

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- 006

Kimberly Jo Cull, M.D.
8541 Maple Leaf Court
Powell, Ohio 43065

Dear Doctor Cull:

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 29, 2013, you initiated the application process to seek new licensure after your prior certificate to practice medicine and surgery in Ohio had been revoked. On or about May 9, 2014, you were notified by the Board that your application materials were incomplete. You subsequently provided additional information and your Application for Physician Licensure [License Application], is currently pending.
- (2) On or about September 8, 2010, the Board issued an Entry of Order which revoked your certificate to practice medicine and surgery in the State of Ohio. In the September 2010 Board Order, it was determined that you were impaired in your ability to practice medicine according to acceptable and prevailing standards of care as that clause is used in Section 4731.22(B)(26), Ohio Revised Code, due to cocaine abuse.

You were also have found to have made a “false, fraudulent, deceptive, or misleading statement . . . in securing or attempting to secure any certificate to practice” as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, when you failed to disclose in an application for renewal of your certificate to practice medicine and surgery that on August 9, 2007, in the Municipal Court of Wayne County Ohio, you had pled no contest to, and been found guilty of, Operating a Vehicle Under the Influence of Alcohol.

- (3) (a) On or about February 4, 2011, at the Chiller Ice Rink [Chiller] in

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Dublin, Ohio, a Dublin police officer working special duty confronted you after he overheard you cursing at an unknown person. You subsequently left the building and vandalized the windows of four vehicles parked in the Chiller parking lot, one of which was a City of Dublin Police Department cruiser. Officers soon responded at which time you fled the scene in your vehicle and refused to bring your vehicle to a stop after officers used visible and audible stop signals.

When you were eventually apprehended, officers smelled an odor of an alcoholic beverage about your person and also noticed your eyes appeared to be glassy. You told officers that it was not illegal to drink and refused to submit to a breath test.

After you were arrested, you identified yourself to officers by using the name of one your patients. You also provided officers with the patient's date of birth, address, and social security number. Officers later determined your actual identity after speaking with one of your family members on February 5, 2011. The patient did not give you permission to use her name or any information found within the patient's medical record.

- (b) On or about March 12, 2011, in the Court of Common Pleas of Franklin County, Ohio, as part of a negotiated plea, you pled guilty to and were convicted of the offenses of Vandalism, a fifth degree felony; Failure to Comply with an Order or Signal of a Police Officer, a fourth degree felony; and Identify Fraud, a fifth degree felony. You were ordered to complete a three year period of community control, pay a \$1,000.00 fine, and pay a total amount of \$1,400.00 in restitution.
- (c) On or about November 7, 2012, in the Municipal Court of Franklin County, Ohio, as part of a negotiated plea, you pled guilty to and were convicted of the amended offense of Having Physical Control of Vehicle While Under the Influence, a first degree misdemeanor. You were ordered to pay a \$375.00 fine, sentenced to three days in jail to which you were given credit for three days previously served, and your operator's license was suspended for one hundred eighty days.
- (4) On or about August 28, 2014, in response to Interrogatories sent to you by the Board, you admitted under oath that you have never sought professional help for your self-diagnosis of posttraumatic stress disorder. You stated the underlying reason for your self-diagnosis is childhood molestation by relatives. You indicated you are able to manage any fearful memories, threatening feelings, and hypervigilance but also stated your easy "startle" reflex is your only daily reminder of sexual abuse.

Further, you admitted using cocaine “one or two weekend evenings per week or 6-8 times per month” with your last use being in January 2010. You also indicated you drink alcohol approximately once or twice per month when you dine out with your family. However, the Board has not received any evidence that you entered inpatient or residential treatment as required by Rule 4731-16-02, Ohio Administrative Code.

You also informed the Board that you have been employed as a “Server/Catering/Breakfast Attendant” since March 1, 2011. Although you have indicated that you have also held the position of chief medical officer of your own medical device company, you have not actively practiced medicine and surgery since in or around January 2010.

- (5) By letter dated September 24, 2014, the Board notified you of its determination that it had reason to believe that you are in violation of Section 4731.22(B)(19), Ohio Revised Code, and ordered you to undergo an examination with Stephen G. Noffsinger, M.D., to determine if you are in violation of Section 4731.22(B)(19), Ohio Revised Code.
- (6) By letter dated November 28, 2014, Dr. Noffsinger submitted to the Board his findings from your psychiatric examination that occurred on October 16, 2014. Dr. Noffsinger reported that it is his opinion, with reasonable degree of medical certainty, that you have diagnoses including but not limited to posttraumatic stress disorder, and that you are not presently capable of practicing medicine and surgery according to acceptable and prevailing standards of care.

The facts as alleged in paragraphs (1) through (3) above, individually and/or collectively, constitute a “plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony,” as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) through (6) above, individually and/or collectively, constitute an “[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills,” as that clause is used in Section 4731.22(B)(19), Ohio Revised Code.

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

Further, your failure to be engaged in the active practice of medicine and surgery for a period in excess of two years prior to your license application, as alleged in paragraphs (1) and (4) above, constitutes cause for the Board to exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of your fitness to resume practice.

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/GAT/pev
Enclosures

CERTIFIED MAIL #91 7199 9991 7034 8392 3711
RETURN RECEIPT REQUESTED

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

September 8, 2010

Kimberly Jo Cull, M.D.
4501 Liberty Road
Delaware, OH 43015

RE: Case No. 10-CRF-001

Dear Doctor Cull:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 8, 2010, 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 must be commenced by the filing of a Notice of Appeal with the State Medical Board and the Franklin County Court of Common Pleas. The Notice of Appeal must set forth the Order appealed from and state that the State Medical Board's Order is not supported by reliable, probative, and substantive evidence and is not in accordance with law. The Notice of Appeal may, but is not required to, set forth the specific grounds of the appeal. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO



Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3936 3070 7504
RETURN RECEIPT REQUESTED

Mailed 9-9-10

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 September 8, 2010, 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 Kimberly Jo Cull, M.D., Case No. 10-CRF-001, 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)

September 8, 2010
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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CASE NO. 10-CRF-001

KIMBERLY JO CULL, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on September 8, 2010.

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

It is hereby ORDERED that:

The certificate of Kimberly Jo Cull, M.D., to practice medicine and surgery in the State of Ohio shall be REVOKED.

