that he practices with a group that consists of three partners, including himself, as well as several physician employees. Dr. Allen further testified that his practice consists of approximately 90 percent pain management, and the remaining 10 percent is operating room anesthesia. Moreover, Dr. Allen testified that his primary practice location is South Pointe Hospital in Warrensville Heights, Ohio. Dr. Allen testified that he also works at a surgical center in Beachwood, Ohio, and at Union Hospital in Dover, Ohio. Dr. Allen testified that he sees approximately 100 patients or more per week. (Resp. Ex. T; Tr. at 16-18)

Dr. Allen testified that he is on call approximately two or three times per week with regard to his pain management practice, and approximately every fifth weekend with regard to his anesthesia practice. (Tr. at 19-20)

2. On June 7, 1999, at 12:42 a.m., Dr. Allen was arrested by the Bedford Heights [Ohio] Police Department for Driving While Under the Influence of Alcohol [DUI]. Dr. Allen

submitted to a Breathalyzer test, which revealed his blood alcohol level to be 0.16 percent. On July 7, 1999, in Bedford Municipal Court, Dr. Allen was fined \$500, and sentenced to thirty days in jail. The court suspended twenty-seven of those days, and agreed to accept the Driver's Intervention Program in lieu of the remaining three days. Further, Dr. Allen's driver's license was suspended for 180 days with occupational driving privileges after fifteen days. (State's Exhibit [St. Ex.] 6)

Dr. Allen testified that the court had ordered him to attend "a three-day or four-day course" related to alcohol, but did not order him to a treatment program. Moreover, Dr. Allen testified that the court did not order him to attend Alcoholics Anonymous [AA] meetings. (Tr. at 20-22)

3. On May 9, 2001, at 1:19 a.m., Dr. Allen was arrested and charged by the Bedford Heights Police Department with DUI. A Breathalyzer test indicated that Dr. Allen's blood alcohol level was 0.148 percent. On August 16, 2001, in the Bedford Municipal Court, Dr. Allen's offense was amended to Reckless Operation. The court fined Dr. Allen \$1,000, sentenced him to ninety days in jail, but suspended all jail time. The court suspended Dr. Allen's driver's license for 180 days with occupational driving privileges after thirty days. Moreover, the court placed Dr. Allen on active probation for two years, with conditions that included abstention from alcohol and drugs, submission to random alcohol and drug screens, satisfactory completion of his current intensive outpatient program, and attendance at two AA meetings per week. (St. Ex. 7)

Dr. Allen acknowledged that, in 2001, he had been arrested for a second alcohol-related traffic offense. Dr. Allen further testified that, prior to the final hearing before the court, he had instituted a treatment plan with psychologist Cynthia Downing, Ph.D. Dr. Allen testified that the court had agreed to accept his treatment plan with Dr. Downing. Dr. Allen further testified that the court had ordered him to have random urine screens for alcohol, but that his probation officer never requested that he provide a sample. (Tr. at 22-25)

4. Dr. Allen testified that friends and fellow professionals had recommended Dr. Downing to him. Dr. Allen further testified that Dr. Downing specializes in alcohol and drug treatment and, Dr. Allen believes, is recognized by the Board as a treatment specialist. (Tr. at 25)

Dr. Allen testified that he had seen Dr. Downing once per week. Dr. Allen further testified that, after he had seen her for a period of time, he entered Dr. Downing's aftercare group, and met with that group once per week. Dr. Allen testified that his treatment plan with Dr. Downing had not included inpatient treatment or urine screens. (Tr. at 25-26)

5. On November 7, 2002, Dr. Allen petitioned the court for early release from his probation. (St. Ex. 7 at 7-9) On November 9, 2002, the court granted Dr. Allen's petition, and released Dr. Allen from probation. (St. Ex. 7 at 4-5)

Dr. Allen testified that, in early 2003, he had stopped seeing Dr. Downing and began seeing another psychologist, Kurt Jensen, Psy.D. Dr. Allen testified that he saw Dr. Jensen for alcohol counseling as well as for relationship issues. (Tr. at 26-27)

Dr. Allen further testified that he had continued to attend AA meetings after his probation had ended. Dr. Allen testified that he had attended one meeting per week. (Tr. at 28-29)

### **Dr. Allen's Evaluation at Glenbeigh Health Sources of Rock Creek**

6. In a November 12, 2003, Notice of Opportunity for Hearing, the Board alleged that, by letter dated September 3, 2003, it had ordered Dr. Allen to submit to a three-day evaluation at Glenbeigh Health Sources of Rock Creek, Rock Creek, Ohio [Glenbeigh], commencing on October 6, 2003. The Notice of Opportunity for Hearing states that the order was based on the Board's determination that it had reason to believe that Dr. Allen was in violation of Section 4731.22(B)(26), Ohio Revised Code. (St. Ex. 1A)

Dr. Allen testified that, after he received the Board's letter ordering him to be evaluated, he had resumed meeting with Dr. Downing's aftercare group, and continued seeing Dr. Jensen as well. (Tr. at 27-28)

7. On October 6, 2003, Dr. Allen was admitted to Glenbeigh for a three-day assessment as ordered by the Board. While at Glenbeigh, Dr. Allen was examined by Chester J. Prusinski, D.O., and evaluated by Roy Nichols, M.Ed., LSW, CCDCIIE. (St. Ex. 4)

#### *Testimony of Chester J. Prusinski, D.O.*

8. Chester J. Prusinski, D.O., obtained his osteopathic medical degree in 1964 from the Kansas City College of Osteopathic Medicine and Surgery. Dr. Prusinski completed a rotating internship in 1965 at Richmond Heights General Hospital in Richmond Heights, Ohio. Dr. Prusinski testified that, following his internship, he had joined the practice of an older physician for four years, then opened his own general practice in Euclid, Ohio. Dr. Prusinski testified that he had eventually moved to Ashtabula County, Ohio, where he took over the practice of another physician. (St. Ex. 14; Tr. at 52-54)

Dr. Prusinski testified that, in 1988, he had decided that he had a problem with alcohol and joined AA. Dr. Prusinski started volunteering his time at Glenbeigh. Eventually, after a Medical Director at Glenbeigh left to accept another position, Dr. Prusinski took over the medical directorship of that facility. Dr. Prusinski has been the Medical Director of Glenbeigh since November 1992. (St. Ex. 14; Tr. at 54-55)

Dr. Prusinski testified that he is board-certified in family practice and, in approximately 1997, became certified in addictionology by the American Society of Addiction Medicine. (Tr. at 55-56)

Dr. Prusinski testified that his own sobriety date is February 19, 1988. (Tr. at 72)

9. Dr. Prusinski testified that Glenbeigh is a Board-approved treatment provider. Dr. Prusinski testified that, as such, Glenbeigh performs approximately six evaluations for the Board on an annual basis. (Tr. at 56)

Dr. Prusinski testified that he usually sees patients for medical evaluation on the day following their admission. Dr. Prusinski testified that he performs a complete history, including a chemical dependency history, and physical examination on each patient. Dr. Prusinski further testified that, "In the case of alcohol, it's when did they start drinking, when did it become a problem, if they have consequences, both social and physical." (Tr. at 57-58)

Dr. Prusinski testified that the patient next meets with an intake counselor who performs a psychosocial assessment. Dr. Prusinski testified that this includes standardized tests, interviews, and contact with people involved in the person's recovery, such as spouses, employers, etc. (Tr. at 58)

10. Dr. Prusinski testified that he is familiar with Dr. Allen, and that he performed the history and physical examination on Dr. Allen. Dr. Prusinski further testified that Dr. Allen's examination was remarkable in that Dr. Allen had macrocytosis (enlarged red blood cells), which Dr. Prusinski testified is "pretty typical of alcohol abuse." Dr. Prusinski further testified that Dr. Allen had macrocytic anemia, which can also result from alcohol abuse. Dr. Prusinski testified that macrocytic anemia is not exclusively related to alcohol abuse, and can be a sign of inadequate vitamin B-12 in his system. However, Dr. Prusinski further testified that inadequate vitamin B-12 can also be related to alcohol abuse, because, according to theory, alcohol consumption can affect a person's ability to absorb vitamin B-12. Finally, Dr. Prusinski testified that Dr. Allen is diabetic. (Tr. at 60-62)

Dr. Prusinski testified that, after he had completed Dr. Allen's physical examination, Dr. Allen met with Roy Nichols. (Tr. at 62)

#### *Testimony of Roy Nichols*

11. Roy Nichols, M.Ed., LSW, CCDCHIE, testified that he had obtained a Bachelor's degree in Comprehensive Science in 1959 from Wittenberg University. Subsequently, Mr. Nichols graduated from the Cincinnati College of Mortuary Science in 1963. In 1967, Mr. Nichols obtained a Master of Education degree from Wittenberg University. Mr. Nichols testified that he has been a Licensed Social Worker for ten years. Mr. Nichols is also a Certified Chemical Dependency Counselor, Level III, with Supervision Endorsement. Mr. Nichols testified that he works at Glenbeigh, and that his current duties include performing assessments for impairment issues. (St. Ex. 13; Tr. at 86-87)

Mr. Nichols testified that he is a recovering alcoholic. Mr. Nichols further testified that he last drank alcohol on July 26, 1984. (Tr. at 143)

12. Mr. Nichols testified that, when he performs an assessment of a physician, he first reviews the chart, which includes a history and physical examination report, the nursing report, the letters from the Board, and counselor's notes. Mr. Nichols then interviews the person being assessed. Mr. Nichols testified that the interview lasts approximately two hours. In addition, Mr. Nichols administers a test called the Substance Abuse Subtle Screening Inventory [SASSI]. Further, Mr. Nichols contacts significant others in the patient's life. Mr. Nichols testified that this last step is "nearly required. We need to get corroborative information from other persons to verify what the patient has told us, or to add additional information that may be useful to us." Moreover, Mr. Nichols testified:

The decisions we make are critical. I think we want to make sure we're making as correct a decision as we can possibly make. Alcoholics are sometimes known as being manipulative, perhaps dishonest, or at least defensive. In many cases, alcoholics do not really see clearly the truth; not that any one person has a lock on truth, but what you're getting basically is the truth of other parties, and then you try to blend a common truth, because everybody sees it their own way.

