



STATE MEDICAL BOARD OF OHIO
77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614)466-3934

December 3, 1997

Russell B. Allison, M.D.
4208 Glasgow Road
Valencia, PA 16059

Dear Doctor Allison:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Melinda R. Early, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on December 3, 1997, 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 may be taken to the Franklin County Court of Common Pleas only.

Such an appeal setting forth the Order appealed from and the grounds of 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 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

Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. Z 395 591 674
RETURN RECEIPT REQUESTED

cc: Kevin B. Byers, Esq.
CERTIFIED MAIL RECEIPT NO. Z 395 591 675
RETURN RECEIPT REQUESTED

Mailed 12/23/97

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Melinda R. Early, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on December 3, 1997, 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 Russell B. Allison, 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.


Anand G. Garg, M.D.
Secretary

(SEAL)

12/23/97
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

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RUSSELL B. ALLISON, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on December 3, 1997.

Upon the Report and Recommendation of Melinda R. Early, 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. The certificate of Russell B. Allison, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for a period of one year. Such suspension is **STAYED**, subject to the following **PROBATIONARY** terms, conditions, and limitations for a period of five years.
 - a. Dr. Allison shall obey all federal, state, and local laws, and all rules governing the practice of medicine in the state in which he is practicing medicine.
 - b. Dr. Allison shall immediately notify the Board of any action in any other state taken against a certificate to practice medicine held by Dr. Allison in that state. Additionally, once another state has taken action against Dr. Allison's certificate to practice medicine in that state, then Dr. Allison shall immediately notify the Board in writing of any modification or change to any term, condition, or limitation imposed by another state medical board. Moreover,

Dr. Allison shall provide acceptable documentation verifying the other state boards' actions.

- c. Dr. Allison shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution stating whether he has complied with all the terms, conditions, and limitations imposed by this Board, and any other state medical board. 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 the probation becomes effective, provided that if the effective date is on or after the 16th 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. Moreover, Dr. Allison shall cause to be submitted to the Board copies of the declarations and reports that he submits to any other state medical board whenever such submission is required.
- d. Within thirty (30) days of the effective date of this Order, Dr. Allison 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 a license to practice. Dr. Allison further agrees to provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for licensure or reinstatement of licensure. Further, Dr. Allison shall provide this Board with a copy of the return receipt as proof of notification within thirty (30) days of receiving that return receipt.
- e. Dr. Allison shall appear in person for interviews before the full Board or its designated representative within three months of the effective date of this Order, and upon his request for the termination of the probationary period, or as otherwise requested by the Board.
- f. Dr. Allison shall immediately notify the Board in writing should he fail to comply with any term, condition, or limitation of this probation or with any term, condition, or limitation imposed by any other state medical board.

- g. Within thirty (30) days of the effective date of this Order, *Dr. Allison shall provide a copy of this Order to all employers or entities with which he is under contract to provide physician services or is receiving training, and the Chief of Staff at each hospital where Dr. Allison has privileges or appointments. Further, Dr. Allison shall provide a copy of this Order to all employers or entities with which he contracts to provide physician services, or applies for or receives training, and the Chief of Staff at each hospital where Dr. Allison applies for or obtains privileges or appointments.*
- h. *Dr. Allison 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. Allison's history of chemical dependency.*
- i. *Dr. Allison shall abstain completely from the use of alcohol.*
- j. *Dr. Allison shall provide the Board, quarterly, with acceptable documentation evidencing his continuing compliance with the Gateway Rehabilitation Center's recommended treatment plan consisting of at least the following requirements:*
 - i. *Continuous participation in a drug and alcohol rehabilitation program, such as AA, NA, or Caduceus, approved in advance by the Board specifically for Dr. Allison, at least three times per week, or as otherwise directed by the Board;*
 - ii. *Weekly random drug screens;*
 - iii. *Weekly meetings with a monitoring physician with whom Dr. Allison has established a relationship. The monitoring physician shall provide acceptable documentation to the Board at regular intervals; and*
 - iv. *Weekly counseling sessions, either individual or group, with a counselor with whom Dr. Allison has established a relationship.*
- k. *Within thirty (30) days of the effective date of this Order, Dr. Allison shall submit, for the Board's prior approval, the name*

of a monitoring physician. The monitoring physician shall monitor Dr. Allison and provide the Board with reports on Dr. Allison's progress and status on a quarterly basis. Dr. Allison shall ensure that said reports are forwarded to the Board on a quarterly basis.

In the event that the approved monitoring physician becomes unable or unwilling to so serve, Dr. Allison shall immediately so notify the Board in writing and shall make arrangements for another physician to monitor Dr. Allison's progress and status as soon as practicable. Dr. Allison shall further ensure that the previously designated monitoring physician also notifies the Board directly of the inability to continue to serve and the reasons therefor.

All monitoring physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Allison's quarterly declaration. It is Dr. Allison's responsibility to ensure that the reports are timely submitted.

1. Dr. Allison shall continue counseling with a treatment provider approved by the Board, at such intervals as are deemed appropriate by the treatment provider. The sessions shall be in person and may not be conducted by telephone or other electronic means.

Dr. Allison shall continue in counseling until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the approved treatment provider. Dr. Allison shall ensure that reports are forwarded by the treatment provider to the Board on a quarterly basis, or as otherwise directed by the Board. It is Dr. Allison's responsibility to ensure that the quarterly reports are received in the Board's offices no later than the due date for Dr. Allison's quarterly declaration.

- m. Dr. Allison shall provide acceptable documentation of successful completion of a course dealing with the prescribing of controlled substances. 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 biennial registration period(s) in which they are completed.

- n. Dr. Allison shall refrain from commencing practice in Ohio without prior written Board approval. Moreover, should he commence practice in Ohio, the Board may place Dr. Allison's certificate under additional terms, conditions, or limitations, including the following:

- i. Dr. Allison shall appear in person for quarterly interviews before the full Board or its designated representative, 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. Although the Board will normally give him written notification of scheduled appearances, it is Dr. Allison's responsibility to know when personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Allison shall immediately submit to the Board a written request to be notified of his next scheduled appearance.

- ii. Dr. Allison shall submit to the Board and receive its approval for a plan of practice in Ohio.
- iii. Dr. Allison shall comply with any requirements the Board determines are then necessary to ensure his fitness to practice medicine and surgery.
- iv. In the event that Dr. Allison has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to notifying the Board of his intent to practice in Ohio, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.

2. If Dr. Allison violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including, the permanent revocation of Dr. Allison's certificate.

In the Matter of Russell B. Allison, M.D.

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3. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Allison's certificate shall be fully restored.

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

(SEAL)

Anand G. Garg, M.D. / ggc
Anand G. Garg, M.D.
Secretary

12/23/97
Date

**REPORT AND RECOMMENDATION
IN THE MATTER OF RUSSELL B. ALLISON, M.D.**

The Matter of Russell B. Allison, M.D., was heard on July 14, 1997, by Melinda R. Early, Attorney Hearing Examiner for the State Medical Board of Ohio.

INTRODUCTION

I. Basis for Hearing

- A. The State Medical Board of Ohio [Board] notified Russell B. Allison, M.D., by letter dated April 9, 1997, that it intended to determine whether to take disciplinary action against his certificate for one or more of the following reasons:

On or about September 24, 1996, in the Tuscarawas County Court, Uhrichsville, Ohio, [Dr. Allison] pleaded no contest and was found guilty of one first degree misdemeanor count of Attempted Drug Abuse involving a Schedule II controlled substance, in violation of Sections 2923.02 and 2925.11, Ohio Revised Code, and one third degree misdemeanor count of Drug Abuse involving a Schedule IV controlled substance, in violation of Section 2925.11, Ohio Revised Code.

Further, the Board asserted that Dr. Allison's acts which resulted in his conviction, as more particularly described in this Report and Recommendation, were subject to disciplinary action. Accordingly, the Board asserted that Dr. Allison's "acts, conduct, and/or omissions * * * individually and/or collectively, constitute[d]:

- a) '(s)elling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, or a judicial finding of guilt 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; and
- b) '(c)ommission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act was committed,' as

that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.11, Ohio Revised Code.

The Board advised Dr. Allison of his right to request a hearing in this matter. (State's Exhibit [St. Ex.] 1).

- B. Kevin P. Byers, Esq., requested a hearing in Dr. Allison's behalf on May 9, 1997. (St. Ex. 3).

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Anne Berry Strait, Assistant Attorney General.
- B. On behalf of the Respondent: Kevin P. Byers, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

- A. Presented by the State
1. Scott M. Beckley
 2. James P. Myers
 3. Russell B. Allison, M.D., as on cross-examination
- B. Presented by the Respondent
1. Russell B. Allison, M.D.

