BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :

:

ALAN MARTIN GARDNER, M.D. :

ORDER AND ENTRY

On or about July 11, 2007, notice was issued to Alan Martin Gardner, M.D., that the State Medical Board of Ohio intended to consider disciplinary action against his license to practice medicine and surgery in the State of Ohio. The Board having been subsequently notified of Dr. Gardner's demise on or about December 29, 2007, it is hereby ORDERED that the above referenced matter be and is hereby dismissed as MOOT.

Lance A. Talmage, M.D.
Secretary

SEAL

1-9-08
Date

Raymond J. Albert
Supervising Member

1/8/08
Date

State Medical Board of Ohio

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

July 11, 2007

Alan Martin Gardner, M.D.
301 Carpenter Drive East
Battle Creek, MI 49017

Dear Doctor Gardner:

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

(1) On or about March 8, 2006, the Board ratified your Surrender of Certificate to Practice Medicine and Surgery [Surrender], in lieu of formal disciplinary proceedings pursuant to Section 4731.22(B)(19), Ohio Revised Code. Based upon said Surrender, you agreed that you would no longer be permitted to practice medicine and surgery in any form or manner in the state of Ohio. You further agreed that you would be ineligible for, shall not apply for, and that the Board shall not consider reinstatement or restoration of your certificate to practice medicine and surgery, unless and until certain conditions were met, including that you shall cause to be submitted to the Board "a written report indicating that, [your] ability to practice has been psychiatrically assessed and that [you] have been found capable of practicing medicine according to acceptable and prevailing standards of care." Your Surrender stipulates that such psychiatric evaluation shall be conducted within a specified time period that shall commence ninety days immediately preceding the date of initial application filing of your written application form. You agreed that you are responsible for ensuring that the required psychiatric evaluation is accomplished within the specified period of time.

To date you remain subject to all terms, conditions, and limitations of your Surrender, a copy of which is attached hereto and fully incorporated herein.

(2) On or about May 29, 2007, you caused to be submitted the required sworn statement for the Board to deem your Application for License Restoration Medicine or Osteopathic Medicine [Application] as having been filed. Your Application remains pending at this time. Pursuant to the factual stipulations

Mailed 7-12-07

contained in your Surrender, you have not actively practiced medicine and surgery in Ohio since on or about May 13, 2005.

On or about July 10, 2006, the Board received a written report from Howard H. Sokolov, M.D., a psychiatrist and Board-approved evaluator in Columbus, Ohio, indicating that you were evaluated on or about June 8, 2006. In his evaluation, Dr. Sokolov opined that you are not yet ready to resume your medical practice according to acceptable and prevailing standards of care. Dr. Sokolov further opined that you have a number of current issues that need to be resolved in order for you to have a favorable prognosis regarding your future ability to practice medicine.

As alleged in paragraphs (1) and (2) above, you have requested restoration of your certificate to practice medicine and surgery in Ohio and have caused to be submitted to the Board a written report related to a psychiatric evaluation conducted in pursuit of such licensure restoration request, but failed to fulfill the requisite conditions as set forth in the Surrender, that require you to submit to the Board a written report indicating that, no more than ninety days immediately preceding the date of initial application filing of your written application form, you have been psychiatrically evaluated, at which time your ability to practice medicine was assessed and you were found capable of practicing medicine according to acceptable and prevailing standards of care.

Further, your failure to be engaged in the active practice of medicine and surgery for a period in excess of two years, as alleged in paragraph (2) above, constitutes cause for the Board to exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of your fitness to resume practice.

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute "[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills," as that clause is used in Section 4731.22(B)(19), Ohio Revised Code.

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

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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Lance A. Talmage, M.D.
Secretary

LAT/AMS/flb
Enclosures

CERTIFIED MAIL # 91 7108 2133 3931 8318 3824
RETURN RECEIPT REQUESTED

STATE OF OHIO
THE STATE MEDICAL BOARD
SURRENDER OF CERTIFICATE
TO PRACTICE MEDICINE AND SURGERY

I, Alan M. Gardner, M.D., am aware of my right to representation by counsel, which I have exercised; the right of being formally charged; and having a formal adjudicative hearing. I do hereby freely execute this document and choose to take the actions described herein.

