



State Medical Board of Ohio

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October 12, 2011

Daniel Howard Brumfield, M.D.
2391 Locust Hill Blvd.
Beavercreek, OH 45431

RE: Case No. 11-CRF-083

Dear Doctor Brumfield:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Esq., Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on October 12, 2011, including motions approving and confirming the Findings of Fact and Proposed Order, and modifying the Conclusions of the Hearing Examiner.

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. *rw*
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3938 3021 5878
RETURN RECEIPT REQUESTED

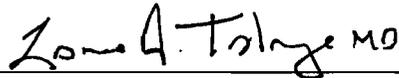
Cc: Elizabeth Y. Collis, Esq.
CERTIFIED MAIL NO. 91 7108 2133 3938 3021 5885
RETURN RECEIPT REQUESTED

Mailed 11-2-11

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, Esq., State Medical Board Attorney Hearing Examiner; and excerpt of the Minutes of the State Medical Board, meeting in regular session on October 12, 2011, including motions approving and confirming the Findings of Fact and Proposed Order, and modifying Conclusions of the Hearing Examiner; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Daniel Howard Brumfield, M.D., Case No. 11-CRF-083, 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. *rw*
Secretary

(SEAL)

October 12, 2011

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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CASE NO. 11-CRF-083

DANIEL HOWARD BRUMFIELD, M.D. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on October 12, 2011.

Upon the Report and Recommendation of R. Gregory Porter, Esq., State Medical Board 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 within, and upon the modification, approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

Rationale for Amendment: Conclusion of Law 4 is amended to find that Dr. Brumfield illegally issued a prescription for Subutex in violation of Section 4731.22(B)(3), Ohio Revised Code, in that he prescribed Subutex to a patient over an extended period of time without having the required registration through the Drug Enforcement Administration. Such prescribing violated federal law and was a violation of Dr. Brumfield's January 2008 Consent Agreement

Conclusion of Law No. 4 is amended as follows:

4. The acts, conduct, and/or omissions of Daniel Howard Brumfield, M.D., as set forth in Findings of Fact 2 and 5, individually and/or collectively, constitute "[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes" as that clause is used in Section 4731.22(B)(3), Ohio Revised Code.

The evidence establishes that Dr. Brumfield prescribed Subutex to Patient 3 for the purpose of maintenance of detoxification treatment, contrary to 21 U.S.C. § 823(g). Thus, it is concluded that Dr. Brumfield prescribed a drug to Patient 3 for other than legal purposes.

It is hereby ORDERED that:

The certificate of Daniel Howard Brumfield, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED

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

Lance A. Talmage

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

(SEAL)

October 12, 2011

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of

*

Case No. 11-CRF-083

Daniel Howard Brumfield, M.D.,

*

Hearing Examiner Porter

Respondent.

*

REPORT AND RECOMMENDATION

Basis for Hearing

In a Notice of Summary Suspension and Opportunity for Hearing dated July 22, 2011, the State Medical Board of Ohio [Board] notified Daniel Howard Brumfield, M.D., that, pursuant to Section 4731.22(G), Ohio Revised Code, the Board had summarily suspended his certificate to practice medicine and surgery in Ohio.¹ The Board further notified Dr. Brumfield that it intended to determine whether to take disciplinary action against his certificate based on allegations that included the following:

- Dr. Brumfield helped institute or participated in a policy to reshape the medical practice of a pain management clinic so that no more than fifty percent of the patients would be treated for pain. To accomplish this, existing pain management patients were informed by Dr. Brumfield and/or office staff that they would not be treated for pain unless they brought with them to their appointments another individual to serve as a family practice referral patient.

As an example, Patient 1,² a pain management patient, was advised that, in order to receive continued pain treatment, she needed to bring an extra person to serve as a non-pain patient to her next appointment. Patient 2 accompanied Patient 1 to her July 2011 visit for that purpose.

- Dr. Brumfield treated Patient 3 for opioid dependence using Subutex despite the fact that he had not been separately registered with the Drug Enforcement Administration indicating that he had been approved to prescribe Subutex for that purpose. Additionally, Dr. Brumfield submitted a statement to a prescription drug program administrator indicating that he held such registration. Further, Dr. Brumfield submitted a Declaration of Compliance indicating that he was in full compliance with his January 2008 Consent Agreement.

The Board further alleged that Dr. Brumfield's conduct constitutes:

- "Selling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt

¹ Additional information concerning the summary suspension process in this case is set forth in State's Exhibit 20.

² All patients referenced herein were identified on a Confidential Patient Key.

of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,” as those clauses are used in Section 4731.22(B)(3), Ohio Revised Code, to wit: 21 USC § 823(g) (2008), Registration Requirements.

- “Making 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.
- “Violation of the conditions of limitation placed by the board upon a certificate to practice,” as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.
- A “violation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule,” as that clause is used in Section 4731.22(B)(18), Ohio Revised Code, to wit: Principles I, II, IV, and VIII of the American Medical Association’s Principles of Medical Ethics.

Finally, the Board advised Dr. Brumfield of his right to request a hearing, and received his written request on July 25, 2011. (State’s Exhibits [St. Exs.] 1A, 1B)

Appearances

Mike DeWine, Attorney General, and Kyle C. Wilcox and Heidi W. Dorn, Assistant Attorneys General, for the State of Ohio. Elizabeth Y. Collis, Esq., on behalf of Dr. Brumfield.

Hearing Dates: August 3 and 4, 2011

PROCEDURAL MATTER

After the hearing, the Hearing Examiner redacted a patient name from State’s Exhibit 2, which consists of Dr. Brumfield’s responses to Board interrogatories. The patient name appeared in Dr. Brumfield’s response to question 39 on page 10 of the exhibit.

SUMMARY OF THE EVIDENCE

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

Background Information

1. Daniel Howard Brumfield, M.D., obtained his medical degree in 1992 from Wright State University School of Medicine in Dayton, Ohio. In 1995, he completed a three-year residency in family medicine at St. Elizabeth Medical Center in Dayton. Dr. Brumfield was certified by the American Board of Family Practice from 1997 through 2004, and is currently board-eligible for certification by that board. (Hearing Transcript [Tr.] at 283-284; Respondent's Exhibit [Resp. Ex.] A)
2. Dr. Brumfield was initially licensed by the Board in July 1993 under Certificate No. 35.065317. (Ohio eLicense Center, <<https://license.ohio.gov/Lookup/>>, accessed September 1, 2011)

Dr. Brumfield's History of Prior Board Discipline

3. In December 2002, Dr. Brumfield entered into a Step I Consent Agreement with the Board in lieu of formal proceedings based upon his violations of Sections 4731.22(B)(10) and (26), Ohio Revised Code. A short time earlier, Dr. Brumfield had been diagnosed with and obtained treatment for cocaine dependency. Additionally, he had pre-signed blank prescriptions to be used by an advanced nurse practitioner and other office staff to refill prescriptions. As a result, Dr. Brumfield's license was suspended for a minimum of 270 days with conditions for reinstatement. (St. Ex. 13 at 1-9)
4. In January 2004, Dr. Brumfield entered into a Step II Consent Agreement with the Board that reinstated his license subject to probationary conditions. (St. Ex. 13 at 11-20)
5. In December 2004, the Board summarily suspended Dr. Brumfield's medical license based on an allegation that, in November 2004, he had submitted a urine specimen that tested positive for cocaine. (St. Ex. 13 at 30-37)

During the administrative hearing that followed, Dr. Brumfield denied that he had relapsed. He testified instead that he had involuntarily ingested cocaine when he used an old nebulizer in which he had once stored his cocaine. Dr. Brumfield further stated that he was committed to his recovery and knew that a relapse "would be tantamount to 'a death sentence[.]'" (St. Ex. 13 at 90)

In January 2005, based upon a finding that Dr. Brumfield's positive urine screen had resulted from an unintentional ingestion of cocaine, the Board took no further action against Dr. Brumfield's license and ordered that he continue to comply with the January 2004 Step II Consent Agreement. (St. Ex. 13 at 39-72)

6. At the present hearing, Dr. Brumfield acknowledged that, during the hearing concerning his December 2004 summary suspension, he had offered a false explanation for his positive urine screen and denied that he had relapsed on cocaine when, in fact, he had. (Tr. at 75-76)

7. In April 2005, the Board summarily suspended Dr. Brumfield's medical license based on an allegation that, in March 2005, he had submitted a urine specimen that tested positive for benzoylecgonine, a cocaine metabolite. In July 2005, following an administrative hearing, the Board revoked Dr. Brumfield's medical license. (St. Ex. 13 at 74-112)
8. Effective January 9, 2008, Dr. Brumfield entered into a consent agreement with the Board [January 2008 Consent Agreement] in lieu of formal proceedings based upon violations of Sections 4731.22(B)(26) and (B)(15), Ohio Revised Code. Pursuant to that agreement, the Board granted Dr. Brumfield's application for a new medical license, under Certificate No. 35.090980, subject to probationary conditions. Among these probationary conditions, paragraph 1 states, "Dr. Brumfield shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio." Further, paragraph 2 states, in part, "Dr. Brumfield shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of [the January 2008 Consent Agreement]." (St. Ex. 13 at 114-123; Ohio eLicense Center, <<https://license.ohio.gov/Lookup/>>, accessed September 1, 2011)

Since it became effective, the January 2008 Consent Agreement has been modified. In February 2009, the Board approved Dr. Brumfield's request for a reduction in the number of required recovery meetings, a reduction in the number of psychotherapy sessions, and permission to administer, personally furnish, or dispense controlled substances with maintenance of drug logs. Subsequently, in August 2009, the Board approved Dr. Brumfield's request to reduce the number of required urine screens. Finally, in August 2010, the Board approved Dr. Brumfield's request to further reduce the number of psychotherapy sessions. (Ohio eLicense Center <<https://license.ohio.gov/Lookup/>>, accessed September 13, 2011)

9. Dr. Brumfield remains subject to the probationary conditions of the January 2008 Consent Agreement, as modified. (Tr. at 288-289)
10. Dr. Brumfield testified that his sobriety date is March 23, 2005. (Tr. at 288)

Dr. Brumfield's Recent Work History

11. Dr. Brumfield testified that, in March 2008, after obtaining his new medical license, he went to work at three locations. First, he began working at Community Urgent Care in Springfield, Ohio, about three days per week. Dr. Brumfield also began working one day per week at County Wide Medical Pain Management in Ironton, Ohio. Additionally, Dr. Brumfield began working one or two days per week at Ohio Medical and Pain Management [Ohio Medical] in Waverly, Ohio. Dr. Brumfield testified that the practices in Ironton and Waverly were pain management practices. (Tr. at 83-86; Resp. Ex. A)
12. Dr. Brumfield testified that Ohio Medical was owned by Lester Sadler. Mr. Sadler is not a physician. (Tr. at 86, 111)

13. Dr. Brumfield testified that, approximately one month after he began working for Ohio Medical, he had learned that the physician he had replaced had been “shut down by the DEA.” He further testified that that had caused him some concern but he had continued working there despite his concern. (Tr. at 87)
14. Dr. Brumfield left the Ironton practice in December 2008. He then began to devote more time to Ohio Medical in Waverly, and continued to work at the urgent care facility in Springfield. Dr. Brumfield testified that, at that time, he had been working at Ohio Medical approximately 30 to 35 hours per week, and at the urgent care center approximately 12 to 20 hours per week. (Tr. at 92; Resp. Ex. A)
15. According to Dr. Brumfield’s curriculum vitae, he left the urgent care in Springfield in October 2009 and, in November 2009, began working at Lindewald Medical Associates, a family practice in Hamilton, Ohio. Subsequently, he transferred to their office in Huber Heights, Ohio. Dr. Brumfield testified that he works at the family practice in Huber Heights five days per week, Monday through Friday, and considers that to be his primary employment. (Tr. at 93, 285; Resp. Ex. A)
16. In or around March 2010, Mr. Sadler opened a second pain management office in Columbus, Ohio, called Ohio Medical West. (Tr. at 93-94)
17. Dr. Brumfield testified that, in June or July 2010, Mr. Sadler, along with his wife, Nancy Sadler, and several other individuals associated with the Waverly practice were indicted. Dr. Brumfield further testified that the criminal charges related to activities that took place during the time Dr. Brumfield’s predecessor worked at the practice. Moreover, Dr. Brumfield testified that, after the indictments had been issued, Mr. Sadler closed the Waverly practice due to the bad publicity. After the Waverly practice closed, Dr. Brumfield went to work at Ohio Medical West one or two days per week. (Tr. at 94-96)

Dr. Brumfield’s Practice at Ohio Medical West

18. Dr. Brumfield testified that, when he had first started working at Ohio Medical West in June or July 2010, he had worked on Mondays and on one Sunday per month, and sometimes another day during the week if his schedule permitted it. Later, Dr. Brumfield worked there on Saturdays and every other Sunday. A second physician, Dr. Cullen, had also worked there one or two days per week. (Tr. at 99, 292)
19. Dr. Brumfield testified that he had seen 35 to 45 patients per day at Ohio Medical West. Dr. Brumfield noted that the patients paid in cash but were given a form that they could send to their insurance companies for reimbursement. He believes that the fee for a visit was \$180. (Tr. at 101, 104)
20. Dr. Brumfield testified that on June 2 or 3, 2011, he had learned that the Board was in the process of adopting new rules that would drastically affect pain management clinics.

Dr. Brumfield further testified that he had previously heard rumors about such changes but had believed that the changes would only affect clinics that directly dispense medication, which Ohio Medical West did not do. (Tr. at 107-108)

21. Dr. Brumfield testified that a new Board rule that became effective on June 20, 2011,³ requires, among other things, that pain management clinics be owned by physicians. As previously noted, Mr. Sadler is not a physician. (Tr. at 111-112)

In addition, the new rule defines a pain management clinic as a facility where “[t]he primary component of the practice is the treatment of pain or chronic pain” and where the majority of patients (based upon the number of patients treated during a calendar month) are treated using controlled substances, tramadol, carisoprodol, or other substances specified by Board rule. (Emergency Rule 4731-29-01(A)(5), Ohio Administrative Code; Resp. Ex. E)

22. Dr. Brumfield testified that, when he learned of the Board’s new rules, he had considered but eventually rejected the idea of applying for a grandfathering provision as set forth in the rules. The grandfathering provision permitted certain non-board-certified physicians to own pain management clinics. However, Dr. Brumfield testified that he did not qualify. (Tr. at 112, 298-303; Resp. Ex. E)
23. Dr. Brumfield testified that, as of mid-June 2011, roughly 100 percent of his patients at Ohio Medical West were seen and treated for pain. Dr. Brumfield further testified that patients were prescribed narcotics at every visit. Moreover, Dr. Brumfield testified that it had been his understanding that Ohio Medical West would fall under the new rule’s definition of a pain management clinic, and thus be subject to the rule’s requirements, if the number of patients receiving narcotics exceeded 50 percent. (Tr. at 114, 294)
24. Dr. Brumfield testified that he had realized prior to the Board’s new rules taking effect that he would probably not be able to continue practicing at Ohio Medical West. However, Dr. Brumfield testified that, in mid-June, he and Mr. Sadler discussed a plan “to revamp the practice.” Dr. Brumfield testified, “Essentially, Mr. Sadler asked me if I would continue as a family practitioner in his practice, and I told him that we would attempt it.” (Tr. at 113-114)

Ohio Medical West’s New Policy

25. In order to remain in business, an attempt was made to change Ohio Medical West from a pain management practice to a family practice. A key element of this policy involved having current pain management patients bring with them to their appointments a family practice referral patient in order to keep the percentage of pain management patients below

³ Dr. Brumfield actually testified that House Bill [HB] 93 became effective on June 20, 2011, which is incorrect. HB 93 became effective May 20, 2011. However, the Board’s new rule affecting pain management clinics, Emergency Rule 4731-29-01, Ohio Administrative Code, became effective on June 20, 2011. (Resp. Ex. E; Ohio Legislative Commission Website <<http://lsc.state.oh.us/coderev/hou129.nsf/House+Bill+Number/0093?OpenDocument>> , accessed September 2, 2011)

fifty percent. In addition, no new pain management patients would be accepted. Dr. Brumfield testified that the new policy became effective around June 20, 2011. (Tr. at 123; St. Ex. 8 at 1:00 – 2:13)

26. Dr. Brumfield testified that the plan that pain management patients would be asked to bring a family practice patient with them had been Lester Sadler's idea. Dr. Brumfield further testified that, at the time, he had not seen anything wrong with the plan. (Tr. at 310)
27. Dr. Brumfield testified that existing pain management patients were "asked" to bring a family practice patient with them to their appointments:

Q. [T]his plan that you instituted required that all existing pain patients of your practice bring a friend who was not a pain patient along to their scheduled appointment, and that patient that they brought along, then, would be treated in this practice; is that correct?

A. I wouldn't say it was required. I would say that it was asked that the patient bring a patient for family practice.

Q. Well, if they didn't bring—Well, first of all, the reasoning behind this was so if you brought—if each pain patient brought an additional patient who was not a pain patient, you believed that you should maybe get the numbers of non-pain patients above 50 percent; is that correct?

A. The idea was that we would switch it over to family practice. We advertised. We did not just ask the patient to bring a non-pain patient. We were trying everything we could to switch it to family practice.

Q. But that's the reason why you had these people bring someone, correct?

A. We asked them to bring a non-pain patient so that we would comply with the law, yes.

* * *

Q. If the pain patient did not bring a friend or a referral to a regularly-scheduled appointment, you told them, essentially, that you would not prescribe them pain medications and they would not be treated for pain at that time, correct?

A. I did not tell them anything. When the patient came to the office window—I don't see the patient until I walk into the exam room. I cannot tell you what the staff told them. I know that I was asked several times about patients that did not have somebody with them, and I told them I would see them.

Q. But the policy that you and Mr. Sadler—the new policy you instituted was that these patients were to be informed if they did not bring an additional patient with them, they would not be treated with pain medications; is that correct?

A. I cannot tell you that I instituted that policy. I can tell that you Mr. Sadler did.

Q. Well, Mr. Sadler's not a medical doctor, is he?

A. That's correct.

Q. So you're the doctor at the practice, correct?

A. That's correct.

Q. And you make the clinical treatment decisions, correct?

A. We made the decision to change it to family practice.

Q. When you say, "we", Mr. Sadler is not a doctor, correct?

A. Correct.

Q. So you, as the physician, have all the decision-making on clinical treatment, correct?

A. That's correct.

Q. You and Mr. Sadler concocted this plan and stated, clinically, you would not treat a patient unless they brought another patient along with them; is that correct?

A. I can't tell you that I ever told a patient I would not treat them if they did not bring a non-pain patient with them. I did not say that to the patients.

Q. But that was the policy you and Mr. Sadler agreed to, correct?

A. I can say that Mr. Sadler was instituting a policy where, if they did not bring a pain patient with them, then they may not be seen.

Q. But Mr. Sadler can't tell you how to treat patients clinically, correct?

A. That's correct.

Q. That's a decision that you have to make yourself, as the physician, correct?

A. That's correct.

Q. And you were the only physician at Ohio Medical West, correct?

A. After June 20th, yes.

Q. Okay. So the pain patients ultimately were not seen because they did not bring along another patient or were not prescribed medications because they did not bring along a patient with them, ultimately, that was your clinical decision, correct?

A. Ultimately, it was my clinical decision to see the patient once they were in the rooms. I did not get involved in the scheduling. I didn't get involved in anything other than coming in and seeing the patients between the time that I was there.

Q. But you knew when you practiced at Ohio Medical West that that was the policy of the office, correct?

A. I had been told that that was the policy, yes.

Q. In fact, you and Mr. Sadler had instituted the policy, correct?

A. We instituted a policy to change to it family practice.

Q. And that policy was as I have described, correct, as far as the patient who is a pain patient must bring along another non-pain patient in order to be treated, correct?

* * *

A. I did not institute the policy that they had to bring a non-pain patient with them.

THE EXAMINER: Did you follow it?

THE WITNESS: I'm sorry?

THE EXAMINER: Did you follow that policy?

THE WITNESS: Like I said, I saw the patients once they were in the room. I did not tell the staff whether to accept a patient or not according to whether they had somebody with them. That was not my policy.

* * *

Q. [By Mr. Wilcox] Okay. But as the clinical physician in—who is the only clinical physician in the practice, Doctor, you're in charge of the staff—a staff as far as your decision on medical choice and treatment as the final decision, correct, not the staff?

A. That's correct.

Q. I want to ask it like this one more time, and then I'll move on.

Did you know this policy was being—was implemented and was being carried out, “yes” or “no”?

A. I did hear the policy, yes.

Q. And you knew it was being carried out at Ohio Medical West?

A. I knew that it was being instituted, yes.

(Tr. at 114-121)

28. However, during previous interviews with Board staff, Dr. Brumfield had been more emphatic that the new policy required that pain patients provide a family practice referral patient in order to be seen. For example, during a July 7, 2011, interview with Board Enforcement Investigator Jeffrey Bradford and Pharmacy Board Investigator Eric Griffin with respect to his practice at Ohio Medical West, Dr. Brumfield was asked how he is complying with HB 93. Dr. Brumfield replied that he was practicing family medicine, although he was also continuing to treat pain patients. When asked how he was getting the family practice patients, Dr. Brumfield stated that patients had been asked to bring referrals in with them. When asked, “What if they don't?”, Dr. Brumfield replied, “If they don't, then I won't prescribe to them[.] * * * The pain patient.” Dr. Brumfield further stated that he tells them that his goal is to keep the number of pain patients below 50 percent. (St. Ex. 7 at 3:35 – 4:30)

When asked whether he or the office staff informed pain patients of the need to bring a family practice referral, Dr. Brumfield replied, “Both of us.” (St. Ex. 7 at 9:45 – 9:55)

29. In addition, during a July 11, 2011, interview with Board Enforcement Attorney Daniel Zinsmaster and Chief Enforcement Attorney Rebecca Marshall, Dr. Brumfield stated that pain patients who called for appointments were told to schedule at least two appointments: one for themselves and one for a family practice referral patient. (St. Ex. 8 at 4:23-4:50) Dr. Brumfield further stated that he knows that the pain patient has provided a family practice referral patient when he walks into the room: “I know that when I see the patients in the room, and there's a family practice patient and a pain patient in the room unless there are just

plain family practice patients.”⁴ (St. Ex. 8 at 5:15 – 5:30) Moreover, Dr. Brumfield stated that, if there is only one patient in the room, “I ask them why they’re there and if they say that they’re there for pain management I tell them I can’t do that.” (St. Ex. 8 at 5:45 – 5:55)

In addition, during the July 11, 2011, interview, Dr. Brumfield stated that, under the new policy, if a pain patient comes in and does not have a family practice referral patient with them, he cannot see them “because that would make it too many pain management patients” and put them over the 50 percent limit. If a pain patient comes in without a referral, the front desk tells them that Dr. Brumfield cannot see them. Dr. Brumfield stated that he does not personally do that. Moreover, Dr. Brumfield testified pain patients who are turned away do not receive prescriptions. He stated that he was unaware whether they received referrals to other practitioners. (St. Ex. 8 at 8:35 – 10:05)

Moreover, Dr. Brumfield noted that he had concerns about stopping patients’ medication but that he had to balance that with complying with HB 93. (St. Ex. 8 at 10:10 – 10:40)

Finally, later during the interview, Dr. Brumfield stated that he cannot say that he would refuse to see a pain patient who comes in to see him without a referral, and that it would depend on whether he had enough family practice patients to keep the number of pain patients below 50 percent. (St. Ex. 8 at 27:50 – 28:07)

30. Dr. Brumfield testified that, if a patient has been receiving opiate medications for an extended period of time and is suddenly denied medication, the patient can experience withdrawal symptoms. Dr. Brumfield testified that opiate withdrawal symptoms start out with flu-like symptoms and diarrhea and, “[u]ltimately, you go into withdrawal symptoms where you feel like you’re going to die.” (Tr. at 121-122)

Similarly, Dr. Brumfield testified that if a patient has been receiving benzodiazepines for an extended period of time and is suddenly denied medication, the patient can experience life-threatening seizures. (Tr. at 122)

31. Dr. Brumfield testified that it is his understanding that patients were notified of the new policy when they were called by office staff to be reminded of their appointments. (Tr. at 310-311)

Patients 1 and 2

32. Dr. Brumfield testified that Dr. Cullen left Ohio Medical West around June 20, 2011, the date that Emergency Rule 4731-29-01 became effective. (Tr. at 99, 134; Resp. Ex. E)

Dr. Brumfield further testified that he and Dr. Cullen had worked at Ohio Medical West on different days. Dr. Brumfield testified that they each saw their own patients, and there was very little overlap. However, Dr. Brumfield testified that, when Dr. Cullen left the

⁴ Dr. Brumfield stated that he sees the pain patient and family practice referral patient together in the same room if the patients agree to that. (St. Ex. 8 at 5:30 – 5:36)

practice, Dr. Cullen had had patients scheduled for that Thursday and Friday. Dr. Brumfield was asked to see those patients, and he agreed to see them in the evening after he finished working at his Huber Heights office. (Tr. at 291-293)

Patient 1

33. Patient 1 is a female born in 1956. She had been a pain management patient of Dr. Cullen at Ohio Medical West since about July 2010. She saw Dr. Brumfield for the first and only time on July 7, 2011. (St. Ex. 5)
34. At hearing, Patient 1 was asked why she was being treated at Ohio Medical West. She replied: "I have two herniated vertebrae in my lower back. I've had three surgeries on my lower back. I've had both knees replaced. I've had a C5-C6 fusion, so it's a lot of pain." Patient 1 further testified that, during this time, she visited Ohio Medical West every 28 days. Moreover, Patient 1 testified that her last visit there had been July 7, 2011, when she saw Dr. Brumfield. (Tr. at 177-182, 196-197)

At her previous visit on June 9, 2011, Dr. Cullen had prescribed, among other things, Motrin, Flexeril, Percocet, Xanax, and oxycodone. (St. Ex. 5 at 21)

Patient 2

35. Patient 2, a female born on 1962, is Patient 1's sister. She was seen by Dr. Brumfield for the first and only time on July 7, 2011. The medical record indicates that Patient 2 was seen for a general check-up and high blood pressure. (St. Ex. 6B at 2)

July 7, 2011, office visit

36. Patient 1 testified that, on July 7, 2011, she had gone to Ohio Medical West at 9:00 a.m. for her previously scheduled visit; however, there was a sign on the door stating that patients would not be seen until 5:30 p.m. Patient 1 left and returned to the office at 5:00 p.m. While Patient 1 was waiting for her appointment, her sister, Patient 2, brought money for Patient 1 to pay for her appointment. Patient 1 further testified that, after Patient 2 got there, "one of the boys come out from the back and said that if we didn't bring in somebody with us, we wouldn't be seen for—bring somebody in for a family practice visit, we wouldn't be seen for your pain management." She then clarified that she had been told that that would apply to the *following* month's visit: "they told me that * * * in the future, next month, if you don't bring somebody in for family practice, you won't be seen. And I don't know who talked [Patient 2] into staying, but she said she would stay and be seen as a family practice patient."⁵ Patient 2 evidently agreed to stay even though her presence was not required for Patient 1's July 7, 2011, visit. (Tr. at 181-183, 187-188)

⁵ Patient 1 was quite emotional during her testimony because her sister, Patient 2, had passed away about two weeks prior to the hearing. (See, Tr. at 195) Patient 2's passing was completely unrelated to any issues addressed at hearing. (Tr. at 207)

37. Patient 1 testified that she had been told that the family practice patient could be a “family member, friend, anybody,” and it could be the same person as the previous month. (Tr. at 187)
38. Patient 1 testified that Patient 2 had already had a family practice physician when she saw Dr. Brumfield on July 7, 2011. Patient 1 further testified that Patient 2 had not planned to see the doctor when she came to Patient 1’s appointment. (Tr. at 188)
39. Patient 1 testified that Patient 2 had to fill out new-patient paperwork. Patient 1 further testified that Patient 2 was asked for insurance information, but that Patient 2 had not been asked to pay for her visit. (Tr. at 190; St. Ex. 6B at 5-7)
40. Patient 1 testified that, when the time came, both she and Patient 2 had been called back and placed in the same examination room. Patient 1 testified that staff did not ask if they wanted separate examination rooms; she does not recall whether staff asked if would be okay if they were seen together. (Tr. at 185)
41. Dr. Brumfield saw Patient 1 and refilled her medication except for Xanax. Dr. Brumfield testified that he had discontinued Xanax that day and placed her on Klonopin instead, because Klonopin is longer acting and has a lower abuse potential than Xanax. (Tr. at 130-133; St. Ex. 5 at 17, 19-20)
42. Patient 1 testified that, after she was seen by Dr. Brumfield, Dr. Brumfield examined Patient 2. She testified that Dr. Brumfield asked her if she needed any medicine and Patient 2 said “no” because she had had her own physician. (Tr. at 189-190)
43. Dr. Brumfield testified that he had diagnosed Patient 2 with high blood pressure based on her history, and that she had been taking lisinopril to treat that condition. Dr. Brumfield further testified that he had offered to prescribe a refill of her blood pressure medication, but she declined. (Tr. at 144-146; St. Ex. 6B at 2)
44. Dr. Brumfield acknowledged that Patient 2 was to be counted as a family practice patient at Ohio Medical West. (Tr. at 147)
45. Dr. Brumfield testified that neither Patient 1 nor Patient 2 expressed any concern or objection that Patient 1 had to bring another patient, or that they were both seen in the same room. (Tr. at 326)

Additional Evidence Concerning the New Policy at Ohio Medical West

Testimony of Dustin Blankenship

46. Dustin Blankenship testified that he is employed by Ohio Medical West as a phlebotomist and medical assistant, and has been so employed since July 2010. Mr. Blankenship testified that his job duties were to “draw blood when orders are received” and to assist

Dr. Brumfield when needed. Mr. Blankenship further testified that he collected and tested urine specimens. (Tr. at 253-255)

47. Mr. Blankenship testified that, around June 20, 2011, Ohio Medical West switched from pain management to family practice because of HB 93. Mr. Blankenship testified that, in order to comply with HB 93, “We passed out flyers and told patients that if they knew anybody, to bring them in.” Mr. Blankenship further testified that the flyers were “distributed around the community near the medical office, and some were also placed in the office and some were given to patients.” (Tr. at 256-259; Resp. Ex. C)

48. When asked if the pain patients were advised to bring along another patient to their visits, Mr. Blankenship replied:

I wouldn't say advised or asked. They were just—I mean, we would mention it to them to—if they knew anybody that needed to see a family practice for, like, a general checkup or school physical for their children or anything like that, they could bring them in.