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

(SEAL)



Lance A. Talmage, M.D.
Secretary

September 8, 2010

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO**In the Matter of**

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Case No. 10-CRF-001**Kimberly Jo Cull, M.D.,**

*

Hearing Examiner Porter**Respondent.**

*

REPORT AND RECOMMENDATIONBasis for Hearing

In a Notice of Summary Suspension and Opportunity for Hearing dated January 13, 2010, the State Medical Board of Ohio [Board] notified Kimberly Jo Cull, M.D., that, pursuant to Section 4731.22(G), Ohio Revised Code, the Board had summarily suspended her certificate to practice allopathic medicine and surgery in Ohio. The Board further advised that continued practice would be considered practicing without a certificate, in violation of Section 4731.41, Ohio Revised Code. Moreover, the Board notified Dr. Cull that it intended to determine whether to take disciplinary action against her certificate based on the following allegations:

- impairment of ability to practice due to abuse or dependency upon alcohol and/or drugs, in violation of Section 4731.22(B)(26), Ohio Revised Code; and/or
- a false statement made on her 2008 application for renewal of her Ohio certificate, in violation of Section 4731.22(B)(5), Ohio Revised Code.

Finally, the Board advised Dr. Cull of her right to request a hearing in this matter, and received her written request on January 28, 2010. (St. Exs. 1A, 1B)

Appearances

Richard Cordray, Attorney General, and Melinda R. Snyder, Assistant Attorney General, for the State of Ohio. Dr. Cull did not appear at the hearing or present a written defense.

Hearing Date: July 19, 2010

SUMMARY OF THE EVIDENCE

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

1. Kimberly Jo Cull, M.D., obtained her medical degree in 1991 from the Ohio State University College of Medicine and Public Health. In 1997 she was certified by the

American Board of Obstetrics and Gynecology. She is a solo practitioner with an office in Powell, Ohio. (St. Ex. 12; Ohio e-License Center, State of Ohio, <<https://license.ohio.gov/Lookup/>>, July 26, 2010)

2. By letter dated November 30, 2009, the Board notified Dr. Cull that it had reason to believe that she is impaired in her ability to practice medicine and surgery according to acceptable and prevailing standards of care due to: (a) “mental illness or physical illness,” in violation of Section 4731.22(B)(19), Ohio Revised Code; and/or, (b) “habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,” in violation of Section 4731.22(B)(26), Ohio Revised Code. The Board ordered Dr. Cull to undergo a 72-hour inpatient examination at Shepherd Hill, a Board-approved treatment provider in Newark, Ohio, to determine if she is so impaired. Finally, the Board advised Dr. Cull of the reasons for its order, which included the following:
 - (a) In or about December 2007, in response to Board inquiry, you informed the Board that your hospital privileges at three hospitals had been subject to suspensions. You informed the Board that in or about the spring of 2001, your privileges had been suspended at Grady Memorial Hospital, Delaware, Ohio. Further, you stated that on or about September 24, 2007, your privileges were summarily suspended at Riverside Methodist Hospital [Riverside], allegedly arising from behavioral issues and that you had been advised that there was a concern that you were acting “oddly.” You further advised the Board that in or about 2006, some questions arose at St. Ann’s Hospital, Westerville, Ohio [St. Ann’s], regarding the timeliness of responding to your pages. You stated that the issues regarding responding to your pages occurred while you were enduring a difficult, volatile divorce and that you had taken steps to address the concerns. You further stated that when St. Ann’s discovered you were being investigated by Riverside, you were asked to provide a letter from Riverside that no patient issues were being investigated. When Riverside declined to issue that letter, St. Ann’s issued a precautionary suspension of your privileges. You currently do not have privileges at any hospital.
 - (b) On or about May 16, 2007, in Wayne County, Ohio, you were charged with violations including operating a motor vehicle under the influence of alcohol [OVI] and failure to operate within marked lanes. Your blood alcohol concentration measured 0.082 [percent]. In the Wayne County Municipal Court, Wooster, Ohio [Wayne County Municipal Court], the charge of failure to operate a motor vehicle within marked lanes was dismissed and you pled no contest to, and were found guilty of, OVI. The Wayne County Municipal Court fined you \$500.00 plus costs; suspended your license for six months; placed you on community control for six months and ordered that you consume no alcohol; ordered you to three days in jail, which could have been served by attending a seventy-two hour treatment program; and ordered you to complete an alcohol and drug assessment and any further counseling as

ordered by the probation department. On or about May 19, 2008, the adult probation officer for the Wayne County Municipal Court reported that you were in violation of the terms of your probation in that you had failed to successfully complete the seventy-two hour jail alternative program. Consequently, the Wayne County Municipal Court issued a warrant and you were summoned to appear at the Wayne County Municipal Court on June 6, 2008, at 9:00 a.m., or face possible arrest.

- (c) In or about 2006, an officer with the Powell, Ohio, Police Department observed you driving your vehicle at the rate of forty-six miles per hour in a twenty-five-mile-per-hour zone, and stopped your vehicle on a residential street. When the officer approached you with a citation, you began cursing at him. You crumpled the citation and threw it against the glove box, saying that this was “fucking bullshit.” As the officer began to retract the citation holder from your vehicle, he barely cleared his arm from your window when you stepped on the gas, nearly hitting him. You turned your vehicle around in a driveway and the officer, concerned about your unsafe start, walked to the middle of the street intending to stop you and to warn you about pulling away from traffic stops unsafely. He put his hand up for you to stop, but you shook your head, mouthed the word “no,” gunned the accelerator and drove straight at the officer. The officer jumped out of the way and you stopped your vehicle. The officer told you that your actions were criminal, but you began yelling at him saying that you knew the Chief of Police and would be complaining to him about your ticket.
- (d) On or about June 8, 2009, an officer with the Powell, Ohio, Police Department was dispatched to your office in response to a request to assist the employees there with the removal of an unwanted person. Upon arrival, the officer discovered that the unwanted person was a court bailiff of the Delaware Municipal Court who was attempting to serve civil papers on you. You had refused to take the papers and tried to order him off of the premises. The officer told your receptionist that the bailiff was a law enforcement officer with a mandate from a judge to serve papers to you. After more exchanges with the receptionist, the police officer and the bailiff were taken to see you, but as soon as you saw the bailiff, you became irate and began yelling, among other things, that you did not want the bailiff “on my fucking property.” The officer advised you to calm down as your patients were within hearing distance and the bailiff needed to serve you with a paper. You responded that this was your business and that if the officer was not going to help you he could “get the fuck out of my property, too.” The police officer threatened you with disorderly conduct and at that point you took the paper from the bailiff and told the officer “to fucking leave.”

Following the encounter, the police officer consulted his sergeant and went back to the office where he found you crying. You apologized that you had

lost your temper and explained you [*sic*] life was being ruined. You said you were a red head with a fiery attitude and that was why you were temperamental. You cried hysterically throughout the encounter, telling the officer about your problems, stating that the air conditioning company that had sued you was a bunch of “fucking assholes.” The police officer warned you about your behavior and left.

- (e) In or about 2009, a City of Powell, Ohio, [City of Powell] Zoning and Development Representative contacted your business to inform the business of a violation of the Powell ordinance relating to uncut weeds on your property and to discuss concerns related to temporary signage on your building.