II. Exhibits Examined

In addition to State's Exhibits 1 and 3, noted above, the following exhibits were identified and admitted into evidence:

- A. Presented by the State
- * 1. State's Exhibit 2: Patient Key
 2. State's Exhibit 4: Respondent's Notice of Appearance, filed on or about May 9, 1997.

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3. State's Exhibit 5: Respondent's Request for List of Witnesses and Documents, filed on or about May 9, 1997.
4. State's Exhibit 6: May 12, 1997, letter to Dr. Allison from the Board advising that the hearing had been scheduled for May 20, 1997, but further advising Dr. Allison that said hearing had been postponed. (2 pp.)
5. State's Exhibit 7: May 13, 1997, letter to Dr. Allison from the Board scheduling the hearing for July 2, 1997. (2 pp.)
6. State's Exhibit 8: Respondent's May 29, 1997, Motion for Continuance of Hearing with supporting Memorandum. (2 pp.)
7. State's Exhibit 9: June 3, 1997, Entry granting Respondent's motion for continuance.
8. State's Exhibit 10: Notice of Appearance of Counsel for State.
9. State's Exhibit 11: State's Request for List of Witnesses and Documents. (2 pp.)
10. State's Exhibit 12: State's Request for Issuance of Subpoenas. (2 pp.)
11. State's Exhibit 13: State's Response to Respondent's Request for List of Witnesses and Documents. (2 pp.)
12. State's Exhibit 14: Certified copy of September 24, 1996, Judgment Entry, filed in Tuscarawas County Court, Uhrichsville, Ohio, reflecting the Court's acceptance of Dr. Allison's plea of "no contest" to: a) one count of attempted drug abuse involving a Schedule II controlled substance, in violation of Section 2923.02, Ohio Revised Code, and Section 2925.11, Ohio Revised Code, a misdemeanor of the first degree; and b) one count of Drug abuse involving a Schedule IV controlled substance, a misdemeanor of the third degree. The Court therefore found Dr. Allison guilty of the above charged offenses, and sentenced him to serve thirty days in the Tuscarawas County Jail, or, the Renewal, Inc., facility in Pittsburgh, PA. (2 pp.)

13. State's Exhibit 15: Certified copy of September 24, 1996, Judgment Entry, filed in Tuscarawas County Court, Uhrichsville, Ohio, ordering the release of Dr. Allison's vehicle which had been impounded following his arrest by the Uhrichsville Police. (2 pp.)
14. State's Exhibit 16: Certified copy of November 26, 1996, Judgment Entry, filed in Tuscarawas County Court, Uhrichsville, Ohio, ordering the destruction of evidence obtained during the search of Dr. Allison's hotel room and motor vehicle. (4 pp.)
15. State's Exhibit 17: Certified copy of Dr. Allison's January 30, 1997, Motion to Reconsider Sentence, filed in Tuscarawas County Court, Uhrichsville, Ohio. (2 pp.)
16. State's Exhibit 18: December 2, 1995, Laboratory Report from The Ohio State University Medical Center, containing Drug Abuse Panel 10, GCMS results.
17. State's Exhibit 19: December 14, 1995, Bureau of Criminal Identification and Investigation Report. (2 pp.)
18. State's Exhibit 20: November 25, 1995, BAC DataMaster Report.
19. State's Exhibit 21: Copy of Miranda Rights Statement Dr. Allison signed at the Uhrichsville, Ohio, Police Department on November 25, 1995.
20. State's Exhibit 22: Copy of NES Central, Inc., work schedule for November and December 1995 for Twin City Hospital, Dennison, Ohio. (4 pp.)
- * 21. State's Exhibit 23: January 22, 1997, letter from Gateway Greentree Rehabilitation Center to Dr. Allison's criminal attorney. (2 pp.)

B. Presented by the Respondent

1. Respondent's Exhibit A: Dr. Allison's Curriculum Vitae. (4 pp.)
- * 2. Respondent's Exhibit B: Copy of Dr. Allison's Agreement with Physicians' Health Programs [PHP], together with information about PHP. (23 pp.)

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3. Respondent's Exhibit C: Copy of July 10, 1997, letter from Donna Dolan, R.N., Clinical Charge Nurse, Allegheny General Hospital Orthopedic team outlining Dr. Allison's skills as an orthopedic surgeon.
4. Respondent's Exhibit D: Copy of July 8, 1997, letter from Mark E. Baratz, M.D., Associate Professor of Orthopaedic Surgery, outlining Dr. Allison's skills as an orthopedic surgery resident.
5. Respondent's Exhibit E: Copy of July 9, 1997, letter from Patrick C. Dunster, M.D., Joel Pomerene Memorial Hospital, supporting Dr. Allison.
6. Respondent's Exhibit F: Copy of July 10, 1997, letter from Timothy J. Sweet, Associate Pastor, First Presbyterian Church, Bakerstown, PA, supporting Dr. Allison.
7. Respondent's Exhibit G: Copy of July 8, 1997, letter from Dr. Allison's wife supporting Dr. Allison.
8. Respondent's Exhibit H: July 10, 1997, letter from Richard L. Ray, M.D., to the Board supporting Dr. Allison. (2 pp.)
- * 9. Respondent's Exhibit I: Copy of July 8, 1997, letter from John D. Massella, M.Ed., Gateway Greentree Rehabilitation Center to Mr. Byers, regarding Dr. Allison's recovery progress.

NOTE: An * preceding an exhibit explanation denotes a document which is sealed to protect confidentiality.

C. Post Hearing Admissions

1. The hearing record was kept open for the submission of Respondent's Exhibit J, a July 8, 1997, letter from Thomas R. Hobbs, PhD., M.D., of Physicians' Health Programs regarding Dr. Allison's compliance with his agreement with PHP. Accordingly, this exhibit is admitted to the hearing record. (Note: This exhibit will be sealed to protect confidentiality.)
2. The hearing record remained open for receipt of court documents regarding Dr. Allison's motion for reconsideration of the criminal

sentence which was pending at the time of hearing. During this time, the Hearing Examiner learned that Dr. Allison's motion had been denied and that he was serving a thirty day sentence at Renewal, Inc., in Pittsburgh, Pennsylvania. A judgment entry from the Tuscarawas County Court, Uhrichsville, Ohio, denying Dr. Allison's motion, however, was not available. Thus, in order to close the hearing record with appropriate documentation, the parties' agreed to Dr. Allison submitting an affidavit outlining the sentence he served and any additional treatment he received while at Renewal, Inc. Accordingly, Dr. Allison's affidavit is admitted to the hearing record as Board Exhibit A.

3. During the time the record remained open for receipt of Tuscarawas County Court documents, Dr. Allison's criminal attorney forwarded the Hearing Examiner a copy of Conditions of Probationary Status in Orthopaedic Surgery Residency Training Program. Both parties agreed that this was relevant information that should be included with the hearing record. Accordingly, Dr. Allison submitted a fully executed copy of the Conditions. This document is admitted to the record as Board Exhibit B. Additionally, an updated letter from the Physicians' Health Programs regarding Dr. Allison's status is admitted to the record as Board Exhibit C. (Note: This document will be sealed to protect confidentiality.)
4. On the Hearing Examiner's own admission, copies of excerpts from *Facts and Comparisons* regarding Cocaine and Zolpidem are admitted to the hearing record as Board Exhibit D.

SUMMARY OF EVIDENCE

All transcripts and exhibits, whether or not specifically referred to herein, were thoroughly reviewed and considered by the Attorney Hearing Examiner prior to the preparation of this Report and Recommendation.

1. Russell B. Allison, M.D., graduated from Arkansas Tech University, with honors, in 1989. Prior to entering college, however, Dr. Allison worked as a professional rodeo cowboy, and ran his family's cattle ranch. In May 1993, Dr. Allison received a Doctor of Medicine from the University of Arkansas for Medical Sciences, Little Rock, Arkansas. Dr. Allison subsequently entered a transitional internship at the University Hospital of Arkansas from July 1993 to June 1994. He then entered the orthopaedic surgery residency at Allegheny

General Hospital, Pittsburgh, Pennsylvania, in July 1994. Dr. Allison is presently completing the orthopaedic surgery residency at Allegheny General Hospital and is serving as chief resident. Dr. Allison plans to return to Russelville, Arkansas, to establish a private orthopaedic practice when he completes his residency. (Respondent's Exhibit [Resp. Ex.] B; Transcript [Tr.] 66-67; 96-100).