(Tr. at 258) Mr. Blankenship further testified that patients were not denied care if they did not bring in another patient. (Tr. at 258, 260)

49. Mr. Blankenship testified that he had been in the patient exam room when Dr. Brumfield was with patients. When asked if he had ever heard Dr. Brumfield advise pain patients that they needed to bring in a non-pain referral patient the next time they came, Mr. Blankenship replied, “He advised them to see if they knew anybody that needed to see a family doctor for school physicals; school physicals, general checkups, they could bring them in with them.” (Tr. at 270-271)

Testimony of Dr. Brumfield

50. Dr. Brumfield testified that, to his knowledge, no patient was refused an appointment or a prescription due to a failure to bring a family practice patient to his or her appointment. Dr. Brumfield further testified that he never told office staff that he would not see a pain patient who failed to bring a family practice patient. Moreover, Dr. Brumfield testified that he was never notified that a particular patient would not be seen at the scheduled time due to failure to bring a family practice patient. Additionally, Dr. Brumfield testified that, to his knowledge, no patient ever ran out of his or her medication and experienced withdrawal symptoms as a result of the policy. (Tr. at 310-313)

Later in the hearing, however, a portion of the audio recording of his July 11, 2011, interview with Mr. Zinsmaster and Ms. Marshall was played. In the recording, Dr. Brumfield stated that that he was aware that patients *had* been turned away because of the new policy, and that he had been made aware of that on more than one occasion. (St. Ex. 8 at 11:23 – 11:38)

After listening to the recording, Dr. Brumfield acknowledged that he had truthfully answered during the interview that pain management patients had been turned away because they failed to bring a family practice referral patient with them to their appointments. (Tr. at 339-340)

Testimony of Dr. Welker

51. Mary Jo Welker, M.D., testified as an expert witness on behalf of the State. Dr. Welker obtained her medical degree in 1976 from the Ohio State University College of Medicine. In 1979, she completed a family practice residency at Riverside Methodist Hospital in Columbus, Ohio. Dr. Welker was certified by the American Board of Family Medicine in 1979. She is licensed to practice medicine in Ohio. (St. Ex. 17)
52. Dr. Welker currently serves as the Chair of the Department of Family Practice at the Ohio State University, as well as the Executive Director of the Primary Care Network, and the Associate Dean for Primary Care for that institution. Dr. Welker testified that she oversees about 50 faculty members, and that the program includes up to 30 residents and about 220 medical students per year. Moreover, Dr. Welker testified, "I'm responsible for the clinical practice, the teaching and education of medical students and residents, and any research that we do in our department." Dr. Welker further testified that the education of medical students and residents includes ethics training. (Tr. at 27-31; St. Ex. 17)
53. Dr. Welker testified that she sees general, family practice patients clinically about 20 hours per week. (Tr. at 31, 45)
54. In a July 8, 2011, written report to the Board, Dr. Welker responded to the following question from the Board:

If the following facts were proven to be true, in your opinion to a reasonable degree of medical probability, does the conduct described below violate any provision of the code of ethics of the American Medical Association?

Dr. Brumfield is treating certain patients for pain, prescribing controlled substances and/or dangerous drugs to the pain patients. The physician started a new policy, informing his pain patients that he will not prescribe pain medications to them unless the pain patient brings along another individual to his/her appointment to serve as a referral family medicine (non-pain) patient on the same date of service. The doctor stated that he began this new policy in order to grow the family medicine aspect of his practice, and due to new regulations that apply when a physician prescribes controlled substances to more than 50% of patients. A fee may or may not be charged to the referral patient and/or the referral patient's insurance.

(St. Ex. 16)

In her report, Dr. Welker responded:

In my opinion to a reasonable degree of medical certainty, this violates several sections and opinions from the Principles of Medical Ethics of the American Medical Association.

First, Section I states that “A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights.” To force a patient to bring another individual to serve as a referral family medicine patient is not being compassionate and respectful of the patient and is a violation of Section I of the Principles of Medical Ethics of the American Medical Association.

Section II states that “A physician shall uphold the standards of professionalism, be honest in all professional interactions.” To force a patient to bring another individual to serve as a referral family medicine patient is not upholding the standards of professionalism and honesty and is a violation of Section II of the Principles of Medical Ethics of the American Medical Association.

Section IV states that “a physician shall respect the rights of patients, colleagues and other health professionals and shall safeguard patient confidences and privacy within the constraints of the law.” To force a patient to bring along another individual to serve as a referral family medicine patient on the same date of service might force the patient to reveal private issues to another individual against their wishes. And to know that another patient is not a “pain patient” would potentially violate the rights of that patient as well. This is a violation of Section IV of the Principles of Medical Ethics of the American Medical Association.

Section VIII states that “a physician shall, while caring for a patient, regard responsibility to the patient as paramount.” Forcing a patient to bring another individual to the practice in order to obtain necessary medications is not keeping the patient as paramount in the relationship, but is seeking to change the patient mix of the physician’s practice. This is a violation of Section [VIII] of the Principles of Medical Ethics of the American Medical Association.

Second, in Opinion 10.01 the Principles of Medical Ethics⁶ discusses the fundamental elements of the patient-physician relationship. In article 3, it states “the patient has the right to courtesy, respect, dignity, responsiveness, and timely attention to his or her needs.” Forcing a patient to bring a referral

⁶ Dr. Welker testified that the Opinions of the American Medical Association [AMA] detail some of the things identified in the AMA’s Principle of Medical Ethics and put them in a practical perspective. (Tr. at 35-36; St. Ex. 14)

patient in order to obtain necessary medication is not in keeping with respect and responsiveness to the patient and his or her needs and violates opinion 10.01 and Section I of the AMA Principles of Medical Ethics.

Third, in Opinion 10.015 the Principles of Medical Ethics state that “the relationship between the patient and physician is based on trust and gives rise to the physician’s ethical obligations to place patients’ welfare above their own self-interest and above obligations to other groups and to advocate for their patient’s “welfare.” Forcing a patient to bring another individual to the practice in order to obtain necessary medications is not keeping the patient as paramount in the relationship, especially if this is to increase or change the type of patients that the physician sees in his or her practice. This violates opinion 10.015 and Section I and Section VIII of the AMA Principles of Medical Ethics.

Fourth, if the privacy of the patient is violated in any way, this violates even more of the opinions of the Principles of Medical Ethics. This would include Opinion 5.05 on Confidentiality, Opinion 5.059 on Privacy in the Context of Health Care, Opinion 5.0591 on Patient Privacy and Outside Observers in the Clinical Encounter. This would violate Section IV of the Principles of Medical Ethics of the American Medical Association.

Finally, it is in violation of Opinion 6.021 on Financial Incentives to Patients for Referrals which states “Physicians should not offer financial incentives or **other valuable considerations to patients in exchange for recruitment of other patients.** [Emphasis in original] Such incentives can distort the information that patients provide to potential patients, thus distorting the expectations of potential patients and compromising the trust that is the foundation of the patient-physician relationship.” The ability to get needed medication would be a valuable consideration for patients and might lead to exactly the kind of behavior that is mentioned in this document. To hold a patient hostage in such a manner would disrupt the trust that is necessary in the patient-physician relationship and is a violation [of] Section I and Section VIII of the AMA Principles of Medical Ethics.

In summary, this practice of Dr. Brumfield violates multiple portions of the Principles of Medical Ethics of the American Medical Association as indicated above. Most specifically, it violates the trust and respect that should be part of the patient-physician relationship, potentially the confidentiality of the patients involved, and offering valuable considerations to patients in exchange for recruitment of other patients.

(St. Ex. 16)

55. Dr. Welker testified that, in her opinion, Dr. Brumfield’s most important violations concerned Principals I and VIII, and Opinion 6.021, which states, “Physicians should not

offer financial incentives or other valuable considerations to patients in exchange for recruitment of other patients.” Dr. Welker testified:

[S]uch incentives can distort the information that patients provide to other people in encouraging them to come to that physician such that the expectations of the, in this case, non-pain patients would be compromised. And so I would think, in my opinion, that the needed medication would be a very valuable incentive to a patient who might then try to bring other patients to see this particular physician.

(Tr. at 37-38) Moreover, Dr. Welker testified that the pain patient could “feel coerced, held hostage to bringing other patients or they can’t get their pain medication.” (Tr. at 38)

56. With respect to AMA Principle II, Dr. Welker was asked how it is dishonest for a physician to ask a patient to bring someone else into the practice. Dr. Welker replied:

I would say that it’s really not a complete informed consent in that informed consent to me is what also constitutes honesty. That you tell the patient, “These are your options. These are the risks and benefits. This is what’s happening here.” I think if the patient is confused about what’s happening, then that hasn’t been an honest interaction.

(Tr. at 57-58)

57. Dr. Welker described how that Dr. Brumfield’s policy violated Principle IV of the AMA’s Principals of Medical Ethics, part of which requires safeguarding patients’ confidences:

Well, I think that if I’m going to bring another patient along who is a non-pain patient, then I’m going to have to know something about that patient’s medical information. And that’s going to potentially force me to inform that other patient about what problems I have that are making me bring that other patient along, and then I would have to know enough about their medical condition to know that they’re not going to be asking for any pain medications. So that has the potential to be violating confidentiality issues.

(Tr. at 41-42; St. Ex. 14; see, also, Tr. at 61-62)

Dr. Brumfield’s Quarterly Appearances Pursuant to his January 2008 Consent Agreement

58. Danielle Bickers testified that she is employed by the Board as the Compliance Supervisor. Her job duties include supervising the Board’s Compliance Section, which monitors licensees who have been disciplined under Board Orders and Consent Agreements. In that capacity, she is familiar with Dr. Brumfield, most recently through his January 2008 Consent Agreement. (Tr. at 209-211)

59. Ms. Bickers noted that Dr. Brumfield's January 2008 Consent Agreement requires him to appear quarterly before the Board or its staff for office conferences. Ms. Bickers testified that, with cases involving impairment issues, the office conferences "usually involve questions about how the individual's doing in their recovery program, their support network, what kind of work environment they are working in and any stressors that may or may not apply to them in their recovery program." (Tr. at 212) Ms. Bickers testified that they also want to be sure that the licensee is not working too many hours and is working within his or her specialty. (Tr. at 212, 215)

Ms. Bickers further testified that, at Dr. Brumfield first office conference in July 2008, "Dr. Brumfield told us that he was working in a clinic—a pain management clinic in Waverly and also a facility in Ironton, Ohio." Moreover, Ms. Bickers testified:

I specifically told Dr. Brumfield at that time that, you know, he's on our radar, * * * and he needs to take great care in getting into an environment that has drug seekers and in a specialty that he is not necessarily trained in or experienced in, pain management or addiction medicine, and that both of those clinics were also on our radar and that he needs to take—he needs to be very, very careful about practicing in that environment.

And then every office conference every three months since then, we did the same thing. We talked to him about it again and asked him to be cautious. And we asked him if he had been trained in pain medicine and Dr. Brumfield—at that conference in July of 2008, Dr. Brumfield said that he had very little training. He had some courses that he was looking at taking, but that he was just learning as he went along.

(Tr. at 215-216)

Ms. Bickers testified that Dr. Brumfield said that he understood the Board's concerns, but that he kept good medical records, did drug screens on the patients, and ran OARRS, KASPER, and West Virginia Board of Pharmacy reports on his patients. (Tr. at 216-217)

60. When asked if Dr. Brumfield had ever told her that he was attempting to leave pain management, Ms. Bickers replied that he did. She further testified:

Since that July of 2008 office conference, Dr. Brumfield said that's not the environment that he wants to be in and he hopes to leave pain medicine. At that time, he couldn't get recertified in family medicine. According to him, the restriction that the Consent Agreement placed on his controlled substance dispensing kept him from getting recertified in family medicine, which limited his ability to practice in his specialty, so unless that was lifted, there wasn't a whole lot that he could do.

So, eventually, in April of 2009, the Board granted Dr. Brumfield the ability to also dispense controlled substances with the thought being that he would then get out of pain medicine. But he continued to stay at both the Waverly and he did eventually leave the Ironton practice, but stayed in the Waverly practice and then started practicing in Columbus as well, doing the same thing.

(Tr. at 217-218)

61. Ms. Bickers testified that, with respect to Dr. Brumfield's 12-step meeting attendance and drug screens, Dr. Brumfield has been compliant with the terms of his consent agreement. (Tr. at 218-219)

Evidence Concerning Dr. Brumfield's Resignation from Ohio Medical West

62. Dr. Brumfield acknowledged that Board staff had frequently raised concerns with him concerning his association with Lester Sadler, the practice in Waverly, and Ohio Medical West. Dr. Brumfield testified that Board staff had advised that they cannot tell him to quit, but told him that he should not associate with those practices. Dr. Brumfield further acknowledged that he had told the Board's compliance staff on several occasions that he was in the process of leaving the Waverly practice or Ohio Medical West. Dr. Brumfield testified that those statements had been truthful, that he had turned in his resignation on multiple occasions, but that he had never followed through because Ohio Medical West had provided health insurance for Dr. Brumfield and his wife; health insurance was not available through his position with Lindewald Medical Associates. (Tr. at 110-111, 171-172, 316)
63. Dr. Brumfield presented a copy of a document entitled Letter of Resignation, dated June 20, 2011. The letter is addressed to Mr. Sadler and states, in part, "Please accept this correspondence as my letter of resignation, effective July 8, 2011." (Resp. Ex. D) However, Dr. Brumfield testified that, following June 20, 2011, he had worked at Ohio Medical West on the following dates: June 23 through 25, and July 1 through 3, 7 through 9, 14 through 16, 21, and 22, 2011. (Tr. at 305-306)

With respect to Dr. Brumfield's June 20, 2011, resignation letter, the following exchange took place:

Q. If I can have you look at Respondent's Exhibit D. What's this?

A. It's a letter of resignation to Mr. Sadler, Ohio Medical West.

Q. And when is the effective date?

A. July 8th, 2011.

Q. Well, then if it's July 8th, why did you give me all these dates, July 9th, July 14th, July 15th that you still worked if you supposedly gave him this letter of resignation?

A. Because I continued to go so that I did not abandon the patients. And I was in the process of determining which practice I would accept for further employment.

Q. So when did you really think the effective date was going to be?

A. I initially thought it was going to be July 8th, but I had to do the 30 days so that I did not abandon the patients.

Q. What day did you give this to him?

A. July 8th.

Q. So aside from this whole summary suspension thing, when did you think you would part ways with Ohio Medical West, based on your handing him this letter?

A. It would have been around August 7th.

(Tr. at 318-319)

64. During his July 11, 2011, interview, Dr. Brumfield stated that he had been actively seeking employment in order to sever his ties with Ohio Medical West. Dr. Brumfield further stated that he would give Ohio Medical West 30 days' advance notice of his resignation for the sake of the patients. However, he did *not* mention that he had submitted his resignation to Mr. Sadler on July 8, three days earlier. (Tr. at 172-173; St. Ex. 8 at 19:10 – 21:40)

Evidence Concerning Patient 3

65. Patient 3, a female born in 1983, was a patient of Dr. Brumfield at Ohio Medical in Waverly. Patient 3 is a relative of Lester Sadler. Her medical records show a history of opiate addiction and prior treatment with Suboxone and Subutex through a clinic in Huntington, West Virginia. She first saw Dr. Brumfield on August 1, 2008. Her last visit was on March 16, 2010. During this period of time, Dr. Brumfield prescribed Subutex to Patient 3 for opiate addiction. Specifically, Dr. Brumfield prescribed Subutex 8 mg #30 to Patient 3, with instructions to take one per day, on a monthly basis from November 3, 2008, through March 16, 2010. (Tr. at 148-155; St. Ex. 11; St. Ex. 12; St. Ex. 23)

66. Dr. Brumfield testified that he is now aware that federal law requires that a physician obtain a special registration from the Drug Enforcement Administration [DEA] in order to prescribe either Subutex or Suboxone. Dr. Brumfield acknowledged that he has never

obtained that special registration. Moreover, Dr. Brumfield acknowledged that he had violated federal law by prescribing Subutex to Patient 3 from 2008 through 2010 and that that violation had, in turn, violated his January 2008 Consent Agreement. (Tr. at 156)

Dr. Brumfield further testified that he had not known at the time that a special registration from the DEA had been required in order to prescribe Subutex. Dr. Brumfield testified that Patient 3 had been the only patient he had ever treated for opiate dependence using that medication. When asked how he had known how much to prescribe, Dr. Brumfield testified that he used the Monthly Prescribing Reference. (Tr. at 326-328) Dr. Brumfield further testified:

I looked under Suboxone, which is what Subutex is a part of, and looked under the dosing and I saw that it was a Schedule III narcotic or controlled substance and there was no comment in there about any needed special DEA, so I was not familiar with the fact that it did require a special DEA number.

(Tr. at 328)

In addition, Dr. Brumfield testified that his DEA registration number is printed on his prescription pads, and that, to his knowledge, no pharmacist had refused any of the Subutex prescriptions he had written for Patient 3. Dr. Brumfield further testified that he was never contacted by any pharmacy regarding those prescriptions. (Tr. at 329-330)

67. On April 23, 2009, Dr. Brumfield signed and faxed a completed “Prior Authorization Request: Subutex Tab Subl” to Medco Health Solutions on behalf of Patient 3. On the form, Dr. Brumfield answered “Yes” to Section A, Question 2, which asked:

Is the prescriber certified to prescribe this medication, as per the requirements of the Drug Addiction Treatment Act (DATA) of 2000 (that is, the prescriber has been issued a unique DEA identification number by the DEA, indicating that he/she is a qualified physician under the DATA to prescribe Suboxone/Subutex)? [PLEASE NOTE reference: www.dpt.samhsa.gov or <http://buprenorphine.samhsa.gov/data.html>]

(St. Ex. 11 at 118) (Emphasis in original)

68. By letter dated April 23, 2009, a representative of United Healthcare advised Dr. Brumfield that Patient 3 had been approved for coverage for treatment with Subutex.⁷ (St. Ex. 11 at 116)
69. Dr. Brumfield acknowledged that his statement on the Medco form had been incorrect, and that he did not have the special registration the form refers to. Dr. Brumfield further acknowledged that it had been a false statement. Dr. Brumfield further acknowledged that United Healthcare had based its decision to provide coverage for Patient 3’s Subutex

⁷ The letter indicates that “[t]he United Healthcare prescription drug program is administered by Medco.” St. Ex. 11 at 116)

treatment, at least in part, upon his representation that he was qualified to prescribe that medication. However, Dr. Brumfield testified that, at the time he filled out the form, he had had no reason to believe that he had given an incorrect response. Rather, he had thought that he was essentially being asked if he had a DEA number. (Tr. at 158-162, 330-331; St. Ex. 11 at 118-119)

Dr. Brumfield's June 20, 2009, Declaration of Compliance

70. On or around June 20, 2009, Dr. Brumfield signed and submitted to the Board a quarterly declaration of compliance, as required by paragraph 2 of his January 2008 Consent Agreement, in which he declared that he was in full compliance with the probationary terms, conditions and limitations imposed upon him by the Board. (St. Ex. 21)
71. Dr. Brumfield testified that, when he signed his June 20, 2009, Declaration of Compliance, he had believed that he was in full compliance with the terms of his January 18, 2009, Consent Agreement. Dr. Brumfield testified that he had been unaware that there had been a problem with his prescribing to Patient 3 until he was notified by the Board that that was an issue. (Tr. at 332-333; St. Ex. 21)

July 22, 2011, Notice of Summary Suspension and Opportunity for Hearing.

72. On July 22, 2011, the Board issued to Dr. Brumfield a Notice of Summary Suspension and Opportunity for Hearing pursuant to Section 4731.22(G), Ohio Revised Code, giving rise to the present action. (St. Ex. 1A)

Additional Information

73. Dr. Brumfield testified with respect to his employment at Ohio Medical West that, prior to June 20, 2011, he had had no real reason to leave his position there, although he was concerned by the indictments of the owner and other employees. Dr. Brumfield further testified that he had autonomy to practice the way he wanted to, and that he does not believe that he did anything wrong in his practice there. He reiterated that his reason for staying at Ohio Medical West was to have health insurance for him and his wife. (Tr. at 334-336)
74. Dr. Brumfield testified that, prior to the summary suspension of his certificate in July 2011, he had held hospital privileges at St. Elizabeth's Medical Center in Dayton. (Tr. at 287-288)

FINDINGS OF FACT

1. Effective January 9, 2008, Daniel Howard Brumfield, M.D., entered into a Consent Agreement with the Board in lieu of formal proceedings based upon violations of Sections 4731.22(B)(26) and (B)(15), Ohio Revised Code [January 2008 Consent Agreement]. The January 2008 Consent Agreement granted Dr. Brumfield a new license to practice medicine

and surgery in the State of Ohio, subsequent to his prior certificate having been revoked, and placed him on probation for a minimum of five years.

Dr. Brumfield's disciplinary history with the Board also includes the following:

- A December 2002 Step I Consent Agreement that indefinitely suspended Dr. Brumfield's license for at least 270 days based on his impairment related to cocaine dependency, and pre-signing otherwise blank prescriptions to be used by an advanced nurse practitioner and other office staff to refill prescriptions.
- A January 2004 Step II Consent Agreement that reinstated his license subject to probationary conditions.
- A December 2004 summary suspension of Dr. Brumfield's license for an alleged relapse on cocaine and violation of his consent agreement. This action resulted in a January 2005 Board Order of no further action based upon his claim of unintentional ingestion of cocaine from a tainted nebulizer.
- An April 2005 summary suspension of Dr. Brumfield's license based upon his relapse on cocaine and violation of his January 2004 consent agreement. This action resulted in a July 2005 Board Order revoking Dr. Brumfield's previous certificate to practice medicine and surgery.

To date, Dr. Brumfield remains subject to the terms, conditions and limitations of the January 2008 Consent Agreement, as modified by the Board, including Paragraph 1, which requires that Dr. Brumfield obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio. Furthermore, Paragraph 2 requires Dr. Brumfield to submit quarterly declarations stating that he has complied with all conditions of the January 2008 Consent Agreement.

2. During the course of his practice, Dr. Brumfield undertook the care of Patients 1 through 3, as identified on a Confidential Patient Key.
3. Beginning in March 2008 and continuing through June or July 2010, Dr. Brumfield practiced at Ohio Medical and Pain Management, a pain management clinic in Waverly, Ohio, that was owned by a non-physician. When that practice closed in June or July 2010, Dr. Brumfield began practicing at Ohio Medical West, a pain management clinic in Columbus, Ohio, owned by the same non-physician.

Credible evidence establishes that, beginning around June 20, 2011, Dr. Brumfield helped institute and/or participated in a policy at Ohio Medical West in an attempt to reshape the practice so that no more than fifty percent of the patients would receive treatment for pain or chronic pain. To accomplish this, Dr. Brumfield and/or office staff began informing existing pain patients of Ohio Medical West that he will not treat them and/or prescribe or continue to prescribe medication to them unless the pain patient brings with him or her

another individual to the appointment to serve as a non-pain family practice referral patient. The existing pain patient must do this at every visit, and it does not matter who they bring as long as it is for non-pain treatment.

In his defense, Dr. Brumfield asserted at hearing that, under the new policy, existing pain patients had simply been “asked” to bring in referral patients, and that no pain patients were denied treatment because of a failure bring in a referral patient. This testimony directly contradicts statements that he had made less than a month earlier during two separate interviews with Board staff and, therefore, is not credible. Moreover, Dr. Brumfield’s testimony with respect to another issue, his supposed July 8, 2011, resignation from Ohio Medical West, also appeared deceptive, inasmuch as he had failed to mention that resignation during an interview with Board staff just three days after the purported resignation. Accordingly, the Hearing Examiner finds that Dr. Brumfield is not a credible witness.

Similarly, Dustin Blankenship testified that pain patients were not even really *asked* to bring a referral patient; it was just something that was “mentioned” to them. This testimony is not credible, and is rejected.