On or about August 3, 2009, you telephoned the City of Powell and left three voicemail messages at 4:50 pm, 4:53 pm and 5:01 pm. In these messages, you made statements including the following:

- Hi [Zoning Representative’s first name]. This is Dr. Kimberly Cull, and I understand you were at my office today about weed growth. Well, I’m going to tell you right now: if you ever walk on my property again, it will be criminal trespassing.
- You are intrusive, you’re obnoxious, I’m not paying my employees to pull weeds. But you can pull them since I pay taxes.
- Don’t you ever tell my employees – talk to any of my employees.
- I’m not paying my employees to pull weeds. That’s the least of our concerns this day and age in this country, and it’s people like you who disgust me. Okay? I can’t believe I’ve paid one penny toward your purpose in life. Which, in my opinion, there is no purpose to your life. You’re worthless. Stay off my property. I will call the Powell Police. You will be criminally trespassing unless you’re coming with your gloves to pull the weeds that you don’t like. Because I am going to let them grow, and grow, and grow and grow. I actually think they’re aesthetically pleasing. So, now, are you going to challenge me on that? What if I told you I liked them? Okay? Get it? I’m not sure your, um cerebral [laughter] – I’m not sure you can understand anything I am saying, because it’s government officials like you who are partially retarded, stuck in the birth canal too long [laughter] and really don’t deserve to be here. So kiss my flipping ass.
- Get a life. You are the reason our country is failing.
- You know, it kind of reminds me of Hitler. You know, people like you are the reason all the Jews were killed in Germany, because, you know, you just listen to people, and you just do what you are told. Don’t you? You just do what you’re told. First it’s weeds. Next thing you know it’s euthanizing people. You are an obnoxious piece of crap. Stay away from me. I hate you.

- Everybody hates people like you. The police are stool pigeons for the government. You're a piece of feces in my opinion. I could give a rat's ass. Come talk to me to my face if you have the balls. 'Cause I think your testicular atrophy and your fucking – well, I – I won't use that word because you might think there's something wrong with me. But I don't care. I hate you all.
- I am really mad. I'm so mad that [laughter] I'm – well, I just don't know. But you better – you better be careful. Don't mess with me.
- [Directed to City of Powell Development Planner] I like my weeds. Get it? I haven't broken any laws. I have a constitutional right to grow weeds if I want to. Got it? Now, if you want to debate me, that's fine, but you likely will lose. In any case, Mr. [name of City of Powell Development Planner] Whatever-You-Are, stool pigeon for the government, um, you can call me. I'd be happy to talk to any rationally semi-intelligent person. But if you're not, I don't want to talk to you. I'll just send my attorney. Don't send any of your little cohorts on to my property again, much less tell an employee of mine to pull weeds. 'Cause I like my weeds. Got it? Love'em. They're very good for the environment. Did you know that? I – I'm sure you don't. I'm sure you're not even very well-versed in what global warming really is, which is really global cooling, but you probably don't know that, either, because it's all a political thing. You know, I know about morons like you who work for the government who do nothing but waste taxpayer dollars doing nothing but getting fucking hemorrhoids. So take your fucking laws and shove 'em up your ass because I've broken no law and I'm not going to pull my weeds.

The City of Powell subsequently asked you to put any further communications in writing and warned that all further electronic communication from you may be considered harassment possibly resulting in complaints to the police department. Despite this request, you left a fourth telephone message to the City of Powell, on or about August 7, 2009, approximately seven minutes and fifty-seven seconds in length.

- (f) On or about September 15, 2009, you were interviewed by a Board investigator with respect to your statements to the City of Powell employees. You explained that you had been aggravated by the City of Powell for several months and feel as though you have been harassed. As the Board investigator began to read portions of the telephone messages you left in or about August 2009, to the City of Powell employees, you became visibly uncomfortable and began crying, explaining that you had been under a lot of financial pressure. You said the directive from the City of Powell to cut your weeds was the last straw and you had snapped.

You further told the Board investigator that you had probably been drinking when you left the voicemails. You said that you probably drink a couple of

drinks of wine after work each day. You said that you could not be sure if you had been drinking on that particular day, but that was likely.

You further told the Board investigator that you had been evaluated for mental health issues in 2007 when Riverside Hospital suspended your privileges pending an internal investigation.

- (g) The Board has information that while at your medical office you would have to be awakened on a regular basis to see your patients. You have been seen with a white powdery substance near your nose. You have been observed continually sniffing. It has further been reported that you consume wine during office hours and that you have smelled of alcohol. Additionally, you told the Board investigator that you had been evaluated for mental health issues in the past and that you are under a lot of financial pressure, including that your building had recently been sold at sheriff's auction.

(St. Ex. 5)

3. The information set forth in the Board's November 30, 2009, letter to Dr. Cull is corroborated by State's Exhibits 2, 3, 4, 11, and 12, and by the testimony of Board Enforcement Investigator Jeffrey Bradford. (St. Exs. 2, 3, 4, 11, 12; Tr. at 10-21)
4. Dr. Cull submitted to the 72-hour examination as ordered by the Board, which took place from December 15 through 18, 2009, at Shepherd Hill. In a letter to Board staff dated January 4, 2010, Richard N. Whitney, M.D., Medical Director of Addiction Services at Shepherd Hill, advised that he had diagnosed Dr. Cull with Cocaine Abuse based upon, among other things, a hair drug screen obtained from Dr. Cull during her evaluation. Based upon that diagnosis, Dr. Whitney stated, "In my opinion, Dr. Cull is currently unable to practice medicine at acceptable and prevailing standards of care, and should complete, at a minimum, 28 days of treatment for chemical dependence at a Medical Board approved facility." (St. Ex. 9; see, also, St. Ex. 7)

Dr. Whitney's January 4, 2010, letter further states that, during the 72-hour examination, Dr. Cull had been evaluated by a psychiatrist, and that the psychiatric evaluation "showed no indication of any psychiatric diagnosis that would require treatment or limit her ability to practice medicine safely." (St. Ex. 9)

5. Dr. Whitney testified concerning his examination of Dr. Cull:

[I]n summary, it appeared that Dr. Cull, who had a practice in—at that time in Powell, Ohio, had been having erratic behavior, had been having behavior that really is not consistent with that that you usually see with a licensed physician.

Some of the more memorable material, again, was the tape of some messages that Dr. Cull left with authorities from the City of Powell who had visited her and said she needed to cut the weeds around her office.

And the—the messages were hateful, vitriolic, swear words, and just really unbelievable coming from anyone, much less a licensed physician.

In addition to that, there were reports from office personnel that she had had mood swings.

