STATE MEDICAL BOARD
OF OHIO
2002 DEC -2 P 3:45

STEP II
CONSENT AGREEMENT
BETWEEN
DAVID E. SUBLER, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO

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

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

BASIS FOR ACTION

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

A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4731.22(B)(26), Ohio Revised Code, "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," and/or Section 4731.22(B)(10), Ohio Revised Code, "[c]omission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act was committed."

B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violations of Ohio Revised Code Section 4731.22(B)(26), and Section 4731.22(B)(10), to wit: Section 2925.22, Ohio Revised Code, Deception to Obtain a Dangerous Drug; Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents; and/or Section 2913.02, Ohio Revised Code, Theft, as set forth in Paragraphs (E) and (F) of the Step I Consent Agreement Between David E. Subler, M.D., and The State Medical Board of Ohio, effective on November 20, 2002, [November 2002 Step I Consent Agreement], a copy of which is attached hereto and fully incorporated herein. The Board expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement. Such express reservation includes, but is not limited to, the right to institute formal proceedings based upon any violations related to patient care, regardless of whether the acts

underlying such additional violations are related to the violations of Sections 4731.22(B)(26) and/or (B)(10), Ohio Revised Code, as set forth in the November 2002 Step I Consent Agreement and/or this Consent Agreement. Additionally, Dr. Subler states and acknowledges he understands that the Board intends to pursue by separate action any violations beyond Section 4731.22(B)(26) and/or (B)(10), Ohio Revised Code, including but not limited to, Section 4731.22(B)(2) and/or (B)(6), Ohio Revised Code, even if such violations arise from the same common nucleus of operative fact as outlined within the November 2002 Step I Consent Agreement addressing the issue of Dr. Subler's chemical impairment and methods of obtaining controlled substances and/or contained herein. Dr. Subler further states and acknowledges that he understands that subsequent Board Orders and/or Consent Agreements may supercede this Step II Consent Agreement and may result in further discipline, up to and including permanent revocation of his license to practice medicine in Ohio.

C. Dr. Subler is licensed to practice medicine and surgery in the State of Ohio, License # 35-065191.

D. Dr. Subler states that he is not licensed to practice medicine and surgery in any other state or jurisdiction.

E. Dr. Subler admits that on or about September 5, 2002, he entered residential treatment at Parkside Behavioral Healthcare, a Board approved treatment provider in Columbus, Ohio, related to his abuse of alcohol and chemical dependency on sedative hypnotics, and was discharged, treatment complete, on or about October 4, 2002. Dr Subler further admits that immediately thereafter, he completed four weeks of out-patient treatment that concluded on or about November 1, 2002. Dr. Subler states, and the Board acknowledges receipt of information to support, that since being discharged from Parkside Behavioral Healthcare, he has remained compliant with his recovery plan, including participating in at least three A.A. meetings per week and submitting to random urine screens on a weekly basis. Dr. Subler states, and the Board acknowledges receipt of information to support, that Dr. Subler has remained compliant with the terms of the advocacy contract he entered into with the Ohio Physicians Effectiveness Program on or about October 22, 2002, and the aftercare contract he entered into with Parkside Behavioral Healthcare on or about November 4, 2002. Further, Dr. Subler admits that the aforementioned advocacy and aftercare contracts remain in effect.

Dr. Subler states, and the Board acknowledges, that Edna Jones, M.D., of Parkside Behavioral Healthcare, and David Goldberg, D.O., of Greene Memorial Hospital, a Board approved treatment provider in Xenia, Ohio, have each provided written reports indicating that Dr. Subler's ability to practice has been assessed and he has been found capable of practicing medicine and surgery according to acceptable and prevailing standards of care, so long as certain treatment and monitoring conditions

are in place, including a restriction on the amount of hours Dr. Subler works each week and a prohibition against Dr. Subler directly handling or administering opioids.

Accordingly, Dr. Subler states and the Board acknowledges receipt of information to support that Dr. Subler has fulfilled the conditions for reinstatement of his certificate to practice medicine and surgery in the State of Ohio, as established in the November 2002 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. Subler to practice medicine and surgery in the State of Ohio shall be reinstated, and Dr. Subler knowingly and voluntarily agrees with the Board to the following PROBATIONARY terms, conditions and limitations:

1. Dr. Subler shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.

2. Dr. Subler 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 November 2002 Step I Consent Agreement with the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. Dr. Subler 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 November 2002 Step I Consent Agreement with the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

4. In the event that Dr. Subler should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Subler must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this period under this Consent Agreement, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.