4. On July 7, 2011, Dr. Brumfield undertook the care of Patient 1 and Patient 2. Patient 1, an existing pain management patient of Ohio Medical West, was notified when she appeared for her appointment on July 7, 2011, that she needed to bring a family practice referral patient with her to her *next* appointment in August 2011 or else she would not be treated at her August appointment. Patient 2, the sister of Patient 1, coincidentally happened to be with Patient 1 and agreed to accompany Patient 1 to her July 7, 2011, appointment. Patient 2 completed new-patient paperwork, including a medical history, which included high blood pressure. After Patient 1 and Patient 2 were taken back to an examination room, Dr. Brumfield saw Patient 1 and prescribed, among other things, Percocet, oxycodone, and Klonopin. Dr. Brumfield then saw Patient 2, took her blood pressure and listened to her lungs, and asked if she wanted any blood pressure medication, to which she indicated she did not. Notably, at that time, Patient 2 had an existing physician/patient relationship with a primary care physician who was treating her for high blood pressure.
5. From August 2008 to March 2010, Dr. Brumfield undertook the care of Patient 3. Beginning in November 2008, and continuing monthly through March 2010, Dr. Brumfield prescribed Subutex to Patient 3 for opioid addiction. However, Dr. Brumfield was not separately registered with the Drug Enforcement Administration [DEA] as being authorized to prescribe Subutex or Suboxone for maintenance or detoxification treatment.
6. On April 23, 2009, Dr. Brumfield executed a Prior Authorization Request prescription benefit coverage form on behalf of Patient 3 in which he responded “Yes” to a question that asked:

Is the prescriber certified to prescribe this medication, as per the requirements of the Drug Addiction Treatment Act (DATA) of 2000 (that is, the prescriber has been issued a unique DEA identification number by the DEA, indicating that he/she is a qualified

physician under the DATA to prescribe Suboxone/Subutex)? [PLEASE NOTE reference: www.dpt.samhsa.gov or <http://buprenorphine.samhsa.gov/data.html>]

Dr. Brumfield faxed the completed form that day to Medco Health Solutions [Medco], a company who administers a prescription drug program for UnitedHealthcare, who thereafter approved coverage of Subutex for Patient 3.

As previously stated in Finding of Fact 5, Dr. Brumfield had not been approved by the DEA to prescribe Subutex for maintenance or detoxification treatment.

Dr. Brumfield denied that he had been aware of the requirement that he had to obtain a special DEA registration in order to prescribe Subutex. However, as stated in Finding of Fact 3, Dr. Brumfield is not a credible witness and this testimony is disregarded.

7. On or around June 20, 2009, Dr. Brumfield signed and submitted to the Board a quarterly declaration of compliance, as required by paragraph 2 of his January 2008 Consent Agreement, in which he declared that he was in full compliance with the probationary terms, conditions, and limitations imposed upon him by the Board.

As previously stated in Finding of Fact 6, on April 23, 2009, Dr. Brumfield had submitted a false, fraudulent, deceptive, and/or misleading statement to Medco. Further, as set forth in Finding of Fact 5, Dr. Brumfield had prescribed Subutex to Patient 3 for maintenance or detoxification treatment despite failing to appropriately register with the DEA.

CONCLUSIONS OF LAW

1. The acts, conduct, and/or omissions of Daniel Howard Brumfield, M.D., as set forth in Findings of Fact 1, 2, 6, and 7, 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.
2. Dr. Brumfield’s acts, conduct, and/or omissions as set forth in Findings of Fact 1 through 7, individually and/or collectively, constitute a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.
3. Dr. Brumfield’s acts, conduct, and/or omissions as set forth in Findings of Fact 2 through 4, individually and/or collectively, constitute a “violation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule,” as that clause is used in Section 4731.22(B)(18), Ohio Revised Code.

Code, to wit: Principles I, II, IV, and VIII of the American Medical Association's Principles of Medical Ethics.

4. For reasons set forth below, the evidence is insufficient to support a conclusion that the acts, conduct, and/or omissions of Daniel Howard Brumfield, M.D., as set forth in Findings of Fact 2 and 5, individually and/or collectively, constitute "[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug," as those clauses are used in Section 4731.22(B)(3), Ohio Revised Code, to wit: 21 USC § 823(g) (2008), Registration Requirements.

With respect to the first clause of Section 4731.22(B)(3), that he prescribed drugs for other than legal and legitimate purposes, the evidence indicates that Dr. Brumfield prescribed Subutex to Patient 3 without first obtaining proper authorization from the DEA. This may have constituted a violation of 21 U.S.C. § 823(g), as alleged in the notice; however, there is no evidence that Dr. Brumfield had prescribed Subutex to Patient 3 for illegal or illegitimate purposes. All evidence indicates that he had prescribed Subutex to treat Patient 3 for opiate addiction, a condition supported by her history and previous treatment. The treatment of opiate addiction is a legal and legitimate therapeutic purpose for prescribing Subutex.

Further, the second clause of Section 4731.22(B)(3) requires a plea of guilty to or conviction for a drug-related crime. There is no evidence that Dr. Brumfield had pleaded guilty to or been convicted of any crime. Prescribing Subutex to Patient 3 without proper authorization may have constituted a violation of 21 U.S.C. § 823(g), but Section 4731.22(B)(3) requires an actual guilty plea or conviction. Acts that constitute a drug-related crime do not support a violation of the second clause of Section 4731.22(B)(3).

Accordingly, the evidence is insufficient to support a conclusion that Dr. Brumfield violated Section 4731.22(B)(3), Ohio Revised Code.

RATIONALE FOR THE PROPOSED ORDER

Dr. Brumfield has a troubled history with this Board primarily due to chemical dependency and relapses. In fact, his previous certificate was revoked in 2005. He obtained a new certificate in 2008 subject to probationary conditions set forth in a January 2008 Consent Agreement. To Dr. Brumfield's credit, there is no evidence of any subsequent misuse of chemical substances.

With respect to the current matter, Dr. Brumfield committed serious breaches of professional ethics in an attempt to keep Ohio Medical West—a pain management clinic where he worked part-time—in operation. In doing so, he placed his own personal interests and the interests of his employer above those of his patients. Moreover, the evidence establishes that Dr. Brumfield knew

that patients had been denied care when they failed to bring new non-pain, family medicine patients with them to their appointments.

Furthermore, aggravating factors are present in this case. First, as previously alluded to, Dr. Brumfield had a selfish underlying motive for his conduct. Second, there was clearly an adverse impact on patients, some of whom were denied treatment. The pain management patients were vulnerable; no doubt many were physically dependent on the pain medications they had been receiving. Other patients, who presented as family practice referral patients so that their friends or relatives could continue their pain treatment, had their privacy violated in a very intrusive way by being seen as patients when, in the absence of the new policy, they would not have sought medical care from Dr. Brumfield. Third, Dr. Brumfield offered sworn testimony at hearing that was demonstrably false. Some of his testimony was directly contradicted by earlier statements he had made during interviews with Board staff less than a month before the hearing. Dr. Brumfield offered this deceptive testimony in an attempt to deny and/or minimize his conduct. Finally, Dr. Brumfield's statement that he had seen nothing wrong with the new policy further calls into question his judgment and ability to practice in an ethical manner.

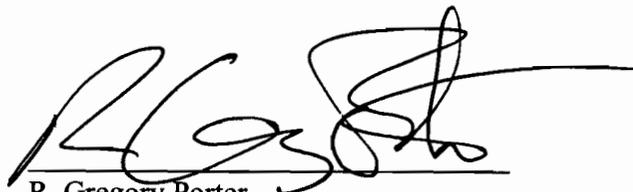
Accordingly, based upon Dr. Brumfield's breach of medical ethics and his history of prior disciplinary actions, it is recommended that his medical license be permanently revoked.

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Daniel Howard Brumfield, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

This Order shall become effective immediately upon the mailing of 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

(614) 466-3934
med.ohio.gov

EXCERPT FROM THE DRAFT MINUTES OF OCTOBER 12, 2011

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

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

Dr. Mahajan 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: Daniel Howard Brumfield, M.D.; David C. Blocker, M.D.; Walter Thomas Bowers, II, M.D.; Stephen Leon Edge, M.D.; Michelle M. Walter; Mark A. Wangler, M.D.; Adil Younis Yamour, M.D. A roll call was taken:

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Steinbergh	- aye
	Dr. Mahajan	- aye
	Dr. Madia	- aye
	Dr. Talmage	- aye
	Ms. Elsass	- aye
	Dr. Ramprasad	- aye

Dr. Mahajan 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. Steinbergh	- aye
	Dr. Mahajan	- aye
	Dr. Madia	- aye
	Dr. Talmage	- aye
	Ms. Elsass	- aye
	Dr. Ramprasad	- aye

Dr. Mahajan noted that, in accordance with the provision in section 4731.22(F)(2), Ohio 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 and Dr. Amato served as Supervising Members.

Dr. Mahajan 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.

.....
DANIEL HOWARD BRUMFIELD, M.D., Case No. 11-CRF-083
.....

Dr. Madia moved to approve and confirm Mr. Porter's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Daniel Howard Brumfield, M.D. Mr. Hairston seconded the motion.

.....
Dr. Steinbergh moved to amend the first paragraph of Conclusion of Law #4 of the Report and Recommendation to read as follows: The acts, conduct, and/or omissions of Daniel Howard Brumfield, M.D., as set forth in Findings of Fact 2 and 5, individually and/or collectively, constitute "[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes" as that clause is used in Section 4731.22(B)(3), Ohio Revised Code.

Dr. Steinbergh further moved to amend the second paragraph of Conclusion of Law #4 to read as follows: The evidence establishes that Dr. Brumfield prescribed Subutex to Patient 3 for the purpose of maintenance of detoxification treatment, contrary to 21 U.S.C. § 823(g). Thus, it is concluded that Dr. Brumfield prescribed a drug to Patient 3 for other than legal purposes.

Dr. Steinbergh further moved to delete the third and fourth paragraphs of Conclusions of Law #4.

Mr. Hairston seconded the motion. A vote was taken:

ROLL CALL:

Dr. Madia	- aye
Dr. Talmage	- abstain
Ms. Elsass	- aye
Dr. Ramprasad	- aye
Dr. Strafford	- aye
Mr. Hairston	- aye
Dr. Stephens	- aye
Dr. Steinbergh	- aye
Dr. Mahajan	- aye

The motion to amend carried.

Dr. Steinbergh moved to approve and confirm Mr. Porter's Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the matter of Daniel Howard Brumfield, M.D. Mr. Hairston seconded the motion. A vote was taken:

ROLL CALL:	Dr. Madia	- aye
	Dr. Talmage	- abstain
	Ms. Elsass	- aye
	Dr. Ramprasad	- aye
	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Steinbergh	- aye
	Dr. Mahajan	- aye

The motion to approve carried.

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

July 22, 2011

Case number: 11-CRF-083

Daniel Howard Brumfield, M.D.
2391 Locust Hill Blvd.
Beavercreek, Ohio 45431

Dear Doctor Brumfield:

Enclosed please find certified copies of the Entry of Order, the Notice of Summary Suspension and Opportunity for Hearing, and the Motion by the State Medical Board of Ohio made at a conference call on July 22, 2011, scheduled pursuant to Section 4731.22(G), Ohio Revised Code, 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.,
by verbal authority - rj
Lance A. Talmage, M.D., Secretary

LAT/DSZ/flb
Enclosures

Mailed 7-22-11

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, in a conference call on July 22, 2011, scheduled pursuant to Section 4731.22(G), Ohio Revised Code, 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 Daniel Howard Brumfield, M.D., Case number: 11-CRF- 083 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, MD
by verbal authority - rj
Lance A. Talmage, M.D., Secretary

(SEAL)

July 22, 2011
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :
 :
 DANIEL HOWARD BRUMFIELD, M.D. :
 :
 CASE NUMBER: 11-CRF-083 :

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 22nd day of July, 2011.

Pursuant to Section 4731.22(G), Ohio Revised Code, and pursuant to the contractual terms of the Consent Agreement between Daniel Howard Brumfield, M.D., and the State Medical Board of Ohio, effective January 9, 2008, and upon recommendation of Lance A. Talmage, M.D., Secretary, and Raymond J. Albert, Acting 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 Daniel Howard Brumfield, M.D., has violated Sections 4731.22(B)(3), (B)(5), (B)(15), and (B)(18), 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. Brumfield'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 22nd day of July, 2011:

It is hereby ORDERED that the certificate of Daniel Howard Brumfield, M.D., to practice medicine and surgery in the State of Ohio be summarily suspended.

It is hereby ORDERED that Daniel Howard Brumfield, 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.

Lance A. Talmage, MD,
by verbal authority - j
Lance A. Talmage, M.D., Secretary

(SEAL)

July 22, 2011
Date

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

EXCERPT FROM TELECONFERENCE OF JULY 22, 2011

CONFERENCE CALL OF JULY 22, 2011 TO CONSIDER THE SUMMARY SUSPENSION OF A CERTIFICATE

DANIEL HOWARD BRUMFIELD, M.D. – ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

.....

Dr. Steinbergh moved to enter an Order of Summary Suspension in the matter of Daniel Howard Brumfield, M.D., in accordance with Section 4731.22(G), Ohio Revised Code, and to issue the Notice of Summary Suspension and Opportunity for Hearing to Dr. Brumfield. Mr. Hairston seconded the motion. A vote was taken:

ROLL CALL:	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Steinbergh	- aye
	Dr. Suppan	- aye
	Ms. Elsass	- aye
	Dr. Ramprasad	- aye

The motion carried.

Ms. Marshall stated that she has already obtained Dr. Talmage's prior authorization to affix his electronic signature to the Order of Summary Suspension, Notice of Opportunity for Hearing, certification, and cover letter in the matter of Daniel Howard Brumfield, M.D., in his absence, in the event that the Board approved the Order.

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

NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING

July 22, 2011

Case number: 11-CRF- 083

Daniel Howard Brumfield, M.D.
2391 Locust Hill Blvd.
Beavercreek, Ohio 45431

Dear Doctor Brumfield:

The Secretary and the Acting Supervising Member of the State Medical Board of Ohio [Board] have determined that there is clear and convincing evidence that you have violated Sections 4731.22(B)(3), (B)(5), (B)(15), and (B)(18), 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 (6), below.

Therefore, pursuant to Section 4731.22(G), Ohio Revised Code, and pursuant to the Consent Agreement between Daniel Howard Brumfield, M.D., and the State Medical Board of Ohio, effective January 9, 2008, and upon recommendation of Lance A. Talmage, M.D., Secretary, and Raymond J. Albert, Acting 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) On or about January 9, 2008, you entered into a Consent Agreement with the Board in lieu of formal proceedings based upon violations of Sections 4731.22(B)(26) and

(B)(15), Ohio Revised Code [January 2008 Consent Agreement]. The January 2008 Consent Agreement granted you a new license to practice medicine and surgery in the State of Ohio, subsequent to your prior certificate having been revoked, and placed you on probation for a minimum of five years. Further, your disciplinary history includes the following in addition to the January 2008 Consent Agreement:

- Step I Consent Agreement, effective on or about December 11, 2002, that indefinitely suspended your certificate for at least 270 days based on your impairment related to cocaine dependency and acts constituting a felony, namely, complicity to the unlicensed practice of medicine;
- Step II Consent Agreement, effective on or about January 16, 2004;
- Summary Suspension of your certificate on or about December 8, 2004, for your alleged relapse on cocaine and violation of your consent agreement. This action resulted in a January 12, 2005 Board Order of no further action based upon your claim of unintentional ingestion of cocaine from a tainted nebulizer; and
- Summary Suspension of your certificate on or about April 13, 2005, based upon your relapse on cocaine and violation of your consent agreement. This action resulted in a July 13, 2005 Board Order revoking your certificate to practice medicine and surgery.

To date you remain subject to all terms, conditions and limitations of the January 2008 Consent Agreement, as modified by the Board, including Paragraph 1, which requires that you obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio. Furthermore, Paragraph 2 requires you to submit quarterly declaration stating you have been in compliance with all conditions of the January 2008 Consent Agreement.

- (2) From in or about August 2008, to in or about July 2011, you undertook the care of Patients 1 – 3 in the course of your medical practice, as identified on the attached Patient Key (Patient Key is confidential and not subject to public disclosure).
- (3) Beginning in or about March 2008, you have practiced at Ohio Medical West, which you have described as a pain management clinic in Columbus, Ohio, owned by one or more non-physicians. On or about June 20, 2011, you helped institute and/or participated in a policy at Ohio Medical West in an attempt to reshape the practice so that no more than fifty percent of the patients would receive treatment for pain or chronic pain. You informed Board staff that to accomplish this, you and/or office staff began informing existing pain patients of Ohio Medical West

that you will not treat them and/or prescribe or continue to prescribe medication unless said pain patient brings with them another individual to the appointment to serve as a non-pain referral patient on the same date of service. You have further indicated that the existing pain patient must do this at every visit, that it does not matter who they bring as long as it is for non-pain treatment, and stated that you do not note in the existing pain patient's chart the identity of the non-pain patient referral brought with them.

By way of example, Patient 1, an existing pain management patient of Ohio Medical West, was notified that she needed to bring an extra person to her next appointment if she wanted to be treated. Patient 2, the sibling of Patient 1, accompanied Patient 1 to the appointment on or about July 7, 2011, whereby Patient 1 was treated, including receiving prescriptions from you for, *inter alia*, Percocet, Oxycodone, and Klonopin. Furthermore, you and/or office staff had Patient 2 complete paperwork indicating Patient 2 was presenting for a general check-up and high blood pressure, took her blood pressure and listened to her lungs, and asked if she wanted any blood pressure medication, to which she indicated she did not. Notably, since in or about July 2010, Patient 2 had an existing doctor-patient relationship with an internal medicine practitioner in Columbus, Ohio.

- (4) From in or about August 2008, to in or about March 2010, you undertook the care of Patient 3. Beginning on or about August 1, 2008, you began periodically prescribing Subutex to Patient 3 for opioid dependence, despite the fact that you are not separately registered with the Drug Enforcement Administration [DEA], as per the requirements of the Drug Addiction Treatment Act of 2000, and had not been issued a unique DEA identification number by the DEA indicating you were approved to prescribe Suboxone and/or Subutex for maintenance or detoxification treatment.
- (5) On or about April 23, 2009, you executed a Prior Authorization Request prescription benefit coverage form on behalf of Patient 3, whereby you stated that you were certified to prescribe Subutex for opioid dependence. Said form was faxed on or about April 23, 2009, to Medco Health Solutions [Medco], a company who administers a prescriptions drug program for UnitedHealthcare, who thereafter approved coverage of Subutex for Patient 3.

As previously stated, you were not approved by the DEA to prescribe Subutex for maintenance or detoxification treatment.

- (6) On or about June 24, 2009, you caused to be submitted to the Board a quarterly declaration of compliance, as required by Paragraph 2 in your January 2008 Consent Agreement, whereby you declared you were in full compliance with the probationary terms, conditions and limitations imposed upon you by the Board.

In fact, on or about April 23, 2009, you submitted a false, fraudulent, deceptive, and/or misleading statement to Medco, as described in paragraph (5) above. Further, you were prescribing Subutex to Patient 3 for maintenance or detoxification treatment despite failing to appropriately register with the DEA, as described in paragraph (4) above.

Your acts, conduct, and/or omissions as alleged in paragraphs (2) and (4) above, individually and/or collectively, constitute “[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,” as those clauses are used in Section 4731.22(B)(3), Ohio Revised Code, to wit: 21 USC § 823(g) (2008), Registration Requirements.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1), (2), (5), and (6) 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.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1) through (6) above, individually and/or collectively, constitute a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (2) and (3) above, individually and/or collectively, constitute a “violation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule,” as that clause is used in Section 4731.22(B)(18), Ohio Revised Code, to wit: Principles I, II, IV, and VIII of the American Medical Association’s Principles of Medical Ethics.

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

Notice of Summary Suspension
& Opportunity for Hearing
Daniel Howard Brumfield, M.D.
Page 5

to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,


Lance A. Talmage, MD.
Secretary

LAT/DSZ/flb
Enclosures

CERTIFIED MAIL #91 7199 9991 7030 3380 5344
RETURN RECEIPT REQUESTED

DUPLICATE BY PERSONAL SERVICE

cc: Elizabeth Y. Collis, Esq.
Collis, Smiles & Collis, LLC
1650 Lake Shore Drive, Suite 225
Columbus, Ohio 43204

CERTIFIED MAIL #91 7199 9991 7030 3380 5337
RETURN RECEIPT REQUESTED

JAN 4 2008

CONSENT AGREEMENT
BETWEEN
DANIEL HOWARD BRUMFIELD, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO

RECEIVED

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

Dr. Brumfield 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)(15), Ohio Revised Code, "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice."
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Sections 4731.22(B)(26) and 4731.22(B)(15), Ohio Revised Code, as set forth in the Order issued by the Board in July 2005 [July 2005 Board Order], a copy of which is attached hereto and incorporated herein, and as set forth 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 Consent Agreement.
- C. Dr. Brumfield was previously licensed to practice medicine and surgery in the State of Ohio, License # 35-065317, which was revoked pursuant to the terms of the abovementioned July 2005 Board Order. Dr. Brumfield has applied for a new certificate to practice medicine and surgery in the State of Ohio at this time, and said application remains pending.

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- D. Dr. Brumfield states that he is not licensed to practice medicine and surgery in any other State.
- E. Dr. Brumfield admits that after relapsing on cocaine, he entered treatment at Glenbeigh Hospital [Glenbeigh], a Board approved treatment provider in Rock Creek, Ohio, on April 11, 2005; successfully completed twenty-eight days of in-patient treatment for cocaine dependence; and was discharged on May 8, 2005.
- F. Dr. Brumfield states that following his discharge from Glenbeigh he entered into an aftercare contract with Greene Memorial Hospital [Greene Hall], a Board-approved treatment provider in Xenia, Ohio, on May 12, 2005. Dr. Brumfield states, and the Board acknowledges receipt of information to support, that Dr. Brumfield has remained abstinent since March 2005. Dr. Brumfield further states, and the Board acknowledges receipt of information to support, that Dr. Brumfield has, since March 2005, remained compliant with terms of the advocacy contract into which he originally entered with the Ohio Physicians Health Program [OPHP] in February 2003. Dr. Brumfield further states that he entered into new aftercare and advocacy contracts with, respectively, Bethesda Hospital Alcohol and Treatment Program, a Board-approved treatment provider, on January 3, 2008, and with OPHP on November 29, 2007.
- G. Dr. Brumfield states, and the Board acknowledges, that David D. Goldberg, D.O., of Greene Hall, and Richard N. Whitney, M.D., of Shepherd Hill Hospital, a Board-approved treatment provider in Newark, Ohio, have provided written reports indicating that Dr. Brumfield's ability to practice has been assessed and that 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 requirements are in place including that he continue psychiatric/psychological counseling relating to his recovery.
- H. Dr. Brumfield further states that, and the Board acknowledges, although Dr. Brumfield has not practiced medicine and surgery since on or about April 13 2005, Dr. Brumfield passed the Special Purpose Examination which was administered on November 8, 2007.

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 Board agrees to GRANT Dr. Brumfield a certificate to practice medicine and surgery in the State of Ohio shall be granted, provided that he otherwise meets all statutory and regulatory requirement, and Dr. Brumfield knowingly and voluntarily agrees with the Board to the following PROBATIONARY terms, conditions and limitations:

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1. Dr. Brumfield shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
2. Dr. Brumfield shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
3. Dr. Brumfield 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.
4. Dr. Brumfield shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.
5. In the event Dr. Brumfield 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. Brumfield 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. Brumfield's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Brumfield shall make his patient records with regard to such prescribing available for review by an agent of the Board upon request.
7. Dr. Brumfield 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

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modify this Consent Agreement to allow Dr. Brumfield to administer or personally furnish controlled substances, Dr. Brumfield 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. Brumfield's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Brumfield shall make his patient records with regard to such prescribing, administering, or personally furnishing available for review by an agent of the Board upon request.

Sobriety

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

Drug and Alcohol Screens/Supervising Physician

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

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

Within thirty days of the effective date of this Consent Agreement, Dr. Brumfield shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Brumfield 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. Brumfield. Dr. Brumfield and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

The Board expressly reserves the right to disapprove any person or entity proposed to serve as Dr. Brumfield's designated supervising physician, or to withdraw approval of any person or entity previously approved to serve as Dr. Brumfield's designated supervising physician, in the event that the Secretary

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and Supervising Member of the Board determine that any such supervising physician has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

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Dr. Brumfield 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. Brumfield must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Brumfield 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. Brumfield's quarterly declaration. It is Dr. Brumfield's responsibility to ensure that reports are timely submitted.

11. The Board retains the right to require, and Dr. Brumfield agrees to submit, blood or urine specimens for analysis at Dr. Brumfield's expense upon the Board's request and without prior notice. Dr. Brumfield'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. Brumfield 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. Brumfield and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Brumfield and his medical practice, and shall review Dr. Brumfield'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

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

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Brumfield must immediately so notify the Board in writing. In addition, Dr. Brumfield 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. Brumfield 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. Brumfield 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 four times per week. Substitution of any other specific program must receive prior Board approval.

Dr. Brumfield 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. Brumfield's quarterly declarations.

Aftercare

14. Dr. Brumfield shall contact an appropriate impaired physicians committee, approved by the Board, to arrange for assistance in recovery or aftercare.
15. Dr. Brumfield shall maintain continued compliance with the terms of the aftercare contract entered into with Bethesda Hospital Alcohol and Treatment Program, provided that, where terms of the aftercare contract conflict with terms of this Consent Agreement, the terms of this Consent Agreement shall control.

Mental Health Treatment

16. Within thirty days of the effective date of this Consent Agreement, Dr. Brumfield shall submit to the Board for its prior approval the name and qualifications of a psychiatrist of his choice. Upon approval by the Board, Dr. Brumfield shall undergo and continue psychiatric treatment, to include psychotherapy, at least once a week, or as otherwise directed by the Board. Dr. Brumfield shall comply with his psychiatric treatment plan.

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Dr. Brumfield shall ensure that psychiatric reports are forwarded by his treating psychiatrist to the Board on a quarterly basis, or as otherwise directed by the Board. The psychiatric reports shall contain information describing Dr. Brumfield's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Brumfield's compliance with his treatment plan; Dr. Brumfield's mental status; Dr. Brumfield's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. Brumfield shall ensure that his treating psychiatrist immediately notifies the Board of his failure to comply with his psychiatric treatment plan.

The psychotherapy required pursuant to this paragraph may be delegated by Dr. Brumfield's treating psychiatrist to an appropriately licensed mental health professional approved in advance by the Board, and may be limited to group counseling under the direction of a licensed mental health professional, so long as Dr. Brumfield treating psychiatrist oversees/supervises such psychotherapy; includes information concerning Dr. Brumfield's participation and progress in psychotherapy in his or her quarterly reports; and continues to meet personally with Dr. Brumfield at least every other month. Should the psychotherapy required pursuant to this provision be delegated to a licensed mental health professional, Dr. Brumfield shall ensure that psychotherapy reports are forwarded by his treating licensed mental health professional to the Board on a quarterly basis, or as otherwise directed by the Board. The psychotherapy reports shall contain information describing Dr. Brumfield's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Brumfield compliance with his treatment plan; Dr. Brumfield's mental status; Dr. Brumfield's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. Brumfield shall ensure that his treating licensed mental health professional immediately notifies the Board of his failure to comply with his psychotherapy treatment plan. These psychotherapy reports shall be in addition to the psychiatric reports.

It is Dr. Brumfield's responsibility to ensure that all quarterly reports (psychiatric and psychotherapy, if applicable) are received in the Board's offices no later than the due date for Dr. Brumfield's quarterly declaration.

In the event that the designated treating psychiatrist and/or treating licensed mental health professional become unable or unwilling to serve in this capacity, Dr. Brumfield must immediately so notify the Board in writing. In addition, Dr. Brumfield shall make arrangements acceptable to the Board for another treating psychiatrist and/or treating mental health professional within thirty days after the previously designated treating psychiatrist and/or treating licensed mental health professional becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Brumfield shall ensure that the previously designated treating psychiatrist and/or treating licensed mental health professional also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

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Releases

17. Dr. Brumfield 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. Brumfield'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. Brumfield further agrees to provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Consent Agreement.

Required Reporting by Licensee

18. Within thirty days of the effective date of this Consent Agreement, Dr. Brumfield 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. Brumfield 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.
19. Within thirty days of the effective date of this Consent Agreement, Dr. Brumfield 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. Brumfield 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. Brumfield shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
20. Dr. Brumfield shall provide a copy of this Consent Agreement to all persons and entities that provide Dr. Brumfield chemical dependency treatment or monitoring.