2. On September 24, 1996, the Tuscarawas County Court, Uhrichsville, Ohio, found Dr. Allison guilty of: a) Attempted Drug abuse involving a Schedule II controlled substance, a first degree misdemeanor; and b) Drug abuse, involving a Schedule IV controlled substance, a third degree misdemeanor. Prior to entering this finding, the Court had accepted Dr. Allison's "no contest" plea to an amended complaint which charged Dr. Allison with Attempted Drug abuse involving a Schedule II controlled substance, in violation of Sections 2925.11, Ohio Revised Code, and 2923.02, Ohio Revised Code; and Drug abuse involving a Schedule IV controlled substance, a violation of Section 2925.11, Ohio Revised Code. The Court sentenced Dr. Allison to thirty days in the Tuscarawas County jail, or thirty days at Renewal, Inc., a facility in Pittsburgh, Pennsylvania. Moreover, the Court ordered Dr. Allison to commence the confinement within six months of the date of the Order. Further, the Court fined Dr. Allison the mandatory fines of \$1,500 for Attempted Drug abuse involving a Schedule II controlled substance, and \$500 for Drug abuse involving a Schedule IV controlled substance. The acts which led to Dr. Allison's arrest and conviction occurred at or around 1:20 A.M., November 25, 1995, in Uhrichsville, Ohio. (St. Ex. 14; Tr. 20).
3. In the early morning hours of November 25, 1995, the Uhrichsville, Ohio, police observed Dr. Allison driving erratically on a public street, going left of center, driving in the wrong lane for blocks at a time, as well as driving up onto a median curb dividing the north and south bound traffic lanes.¹ The

¹ The Board asserted in its April 9, 1997, notice of opportunity for hearing letter that Dr. Allison was arrested by the Uhrichsville Police Department on November 25, 1995, after his truck struck a concrete divider at an intersection. During a search of Dr. Allison's vehicle, the Police confiscated an opened bottle of "Lite Ice" and a white powdery residue. Subsequent testing confirmed the presence of cocaine in the white powdery substance.

Moreover, the Board asserted that after Dr. Allison was transported to the police station, he submitted to a BAC Datamaster breathalyzer which registered 0.079 grams of alcohol per 210 liters of breath. Further, urine drug screen results were positive for cocaine, benzoylecgonine, and alcohol at 0.088 grams per deciliter.

Further, the Board asserted that the Police searched Dr. Allison's hotel room and confiscated a white rock-like substance. Subsequent testing confirmed that cocaine was present in the white rock-like substance.

first officer who had observed Dr. Allison, James P. Myers, called a second police officer for assistance. The second police officer, Scott Beckley, followed Dr. Allison and was able to stop him after using both lights and the siren. After approaching Dr. Allison, Officer Beckley noted an alcoholic odor and attempted to administer a field sobriety test consisting of a basic balance test. Dr. Allison, however, was unable to complete the test and started to fall as the test was being administered. Officer Myers, as the senior police officer on the scene, decided to stop the test for Dr. Allison's safety. The police then took Dr. Allison into custody.

The police officers explained that by taking Dr. Allison into custody, they were required to search both Dr. Allison and his truck. In searching Dr. Allison, the police discovered Dr. Allison was wearing a white T-shirt, boxer shorts with a belt holding his pager, socks, tennis shoes, a baseball cap, and a coat. Although Dr. Allison had advised the police he did not have any identification with him, the police found Dr. Allison's wallet with his identification in his coat pocket. In searching Dr. Allison's truck, the police confiscated a bottle of "Bud Ice" beer.² Moreover, Officer Beckley noted a white powdery substance on the truck console, and therefore, secured as much as possible of the substance and then had the entire console removed. The console and the white substance were subsequently submitted to the Bureau of Criminal Investigation [BCI] for analysis. (Tr. 21-53).

4. After taking him into custody, the police advised Dr. Allison that he was being charged with operating a motor vehicle under the influence of alcohol, drugs, or both alcohol and drugs. Accordingly, the police administered a BAT DataMaster test for determining alcohol levels. The test reflected that Dr. Allison had 0.079 grams of alcohol per 210 liters of breath, a legal alcohol level under Ohio law. Nevertheless, based on Dr. Allison's behavior before and after the arrest, the police decided to run additional testing and asked Dr. Allison for his consent to perform a urinalysis. Dr. Allison consented to the test. He then confessed to the police that the urinalysis would be positive for cocaine and some pills he had been taking. Moreover, Dr. Allison advised the police that there could be more cocaine in his hotel room. Consequently, the police asked Dr. Allison for permission to search his hotel room.

Moreover, the police confiscated a prescription bottle containing Ambien, a Schedule IV controlled substance. The prescription for Ambien was written by Dr. Allison as the prescribing physician for Patient 1.

² Officer Myers testified that he confiscated a bottle of "Bud Ice" from Dr. Allison's truck in performing an administrative search. Court documents, however, identified the bottle of beer as "Lite Ice."

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Initially, Dr. Allison consented to a search of his hotel room. However, as the effects of drugs began to dissipate and Dr. Allison became more aware of his environment, he politely, but firmly, rescinded the consent. The police then obtained a search warrant and performed a search of Dr. Allison's hotel room. The following items were confiscated:

- a. One, silver steel mesh scrub pad;
- b. A white rock-like substance; and
- c. One prescription bottle containing 16, Ambien, 10 mg., written in the name of Patient 1. Dr. Allison was the prescribing physician.

The items confiscated from Dr. Allison were sent to the BCI for analysis and demonstrated the following:

- a. The white rock-like substance contained 0.15 gram cocaine;
- b. The prescription vial contained 1.92 gram zolpidem; and
- c. The white powdery residue recovered from the truck console was positive for cocaine, containing a total of 0.11 gram.

The steel mesh scrub pad was not tested at BCI, however.

(St. Exs. 19, 20; Tr. 35-42; 47-53; 75).

5. The drug abuse panel performed on Dr. Allison's urine was positive for cocaine, benzoylecgonine, and 0.088 g/dl alcohol. (St. Ex. 18; Tr. 43).
6. Officer Myers stated that while he was in custody, Dr. Allison expressed concern about being able to report to work on time at Twin City Hospital. Additionally, Officer Beckley noted that as Dr. Allison became more aware of his environment while in custody, he asked Officer Beckley where his pants were and what he had been doing when he was stopped by the police. Both Officer Beckley and Officer Myers noted that Dr. Allison was very cooperative and polite during the time he was in police custody. (Tr. 29-30; 36, 51, 55).
7. Dr. Allison stated that he first used cocaine during his freshman year at Arkansas Tech University. Dr. Allison further stated that prior to this, with the exception of one marijuana cigarette, he had never used any other type of drug. Dr. Allison did, however, admit to occasionally drinking beer and liquor. Dr. Allison stated that he

knew the very moment he used cocaine it would have a hold on him. Consequently, Dr. Allison's cocaine use escalated over a six month period to weekly use of the drug. When cocaine began to impact his family life, however, he realized he had a problem and voluntarily entered an outpatient rehabilitation program. Following the completion of the outpatient treatment program, Dr. Allison continued to attend AA meetings for some period of time. Dr. Allison stated that his life went along pretty well for a few years until the first year of medical school when he was exposed to people who used cocaine. Dr. Allison once again succumbed to this influence and used cocaine, infrequently, during the first year of medical school. Dr. Allison stated that he fairly quickly recognized what was happening and once again started attending meetings. Dr. Allison additionally stated that through his church affiliation he was able to stay away from the people and the environment that made him susceptible to using cocaine.

Dr. Allison successfully refrained from cocaine use until November 24, 1995, the day before he was arrested in Uhrichsville, Ohio. Dr. Allison stated that some of his co-workers at Allegheny General Hospital used cocaine and he allowed himself to become complacent about cocaine use when in the presence of these co-workers. Thus, he set himself up for failure by agreeing to meet these co-workers the day after Thanksgiving. Dr. Allison stated that he had received a very good evaluation for the rotation he had just completed and had the day off before reporting to Twin City Hospital in Dennison, Ohio, to work a twenty-four hour shift in the emergency room. Prior to leaving for Ohio, Dr. Allison met the co-workers at one of the co-worker's homes and used cocaine. He then left Pittsburgh and drove to Uhrichsville, Ohio, where he had planned to spend the night before reporting to work at 6:00 a.m.

Dr. Allison remembers that after arriving in Uhrichsville, he stopped and ate a pizza and drank two beers. Dr. Allison stated that he felt he was no longer then under the influence of the cocaine because he could eat. He then returned to his hotel room and took Ambien. That is the last thing he remembers before awakening in the Uhrichsville Police Station. Dr. Allison further stated that he had no recollection of many of the details of the incident which led to his arrest until the police officers testified at hearing. Thus, he could not explain why he was driving through town partially dressed, how much beer he had had in his truck, or how, or when, he obtained the cocaine the police found in his hotel room. (St. Ex. 22; Tr. 63-74).