(Tr. at 88-90)

Mr. Nichols testified that he performed the biopsychosocial assessment of Dr. Allen. (Tr. at 92)

13. In Mr. Nichols's report of his biopsychosocial assessment of Dr. Allen, Dr. Allen is noted to have made the following statements:
- Dr. Allen indicated that he and his wife had been separated for several months due to differing interests, but that "[s]he is glad [Dr. Allen] is sober." Dr. Allen further stated that "before [he] got sober," his wife had told him that it was "best not to drink in front of [their] son[.]" (St. Ex. 4 at 1)
  - Dr. Allen indicated that his father is aware of Dr. Allen's problems with alcohol, and "is aware of family tendencies \* \* \* regarding the use of alcohol. He believes both his parents [Dr. Allen's paternal grandparents] had a drinking problem. His only sibling also had a drinking problem." Dr. Allen further indicated that his mother is pleased that Dr. Allen is going to meetings and staying sober. (St. Ex. 4 at 2)
  - Dr. Allen indicated that he has two older brothers, and that both are aware of Dr. Allen's "struggle with alcohol." (St. Ex. 4 at 3)

- Dr. Allen indicated that, when he was growing up, there had been no alcohol in his home. The first time Dr. Allen drank was at high school parties. (St. Ex. 4 at 3)
- Dr. Allen related that, when he was in high school, his father had confronted him for drinking beer. (St. Ex. 4 at 3)
- Dr. Allen described his history of drinking. Dr. Allen stated that he had had his first drink and his first drunk when he was 17 years old, in high school. He continued to drink through high school and college. His drinking habits were stable until two and one-half years ago, and he had drunk two to three times per week. He first realized that alcohol was a problem for him in 1999, when he was 47 years old. Dr. Allen stated that during the period of his two DUIs he had been drinking two to three days per week, “a couple glasses of wine with dinner.” Dr. Allen further stated that, on weekends, if at a party, he may have drank more, “maybe four glasses of wine.” Dr. Allen denied having had blackouts. Moreover, Dr. Allen indicated, “When I drink heavier, I get unstable on my feet and sleepy.” Dr. Allen indicated, “I am an alcoholic. The fact of DUIs bring[s] me to that conclusion. With my first DUI, I thought I could control it. With the second DUI, I knew I could not.” (St. Ex. 4 at 12)
- Dr. Allen reported his last date of alcohol use as May 9, 2001. (St. Ex. 4 at 12)
- Dr. Allen indicated that he is now in control of his drinking because he has not used alcohol for two and one-half years. Dr. Allen further stated, “I am also more aggressively caring for my diabetes. The use of alcohol with my diabetes is unwise and my diabetic treatment is more effective in sobriety.” (St. Ex. 4 at 13)
- Dr. Allen indicated, “I have been to AA and I feel like I fit in there; I have good friends there.” Dr. Allen reported attending one AA meeting per week, in addition to Dr. Downing’s weekly aftercare group. (St. Ex. 4 at 4, 14)

Mr. Nichols testified that he is confident that his biopsychosocial assessment accurately reflects the statements of Dr. Allen, because he had had Dr. Allen review the assessment on Mr. Nichols’s computer screen as they went along. (Tr. at 121-123)

14. In addition, Mr. Nichols contacted people in Dr. Allen’s life by telephone. Mr. Nichols testified that he had had to obtain releases from Dr. Allen in order to speak with these individuals. (Tr. at 109-110) Mr. Nichols summarized these contacts in the biopsychosocial assessment:

- Dr. Allen’s sponsor, who will be referred to herein as “Mr. H,” indicated that he had been sober for 25 years. Mr. H indicated that Dr. Allen has another sponsor who is a physician. Mr. H stated that Mr. H and Dr. Allen have been close personal friends for three years. Mr. H further stated that he sees Dr. Allen about once each week, and talks to him often on the telephone. Mr. H further stated, “[Dr. Allen] is very

committed to working his program. He has brought in other doctors. He is living it. He is a magnet for others.” (St. Ex. 4 at 9)

Mr. Nichols testified that the responses that he had received from Mr. H had caused him concern because Mr. H’s report was “just too glowing.” Mr. Nichols testified, “I don’t see how it would be possible for someone to work a program that warrants that kind of a glowing profile and also work the number of hours and numbers of jobs that Dr. Allen reported he worked.” Mr. Nichols further noted that Dr. Allen had reported attending only one AA meeting per week, which indicates to Mr. Nichols that Dr. Allen is “not connecting much with AA.” (St. Ex. 4 at 9; Tr. at 111-113)

- Mr. Nichols summarized his telephone interview with Dr. Allen’s spouse as follows:

[Dr. Allen] does not drink in my presence at all. He was a social drinker. I don’t think he is an alcoholic because they carry a bottle to work and hide it in the desk drawer. Why is this happening now[?] Those DUI’s are so old. We have been separated for several months. When we were living together, he would drink maybe two days per week, a couple of glasses of wine with dinner. I see him often even though we are separated. When he drinks, he is more relaxed. I can tell when he has had a drink. There are times when he says he does not remember me saying things or us talking about something. That’s like any other men. The man’s brain. Most men are like that. Women complain about that. He can drink too much at times; his body weight and diabetes can do that. His last drink was a couple months ago when he got the letter from the Board to go there. Before that, over a year ago. We are separated because he had a woman who approached him. A lot of our troubles stem from her. I am fighting to keep my family together. He is not blameless. (St. Ex. 4 at 9-10)

Mr. Nichols further testified that his conversation with Dr. Allen’s spouse had caused him some concern. Mr. Nichols stated that she had not thought that Dr. Allen was an alcoholic. However, she had also stated that she could tell when Dr. Allen has been drinking, which Mr. Nichols interpreted as meaning that Dr. Allen’s personality changes when he drinks. Further, Mr. Nichols testified that the spouse had indicated that sometimes Dr. Allen does not remember conversations, which Mr. Nichols said may indicate the presence of blackouts. Moreover, the spouse had reported that Dr. Allen had had a drink a couple months prior to the evaluation after he received the letter from the Board. Mr. Nichols testified that that conflicts with Dr. Allen’s statement that he had not had a drink since his second arrest. Finally, Mr. Nichols testified that the spouse had made some statements that indicated that she is naïve about the disease of alcoholism. (St. Ex. 4 at 9-10; Tr. at 113-116)

Mr. Nichols acknowledged that Dr. Allen's spouse did not quantify the amount that Dr. Allen may have drunk after he got the Board's letter. Mr. Nichols further acknowledged that she did not say that Dr. Allen got drunk. (Tr. at 146-148)

- Mr. Nichols summarized his telephone interview with Dr. Downing as follows:

I have done Aftercare with the [Board] since 1988. I first saw Mark on 8-24-01. He took time off from the group aftercare for about a year and just came back a month ago. His drinking history was terrible. He drank at night with his diabetes. His marriage was falling apart. His wife was pretending it was not going on. He readily admitted right away he was in trouble with alcohol and it was time to quit. He fit right away in with the group. I have also seen him weekly for individual sessions. He did excellent except for one thing. I recommended he join the Ohio Physicians Effectiveness Program [OPEP]. This is the direct result of that. I had no duty to report. He tried to control his drinking. He could not carry out his intent. He had a lot of disappointments with his wife and was involved with another woman after he concluded his wife was not going to work with him, even though he was still living with her. I have one verified blackout. He said he blacked out the first time he drank. He was so consistent with his drinking for so long. He was a pretty drunk guy for a pretty long time. His father quit drinking just before Mark was born. (St. Ex. 4 at 10)