There was one person in the office who had stated that she kept her office door always locked, that she would go behind locked doors in her office and come out in a significantly elevated mood, and even report of a white powder around her nose.

There were other documents that indicated that she had either been dismissed from or lost privileges from other hospitals, which sometimes can be a sign of a physician with an addictive disorder, because many times they would get into difficulties not answering pages, poor patient care, and not being reliable and dependable and so forth, and will lose privileges.

In a physician, this is a specific sign that we look for because very often physicians will protect their medical practice to the bitter end, meaning that's one of the last areas of one's life that it takes addiction to interfere with.

People will have problems financially, in the family, spiritually, recreationally, and sometimes even legally, but they will protect the medical practice as the last bastion of my addiction will not enter into this.

And when it actually does interfere with a medical practice, that is often a sign of a later-stage addiction because the ability to keep the alcohol or drug addiction out of one's medical practice, they are no longer able to do that.

(Tr. at 38-40)

6. Dr. Whitney testified that the examination initially failed to support a diagnosis of substance abuse:

I remember this being a very, very challenging case, as many are, because again, Dr. Cull just adamantly and vehemently denied ever using anything.

When I initially reviewed, I said this has got to either be bipolar disorder or a drug use disorder, because this type of erratic behavior just is not consistent with a normal, if you will, practicing physician.

The mood swings that were reported and the difficulties in practice, and the report from the office staff, just made it seem pretty clear that these wide mood swings must either be drug related, or a severe psychiatric disorder.

And we spoke to a number of different individuals, * * * psychiatrists and psychologists [who had previously evaluated Dr. Cull who] seemed to support what Dr. Cull was indicating, which was the life stressors, a severe divorce, financial problems, leading to mood swings and irritability and depression, causing her to—when I spoke with her she knew that she shouldn't have left those voicemails, and she did acknowledge that she left those voicemails after she had been drinking.

But nowhere could we really gather enough clinical information to really conclusively say this is definitely a drug use disorder. There was nothing to support it.

And there was not enough information that I could gather from her previous evaluations or from our own psychiatrist, Dr. Layne, that would really support bipolar disorder or another really disabling psychiatric disorder, schizophrenia or any type of thought disorder.

* * *

And I recall this one because it was such a striking case, and because I really felt quite frustrated that I really hadn't come up with anything conclusive, just it seemed to be a lot of loose ends, and I told Dr. Cull [at the end of the 72-hour examination] that at this point I could not conclusively diagnose her with a substance use disorder, or with a psychiatric disorder that would impair her ability to practice.

But I had enough concern in her case where we did collect hair. And I can't remember specifically—I remember her hair was at least four inches long, three or four inches long, so I knew we had enough to look back several weeks, and probably several months, and I indicated to her that my results were tenuous depending upon the results of the hair drug screen, which usually takes somewhere between a week and ten days for us to get that result.

* * *

And then subsequently, when I did get the result of the hair drug screen back as it being clearly positive for cocaine, it put all the pieces of the puzzle together, and I felt very confident and diagnosed her with a cocaine abuse at least.

And again, that was virtually from my perspective, a no-brainer diagnosis, that with her adamant denial and the mood swings and the interference in her life, surely it must at least be abuse, and I'm certain to the point of high probability that she's cocaine dependent.

But I just didn't have enough really to nail a dependence diagnosis. And the nice thing about the Ohio Medical Practice Act is it doesn't matter, that abuse and dependence are treated exactly the same. So it takes a lot of pressure off between differentiating those.

But with all the behaviors, the mood swings, the disruption in her life and the positive hair drug screen, I could make a pretty easy diagnosis of cocaine abuse.

(Tr. at 43-47)

7. Dr. Whitney testified that the "window of detection" for urine drug screens is narrow compared to hair drug screens:

So if an individual has advance notice that they are going to be screened—and obviously the overwhelming majority of licensees that come have days' or weeks' notice, then if they abstain from using for just three, four, five days, depending on the drug, then the urine drug screen will often come back negative.

Hair, on the other hand, can contain residue from a variety of different drugs; marijuana, cocaine, other stimulants like Amphetamine, Methamphetamine, Methadone, and other opiates, heroin, Oxycodone, so forth.

The residue and breakdown products can be secreted and contained within the hair, itself, for up to several months, depending on the length of the hair.

Essentially hair grows at roughly a half an inch a month, and therefore, * * * we can have a backward-looking window, if you will, of several months for a long-haired individual, or a month or two on shorter-haired individuals.

* * *

And this is a well-known time tested, accurate diagnostic test that's done by a number of different laboratories.

(Tr. at 32-33)

8. Dr. Whitney added that Dr. Cull had never revealed that she had taken cocaine and, in fact, "absolutely adamantly denied use of any illicit drugs whatsoever." (Tr. at 47)

9. On December 30, 2008, Dr. Cull caused to be submitted to the Board an application for the renewal of her certificate to practice medicine and surgery in Ohio. In that application, Dr. Cull answered “No” to Question 1, which asked:

Have you been found guilty of, or pled guilty or no contest to, or received treatment or intervention in lieu of conviction of, a misdemeanor or felony?

(St. Ex. 10)

However, on August 9, 2007, in the Municipal Court of Wayne County, Ohio, Dr. Cull had pleaded no contest to, and been found guilty of, Operating a Vehicle under the Influence of Alcohol. (St. Ex. 2)

FINDINGS OF FACT

1. By letter dated November 30, 2009, the Board notified Kimberly Jo Cull, M.D., that it had reason to believe that she is impaired in her ability to practice medicine and surgery according to acceptable and prevailing standards of care due to: (a) “mental illness or physical illness,” in violation of Section 4731.22(B)(19), Ohio Revised Code; and/or, (b) “habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,” in violation of Section 4731.22(B)(26), Ohio Revised Code. The Board further ordered Dr. Cull to undergo a 72-hour inpatient examination at Shepherd Hill, a Board-approved treatment provider in Newark, Ohio, to determine if she is so impaired. Finally, the Board advised Dr. Cull of the reasons for its order, which included the following:
 - a. In or about December 2007, in response to Board inquiry, you informed the Board that your hospital privileges at three hospitals had been subject to suspensions. You informed the Board that in or about the spring of 2001, your privileges had been suspended at Grady Memorial Hospital, Delaware, Ohio. Further, you stated that on or about September 24, 2007, your privileges were summarily suspended at Riverside Methodist Hospital [Riverside], allegedly arising from behavioral issues and that you had been advised that there was a concern that you were acting “oddly.” You further advised the Board that in or about 2006, some questions arose at St. Ann’s Hospital, Westerville, Ohio [St. Ann’s], regarding the timeliness of responding to your pages. You stated that the issues regarding responding to your pages occurred while you were enduring a difficult, volatile divorce and that you had taken steps to address the concerns. You further stated that when St. Ann’s discovered you were being investigated by Riverside, you were asked to provide a letter from Riverside that no patient issues were being investigated. When Riverside declined to issue that letter, St. Ann’s issued a precautionary suspension of your privileges. You currently do not have privileges at any hospital.