8. Dr. Allison stated that he wrote the prescription for Ambien in his wife's name intending to use it himself for treatment of bruxism. Dr. Allison explained that sleeping pills were a suggested treatment for this condition although this was the first time he had ever used a sleep aid. Dr. Allison stated that when

he prescribed Ambien in his wife's name he thought it was harmless. He now recognizes, however, that prescribing medication in this manner is wrong. Thus, he now knows to ask his family physician to prescribe the medications he needs. (Tr. 74-76).

9. Following his arrest in Uhrichsville, Dr. Allison recognized that he must be experiencing unresolved problems that would cause him to jeopardize his loving, supportive family and his career. Thus, he began to search for appropriate rehabilitation services and learned of the Physicians' Health Programs [PHP] operated by the Pennsylvania Medical Society. Through PHP, Dr. Allison learned of Gateway Rehabilitation Services [Gateway] where he underwent an evaluation. As a result of the evaluation, Gateway recommended Dr. Allison enter a thirty day outpatient treatment program. The thirty day treatment program consisted of three meetings a week based on the 12-step program. The primary goal of the thirty day treatment program is to ensure that participants recognize and admit their substance abuse problem. After partially completing the rehabilitation program, Dr. Allison was transferred to an Impaired Professionals Group. Dr. Allison attended sessions with this group for more than three months. He then moved to Tampa, Florida, to complete a medical rotation. Nevertheless, he maintained treatment through the Florida Physicians' Rehabilitation Network where he attended group meetings twice weekly. Additionally, Dr. Allison arranged to have the Florida Physicians' Rehabilitation Network monitor his urinalyses.

When he returned to Pittsburgh, Dr. Allison renewed his counseling with Gateway Rehabilitation Center's Impaired Professionals Group which he continues to attend. He additionally attends AA meetings, primarily on the weekends. Moreover, Dr. Allison submits to at least two random urinalyses per month. The urinalysis results have all been negative. (St. Ex. 23; Resp. Ex. I; Tr. 77-82).

10. Dr. Allison has additionally entered into an agreement with PHP for a three year period commencing December 7, 1995, and concluding December 6, 1998. The critical terms of this agreement are:
 - a. Dr. Allison is to undergo both individual and group therapy for at least two years, or until such time that he is released by the attending therapists;
 - b. Dr. Allison is to attend three, 12-step programs weekly and, when possible, attend Caduceus Club meetings or other professional recovery group meetings;

- c. Dr. Allison is to submit one random urinalysis per week; and
- d. Dr. Allison is to maintain contact with his PHP monitor.

As of September 1997, the most recent available information, Dr. Allison is in complete compliance with the PHP agreement and continues in stable recovery. (Resp. Exs. B, J; Board [Bd] Ex. C).

11. At the time of hearing, Dr. Allison stated that he had not yet served the thirty day confinement pursuant to the September 24, 1996, Tuscarawas County Court Order. He explained that he attempted to serve the time at Renewal, Inc., as permitted under the Order. This facility, however, is similar to a work-release facility and limits a participant's work schedule to forty hours per week. Because this limitation would have prevented Dr. Allison from meeting his residency obligations, Dr. Allison filed a motion on January 30, 1997, asking the Court to reconsider its sentence in light of his successful treatment and continued recovery.

In August 1997, the Tuscarawas County Court denied Dr. Allison's motion. Accordingly, Dr. Allison completed a thirty day confinement at Renewal, Inc., during August and September, 1997. As a result of Renewal, Inc.'s, processing procedure which included testing, an evaluation, and staff interview, Renewal, Inc., deferred its in-house treatment and permitted Dr. Allison to continue the treatment program he had previously established. (St. Ex. 17; Bd. Ex. A; Tr. 112-114).

12. On July 30, 1997, the Allegheny General Hospital Orthopaedic Surgery Residency Program placed Dr. Allison on probation through June 30, 1998. The consequences of a probationary violation would result in Dr. Allison being terminated from the Residency Program. One of the Residency Program's probationary conditions was that Dr. Allison was to be evaluated by the Hospital's Impaired Physician Program which was to report to the Orthopaedic Surgery Residency Program Director on Dr. Allison's ability to perform professional residency duties. Additionally, Dr. Allison agreed to a psychiatric evaluation, and treatment, by the Hospital's Department of Psychiatry. Dr. Allison stated in his Affidavit that the evaluations performed under the terms of the Residency Program's probation have not resulted in modifications to the treatment plan he has followed the past two years. Further, under the terms of probation, Dr. Allison is required to submit to random drug testing at the discretion of the Residency Program Director. (Bd. Exs A, B).

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13. Dr. Allison submitted letters of support from physician colleagues, a nurse co-worker, a minister, his rehabilitation and treatment counselor, and his wife. It is important to note, however, that the State did not have an opportunity to cross-examine the authors of the letters. One physician, Richard L. Ray, M.D., stated that while he appreciated the seriousness of the incident which led to Dr. Allison's arrest and conviction, he was nonetheless hopeful that Dr. Allison would be afforded the opportunity to continue his promising career in orthopaedic surgery with appropriate monitoring and counseling. Moreover, Dr. Ray noted that he believes Dr. Allison does not have an ongoing substance abuse problem which would negatively affect patient care. Nevertheless, in order to assist Dr. Allison in meeting his obligations, Dr. Ray stated Allegheny General Hospital is prepared to have Dr. Allison monitored by the Hospital's Impaired Physicians' Committee during Dr. Allison's final year of training. (Resp. Ex. H).

Dr. Allison's treatment counselor noted that Dr. Allison is "an honorable man who in the past may have compromised his value structure and/or the norms of our society due only to his addiction." He further noted that Dr. Allison's "ongoing recovery has been stellar" and his prognosis for continued recovery is excellent. (Resp. Ex. I).

- 14 Dr. Allison spoke very candidly about the lessons he has learned about cocaine abuse, particularly since November 25, 1995. Dr. Allison stated that his recent experiences have taught him to accept the fact that he is an addict. Although he does not like the fact that he is an addict, he recognizes that accepting this is critical to his continued recovery. Moreover, given that he is an addict, Dr. Allison is very appreciative that he has been able to maintain his family and career. Dr. Allison is hopeful that he can maintain his abstinence. (Tr. 83-84).

FINDINGS OF FACT

1. On or about September 24, 1996, Dr. Allison was adjudged guilty in the Tuscarawas County Court, Uhrichsville, Ohio, of:
 - a. one first degree misdemeanor count of Attempted Drug abuse involving a Schedule II controlled substance, in violation of Section 2925.11, Ohio Revised Code, and Section 2923.02, Ohio Revised Code; and

- b. one third degree misdemeanor count of drug abuse involving a Scheduled IV controlled substance in violation of Section 2925.11, Ohio Revised Code.
2. The acts which led to Dr. Allison's conviction occurred on November 25, 1995, when Dr. Allison was arrested by the Uhrichsville, Ohio, Police Department after he was observed driving his truck left of center and in the wrong lane for blocks at a time, as well as driving up onto a median curb dividing the north and south bound traffic lanes in Uhrichsville. Following transport to the police station, Dr. Allison submitted to a BAC Datamaster breathalyzer which registered 0.079 grams of alcohol per 210 liters of breath. The results of a urine drug screen, however, were positive for cocaine and benzoylecgonine, and demonstrated an alcohol level of 0.088 grams per deciliter.

During a search of Dr. Allison's vehicle, the police confiscated a bottle of "Lite Ice" and a white powdery residue from the truck console. Cocaine was later confirmed to be present in the white residue. Moreover, during a search of Dr. Allison's hotel room, the police confiscated a white rock-like substance and a prescription bottle labeled Ambien. Subsequent testing confirmed that cocaine was present in the white rock-like substance. The prescription was zolpidem which Dr. Allison had written for Patient 1 but which he intended to personally use.

3. Ambien, or zolpidem, is a non-benzodiazepine hypnotic which is classified as a Schedule IV controlled substance.
4. Cocaine is an alkaloid derived from the coca plant. It's chemical composition is benzoylmethylecgonine. Cocaine is a Schedule II controlled substance.
5. Following his arrest in November 1995, Dr. Allison voluntarily entered a rehabilitation and treatment program at Gateway Rehabilitation Center in Pennsylvania. Additionally, Dr. Allison entered into a three year agreement with the Physicians' Health Programs of the Pennsylvania Medical Society. During the past two years, Dr. Allison has complied with a treatment regimen involving random drug screens, physician monitoring, group counseling sessions, and weekly AA meeting attendance. Dr. Allison has maintained his abstinence during this time and is compliant with his treatment program and Physicians' Health Programs agreement.