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FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Brumfield 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. Brumfield has violated any term, condition or limitation of this Consent Agreement, Dr. Brumfield 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. Brumfield shall not request termination of this Consent Agreement for a minimum of five years. In addition, Dr. Brumfield 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. Brumfield 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. Brumfield hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

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

EFFECTIVE DATE

CONSENT AGREEMENT
DANIEL HOWARD BRUMFIELD, M.D.
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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.



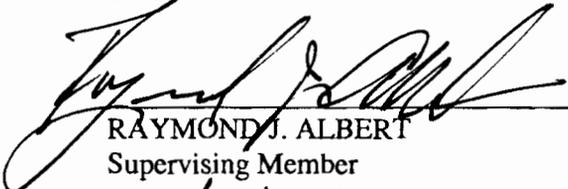
DANIEL HOWARD BRUMFIELD, M.D.



LANCE A. TALMAGE, M.D.
Secretary

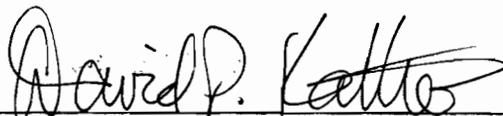
DATE 1/4/08

DATE 1-9-08



RAYMOND J. ALBERT
Supervising Member

DATE 1/9/08



DAVID P. KATKO
Enforcement Attorney

DATE 01/04/08



State Medical Board of Ohio

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

July 13, 2005

Daniel Howard Brumfield, M.D.
3243 Rocky Point Road
Springfield, OH 45502

Dear Doctor Brumfield:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 13, 2005, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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

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

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

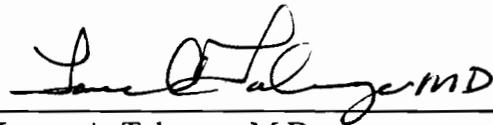
CERTIFIED MAIL NO. 7002 2410 0002 3141 4380
RETURN RECEIPT REQUESTED

MAILED 8-12-05

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 13, 2005, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Daniel Howard Brumfield, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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



Lance A. Talmage, M.D.
Secretary

(SEAL)

July 13, 2005
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

DANIEL HOWARD BRUMFIELD, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on July 13, 2005.

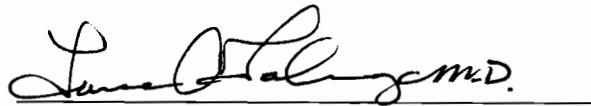
Upon the Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the modification, approval and confirmation by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

It is hereby ORDERED that:

The certificate of Daniel Howard Brumfield, M.D., to practice medicine and surgery in the State of Ohio shall be REVOKED.

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

(SEAL)



Lance A. Talmage, M.D.
Secretary

July 13, 2005

Date

2005 JUN 13 P 1:06

**REPORT AND RECOMMENDATION
IN THE MATTER OF DANIEL HOWARD BRUMFIELD, M.D.**

The Matter of Daniel Howard Brumfield, M.D., was heard by Sharon W. Murphy, Esq., Hearing Examiner for the State Medical Board of Ohio, on May 11, 2005.

INTRODUCTION

I. Basis for Hearing

- A. In a Notice of Summary Suspension and Opportunity for Hearing dated April 13, 2005, the State Medical Board of Ohio [Board] notified Daniel Howard Brumfield, M.D., that, pursuant to Section 4731.22(G), Ohio Revised Code, the Board had adopted an Order of Summary Suspension of Dr. Brumfield's certificate to practice medicine and surgery in Ohio. The Board further advised that continued practice would be considered practicing without a certificate, in violation of Section 4731.141, Ohio Revised Code.

Moreover, the Board notified Dr. Brumfield that it had proposed to take disciplinary action against his certificate. The Board based its proposed action on allegations relating to Dr. Brumfield's history of impairment and his violation of a Step II Consent Agreement with the Board. Further, the Board alleged that Dr. Brumfield's conduct constitutes a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,' as that clause is used in Section 4731.22(B)(15), Ohio Revised Code, [and] '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,' as that clause is used in Section 4731.22(B)(26), Ohio Revised Code." Accordingly, the Board advised Dr. Brumfield of his right to request a hearing in this matter. (State's Exhibit 1A).

- B. On April 25, 2005, Dr. Brumfield submitted a written hearing request to the Board. (State's Exhibit 1B).

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Kyle C. Wilcox, Assistant Attorney General.
- B. On behalf of the Respondent: Dr. Brumfield, having previously been apprised of his right to be represented by an attorney, appeared on his own behalf.

EVIDENCE EXAMINED

I. Testimony Heard

Daniel Howard Brumfield, M.D.

II. Exhibits Examined

- A. State's Exhibits 1A through 1L: Procedural exhibits.
- B. State's Exhibit 2: Certified copies of documents pertaining to Dr. Brumfield maintained by the Board.
- C. State's Exhibit 3: Copy of a report of screening of a March 23, 2005, urine sample provided by Dr. Brumfield which tested positive for cocaine metabolites.
- D. State's Exhibit 4: Copy of an assessment of Dr. Brumfield performed at Glenbeigh Hospital and Outpatient Centers, Rock Creek, Ohio. (Note: This exhibit is sealed to protect patient confidentiality.)
- E. State's Exhibit 5: A May 26, 2005, Affidavit of David P. Katko pertaining to Dr. Brumfield.

PROCEDURAL MATTERS

The hearing record in this matter was held open to allow the State to determine whether it would be appropriate to submit a brief on a procedural issue. (See Hearing Transcript at 43-45) On May 26, 2005, the State advised the Hearing Examiner that it would not be submitting a brief; instead, with the Respondent's agreement, the State submitted an Affidavit, which was admitted as State's Exhibit 5. The hearing record closed at that time.

SUMMARY OF THE EVIDENCE

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

1. Daniel Howard Brumfield, M.D., testified that he had obtained his medical degree from Wright State University in 1992. In 1995, Dr. Brumfield completed a residency in family medicine at Saint Elizabeth Medical Center in Dayton, Ohio. After completing his

residency training, he worked as a solo practitioner in Enon, Ohio. (Hearing Transcript [Tr.] at 10; State's Exhibit [St. Ex.] 2 at 17)

2. Dr. Brumfield testified that he has had a long history of substance abuse. Dr. Brumfield testified that, after he entered the United States Army in 1973, he had started smoking marijuana. While stationed in Germany, he had also smoked hashish and used cocaine a few times. Dr. Brumfield further stated that he had continued to use marijuana and cocaine sporadically for several years after his discharge from the Army in 1976. In 1986, Dr. Brumfield entered medical school; he stated that he had stopped using any illegal drugs at that time and remained drug-free for several years. Nevertheless, in 2002, he resumed the use of cocaine after facing a number of stressors in his life. (Tr. at 11-12; St. Ex. 2 at 17)

Dr. Brumfield stated that, after he had resumed the use of cocaine in 2002, his use had become "habitual and uncontrolled." He testified that he had been using cocaine every weekend and on evenings when he did not have to work the next day. He added that his use of cocaine had resulted in changes in his behavior, which the staff at Mercy Medical Center had observed. He was asked to undergo a physical examination and drug screen, and the drug screen was positive for cocaine. In November 2002, Dr. Brumfield was evaluated at Greene Hall, and was found to be impaired. He subsequently completed twenty-eight days of inpatient treatment at that facility. (Tr. at 11-13; St. Ex. 2 at 17-19)

3. On December 11, 2002, Dr. Brumfield entered into a Step I Consent Agreement with the Board in lieu of formal proceedings. The Step I Consent Agreement was based upon Dr. Brumfield's violations of Sections 4731.22(B)(26) and 4731.22(B)(10), Ohio Revised Code, related to cocaine dependency and aiding and abetting the unlicensed practice of medicine. The conduct underlying aiding and abetting the unlicensed practice of medicine violation involved Dr. Brumfield's leaving otherwise blank, presigned prescriptions for use by an advanced nurse practitioner and other office staff, as well as his authorizing office staff to administer influenza injections in his office with no supervising physician present. In the Step I Consent Agreement, Dr. Brumfield agreed to certain terms, conditions, and limitations, including that his certificate to practice medicine and surgery in the State of Ohio would be suspended for an indefinite period of time, but not less than 270 days. (St. Ex. 2 at 17, 19, 63-70).
4. On January 16, 2004, Dr. Brumfield entered into a Step II Consent Agreement with the Board. Because Dr. Brumfield had fulfilled the conditions for reinstatement of his certificate as set forth in his Step I Consent Agreement, Dr. Brumfield's certificate to practice was reinstated. (St. Ex. 2 at 17, 19, 54-62; Tr. at 15) As part of the Step II Consent Agreement, Dr. Brumfield agreed to comply with specified terms, conditions, and limitations, including the following:
 - o Paragraph 8 states that Dr. Brumfield "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. Brumfield's history of chemical dependency.”
- Paragraph 9 states that Dr. Brumfield “shall abstain completely from the use of alcohol.”
 - Paragraph 10 states, among other things, that Dr. Brumfield shall submit to random drug and alcohol screens on a weekly basis, and that he shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis.

(St. Ex. 2 at 19-20, 32, 57-58)

Moreover, in the Step II Consent Agreement, Dr. Brumfield agreed that if the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that Dr. Brumfield has violated any term, condition, or limitation of the agreement, that violation, as alleged, also constitutes clear and convincing evidence that Dr. Brumfield's 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. (St. Ex. 2 at 20, 60).

5. Following the reinstatement of his license in January 2004, Dr. Brumfield worked in locum tenens positions and, in September 2004, he entered into the solo practice of family medicine in Fairborn, Ohio. (St. Ex. 2 at 17).
6. On November 3, 2004, Dr. Brumfield submitted a urine sample for drug screening. The urine specimen tested positive, and was GC/MS confirmed, for the presence of a cocaine metabolite, benzoylecgonine. (St. Ex. 2 at 20)

On December 8, 2004, after learning of Dr. Brumfield's positive urine screen, the Board entered an Order summarily suspending his license to practice medicine and surgery in the State of Ohio. The Board also issued a Notice of Summary Suspension and Opportunity for Hearing. (St. Ex. 2 at 21, 45, 50)

7. An administrative hearing was held on December 21, 2004. (St. Ex. 2 at 14) At hearing, Dr. Brumfield and others testified on his behalf. Such testimony included the following:
 - Dr. Brumfield denied that he had relapsed. He testified, instead, that he had involuntarily ingested cocaine when he used an old nebulizer in which he had once stored his cocaine. Dr. Brumfield further stated that he was committed to his recovery and knew that a relapse “would be tantamount to ‘a death sentence[.]’” (St. Ex. 2 at 23-24, 28).

- John Peterangelo, D.O., testified that he is engaged in the solo practice of family medicine in Fairborn, Ohio, and was one of four physicians who started the chemical dependency unit, Greene Hall, at Greene Memorial Hospital.” Dr. Peterangelo further testified that he was Dr. Brumfield’s monitoring physician and family physician and that, despite the positive urine screen, he did not believe that Dr. Brumfield had relapsed. (St. Ex. 2 at 25-26)
 - David D. Goldberg, D.O., testified that he is the Medical Director of Greene Memorial Hospital, a 215-bed community hospital. Dr. Goldberg further testified that he is board certified in family practice and addiction medicine. Dr. Goldberg testified that he had helped Dr. Brumfield start a practice at Green Memorial Hospital and that, when Dr. Brumfield stated that he had not relapsed, Dr. Goldberg had “flat out” believed him. (St. Ex. 2 at 26-27)
8. On January 12, 2005, following the administrative hearing, the Board determined that the Secretary and Supervising Member had possessed clear and convincing evidence of Dr. Brumfield’s violation of Section 4731.22(B)(15), Ohio Revised Code, to wit: Dr. Brumfield’s positive cocaine screen from November 3, 2004. The Board further found, however, that there was insufficient evidence to support a conclusion that Dr. Brumfield had intentionally ingested cocaine, or that he had relapsed on cocaine. Therefore, the Board took no further action in that matter. (St. Ex. 2 at 11, 13, 31-32)
9. On or about March 22, 2005, Dr. Brumfield voluntarily ingested approximately one-quarter to one-half gram of cocaine. (Tr. at 27) Dr. Brumfield submitted a urine sample for drug screening the following day. Dr. Brumfield was later notified by the Ohio Physicians Health Program that the urine specimen had tested positive, and had been GC/MS confirmed, for the presence of a cocaine metabolite, benzoylecgonine. (St. Ex. 3)
- On April 4, 2005, after learning that his March 23, 2005, urine sample had tested positive for cocaine, Dr. Brumfield reported to the Board that he had relapsed. (St. Exs. 3, 5)
10. On April 11, 2005, Dr. Brumfield submitted to an evaluation at Glenbeigh Hospital and Outpatient Centers in Rock Creek, Ohio. It was determined that Dr. Brumfield suffered from chemical dependency, and inpatient treatment was recommended. (St. Ex. 4)

Moreover, Dr. Brumfield testified that he had undergone a psychiatric evaluation at Glenbeigh. The report of Dr. Brumfield’s evaluation at Glenbeigh contains an account of Dr. Brumfield’s depressed mood as reported by his wife. Dr. Brumfield stated that, while at Glenbeigh, he had been diagnosed with major depression and that he was taking medication for that problem. Moreover, he was advised to see his family physician to determine whether he should be seen by a psychiatrist. Nevertheless, as Dr. Brumfield had been discharged from Glenbeigh only a few days before the hearing, he had not yet seen his family physician. (Tr. at 36-37; St. Ex. 4 at 12)

Moreover, the report lists the problems that were to be addressed during Dr. Brumfield's treatment at Glenbeigh. (St. Ex. 4 at 13) These included Dr. Brumfield's:

- o "lack of ability to recognize the severity of this disease as a block to accepting his powerlessness over the disease";
- o "lack of a sober support network";
- o "lack of positive coping skills needed for recovery";
- o "low self esteem";
- o "shame and guilt issues related to use;"
- o "unresolved grief issues";
- o lack of "the ability to identify powerlessness"; and
- o a "struggle with feeling recognition, acceptance, and expression."

(St. Ex. 4 at 13-14) Dr. Brumfield entered treatment that day and remained there for twenty-eight days. (Tr. at 20, 24-25, 33-34)

[Note: Dr. Brumfield testified that he is aware that the Board did not allege psychiatric impairment in the April 13, 2005, notice of opportunity for hearing in this matter. Nevertheless, Dr. Brumfield stated that he would not object should the Board decide to impose sanctions that include a psychiatric evaluation and treatment. (Tr. at 41)].

11. By Affidavit, David P. Katko, Enforcement Attorney for the Board, advised that, after learning that Dr. Brumfield had submitted a urine sample that had tested positive for cocaine, and after Dr. Brumfield had admitted to his relapse, Mr. Katko had presented this information to the Secretary and Supervising Member of the Board. Mr. Katko further advised that the Secretary and Supervising member indicated that they had "found clear and convincing evidence that Dr. Brumfield had violated the provisions of this Step II Consent Agreement * * *." (St. Ex. 5) Accordingly, on April 13, 2005, the Board issued a second Order summarily suspending Dr. Brumfield's license to practice medicine and surgery in the State of Ohio. (St. Ex. 2 at 4).
12. At the May 2005, hearing, Dr. Brumfield admitted that, during the December 2004 hearing, he had lied to the Board about his relapse and use of cocaine. He further admitted that he had intentionally used cocaine in November 2004 and had manufactured the story about the nebulizer that he had told during the December 2004 hearing. (Tr. at 21-22)

Regarding his relapse, Dr. Brumfield testified that, in October 2004, after being clean for two years, he had come into contact with a person from whom he had obtained cocaine in the past. Dr. Brumfield stated that his “addict side” had convinced him that he could use without getting caught or becoming addicted. Therefore, he met the man in a gas station bathroom and snorted cocaine. Dr. Brumfield testified that he had used cocaine on two occasions during late 2004, once in October and once in November. He added that, after his use in November, he had been called to provide a urine sample for drug screening and that that sample had tested positive. Dr. Brumfield testified that he had stopped using cocaine during the subsequent summary suspension and hearing. (Tr. at 21-24)

Dr. Brumfield further testified that he not used cocaine again until March 22, 2005. Dr. Brumfield testified that the same individual who had given him cocaine in October and November 2004 had contacted him again. Dr. Brumfield stated that he had been on his way to an Alcoholics Anonymous [AA] meeting but, instead, agreed to meet the man in the bathroom of a gas station. When he got there, Dr. Brumfield snorted cocaine. (Tr. at 26-28)

Dr. Brumfield testified that he had not gone to his AA meeting, and had not gone home until after midnight. His wife was very concerned by his unusual behavior, and he lied to her to hide his relapse. (Tr. at 31-32) Moreover, when his monitor from the Ohio Physicians Effectiveness Program advised him that his urine had tested positive for cocaine, he at first denied use. He later decided to tell the truth. In addition, when Dr. Brumfield first contacted the Board’s Compliance Officer, Danielle Bickers, to admit his relapse, he told her that he had not yet had a positive urine screen. Again, he later changed his mind and admitted the positive urine screen. (Tr. at 29-31)

13. Dr. Brumfield testified that he had tried to deceive the Board because he had “suffered such severe consequences the first time.” Moreover, Dr. Brumfield testified that it wasn’t until his treatment at Glenbeigh that he started to have insight into his personality defects. Dr. Brumfield explained that, during the course of treatment at Glenbeigh, he had learned that his friends and family see him as a “pathological liar.” Dr. Brumfield testified that he looked at himself closely, realizing that that was not who he wanted to be. Therefore, a large part of his current recovery program is devoted to “strict honesty.” (Tr. at 24-25, 30)

When asked why the Board should believe him now, considering his pattern of lying to the Board, Dr. Brumfield responded,

The only way I can respond to that is that I know that trust basically has to be rebuilt, and the same thing with my personal relationships, as well as my relationship with the Board. I know that the first time that I went into treatment I basically did it to get my license back.

Whatever happens this time, I'm doing it because I need to stop this disease in its tracks. I need to be as honest with myself as with anybody else that I can.

(Tr. at 34-35)

14. Dr. Brumfield testified that he is practicing a vigorous recovery program. He is attending ninety AA meetings in ninety days. He also has a very active sponsor, another physician. Dr. Brumfield testified that he is taking medication for depression as recommended at Glenbeigh. He is also attending church on a regular basis. He concluded: "I'm not trying to be deceitful anymore. I'm tired. Whether I practice medicine or not, I want to be the best person I can be." (Tr. at 35-37) Dr. Brumfield apologized to the Board for his behavior and deceit. (Tr. at 40)

FINDINGS OF FACT

1. On December 11, 2002, Daniel Howard Brumfield, M.D., entered into a Step I Consent Agreement with the Board in lieu of formal proceedings. The Step I Consent Agreement was based upon Dr. Brumfield's violations of Sections 4731.22(B)(26) and 4731.22(B)(10), Ohio Revised Code, related to cocaine dependency and aiding and abetting the unlicensed practice of medicine. The conduct underlying the aiding and abetting the unlicensed practice of medicine violation involved Dr. Brumfield's leaving otherwise blank, prescribed prescriptions for use by an advanced nurse practitioner and other office staff, as well as his authorizing office staff to administer influenza injections in his office with no supervising physician present. In this Step I Consent Agreement, Dr. Brumfield agreed to certain terms, conditions, and limitations, including that his certificate to practice medicine and surgery in the State of Ohio would be suspended for an indefinite period of time, but not less than 270 days.
2. On January 16, 2004, Dr. Brumfield entered into a Step II Consent Agreement with the Board after he had fulfilled the conditions for reinstatement of his certificate as set forth in the Step I Consent Agreement. In the Step II Consent Agreement, Dr. Brumfield's certificate to practice medicine and surgery in the State of Ohio was reinstated. As part of the Step II Consent Agreement, Dr. Brumfield agreed to comply with specified terms, conditions, and limitations. These included the requirements that: (a) Dr. Brumfield abstain completely from the personal use or possession of drugs except those prescribed, dispensed, or administered to him by another so authorized who has full knowledge of Dr. Brumfield's history of chemical dependency; and (b) Dr. Brumfield submit to random drug and alcohol screens on a weekly basis.
3. On December 8, 2004, the Board entered an Order summarily suspending Dr. Brumfield's license to practice medicine and surgery in the State of Ohio after a urine specimen he had

submitted on November 3, 2004, tested positive, and was GC/MS confirmed, for the presence of a cocaine metabolite, benzoylecgonine. After a December 21, 2004, administrative hearing, the Board determined that the Secretary and Supervising Member had possessed clear and convincing evidence of Dr. Brumfield's violation of Section 4731.22(B)(15), Ohio Revised Code, to wit: his positive cocaine screen from November 3, 2004. Nevertheless, the Board took no further action in that matter.

4. Paragraph 8 of the Step II Consent Agreement states that Dr. Brumfield "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 his history of chemical dependency." Despite this requirement, on April 4, 2005, Dr. Brumfield reported to the Board that, on March 22, 2005, he had voluntarily ingested approximately one-quarter to one-half gram of cocaine. In addition, Dr. Brumfield did not report the relapse until after he had been notified by the Ohio Physicians Health Program that the urine specimen he submitted on March 23, 2005, had tested positive, and had been GC/MS confirmed, for the presence of a cocaine metabolite, benzoylecgonine.
5. In the Step II Consent Agreement, Dr. Brumfield agreed that if the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that Dr. Brumfield has violated any term, condition, or limitation of the agreement, that violation, as alleged, would constitute clear and convincing evidence that Dr. Brumfield's 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.

CONCLUSIONS OF LAW

1. The conduct of Daniel Howard Brumfield, M.D., as set forth in Findings of Fact 4, constitutes a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.
2. The conduct of Dr. Brumfield, as set forth in Findings of Fact 1, 2, 4, and 5, constitutes "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

* * * * *

Dr. Brumfield has a history of serious impairment to a very addictive substance. Moreover, Dr. Brumfield has employed outrageous deceit in his dealings with the Board, making it very difficult for the Board to monitor his conduct and protect the public from potential harm. In light

of Dr. Brumfield's conduct, the Board would be fully justified in permanently revoking his certificate to practice in this state.

Nevertheless, there are a few mitigating circumstances in this matter. Dr. Brumfield testified that, during his most recent bout of inpatient treatment, he had identified underlying personality defects for the first time. Dr. Brumfield further testified that he is working energetically on being honest in all of his dealings. Under these circumstances, the Board may wish to allow Dr. Brumfield one final opportunity to return to practice after a long period of documented sobriety and under strict monitoring conditions.

PROPOSED ORDER

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Daniel Howard Brumfield, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Brumfield's certificate shall be SUSPENDED for an indefinite period of time, but not less than two years.
- B. **INTERIM MONITORING:** During the period that Dr. Brumfield's license is suspended, he shall comply with the following terms, conditions, and limitations:
 1. **Obey the Law:** Dr. Brumfield shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 2. **Personal Appearances:** Dr. Brumfield shall appear in person for quarterly interviews before the Board or its designated representative. The first such appearance shall take place on the date his appearance would have been scheduled pursuant to his January 16, 2004, Consent Agreement with the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise directed by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
 3. **Quarterly Declarations:** Dr. Brumfield shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on the date his quarterly declaration would have been due pursuant to his January 16, 2004, Consent Agreement with the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

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

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

The person or entity previously approved by the Board to serve as Dr. Brumfield's supervising physician pursuant to the January 16, 2004, Step II Consent Agreement is hereby approved to continue to as Dr. Brumfield's designated supervising physician under this Order, unless within thirty days of the effective date of this Order, Dr. Brumfield submits to the Board for its prior approval the name and curriculum vitae of an alternative supervising physician to whom Dr. Brumfield 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. Brumfield. Dr. Brumfield and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

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

Dr. Brumfield shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Order, whether all urine screens have been

negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

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

7. **Submission of Blood or Urine Specimens upon Request**: Dr. Brumfield shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Brumfield's expense.
8. **Comply with the Terms of Treatment and Aftercare Contract**: Dr. Brumfield shall maintain continued compliance with the terms of the aftercare contract entered into with his treatment provider, provided that, where terms of the aftercare contract conflicts with terms of this Order, the terms of this Order shall control.
9. **Rehabilitation Program**: Dr. Brumfield shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Dr. Brumfield 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. Brumfield's quarterly declarations.
10. **Continued Compliance with a Contract with an Impaired Physicians Committee**: Dr. Brumfield shall maintain continued compliance with the terms of the contract entered into with OPEP, or with another impaired physicians committee approved by the Board, to assure continuous assistance in recovery and/or aftercare.
11. **Psychiatric Assessment/Treatment**: Within sixty days of the effective date of this Order, Dr. Brumfield shall submit to the Board for its prior approval the name and curriculum vitae of a psychiatrist of Dr. Brumfield's choice. Upon approval by the Board, Dr. Brumfield shall obtain from the approved psychiatrist an assessment of Dr. Brumfield's current mental and psychiatric status. Prior to the initial assessment, Dr. Brumfield shall furnish the approved psychiatrist copies of the Board's Order,

including the Summary of the Evidence, Findings of Fact, Conclusions of Law, and Order, and any other documentation from the hearing record which the Board may deem appropriate or helpful to that psychiatrist.

Upon completion of the initial assessment, Dr. Brumfield shall cause a written report to be submitted to the Board from the approved psychiatrist. The written report shall include:

- a. A detailed report of the evaluation of Dr. Brumfield's current mental and psychiatric status and condition;
- b. A detailed plan of recommended psychiatric treatment, if any, based upon the psychiatrist's informed assessment of Dr. Brumfield's current needs; and
- c. Any reports upon which the treatment recommendation is based, including reports of physical examination and psychological or other testing.

Should the Board-approved psychiatrist recommend treatment, and upon approval by the Board, Dr. Brumfield shall undergo and continue treatment as frequently as is recommended by the psychiatrist, or as otherwise directed by the Board. The sessions shall be in person and may not be conducted by telephone or other electronic means. Dr. Brumfield shall comply with his treatment plan, including taking medications as prescribed for his disorder.

Dr. Brumfield shall continue in treatment until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require reports from the approved treating psychiatrist. The psychiatric reports shall contain information describing Dr. Brumfield's current treatment plan and any changes that have been made to the treatment plan since the prior report, Dr. Brumfield's compliance with the treatment plan, Dr. Brumfield's mental and psychiatric status, Dr. Brumfield's progress in treatment, and results of any laboratory studies that have been conducted since the prior report. Dr. Brumfield 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 his quarterly declaration.

In addition, Dr. Brumfield shall ensure that his treating psychiatrist immediately notifies the Board of Dr. Brumfield's failure to comply with his treatment plan and/or any determination that Dr. Brumfield is unable to practice due to his disorder.

In the event that the designated psychiatrist becomes unable or unwilling to serve in this capacity, Dr. Brumfield must immediately so notify the Board in writing and make arrangements acceptable to the Board for another psychiatrist as soon as practicable. Dr. Brumfield shall further ensure that the previously designated

psychiatrist also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

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

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

1. **Application for Reinstatement or Restoration:** Dr. Brumfield shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Compliance with Interim Conditions:** Dr. Brumfield shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order, unless otherwise determined by the Board.
3. **Demonstration of Ability to Resume Practice:** Dr. Brumfield shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Brumfield has successfully completed any required inpatient treatment.
 - b. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
 - c. Evidence of continuing full compliance with this Order.
 - d. Two written reports indicating that Dr. Brumfield's ability to practice has been evaluated for chemical dependency and/or impairment and that he has been found capable of practicing according to acceptable and prevailing standards of care. The evaluations shall have been performed by individuals or providers approved by the Board for making such evaluations. Moreover, the evaluations

shall have been performed within sixty days prior to Dr. Brumfield's application for reinstatement or restoration. The reports of evaluation shall describe with particularity the bases for the determination that Dr. Brumfield has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon his/her practice.