- b. On or about May 16, 2007, in Wayne County, Ohio, you were charged with violations including operating a motor vehicle under the influence of alcohol [OVI] and failure to operate within marked lanes. Your blood alcohol concentration measured 0.082 [percent]. In the Wayne County Municipal Court, Wooster, Ohio [Wayne County Municipal Court], the charge of failure to operate a motor vehicle within marked lanes was dismissed and you pled no contest to, and were found guilty of, OVI. The Wayne County Municipal Court fined you \$500.00 plus costs; suspended your license for six months; placed you on community control for six months and ordered that you consume no alcohol; ordered you to three days in jail, which could have been served by attending a seventy-two hour treatment program; and ordered you to complete an alcohol and drug assessment and any further counseling as ordered by the probation department. On or about May 19, 2008, the adult probation officer for the Wayne County Municipal Court reported that you were in violation of the terms of your probation in that you had failed to successfully complete the seventy-two hour jail alternative program. Consequently, the Wayne County Municipal Court issued a warrant and you were summoned to appear at the Wayne County Municipal Court on June 6, 2008, at 9:00 a.m., or face possible arrest.
- c. In or about 2006, an officer with the Powell, Ohio, Police Department observed you driving your vehicle at the rate of forty-six miles per hour in a twenty-five-mile-per-hour zone, and stopped your vehicle on a residential street. When the officer approached you with a citation, you began cursing at him. You crumpled the citation and threw it against the glove box, saying that this was “fucking bullshit.” As the officer began to retract the citation holder from your vehicle, he barely cleared his arm from your window when you stepped on the gas, nearly hitting him. You turned your vehicle around in a driveway and the officer, concerned about your unsafe start, walked to the middle of the street intending to stop you and to warn you about pulling away from traffic stops unsafely. He put his hand up for you to stop, but you shook your head, mouthed the word “no,” gunned the accelerator and drove straight at the officer. The officer jumped out of the way and you stopped your vehicle. The officer told you that your actions were criminal, but you began yelling at him saying that you knew the Chief of Police and would be complaining to him about your ticket.
- d. On or about June 8, 2009, an officer with the Powell, Ohio, Police Department was dispatched to your office in response to a request to assist the employees there with the removal of an unwanted person. Upon arrival, the officer discovered that the unwanted person was a court bailiff of the Delaware Municipal Court who was attempting to serve civil papers on you. You had refused to take the papers and tried to order him off of the premises. The officer told your receptionist that the bailiff was a law enforcement officer

with a mandate from a judge to serve papers to you. After more exchanges with the receptionist, the police officer and the bailiff were taken to see you, but as soon as you saw the bailiff, you became irate and began yelling, among other things, that you did not want the bailiff “on my fucking property.” The officer advised you to calm down as your patients were within hearing distance and the bailiff needed to serve you with a paper. You responded that this was your business and that if the officer was not going to help you he could “get the fuck out of my property, too.” The police officer threatened you with disorderly conduct and at that point you took the paper from the bailiff and told the officer “to fucking leave.”

Following the encounter, the police officer consulted his sergeant and went back to the office where he found you crying. You apologized that you had lost your temper and explained your life was being ruined. You said you were a red head with a fiery attitude and that was why you were temperamental. You cried hysterically throughout the encounter, telling the officer about your problems, stating that the air conditioning company that had sued you was a bunch of “fucking assholes.” The police officer warned you about your behavior and left.

- e. In or about 2009, a City of Powell, Ohio, [City of Powell] Zoning and Development Representative contacted your business to inform the business of a violation of the Powell ordinance relating to uncut weeds on your property and to discuss concerns related to temporary signage on your building.

On or about August 3, 2009, you telephoned the City of Powell and left three voicemail messages at 4:50 pm, 4:53 pm and 5:01 pm. In these messages, you made statements including the following:

- Hi [Zoning Representative’s first name]. This is Dr. Kimberly Cull, and I understand you were at my office today about weed growth. Well, I’m going to tell you right now: if you ever walk on my property again, it will be criminal trespassing.
- You are intrusive, you’re obnoxious, I’m not paying my employees to pull weeds. But you can pull them since I pay taxes.
- Don’t you ever tell my employees – talk to any of my employees.
- I’m not paying my employees to pull weeds. That’s the least of our concerns this day and age in this country, and it’s people like you who disgust me. Okay? I can’t believe I’ve paid one penny toward your purpose in life. Which, in my opinion, there is no purpose to your life. You’re worthless. Stay off my property. I will call the Powell Police. You will be criminally trespassing unless you’re coming with your gloves to pull the weeds that you don’t like. Because I am going to let them grow, and grow, and grow and grow. I actually think they’re aesthetically pleasing. So, now, are you going to challenge me on that? What if I told

you I liked them? Okay? Get it? I'm not sure your, um cerebral [laughter] – I'm not sure you can understand anything I am saying, because it's government officials like you who are partially retarded, stuck in the birth canal too long [laughter] and really don't deserve to be here. So kiss my flipping ass.

- Get a life. You are the reason our country is failing.
- You know, it kind of reminds me of Hitler. You know, people like you are the reason all the Jews were killed in Germany, because, you know, you just listen to people, and you just do what you are told. Don't you? You just do what you're told. First it's weeds. Next thing you know it's euthanizing people. You are an obnoxious piece of crap. Stay away from me. I hate you.
- Everybody hates people like you. The police are stool pigeons for the government. You're a piece of feces in my opinion. I could give a rat's ass. Come talk to me to my face if you have the balls. 'Cause I think your testicular atrophy and your fucking – well, I – I won't use that word because you might think there's something wrong with me. But I don't care. I hate you all.
- I am really mad. I'm so mad that [laughter] I'm – well, I just don't know. But you better – you better be careful. Don't mess with me.
- [Directed to City of Powell Development Planner] I like my weeds. Get it? I haven't broken any laws. I have a constitutional right to grow weeds if I want to. Got it? Now, if you want to debate me, that's fine, but you're likely to lose. In any case, Mr. [name of City of Powell Development Planner] Whatever-You-Are, stool pigeon for the government, um, you can call me. I'd be happy to talk to any rationally semi-intelligent person. But if you're not, I don't want to talk to you. I'll just send my attorney. Don't send any of your little cohorts on to my property again, much less tell an employee of mine to pull weeds. 'Cause I like my weeds. Got it? Love'em. They're very good for the environment. Did you know that? I – I'm sure you don't. I'm sure you're not even very well-versed in what global warming really is, which is really global cooling, but you probably don't know that, either, because it's all a political thing. You know, I know about morons like you who work for the government who do nothing but waste taxpayer dollars doing nothing but getting fucking hemorrhoids. So take your fucking laws and shove 'em up your ass because I've broken no law and I'm not going to pull my weeds.