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CONCLUSIONS OF LAW

1. Finding of Fact 1, above, supports a conclusion that Dr. Allison's acts, conduct, and/or omissions, individually and/or collectively, constitute "a judicial finding of guilt of, a violation of any federal or state law regulating the possession, distribution, or use of any drug," as set forth in Section 4731.22(B)(3), Ohio Revised Code.
2. Finding of Fact 2, above, supports a conclusion that Dr. Allison's acts, conduct, and/or omissions, individually and/or collectively, constitute "[c]ommission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act was committed," as set forth in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.11, Ohio Revised Code.

★ ★ ★ ★ ★

Dr. Allison is a talented physician who has a promising career ahead as an orthopaedic surgeon. Regrettably, he succumbed to a habit which could, and often does, derail the lives and careers of others. Unlike so many others, however, as a result of one incident which led to a criminal drug conviction, Dr. Allison was able to acknowledge that he is an addict. This self-realization and acceptance empowered Dr. Allison to seek and maintain appropriate treatment. As a result, Dr. Allison has been able to remain abstinent for the past two years. Moreover, Dr. Allison has served a debt to society by serving the court imposed thirty day confinement resulting from the drug conviction.

Although a criminal drug conviction is an offense this Board takes very seriously, Dr. Allison has accomplished, on his own, the objectives this Board typically imposes for physicians similarly situated. Accordingly, the Board can achieve its goal of protecting the public by disciplining Dr. Allison to the extent that his continued treatment and sobriety are insured.

PROPOSED ORDER

It is hereby ORDERED that:

1. The certificate of Russell B. Allison, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for a period of one year. Such suspension is **STAYED**, subject to the following **PROBATIONARY** terms, conditions, and limitations for a period of three years.

- a. Dr. Allison shall obey all federal, state, and local laws, and all rules governing the practice of medicine in the state in which he is practicing medicine.
- b. Dr. Allison shall immediately notify the Board of any action in any other state taken against a certificate to practice medicine held by Dr. Allison in that state. Additionally, once another state has taken action against Dr. Allison's certificate to practice medicine in that state, then Dr. Allison shall immediately notify the Board in writing of any modification or change to any term, condition, or limitation imposed by another state medical board. Moreover, Dr. Allison shall provide acceptable documentation verifying the other state boards' actions.
- c. Dr. Allison shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution stating whether he has complied with all the terms, conditions, and limitations imposed by this Board, and any other state medical board. 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 the probation becomes effective, provided that if the effective date is on or after the 16th 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. Moreover, Dr. Allison shall cause to be submitted to the Board copies of the declarations and reports that he submits to any other state medical board whenever such submission is required.
- d. Within thirty (30) days of the effective date of this Order, Dr. Allison 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 a license to practice. Dr. Allison further agrees to provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for licensure or reinstatement of licensure. Further, Dr. Allison shall provide this Board with a copy of the return receipt as proof of notification within thirty (30) days of receiving that return receipt.
- e. Dr. Allison shall appear in person for interviews before the full Board or its designated representative within three months of the effective date of

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this Order, and upon his request for the termination of the probationary period, or as otherwise requested by the Board.

- f. Dr. Allison shall immediately notify the Board in writing should he fail to comply with any term, condition, or limitation of this probation or with any term, condition, or limitation imposed by any other state medical board.
- g. Within thirty (30) days of the effective date of this Order, Dr. Allison shall provide a copy of this Order to all employers or entities with which he is under contract to provide physician services or is receiving training, and the Chief of Staff at each hospital where Dr. Allison has privileges or appointments. Further, Dr. Allison shall provide a copy of this Order to all employers or entities with which he contracts to provide physician services, or applies for or receives training, and the Chief of Staff at each hospital where Dr. Allison applies for or obtains privileges or appointments.
- h. Dr. Allison 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. Allison's history of chemical dependency.
- i. Dr. Allison shall abstain completely from the use of alcohol.
- j. Dr. Allison shall provide the Board, quarterly, with acceptable documentation evidencing his continuing compliance with the Gateway Rehabilitation Center's recommended treatment plan consisting of at least the following requirements:
 - i. Continuous participation in a drug and alcohol rehabilitation program, such as AA, NA, or Caduceus, approved in advance by the Board specifically for Dr. Allison, at least three times per week, or as otherwise directed by the Board;
 - ii. Weekly random drug screens;
 - iii. Weekly meetings with a monitoring physician with whom Dr. Allison has established a relationship. The monitoring physician shall provide acceptable documentation to the Board at regular intervals; and

- iv. Weekly counseling sessions, either individual or group, with a counselor with whom Dr. Allison has established a relationship.
- k. Within thirty (30) days of the effective date of this Order, Dr. Allison shall submit, for the Board's prior approval, the name of a monitoring physician. The monitoring physician shall monitor Dr. Allison and provide the Board with reports on Dr. Allison's progress and status on a quarterly basis. Dr. Allison shall ensure that said reports are forwarded to the Board on a quarterly basis.

In the event that the approved monitoring physician becomes unable or unwilling to so serve, Dr. Allison shall immediately so notify the Board in writing and shall make arrangements for another physician to monitor Dr. Allison's progress and status as soon as practicable. Dr. Allison shall further ensure that the previously designated monitoring physician also notifies the Board directly of the inability to continue to serve and the reasons therefor.

All monitoring physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Allison's quarterly declaration. It is Dr. Allison's responsibility to ensure that the reports are timely submitted.

- l. Dr. Allison shall continue counseling with a treatment provider approved by the Board, at such intervals as are deemed appropriate by the treatment provider. The sessions shall be in person and may not be conducted by telephone or other electronic means.

Dr. Allison shall continue in counseling until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the approved treatment provider. Dr. Allison shall ensure that reports are forwarded by the treatment provider to the Board on a quarterly basis, or as otherwise directed by the Board. It is Dr. Allison's responsibility to ensure that the quarterly reports are received in the Board's offices no later than the due date for Dr. Allison's quarterly declaration.

- m. Dr. Allison shall provide acceptable documentation of successful completion of a course dealing with the prescribing of controlled substances. 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

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addition to the Continuing Medical Education requirements for relicensure for the biennial registration period(s) in which they are completed.

n. Dr. Allison shall refrain from commencing practice in Ohio without prior written Board approval. Moreover, should he commence practice in Ohio, the Board may place Dr. Allison's certificate under additional terms, conditions, or limitations, including the following:

i. Dr. Allison shall appear in person for quarterly interviews before the full Board or its designated representative, 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. Although the Board will normally give him written notification of scheduled appearances, it is Dr. Allison's responsibility to know when personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Allison shall immediately submit to the Board a written request to be notified of his next scheduled appearance.

ii. Dr. Allison shall submit to the Board and receive its approval for a plan of practice in Ohio.

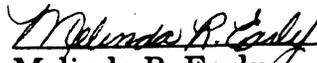
iii. Dr. Allison shall comply with any requirements the Board determines are then necessary to ensure his fitness to practice medicine and surgery.

iv. In the event that Dr. Allison has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to notifying the Board of his intent to practice in Ohio, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.

2. If Dr. Allison violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including, the permanent revocation of Dr. Allison's certificate.

3. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Allison's certificate shall be fully restored.

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



Melinda R. Early
Attorney Hearing Examiner



EXCERPT FROM THE DRAFT MINUTES OF DECEMBER 3 , 1997

REPORTS AND RECOMMENDATIONS

Ms. Noble announced that the Board would now consider the findings and orders appearing on the Board's agenda.

Ms. Noble asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Russell B. Allison, M.D.; Theresa E. Boyd, M.D.; Joseph C. Carver, M.D.; John C. Cheek, M.D.; Katherine A. Humes, M.D.; Muneer Mirza, D.P.M.; Laura Rosenbaum-Bloom, M.D.; Terrance E. Smith, M.D.; and Paul W. Wilson, D.O.

A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Heidt	- aye
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Dr. Buchan	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Ms. Noble	- aye

Mr. Sinnott indicated that he did not read the materials in the matter of Joseph C. Carver, M.D., and Paul W. Wilson, D.O., as his firm had earlier represented both physicians.

Ms. Noble 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. Heidt	- aye
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Dr. Buchan	- aye
	Dr. Stienecker	- aye

Dr. Agresta	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye
Ms. Noble	- aye

In accordance with the provision in Section 4731.22(C)(1), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters.

Ms. Noble 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.

REPORT AND RECOMMENDATION IN THE MATTER OF RUSSELL B. ALLISON, M.D.

Ms. Noble directed the Board's attention to the matter of Russell B. Allison, M.D. She advised that no objections were filed to Hearing Examiner Early's Report and Recommendation.

Ms. Noble advised that a letter submitted on behalf of Dr. Allison is being construed as a request to submit additional evidence. This letter was previously mailed to Board members. Ms. Noble asked whether the Board wished to admit the letter to the record.