4. **Reports of Evaluation:** Upon submission of his application for reinstatement or restoration, Dr. Brumfield shall provide the Board with a written report of evaluation by a psychiatrist acceptable to the Board indicating that Dr. Brumfield's ability to practice has been assessed and that he has been found capable of practicing in accordance with acceptable and prevailing standards of care. Such assessment shall have been performed within sixty days prior to submission of his application for reinstatement or restoration. The report shall describe with particularity the bases for this determination and shall set forth any recommended limitations upon Dr. Brumfield's practice.
 5. **Personal Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Brumfield shall provide acceptable documentation of successful completion of a course or courses dealing with personal ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.
 6. **Absence from Practice:** In the event that Dr. Brumfield has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to the submission of his application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Brumfield's fitness to resume practice.
- D. **PROBATIONARY CONDITIONS:** Upon reinstatement or restoration, Dr. Brumfield's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least ten years:
1. **Obey Laws in Ohio:** Dr. Brumfield shall obey all federal, state, and local laws; and all rules governing the practice of medicine in Ohio.
 2. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Brumfield shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.

3. **Practice Plan**: Prior to commencement of practice in Ohio, or as otherwise determined by the Board, Dr. Brumfield shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Brumfield's activities will be directly supervised and overseen by a monitoring physician approved by the Board. Moreover, Dr. Brumfield's practice shall be limited to no more than forty hours per week, unless otherwise determined by the Board. Dr. Brumfield shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

At the time Dr. Brumfield submits his practice plan, he shall also submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary or Supervising Member will give preference to a physician who practices in the same locale as Dr. Brumfield and who is engaged in the same or similar practice specialty.

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

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

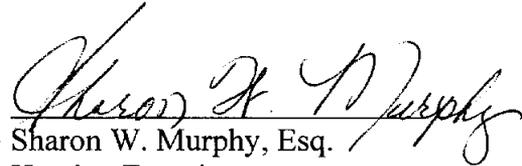
4. **Controlled Substances Log**: Dr. Brumfield shall keep a log of all controlled substances he prescribes. Such log shall be submitted in a format approved by the Board thirty days prior to Dr. Brumfield's personal appearance before the Board or its designated representative, or as otherwise directed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

5. **Ban on Administering, Furnishing, or Possessing Controlled Substance; Log:** Dr. Brumfield shall not, without prior Board approval, administer, personally furnish, or possess (except as allowed under Paragraph B4, above) any controlled substances as defined by state or federal law. In the event that the Board agrees at a future date to modify this Order to allow Dr. Brumfield to administer or personally furnish controlled substances, Dr. Brumfield shall keep a log of all controlled substances administered or personally furnished. Such log shall be submitted in a format approved by the Board thirty days prior to Dr. Brumfield's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Brumfield shall make his patient records with regard to such administering, or personally furnishing available for review by an agent of the Board upon request.
 6. **Tolling of Probationary Period While Out of State:** Dr. Brumfield shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.
- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Brumfield's certificate will be fully restored.
- F. **RELEASES:** Dr. Brumfield shall provide continuing authorization, through appropriate written consent forms, for disclosure by his treatment providers of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Brumfield's chemical dependency, psychiatric condition and/or related conditions, or for purposes of complying with this Order, whether such treatment or evaluations occurred before or after the effective date of this Order. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.
- G. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Dr. Brumfield shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training, and to the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Brumfield shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and to the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. Further, Dr. Brumfield shall provide this

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

- H. **REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, Dr. Brumfield shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Brumfield shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Brumfield shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon the mailing of notification of approval by the Board.


Sharon W. Murphy, Esq.
Hearing Examiner



State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF JULY 13, 2005

REPORTS AND RECOMMENDATIONS

Dr. Davidson announced that the Board would now consider the findings and order appearing on the Board's agenda. She asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matter of: Daniel Howard Brumfield, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

Dr. Davidson 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.

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

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

DANIEL HOWARD BRUMFIELD, M.D.

Dr. Davidson directed the Board's attention to the matter of Daniel Howard Brumfield, M.D. She advised that no objections were filed to Hearing Examiner Murphy's Report and Recommendation.

Dr. Davidson advised that, after the Report and Recommendation had been filed by the Hearing Examiner, Assistant Attorney General Wilcox and Dr. Brumfield filed a joint motion to admit additional evidence to the record. That motion and the evidence were previously distributed to the Board members for review. She asked whether the Board wished to accept the additional evidence into the hearing record.

DR. STEINBERGH MOVED TO ACCEPT THE ADDITIONAL EVIDENCE INTO THE HEARING RECORD. DR. KUMAR SECONDED THE MOTION. A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

The motion carried.

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

Dr. Brumfield thanked the Board for allowing him to address it today. He apologized to the Board for the need to appear before it once again. He thanked Ms. Murphy for her recommendation of a stayed revocation and subsequent suspension of his license, as opposed to a complete revocation. He also thanked her for the recommendation of a psychiatric evaluation, for he believes that this is the crux of his problem.

Dr. Brumfield stated that he sincerely wants to be a productive and responsible member of society, as well as of the medical community. Dr. Brumfield stated that he wishes to share with the Board the differences in the person who sits before it now. His recent inpatient stay at Glenbeigh has disclosed, and with their

help he has realized, the faulty thinking processes that have engendered his disease. He has realized the absence of and need for religion in his life. He has recently been baptized and continues counseling with his pastor. Dr. Brumfield stated that he prays that, with God's help, he will heal this process of information that has interfered with his ability to process information correctly. He hopes that he will be able to retrain his thinking with this help, allowing him to make the right choices in every day life, as well as controlling his disease.

Dr. Brumfield stated that he has totally embraced his A.A. family, and is currently attending 90 meetings in 90 days, after his discharge. He's obtained two sponsors, one of whom is a recovering physician to enable his thought processes on a professional level, as well as a lay sponsor with whom he is diligently working the 12-step program.

Dr. Brumfield continued that, even though his training has been in the medical field, his employment has been limited by his disease. He's applied to every hospital in the Columbus, Dayton and Cincinnati regions, without success, for a medical technologist position. Until recently, he was employed as an engineer's assistant at \$10 an hour, which allowed him to at least put food on his table. He has applied for positions with insurance agents, hospital laboratories, as well as Burger King, with minimal success. He is currently working as a traveling medical technologist, on assignment in Nebraska for three months, where he continues nightly A.A. meetings. Fortunately, with this employment, he is once again able to obtain health insurance and will begin psychiatric counseling after August 1, when this insurance goes into effect.

Dr. Brumfield stated that he was very fearful of appearing before the Board today at the risk of antagonizing the Board more than he already has, but he would be doing an injustice to those for whom he is financially responsible if he did not at least attempt to minimize the impact of his disease on the innocent victims of his disease. His wife, children and in-laws have all financially helped him. Dr. Brumfield stated that he is willing to prove himself to the Board and the medical community by doing whatever is deemed necessary. He's willing to undergo daily urine screens, ongoing psychiatric counseling or any other task that the Board requires to allow him to practice medicine again in the future. Dr. Brumfield stated that he humbly asks consideration of a reduction of the suspension, and retroactive credit for the time already served.

Dr. Brumfield again apologized, and stated that he knows that amends are more than just asking for forgiveness, but also improving his worth to the Board. Dr. Brumfield thanked the Board for its time.

Dr. Davidson asked whether the Assistant Attorney General wished to respond.

Mr. Wilcox stated that he thinks that, given Dr. Brumfield's track record and his lack of trustworthiness, the Board would have a very difficult time in monitoring his treatment and recovery. Mr. Wilcox stated that the Board would be perfectly justified in permanently revoking Dr. Brumfield's certificate to practice and, in fact, should do so. Mr. Wilcox noted that Dr. Brumfield has gone to great lengths in the past to flat out deceive and lie to the Board regarding his prior drug abuse.

Mr. Wilcox continued that, should the Board see fit to allow Dr. Brumfield to continue to work for reinstatement of his license, he would strongly urge that the Board order Dr. Brumfield to random urine screens at least three times a week, and not twice as in the Proposed Order. Mr. Wilcox commented that it is his understanding that cocaine stays in the system for up to 48 hours. He doesn't think that two tests weekly are sufficient.

Mr. Wilcox stated that he knows that the Board has a tendency to want to work with impaired physicians, but Dr. Brumfield should be put on notice that if he gets one more shot, it will be his last opportunity to work with the Board. Mr. Wilcox also spoke against reducing the proposed suspension in any way.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF DANIEL HOWARD BRUMFIELD, M.D. MR. BROWNING SECONDED THE MOTION.

Dr. Davidson stated that, before she entertains general discussion, she would like to direct the Board's attention to a motion filed by Mr. Wilcox. She noted that Mr. Wilcox has requested that the Board ratify the determination of the Secretary and Supervising Member that there was clear and convincing evidence that Dr. Brumfield had violated the terms of his consent agreement and, therefore, his continued practice of medicine constituted a danger of immediate and serious harm to the public, as provided in the consent agreement. She referred the Board to Mr. Wilcox' motion in their agenda materials, and allowed them time to consider the motion.

DR. STEINBERGH MOVED TO AMEND THE FINDINGS OF FACT BY ADDING FINDINGS THAT:

- 1. THE SECRETARY AND SUPERVISING MEMBER, AT THE TIME THEY MADE THE RECOMMENDATION TO SUMMARILY SUSPEND THE LICENSE OF DR. BRUMFIELD, HAD CLEAR AND CONVINCING EVIDENCE THAT DR. BRUMFIELD HAD VIOLATED THE TERMS OF HIS CONSENT AGREEMENT, AND,**
- 2. THEREFORE, HIS CONTINUED PRACTICE OF MEDICINE CONSTITUTED A DANGER OF IMMEDIATE AND SERIOUS HARM TO THE PUBLIC, AS PROVIDED IN THE CONSENT AGREEMENT.**

DR. BUCHAN SECONDED THE MOTION. A vote was taken:

VOTE:

Mr. Albert	- abstain
Dr. Talmage	- abstain
Dr. Varyani	- aye
Dr. Buchan	- aye
Dr. Kumar	- aye
Mr. Browning	- aye

Dr. Saxena - aye
Dr. Steinbergh - aye
Dr. Davidson - aye

The motion carried.

Dr. Davidson stated that she would now entertain further discussion in the above matter.

Dr. Steinbergh stated that Dr. Brumfield has a long history with this Board, with multiple relapses. She noted that the Report and Recommendation permanently revokes Dr. Brumfield's license, stays the revocation, and imposes a minimum two-year suspension. It includes monitoring conditions, should Dr. Brumfield come back, and a probationary period of five years.

Dr. Steinbergh stated that she would certainly not be in favor of reducing the suspension period. She added that, if the Board wants Dr. Brumfield to return to practice at some point, it has to be very severe this time. He has to be out of practice for several years, and he has to want to come back into practice. He must demonstrate his sobriety for several years. She stated that she is interested in hearing what other Board members have to say, but she again stated that she is not in favor of reducing suspension time, but would recommend increasing the period of suspension and requiring Dr. Brumfield to demonstrate his competency before he returns to practice. She stated that the Proposed Order requires Dr. Brumfield to pass the SPEX for reinstatement if he is out of practice for more than two years. She commented that she believes that the Board should require Dr. Brumfield to take the SPEX, regardless of how long he is out of practice.

Dr. Steinbergh continued that, as far as urine screens, she is not opposed to requiring Dr. Brumfield to submit three samples a week for testing. She noted that, otherwise, the Proposed Order is a basic order for chemically dependent physicians. Dr. Steinbergh stated that this is not the time to be lenient with Dr. Brumfield. If the Board is not tough this time, he won't succeed.

Dr. Buchan stated that this is very difficult. He feels badly for Dr. Brumfield. The Board gave him an opportunity and, obviously, he wasn't able to capitalize on that opportunity. He noted that Dr. Brumfield deceived the Board members, his colleagues, his community, his medical director and his hospital. Dr. Buchan stated that it is his sense that Dr. Brumfield's issue is more significant than the maintenance of his medical license; it's one of survival, as a man, as a father, and as a husband. Dr. Buchan stated that he was moving more towards simplifying Dr. Brumfield's life and letting him focus on what's really important to him. Dr. Buchan stated that he just doesn't believe Dr. Brumfield any more. He added that he was moving more toward revocation. He feels that it's time for Dr. Brumfield to simplify and get on with the matters that are more important. Dr. Buchan stated that he can't believe that Dr. Brumfield is going to come back to the Board in any kind of rehabilitative form. Dr. Buchan stated that this may be the death sentence for his medical career, but if Dr. Brumfield has a heart for service, he'll move into a different area of service, but not as a physician.

Dr. Buchan commented that he wants to hear what other Board members felt. He again stated that he's not interested in leniency at this point. His posture coming to the Board meeting today was one for revocation.

Dr. Kumar stated that he's not for leniency at all in this case. Actually, he's troubled by the fact of how Dr. Brumfield deceived the Board in the past. He thinks that needs to be brought home. When Dr. Brumfield relapsed before, he gave the Board a cute story about inhaling his nebulizer for respiratory problems, and the nebulizer was where he used to store the cocaine. He went to the extent of sending the nebulizer for an examination by a lab to prove that there was cocaine in it. Dr. Kumar stated that going to the extent of coming up with such a story tells him that there's more involved than simply lying. Dr. Kumar stated that that really troubles him, and he has a real problem with this case for that reason. Dr. Kumar stated that he is more in favor of a permanent revocation. He added that he knows that the Board should give people a chance, but he noted that Dr. Brumfield deceived the Board, and he also may have deceived his own counsel and family members. Dr. Kumar stated that he's worried about the way Dr. Brumfield took that particular type of action instead of simply saying that he relapsed.

Dr. Varyani stated that he agrees with Dr. Kumar, but he believes that someone who is chemically dependent should get one final chance. Dr. Varyani stated that, for that reason, he leans towards Dr. Steinberg's suggestion.

Dr. Steinbergh stated that she suggested something different from Dr. Buchan. She noted that Dr. Buchan and Dr. Kumar both suggested revocation.

Dr. Varyani stated that he is in favor of a longer suspension. He does not believe the Board should be lenient, but he wants to give Dr. Brumfield one last chance.

Dr. Saxena stated that she's also in favor of giving Dr. Brumfield a last chance.

Dr. Davidson stated that she would speak in favor of Dr. Buchan's motion. She understands him to be in favor of revocation, as opposed to permanent revocation. This would put the ball in Dr. Brumfield's court, as far as getting his life back in order. He would be asked to save himself, to concentrate on his sobriety. He would not be a licensed a physician, but could reapply some day down the line. Dr. Davidson stated that the Board had Dr. Brumfield in the Board's best recovery program and Dr. Brumfield lied and fooled the Board members. She stated that this was the best treatment and monitoring the Board could give him. She added that she thinks of the people who submitted affidavits on Dr. Brumfield's behalf, believing he was in recovery. Dr. Davidson stated that she has learned a lot in this case, and that is to trust, but verify. Cocaine is a very, very addictive drug. She acknowledged Dr. Buchan's comments that Dr. Brumfield is now fighting for his life. She stated that she doesn't think that Dr. Brumfield needs to worry about the Board and his medical license right now. Dr. Davidson spoke in support of revocation.

Dr. Kumar stated that he earlier suggested "permanent revocation," but he meant to say "revocation."

Dr. Steinbergh asked Dr. Buchan whether he was suggesting "revocation" or "permanent revocation."

Dr. Buchan stated that he was speaking in favor of "revocation." Dr. Buchan stated that the ball is in Dr. Brumfield's court now. The Board did its best, and will continue to do its best for the citizens of the State. In this particular scenario, however, it's all up to Dr. Brumfield. Dr. Buchan added that his prayer would be that Dr. Brumfield succeed. He added that there is enough compassion around the table to wish that upon him, but now it's all up to Dr. Brumfield. He recommended that Dr. Brumfield get well and then maybe come back, should that be what he chooses to do.

DR. BUCHAN MOVED MODIFY THE PROPOSED ORDER BY SUBSTITUTING AN ORDER OF REVOCATION. DR. KUMAR SECONDED THE MOTION.

Mr. Browning stated that he understands the intentionality of deceit in this and why that's a difference. He doesn't fundamentally understand the difference between this case and a host of cases the Board has had where people have relapsed multiple times. The Board has gone the third round, which is usually the last and final round. Mr. Browning stated that it is his sense that this is a person with a serious problem, and it's reasonable to revoke. He wouldn't be in favor of revoking permanently. He added that Dr. Steinbergh made a good point about the length of time, and suggested that, if the Board does do something short of revocation, he would be for a suspension period of two years and a month, which would require Dr. Brumfield to take the SPEX. Mr. Browning added that he has questions about Dr. Brumfield's ability to pass the SPEX.

Dr. Steinbergh stated that she was considering a suspension longer than that.

Mr. Browning stated that the point is that two years and a day and he'd have to take the SPEX.

Dr. Steinbergh stated that she doesn't think recovery will happen in two years, and she doesn't think a two-year suspension is sufficient in this case. This proposed amendment puts the onus on Dr. Brumfield now. If Dr. Brumfield's license is revoked, the Board has no authority to monitor. If he ever decides to come back, he will have to provide to the Board documentation of years of monitoring and doing what he needs to do.

Dr. Buchan stated that Mr. Browning has a point in the Board's being consistent with its actions, but he noted that this is just several months after a previous Board Order. He believes there is fundamentally enough difference in this case, and he's interested in Dr. Brumfield's success.

Dr. Steinbergh stated that she thinks that she does believe that the Board needs to encourage chemically dependent physicians to be healed, but the amount of deception in this case concerned her. This is a case different from the others. There has been tremendous deception to the Board in this case. Dr. Steinbergh stated that she's in agreement with Dr. Buchan's evaluation and his approach.

Dr. Kumar stated that the only difference he sees between a revocation and the current Proposed Order is that Dr. Brumfield would be monitored by the Board and the Board would have to spend its resources to do

so.

Dr. Steinbergh agreed, and stated that with a revocation, the Board wouldn't have to do that.

Dr. Kumar stated that there has to be some increased penalty for the way the deception occurred, and that is his concern. With a revocation he will have to get himself clean and come back and prove it to the Board. At the time he reapplies, the Board could impose monitoring conditions.

Dr. Talmage left the room during the previous discussion.

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

VOTE:	Mr. Albert	- abstain
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

The motion carried.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF DANIEL HOWARD BRUMFIELD, M.D. DR. VARYANI SECONDED THE MOTION. A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

The motion carried.



State Medical Board of Ohio

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April 13, 2005

Daniel Howard Brumfield, M.D.
3243 Rocky Point Road
Springfield, OH 45502

Dear Doctor Brumfield:

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 April 13, 2005, 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.
Lance A. Talmage, M.D., Secretary *LAT*

LAT:blt
Enclosures

MAILED 4-14-05



State Medical Board of Ohio

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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 April 13, 2005, 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 Daniel Howard Brumfield, M.D., 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.
Lance A. Talmage, M.D., Secretary *LAD*

(SEAL)

April 13, 2005

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :
 :
 DANIEL HOWARD BRUMFIELD, M.D. :
 :

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 13th day of April, 2005.

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 Daniel Howard Brumfield, M.D., has violated Sections 4731.22(B)(15), and 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. Brumfield's continued practice presents a danger of immediate and serious harm to the public; and

Pursuant to the terms of the Step II Consent Agreement Between Daniel Howard Brumfield, M.D., and the State Medical Board of Ohio, effective January 16, 2004, which states:

If the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that Dr. Brumfield has violated any term, condition or limitation of this Consent Agreement, Dr. Brumfield 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;

The following Order is hereby entered on the Journal of the State Medical Board of Ohio for the 13th day of April, 2005;

It is hereby ORDERED that the certificate of Daniel Howard Brumfield, M.D., to practice medicine or surgery in the State of Ohio be summarily suspended.

It is hereby ORDERED that Daniel Howard Brumfield, 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.
Lance A. Talmage, M.D., Secretary *(TAD)*

April 13, 2005
Date



State Medical Board of Ohio

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EXCERPT FROM DRAFT MINUTES OF APRIL 13, 2005

CITATIONS, PROPOSED DENIALS & ORDERS OF SUMMARY SUSPENSION

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DANIEL HOWARD BRUMFIELD, M.D. – ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

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

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

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

The motion carried.



State Medical Board of Ohio

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NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING

April 13, 2005

Daniel Howard Brumfield, M.D.
3243 Rocky Point Road
Springfield, OH 45502

Dear Doctor Brumfield:

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 Sections 4731.22(B)(15) and 4731.22(B)(26), Ohio Revised Code, and have further determined that, in accordance with the Step II Consent Agreement referenced in paragraph (2) below, such violations constitute clear and convincing evidence that your continued practice presents a danger of immediate and serious harm to the public, as set forth in paragraphs (1), (2), (4) and (5) 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 or 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 State Medical Board of Ohio 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 December 11, 2002, you entered into a Step I Consent Agreement with the Board in lieu of formal proceedings based upon your violations of Sections 4731.22(B)(26) and 4731.22(B)(10), Ohio Revised Code, related to cocaine dependency and aiding and abetting the unlicensed practice of medicine. The aiding and abetting the unlicensed practice of medicine violation involved your leaving otherwise blank presigned prescriptions for use by an advanced nurse practitioner and other office staff as well as authorizing office staff to administer influenza injections in your office with no supervising physician present. In this Step I Consent Agreement, you agreed to certain terms, conditions, and limitations,

including that your certificate to practice medicine and surgery in the State of Ohio would be suspended for an indefinite period of time, but not less than 270 days. A copy of the Step I Consent Agreement is attached hereto and fully incorporated herein.

- (2) On or about January 16, 2004, you entered into a Step II Consent Agreement with the Board whereby, having fulfilled the conditions for reinstatement of your certificate as set forth in your Step I Consent Agreement, your certificate to practice medicine and surgery in the State of Ohio was reinstated. As part of the Step II Consent Agreement, you agreed to comply with specified terms, conditions, and limitations, including, *inter alia*, the requirements that you abstain completely from the personal use or possession of drugs except those prescribed, dispensed, or administered to you by another so authorized who has full knowledge of your history of chemical dependency and that you submit to random drug and alcohol screens on a weekly basis. A copy of this Step II Consent Agreement is attached hereto and fully incorporated herein.
- (3) On or about December 8, 2004, the Board entered an Order summarily suspending your license to practice medicine and surgery in the State of Ohio after the urine specimen you submitted on or about November 3, 2004, tested positive for, and was GC/MS confirmed for, the presence of a cocaine metabolite, benzoylecgonine. After a hearing held on or about December 21, 2004, the Board determined that the Secretary and Supervising Member possessed clear and convincing evidence of your violation of Section 4731.22(B)(15), Ohio Revised Code, to wit: your positive cocaine screen from November 3, 2004, but otherwise took no further action. Copies of the Board's December 8, 2004, Notice of Summary Suspension and Opportunity for Hearing and January 12, 2005, Entry of Order are attached hereto and fully incorporated herein.
- (4) Paragraph 8 of the Step II Consent Agreement states that you "shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to [you] by another so authorized by law who has full knowledge of [your] history of chemical dependency." Despite the requirements set forth in the Step II Consent Agreement, on or about April 4, 2005, you reported to the Board that, on or about March 22, 2005, you voluntarily ingested approximately one-quarter to one-half gram of cocaine. In addition, you reported the relapse after having been notified by the Ohio Physicians Health Program that the urine specimen you submitted on or about March 23, 2005, had tested positive for, and had been GC/MS confirmed for, the presence of a cocaine metabolite, benzoylecgonine.
- (5) In the Step II Consent Agreement, you agreed that if the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that you have violated any term, condition, or limitation of the agreement, that violation, as

alleged, also constitutes clear and convincing evidence that your 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.

Further, Rule 4731-16-02(B)(3)(a), Ohio Administrative Code, provides that an individual's relapse during or following treatment shall constitute independent proof of impairment and shall support license suspension or denial without the need for an examination.

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

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1), (2), (4) and (5) above, individually and/or collectively, constitute "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, and Chapter 4731., 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.

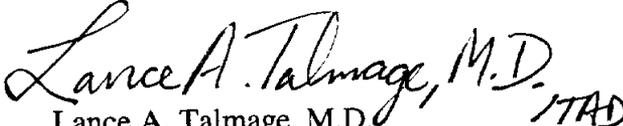
Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate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

Notice of Summary Suspension
& Opportunity for Hearing
Daniel Howard Brumfield, M.D.
Page 4

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. /TAD
Secretary

LAT/blt
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5142 9082
RETURN RECEIPT REQUESTED



State Medical Board of Ohio

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

January 12, 2005

Daniel Howard Brumfield, M.D.
3243 Rocky Point Road
Springfield, OH 45502

Dear Doctor Brumfield:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on January 12, 2005, including motions modifying the Findings of Fact, and approving and confirming the Hearing Examiner's Conclusions of Law and Order, and adopting the Findings of Fact, Conclusions of Law and Order, as amended.

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

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

THE STATE MEDICAL BOARD OF OHIO

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

LAT:jam
Enclosures

CERTIFIED MAIL NO. 7002 2410 0002 3141 3208
RETURN RECEIPT REQUESTED

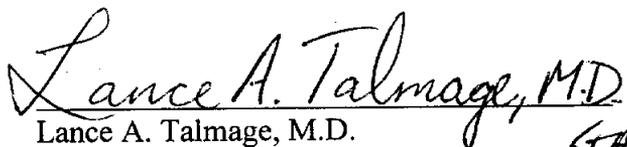
Cc: Elizabeth Y. Collis, Esq.
CERTIFIED MAIL NO. 7002 2410 0002 3141 3222
RETURN RECEIPT REQUESTED

MAILED 1-24-05

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on January 12, 2005, including motions modifying the Findings of Fact, approving and confirming the Hearing Examiner's Conclusions of Law and Order, and adopting the Findings of Fact, Conclusions of Law and Order, as amended; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Daniel Howard Brumfield, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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


Lance A. Talmage, M.D.
Secretary GAD

(SEAL)

January 12, 2005

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

DANIEL HOWARD BRUMFIELD, M.D. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on January 12, 2005.

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

It is hereby ORDERED that:

1. **No Further Action:** No further action be taken in the matter of Daniel Howard Brumfield, M.D.
2. **Continue Current Consent Agreement:** All terms, conditions, and limitations as set forth in the January 16, 2004, Step II Consent Agreement between the Board and Dr. Brumfield shall remain in full force and effect.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon the mailing of notification of approval by the Board.

(SEAL)


Lance A. Talmage, M.D.
Secretary GAD

January 12, 2005

Date

2005 JAN -3 A 9 28

**REPORT AND RECOMMENDATION
IN THE MATTER OF DANIEL HOWARD BRUMFIELD, M.D.**

The Matter of Daniel Howard Brumfield, M.D., was heard by R. Gregory Porter, Esq., Hearing Examiner for the State Medical Board of Ohio, on December 21, 2004.

INTRODUCTION

I. Basis for Hearing

- A. In a Notice of Summary Suspension and Opportunity for Hearing, dated December 8, 2004, the State Medical Board of Ohio [Board] notified Daniel Howard Brumfield, M.D., that, pursuant to Section 4731.22(G), Ohio Revised Code, the Board had adopted an Order of Summary Suspension of Dr. Brumfield's certificate to practice 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. Brumfield that the Board had proposed to take disciplinary action against his certificate because of his history of treatment for substance abuse, and for his having relapsed on cocaine as evidenced by a positive urine toxicology report.

Furthermore, the Board alleged that Dr. Brumfield's conduct constitutes "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,' as that clause is used in Section 4731.22(B)(15), Ohio Revised Code[; and/or] '[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,' as that clause is used in Section 4731.22(B)(26), Ohio Revised Code."