Mr. Nichols testified that Dr. Downing's report had also caused him concern. Mr. Nichols testified that Dr. Downing had reported that Dr. Allen left the aftercare group after his probation had ended, and returned after he had received the Board's letter. Mr. Nichols testified that he interprets this as an attempt by Dr. Allen "to look good." Mr. Nichols further testified that Dr. Downing had related a much more serious history of drinking than Dr. Allen reported to Glenbeigh. Moreover, Mr. Nichols testified that it had appeared that Dr. Allen's spouse was living in denial concerning Dr. Allen's drinking. Furthermore, Dr. Downing reported that Dr. Allen had tried to control his drinking after his first DUI arrest but failed; Mr. Nichols testified that an inability to drink socially is "a strong indicator of alcoholism." In addition, Dr. Downing reported that Dr. Allen had had one blackout; Mr. Nichols testified that Dr. Allen had reported to Glenbeigh that he had had no blackouts. Finally, Mr. Nichols testified that Dr. Downing's report had indicated a familial tendency toward alcoholism. (St. Ex. 4 at 10; Tr. at 116-120)

15. Mr. Nichols testified that he had also spoken with Dr. Jensen. Mr. Nichols testified that Dr. Jensen had told him that Dr. Jensen was not seeing Dr. Allen for his drinking. Nevertheless, Mr. Nichols testified that Dr. Jensen had stated that he saw no need for the evaluation, diagnosis, or recommendations. Mr. Nichols testified that he had been confused as to why Dr. Jensen criticized the evaluation and diagnosis concerning

Dr. Allen's drinking when Dr. Jensen himself had stated that he was not seeing Dr. Allen concerning Dr. Allen's drinking behavior. Mr. Nichols testified that he did not include his conversation with Dr. Jensen in the biopsychosocial assessment. (Tr. at 128-130, 156-158)

16. Mr. Nichols testified that, as part of his assessment of Dr. Allen, Dr. Allen had completed a Substance Abuse Subtle Screening Inventory [SASSI]. Mr. Nichols testified that the SASSI inventory consists of two pages. One page contains 67 statements in True/False format. The second page asks twelve questions concerning alcohol, and fourteen questions concerning other drugs. The responses to those questions can be "Never," "Once or Twice," "Several Times," or "Repeatedly." Dr. Allen was asked to respond to the applicability of each of those questions with regard to his entire life. Dr. Allen answered "Never" to all questions on the second page except for two. He answered "Once or Twice" to: "Had more to drink than you intended to?" and "Spent your spare time in drug related activities (e.g. talking about drugs, buying, selling, taking, etc.)?" (St. Ex. 4 at 20-21; Tr. at 94-95)

Mr. Nichols testified that the SASSI is then scored on several categories<sup>1</sup>, and the value of each category is used to create a profile to determine whether the individual has a high probability or low probability of having a substance dependence disorder. Mr. Nichols testified that, based upon Dr. Allen's answers, his SASSI profile had indicated that he had a low probability of having a substance abuse disorder. (St. Ex. 4 at 18; Tr. at 95-98)

17. Mr. Nichols testified that Glenbeigh had chosen to use the SASSI instead of competing screening tests "because there are people who take this inventory who are trying to achieve a better impression than what they really are, and this is an inventory that has been designed to detect those people. Some of the inventories are just real straightforward. This tries to go through the camouflage." (Tr. at 99-100)

Mr. Nichols testified that Dr. Allen's score had caused him concern. Mr. Nichols noted that Dr. Allen's score in the "Defensiveness" category had been "10," which Mr. Nichols characterized as "a red flag." Mr. Nichols testified that a Defensiveness score of eight or more might indicate "the possibility of a SASSI missing substance dependent individuals." (St. Ex. 4 at 18; Tr. at 99-100)

Mr. Nichols further testified that, in addition to the high Defensiveness score on the SASSI, some of Dr. Allen's responses on the SASSI were not consistent with statements he had made to Mr. Nichols during the biopsychosocial assessment. (Tr. at 103-104)

---

<sup>1</sup> The parameters are: Face Valid Alcohol (FAV), Face Valid Other Drugs (FVOD), Symptoms (SYM), Obvious Attributes (OAT), Subtle Attributes (SAT), Defensiveness (DEF), Subtle Addiction Measure (SAM), Family vs. Controls (FAM), and Correctional (COR). In addition, a score is determined for Random Answering Pattern (RAP), that indicates whether the individual answered questions without attempting to read them and answer in a thoughtful way. (St. Ex. 4 at 18; Tr. at

18. Mr. Nichols testified that the organization that produces the SASSI provides a telephone number for consultation should there be any questions concerning the profile. Mr. Nichols testified that he called that number on November 7, 2003; gave the person at the other end Dr. Allen's profile; and asked for an interpretation of that profile. Mr. Nichols testified that he was informed that, among other things, Dr. Allen's profile indicated that Dr. Allen had minimized and attempted to conceal his problems, and is likely to blame his problems on external sources. (St. Ex. 8; Tr. at 99-103)

Mr. Nichols acknowledged that he does not know who the person was that he talked to concerning Dr. Allen's SASSI profile, nor is he aware of the person's qualifications. (Tr. at 149-156)

19. Mr. Nichols testified that, after he spoke with the SASSI representative, he had used Dr. Allen's responses on the biopsychosocial assessment, to answer the SASSI questions concerning alcohol use in a manner that would be consistent with the biopsychosocial assessment:
- Dr. Allen had previously answered, "Once or Twice," to question 4 which asked, "Had more to drink than you intended to?" Mr. Nichols testified that he changed the answer to "Several Times" or "Repeatedly."
  - Similarly, Dr. Allen had answered, "Never," to question 5, which asked, "Experienced physical problems after drinking (e.g. nausea, seeing/hearing problems, dizziness, etc.)?" Mr. Nichols testified that he changed that to, "Several Times," or, "Repeatedly," based on Dr. Prusinski's diagnoses of macrocytic anemia and diabetes, and Dr. Allen's admission that drinking exacerbated his diabetes.
  - Further, Dr. Allen had answered, "Never," to question 8 which asked, "Argued with your family or friends because of your drinking?" Mr. Nichols testified that he changed that answer to, "Several Times," or, "Repeatedly," because Dr. Allen was "separated from his wife, and she said a lot of their problems had to do with drinking."
  - Finally, Dr. Allen had answered, "Never," to question 10, which asked, "Had problems in relationships because of your drinking (e.g. loss of friends, separation, divorce, etc.)?" Mr. Nichols testified that he changed that to, "Several Times," or, "Repeatedly."

(St. Ex. 4 at 21; Tr. at 105-106) Mr. Nichols testified that, after rescoring Dr. Allen's SASSI, Dr. Allen's score in the "Face Valid Alcohol" category increased from "1" to "10 to 15." Mr. Nichols testified that, based on that score, Dr. Allen's profile changed from a low probability to a high probability of having a substance dependence disorder. (St. Ex. 4 at 18; St. Ex. 9; Tr. at 105-107)

20. Mr. Nichols testified that, in his opinion, Dr. Allen “is impaired and not able to practice well.” (Tr. at 132) Mr. Nichols testified that he had found that Dr. Allen had a positive response to four criteria, which qualifies for a diagnosis of alcoholism according to the DSM-IV. Mr. Nichols further testified:

One of them is the increased tolerance for the mood-altering chemical. Dr. Allen indicates he drank 15 to 20 years on a steady basis, two or three days a week. He also admitted that his drinking had gotten out of control. That indicates, to me, an increased tolerance.

The second item, the chemical is taken in larger amounts or over a longer period than intended. Those two DUI charges would support that.

The third, the persistent desire or unsuccessful attempts to cut down or control chemical use, he admits in this document that he was not able to control his drinking. Dr. Downing supports that in her statement. And as I understand alcoholism, the only reason you need to control your drinking is because it's out of control; otherwise, there is no reason to [say], I have to control this.

And the fourth item is the chemical is used despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by the chemical. Again, the psychological problem is the control issue, and the physical problem is his exacerbation of his diabetes.

(St. Ex. 4 at 15-16; Tr. at 133-134)

21. Dr. Allen had reported attending one AA meeting per week. Mr. Nichols testified that attending one AA meeting per week “is not sufficient to maintain good recovery.” Mr. Nichols testified that Dr. Allen appears to take a “casual approach” to his recovery. Moreover, Mr. Nichols testified:

I think [Dr. Allen] verbalizes a good intention. I think he probably believes he is doing a good job.

One of the characteristics about alcoholics is that we do not judge ourselves by our behavior, we judge ourselves instead by our intentions; therefore, we never see ourselves as bad as perhaps others see us because we observe ourselves by our intentions, not our behavior. I think that's true here. This is a pretty lightweight approach, as I see it, to recovery, particularly when persons have their lives in Dr. Allen's hands. It's a lot of awesome responsibility for a lightweight approach to alcoholism.

(Tr. at 130-131)

In Mr. Nichols' report of Dr. Allen's biopsychosocial assessment, under the section entitled, "Diagnostic Summary and Recommendations," Mr. Nichols noted that it was his diagnostic impression that Dr. Allen's primary problem is chemical dependency, and that his drug of choice is alcohol. (St. Ex. 4 at 16)

*The Results of the Glenbeigh Evaluation*

22. Dr. Prusinski testified that, after the evaluation of Dr. Allen had been completed, Dr. Prusinski was able to make a determination concerning Dr. Allen's condition. Dr. Prusinski testified, "we were able to establish the chronicity and relapse and significant consequences and medical findings that would indicate that \* \* \* he was a chronic alcoholic." (Tr. at 62)

23. By letter dated November 4, 2003, Dr. Prusinski informed the Board as follows:

Mark Allen, M.D., was referred to Glenbeigh Hospital by the Ohio State Medical Board for an inpatient chemical dependency assessment.