The City of Powell subsequently asked you to put any further communications in writing and warned that all further electronic communication from you may be considered harassment possibly resulting in complaints to the police department. Despite this request, you left a fourth telephone message to the City of Powell, on or about August 7, 2009, approximately seven minutes and fifty-seven seconds in length.

- f. On or about September 15, 2009, you were interviewed by a Board investigator with respect to your statements to the City of Powell employees. You explained that you had been aggravated by the City of Powell for several months and feel as though you have been harassed. As the Board investigator began to read portions of the telephone messages you left in or about August 2009, to the City of Powell employees, you became visibly uncomfortable and began crying, explaining that you had been under a lot of financial pressure. You said the directive from the City of Powell to cut your weeds was the last straw and you had snapped.

You further told the Board investigator that you had probably been drinking when you left the voicemails. You said that you probably drink a couple of drinks of wine after work each day. You said that you could not be sure if you had been drinking on that particular day, but that was likely.

You further told the Board investigator that you had been evaluated for mental health issues in 2007 when Riverside Hospital suspended your privileges pending an internal investigation.

- g. The Board has information that while at your medical office you would have to be awakened on a regular basis to see your patients. You have been seen with a white powdery substance near your nose. You have been observed continually sniffing. It has further been reported that you consume wine during office hours and that you have smelled of alcohol. Additionally, you told the Board investigator that you had been evaluated for mental health issues in the past and that you are under a lot of financial pressure, including that your building had recently been sold at sheriff's auction.
2. Dr. Cull submitted to the 72-hour examination as ordered by the Board, which took place from December 15 through 18, 2009, at Shepherd Hill. By letter dated January 4, 2010, Richard M. Whitney, M.D., Medical Director of Addiction Services at Shepherd Hill, notified the Board that he had diagnosed Dr. Cull with Cocaine Abuse. Moreover, Dr. Whitney determined that Dr. Cull is impaired in her ability to practice medicine according to acceptable and prevailing standards of care, and that she requires residential treatment for chemical abuse/dependence.
3. There is no evidence that Dr. Cull has entered inpatient or residential treatment as required by Rule 4731-16-02, Ohio Administrative Code.
4. On December 30, 2008, Dr. Cull caused to be submitted to the Board an application for the renewal of her certificate to practice medicine and surgery in Ohio. In that application, Dr. Cull answered "No" to Question 1, which asked:

Have you been found guilty of, or pled guilty or no contest to, or received treatment or intervention in lieu of conviction of, a misdemeanor or felony?

In fact, on August 9, 2007, in the Municipal Court of Wayne County, Ohio, Dr. Cull had pleaded no contest to, and been found guilty of, Operating a Vehicle under the Influence of Alcohol.

CONCLUSIONS OF LAW

1. The acts, conduct, and/or omissions of Kimberly Jo Cull, M.D., as set forth in Findings of Fact 1 through 4, individually and/or collectively, constitute “[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,” as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.
2. The acts, conduct, and/or omissions of Dr. Cull as set forth in Finding of Fact 4, individually and/or collectively, constitute “[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,” as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

RATIONALE FOR THE PROPOSED ORDER

The proposed order recommends that Dr. Cull’s certificate be revoked, but not permanently revoked. The Board should not grant any future application from Dr. Cull for a certificate to practice medicine until, at the very least, she is willing to enter into a recovery program and comply with any and all conditions that the Board deems necessary to protect the public.

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Kimberly Jo Cull, M.D., to practice medicine and surgery in the State of Ohio shall be REVOKED.

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



R. Gregory Porter
Hearing Examiner



State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

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EXCERPT FROM THE DRAFT MINUTES OF SEPTEMBER 8, 2010

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

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

Dr. Amato asked whether each member of the Board had received, read and considered the hearing records; the Findings of Fact, Conclusions of Law, Proposed Orders, and any objections filed in the matters of: Douglas A. Bruns, D.O.; Kimberly Jo Cull, M.D.; Thomas E. Dunaway, M.D.; William Arthur Garringer, M.D.; Tonya R. Rutledge, M.D.; Shannon Dimetra Weikert; and Roy Whitman, M.D. A roll call was taken:

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Amato	- aye
	Mr. Albert	- aye
	Dr. Madia	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Mr. Morris	- aye
	Dr. Ramprasad	- aye

Dr. Amato 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:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Amato	- aye
	Mr. Albert	- aye
	Dr. Madia	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Mr. Morris	- aye
	Dr. Ramprasad	- aye

Dr. Amato noted that, In accordance with the provision in section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member. However, Dr. Talmage and Mr. Albert may vote on the matter of Roy Whitman, M.D., as that case is not disciplinary in nature and only involves the respondent's qualifications for licensure.

Dr. Amato reminded all parties that no oral motions may be made during these proceedings.

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

.....
KIMBERLY JO CULL, M.D.
.....

Dr. Talmage exited the meeting prior to this discussion
.....

Dr. Steinbergh moved to approve and confirm Mr. Porter's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Kimberly Jo Cull, M.D. Dr. Mahajan seconded the motion.
.....

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

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Amato	- abstain
	Mr. Albert	- abstain
	Dr. Madia	- aye
	Dr. Suppan	- aye
	Mr. Morris	- aye
	Dr. Ramprasad	- aye

The motion carried.

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

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January 13, 2010

Case number: 10-CRF- 001

Kimberly Jo Cull, M.D.
4501 Liberty Road
Delaware, Ohio 43015

Dear Doctor Cull:

Enclosed please find certified copies of the Entry of Order, the Notice of Summary Suspension and Opportunity for Hearing, and an excerpt of the Minutes of the State Medical Board, meeting in regular session on January 13, 2010, including a Motion adopting the Order of Summary Suspension and issuing the Notice of Summary Suspension and Opportunity for Hearing.

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

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

THE STATE MEDICAL BOARD OF OHIO


Lance A. Talmage, M.D., Secretary

LAT/KHM/flb
Enclosures

Mailed 01-14-10

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 January 13, 2010, to Adopt the Order of Summary Suspension and to Issue the Notice of Summary Suspension and Opportunity for Hearing, constitute true and complete copies of the Motion and Order in the Matter of Kimberly Jo Cull, M.D., Case number: 10-CRF- 001 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)

January 13, 2010
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :
KIMBERLY JO CULL, M.D. :
CASE NUMBER: 10-CRF-001 :

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 13th day of January, 2010.