I, Alan M. Gardner, M.D., do hereby voluntarily, knowingly, and intelligently surrender my certificate to practice medicine and surgery, license No. 35-066286, to the State Medical Board of Ohio [Board], thereby relinquishing all rights to practice medicine and surgery in Ohio. I understand that as a result of the surrender herein that I am no longer permitted to practice medicine and surgery in any form or manner in the State of Ohio.

I stipulate and agree that I am taking the action described herein in lieu of formal disciplinary proceedings pursuant to Section 4731.22(B)(19), Ohio Revised Code, based upon the following facts:

> My history of problems with mental illness began in 1975, at which time I suffered from a spell of depression after my first divorce and my commencement of medical school. I was hospitalized twice during this period of depression. Subsequently, I had a second breakdown due to depression in 1994, and was diagnosed with Bipolar Disorder, and prescribed Lithium for approximately eighteen months. After this diagnosis, I continued seeing a psychologist for about seven years. Most recently, on May 20, 2005, I was admitted to Flower Hospital in Sylvania, Ohio, after my family convinced me to visit the emergency room due to my depression and suicidal thoughts that included using knives to hurt myself. Upon my discharge from Flower Hospital on May 31, 2005, my principal diagnosis was Bipolar Disorder, Type II, depressed, which was confirmed by a follow-up Diagnostic Assessment. I continue to obtain counseling and psychiatric services.
>
> Due to my condition, I am currently unable to practice medicine and surgery according to acceptable and prevailing standards of care. Further, I have not engaged in the practice of medicine or surgery since on or about May 13, 2005.

I agree that I shall be ineligible for, that I shall not apply for, and that the Board shall not consider reinstatement or restoration of my certificate to practice medicine and surgery,

license No. 35-066286, or issuance of any other certificate to me pursuant to Chapters 4730., 4731., 4760. or 4762., Ohio Revised Code, on or after the date of signing this Surrender of Certificate to Practice Medicine and Surgery, unless and until all of the following conditions are met:

1. I submit an application for reinstatement or restoration of my certificate to practice medicine and surgery, or application for issuance of any other certificate pursuant to Chapters 4730., 4731., 4760. or 4762., Ohio Revised Code, accompanied by appropriate fees, if any. Such application shall be a written application under oath on the form prescribed by the Board. Further, my initial submission of such written application form to the Board must include an attached sworn statement in which I attest that I have undertaken a psychiatric evaluation in conformance with the requirements set forth in Paragraph 2 below, and stating the date(s) upon which such evaluation occurred. Any written application form that I attempt to submit which does not include such sworn statement, or any written application form which includes a sworn statement documenting an evaluation not in conformance with the requirements set forth in Paragraph 2 below, shall be deemed by the Board to be null and void, and shall not be processed by the Board.

   The date upon which the Board receives my written application form and requisite accompanying sworn statement shall be deemed the date of initial application filing.

2. I demonstrate to the satisfaction of the Board that I can resume practice in accordance with acceptable and prevailing standards of care under the provisions of my certificate. Such demonstration shall include, but shall not be limited to, my causing to be submitted to the Board a written report indicating that my ability to practice has been psychiatrically assessed and that I have been found capable of practicing according to acceptable and prevailing standards of care. In order to ensure appropriate integrity of information, such written psychiatric evaluation report must be provided to the Board directly from the evaluating psychiatrist. Further, the written psychiatric evaluation report shall be based upon an examination performed by a psychiatrist approved in advance by the Board for the purpose of evaluating me. Such evaluation shall be accomplished in a single appointment date or over a series of appointment dates at the evaluator's discretion, and shall be at my own expense.

   Prior to the examination, I shall provide the evaluating psychiatrist with copies of all patient records from any evaluations and/or treatment that I have received and a copy of this Surrender of Certificate, as well as any other information I deem may be appropriate or helpful to the evaluating psychiatrist, provided that I supply the same information to the Board at the time I submit such information to the evaluator. Additionally, the Board may provide the evaluating psychiatrist with any information that it deems may be appropriate or helpful to the evaluating psychiatrist. The written report from the evaluating

psychiatrist shall include the evaluating psychiatrist's diagnoses and conclusions; any recommendations for care, counseling and treatment for the psychiatric diagnoses; any conditions, restrictions, or limitations that should be imposed on my practice; and the bases for the psychiatrist's determinations.