While at Glenbeigh, I saw him on October 7, 2003, for a complete history and physical examination, which was followed by a psychiatric evaluation, a mental status evaluation and a comprehensive biopsychosocial assessment which included a thorough chemical usage history. As a result of my review of this information, my findings are that Mark Allen, M.D., is not qualified, by impairment due to alcohol dependence, to perform his duties as a physician in accordance to acceptable prevailing standards of care because of habitual and excessive use of alcohol that has impaired his ability to practice.

We therefore recommend residential treatment of twenty-eight days at a facility acceptable to the Ohio State Medical Board.

(St. Ex. 2) By second letter dated November 4, 2003, Dr. Prusinski informed the Board of the same information, minus the reference to a psychiatric evaluation and mental status examination. Dr. Prusinski testified that neither a psychiatric examination nor a mental status examination had been performed. Nevertheless, Dr. Prusinski testified that he was able to make a determination that Dr. Allen was impaired without those examinations. (St. Ex. 3; Tr. at 63-66, 73-78)

24. Dr. Prusinski testified that, in his opinion, Dr. Allen was, at the time of his evaluation, impaired in his ability to practice medicine by reason of his use of alcohol. (Tr. at 68)

25. Dr. Prusinski testified that Dr. Allen did not obtain the recommended 28 days of inpatient treatment at Glenbeigh. (Tr. at 67)

*Testimony of Dr. Allen Concerning the Glenbeigh Evaluation*

26. Dr. Allen testified concerning his Glenbeigh evaluation that Dr. Prusinski's examination had lasted approximately fifteen minutes. Dr. Allen stated that Dr. Prusinski took a history on a standardized history form, then performed a physical examination. (Tr. at 276-277)

Dr. Allen testified that he had spent approximately 30 minutes with Mr. Nichols during the Glenbeigh evaluation. Dr. Allen further testified that he does not recall spending two hours with Mr. Nichols, as Mr. Nichols had testified. (Tr. at 278, 284)

27. Concerning the testimony of Mr. Nichols that Mr. H's report concerning Dr. Allen had been too glowing, Dr. Allen testified that he does not believe that Mr. H would lie for him, or for anybody else. (Tr. at 282-283)
28. Dr. Allen testified that he could not recall reporting to Dr. Downing that he had had one blackout from his alcohol use. Moreover, Dr. Allen testified that he cannot recall ever having had a blackout related to alcohol use. (Tr. at 33-35)

However, Dr. Downing's treatment records for Dr. Allen contain the following note dated October 5, 2001, "First Drunk=Stinko drunk=Blackout=Headache." (St. Ex. 11)

29. Dr. Allen acknowledged that he had completed a questionnaire during his evaluation at Glenbeigh wherein he had answered "Never" to the question, "Had problems in relationships because of your drinking (e.g. loss of friends, separation, divorce, etc.)?" Dr. Allen acknowledged that he is separated from his wife. However, Dr. Allen testified that he had stopped drinking one and one-half years before that separation, and that they had separated for relationship issues, not because of Dr. Allen's alcohol use. (St. Ex. 4 at 21; Tr. at 36-37)
30. On the SASSI, true/false statement 4 said, "I have never been in trouble with the police." Both the True and the False boxes were filled in, with an "X" through the False answer, and an arrow pointing to the True response, and the True response circled. Such a response would indicate that Dr. Allen had answered that he had never been in trouble with the police. (St. Ex. 4 at 20)

During hearing, after much confusing testimony concerning that response, Dr. Allen testified, "The final answer is—to the question is I've never been in trouble with the police. The answer is I've been in trouble with the police on the two occasions I was arrested for alcohol. So it's true I've been in trouble with the police other than those two occasions." When asked to clarify his answer, Dr. Allen stated, "It's true that I've been in trouble with the police on the two occasions that I was arrested for alcohol because I was arrested. I don't know how to make that any more clear." (St. Ex. 4 at 20; Tr. at 37-42)

Further, true/false statement 60 said, “I do most of my drinking or drug using away from home.” Both the True and the False boxes were filled in, with an “X” through the False answer, and an arrow pointing to the True response, and the True response circled. At hearing, the following exchange took place concerning that question:

Q. (By Ms. Albers): Going down to question 60, then, which is the correct answer?

A. (By Dr. Allen): I do most of my drinking from home, that’s true. That question, I did most of my drinking at home, correct.

Q. (By the Hearing Examiner): I believe—if I can actually quote from the form, it says: ‘I [did] most of my drinking or drug use away from home.’

A. Away from home, all right. That’s true. Okay. I misread that again, too. I do most of my drinking and drug using away from home, true. The true is the answer.

Q. (By Ms. Albers): So at that time you put an X through the false box and drew an arrow pointing to the true for that question?

A. I did.

(St. Ex. 4 at 20; Tr. at 42-43)

31. Dr. Allen testified that, after he had taken the SASSI, Mr. Nichols had informed him that he had a low probability of having a substance abuse disorder. Dr. Allen further testified that Mr. Nichols had never informed him that Mr. Nichols had later retaken or rescored Dr. Allen’s SASSI. Dr. Allen testified that he had only learned of that during Mr. Nichols’ testimony at the hearing. (Tr. at 278-280)
32. Dr. Allen testified that, following his evaluation, Glenbeigh recommended that Dr. Allen attend 28 days of inpatient treatment. Dr. Allen further testified that he had originally agreed to do so, but instead went to The Cleveland Clinic Foundation for another evaluation. (Tr. at 43-44)

### **Dr. Allen’s Evaluation at The Cleveland Clinic Foundation**

*Testimony of Gregory B. Collins, M.D.*

33. Gregory B. Collins, M.D., testified that he had obtained his medical degree from The Ohio State University College of Medicine in 1970. From 1970 through 1973, Dr. Collins participated in a psychiatry residency at The Ohio State University Hospitals. Dr. Collins testified that he is board certified in psychiatry with special qualifications in addiction

psychiatry. Dr. Collins testified that he has worked in the field of chemical dependency rehabilitation for 30 years. Dr. Collins is the founder and section head of the Alcohol and Drug Recovery Center at The Cleveland Clinic Foundation, and has held that position since 1980. (Resp. Ex. H; Tr. at 189-191)

34. Dr. Collins testified that he had evaluated Dr. Allen concerning drug and alcohol addiction. Dr. Collins further testified that, following that evaluation, he had found “that Dr. Allen met criteria for alcohol dependence in remission.” Dr. Collins testified that he had based his findings on Dr. Allen having been abstinent for two and one-half years, but having previously had problems with alcohol. Dr. Collins noted that these problems included two alcohol-related driving offenses. Further, Dr. Collins testified that Dr. Allen had obtained some appropriate treatment, and was doing well. (Tr. at 192-193)

On November 7, 2003, Dr. Collins sent a letter to Dr. Allen’s attorney, Leonard W. Yelsky, Esq., concerning the outcome of that evaluation. Mr. Yelsky then forwarded Dr. Collins’ letter to the Board.

In his November 7, 2003, letter, Dr. Collins stated:

[Dr. Allen] was seen and thoroughly evaluated at The Cleveland Clinic Foundation, as an inpatient beginning on October 27, 2003. The evaluation included attention to substance abuse, physical issues, and psychiatric fitness. The final diagnosis reached upon the conclusion of the evaluation was alcohol dependence in remission, based on a finding that Dr. Allen has been free of alcohol since May 9, 2001, the day of his DUI. As far as we are aware, there is no other verifiable indication or evidence that he had abused alcohol since that time. We are in possession of documentation from Cynthia Downing, Ph.D., who followed Dr. Allen for psychological and sobriety oriented treatment from August 24, 2001, through December 2002. Dr. Downing asserted the patient maintained sobriety and was compliant with outpatient treatment and [AA] meetings. Dr. Allen subsequently switched therapist to Curt Jensen, Ph.D. [sic] and continued with seeing him on an outpatient basis every other week from March 1, 2003, until September 2003 and then advanced to weekly visits. Dr. Allen became involved in AA in August 2001, initially attending two AA meetings per week, then one AA meeting per week, plus seeing Cynthia Downing individually weekly and being involved in group aftercare in her practice. He maintained documentation of his AA involvement until November 9, 2002, at which time his probation for his DUI ended.

On the basis of the three day assessment done at The Cleveland Clinic Foundation, commencing on October 27, 2003, it was recommended by this State Medical Board of Ohio approved provider that Dr. Allen complete a 28 day residential treatment stay for his diagnosis of alcohol dependence in remission. Dr. Allen has willingly agreed to do so and is in the midst of

completing the 28 day recommended residential treatment requirement. He is fully prepared to participate actively in required aftercare as well. Dr. Allen has demonstrated a solid commitment to sobriety, full acceptance of the reality of his dependence on alcohol, full compliance with the terms and conditions of our recommended treatment program. There is neither psychiatric nor medical comorbidity in his case. We have no evidence that Dr. Allen's practice of medicine was affected in any way by his misuse of alcohol in the past. Based on our thorough assessment of Dr. Allen, there is no psychiatric medical or substance abuse contraindication to his returning to active medical practice upon completion of his required 28 day residential treatment at The Cleveland Clinic Foundation. I would be in strong support of board action to allow Dr. Allen to promptly resume active medical practice at the time of his discharge from The Cleveland Clinic residential program.