DR. STIENECKER MOVED TO GRANT DR. ALLISON'S MOTION TO SUBMIT ADDITIONAL EVIDENCE. DR. HEIDT SECONDED THE MOTION. A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Heidt	- aye
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Dr. Buchan	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

Ms. Noble advised that a request to address the Board has been timely filed on behalf of Dr. Allison. Five minutes would be allowed for that address.

Mr. Byers stated that he would comment briefly and then Dr. Allison would address the Board.

Mr. Byers stated that he was very impressed with the fair and impartial fashion in which Hearing Examiner Early wrote her report. The Proposed Order appropriately sanctions Dr. Allison and puts teeth into the enforcement and monitoring of him. He noted that there is a typographical error on page nine of the Report and Recommendation. The Report refers to .1 gram of cocaine found. According to the State's Exhibit, that should have read ".01 gram."

Dr. Allison stated that he appreciates the opportunity to appear before the Board. He does know right from wrong, and he knows that what he did was wrong. He considers this to be a very personal disappointment in his life. These aren't the morals and values with which he was raised, or with which he is raising his children. Dr. Allison stated that he believes he has been treated fairly by the Board. He complimented Ms. Early on her looking not only at the night involved, but his life before and after the event. What he did is an embarrassment to himself and to his family. During the past two years he voluntarily entered a 30-day outpatient program. He is now undergoing monitoring. He is happy to complete any treatment documentation that the Board needs to ensure that he is a capable and competent physician.

Ms. Noble asked whether the Assistant Attorney General wished to respond.

Ms. Strait stated that she fully supports the Hearing Examiner's Report and Recommendation. Clearly, the Board needs to take action and monitor Dr. Allison. Ms. Strait added that she believes Dr. Allison has learned his lesson. From everything the Board has seen, Dr. Allison has jumped head-first into his rehabilitation programs. She hopes that he can continue on the same path. Ms. Strait urged the Board to adopt the Hearing Examiner's Report and Recommendation.

DR. GARG MOVED TO APPROVE AND CONFIRM MS. EARLY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF RUSSELL B. ALLISON, M.D. DR. STEINBERGH SECONDED THE MOTION.

Dr. Steinbergh stated that she basically agrees with the Proposed Order, but she also believes that the probationary period should be for five years instead of three. She noted that that would be more consistent with what the Board is doing in similar cases.

DR. STEINBERGH MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF RUSSELL B. ALLISON, M.D., BY CHANGING THE TERM OF PROBATION FROM THREE YEARS TO FIVE YEARS. DR. HEIDT SECONDED THE MOTION.

Dr. Heidt agreed with Dr. Steinbergh, stating that Dr. Allison showed poor judgment.

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

VOTE:	Mr. Albert	- abstain
	Dr. Heidt	- aye
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Dr. Buchan	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

DR. GARG MOVED TO APPROVE AND CONFIRM MS. EARLY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF RUSSELL B. ALLISON, M.D. DR. AGRESTA SECONDED THE MOTION.

Dr. Garg noted that this case also included a matter of Dr. Allison's using the patient's prescriptions.

Dr. Buchan stressed to Dr. Allison that some Board members were leaning towards revocation in his case.

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

VOTE:	Mr. Albert	- abstain
	Dr. Heidt	- aye
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Dr. Buchan	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.



STATE MEDICAL BOARD OF OHIO

100 East Broad Street, Columbus, Ohio 43260-0315 • (614) 466-3931

April 9, 1997

Russell B. Allison, M.D.
4208 Glasgow Road
Valencia, PA 16059

Dear Doctor Allison:

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, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) On or about September 24, 1996, in the Tuscarawas County Court, Uhrichsville, Ohio, you pleaded no contest and were found guilty of one first degree misdemeanor count of Attempted Drug Abuse involving a Schedule II controlled substance, in violation of Sections 2923.02 and 2925.11, Ohio Revised Code, and one third degree misdemeanor count of Drug Abuse involving a Schedule IV controlled substance, in violation of Section 2925.11, Ohio Revised Code.

The acts underlying this conviction occurred on November 25, 1995, when you were arrested by the Uhrichsville Police Department after your truck hit a concrete divider at an intersection in Uhrichsville.

During a search of your vehicle, an opened bottle of "Lite Ice" and a white powdery residue in the console were confiscated. Cocaine was later confirmed to be present in the white residue.

Following transport to the police station, you submitted to a BAC Datamaster breathalyzer which registered 0.079 grams of alcohol per 210 liters of breath. Further, results of a urine drug screen were positive for cocaine and benzoylecgonine, and an alcohol level of 0.088 grams per deciliter.

During a search of your hotel room, a white rocky substance was confiscated. Subsequent testing confirmed that cocaine was present in the white rock-like substance. A prescription bottle containing Ambien, a Schedule IV controlled substance, was also confiscated. The prescription was in the name of Patient 1, with your name listed as the prescribing physician.

Mailed 4/14/97

RUSSELL ALLISON, M.D.

PAGE 2

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "(s)elling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, or a judicial finding of guilt 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.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "(c)ommission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.11, Ohio Revised Code.

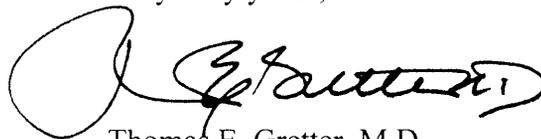
Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that 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 (30) 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, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Thomas E. Gretter, M.D.
Secretary

TEG/bjs
Enclosures

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there is no abandonment, a conspirator cannot defend on the ground that no offense which was the object of the conspiracy was actually committed

The section also states that even though a conspiracy may include plans to commit more than one offense, it is still one conspiracy when these offenses are part of the same plan, agreement, or continuous conspiratorial relationship. The section prohibits conviction of conspiracy to commit an offense, when the offender is convicted of committing or attempting to commit, or of complicity in committing or attempting to commit the same offense. Also, the section provides that a person may not be convicted of conspiracy upon the uncorroborated evidence of a co-conspirator.

Defenses to conspiracy include: (1) that a conspirator prevented the success of the conspiracy under circumstances showing that he had completely and voluntarily renounced his criminal plan; or (2) that the conspirator divorced himself from the plan prior to an attempt to commit or commission of any crime which was the object of the conspiracy, either by telling all the conspirators of his abandonment or by informing law enforcement authorities of the plan and his part in it.

Although this section does not replace any other conspiracy offenses defined in the Revised Code, the rules, exceptions, and defenses defined in this section are expressly made applicable to such other offenses.

Conspiracy is: a felony of the first degree if its object is aggravated murder or murder, a felony of the next lesser degree if its object is a felony of the first, second, or third degree, and a first degree misdemeanor if its object was a fourth degree felony.

[[§§ 2923.01.1, 2923.01.2]

§§ 2923.011, 2923.012 Repealed, 134 v H 511, § 2 [131 v 676; 132 v H 1; 133 v H 288], Eff 1-1-74.

These sections concerned carrying firearms, explosives and other concealed weapons

§ 2923.02 Attempt.

(A) No person, purposely or knowingly, and when purpose or knowledge is sufficient culpability for the commission of an offense, shall engage in conduct which, if successful, would constitute or result in the offense.

(B) It is no defense to a charge under this section that in retrospect, commission of the offense which was the object of the attempt was either factually or legally impossible under the attendant circumstances, if that offense could have been committed had the attendant circumstances been as the actor believed them to be.

(C) No person who is convicted of committing a specific offense, of complicity in the commission of an offense, or of conspiracy to commit an offense shall be convicted of an attempt to commit the same offense in violation of this section.

(D) It is an affirmative defense to a charge under this section that the actor abandoned his effort to commit the offense or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

(E) Whoever violates this section is guilty of an attempt to commit an offense. An attempt to commit aggravated murder or murder is an aggravated felony of the first degree. An attempt to commit an aggravated felony of the first or second degree is an aggravated felony of the next lesser aggravated degree than the aggravated felony attempted. An attempt to commit an aggravated felony of the third degree is a felony of the fourth degree. An attempt to commit any other offense is an offense of the next lesser degree than the offense attempted. In the case of an attempt to commit an offense other than a violation of Chapter 3734. of the Revised Code that is not specifically classified, an attempt is a misdemeanor of the first degree if the offense attempted is a felony, and a misdemeanor of the fourth degree if the offense attempted is a misdemeanor. In the case of an attempt to commit a violation of any provision of Chapter 3734. of the Revised Code, other than section 3734.18 of the Revised Code, that relates to hazardous wastes, an attempt is a felony punishable by a fine of not more than twenty-five thousand dollars or imprisonment for not more than eighteen months, or both. An attempt to commit a minor misdemeanor, or to engage in conspiracy, is not an offense under this section.

HISTORY: 134 v H 511 (Eff 1-1-74); 140 v S 210 (Eff 7-1-53); 140 v H 651 (Eff 10-1-84); 144 v H 225, Eff 10-23-91.