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

- B. On December 9, 2004, Elizabeth Y. Collis, Esq., submitted a written hearing request on behalf of Dr. Brumfield. (State's Exhibit 1B)

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Kyle C. Wilcox, Assistant Attorney General.
- B. On behalf of the Respondent: Elizabeth Y. Collis, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State

1. David P. Katko, Esq.
2. Daniel Howard Brumfield, M.D., as upon cross-examination
3. William J. Closson, Ph.D.

B. Presented by the Respondent

1. Daniel Howard Brumfield, M.D.
2. Dayamayee Parsa
3. David D. Goldberg, D.O.
4. John J. Peterangelo, D.O.
5. Paula A. Johnson, R.N.
6. Jack Kinsler

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A through 1F, and 1H through 1M: Procedural exhibits.
2. State's Exhibit 2: Certified copies of Dr. Brumfield's Step I and Step II Consent Agreements with the Board.
3. State's Exhibit 3: Copy of a urine screen toxicology report from Bendiner & Schlesinger, Inc., to the Ohio Physicians Effectiveness Program [OPEP], and received by the Board on November 15, 2004.
4. State's Exhibit 4: Copy of a December 6, 2004, Memorandum to Lance A. Talmage, M.D., Secretary; and Raymond J. Albert, Supervising Member, from David P. Katko, Enforcement Attorney, concerning Dr. Brumfield.
5. State's Exhibit 5: Copies of instructions for the usage and maintenance of an aerosol therapy nebulizer, and attached fax cover sheet. [Note: This exhibit was admitted for the limited purpose of showing the use and care of nebulizers in general, and is not specific to the type or brand of nebulizer used by Dr. Brumfield.]

6. State's Exhibit 6: Copy of medical records maintained by Richard D. Potts, M.D., concerning Dr. Brumfield. [Note: This exhibit has been sealed to protect patient confidentiality.]
 7. State's Exhibit 7: Curriculum Vitae of William J. Closson, Ph.D.
- B. Presented by the Respondent
1. Respondent's Exhibit A: Dr. Brumfield's curriculum vitae.
 2. Respondent's Exhibit B: Copy of a November 24, 2004, Status Report from OPEP to the Board concerning Dr. Brumfield.
 3. Respondent's Exhibit C: Copy of an October 15, 2004, letter to Elizabeth Y. Collis, Esq., from Barron Farrier, CCDC III, Case Manager for OPEP, concerning Dr. Brumfield.
 4. Respondent's Exhibit D: Copy of a December 15, 2004, letter to the Board from Carla C. McConnell, MAT, CCDCIII-E, LSW, of Greene Hall Outpatient, concerning Dr. Brumfield.
 5. Respondent's Exhibit E: Copy of Dr. Brumfield's AA Log from November 30 through December 15, 2004. [Note: This exhibit has been sealed to protect the confidentiality of recovery program participants.]
 6. Respondent's Exhibit F: Dr. Brumfield's nebulizer. [Note: This exhibit will be available for viewing by Board members at the offices of the Board.]
 7. Respondent's Exhibit G: Copy of a Chain of Custody and Control Form for Drug and Alcohol Analysis and result of test concerning Dr. Brumfield's nebulizer from The Ohio State University Medical Center Reference Laboratory. [Note: Social Security numbers were redacted from this document.]

SUMMARY OF THE EVIDENCE

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

Background Information

1. Daniel Howard Brumfield, M.D., testified that he had started working in the health care field in 1979 as a laboratory technician, after having obtained an Associate's Degree from

Clark State Technical College. Dr. Brumfield testified that he had continued going to school while working and, in 1984, had obtained a Bachelor's Degree as a medical technologist from Wright State University. Moreover, Dr. Brumfield testified that he had been accepted into medical school at Wright State University in 1986, and graduated from that institution in 1992. Finally, Dr. Brumfield testified that he had completed a residency in family medicine at Saint Elizabeth Medical Center in Dayton, Ohio, in 1995. (Respondent's Exhibit [Resp. Ex.] A; Hearing Transcript [Tr.] at 46-47)

Dr. Brumfield testified that, after completing his residency training, he had gone into private practice in Enon, Ohio, where he practiced as a solo practitioner until Fall 2002, at which time he entered treatment for cocaine dependency. Dr. Brumfield entered into A Step I Consent Agreement with the Board on December 11, 2002, and a Step II Consent Agreement on January 16, 2004. Following the reinstatement of his license in January 2004, Dr. Brumfield worked in locum tenens positions and, September 2004, entered into the solo practice of family medicine in Fairborn, Ohio. (Resp. Ex. A; Tr. at 47, 185)

2. Dr. Brumfield testified concerning his history of substance abuse. Dr. Brumfield testified that he had entered the United States Army in 1973, after graduating from high school. Dr. Brumfield further testified that, after basic training, he had been stationed in Colorado for one year, during which time he had begun smoking marijuana. Moreover, Dr. Brumfield testified that he had subsequently been stationed in Darmstadt, Germany, for two years, where he had begun using cocaine. Dr. Brumfield testified that he had been discharged from the Army in 1976, and had discontinued abusing substances until the early 1980s, when he had resumed using cocaine on a sporadic basis. Finally, Dr. Brumfield testified that he had again discontinued his use of cocaine in 1986 when he entered medical school, and did not resume its use until about June 2002. (Tr. at 48-49)
3. With regard to his resuming the use of cocaine in 2002, Dr. Brumfield testified that 2001 and 2002 had been stressful years for him. Dr. Brumfield testified, "My practice was not doing well financially. I was going through a divorce. I lost my mother in May of 2002. I lost my remaining grandparents three weeks after my mother expired." (Tr. at 50-51)

Dr. Brumfield further testified that, during this period, his ex-wife had been his office manager and his mother-in-law had also worked for him. Moreover, Dr. Brumfield testified that he had suspected that his accountant had been stealing money from him. Dr. Brumfield stated that his accountant and his ex-wife had told him "to keep [his] nose out of the business and just practice medicine[.]" Finally, Dr. Brumfield testified, "I do not believe that the money was being watched very carefully, and even though I had 6,000 patients as a family practitioner, I was not doing very well financially." (Tr. at 218)

Dr. Brumfield testified that, in 2002, he had begun seeing a nurse socially who was a cocaine user, and that she had "reintroduced it into [his] life." Dr. Brumfield further

testified that he had resumed using cocaine because it relieved his stress. (Tr. at 50-51, 218-219) Dr. Brumfield testified,

I would summarize it as medicating so that I would not have to feel. One thing that addiction has taught me is that my reasons for using are basically so that I do not have to feel stress; I don't have to feel pain; I don't have to feel. It would be the same thing if you took a drink of alcohol. That is a stress reliever.

(Tr. at 50) Dr. Brumfield stated that, at first, he had obtained the cocaine from the nurse, but later obtained it on his own after having been introduced to her source. Dr. Brumfield further testified that, between June and November 2002, he had used cocaine on weekends and sometimes on Wednesdays, because he “was off on Wednesdays.” Dr. Brumfield testified that he had not used cocaine on work nights, because he had known that if he did, he “probably would not sleep that night.” (Tr. at 51, 219)

4. Dr. Brumfield testified that he had usually purchased cocaine in an amount equivalent to about two restaurant sugar packets. (Tr. at 220) It would often be packaged in the corner of a sandwich bag. (Tr. at 113, 220-221) Dr. Brumfield testified that, each time he used cocaine, he had used up his entire supply in one sitting—if he had used it three times per week, he had had to purchase it three times that week. (Tr. at 219)

Dr. Brumfield testified that he and his wife had been separated, and his sixteen-year-old daughter had been living with him during this time. Dr. Brumfield testified that he had hidden his cocaine supply in various places around the house, including in a blue plastic nebulizer cup. (Tr. at 221-222)

Dr. Brumfield indicated that he suffers from asthma, and that he had owned a nebulizer that he used to treat asthma attacks. Dr. Brumfield testified that a nebulizer is a machine that forces compressed air into a mixture of fluid, usually Albuterol and saline solution, to aerosolize the medication for inhalation. (Tr. at 69-70) Dr. Brumfield testified that the fluid is placed in a small plastic cup to which a plastic air tube is attached, and that a mouthpiece is attached at the top to allow the aerosolized mixture to be inhaled. Dr. Brumfield testified that the cup is about two inches in diameter. Dr. Brumfield testified he had had two cups, one of which was clear, and the other was blue. Dr. Brumfield testified that he used to hide cocaine in the blue cup, because it had been harder to see through. (Tr. at 66, 110-112, 232-233)

5. Dr. Brumfield testified that he takes Theophylline on a daily basis to control his asthma. (Tr. at 70)
6. Dr. Brumfield testified that cocaine's effect on him had made him “more mellow[.]” Dr. Brumfield further testified, “I just felt like I was medicating and didn't care.” Moreover, Dr. Brumfield testified that the after-effects of cocaine use had been “[e]xtreme

fatigue” because he had been unable to “sleep on it[.]” Dr. Brumfield stated that this had resulted in changes in his behavior that had been noticed by staff at Mercy Medical Center. (Tr. at 222) Dr. Brumfield further stated,

One of the hospitals that I had privileges at asked me to go and get an evaluation because of my routines changing. Instead of doing rounds in the morning, I was doing them at night. I was falling asleep at the nurses’ station; so one of the hospitals was concerned and asked me to get an evaluation.

At which point, I could not even stop using long enough to give them a clean urine for the drug screen; so that I knew that my habit was bad, and I knew that I needed treatment.

(Tr. at 52) Dr. Brumfield testified that he had been evaluated at Greene Hall in November 2002, and had been found to be impaired, and that he had subsequently completed twenty-eight days of inpatient treatment at that facility. (State’s Exhibit [St. Ex.] 2; Tr. at 53)

Dr. Brumfield testified that he had never before been in treatment for substance abuse. (Tr. at 216)

7. On December 11, 2002, Dr. Brumfield entered into a Step I Consent Agreement with the Board in lieu of formal proceedings based upon his violations of Sections 4731.22(B)(26) and 4731.22(B)(10), Ohio Revised Code. Dr. Brumfield’s violations related to cocaine dependency, aiding and abetting the unlicensed practice of medicine by leaving otherwise blank pre-signed prescriptions for use by an advanced nurse practitioner and other office staff, and authorizing his office staff to administer influenza injections in his office with no supervising physician present. In the Step I Consent Agreement, Dr. Brumfield agreed to certain terms, conditions, and limitations, including that his certificate to practice medicine and surgery in the State of Ohio would be suspended for an indefinite period of time, but not less than 270 days. (St. Ex. 2 at 11-18)
8. On January 16, 2004, Dr. Brumfield entered into a Step II Consent Agreement with the Board, in lieu of formal proceedings based upon his violations of Sections 4731.22(B)(26) and 4731.22(B)(10), Ohio Revised Code. The Step II Consent Agreement reinstated Dr. Brumfield’s certificate to practice medicine and surgery in the State of Ohio subject to certain terms, conditions, and limitations. (St. Ex. 2 at 1-10) These include the following:
 - Paragraph 8 states that Dr. Brumfield “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. Brumfield’s history of chemical dependency.” (St. Ex. 2 at 5)

- Paragraph 9 states that Dr. Brumfield “shall abstain completely from the use of alcohol. (St. Ex. 2 at 5)
- Paragraph 10 states, among other things, that Dr. Brumfield shall submit to random drug and alcohol screens on a weekly basis, and that he ensure that all screening reports are forwarded directly to the Board on a quarterly basis. (St. Ex. 2 at 5)

Moreover, Dr. Brumfield agreed that if the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that he had violated any term, condition, or limitation of the agreement, that 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. (St. Ex. 2 at 8)

9. Dr. Brumfield testified that his monitoring physician is David D. Peterangelo, D.O. Dr. Brumfield testified that Dr. Peterangelo’s office is located across the hall from his own. (Tr. at 58, 62)

The November 3, 2004, Urine Sample and Toxicology Report

10. On November 15, 2004, the Board received a copy of a urine toxicology report that indicates that a urine sample submitted by Dr. Brumfield on November 3, 2004, had tested positive for cocaine, and that the urine had been GC/MS confirmed for the presence of benzoylecgonine. (St. Ex. 3)

The report further indicates that it had been prepared for the Ohio Physicians Effectiveness Program [OPEP], and that the date and time of the urine submission had been November 3, 2004, at 3:00 p.m. The patient identifying information section lists an alphanumeric code, the name “Peterangelo,” and the handwritten name “Brumfield.” Further, the report bears a handwritten note from B. Farrier, who was identified elsewhere as Barron Farrier, a Case Manager for OPEP.¹ The note states, “Dr. Brumfield denies use. Monitor states he has no reason to believe Dr. Brumfield has used. He has recently opened a new office, married, and bought a new house—I have no reason to believe that he has used at this point.” (St. Ex. 3 at 1)

11. Dr. Brumfield testified that the draw date and time listed on the urine toxicology report coincides with the date and time that he had submitted a urine sample to Dr. Peterangelo. (Tr. at 251-252)

¹ See Resp. Ex. C.

Testimony of David P. Katko, Esq., Enforcement Attorney for the Board

12. David P. Katko testified that he is an Enforcement Attorney for the Board. Mr. Katko stated that his job duties include investigating complaints concerning the Board's licensees and drafting citations, including notices of summary suspension. Mr. Katko testified that he is familiar with Dr. Brumfield, and noted that he had negotiated Dr. Brumfield's consent agreements on behalf of the Board. (Tr. at 19-20)

Mr. Katko testified that, recently, he had been notified through OPEP that Dr. Brumfield had submitted a urine sample that had tested positive for cocaine and benzoylecgonine. (Tr. at 21-25) Mr. Katko further testified that the information noted by Mr. Farrier on the urine screen report concerning Dr. Brumfield's new office, wife, and house "appear to list major life stressors[.]" (Tr. at 32) Moreover, Mr. Katko indicated that it is not unusual for someone from OPEP to record a handwritten note to the Board on a positive urine screen report. (Tr. at 34)

Mr. Katko further testified that he had spoken to Dr. Goldberg, Dr. Brumfield's employer, and that Dr. Goldberg informed Mr. Katko that Dr. Brumfield had provided two possible explanations for the positive screen. The first was that the sample had been contaminated. The second was the possibility of cross-reactivity between Lidocaine and cocaine. (Tr. at 30-31)

Moreover, Mr. Katko testified that he had met with Dr. Brumfield, and that Dr. Brumfield provided another explanation for the positive screen. Mr. Katko testified that Dr. Brumfield informed Mr. Katko that he had previously used his nebulizer as a hiding place for cocaine, and that it may have become contaminated. (Tr. at 34-35)

13. Mr. Katko testified that, based upon the information he had gathered, he had written a memorandum to the Secretary and the Supervising Member of the Board. Mr. Katko further testified that the Secretary and Supervising Member determined that there had been clear and convincing evidence that Dr. Brumfield's continued practice posed an immediate threat of serious harm to the public. Finally, Mr. Katko testified that the Board then issued the notice of summary suspension and opportunity for hearing to Dr. Brumfield. (St. Exs. 1A and 4; Tr. at 26-27)

Testimony of William J. Closson, Ph.D., Director of the Forensic Toxicology Department at Bendiner & Schlesinger Medical Laboratories

14. William J. Closson, Ph.D., testified via telephone on behalf of the State. Dr. Closson testified that he is the Director of the Forensic Toxicology Department at Bendiner & Schlesinger Medical Laboratories [Bendiner & Schlesinger] in New York City. Dr. Closson testified that his duties include managing the overall operation of the department, and certifying the results of the testing that takes place in that department. Dr. Closson testified that he holds a Master's Degree in Biochemistry, and a doctorate

degree in Biochemistry and Toxicology. Moreover, Dr. Closson testified that he is licensed by the New York State Department of Health as a forensic toxicologist, and that he has testified as an expert in his field on more than 400 occasions. (Tr. at 72-74)

Dr. Closson noted that Bendiner & Schlesinger has associations both with the Board and with OPEP. (Tr. at 76-77)

15. Dr. Closson testified extensively concerning the chain of custody and testing procedures utilized at Bendiner & Schlesinger. Among this information, Dr. Closson noted that, during the urine collection process, the urine sample is split into two separate, sealed containers. Dr. Closson testified that, routinely, the urine in only one of those containers is analyzed; however, the second container may be utilized should confirmation of the original test become necessary. (Tr. at 78-81)

With regard to Dr. Brumfield's November 3, 2004, urine sample, Dr. Closson testified that the initial immunoassay "presumptively detected cocaine and cocaine metabolites[.]" Dr. Closson testified that those results were subsequently confirmed from the original container via a much more sensitive and specific technology called gas chromatography/mass spectrometry, often abbreviated GC/MS. Dr. Closson testified that the GC/MS test confirmed the presence in the urine of benzoylecgonine, the primary metabolite of cocaine, at a concentration of 351 ng/ml. Dr. Closson indicated that a quantitative result of 150 ng/ml is required to yield a positive result. Dr. Closson testified that he certified the results of those tests and generated the final report. (St. Ex. 3; Tr. at 81-84)

16. Dr. Closson testified that the presence of benzoylecgonine in urine indicates that the donor had utilized cocaine within three or four days of collection of the urine sample. Dr. Closson noted that cocaine is metabolized out of a person's system after three or four days. (Tr. at 83)

Dr. Closson testified that it is not possible to determine the amount of cocaine that an individual may have ingested solely from the information that the individual's urine had contained benzoylecgonine at a concentration of 351 ng/ml. Dr. Closson stated that such a result could be obtained if the individual had used a significant amount of cocaine three or four days prior to the collection of the sample, or if the individual had used "a very small amount of cocaine several hours prior to the collection." (Tr. at 90)

Dr. Closson noted that the quantitative result of 351 ng/ml of benzoylecgonine in the urine is a relatively low result. Nevertheless, its mere presence "is definitive proof that the individual had consumed cocaine." (Tr. at 85)

17. Dr. Closson testified that, with the authorization of OPEP, Dr. Brumfield had contacted him concerning the positive result. Dr. Closson testified that Dr. Brumfield had asked that Bendiner & Schlesinger test the second bottle, called the "B bottle." The specimen was

tested and benzoylecgonine was confirmed at a concentration of 340 ng/ml, which Dr. Closson testified is well within the margin of error to conclude that the urine produced by the donor had contained benzoylecgonine. (St. Ex. 3 at 4; Tr. at 87-88, 97-99)

Dr. Closson further testified that, after discussion with Dr. Brumfield, he had agreed to test the urine for the presence of Theophylline to further confirm that the urine tested had come from Dr. Brumfield. Dr. Closson testified that the test confirmed the presence of a trace amount of Theophylline in the urine. (Tr. at 87, 99-100)

18. Dr. Closson testified that Lidocaine would not yield a false positive result for the presence of benzoylecgonine. (Tr. at 89, 100-101)
19. Dr. Closson was asked whether a nebulizer contaminated with invisible trace amounts of cocaine could have yielded the results obtained on the November 3, 2004, urine sample. Dr. Closson replied, "Well, I have to state that while I think it is unlikely that invisible amounts of cocaine would cause this result, I don't think you can rule it out completely." (Tr. at 89-90)

Testimony of Dr. Brumfield

20. Dr. Brumfield testified that, on November 2, 2004, at about 10:00 or 11:00 p.m., he had been ill, and had been having trouble breathing because of his asthma. Dr. Brumfield further testified that, upon the suggestion of his wife, he used his nebulizer to give himself a breathing treatment. Dr. Brumfield testified that he had not used the nebulizer for over two years, that he does not remember the last time that he had used it, and that he had not recalled at that time that he had previously used it to hide cocaine. (Tr. at 115-120, 236-239)

Dr. Brumfield further testified that he does not recall whether he had cleaned the cup after his last use, or if he had cleaned it prior to using it on November 2, 2004. Dr. Brumfield testified that he would assume that he had cleaned it after the last time that he had used it. Dr. Brumfield testified that he does remember that he did not clean the cup after using it on November 2, 2004, although his wife may have. (Tr. at 115-120, 236-239)

21. Dr. Brumfield testified that, on November 3, 2004, Dr. Peterangelo had called him at about 6:00 or 7:00 a.m. to check on him because Dr. Peterangelo had heard that he was sick. Dr. Brumfield testified that he had asked Dr. Peterangelo if he could come and see him. Dr. Brumfield testified that he made an appointment for 2:30 p.m. that day. (Tr. at 63-65, 243-246)

Dr. Brumfield testified that, later that morning, he had called Dr. Peterangelo to ask if he could get an injection of Rocephin, an antibiotic, so that Dr. Brumfield would feel well enough to come in. Dr. Brumfield testified that Dr. Peterangelo had ordered that medication, and that Dr. Brumfield's nurse had come to Dr. Brumfield's house and

administered the injection. Dr. Brumfield noted that the Rocephin had been mixed with Lidocaine because Rocephin causes a burning sensation at the injection site, and Lidocaine lessens that unpleasant effect. (Tr. at 67-68)

During Dr. Brumfield's visit with Dr. Peterangelo later that day, Dr. Peterangelo asked Dr. Brumfield to submit a urine sample, and Dr. Brumfield complied. (Tr. at 188)

22. Dr. Brumfield testified that on November 16, 2004, Mr. Farrier had notified him that the November 3, 2004, urine sample had tested positive for cocaine. Dr. Brumfield testified that he initially had believed that it was not his urine "because there wasn't any way that it could have come up positive[.]" After the test for theophylline had come back, Dr. Brumfield had suspected that the urine could have been contaminated. Dr. Brumfield noted that he had also suspected that the positive test could have resulted from cross-reactivity with the Rocephin and Lidocaine injection he had received. (Tr. at 60, 106-109, 240-241)

Dr. Brumfield testified that, some time after he learned of his positive urine screen, while trying to remember what he may have done differently around the time he had submitted the urine sample, his wife had reminded him that he had used the nebulizer the night before he had submitted the urine sample. (Tr. at 121)

Dr. Brumfield testified that his wife had not been aware that he had used to store cocaine in his nebulizer. Dr. Brumfield further testified that he had not known her during the time he had used cocaine. Moreover, Dr. Brumfield testified that he had never before used the nebulizer around his wife. Dr. Brumfield testified that he and his wife had met shortly after Dr. Brumfield had been released from treatment in December 2002. (Tr. at 121)

23. Dr. Brumfield testified that he believes that the nebulizer is the only way that he could have come in contact with cocaine around November 3, 2004. Dr. Brumfield further testified that he has "not used cocaine in over two years now." (Tr. at 123)

Dr. Brumfield testified that he had used enough cocaine from June through November 2002 that he could not stop, and that he knows that if he were to use it again, he would not be able to stop. Dr. Brumfield testified that he does not "want to go down that road again[.]" and that if he were to use again it would be tantamount to "a death sentence[.]"

Dr. Brumfield stated that cocaine is a cardiac stimulant, and he is concerned that further use of that drug would cause "some type of cardiac manifestation." (Tr. at 123-125)

Testimony of Dayamayee Parsa, Lead Technologist at The Ohio State University Reference Laboratory

24. Dayamayee Parsa testified on behalf of Dr. Brumfield. Ms. Parsa testified that she is the Lead Technologist at The Ohio State University Reference Laboratory [URL]. Ms. Parsa testified that she has held that position for four years. Ms. Parsa further testified that she

has a Bachelor's Degree in Medical Technology, and that she is certified by the American College of Medical Technicians. (Tr. at 138-139)

Ms. Parsa testified that on December 7, 2004, URL had been asked by Dr. Brumfield to test a nebulizer for the presence of cocaine. Ms. Parsa further testified that this was done by rinsing the device in methanol, collecting the methanol, and testing it according to URL's protocols. Ms. Parsa testified that the nebulizer had tested positive for the presence of cocaine, and negative for the presence of benzoylecgonine. Ms. Parsa stated that a written report was then generated concerning those results. (Resp. Ex. G; Tr. at 144-152)

Testimony of John Peterangelo, D.O., Dr. Brumfield's Monitoring Physician

25. John Peterangelo, D.O., testified on behalf of Dr. Brumfield. Dr. Peterangelo testified that he is engaged in the solo practice of family medicine in Fairborn, Ohio. Dr. Peterangelo further testified that he has previous experience with addiction medicine. Dr. Peterangelo testified that, in 1976, he and four other physicians had "started the first chemical dependency unit in the Dayton area at Greene Memorial Hospital." Dr. Peterangelo further testified that he is board eligible for the American Society of Addiction Medicine. (Tr. at 183-184)

Dr. Peterangelo testified that he had first met Dr. Brumfield in July 2004 after learning that Dr. Brumfield was setting up practice across the hall from his office. Dr. Peterangelo further testified that he had become Dr. Brumfield's monitoring physician in September 2004. As such, Dr. Peterangelo testified that he has been responsible for taking Dr. Brumfield's random weekly urine samples. Dr. Peterangelo testified that Dr. Brumfield has always submitted a sample within one hour of being contacted. Dr. Peterangelo further testified that Dr. Brumfield never refused to submit to a screen. (Tr. at 184-186)

Dr. Peterangelo testified that he has also become Dr. Brumfield's family physician, and that he sees Dr. Brumfield's wife and children. (Tr. at 186)

26. Dr. Peterangelo testified that, on November 3, 2004, Dr. Brumfield had come to see him for the first time as Dr. Brumfield's primary care physician. Dr. Peterangelo testified that Dr. Brumfield had "had a pretty significant sinus infection" for which Dr. Peterangelo treated him. (Tr. at 187-188)

Dr. Peterangelo testified that, since Dr. Brumfield was in his office, and since Dr. Brumfield had not yet submitted to a urine screen that week, he had had Dr. Brumfield submit a urine sample after the visit. Dr. Peterangelo testified that Dr. Brumfield had complied without hesitation. (Tr. at 188)

Dr. Peterangelo further testified that Dr. Brumfield had informed him a couple weeks later that the November 3, 2004, urine sample had tested positive for cocaine. (Tr. at 188)

Dr. Peterangelo stated that Dr. Brumfield “was searching for answers. He didn’t know why it was positive.” When asked if he believes that Dr. Brumfield had intentionally relapsed and starting using cocaine again, Dr. Peterangelo replied, “No.” (Tr. at 191)

Dr. Peterangelo testified that Dr. Brumfield has continued to submit to random weekly urine screens after the November 3 sample tested positive. Dr. Peterangelo further testified that, as far as he knows, they have all been negative. (Tr. at 189)

27. Dr. Peterangelo testified that, prior to the positive urine screen, Dr. Brumfield’s practice was “starting to build, and he seemed pleased with how things were going[.]” (Tr. at 190)
28. Dr. Peterangelo testified that he does not recall having called Dr. Brumfield early in the morning on November 3, 2004, to submit to a urine screen. Dr. Peterangelo testified that he did not decide to ask for a urine sample until Dr. Brumfield was in his office. (Tr. at 193, 195) Dr. Peterangelo further testified that he had not called Dr. Brumfield on that date. (Tr. at 196)

Testimony of David D. Goldberg, D.O., Medical Director of Greene Memorial Hospital

29. David D. Goldberg, D.O., testified on behalf of Dr. Brumfield. Dr. Brumfield testified that he is the Medical Director of Greene Memorial Hospital, a 215-bed community hospital. Dr. Goldberg further testified that he is board certified in family practice and addiction medicine. (Tr. at 157-159)

Dr. Goldberg testified that he had first met Dr. Brumfield when Dr. Brumfield was in treatment at Greene Hall. Dr. Goldberg testified that, at that time, Dr. Goldberg had been Co-Medical Director of that facility. Dr. Goldberg testified that he had done Dr. Brumfield’s intake, and had seen him at least half of the time he was there. Dr. Goldberg testified that, as best he can recall, Dr. Brumfield had been a compliant patient and had been an active participant in the program. (Tr. at 160-164)

30. Dr. Goldberg testified that, more recently, he had been aware that Dr. Brumfield had closed a practice and was interested in starting a new practice. Dr. Goldberg further testified that Green Memorial Hospital had been interested in recruiting physicians as part of its staff development plan. Dr. Goldberg indicated that Dr. Brumfield had interviewed with various people at Greene Memorial Hospital, and that that everyone involved had been made aware of Dr. Brumfield’s history. Moreover, Dr. Goldberg testified, “I developed out an addendum to his contract in order to be a part of overseeing his recovery; so that I would have access to the drug screens, any kind of documentation or paperwork that was going on with OPEP or the Ohio State Medical Board.” (Tr. at 165-166) Dr. Goldberg testified that, “for the sake of our organization,” he had wanted to have access to Dr. Brumfield’s recovery program details. (Tr. at 168-169)

31. Dr. Goldberg testified that, when Dr. Brumfield had contacted him and told him about the positive urine screen, Dr. Brumfield had seemed as though he “couldn’t believe it.” Dr. Goldberg further testified that Dr. Brumfield denied having used cocaine, and has continued to deny it. Dr. Goldberg further testified,

I’ve been working with him as, you know, part of the organization that’s his employer, I’ve spent some social time with him. I think his character is such that I just flat out believe the guy * * * and started questioning what could have gone wrong. If this—If this is your urine that was tested, is there anything different? Let’s go through each step, if we can.