(St. Ex. 10)

Dr. Collins testified that he had recommended that Dr. Allen complete 28 days of inpatient treatment because Board regulations required it, and "not at all because [Dr. Allen] was a danger to the public." Dr. Collins reiterated that Dr. Allen was in remission, and there was no evidence to cause Dr. Collins to believe that he was a threat to public safety. Finally, Dr. Collins testified that he believes that Dr. Allen is at present capable of practicing medicine in compliance with the acceptable and prevailing standard of care.  
(Tr. at 193-195)

35. Dr. Collins testified that, in making his diagnosis of Dr. Allen, he had relied on his clinical impression of Dr. Allen, Dr. Allen's presentation, information provided by Dr. Allen, and a written report received from Dr. Downing. Dr. Collins testified that, to the best of his recollection, Dr. Downing's report had indicated that Dr. Allen "had been in treatment with her, had done well, had a good prognosis, and was not a danger to anyone."  
(Tr. at 196-197)

Dr. Downing's report as referenced by Dr. Collins, dated October 20, 2003, and addressed to "To Whom It May Concern," states that she had written that letter at the request of Dr. Allen to report on his progress in recovery. The letter further states:

Dr. Allen came to see me in order to explore the possibility that he might have a drinking problem. I first saw him on August 24, 2001. From that time until December 2002, Dr. Allen attended therapy weekly and worked on issues related to recovery. Dr. Allen has made the self-diagnosis that tells him that he is an alcoholic, and he made the commitment to get sober and stay sober because of that self-diagnosis.

Dr. Allen has worked hard on the issues of recovery and is progressing well. He attends AA meetings and had found support there. He attended my

aftercare group from early 2002 to December 2002, in addition to individual therapy. He has shown that he is willing to do whatever it takes to stay sober.

If he continues his current recovery activities, Dr. Allen's prognosis in recovery is excellent. Dr. Allen is at a very low risk for relapse. I can say with reasonable certainty that he is not a danger to his patients.

(Resp. Ex. M) Note that the letter contains a handwritten addendum that states, "Dr. Allen has recently (Sept. 9) come back to group and is a regular, active member. (Resp. Ex. M)

36. Dr. Collins testified that his clinical impressions of Dr. Allen had included Dr. Allen's interest in and motivation concerning sobriety, Dr. Allen's description of his attendance at meetings, "his description of his incorporation of the 12-step philosophy," and Dr. Allen's description of his work with his sponsors. Dr. Collins testified that Dr. Allen's motivation to remain sober and work a good recovery program was evident. (Tr. at 198)
37. Dr. Collins testified that he believes that he had obtained information concerning Dr. Allen from Dr. Allen's family members. Dr. Collins further testified that he believes that a nurse had contacted Dr. Allen's spouse. Moreover, Dr. Collins testified that he was aware that Dr. Allen's spouse had stated that Dr. Allen had had a drink when he received the Board's letter ordering him to an evaluation. Furthermore, Dr. Collins testified that, because Dr. Allen and his wife are in a potentially adversarial relationship, Dr. Collins did not consider Dr. Allen's spouse to be a credible witness. (Tr. at 203-204)

Dr. Collins testified that Dr. Allen had advised that his spouse had not seen him take a drink after he received the Board's letter. Dr. Collins further testified that Dr. Allen had stated that he had called his wife on the telephone about the Board's letter and remarked, "That's enough to make one take a drink." Dr. Allen told Dr. Collins that Dr. Allen's spouse must have assumed that Dr. Allen had taken a drink, or had planned to. (Tr. at 205-206)

38. Dr. Collins testified that "[d]octors go to great lengths to be functional at work and, you know, it's almost the last place that substance abuse problems are apparent." (Tr. at 208)

*Dr. Allen's Treatment at The Cleveland Clinic Foundation*

39. Dr. Collins testified that Dr. Allen has completed 28 days of inpatient treatment at The Cleveland Clinic Foundation, and had been released from that facility on November 30, 2003. (Tr. at 211-212)
40. Dr. Collins testified that The Cleveland Clinic Foundation had prepared an aftercare contract for Dr. Allen, but that Dr. Allen has not yet signed it. Dr. Collins testified that he had assumed that the Board hearing had taken priority for Dr. Allen. Nevertheless,

Dr. Collins testified that the proposed aftercare program includes the following:

- counseling with Dr. Downing once per month.
- attendance at Caduceus meetings at The Cleveland Clinic Foundation.
- random weekly urine screens.
- documented attendance at three AA or Narcotics anonymous meetings per week.
- abstinence from all mood-altering chemicals.

(Tr. at 212-213)

41. Dr. Collins testified that a recovering alcoholic needs to attend two to three AA meetings per week to maintain sobriety. (Tr. at 199)

*Testimony of Dr. Allen Concerning his Evaluation and Treatment at The Cleveland Clinic Foundation*

42. Dr. Allen testified that he completed 28 days of inpatient treatment at The Cleveland Clinic Foundation on November 28, 2003. Dr. Allen further testified that he has not entered aftercare at The Cleveland Clinic Foundation, but plans to return to Dr. Downing's aftercare group. Dr. Allen further testified that his discharge plan at The Cleveland Clinic Foundation is currently on hold pending the outcome of the Board hearing. (Tr. at 48-50)
43. Dr. Allen testified that Dr. Collins had suggested to Dr. Allen that Dr. Allen contact the Ohio Physicians Effectiveness Program [OPEP]. Dr. Allen testified that he has not yet done so, and is awaiting the outcome of the Board hearing. Dr. Allen testified that he would have no objection to being monitored by OPEP. (Tr. at 50)

**Additional Information**

44. Dr. Allen testified that he talks to his sponsor, Mr. H, every day, and meets with him at least once per week. Dr. Allen further testified that he also has another sponsor who is a physician that he sees at aftercare meetings. (Tr. at 29-31)

Dr. Allen further testified that he currently attends one AA meeting per week, sees a psychologist once per week, and meets with his aftercare group once per week.  
(Tr. at 31-32)

45. Dr. Allen testified that he has never been inebriated at a time when he was either seeing patients or on call. Dr. Allen further testified that he is not aware of any patient complaint being made against him claiming that he had been inebriated. (Tr. at 50-51, 274)

46. Dr. Allen acknowledged that he has two misdemeanor traffic violations that both concerned alcohol. However, Dr. Allen testified that neither of those convictions were in any way related to his practice as a physician. (Tr. at 275)
47. Dr. Allen testified that he is an insulin-dependent diabetic. Dr. Allen testified that alcohol “generally did not” raise his blood sugar. Dr. Allen further testified, “My diabetes has been in flux for some time. I think it is in better control now, and I’m also not drinking now. I don’t know that the two are directly related.” Dr. Allen acknowledged, however, that it is unwise for a person with diabetes to use alcohol. (Tr. at 287-289)

Dr. Allen further testified that his maximum blood sugar has probably been about 300, but most of the time is normal. Moreover, Dr. Allen testified, “My hemoglobin A1C, which is the major test of how you’re doing with your diabetes, is close to normal.” However, a laboratory report provided to Glenbeigh for a blood sample collected from Dr. Allen on October 7, 2003, indicated a hemoglobin A1C result of 8.3 percent. The report further indicates that a result greater than 8.0 percent would be interpreted as “Poor Control.” (Resp. Ex. J2; Tr. at 289-290)

48. Jerome Bernard Yokiel, M.D., testified that he had obtained his medical degree in 1988 from Wright State University School of Medicine in Dayton, Ohio. Dr. Yokiel completed a residency in anesthesiology and a fellowship in pain management at The Cleveland Clinic Foundation in 1993. Dr. Yokiel testified that he is board certified in anesthesia and pain management by the American Board of Anesthesiology. (Resp. Ex. Q; Tr. at 230-231, 233)

Dr. Yokiel testified that he, along with Dr. Charles Baird, are partners with Dr. Allen. Dr. Yokiel testified that their partnership employs several physicians and certified registered nurse anesthetists, and that their practice consists of both pain management and anesthesia. Dr. Yokiel testified that the practice has about 5,000 patients. (Tr. at 232)

Dr. Yokiel testified that he has known Dr. Allen since 1993. Dr. Yokiel testified that he has been in a position to observe Dr. Allen’s professional work, concerning both pain management and anesthesia. Dr. Yokiel testified that Dr. Allen practices safe and competent medicine. Moreover, Dr. Yokiel testified that he is aware of no hospital or patient complaints being made against Dr. Allen. (Tr. at 234-237, 242-245)