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

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

   Any request by Dr. Subler for modification of the limitation regarding administering, personally furnishing, and/or possessing any controlled substances set forth in this paragraph shall be accompanied by documentation from a physician affiliated with a Board approved treatment provider, or other physician approved by the Board for this purpose, who has evaluated Dr. Subler, indicating that such physician supports Dr. Subler's request for modification.

Sobriety

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

9. Dr. Subler shall abstain completely from the use of alcohol.

Drug and Alcohol Screens/Supervising Physician

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

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

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

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

Monitoring Physician

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

The monitoring physician shall monitor Dr. Subler and his medical practice, and shall

review Dr. Subler'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. Subler and his medical practice, and on the review of Dr. Subler's patient charts. Dr. Subler 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. Subler's quarterly declaration.

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

Rehabilitation Program

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

Aftercare/Physicians Health Program

14. Dr. Subler shall maintain continued compliance with the terms of the aftercare contract entered into with his Parkside Behavioral Healthcare and with his advocacy contract with the Ohio Physicians Effectiveness Program, or another physician health program approved in advance by the Board, provided that, where terms of the aftercare contract and/or advocacy contract conflict with terms of this Consent Agreement, the terms of this Consent Agreement shall control.

Work Hour Limitation

15. Dr. Subler shall limit his working hours to no more than 50 hours of work per week, until otherwise approved by the Board. Dr. Subler shall keep a log reflecting the dates, times, and facilities and/or locations at which he works. Dr. Subler shall submit his work log to the Board no later than the due date of Dr. Subler's quarterly declaration.

Any request by Dr. Subler for modification of the limitation on work hours set forth in this paragraph shall be accompanied by documentation from a physician affiliated with a Board approved treatment provider, or other physician approved by the Board for this purpose, who has evaluated Dr. Subler, indicating that such physician supports Dr. Subler's request for modification.

Releases

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

Required Reporting by Licensee

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

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

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Subler 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. Subler has violated any term, condition or limitation of this Consent

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

ACKNOWLEDGMENTS/LIABILITY RELEASE

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

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code, and may be reported to appropriate organizations, data banks, and governmental bodies. Dr. Subler agrees to provide his social security number to the Board and hereby authorizes the Board to utilize that number in conjunction with that reporting.

EFFECTIVE DATE

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

DAVID E. SUBLER, M.D.

LANCE A. TALMAGE, M.D.
Secretary

11-25-03
DATE

12-11-03
DATE

ERIC J. PLINKE, ESQ.
Attorney for Dr. Subler

12/1/3
DATE

RAYMOND J. ALBERT
Supervising Member

12/7/03
DATE

REBECCA L. MARSHALL, ESQ.
Enforcement Attorney

12/03/03
DATE

STEP I
CONSENT AGREEMENT
BETWEEN
DAVID E. SUBLER, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO

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

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

BASIS FOR ACTION

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

A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4731.22(B)(26), Ohio Revised Code, "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," and/or Section 4731.22(B)(10), Ohio Revised Code, "[c]omission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act was committed."

B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violations of Ohio Revised Code Section 4731.22(B)(26), as set forth in Paragraphs (E) and (F) below, and Section 4731.22(B)(10), to wit: Section 2925.22, Ohio Revised Code, Deception to Obtain a Dangerous Drug; Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents; and/or Section 2913.02, Ohio Revised Code, Theft, as set forth in Paragraph (F) below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement. Such express reservation includes, but is not limited to, the right to institute formal proceedings based upon any violations related to patient care, regardless of whether the acts underlying such additional violations are related to the violations of Section 4731.22(B)(26) and/or (B)(10), Ohio Revised Code, as set forth in this Consent Agreement. Additionally, Dr. Subler states and acknowledges he

understands that the Board intends to pursue by separate action any violations beyond Section 4731.22(B)(26) and/or (B)(10), Ohio Revised Code, including but not limited to, 4731.22(B)(2) and/or (B)(6), even if such violations arise from the same common nucleus of operative fact as outlined within this Consent Agreement addressing the issue of Dr. Subler's chemical impairment and methods of obtaining controlled substances. Dr. Subler further states and acknowledges that he understands that subsequent Board Orders and/or Consent Agreements may supercede 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. Subler is licensed to practice medicine and surgery in the State of Ohio, License #35-065191.