(Tr. at 179-180)

32. Dr. Goldberg stated that, pursuant to Dr. Brumfield’s contract, when the urine screen came back positive in November, Dr. Brumfield’s right to practice at Greene Memorial Hospital had been automatically relinquished. However, Dr. Goldberg testified that, if the Board chooses to reinstate Dr. Brumfield’s license, as far as Dr. Goldberg knows, Dr. Brumfield’s “practice is still sitting there.” (Tr. at 170-171)

Dr. Goldberg testified that, prior to Dr. Brumfield’s suspension, Dr. Brumfield’s practice had been growing. (Tr. at 169)

33. Dr. Goldberg testified that he had seen Dr. Brumfield outside of practice during golf outings, and that he had never seen anything that would have led him to believe that Dr. Brumfield had relapsed. Dr. Goldberg further testified that he had heard no reports from Dr. Brumfield’s staff that anything was out of the ordinary. (Tr. at 169-170)
34. When asked a question on cross-examination concerning a one-use relapse on cocaine, Dr. Goldberg replied,

My experience is that I don’t know that I’ve seen a person that had a cocaine addiction, relapsed with one use. Sir, it doesn’t happen. The brain works a little different. You don’t stop with one. I don’t know that I’ve ever seen it in my years of experience, and it’s not just been mine. There are lots of other addictionologists who have seen many more people than I have. Cocaine doesn’t let you do that.

(Tr. at 178-179)

Additional Information

35. Paula A. Johnson, R.N., testified on behalf of Dr. Brumfield. Ms. Johnson testified that she and Dr. Brumfield had been childhood friends, then lost track of each other for many years. Ms. Johnson further testified that they became reacquainted when Dr. Brumfield filled in as

locum tenens at Northside Urgent Care, where Ms. Johnson had been working, in April or May 2004. (Tr. at 201-202)

Ms. Johnson testified that she is now employed by Greene Memorial Hospital, and works for Dr. Brumfield in his private practice. Ms. Johnson testified that October 11, 2004, had been her first day working for Dr. Brumfield. (Tr. at 203-204)

Ms. Johnson testified that Dr. Brumfield is the second physician that she has started in a practice. Ms. Johnson further testified that Dr. Brumfield's practice had been slow at first, but "was growing daily." Ms. Johnson testified that the practice had been growing "[b]ecause the people like Dr. Brumfield. I, for the last three weeks, have been in his office monitoring phone calls, assisting how I can, where I can, with the assistance of Dr. Peterangelo, and there—I have a list waiting upon Dr. Brumfield to come back." Ms. Johnson testified that Dr. Peterangelo is assisting with some of the patients, and the others are being referred to urgent care centers or, in some cases, an emergency room. (Tr. at 204-205)

36. Jack R. Kinsler testified on behalf of Dr. Brumfield. Mr. Kinsler testified that he is currently retired, but had been a project manager for the United States Air Force. Mr. Kinsler testified that he is Dr. Brumfield's father-in-law, and that he has known Dr. Brumfield for about two years. (Tr. at 210-211)

Mr. Kinsler testified that he lives about two miles from Dr. Brumfield's new house, and that he has been spending a lot of time there helping to fix things up and make additions to the house. Mr. Kinsler further testified that he has noticed nothing in Dr. Brumfield's behavior or demeanor to lead Mr. Kinsler to believe that Dr. Brumfield had been abusing drugs or alcohol. (Tr. at 211-212)

37. Dr. Brumfield acknowledged that he is a cocaine addict, and that he "will always be a cocaine addict." (Tr. at 122-123)
38. Dr. Brumfield testified that his sobriety date is November 16, 2002. (Tr. at 60)
39. Dr. Brumfield denied that he had intentionally tainted the nebulizer cup with cocaine. (Tr. at 249)
40. When asked what can trigger relapses, Dr. Brumfield replied,

Some of the triggers, actually what we actually called the HALT, hungry, angry, lonely, tired, those are the things that can stimulate a relapse. But there are many, many things that can trigger a relapse. Being in similar situations to the ones that you used, being around the same people that you used with,

being in the same environment that you used, those are all triggers that can do that.

(Tr. at 125) Dr. Brumfield acknowledged that stressors can also be triggers. (Tr. at 126)

41. Medical records for Dr. Brumfield's July 26, 2004, visit to his physician at that time, Richard Potts, M.D., indicate that Dr. Brumfield was "under stress" and was "starting practice again in Fairborn." The medical records further state that Dr. Brumfield "[j]ust got married again" and that "things are doing well[.]" Moreover, the records state, "My biggest problem is stress" (emphasis in original), along with "[e]njoying life & kids better than in past." (St. Ex. 6 at 9)

Dr. Brumfield testified that his stress level had been high in July 2004 because he had not yet signed a contract for his new practice, and he did not yet have full-time employment. Dr. Brumfield testified that he had had his license reinstated, and been negotiating a contract for his practice in Fairborn, but that his practice had not yet started. Dr. Brumfield testified, "I was still working part time as a lab tech." (Tr. at 126-129)

42. Dr. Brumfield testified that, in November 2004, things had been going very well for him—he had a new wife, a new home, and a new practice that had been doing well. Dr. Brumfield stated that there was nothing going on in his life at that time that had made him feel like he wanted to use cocaine. (Tr. at 246)
43. Dr. Brumfield testified that he has continued to submit to random, weekly urine screens, and that the last one he submitted had occurred about one week prior to the hearing. (Tr. at 216-217) Furthermore, Dr. Brumfield testified that he continues to attend weekly aftercare meetings because he finds them helpful. (Tr. at 226-227) Moreover, Dr. Brumfield testified that he continues to attend four AA meetings per week. (Resp. Ex. E; Tr. at 227) Finally, Dr. Brumfield testified that he had signed a five-year contract with OPEP in January 2003. (Tr. at 227)
44. Dr. Brumfield presented a copy of a December 15, 2004, letter to the Board from Carla McConnell, MAT, CCDCIII-E, LSW, who works at Greene Hall Outpatient. Dr. Brumfield testified that Ms. McConnell is his aftercare facilitator. (Resp. Ex. D; Tr. at 230)

In her letter, Ms. McConnell indicated that Dr. Brumfield has been active in his recovery program since December 17, 2002. Ms. McConnell further stated,

Throughout his recovery, Dan has had to deal with a number of frustrations, financial and employment issues and some medical problems, but he remained sober and worked a strong recovery program. I have seen no evidence at all of relapse behavior lately nor at any time throughout these past two years.

His attitude has been good and his motivation for sobriety has seemed totally genuine. I see no indication of relapse.

(Resp. Ex. D)

45. In an October 15, 2004, letter to Dr. Brumfield's attorney, Mr. Farrier stated,

Reports from Dr. Brumfield's monitor and aftercare counselor speak [favorably] of him and are consistent with recovery.

During the time I have served as his case manager, I have observed improvement in his personal appearance along with a distinct improvement in his attitude and in the way he presents himself. He seems much more comfortable with himself. This transition has occurred in spite of having to deal with significant personal and professional issues.

Material manifestations of this positive change are reflected in the fact that, within the past year, he has married, purchased a home, and returned to the practice of medicine.

Again these changes are consistent with recovery.

(Resp. Ex. C)

FINDINGS OF FACT

1. On December 11, 2002, Daniel Howard Brumfield, M.D., entered into a Step I Consent Agreement with the Board in lieu of formal proceedings based upon his violations of Sections 4731.22(B)(26) and 4731.22(B)(10), Ohio Revised Code. Dr. Brumfield's violations related to cocaine dependency, aiding and abetting the unlicensed practice of medicine by leaving otherwise blank pre-signed prescriptions for use by an advanced nurse practitioner and other office staff, and authorizing his office staff to administer influenza injections in his office with no supervising physician present. In the Step I Consent Agreement, Dr. Brumfield agreed to certain terms, conditions, and limitations, including that his certificate to practice medicine and surgery in the State of Ohio would be suspended for an indefinite period of time, but not less than 270 days.
2. On January 16, 2004, Dr. Brumfield entered into a Step II Consent Agreement with the Board, in lieu of formal proceedings based upon his violations of Sections 4731.22(B)(26) and 4731.22(B)(10), Ohio Revised Code. The Step II Consent Agreement reinstated Dr. Brumfield's certificate to practice medicine and surgery in the State of Ohio subject to

certain terms, conditions, and limitations. (St. Ex. 2 at 1-10) These include the following:

- Paragraph 8 states that Dr. Brumfield “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. Brumfield’s history of chemical dependency.”
 - Paragraph 9 states that Dr. Brumfield “shall abstain completely from the use of alcohol.
 - Paragraph 10 states, among other things, that Dr. Brumfield shall submit to random drug and alcohol screens on a weekly basis, and that he ensure that all screening reports are forwarded directly to the Board on a quarterly basis.
3. As stated above, Paragraph 8 of the Step II Consent Agreement states that Dr. Brumfield “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. Brumfield’s history of chemical dependency.” Despite that requirement, on November 3, 2004, Dr. Brumfield submitted a urine sample that tested positive for, and was GC/MS confirmed for, the presence of cocaine.

The evidence supports a finding that Dr. Brumfield had submitted the urine sample that had been tested, and that the presence of cocaine had been detected in that urine sample. Moreover, the evidence supports a finding that the test results are conclusive proof that Dr. Brumfield had ingested cocaine within three or four days prior to submitting the urine sample. However, the evidence is not sufficient to support a finding that Dr. Brumfield had intentionally ingested cocaine, or that he had relapsed on cocaine. The following evidence was considered with regard to this finding:

- Dr. Brumfield testified that he had used his nebulizer the evening prior to submitting his urine sample. The testimony of both Dr. Brumfield and Dr. Peterangelo make it clear that Dr. Brumfield had been ill at the time that he submitted the November 3, 2004, urine sample. Dr. Brumfield’s illness at that time makes it plausible that Dr. Brumfield may have used the nebulizer the previous evening.
- Dr. Brumfield’s nebulizer tested positive for the presence of cocaine. While it is possible that Dr. Brumfield intentionally contaminated the nebulizer after the fact, it is also possible that Dr. Brumfield is telling the truth. One could reasonably expect that cocaine could be detected in the nebulizer if there had been enough cocaine residue in the nebulizer to cause detectable amounts of cocaine in Dr. Brumfield’s urine the following day.

- Dr. Closson testified that, although he did not believe it is likely that a contaminated nebulizer would cause the positive result obtained in Dr. Brumfield's urine screen, he did not rule out the possibility that it could.
- Evidence was presented that Dr. Brumfield has continued to submit to random, weekly urine screens since his November 3, 2004, sample tested positive for cocaine. There is no evidence that any subsequent urine sample has tested positive for cocaine.
- Evidence was provided from a number of individuals who know Dr. Brumfield that they do not believe that Dr. Brumfield relapsed on cocaine. This evidence includes the testimony of Dr. Peterangelo, Dr. Brumfield's monitoring physician; Dr. Goldberg, Dr. Brumfield's employer and a board-certified addictionologist; Ms. Johnson, Dr. Brumfield's employee; and Mr. Kinsler, Dr. Brumfield's father-in-law; as well as letters from Ms. McConnell, Dr. Brumfield's aftercare facilitator; and Mr. Farrier, Dr. Brumfield's case manager at OPEP. Moreover, Dr. Goldberg testified that he does not believe that it is likely that a cocaine addict would have a single-use relapse.
- The evidence indicates that, at the time of the November 3, 2004, urine screen, Dr. Brumfield's life had been improving. He had remarried, and his new practice was doing well.

Accordingly, the evidence does not support a finding that Dr. Brumfield intentionally ingested cocaine or relapsed on cocaine.

4. Dr. Brumfield agreed that if the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that he had violated any term, condition, or limitation of the agreement, that 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. Further, Rule 4731-16-02(B)(3)(a), Ohio Administrative Code, provides that an individual's relapse during or following treatment shall constitute independent proof of impairment and shall support license suspension or denial without the need for an examination.

However, as set forth in Findings of Fact 3, above, the evidence presented at hearing is not sufficient to support a finding that Dr. Brumfield relapsed on cocaine. Nevertheless, there was substantial justification for the Board to bring this action, and to summarily suspend Dr. Brumfield's certificate to practice medicine and surgery in Ohio.

CONCLUSIONS OF LAW

1. The conduct of Daniel Howard Brumfield, M.D., as set forth in Findings of Fact 1 and 2, constitutes “[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,” as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.
2. As set forth in Findings of Fact 3 and 4, the evidence is insufficient to support a conclusion that the conduct of Dr. Brumfield constitutes “[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,” as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.
3. As set forth in Findings of Fact 3, the evidence is insufficient to support a conclusion that the conduct of Dr. Brumfield constitutes a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

PROPOSED ORDER

It is hereby ORDERED that:

1. **No Further Action:** No further action be taken in the matter of Daniel Howard Brumfield, M.D.
2. **Continue Current Consent Agreement:** All terms, conditions, and limitations as set forth in the January 16, 2004, Step II Consent Agreement between the Board and Dr. Brumfield shall remain in full force and effect.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon the mailing of notification of approval by the Board.



R. Gregory Porter, Esq.
Hearing Examiner



State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF JANUARY 12, 2005

REPORTS AND RECOMMENDATIONS

Dr. Davidson announced that the Board would now consider the findings and orders appearing on the Board's agenda. She asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Ghassan Haj Hamed, M.D.; Valerie Ann McLin, M.D.; Daniel Howard Brumfield, M.D.; Jeffrey James Fierra, M.D.; Steven Franklin Greer, M.D.; Felicia K. Howard-McGrady, M.D.; Willie L. Josey, M.D.; Thomas R. Pickett, M.D.; and John Alexander Tripoulas, M.D. A roll call was taken:

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

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

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

Dr. Davidson 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.

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

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

.....
Dr. Garg joined the meeting at this time.

.....
Dr. Davidson asked Dr. Garg whether he had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the Reports and Recommendations on this month's agenda, and whether he 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. Dr. Garg responded, "yes," to both questions.

.....
DANIEL HOWARD BRUMFIELD, M.D.

Dr. Davidson directed the Board's attention to the matter of Daniel Howard Brumfield, M.D. She advised that no objections were filed to Hearing Examiner Porter's Report and Recommendation.

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

Dr. Brumfield was accompanied by his attorney, Elizabeth Y. Collis.

Ms. Collis stated that, as the Board knows, Dr. Brumfield's license was summarily suspended at the December Board meeting. She thanked the Board and Mr. Porter for rushing this case through as quickly as they did. A hearing was held on December 21, and Mr. Porter prepared the Report and Recommendation in this case when many were on holiday break. Ms. Collis also thanked Mr. Dilling for putting this matter on the agenda today.

Ms. Collis stated that it was important for them that this case was presented to the Board today. Dr. Brumfield's license is suspended. As outlined by Mr. Porter in the Report and Recommendation, this is an unusual case. Although evidence was presented at the hearing to show that Dr. Brumfield tested positive for cocaine, no evidence was presented to show that Dr. Brumfield intentionally ingested cocaine. As Mr. Porter found in the Report and Recommendation, Dr. Brumfield testified that, while he will always

be a cocaine addict, his recovery date is November 16, 2002, and he has consistently denied that he intentionally relapsed in this case. As highlighted by Mr. Porter in the Report and Recommendation, no evidence was presented at the hearing to show that Dr. Brumfield intentionally ingested cocaine or relapsed on cocaine in this case.

Ms. Collis reminded the Board of the case of Dr. Tom Starr, another physician who inadvertently ingested medication and was found to be in violation of his Step II Consent Agreement. In that case, Dr. Starr ingested a controlled substance, and this Board ordered a 15-day suspension of his license. In this case, at this point, Dr. Brumfield's license has been suspended for 30 days.

Ms. Collis stated that she knows that this is an unusual case, but she asked that the Board carefully review the Report and Recommendation of Mr. Porter. There was a nine-hour hearing, and Mr. Porter heard testimony from quite a few different witnesses. At the conclusion of the hearing, Mr. Porter determined that there has been no evidence of a relapse in this case.

Dr. Brumfield thanked the Board for allowing him to appear before the Board today. He stated that he is a recovering addict. His drug of choice was cocaine. He began using cocaine at a very difficult time in his life. His medical practice was struggling because of poor billing and collection procedures; his marriage was falling apart; he was frustrated, angry and depressed. He began using cocaine and things only got worse in his life. By the time he entered treatment, he was near bankruptcy. He had lost his spouse and had closed his medical practice.

Dr. Brumfield stated that treatment was a real wake-up call for him. He has now been sober since November 16, 2002. He has worked very hard on his sobriety, and he has continued to take each day one at a time. In January 2004, he entered into a Step II Consent Agreement with the Board, and his medical license was reinstated. He began working in urgent care settings. This past summer, he was given an opportunity to open a private practice office with the backing and support of Greene Memorial Hospital, where he had undergone treatment in 2002. His private practice opened in October. He also has a new loving and supportive wife. Many old patients were beginning to find him, and his practice was beginning to grow. Finally his life was starting to get back on the right track.

Dr. Brumfield stated that, although he continued to attend A.A. meetings, Caduceus and aftercare, he can honestly say that he has had no cravings or desire to relapse on cocaine. He advised that in November he caught a bad cold. He's always had asthma and has been on daily asthma medications for years. At the time, his wife suggested that he use his nebulizer one evening because he was having difficulty breathing. Dr. Brumfield stated that he hadn't used his nebulizer in over two years, since before he'd gone into treatment, and so he did take a treatment with the nebulizer. At the time he had not remembered that in 2002, when he was using cocaine, he would store the cocaine in one of the cups of the nebulizer.

Dr. Brumfield continued that the next morning he contacted his physician, Dr. Peterangelo, who is also his monitoring physician, and set up an appointment for an examination for his cold. He underwent a physical exam, and Dr. Peterangelo asked him to give a urine specimen, as he had not yet given one that week.

Dr. Brumfield stated that he immediately gave the specimen. He received a call from OPEP monitor, Barron Farrier, about two weeks later advising him that the urine specimen he had dropped that day was positive for cocaine. Dr. Brumfield stated that he immediately informed Mr. Farrier and everyone else involved that there must be a mistake, as he had not relapsed. He then racked his brain for days and retraced his steps in the days leading up to the screen. At first he could not figure out how he tested positive. He thought that it might have been a false positive from an injection he received for his cold. He also thought that it might have been from his prostate examination. Dr. Brumfield stated that he could not figure out how he had tested positive.

Dr. Brumfield stated that he then remembered that he had used his nebulizer the night before the urine screen. He remembered what he had previously stored in that cup. Dr. Brumfield stated that he had the nebulizer tested and it was determined that there was a trace amount of cocaine in that machine. Dr. Brumfield stated that he has no idea if the use of the nebulizer had anything to do with the positive screen, but he does know that he did not intentionally use, and that he has been sober since November 16, 2002.

Dr. Brumfield stated that his license has been suspended now for 30 days. He has had to close the practice that he had just opened in October. Greene Memorial had initially required him to sign a contract when they assisted him in setting up his practice. That contract required that he would not violate his Consent Agreement with the Board or they would close down the practice. At this point in time, Greene Memorial does not believe that he has relapsed, and they have agreed to allow him to return to his practice, if the Board agrees to reinstate his license.

Dr. Brumfield again stated that his license has been suspended for a month. If he had inadvertently ingested cocaine, he sincerely apologizes. He added that he certainly never intended to violate his agreement with the Board. He asked that the Board follow the recommendation of the Hearing Examiner and reinstate his license under the same terms of his Step II agreement.

Dr. Davidson asked whether the Assistant Attorney General wished to respond.

Mr. Wilcox stated that he does not agree with the Findings and Recommendation of the Hearing Examiner in this case. He asked the Board to look at the evidence that Dr. Brumfield did relapse on cocaine. There was a urine sample that was submitted by Dr. Brumfield on November 3, 2004. The results of the test and a lab report indicate that that sample tested positive for cocaine, which was GCMS-confirmed. The Board knows that Dr. Brumfield was and is a cocaine addict. There is no dispute that Dr. Brumfield tested positive for cocaine.

Mr. Wilcox stated that Dr. Brumfield has given at least three different stories as to how this positive test could have come back, finally settling on the nebulizer story. The only expert testimony the Board has in this hearing is from William J. Closson, Ph.D., Director of the Forensic Toxicology Department at Bendiner & Schlesinger Medical Laboratories. Dr. Closson testified that it is very unlikely that trace amounts of cocaine on a nebulizer would result in a positive screen. Dr. Closson just couldn't rule out the

possibility.

Mr. Wilcox stated that, based on the screen alone, there is evidence that Dr. Brumfield has violated his Step II Consent Agreement. He reminded the Board that its standard of proof is reliable, probative and substantive evidence. It is not "beyond a reasonable doubt." Mr. Wilcox stated that, even if the Board members believe that the nebulizer story is plausible, Dr. Brumfield has still violated his Step II Consent Agreement. Specifically, he has violated the section of the agreement on sobriety, which states, "Dr. Brumfield 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. Brumfield's history of chemical dependency." Mr. Wilcox stated that he specifically disagrees with the Hearing Examiner's finding that Dr. Brumfield did not violate this part of his Step II Consent Agreement. Mr. Wilcox stated that he believes that Dr. Brumfield had to possess cocaine in order to test positive for it. Dr. Brumfield is the addict under the Step II agreement. There are no excuses for him to be in possession of cocaine, whether it is lying on his coffee table in his living room or is boxed up in a closet. It was his responsibility to remove all cocaine from his house. Mr. Wilcox stated that he believes that however Dr. Brumfield ingested this cocaine is irrelevant. Mr. Wilcox stated that, even if the Board believes the nebulizer story, it cannot argue that Dr. Brumfield did not possess cocaine in his house. He violated the strict term in his Agreement regarding possession of drugs. Otherwise, the Board will have to believe that Dr. Brumfield tested positive for cocaine without ever having possessed it. As such, he believes that Dr. Brumfield has violated his Step II Agreement, which would require a finding of a (B)(15) violation.

Mr. Wilcox added that he doesn't have a suggested penalty in this matter. He just asks that the Board find that there has been a violation of 4731.22 (B)(15), and order an appropriate penalty.

Dr. Davidson advised that Assistant Attorney General Wilcox has filed a motion for an Order ratifying the determination of the Secretary and Supervising Member that, at the time they recommended the summary suspension, there was clear and convincing evidence that Dr. Brumfield had violated the terms of his Consent Agreement and, therefore, his continued practice of medicine constituted a danger of immediate and serious harm to the public, as provided in the consent agreement.

In order to place the matter on the table for discussion, Dr. Davidson asked for a motion to approve and confirm the Report and Recommendation.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF DANIEL HOWARD BRUMFIELD, M.D. DR. BUCHAN SECONDED THE MOTION.

Dr. Davidson stated that she would now entertain discussion in the above matter. She asked that the Board begin the discussion by addressing the motion filed by the State.

Dr. Kumar stated that he feels that it is quite clear that the report that came into the hands of the Secretary

and Supervising Member talked about the fact that Dr. Brumfield tested positive for cocaine. Without having any other information, it was absolutely proper for them to summarily suspend Dr. Brumfield's license.

DR. STEINBERGH MOVED TO AMEND THE FINDINGS OF FACT BY ADDING FINDINGS THAT:

- 1. THE SECRETARY AND SUPERVISING MEMBER, AT THE TIME THEY MADE THE RECOMMENDATION TO SUMMARILY SUSPEND THE LICENSE OF DR. BRUMFIELD, HAD CLEAR AND CONVINCING EVIDENCE THAT DR. BRUMFIELD HAD VIOLATED THE TERMS OF HIS CONSENT AGREEMENT, AND,**
- 2. THEREFORE, HIS CONTINUED PRACTICE OF MEDICINE CONSTITUTED A DANGER OF IMMEDIATE AND SERIOUS HARM TO THE PUBLIC, AS PROVIDED IN THE CONSENT AGREEMENT.**

DR. KUMAR SECONDED THE MOTION.

Dr. Kumar again stated that there was clear evidence that the Secretary and Supervising Member had clear information about a positive urine test. Under those circumstances, they had no other choice but to take the action they took.

Dr. Bhati stated that this is a similar situation to when the question is being raised about how the decision is being made by the Secretary and Supervising Member. It seems very clear that the test was positive for the cocaine. How it got to Dr. Brumfield is really not the Board's problem. It got to him and he had a positive test. There was clear and convincing evidence for the Secretary and Supervising Member, and they took proper action to suspend the license to protect the public of the State of Ohio. Dr. Bhati stated that that job was done properly.

A vote was taken on Dr. Steinbergh's motion to amend the Findings of Fact:

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

The motion carried.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF DANIEL HOWARD BRUMFIELD, M.D. DR. BHATI SECONDED THE MOTION.

Dr. Davidson stated that she would now entertain discussion in the above matter.

Dr. Egner stated that this is one time that she does believe the doctor. She stated that, while she was reading this case, she thought that it goes against how she usually feels about things; but whenever the Board has talked about addiction and relapses, usually in retrospect you can see some sort of behavior leading towards it. The physicians didn't make all their meetings, their behavior changed somewhat. There were just some small, subtle signs that were there, noticeable in retrospect. With Dr. Brumfield, even in retrospect, there was no one who came forward and said that he or she was a little suspicious, or that Dr. Brumfield didn't seem himself. Dr. Brumfield was doing all the things he was supposed to do. Dr. Egner stated that she did question how Dr. Brumfield could not remember that he had put cocaine in the nebulizer, but she's unsure. She noted that it was two years prior that he had done so, Dr. Brumfield was sick, and he used the nebulizer. Dr. Egner stated that she does think that the nebulizer was the source, and she does believe Dr. Brumfield.

Dr. Egner added that, by adopting the Proposed Order, the Board isn't letting Dr. Brumfield off. He will have to continue under his current consent agreement. Dr. Egner added that if Dr. Brumfield did use cocaine purposely, he'll use it again, and the Board will catch it. She doesn't think that's the case right now.

Dr. Bhati stated that it is really not up to the state to prove the issue beyond any doubt. The Board's charge is to determine the probability. Dr. Bhati stated that, without a doubt, Dr. Brumfield tested positive for cocaine. How he got the cocaine into his system is Dr. Brumfield's responsibility. It is not the Board's job to prove how he got it.