Not analogous to former RC § 2923.02 (GC §§ 12819-1, 12819-2; 102 v 124; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Committee Comment to H 511

This section is a general attempt statute which consolidates several specific attempt provisions in former law, and, with three exceptions, establishes an attempt to commit any offense as an offense in itself. The exceptions are an attempt to commit conspiracy, an attempt to commit a minor misdemeanor, and an attempt to commit any offense which in itself is defined as an attempt—in these cases, attempt is not an offense.

Under the section, an attempt must be purposely or knowingly committed. If the offense attempted specifies that purpose is the culpable mental state required for its commission, then the attempt must be purposeful. Purposely or knowingly attempting to commit a crime is sufficient to make the attempt an offense if the crime attempted requires knowledge, recklessness, or negligence for its commission.

In order to prove an attempt to commit an offense it must be shown that particular conduct directed toward commission of the offense took place and that such conduct, if successful, would constitute or result in the offense. The fact that hindsight shows that it would have been impossible to commit the offense under the circumstances is no defense. Thus, if the gun has a broken firing pin and misfires, this is no defense to a charge of attempted murder.

When a person quits his efforts to commit an offense, or otherwise prevents its commission, under circumstances showing that he completely and voluntarily gives up his criminal purpose, then he is not guilty of an attempt. Also, a person cannot be convicted of an attempt to commit an offense if he is convicted of a conspiracy to commit it, or is convicted of its actual commission or complicity in its actual commission.

inspection under section 149.43 of the Revised Code. The attorney general shall make copies of each report received, and, no later than the fifteenth day of April in the calendar year in which the report is received, shall send a copy of it to the president of the senate and the speaker of the house of representatives.

(3) As used in divisions (J) and (N) of this section:

(a) "Law enforcement agencies" includes, but is not limited to, the state board of pharmacy and the office of a prosecutor.

(b) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(K) If a person is charged with any violation of this section and posts bail pursuant to sections 2937.22 to 2937.46 of the Revised Code or Criminal Rule 46, and if the person forfeits the bail, the forfeited bail shall be paid pursuant to division (J) of this section.

(L) No court shall impose a mandatory fine pursuant to division (H) of this section upon an offender who alleges, in an affidavit filed with the court prior to his sentencing, that he is indigent and is unable to pay any mandatory fine imposed pursuant to that division, if the court determines that the offender is an indigent person and is unable to pay the fine.

(M) In addition to any other penalty imposed for a violation of this section, the court may revoke, and, if it does not revoke the license, shall suspend for not less than six months nor more than five years, the driver's or commercial driver's license of any person who is convicted of or pleads guilty to a violation of this section that is a felony of the first degree and shall suspend for not less than six months nor more than five years the driver's or commercial driver's license of any person who is convicted of or pleads guilty to any other violation of this section. If an offender's driver's or commercial driver's license is revoked pursuant to this division, the offender, at any time after the expiration of two years from the day on which his sentence was imposed or from the day on which he finally was released from imprisonment under the sentence, whichever is later, may file a motion with the sentencing court requesting termination of the revocation; upon the filing of such a motion and the court's finding of good cause for the termination, the court may terminate the revocation.

If the offender is a professionally licensed person or a person who has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules, in addition to any other penalty imposed for a violation of this section, the court forthwith shall comply with section 2925.35 of the Revised Code.

(N) If a person commits any act that violates division (A)(11) of this section and also violates any other provision of the Revised Code, the prosecutor, using customary prosecutorial discretion, may prosecute the person for a violation of the appropriate provision of the Revised Code.

HISTORY: 136 v H 300 (Eff 7-1-76); 141 v S 67 (Eff 8-29-86); 143 v H 215 (Eff 4-11-90); 143 v H 261 (Eff 7-18-90); 143 v H 266 (Eff 9-6-90); 143 v S 258 (Eff 11-20-90); 144 v H 62 (Eff 5-21-91); 144 v S 174 (Eff 7-31-92); 144 v H 591 (Eff 11-2-92); 145 v H 377 (Eff 9-30-93); 145 v H 391 (Eff 7-21-94).

§ 2925.04 Offenses involving unapproved drugs; dangerous drug offenses involving livestock.

(A) No person shall administer, dispense, distribute, manufacture, possess, sell, or use any drug, other than a controlled substance, that is not approved by the United States food and drug administration, or the United States department of agriculture, unless one of the following applies:

(1) The United States food and drug administration has approved an application for investigational use in accordance with the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and the drug is used only for the approved investigational use;

(2) The United States department of agriculture has approved an application for investigational use in accordance with the federal "Virus-Serum-Toxin Act," 37 Stat. 832 (1913), 21 U.S.C.A. as amended, 151, as amended, and the drug is used only for the approved investigational use;

(3) A practitioner, other than a veterinarian, prescribes or combines two or more drugs as a single product for medical purposes;

(4) A pharmacist, pursuant to a prescription, compounds and dispenses two or more drugs as a single product for medical purposes.

(B)(1) As used in this division, "dangerous drug," "prescription," "sale at retail," "wholesale distributor of dangerous drugs," and "terminal distributor of dangerous drugs," have the meanings set forth in section 4729.02 of the Revised Code.

(2) Except as provided in division (B)(3) of this section, no person shall administer, dispense, distribute, manufacture, possess, sell, or use any dangerous drug to or for livestock or any animal that is generally used for food or in the production of food, unless the drug is prescribed by a licensed veterinarian by prescription or other written order and the drug is used in accordance with the veterinarian's order or direction.

(3) Division (B)(2) of this section does not apply to a registered wholesale distributor of dangerous drugs, a licensed terminal distributor of dangerous drugs, or a person who possesses, possesses for sale, or sells, at retail, a drug in accordance with Chapters 3719., 4729., or 4741. of the Revised Code.

(C) Whoever violates division (A) or (B)(2) of this section is guilty of a felony of the fourth degree on a first offense. On each subsequent offense, the offender is guilty of a felony of the third degree.

HISTORY: 146 v H 202. Eff 6-14-95.

[DRUG ABUSE]

§ 2925.11 Drug abuse.

(A) No person shall knowingly obtain, possess, or use a controlled substance.

(B) This section does not apply to the following:

(1) Manufacturers, practitioners, pharmacists, owners of pharmacies, and other persons whose conduct

was in accordance with Chapters 3719., 4715., 4729., 4731., and 4741. of the Revised Code or section 4723.56 of the Revised Code.

(2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States food and drug administration;

(3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act.

(4) Any person who obtained the controlled substance pursuant to a prescription issued by a practitioner, where the drug is in the original container in which it was dispensed to such person.

(C) Whoever violates this section is guilty of drug abuse, and shall be sentenced as follows:

(1) If the drug involved is a compound, mixture, preparation, or substance included in schedule I or II, with the exception of marijuana, drug abuse is a felony of the fourth degree, and, if the offender previously has been convicted of a drug abuse offense, drug abuse is a felony of the third degree.

(2) If the drug involved is a compound, mixture, preparation, or substance included in schedule III, IV, or V, with the exception of an anabolic steroid, drug abuse is a misdemeanor of the third degree, and if the offender previously has been convicted of a drug abuse offense, drug abuse is a misdemeanor of the second degree.

(3) If the drug involved is marijuana, drug abuse is a misdemeanor of the fourth degree, unless the amount of marijuana involved is less than one hundred grams, the amount of marijuana resin, or extraction or preparation of such resin, is less than five grams, and the amount of such resin in a liquid concentrate, liquid extract, or liquid distillate form, is less than one gram, in which case drug abuse is a minor misdemeanor.

(4) If the drug involved is an anabolic steroid included in schedule III, drug abuse is a misdemeanor of the third degree and, in lieu of sentencing an offender to a definite or indefinite term of imprisonment in a detention facility, the court may place the offender on conditional probation pursuant to division (G) of this section or division (H) of section 2951.02 of the Revised Code, unless the offender previously has been convicted of a drug abuse offense, in which case drug abuse is a misdemeanor of the second degree.

(D) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license,

or other right or privilege, or made in connection with the person's appearance as a witness.

(E)(1) Notwithstanding the fines otherwise required to be imposed pursuant to section 2929.11, 2929.21, or 2929.31 of the Revised Code for violations of this section and notwithstanding section 2929.14 or 2929.22 of the Revised Code, the court shall impose a mandatory fine of two thousand five hundred dollars if the violation of this section was a felony of the third degree, a mandatory fine of one thousand five hundred dollars if the violation of this section was a felony of the fourth degree, a mandatory fine of seven hundred fifty dollars if the violation of this section was a misdemeanor of the second degree, a mandatory fine of five hundred dollars if the violation of this section was a misdemeanor of the third degree, a mandatory fine of two hundred fifty dollars if the violation of this section was a misdemeanor of the fourth degree, and a mandatory fine of one hundred dollars if the violation of this section was a minor misdemeanor.