49. Dr. Yokiel testified that Dr. Allen had not informed him of Dr. Allen’s alcohol-related traffic convictions. Dr. Yokiel further testified that he had only recently been made aware that Dr. Allen has been obtaining counseling for alcoholism. (Tr. at 238-239)
50. Charles V. Barrett, D.O., obtained his osteopathic medical degree in 1989 from the Ohio University College of Osteopathic Medicine. In 1993, Dr. Barrett completed a residency in anesthesiology and fellowships in cardiac anesthesiology and pain management at Meridia

Huron Hospital in Cleveland, Ohio. Dr. Barrett is board certified by the American Board of Anesthesiology and the American Board of Pain Medicine. Moreover, Dr. Barrett testified that he is the Medical Director at Union Hospital in Dover, Ohio. (Resp. Ex. P; Tr. at 247-249)

Dr. Barrett testified that he is in partnership with Dr. Allen and Dr. Yokiell. Dr. Barrett further testified that he has known Dr. Allen for approximately ten years. Dr. Barrett testified that he has been in a position to observe Dr. Allen's professional work. Dr. Barrett testified that Dr. Allen practices safe and competent medicine. Moreover, Dr. Barrett testified that he is aware of no patient complaints being made against Dr. Allen. (Tr. at 250-252)

51. Dr. Barrett testified that he had not been aware of Dr. Allen's alcohol-related traffic convictions. Dr. Barrett further testified that Dr. Allen had not informed him that he had been undergoing treatment for alcoholism until the Sunday before the hearing. Moreover, Dr. Barrett testified that Dr. Allen had not informed him until then that Dr. Allen's license to practice medicine in Ohio had been summarily suspended. (Tr. at 255-258)
52. Dr. Barrett was asked on cross-examination if, in his capacity as Medical Director at Union Hospital, it would be important that a staff physician report alcohol-related traffic convictions. Dr. Barrett testified that he believes that that is "a private matter, it's a DUI, it's not a patient matter, so I think it happens a lot in the hospital, and I would not know about that." Moreover, Dr. Barrett was asked if it would be important to know if a staff physician is undergoing counseling for alcoholism. Dr. Barrett testified that it "would not be mandatory to know that[.]" Dr. Barrett added, "I suppose it has a degree of importance if there were issues with patient care." (Tr. at 256-257)
53. Jill Helene Mushkat, Ph.D., testified that she is a psychologist, and is licensed to practice psychology in the State of Ohio. Dr. Mushkat obtained her Ph.D. in psychology in 1978 from The Ohio State University. Dr. Mushkat testified that she is the Director of Pain Management Psychology for the Cleveland Clinic Eastern Region. (Resp. Ex. S; Tr. at 260-261)

Dr. Mushkat testified that she has known Dr. Allen since about 1995. Dr. Mushkat testified that pain management requires an interdisciplinary approach with patients, and that she, in her capacity as a psychologist, has worked with Dr. Allen in his pain management practice. Dr. Mushkat testified that, in addition to Dr. Allen, she also works with approximately 25 other physicians. (Tr. at 262-263)

Dr. Mushkat testified that she has never observed Dr. Allen in a state of inebriation. (Tr. at 263-264)

54. Dr. Mushkat testified that she believes that it would be unethical for a psychological tester to change a subjects' answers on a psychological test. Dr. Mushkat further testified that there is "no circumstance under which you would alter a patient's answers to a test." (Tr. at 264-265)

55. Dr. Allen testified that he had believed that it had been important to apprise his partners of his license suspension. Dr. Allen testified that Dr. Barrett had been out of town, and as soon as Dr. Allen had been able to get both of his partners together, he had informed them of the situation. Dr. Allen further testified that he had not felt it necessary to contact them from The Cleveland Clinic Foundation. Dr. Allen testified that, based on Dr. Collins's recommendation, he had expected that he would be returning to work. (Tr. at 292-293)

### **FINDINGS OF FACT**

1. The Board notified Mark L. Allen, M.D., by letter, of its determination that it had reason to believe that he was in violation of Section 4731.22(B)(26), Ohio Revised Code, and ordered him to a three-day evaluation, beginning on October 6, 2003, at Glenbeigh Health Sources of Rock Creek [Glenbeigh], a Board-approved treatment provider in Rock Creek, Ohio, in order to determine whether Dr. Allen was in violation of Section 4731.22(B)(26), Ohio Revised Code. On October 6, 2003, Dr. Allen reported to Glenbeigh for purposes of the evaluation ordered by the Board.

Based upon the Glenbeigh treatment team's evaluation, Dr. Allen was diagnosed as having chemical dependency, with alcohol being his drug of choice. In addition, Chester J. Prusinski, D.O., Medical Director of Glenbeigh, concluded that Dr. Allen has an impairment of his ability to practice according to acceptable and prevailing standards of care because of habitual and excessive abuse of alcohol, and recommended that he undergo 28 days of residential treatment.

2. Beginning on October 27, 2003, Dr. Allen was admitted to The Cleveland Clinic Foundation, a Board-approved treatment provider, for an additional three-day assessment. Thereafter, Dr. Allen's attorney forwarded to the Board a letter dated November 7, 2003, from Gregory B. Collins, M.D., Section Head of the Alcohol and Drug Recovery Center of The Cleveland Clinic Foundation. In his letter, Dr. Collins stated, in part, as follows:

On the basis of the three day assessment done at The Cleveland Clinic Foundation, commencing on October 27, 2003, it was recommended by this State Medical Board of Ohio approved provider that Dr. Allen complete a 28 day residential treatment stay for his diagnosis of alcohol dependence in remission. Dr. Allen has willingly agreed to do so and is in the midst of completing the 28 day recommended residential treatment requirement.

### **CONCLUSIONS OF LAW**

The conduct of Mark L. Allen, M.D., as set forth in Findings of Fact 1 and 2, constitutes, "[i]mpairment of ability to practice according to acceptable and prevailing standards of care

because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,” as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

\* \* \* \* \*

The evidence indicates that, on November 30, 2003, Dr. Allen completed twenty-eight days of inpatient treatment from a treatment provider approved by the Board. Nevertheless, at the time of the hearing, Dr. Allen had not yet entered into an aftercare program that requires monitoring and supervision. In order to insure the safety of the public, Dr. Allen must demonstrate that he is in recovery before he can be permitted to return to practice. Accordingly, the Proposed Order provides that the minimum requirements for reinstatement include evidence of full compliance with a post-discharge aftercare contract, as specified in paragraph C.3.b. of the Proposed Order, for ninety days prior to submission of an application for reinstatement.

### **PROPOSED ORDER**

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Mark L. Allen, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time.
- B. **INTERIM MONITORING:** During the period that Dr. Allen’s certificate to practice medicine and surgery in Ohio is suspended, Dr. Allen shall comply with the following terms, conditions, and limitations:
1. **Obey the Law:** Dr. Allen shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
  2. **Personal Appearances:** Dr. Allen shall appear in person for quarterly interviews before the Board or its designated representative, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
  3. **Quarterly Declarations:** Dr. Allen shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board’s offices on the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board’s offices on or before the first day of every third month.

4. **Abstention from Drugs**: Dr. Allen 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. Allen's history of chemical dependency.
5. **Abstention from Alcohol**: Dr. Allen shall abstain completely from the use of alcohol.
6. **Drug & Alcohol Screens; Supervising Physician**: Dr. Allen shall submit to random urine screenings for drugs and/or alcohol on a weekly basis or as otherwise directed by the Board. Dr. Allen 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. Allen shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Allen 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. Allen. Dr. Allen 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. Allen 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. Allen must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Allen 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. Allen's quarterly declaration. It is Dr. Allen's responsibility to ensure that reports are timely submitted.

7. **Submission of Blood or Urine Specimens upon Request**: Dr. Allen shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Allen's expense.
8. **Rehabilitation Program**: Dr. Allen 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. Allen 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. Allen's quarterly declarations.
9. **Contact Impaired Physicians Committee**: Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Allen shall contact an impaired physicians committee, approved by the Board, to arrange for assistance in recovery and/or aftercare.

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

1. **Application for Reinstatement or Restoration**: Dr. Allen shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Compliance with Interim Conditions**: Dr. Allen 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. Allen 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. Allen has successfully completed any required inpatient treatment.
  - b. Evidence of continuing full compliance, for at least ninety days prior to submitting an application for reinstatement or restoration, 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. Allen'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. Allen's application for reinstatement. The reports of evaluation shall describe with particularity the bases for the determination that Dr. Allen 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. Allen 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. Allen's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Allen 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. **Tolling of Probationary Period While Out of State:** In the event that Dr. Allen should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Allen 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.
  3. **Violation of Terms of Probation:** If Dr. Allen 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. Allen's certificate will be fully restored.

F. **RELEASES:** Dr. Allen 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. Allen'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. Allen shall also provide the Board written consent permitting any treatment provider from whom Dr. Allen 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. Allen 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. Allen 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. Allen 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. Allen 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. Allen shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

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



R. Gregory Porter  
Hearing Examiner



# State Medical Board of Ohio

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

## EXCERPT FROM THE DRAFT MINUTES OF JANUARY 14, 2004

### REPORTS AND RECOMMENDATIONS

Ms. Sloan announced that the Board would now consider the findings and orders appearing on the Board's agenda. She asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and order, and any objections filed in the matters of: Mark L. Allen, M.D.; Glenda M. Dahlquist, M.D.; Joseph W. Fischkelta, P.A.; Timothy A. Gooden, M.D.; Richard W. Liss, M.D.; Larry John Little, M.D.; and Geoffrey D. Snyder, 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
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Ms. Sloan	- aye

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

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

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

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

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

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

MARK L. ALLEN, M.D.