In order to ensure that such psychiatric evaluation occurs within a time frame contemporaneous with my request for reinstatement or restoration of my certificate to practice medicine and surgery, or my request for issuance of any other certificate pursuant to Chapters 4730., 4731., 4760. or 4762., Ohio Revised Code, such psychiatric evaluation shall be conducted within a specified time period that shall commence 90 days immediately preceding the date of initial application filing of my written application form. I agree that I am responsible for ensuring that the required psychiatric evaluation is accomplished within the specified period of time.

3. In the event that the psychiatric evaluation required pursuant to Paragraph 2 above results in a determination that I am unable to practice according to acceptable and prevailing standards of care, the Board shall thereafter issue to me, pursuant to Chapter 119. of the Ohio Revised Code, a written notice and opportunity for a hearing setting forth the Board's allegations of my violation of Section 4731.22(B)(19), Ohio Revised Code. The written report of the psychiatric evaluation required pursuant to Paragraph 2 above may be introduced as evidence by the Board at any such hearing and/or used in any subsequent Board action.

4. In the event that the psychiatric evaluation required pursuant to Paragraph 2 above results in a determination that I am able to practice according to acceptable and prevailing standards of care, or alternatively, that I am able to practice according to acceptable and prevailing standards of care subject to certain treatment, monitoring or supervision, and/or certain conditions, restrictions or limitations upon my practice, I agree that any reinstatement or restoration of my certificate to practice medicine and surgery, or issuance to me of any other certificate pursuant to Chapters 4730., 4731., 4760. or 4762., Ohio Revised Code, shall be subject to the terms of a written Consent Agreement for a period of not less than five years. Such written Consent Agreement shall include probationary terms, conditions and limitations as determined by the Board or, if the Board and I are unable to agree on the terms of a written Consent Agreement, then I further agree 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.

5. In the event that I have not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to my application for reinstatement or restoration of my certificate to practice medicine and surgery, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of my fitness to resume practice.

I, Alan M. Gardner, M.D., acknowledge that in the event that I apply for reinstatement or restoration of my certificate to practice medicine and surgery in Ohio, or I apply for issuance of any other certificate pursuant to Chapters 4730., 4731., 4760. or 4762., Ohio Revised Code, the State Medical Board of Ohio may, based upon the violations of Section 4731.22(B)(19) Ohio Revised Code, as set forth above, or upon any other legal basis, deny my request for reinstatement, restoration or issuance of any other certificate pursuant to Chapters 4730., 4731., 4760. or 4762., Ohio Revised Code or, if a license is granted to me at that time, place terms, conditions, and limitations on such license.

In addition, I agree that in the event that I apply for reinstatement or restoration of my certificate to practice medicine and surgery in Ohio, or I apply for issuance of any other certificate pursuant to Chapters 4730., 4731., 4760. or 4762., Ohio Revised Code, the State Medical Board of Ohio shall have full authority to investigate any matters pertinent to my application, including but not limited to, my ability to practice according to acceptable and prevailing standards of care and any criminal, civil, administrative, and/or disciplinary matters concerning me regardless of whether such investigation relates to the facts stipulated above or any of my other acts, conduct, and/or omissions, either presently known or unknown to the Board and irrespective of whether such investigation concerns matters that have occurred in the past or arise in the future. I further agree that, as part of any future application process, I will authorize release to the State Medical Board of Ohio of any and all documents related to my compliance with and/or monitoring by any agency responsible for regulating the practice of medicine and surgery in another jurisdiction; physicians health committee or other chemical dependency aftercare program; and health provider, including but not limited to, psychiatric treatment related to my diagnoses of depression and Bipolar Disorder, Type II, depressed.

I, Alan M. Gardner, M.D., hereby release the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

This document 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. I, Alan M. Gardner, M.D., acknowledge that my social security number will be used if this information is so reported and agree to provide my social security number to the Board for such purposes.

EFFECTIVE DATE

It is expressly understood that this Surrender of Certificate 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.

Signed this 3rd day of March, 2006

Alan M. Gardner, M.D.

Sworn to and subscribed before me this 3rd day of March, 2006.

(SEAL)

Notary Public

SUSAN M. SWANK
Notary Public, State of Ohio
Commission Expires 3/12/07

Charles M. Boss
Attorney for Dr. Gardner

3-3-06
Date

On behalf of the State Medical Board of Ohio:

Lance A. Talmage, M.D.
Secretary

3-8-06
Date

Raymond J. Albert
Supervising Member

3/8/06
Date