Dr. Buchan stated that, like Dr. Egner, he read this case and thought, here we go again. He expected to hear a tall tale and he had a feeling about where this one would land. However, he read the case most thoroughly, and he commended Mr. Porter for his review and his persistence in seeking what Dr. Buchan believes is the truth. Dr. Buchan stated that he believes Dr. Brumfield is still clean and sober, and he will vote in that way. Dr. Buchan stated that he's disappointed that Dr. Brumfield fell into this, and he's disappointed that the Board has had to review this case. The onus is always on Dr. Brumfield to maintain his clear and clean urines. Dr. Buchan added that this was just an unbelievable case, and upon his final review, he will suggest that the Board proceed with the Proposed Order and Dr. Brumfield's current Consent Agreement.

Dr. Steinbergh stated that she agrees with the State that the evidence is sufficient to support a conclusion

that Dr. Brumfield violated the conditions of his Consent Agreement. He had a positive urine screen for cocaine. Dr. Steinbergh added that she agrees with Dr. Bhati in the sense that how that happened is something to be considered. There's not enough evidence to say that it didn't happen. It did happen. Dr. Brumfield had a positive test for cocaine. She stated that she finds that this is sufficient to support a conclusion that Dr. Brumfield violated the conditions of his consent agreement.

Dr. Steinbergh stated that, on the other hand, she takes a look at the impairment piece of this and she thinks it is conclusive that Dr. Brumfield was not impaired by it. She also agrees with the concept that he should have known better. She stated that, if she were a recovering addict, she thinks that at the beginning of the recovery she would know where she had kept her cocaine. She thinks that Dr. Brumfield should have known better.

Dr. Steinbergh stated that she does agree with the Proposed Order in this case. The Board was obligated to look at this case, and it looked at it. Dr. Brumfield had a positive urine screen for cocaine, and she doesn't think the Board can excuse that. Dr. Brumfield violated his Consent Agreement by that positive urine screen. Dr. Steinbergh stated that she sees no evidence that there is a current impairment. Dr. Brumfield has been out of practice for 30 days. She agrees with the Proposed Order for no further action and to continue with the current Consent Agreement. Dr. Steinbergh added that she also believes that if, in fact, Dr. Brumfield intentionally abused cocaine, the Board will know that in the future.

Dr. Kumar stated that he agrees with what has been said. The Board knows that Dr. Brumfield was addicted, and it knows that there was a positive urine screen. It appears to be an "innocent mistake," but the fact is that Dr. Brumfield was not careful in what he was doing. Dr. Kumar stated that he agrees with the Proposed Order, but he would like to suggest a little different take here. Maybe what the Board should consider is extending the probationary period of five years by adding another year so that the Board will have another year or so to monitor Dr. Brumfield. Dr. Kumar stated that Dr. Brumfield has had a recent relapse. The Board normally follows physicians for five years after they have been in recovery, and this would give the Board the five years.

Dr. Egner stated that, if Dr. Brumfield were near the end of his probationary period, she would be more in favor of that because that extra year would give the Board additional information. But, he really isn't. She doesn't really see at this point what an extra year would tell the Board. She added that, actually, the next twelve months will provide the Board with the information needed. If Dr. Brumfield intentionally used, he'll use again in the next twelve months. She stated that she doesn't want to change anything.

Mr. Browning arrived at this time.

Dr. Davidson asked whether there is any further discussion prior to the vote to approve and confirm, as amended.

Mr. Browning asked for information about the amendment.

Dr. Davidson stated that the amendment was to ratify the Secretary and Supervising Member's summary suspension.

DR. STEINBERGH MOVED TO AMEND CONCLUSION OF LAW #3 TO STATE:

AS SET FORTH IN FINDINGS OF FACT 3, THE EVIDENCE IS SUFFICIENT TO SUPPORT A CONCLUSION THAT THE CONDUCT OF DR. BRUMFIELD CONSTITUTES A "(V)IOLATION OF THE CONDITIONS OF LIMITATION PLACED BY THE BOARD UPON A CERTIFICATE TO PRACTICE," AS THAT CLAUSE IS USED IN SECTION 4731.22(B)(15), OHIO REVISED CODE.

Dr. Steinbergh stated that she would not amend Conclusions 1 and 2 or the Proposed Order. Dr. Steinbergh stated that she believes that that positive urine screen is sufficient to support the conclusion that there was a violation of the Consent Agreement.

Dr. Egner expressed concern that Dr. Brumfield would lose his job.

Dr. Buchan stated that if this physician intentionally used, the Board will know it. What Dr. Brumfield needs to understand today is that the Board takes this business very seriously. Dr. Buchan stated that he has been fooled before and he may be fooled again; however, at this time, he thinks at least a couple of the Board members are suggesting that the Board proceed with the current Consent Agreement, and he's firmly in favor of that. Dr. Buchan questioned penalizing Dr. Brumfield further by amending the Conclusions of Law. He stated that the Board is either in or out with this physician. They're starting a long course of treatment and care for this physician and should proceed as they have agreed to monitor him. Dr. Buchan stated that he is not in favor of any modifications to the current order.

Dr. Steinbergh stated that she's not suggesting amending the Proposed Order, only the Conclusions of Law. She's not proposing a different Order.

DR. KUMAR SECONDED THE MOTION.

Dr. Robbins stated that, although he's inclined to agree with Dr. Steinbergh's proposed amendment, he is concerned that Dr. Brumfield might lose his job. Dr. Robbins agreed with Dr. Buchan that, in this situation, the Board is either in or out. His sense after reading the case and listening to other Board members is that, if he's going to err here, he's going to err on the side of the doctor. Dr. Robbins added that he's been wrong before, but he doesn't think he's wrong here. Dr. Robbins stated that he would be against the motion on the table because he wouldn't want a negative consequence to potentially happen to Dr. Brumfield's practice.

Dr. Steinbergh stated that she's convinced that this won't affect his practice, considering where he's practicing and the fact that Dr. Goldberg is supportive of him. She thinks that this is a technical matter. There was a positive urine screen. The Board knows that there was cocaine. The Board has evidence that

it is highly unusual that contamination from a nebulizer would produce this positive screen. The Board can't sufficiently explain the positive screen, and she's willing to go on the light side with that and not change the Proposed Order, but there was a screen that was positive. She can't ignore that positive screen. She can move in favor of Dr. Brumfield, say that 30 days out is enough, and allow him to go back into practice. The Board summarily suspended him. Dr. Brumfield has come before the Board and said that his job is only in jeopardy if the Board doesn't return him to practice. She stated that she believes that to be true. She again stated that there is evidence to support a violation of the Consent Agreement. It was violated.

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

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

The motion failed.

Dr. Davidson asked whether there was any further discussion on this matter.

Dr. Bhati stated that the Board needs to take into serious consideration the Secretary and Supervising Member, who diligently looked into this case. Dr. Bhati stated that he has a great deal of respect for Mr. Porter, but he also respects the decisions by the Secretary and Supervising Member who felt that there was clear and convincing evidence of a violation. The Board doesn't know how the violation happened. There is a theory that it happened when Dr. Brumfield used his nebulizer, but that is not a proven theory. Dr. Bhati stated that there is clear and convincing evidence that the violation happened. For the Board to totally ignore that is unjustifiable.

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

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

Dr. Kumar	- aye
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Robbins	- aye
Dr. Garg	- abstain
Dr. Steinbergh	- nay

The motion carried.

Mr. Dilling asked Mr. Browning whether he had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the Reports and Recommendations on this month's agenda, and whether he 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. Mr. Browning responded, "yes," to both questions.



State Medical Board of Ohio

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

December 8, 2004

Daniel Howard Brumfield, M.D.
3243 Rocky Point Road
Springfield, OH 45502

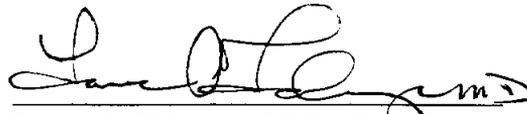
Dear Doctor Brumfield:

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 December 8, 2004, 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:blt
Enclosures

MAILED 12-09-04

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 December 8, 2004, 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 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)

December 8, 2004

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :
 :
 :
 DANIEL HOWARD BRUMFIELD, M.D. :

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 8th day of December, 2004.

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 Daniel Howard Brumfield, M.D., has violated Sections 4731.22(B)(15) and 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. Brumfield's continued practice presents a danger of immediate and serious harm to the public; and

Pursuant to the terms of the Step II Consent Agreement Between Daniel Howard Brumfield, M.D., and the State Medical Board of Ohio, effective January 16, 2004, which states:

If the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that Dr. Brumfield has violated any term, condition or limitation of this Consent Agreement, Dr. Brumfield 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;

The following Order is hereby entered on the Journal of the State Medical Board of Ohio for the 8th day of December, 2004;

It is hereby ORDERED that the certificate of Daniel Howard Brumfield, M.D., to practice medicine or surgery in the State of Ohio be summarily suspended.

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

This Order shall become effective immediately.



Lance A. Talmage, M.D., Secretary

(SEAL)

December 8, 2004

Date



State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF DECEMBER 8, 2004

DANIEL HOWARD BRUMFIELD, M.D. – ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

At this time Ms. Sloan advised that the Secretary and the Supervising Member have determined that, based upon their review of the information supporting the allegations as set forth in the Notice of Summary Suspension and Opportunity for Hearing, there is clear and convincing evidence that Daniel Howard Brumfield, M.D., has violated divisions (B)(15) and (B)(26) of Section 4731.22, Ohio Revised Code, and that, in accordance with the Step II Consent Agreement, Dr. Brumfield entered into with the Board on or about January 16, 2004, such violations constitute clear and convincing evidence that his continued practice presents a danger of immediate and serious harm to the public. They therefore recommend that the Board suspend his certificate without a prior hearing. Copies of a proposed “Notice of Summary Suspension and Opportunity for Hearing” describing the basis for this determination have been distributed to all board members. At this time, the Board members were given the opportunity to review the proposed notice.

MR. BROWNING MOVED TO ENTER AN ORDER OF SUMMARY SUSPENSION IN THE MATTER OF DANIEL HOWARD BRUMFIELD, M.D., IN ACCORDANCE WITH SECTION 4731.22(G), OHIO REVISED CODE, AND TO ISSUE THE NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING. DR. KUMAR SECONDED THE MOTION. A vote was taken:

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

The motion carried.



State Medical Board of Ohio

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NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING

December 8, 2004

Daniel Howard Brumfield, M.D.
3243 Rocky Point Road
Springfield, OH 45502

Dear Doctor Brumfield:

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 Sections 4731.22(B)(15) and 4731.22(B)(26), Ohio Revised Code, and have further determined that, in accordance with the Step II Consent Agreement referenced in paragraph (2) below, such violations constitute clear and convincing evidence that your continued practice presents a danger of immediate and serious harm to the public, as set forth in paragraphs (2) 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 or 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 State Medical Board of Ohio 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 December 11, 2002, you entered into a Step I Consent Agreement with the Board in lieu of formal proceedings based upon your violations of Sections 4731.22(B)(26) and 4731.22(B)(10), Ohio Revised Code, related to cocaine dependency and aiding and abetting the unlicensed practice of medicine by leaving otherwise blank prescribed prescriptions for use by an advanced nurse practitioner and other office staff as well as authorizing office staff to administer influenza injections in your office with no supervising physician present. In this Step I Consent Agreement, you agreed to certain terms, conditions, and limitations, including that your certificate to practice medicine and surgery in the State of Ohio would be suspended for an indefinite period of time, but not less than 270 days. A copy of the Step I Consent Agreement is attached hereto and fully incorporated herein.

- (2) On or about January 16, 2004, you entered into a Step II Consent Agreement with the Board, in lieu of formal proceedings based upon your violations of Sections 4731.22(B)(26) and 4731.22(B)(10), Ohio Revised Code, related to cocaine dependency and aiding and abetting the unlicensed practice of medicine as described in paragraph 1 above. The Step II Consent Agreement reinstated your certificate to practice medicine and surgery in the State of Ohio subject to certain terms, conditions, and limitations, including, *inter alia*, the requirements that you abstain completely from the use of alcohol, that you abstain completely from the personal use or possession of drugs except those prescribed, dispensed, or administered to you by another so authorized who has full knowledge of your history of chemical dependency, that you submit to random drug and alcohol screens on a weekly basis and that you ensure that all screening reports are forwarded directly to the Board on a quarterly basis. A copy of this Step II Consent Agreement is attached hereto and fully incorporated herein.
- (3) Paragraph 8 of the Step II Consent Agreement states that you “shall abstain completely from the personal use or possession of drugs , except those prescribed, dispensed or administered to [you] by another so authorized by law who has full knowledge of [your] history of chemical dependency.” Despite the requirements set forth in the Step II Consent Agreement, the urine specimen you submitted on or about November 3, 2004, tested positive for, and has been GC/MS confirmed for, the presence of cocaine.
- (4) In the Step II Consent Agreement, you agreed that if the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that you have violated any term, condition, or limitation of the agreement, that violation, as alleged, also constitutes clear and convincing evidence that your 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.

Further, Rule 4731-16-02(B)(3)(a), Ohio Administrative Code, provides that an individual’s relapse during or following treatment shall constitute independent proof of impairment and shall support license suspension or denial without the need for an examination.

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

Further, 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.

Pursuant to Chapter 119., Ohio Revised Code, and Chapter 4731., 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.

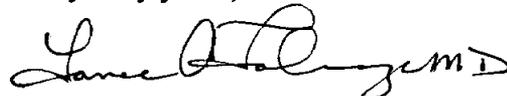
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at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



Lance A. Talmage, M.D.
Secretary

LAT/blt
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5143 2921
RETURN RECEIPT REQUESTED

cc: Elizabeth Collis, Esq.
1650 Lake Shore Drive, Suite 180
Columbus, OH 43215

CERTIFIED MAIL # 7000 0600 0024 5143 2495
RETURN RECEIPT REQUESTED

FEB 0 2 2004

AGREEMENT NUNC PRO TUNC

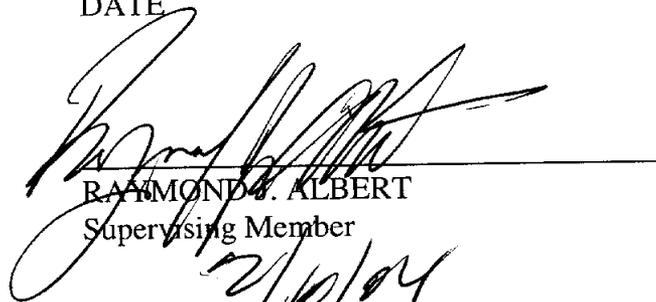
Daniel Howard Brumfield, M.D., the possessor of a license to practice medicine and surgery in the State of Ohio, License # 35-065317, and the State Medical Board of Ohio [Board], entered into a Step II Consent Agreement on January 16, 2004 [January 2004 Step II Consent Agreement]. Dr. Brumfield and the Board mutually acknowledge that Dr. Brumfield's name was inadvertently listed in the January 2004 Step II Consent Agreement as "Donald Howard Brumfield, M.D." and that the January 2004 Step II Consent Agreement should have referred to Dr. Brumfield as "Daniel Howard Brumfield, M.D." Dr. Brumfield and the Board mutually acknowledge that such error does not alter the parties' understanding of the January 2004 Step II Consent Agreement; that the January 2004 Step II Consent Agreement is hereby amended to substitute the name "Donald Howard Brumfield, M.D." with the name "Daniel Howard Brumfield, M.D.;" and that the original terms and conditions of the January 2004 Step II Consent Agreement remain valid and enforceable. Dr. Brumfield and the Board mutually acknowledge that this Agreement Nunc Pro Tunc is hereby permanently attached to and incorporated into the January 2004 Step II Consent Agreement.


DANIEL HOWARD BRUMFIELD, M.D.


LANCE A. TALMAGE, M.D.
Secretary

1/26/04
DATE

2-10-04
DATE


RAYMOND W. ALBERT
Supervising Member
2/10/04
DATE


DAVID P. KATKO
Enforcement Attorney

02/10/04
DATE

STEP II
CONSENT AGREEMENT
BETWEEN
DONALD HOWARD BRUMFIELD, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO

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

Dr. Brumfield 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 Section 4731.22(B)(10), Ohio Revised Code, "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed."
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Sections 4731.22(B)(26) and 4731.22(B)(10), Ohio Revised Code, to wit: Section 2923.03, Ohio Revised Code, Complicity, to wit: Section 4731.41, Ohio Revised Code, Practice of medicine or surgery without certificate, as set forth in Paragraphs E and F of the December 2002 Step I Consent Agreement between Dr. Brumfield and the Board, a copy of which is attached hereto and incorporated herein, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement. Such express reservation includes, but is not limited to, the right to institute formal proceedings based upon any violation related to patient care, or otherwise involving patients, or involving criminal acts, regardless of whether the acts underlying such additional violations are related to the violations of Sections 4731.22(B)(26) and (B)(10), Ohio

Revised Code, as set forth in paragraphs E and F of the December 2002 Step I Consent Agreement.

- C. Dr. Brumfield is applying for reinstatement of his license to practice medicine and surgery in the State of Ohio, License # 35-065317, which was suspended pursuant to the terms of the above-referenced December 2002 Step I Consent Agreement.
- D. Dr. Brumfield states that he is not licensed to practice medicine and surgery in any other State.
- E. Dr. Brumfield admits that after entering treatment at Greene Memorial Hospital [Greene Hall], a Board approved treatment provider in Xenia, Ohio, on November 16, 2002, he successfully completed twenty-eight days of in-patient treatment for cocaine dependence, and was discharged on December 13, 2002.
- F. Dr. Brumfield states that following his discharge from Greene Hall on December 13, 2002, he entered into an aftercare contract with Greene Hall, in December 2002. Dr. Brumfield states, and the Board acknowledges receipt of information to support, that Dr. Brumfield has remained compliant with his aftercare contract with Greene Hall and with terms of the advocacy contract into which he entered with the Ohio Physicians Effectiveness Program in February 2003. Dr. Brumfield further states that such aftercare and advocacy contracts remain in effect to date. Dr. Brumfield further states that he is being followed by his primary care physician for medication management of his diagnosis of depression and is being currently maintained on Effexor XR, 150 mg. daily, with good therapeutic results.
- G. Dr. Brumfield states, and the Board acknowledges, that David D. Goldberg, D.O., of Greene Hall, and Richard N. Whitney, M.D., of Shepherd Hill Hospital, a Board approved treatment provider in Newark, Ohio, have provided written reports indicating that Dr. Brumfield's ability to practice has been assessed and that 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 requirements are in place.
- H. Dr. Brumfield states, and the Board acknowledges receipt of acceptable documentation to support, that Dr. Brumfield successfully completed the course "Appropriate Prescribing of Controlled Substances" presented by the Center for Substance Abuse Education and Research of Mercer University in Atlanta, Georgia, and a five-hour ethics tutorial with Stephen B. Levine, M.D., of the Center for Marital and Sexual Health, in Beachwood, Ohio. Dr. Brumfield and the Board stipulate that the Board provided its prior approval of such courses at its meeting on September 10, 2003.

- I. Dr. Brumfield states, and the Board acknowledges, that Dr. Brumfield has fulfilled the conditions for reinstatement of his certificate to practice medicine and surgery in the State of Ohio, as established in the above-referenced December 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. Brumfield to practice medicine and surgery in the State of Ohio shall be reinstated, and Dr. Brumfield knowingly and voluntarily agrees with the Board to the following PROBATIONARY terms, conditions and limitations:

1. Dr. Brumfield shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
2. Dr. Brumfield 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 December 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. Brumfield 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 December 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. Brumfield should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Brumfield 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. Brumfield 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. Brumfield 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. Brumfield's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Brumfield shall make his patient records with regard to such prescribing available for review by an agent of the Board upon request.
7. Dr. Brumfield 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. Brumfield to administer or personally furnish controlled substances, Dr. Brumfield 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. Brumfield's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Brumfield shall make his patient records with regard to such prescribing, administering, or personally furnishing available for review by an agent of the Board upon request.

Sobriety

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

Drug and Alcohol Screens/Supervising Physician

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

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

Within thirty days of the effective date of this Consent Agreement, Dr. Brumfield shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Brumfield 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. Brumfield.

Dr. Brumfield 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. Brumfield 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. Brumfield must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Brumfield 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. Brumfield's quarterly declaration. It is Dr. Brumfield's responsibility to ensure that reports are timely submitted.

11. The Board retains the right to require, and Dr. Brumfield agrees to submit, blood or urine specimens for analysis at Dr. Brumfield's expense upon the Board's request and without prior notice. Dr. Brumfield'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. Brumfield 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. Brumfield and who is engaged in the same or similar practice specialty.

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

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

Aftercare

14. Dr. Brumfield shall maintain continued compliance with the terms of the aftercare contract entered into with his treatment provider and with the terms of his advocacy contract entered into with the Ohio Physicians Effectiveness Program or, if approved in advance by the Board, another physician health program, 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.

Releases

15. Dr. Brumfield 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

16. Within thirty days of the effective date of this Consent Agreement, Dr. Brumfield 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. Brumfield 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.
17. Within thirty days of the effective date of this Consent Agreement, Dr. Brumfield 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. Brumfield 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. Brumfield 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. Brumfield 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. Brumfield has violated any term, condition or limitation of this Consent Agreement, Dr. Brumfield 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. Brumfield shall not request termination of this Consent Agreement for a minimum of five years. In addition, Dr. Brumfield 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. Brumfield 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. Brumfield hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

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

EFFECTIVE DATE

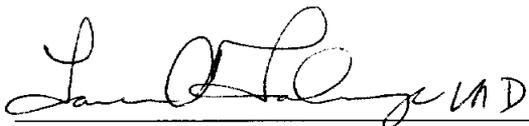
It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.



DONALD HOWARD BRUMFIELD, M.D.

1/7/03

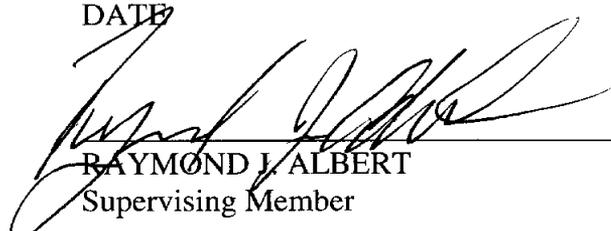
DATE



LANCE A. TALMAGE, M.D.
Secretary

1-14-04

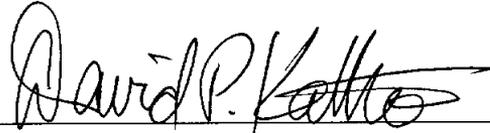
DATE



RAYMOND J. ALBERT
Supervising Member

1/14/04

DATE



DAVID. P. KATKO
Enforcement Attorney

01/16/04

DATE

STEP I
CONSENT AGREEMENT
BETWEEN
DANIEL HOWARD BRUMFIELD, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO

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

Dr. Brumfield 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 Section 4731.22(B)(10), Ohio Revised Code, "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed."

- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Sections 4731.22(B)(26) and 4731.22(B)(10), Ohio Revised Code, to wit: Section 2923.03, Ohio Revised Code, Complicity, to wit: Section 4731.41, Ohio Revised Code, Practice of medicine or surgery without certificate, as set forth in Paragraphs E and 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 violation related to patient care, or otherwise involving patients, or involving criminal acts, regardless of whether the acts underlying such additional violations are related to the violations of Sections 4731.22(B)(26) and (B)(10), Ohio Revised Code, as set forth in paragraphs E and F below.

- C. Dr. Brumfield is licensed to practice medicine and surgery in the State of Ohio, License # 35-065317.
- D. Dr. Brumfield states that he is not licensed to practice medicine and surgery in any other State.
- E. Dr. Brumfield admits that he was initially evaluated at Greene Memorial Hospital [Greene Hall], a Board approved treatment provider in Xenia, Ohio, in November 2002 as required by hospital administration following the observation of unusual behavior on his part and a urine specimen collected on October 30, 2002, that tested positive for cocaine. Dr. Brumfield further admits that his hospital privileges were suspended on a precautionary basis on November 8, 2002. Dr. Brumfield further admits that he entered treatment for cocaine dependency at Greene Hall on November 16, 2002.

Dr. Brumfield further states that he began using cocaine in approximately June 2002 and that his use escalated from weekend use to occasional weekday evening and regular weekend use by October 2002. Dr. Brumfield further states that he sporadically used cocaine, marijuana and hash in 1973 and 1974 and that he used amphetamines on one occasion in 1974 while in the U.S. Army.

- F. Dr. Brumfield admits that, prior to November 2002, he left otherwise blank presigned prescriptions for use by an advanced nurse practitioner and other office staff and states that he did so in order to allow such staff to refill prescriptions. Dr. Brumfield also admits that, while he was being evaluated and during his treatment at Greene Hall in November 2002, he left between 15 and 20 otherwise blank presigned prescriptions at his office for use by his office staff and authorized his office staff to administer influenza injections to patients in his office with no supervising physician present.

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

SUSPENSION OF CERTIFICATE

1. The certificate of Dr. Brumfield to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than 270 days.

Sobriety

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

Releases; Quarterly Declarations and Appearances

4. Dr. Brumfield 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. Brumfield'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. Brumfield 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. Brumfield 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. Brumfield 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. Brumfield shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Brumfield 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. Brumfield shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Brumfield 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. Brumfield. Dr. Brumfield 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. Brumfield 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. Brumfield must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Brumfield 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. Brumfield's quarterly declaration. It is Dr. Brumfield's responsibility to ensure that reports are timely submitted.

Rehabilitation Program

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

CONDITIONS FOR REINSTATEMENT

9. The Board shall not consider reinstatement of Dr. Brumfield's certificate to practice medicine and surgery until all of the following conditions are met:
 - a. Dr. Brumfield shall submit an application for reinstatement, accompanied by appropriate fees, if any.
 - b. Dr. Brumfield shall provide acceptable documentation of successful completion of a course dealing with the prescribing of controlled substances and a separate course dealing with professional ethics. The exact number of hours and the specific content of these courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.
 - c. Dr. Brumfield 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. Brumfield 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. Brumfield'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. Brumfield 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. Brumfield, and any conditions, restrictions, or limitations that should be imposed on Dr. Brumfield'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.

- d. Dr. Brumfield shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the Board or, if the Board and Dr. Brumfield are unable to agree on the terms of a written Consent Agreement, then Dr. Brumfield 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. Brumfield'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. Brumfield 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. Brumfield has maintained sobriety.

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

REQUIRED REPORTING BY LICENSEE

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

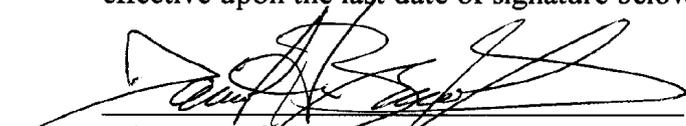
Step I Consent Agreement
Daniel Howard Brumfield, M.D.
Page 8

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

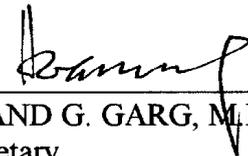
This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code, and may be reported to appropriate organizations, data banks, and governmental bodies. Dr. Brumfield agrees to provide his social security number to the Board and hereby authorizes the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



DANIEL HOWARD BRUMFIELD, M.D.



ANAND G. GARG, M.D.
Secretary

12/9/02

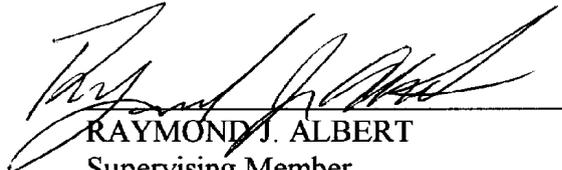
DATE

12/11/02

DATE



Elizabeth V. Collis
Counsel for Dr. Brumfield



RAYMOND J. ALBERT
Supervising Member

12/9/02

date

12/11/02

DATE



REBECCA J. ALBERS, ESQ.
Assistant Attorney General

12/11/02

DATE