D. Dr. Subler states that he is not licensed to practice medicine and surgery in any other state or jurisdiction.

E. Dr. Subler admits that in or about December 2001 he began abusing drugs by orally consuming Demerol, that beginning in or about February 2001 his drug use escalated to include injecting Dilaudid on one occasion and injecting Demerol on numerous occasions, and that his drug of choice is Demerol. Dr. Subler admits that on or about October 28, 2002, he self-reported to the Board that he had initially entered treatment for chemical dependency at Parkside Behavioral Health, a Board-approved treatment provider in Columbus, Ohio, on or about September 5, 2002, that he was discharged, treatment complete, on or about October 4, 2002, and that he immediately thereafter completed four weeks of out-patient treatment that concluded on or about November 1, 2002. Dr. Subler further admits that he has entered into an Aftercare Contract with Parkside Behavioral Health and an Advocacy Contract with the Ohio Physicians Effectiveness Program.

F. Dr. Subler admits that he obtained controlled substances for self-use by theft and deception and specifically denies obtaining controlled substances for self-use by any means other than those set forth in this paragraph. Dr. Subler admits that he stole controlled substances from the hospital's medication inventory, and on two occasions stole controlled substances from a patient's prescription bottle. Dr. Subler further admits that in addition to the aforementioned methods of theft, he also obtained controlled substances through deception by concealing a small vial in his pocket which he filled with residual medication that was not going to be administered to patients, substituting a corresponding amount of saline into the syringe that he had emptied of such residual medication as a decoy, thus deceiving the person disposing of the wastage so as to be unaware that Dr. Subler had diverted the residual medication. Dr. Subler further admits that as his chemical dependence progressed, his behavior escalated into a pattern of splitting doses of controlled substances with his gastroenterology patients, accomplished by administering a lesser amount of medication to the patient than was reflected in the patient's chart. Dr. Subler

specifically denies that he ever diverted the entire dose of medication from any patient.

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

SUSPENSION OF CERTIFICATE

1. The certificate of Dr. Subler to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than 365 days.

Sobriety

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

3. Dr. Subler shall abstain completely from the use of alcohol.

Releases; Quarterly Declarations and Appearances

4. Dr. Subler 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. Subler's chemical dependency or related conditions, or for purposes of complying with this Consent Agreement, whether such treatment or evaluation occurred before or after the effective date of this Consent Agreement. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. Dr. Subler further agrees to provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Consent Agreement.

5. Dr. Subler shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective, provided that if the effective date is on or after the sixteenth day of the month, the first quarterly declaration must

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

6. Dr. Subler shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

Drug & Alcohol Screens; Supervising Physician

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

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

   In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Subler must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Subler 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. Subler's

quarterly declaration. It is Dr. Subler's responsibility to ensure that reports are timely submitted.

Rehabilitation Program

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

CONDITIONS FOR REINSTATEMENT

9. The Board shall not consider reinstatement of Dr. Subler's certificate to practice medicine and surgery until all of the following conditions are met:

   a. Dr. Subler shall submit an application for reinstatement, accompanied by appropriate fees, if any.

   b. Dr. Subler 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. Subler has successfully completed any required inpatient treatment.

      ii. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.

      iii. Evidence of continuing full compliance with this Consent Agreement.

      iv. Two written reports indicating that Dr. Subler's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. These reports shall be made by individuals or providers approved by the Board under Section 4731.25, Ohio Revised Code, or otherwise approved in advance by the

Board for making such Assessments. Prior to the assessments, Dr. Subler 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. Subler, and any conditions, restrictions, or limitations that should be imposed on Dr. Subler'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 evaluations occurring within the three months immediately preceding any application for reinstatement.

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

Further, upon reinstatement of Dr. Subler's certificate to practice medicine and surgery in this state, the Board shall require continued monitoring which shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Revised Code. Moreover, upon termination of the consent agreement or Board Order, Dr. Subler 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. Subler has maintained sobriety.

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

REQUIRED REPORTING BY LICENSEE

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

this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

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

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

FAILURE TO COMPLY

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

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code, and may be reported to appropriate organizations, data banks, and governmental bodies. Dr. Subler agrees to provide his social security number to the Board and hereby authorizes the Board to utilize that number in conjunction with that reporting.

EFFECTIVE DATE

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

DAVID E. SUBLER, M.D.

11.13.02
DATE

ERIC PLINKE, ESQ.
Attorney for Dr. Subler

11/13/02
DATE

ANAND G. GARG, M.D.
Secretary

11/19/02
DATE

RAYMOND J. ALBERT
Supervising Member

11/19/02
DATE

REBECCA J. ALBERS, ESQ.
Assistant Attorney General

11/20/02
DATE