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

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

Pursuant to their further determination, based upon their review of the information supporting the allegations as set forth in the Notice of Summary Suspension and Opportunity for Hearing, that Dr. Cull'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 13th day of January, 2010:

It is hereby ORDERED that the certificate of Kimberly Jo Cull, M.D., to practice medicine and surgery in the State of Ohio be summarily suspended.

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

This Order shall become effective immediately.

(SEAL)


Lance A. Talmage, M.D., Secretary

January 13, 2010
Date

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

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EXCERPT FROM THE DRAFT MINUTES OF JANUARY 13, 2010

CITATIONS, PROPOSED DENIALS, ORDERS OF SUMMARY SUSPENSION & NOTICES OF IMMEDIATE SUSPENSION

KIMBERLY JO CULL, 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 ENTER AN ORDER OF SUMMARY SUSPENSION IN THE MATTER OF KIMBERLY JO CULL, M.D., IN ACCORDANCE WITH SECTION 4731.22(G), OHIO REVISED CODE, AND TO ISSUE THE NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

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

The motion carried.

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

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NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING

January 13, 2010

Case number: 10-CRF- 001

Kimberly Jo Cull, M.D.
4501 Liberty Road
Delaware, Ohio 43015

Dear Doctor Cull:

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

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

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

- (1) By letter dated November 30, 2009, the Board notified you of its determination that it had reason to believe that you are in violation of Sections 4731.22(B)(26) and 4731.22(B)(19), Ohio Revised Code, and ordered you to undergo a 72-hour inpatient examination to determine if you are in violation of such sections. The Board's determination was based upon one or more of the reasons outlined in such letter, which included:

- (a) In or about December 2007, in response to Board inquiry, you informed the Board that your hospital privileges at three hospitals had been subject to suspensions. You informed the Board that in or about the spring of 2001, your privileges had been suspended at Grady Memorial Hospital, Delaware, Ohio. Further, you stated that on or about September 24, 2007, your privileges were summarily suspended at Riverside Methodist Hospital [Riverside], allegedly arising from behavioral issues and that you had been advised that there was a concern that you were acting “oddly.” You further advised the Board that in or about 2006, some questions arose at St. Ann’s Hospital, Westerville, Ohio [St. Ann’s], regarding the timeliness of responding to your pages. You stated that the issues regarding responding to your pages occurred while you were enduring a difficult, volatile divorce and that you had taken steps to address the concerns. You further stated that when St. Ann’s discovered you were being investigated by Riverside, you were asked to provide a letter from Riverside that no patient issues were being investigated. When Riverside declined to issue that letter, St. Ann’s issued a precautionary suspension of your privileges. You currently do not have privileges at any hospital.
- (b) On or about May 16, 2007, in Wayne County, Ohio, you were charged with violations including operating a motor vehicle under the influence of alcohol [OVI] and failure to operate within marked lanes. Your blood alcohol concentration measured 0.082%. In the Wayne County Municipal Court, Wooster, Ohio [Wayne County Municipal Court], the charge of failure to operate a motor vehicle within marked lanes was dismissed and you pled no contest to, and were found guilty of, OVI. The Wayne County Municipal Court fined you \$500.00 plus costs; suspended your license for six months; placed you on community control for six months and ordered that you consume no alcohol; ordered you to three days in jail, which could have been served by attending a seventy-two hour treatment program; and ordered you to complete an alcohol and drug assessment and any further counseling as ordered by the probation department. On or about May 19, 2008, the adult probation officer for the Wayne County Municipal Court reported that you were in violation of the terms of your probation in that you had failed to successfully complete the seventy-two hour jail alternative program. Consequently, the Wayne County Municipal Court issued a warrant and you were summoned to appear at the Wayne County Municipal Court on June 6, 2008, at 9:00 a.m., or face possible arrest.
- (c) In or about 2006, an officer with the Powell, Ohio, Police Department observed you driving your vehicle at the rate of forty-six miles per hour in a twenty-five-mile-per-hour zone, and stopped your vehicle on a residential street. When the officer approached you with a citation, you began cursing

at him. You crumpled the citation and threw it against the glove box, saying that this was “fucking bullshit.” As the officer began to retract the citation holder from your vehicle, he barely cleared his arm from your window when you stepped on the gas, nearly hitting him. You turned your vehicle around in a driveway and the officer, concerned about your unsafe start, walked to the middle of the street intending to stop you and to warn you about pulling away from traffic stops unsafely. He put his hand up for you to stop, but you shook your head, mouthed the word “no,” gunned the accelerator and drove straight at the officer. The officer jumped out of the way and you stopped your vehicle. The officer told you that your actions were criminal, but you began yelling at him saying that you knew the Chief of Police and would be complaining to him about your ticket.

- (d) On or about June 8, 2009, an officer with the Powell, Ohio, Police Department was dispatched to your office in response to a request to assist the employees there with the removal of an unwanted person. Upon arrival, the officer discovered that the unwanted person was a court bailiff of the Delaware Municipal Court who was attempting to serve civil papers on you. You had refused to take the papers and tried to order him off of the premises. The officer told your receptionist that the bailiff was a law enforcement officer with a mandate from a judge to serve papers to you. After more exchanges with the receptionist, the police officer and the bailiff were taken to see you, but as soon as you saw the bailiff, you became irate and began yelling, among other things, that you did not want the bailiff “on my fucking property.” The officer advised you to calm down as your patients were within hearing distance and the bailiff needed to serve you with a paper. You responded that this was your business and that if the officer was not going to help you he could “get the fuck out of my property, too.” The police officer threatened you with disorderly conduct and at that point you took the paper from the bailiff and told the officer “to fucking leave.”

Following the encounter, the police officer consulted his sergeant and went back to the office where he found you crying. You apologized that you had lost your temper and explained you life was being ruined. You said you were a red head with a fiery attitude and that was why you were temperamental. You cried hysterically throughout the encounter, telling the officer about your problems, stating that the air conditioning company that had sued you was a bunch of “fucking assholes.” The police officer warned you about your behavior and left.

- (e) In or about 2009, a City of Powell, Ohio, [City of Powell] Zoning and Development Representative contacted your business to inform the business

of a violation of the Powell ordinance relating to uncut weeds on your property and to discuss concerns related to temporary signage on your building.