.....

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF MARK L. ALLEN, M.D. DR. KUMAR SECONDED THE MOTION.**

.....

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

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

The motion carried.



this section and that the individual's continued practice presents a danger of immediate and serious harm to the public, they may recommend that the board suspend the individual's certificate to practice without a prior hearing. Written Allegations shall be prepared for consideration by the board.

The board, upon review of those allegations and by an affirmative vote of not fewer than six of its members, excluding the secretary and supervising member, may suspend a certificate without a prior hearing.

\* \* \* \* \*

The board shall issue a written order of suspension by certified mail or in person in accordance with section 119.07 of the Revised Code. **The order shall not be subject to suspension by the court during pendency of any appeal filed under section 119.12 of the Revised Code.**

\* \* \* \* \*

(Emphasis added.)

Thus, under the clear terms of the statute, the court may not suspend or stay execution of a summary suspension issued by the State Medical Board.

Appellant argues that other language in subparagraph (G) allows the court to suspend the summary suspension. The last grammatical paragraph of that subparagraph provides as follows.

Any summary suspension imposed under this division shall remain in effect, unless reversed on appeal, until a final adjudicative order issued by the board pursuant to this section and Chapter 119. of the Revised Code becomes effective. The board shall issue its final adjudicative order within sixty days after completion of the hearing. A failure to issue the order within sixty days shall result in dissolution of the summary suspension order but shall not invalidate any subsequent, final adjudicative order.

Appellant argues that the first sentence provides authority for the court to suspend the summary suspension pending a decision on the appeal. The court disagrees. Were that the intent and meaning of the legislation, there would be no purpose in the earlier language

that clearly prevents a court from suspending or staying the summary suspension ordered by the agency.

One final issue remains. Is the lack of an effective judicial means to challenge the summary suspension a violation of appellant's right to due process of law?

Appellant has a property interest in his license to practice medicine under state law sufficient to invoke due process protections. Although appellant's right to practice under his medical license is significant and substantial, the state also has an important interest in insuring the safety of the public health.

Here, the board has found, by clear and convincing evidence, that appellant's ability to practice medicine, (anesthesiology), is impaired by reason of alcohol or substance abuse. It is unquestioned that continued practice of medicine by one so impaired is a very real and substantial danger to the public and the required number of members of the board made that second finding as well.<sup>1</sup> Under R.C. 4731.22(G), summary suspension of appellant's medical license was authorized.

A statute that authorizes a summary suspension of a license or privilege without a pre-suspension hearing may, never-the-less, afford adequate due process of law where the statute provides for a prompt judicial or administrative hearing that will definitely determine the issues in the case. **Barry, Chairman, Racing and Wagering Board of New York v. Barchi** (1979), 443 U.S. 55.

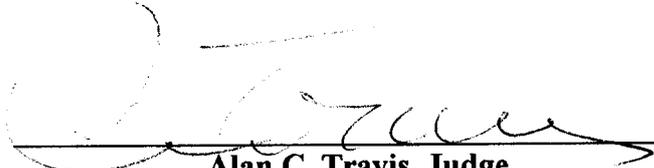
Here, the medical board has set a hearing on Thursday, December 4, 2003, at which it will be determined whether appellant has violated R.C. 4731.22(B)(26): being impaired in his ability to practice medicine according to acceptable and prevailing

---

<sup>1</sup> Obviously, this is a preliminary, legal matter and this preliminary ruling does not address the merits of the suspension order or of appellant's appeal.

standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice. That prompt adjudicative hearing complies with the requirements of due process. Therefore, the application for a stay or suspension of the order summarily suspending appellant's medical license is **DENIED**.

So Ordered.



**Alan C. Travis, Judge**

**Appearances:**

**Leonard W. Yelsky, Esq.  
Sam Weiner, Esq.  
Counsel for Appellant**

**Rebecca J. Albers, Esq.  
Counsel for Appellee**

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

2003 NOV 21 P 12:04

IN THE MATTER OF: )

CASE NO.:

MARK L. ALLEN, M.D. )

JUDGE:

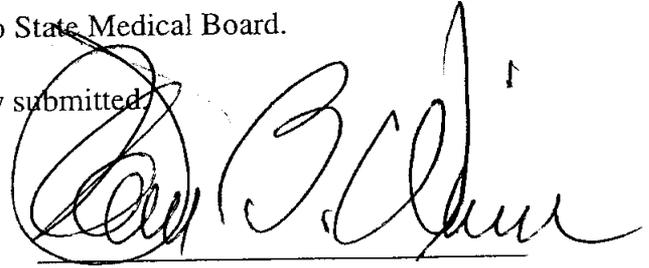
) NOTICE OF APPEAL OF  
) NOVEMBER 12, 2003  
) DECISION OF THE OHIO  
) STATE MEDICAL BOARD

Now comes **MARK L. ALLEN, MD**, and hereby gives his Notice of Appeal of the November 12, 2003 Order of the State Medical Board of Ohio. The Order of the State Medical Board of Ohio summarily suspends **DR. MARK L. ALLEN'S** right to practice medicine and surgery in the State of Ohio and further orders **DR. MARK L. ALLEN** to close all medical offices immediately and refer his active patients to other appropriate physicians. (See a copy of the State Medical Board of Ohio's Order attached hereto and incorporated herein and marked as Exhibit "A").

Annexed hereto as Exhibit "B" is the nature of appeal to the Ohio State Medical Board, which will, this day, be filed with the Ohio State Medical Board.

Respectfully submitted,

  
\_\_\_\_\_  
**YELSKY & LONARDO**  
**BY: LEONARD W. YELSKY, ESQ.**  
Ohio Reg. No. #0034277  
526 Superior Avenue, East  
Suite 1050  
Cleveland, Ohio 44114

  
\_\_\_\_\_  
**SAM WEINER**  
Ohio Reg. #. #0003970  
743 South Front Street  
Columbus, Ohio 43206

216-781-2550

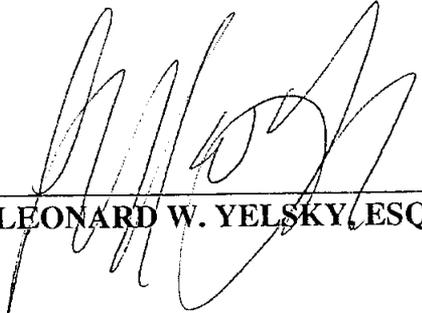
614-443-6581

**CERTIFICATE OF SERVICE**

The following was served a copy of this Notice via hand delivery this 21 day of

November, 2003:

The State Medical Board  
77 South High Street  
17<sup>th</sup> Floor  
Columbus, Ohio 43215



**LEONARD W. YELSKY, ESQ.**

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :

MARK L. ALLEN, M.D. :

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 12th day of November, 2003.

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

Pursuant to their determination that there is clear and convincing evidence that Mark L. Allen, M.D., has violated Section 4731.22(B)(26), Ohio Revised Code, as alleged in the Notice of Summary Suspension and Opportunity for Hearing that is enclosed herewith and fully incorporated herein, which determination is based upon review of information received pursuant to an investigation; and

Pursuant to their further determination that Dr. Allen's continued practice presents a danger of immediate and serious harm to the public;

The following Order is hereby entered on the Journal of the State Medical Board of Ohio for the 12th day of November, 2003;

It is hereby ORDERED that the certificate of Mark L. Allen, M.D., to practice medicine and surgery in the State of Ohio be summarily suspended.

It is hereby ORDERED that Mark L. Allen, M.D., shall immediately close all his medical offices and immediately refer all active patients to other appropriate physicians.

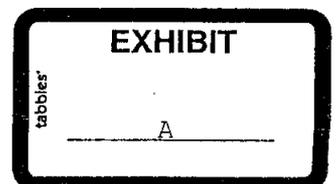
This Order shall become effective immediately.

(SEAL)

  
Lance A. Talmage, M.D., Secretary

November 12, 2003

Date



BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF:

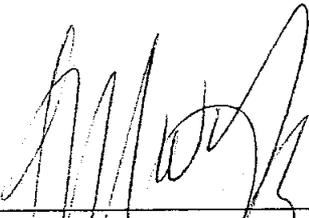
MARK L. ALLEN, MD

:  
:  
:  
:  
:  
:  
:

**NOTICE OF APPEAL FROM ORDER OF THE STATE MEDICAL BOARD OF OHIO (§119.12 ORC)**

Now comes **MARK L. ALLEN, MD**, and hereby gives his Notice of Appeal of the November 12, 2003 Order of the State Medical Board of Ohio. The Order of the State Medical Board of Ohio summarily suspends **DR. MARK L. ALLEN'S** right to practice medicine and surgery in the State of Ohio and further orders **DR. MARK L. ALLEN** to close all medical offices immediately and refer his active patients to other appropriate physicians. (See a copy of the State Medical Board of Ohio's Order attached hereto and incorporated herein and marked as Exhibit "A").