On or about August 3, 2009, you telephoned the City of Powell and left three voicemail messages at 4:50 pm, 4:53 pm and 5:01 pm. In these messages, you made statements including the following:

- Hi [Zoning Representative's first name]. This is Dr. Kimberly Cull, and I understand you were at my office today about weed growth. Well, I'm going to tell you right now: if you ever walk on my property again, it will be criminal trespassing.
- You are intrusive, you're obnoxious, I'm not paying my employees to pull weeds. But you can pull them since I pay taxes.
- Don't you ever tell my employees – talk to any of my employees.
- I'm not paying my employees to pull weeds. That's the least of your concerns this day and age in this country, and it's people like you who disgust me. Okay? I can't believe I've paid one penny toward your purpose in life. Which, in my opinion, there is no purpose to your life. You're worthless. Stay off my property. I will call the Powell Police. You will be criminally trespassing unless you're coming with your gloves to pull the weeds that you don't like. Because I am going to let them grow, and grow, and grow and grow. I actually think they're aesthetically pleasing. So, now, are you going to challenge me on that? What if I told you I liked them? Okay? Get it? I'm not sure your, um cerebral [laughter] – I'm not sure you can understand anything I am saying, because it's government officials like you who are partially retarded, stuck in the birth canal too long [laughter] and really don't deserve to be here. So kiss my flipping ass.
- Get a life. You are the reason our country is failing.
- You know, it kind of reminds me of Hitler. You know, people like you are the reason all the Jews were killed in Germany, because, you know, you just listen to people, and you just do what you are told. Don't you? You just do what you're told. First it's weeds. Next thing you know it's euthanizing people. You are an obnoxious piece of crap. Stay away from me. I hate you.
- Everybody hates people like you. The police are stool pigeons for the government. You're a piece of feces in my opinion. I could give a rat's ass. Come talk to me to my face if you have the balls. 'Cause I think your testicular atrophy and your fucking – well, I – I won't use that word because you might think there's something wrong with me. But I don't care. I hate you all.

- I am really mad. I'm so mad that [laughter] I'm – well, I just don't know. But you better – you better be careful. Don't mess with me.
- [Directed to City of Powell Development Planner] I like my weeds. Get it? I haven't broken any laws. I have a constitutional right to grow weeds if I want to. Got it? Now, if you want to debate me, that's fine, but you- you likely will lose. In any case, Mr. [name of City of Powell Development Planner] Whatever-You-Are, stool pigeon for the government, um, you can call me. I'd be happy to talk to any rationally semi-intelligent person. But if you're not, I don't want to talk to you. I'll just send my attorney. Don't send any of your little cohorts on to my property again, much less tell an employee of mine to pull weeds. 'Cause I like my weeds. Got it? Love'em. They're very good for the environment. Did you know that? I – I'm sure you don't. I'm sure you're not even very well-versed in what global warming really is, which is really global cooling, but you probably don't know that, either, because it's all a political thing. You know, I know about morons like you who work for the government who do nothing but waste taxpayer dollars doing nothing but getting fucking hemorrhoids. So take your fucking laws and shove 'em up your ass because I've broken no law and I'm not going to pull my weeds.

The City of Powell subsequently asked you to put any further communications in writing and warned that all further electronic communication from you may be considered harassment possibly resulting in complaints to the police department. Despite this request, you left a fourth telephone message to the City of Powell, on or about August 7, 2009, approximately seven minutes and fifty-seven seconds in length.

- (f) On or about September 15, 2009, you were interviewed by a Board investigator with respect to your statements to the City of Powell employees. You explained that you had been aggravated by the City of Powell for several months and feel as though you have been harassed. As the Board investigator began to read portions of the telephone messages you left in or about August 2009, to the City of Powell employees, you became visibly uncomfortable and began crying, explaining that you had been under a lot of financial pressure. You said the directive from the City of Powell to cut your weeds was the last straw and you had snapped.

You further told the Board investigator that you had probably been drinking when you left the voicemails. You said that you probably drink a couple of drinks of wine after work each day. You said that you could not be sure if you had been drinking on that particular day, but that was likely.

You further told the Board investigator that you had been evaluated for mental health issues in 2007 when Riverside Hospital suspended your privileges pending an internal investigation.

- (g) The Board has information that while at your medical office you would have to be awakened on a regular basis to see your patients. You have been seen with a white powdery substance near your nose. You have been observed continually sniffing. It has further been reported that you consume wine during office hours and that you have smelled of alcohol. Additionally, you told the Board investigator that you had been evaluated for mental health issues in the past and that you are under a lot of financial pressure, including that your building had recently been sold at sheriff's auction.
- (2) By letter dated January 4, 2010, from Richard M. Whitney, M.D., Medical Director of Addiction Services at Shepherd Hill Hospital, a Board-approved treatment provider, the Board was notified that following the Board-ordered evaluation conducted from on or about December 15, 2009 until on or about December 18, 2009, you were determined to be impaired in your ability to practice according to acceptable and prevailing standards of care and to require residential treatment for chemical abuse/dependence.
- (3) The Board has not received information that you have entered inpatient or residential treatment as required by Rule 4731-16-02, Ohio Administrative Code.
- (4) Further, on or about December 30, 2008, you caused to be submitted to the Board your renewal application wherein you answered "No" to Question 1, which asked:

At any time since signing your last application for renewal of your certificate:

Have you been found guilty of, or pled guilty or no contest to, or received treatment or intervention in lieu of conviction of, a misdemeanor or felony?

In fact, on or about August 9, 2007, in the Municipal Court of Wayne County, Ohio, you pled no contest to, and were found guilty of, Operating a Vehicle under the Influence.

Section 4731.22(B)(26), Ohio Revised Code, provides that if the Board determines that an individual's ability to practice is impaired, the Board shall suspend the individual's certificate and shall require the individual, as a condition for continued, reinstated, or renewed certification to practice, to submit to treatment and, before being eligible to apply for reinstatement, to demonstrate to the Board the ability to resume practice in compliance with acceptable and prevailing standards of care, including completing required treatment,

providing evidence of compliance with an aftercare contract or written consent agreement, and providing written reports indicating that the individual's ability to practice has been assessed by individuals or providers approved by the Board and that the individual has been found capable of practicing according to acceptable and prevailing standards of care.

Further, Rule 4731-16-02(B)(1), Ohio Administrative Code, provides that if an examination discloses impairment, or if the Board has other reliable, substantial and probative evidence demonstrating impairment, the Board shall initiate proceedings to suspend the licensee, and may issue an order of summary suspension as provided in Section 4731.22(G), Ohio Revised Code.

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

Further, your acts, conduct, and/or omissions as alleged in paragraph (4) above, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, and Chapter 4731., Ohio Revised Code, you are hereby advised that you are entitled to a hearing concerning these matters. 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.

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.
Secretary

LAT/KHM/flb
Enclosures

CERTIFIED MAIL, RESTRICTED DELIVERY #91 7108 2133 3936 3068 4676
RETURN RECEIPT REQUESTED

cc: BY HAND DELIVERY

cc: Terri Lynn Smiles, Esq.
Collis, Smiles and Collis, LLC
1650 Lakeshore Drive
Suite 2
Columbus, Ohio 43204

CERTIFIED MAIL #91 7108 2133 3936 3068 4775
RETURN RECEIPT REQUESTED