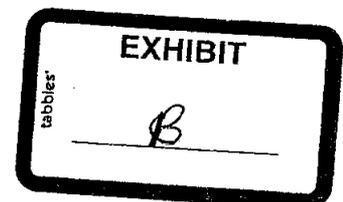
Respectfully submitted,

  
\_\_\_\_\_  
**YELSKY & LONARDO**  
**BY: LEONARD W. YELSKY, ESQ.**  
Ohio Reg. No: #0034277  
526 Superior Avenue, East  
Suite 1050  
Cleveland, Ohio 44114

\_\_\_\_\_  
**SAM WEINER**  
Ohio Reg. #. #0003970  
743 South Front Street  
Columbus, Ohio 43206

216-781-2550

614-443-6581



BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

MARK L. ALLEN, M.D.

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 12th day of November, 2003.

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

Pursuant to their determination that there is clear and convincing evidence that Mark L. Allen, M.D., has violated Section 4731.22(B)(26), Ohio Revised Code, as alleged in the Notice of Summary Suspension and Opportunity for Hearing that is enclosed herewith and fully incorporated herein, which determination is based upon review of information received pursuant to an investigation; and

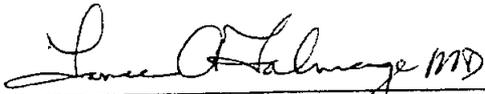
Pursuant to their further determination that Dr. Allen's continued practice presents a danger of immediate and serious harm to the public;

The following Order is hereby entered on the Journal of the State Medical Board of Ohio for the 12th day of November, 2003;

It is hereby ORDERED that the certificate of Mark L. Allen, M.D., to practice medicine and surgery in the State of Ohio be summarily suspended.

It is hereby ORDERED that Mark L. Allen, M.D., shall immediately close all his medical offices and immediately refer all active patients to other appropriate physicians.

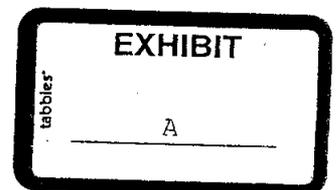
This Order shall become effective immediately.

  
Lance A. Talmage, M.D., Secretary

(SEAL)

November 12, 2003

Date

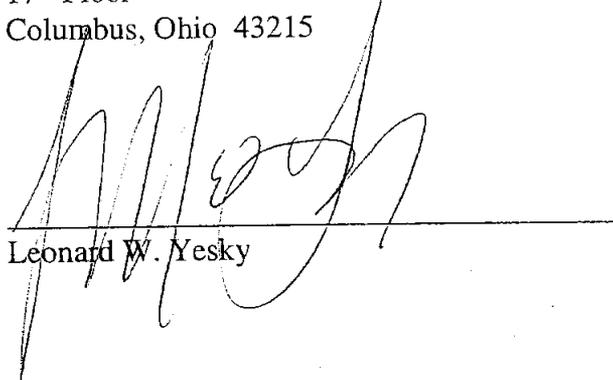


**CERTIFICATE OF SERVICE**

The following was served a copy of this Notice via hand delivery this 21 day of

November, 2003:

The State Medical Board  
77 South High Street  
17<sup>th</sup> Floor  
Columbus, Ohio 43215



---

Leonard W. Yesky



# State Medical Board of Ohio

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

## NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING

November 12, 2003

Mark L. Allen, M.D.  
156 South Franklin Street  
Chagrin Falls, Ohio 44022

Dear Doctor Allen:

Enclosed please find certified copies of the Entry of Order, the Notice of Opportunity for Hearing, and an excerpt of the Minutes of the State Medical Board, meeting in regular session on November 12, 2003, including a Motion adopting the Order of Summary Suspension and issuing the Notice of Opportunity for Hearing pursuant to Section 4731.22(G), Ohio Revised Code.

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

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order of Summary Suspension. Such an appeal may be taken to the Franklin County Court of Common Pleas only. Such an appeal, setting forth the Order appealed from and the grounds of appeal, must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Court within fifteen days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

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

THE STATE MEDICAL BOARD OF OHIO

  
Lance A. Talmage, M.D., Secretary

LAT:blt  
Enclosures

*Mailed 11-13-03*

**CERTIFICATION**

I hereby certify that the attached copies of the Entry of Order of the State Medical Board of Ohio and the Motion by the State Medical Board, meeting in regular session on November 12, 2003, to Adopt the Order of Summary Suspension and to Issue the Notice of Opportunity for Hearing, constitute true and complete copies of the Motion and Order as they appear in the Journal of the State Medical Board of Ohio.

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

  
Lance A. Talmage, M.D., Secretary

(SEAL)

November 12, 2003

Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF :  
 :  
**MARK L. ALLEN, M.D.** :  
 :

**ENTRY OF ORDER**

This matter came on for consideration before the State Medical Board of Ohio the 12th day of November, 2003.

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

Pursuant to their determination that there is clear and convincing evidence that Mark L. Allen, M.D., has violated Section 4731.22(B)(26), Ohio Revised Code, as alleged in the Notice of Summary Suspension and Opportunity for Hearing that is enclosed herewith and fully incorporated herein, which determination is based upon review of information received pursuant to an investigation; and

Pursuant to their further determination that Dr. Allen's continued practice presents a danger of immediate and serious harm to the public;

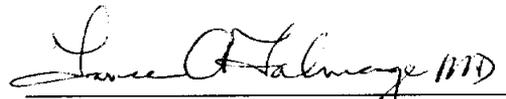
The following Order is hereby entered on the Journal of the State Medical Board of Ohio for the 12th day of November, 2003;

It is hereby ORDERED that the certificate of Mark L. Allen, M.D., to practice medicine and surgery in the State of Ohio be summarily suspended.

It is hereby ORDERED that Mark L. Allen, M.D., shall immediately close all his medical offices and immediately refer all active patients to other appropriate physicians.

This Order shall become effective immediately.

(SEAL)

  
Lance A. Talmage, M.D., Secretary

November 12, 2003  
Date



# State Medical Board of Ohio

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

## EXCERPT FROM THE MINUTES OF NOVEMBER 11, 2003

### MARK L. ALLEN, M.D. – ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

At this time the Board read and considered the proposed Order of Summary Suspension and Notice of Opportunity For Hearing in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

**DR. STEINBERGH MOVED TO APPROVE THE ORDER OF SUMMARY SUSPENSION AND TO SEND THE NOTICE OF OPPORTUNITY FOR HEARING TO DR. ALLEN. DR. BUCHAN SECONDED THE MOTION.** A vote was taken:

Vote:	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

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

## NOTICE OF OPPORTUNITY FOR HEARING

November 12, 2003

Mark L. Allen, M.D.  
156 South Franklin Street  
Chagrin Falls, Ohio 44022

Dear Doctor Allen:

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) By letter dated September 3, 2003, the Board notified you of its determination that it had reason to believe that you are in violation of Section 4731.22(B)(26), Ohio Revised Code, and ordered you to submit to a three-day evaluation, beginning on October 6, 2003, at Glenbeigh Health Sources, a Board approved treatment provider in Rock Creek, Ohio, in order to determine whether you are in violation of Section 4731.22(B)(26), Ohio Revised Code. On October 6, 2003, you reported to Glenbeigh Health Sources for purposes of the examination ordered by the Board.

Based upon the Glenbeigh Health Sources treatment team's examination of you, you were diagnosed as having chemical dependency, with alcohol being your drug of choice. In addition, Chester Prusinski, D.O., Medical Director of Glenbeigh Health Sources, concluded that you have an impairment of ability to practice according to acceptable and prevailing standards of care because of habitual and excessive abuse of alcohol and recommended that you undergo 28 days of residential treatment.

- (2) Further, beginning on or about October 27, 2003, you were admitted to The Cleveland Clinic Foundation, a Board approved treatment provider, for an additional three-day assessment. Thereafter, your attorney forwarded to the Board a letter dated November 7, 2003, from Gregory Collins, M.D., Section Head of the Alcohol and Drug Recovery Center of The Cleveland Clinic Foundation. In this letter, Dr. Collins offered the following:

On the basis of the three day assessment done at The Cleveland Clinic Foundation, commencing on October 27, 2003, it was recommended by this State Medical Board of Ohio approved provider that Dr. Allen complete a 28 day residential treatment stay for his diagnosis of alcohol dependence in remission. Dr. Allen has willingly agreed to do so and is in the midst of completing the 28 day recommended residential requirement.

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

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

A handwritten signature in cursive script that reads "Lance A. Talmage MD". The signature is written in black ink and is positioned above the typed name.

Lance A. Talmage, M.D.  
Secretary

LAT/blt  
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5150 5861  
RETURN RECEIPT REQUESTED

Leonard Yelsky, Esq.  
1050 Leader Bldg.  
526 Superior Ave. E.  
Cleveland, Ohio 44114

CERTIFIED MAIL # 7000 0600 0024 5150 5878  
RETURN RECEIPT REQUESTED