(2) The court may impose a fine in addition to a mandatory fine imposed pursuant to division (E)(1) of this section if the total of the additional and mandatory fines does not exceed the maximum fine that could be imposed pursuant to section 2929.11, 2929.21, or 2929.31 of the Revised Code.

(3) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, fifty per cent of any mandatory fine imposed pursuant to division (E)(1) of this section shall be paid by the clerk of the court in accordance with and subject to the requirements of, and shall be used as specified in, division (J) of section 2925.03 of the Revised Code, and fifty per cent shall be disbursed as provided in section 3719.21 of the Revised Code. Any additional fine imposed pursuant to division (E)(2) of this section shall be disbursed by the clerk of the court as otherwise provided by law.

(4) If a person is charged with any violation of this section and posts bail pursuant to sections 2937.22 to 2937.46 of the Revised Code or Criminal Rule 46, and if the person forfeits the bail, the forfeited bail shall be paid by the clerk of the court in accordance with and subject to the requirements of, and shall be used as specified in, division (E)(3) of this section.

(5) No court shall impose a mandatory fine pursuant to division (E)(1) of this section upon an offender who alleges, in an affidavit filed with the court prior to his sentencing, that he is indigent and is unable to pay any mandatory fine imposed pursuant to that division, if the court determines the offender is an indigent person and is unable to pay the fine.

(F)(1) In addition to any other penalty imposed for a violation of this section, the court shall suspend for not less than six months nor more than five years the driver's or commercial driver's license of any person who is convicted of or has pleaded guilty to a violation of this section. Division (F)(1) of this section does not apply if the court is required to suspend a pregnant woman's sentence of imprisonment and place her on probation under the circumstances described in division (H) of this section, unless, at any time, the pregnant woman fails to comply with the condition of probation

described in that division and her probation is revoked.

(2) If the offender is a professionally licensed person or a person who has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules, in addition to any other penalty imposed for a violation of this section, the court forthwith shall comply with section 2925.38 of the Revised Code. Division (F)(2) of this section does not apply if the court is required to suspend the sentence of imprisonment of, and to place on probation under the circumstances described in division (H) of this section, a pregnant woman who is a professionally licensed person or is a person who has been admitted to the bar by order of the supreme court, except that, if the pregnant woman at any time fails to comply with the condition of probation described in that division and if the court revokes her probation, the court then shall comply with section 2925.38 of the Revised Code.

(G)(1)(a) In lieu of sentencing an offender, who has pleaded guilty to a violation of this section prior to the commencement of the trial in the criminal action, to a definite or indefinite term of imprisonment in a detention facility, the court may place the offender on conditional probation under this division, with the terms of his probation including the following requirements in addition to any terms of probation that can be imposed pursuant to section 2951.02 of the Revised Code:

(i) The offender shall enter into an alternative residential diversion program as described in division (G)(2) of this section and submit to drug abuse treatment and counseling in the program for the period specified by the court, which period shall be at least ninety days.

(ii) Upon his release from the alternative residential diversion program, the offender shall continue to submit for a period specified by the court, which period shall be at least nine months, to drug abuse outpatient treatment and counseling as specified by the court.

(b) If, at any time, the offender fails to comply with the conditions set forth in division (G)(1)(a) of this section and any other conditions of his probation imposed pursuant to section 2951.02 of the Revised Code, the offender shall be arrested pursuant to section 2951.08 of the Revised Code. The court immediately shall hold a hearing to determine if the offender has failed to comply with the conditions set forth in division (G)(1)(a) of this section and any other conditions of his probation imposed pursuant to section 2951.02 of the Revised Code. If the court determines that the offender has so failed, it immediately shall revoke the offender's conditional probation under this division, impose upon the offender any definite or indefinite term of imprisonment that the court previously could have imposed, and order the offender to commence serving that definite or indefinite term of imprisonment.

(c) If the offender complies with the conditions set forth in division (G)(1)(a) of this section and all other conditions of his probation imposed pursuant to section 2951.02 of the Revised Code, the court shall relieve the offender of the condition of drug abuse treatment and counseling and the other conditions of the probation, enter on its journal a dismissal of the charges against the offender, and discharge the offender.

(2) Each court of common pleas, by local rule, may provide for one or more alternative residential diversion programs that are designed to provide drug abuse treatment and counseling for adults and juveniles who commit violations of this section. The rule shall be consistent with divisions (G)(1) and (3) of this section and all of the following:

(a) The rule shall design the programs so as to reduce the number of future violations of this section in the county by rehabilitating persons who have committed violations of this section, to provide persons who have committed violations of this section and who are not dangerous offenders with residential treatment and counseling alternatives to incarceration in a detention facility, to reduce overcrowding conditions in detention facilities in the county and elsewhere in the state, and to provide, at the same time, for the safety of residents of this state during the period the persons who have committed violations of this section are receiving treatment and counseling as described in division (G)(1) of this section.

(b) The rule shall require that the programs be used for qualified persons who commit violations of this section and who the trial courts in the county have reason to believe are drug dependent persons or persons in danger of becoming drug dependent persons.

(c) The rule shall require that persons who commit violations of this section, other than indigent persons, persons in danger of becoming indigent persons because of their violations of this section, and persons receiving aid to dependent children or disability assistance, are liable for the expenses associated with the treatment and counseling that they receive pursuant to the programs.

(3) Nothing in this division affects, or shall be construed as affecting, the ability of the courts of this state to grant conditional probation under section 2951.04 of the Revised Code or to grant treatment in lieu of conviction under section 2951.041 [2951.04.1] of the Revised Code.

(4) As used in this division:

(a) "Dangerous offender" has the same meaning as in section 2929.01 of the Revised Code.

(b) "Detention facility" has the same meaning as in section 2921.01 of the Revised Code.

(c) "Drug dependent person" and "person in danger of becoming a drug dependent person" have the same meanings as in section 3719.011 [3719.01.1] of the Revised Code.

(H) If a person who has been convicted of or pleaded guilty to a violation of this section is a woman who is pregnant at the time of sentencing for the violation of this section, and if the offender agrees both to receive prenatal care as ordered by the court and to participate in and successfully complete rehabilitation at an appropriate drug treatment facility or program as described in division (B) of section 2951.04 of the Revised Code in connection with the use of any controlled substance, then, in lieu of requiring the offender to serve a term of imprisonment pursuant to division (C) of this section, the court shall suspend the offender's sentence of imprisonment and place her on probation pursuant to

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section 2951.02 of the Revised Code, with at least one of the conditions of her probation being that she receive prenatal care as ordered by the court until the birth of her child and participate in and successfully complete rehabilitation at an appropriate drug treatment facility or program as described in division (B) of section 2951.04 of the Revised Code in connection with the use of any controlled substance until she is rehabilitated and released from this requirement by an order of the court.

HISTORY: 138 v S 184, § 5 (Eff 6-20-84); 143 v S 258 (Eff 11-20-90); 144 v H 62 (Eff 5-21-91); 144 v H 298 (Eff 7-26-91); 145 v H 377 (Eff 9-30-93); 145 v H 391 (Eff 7-21-94); 146 v H 249, Eff 7-17-95.

Analogous to former RC § 2925.11 (136 v H 300; 138 v S 184), repealed 138 v S 184, § 4, eff 6-20-84.

§ 2925.12 Possessing drug abuse instruments.

(A) No person shall knowingly make, obtain, possess, or use any instrument, article, or thing whose customary and primary purpose is for the administration or use of a dangerous drug, other than marijuana, when the instrument involved is a hypodermic or syringe, whether or not of crude or extemporized manufacture or assembly, and the instrument, article, or thing involved has been used by the offender to unlawfully administer or use a dangerous drug, other than marijuana, or to prepare a dangerous drug, other than marijuana, for unlawful administration or use.

(B) This section does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies, and other persons whose conduct was in accordance with Chapters 3719, 4715, 4729, 4731, and 4741, of the Revised Code or section 4723.56 of the Revised Code.

(C) Whoever violates this section is guilty of possessing drug abuse instruments, a misdemeanor of the second degree. If the offender previously has been convicted of a drug abuse offense, a violation of this section is a misdemeanor of the first degree.

(D) Notwithstanding the fines otherwise required to be imposed pursuant to section 2929.21 or 2929.31 of the Revised Code for violations of this section and notwithstanding section 2929.22 of the Revised Code, the court shall impose a mandatory fine of one thousand dollars if the violation of this section was a misdemeanor of the first degree and a mandatory fine of seven hundred fifty dollars if the violation of this section was a misdemeanor of the second degree.

(2) The court may impose a fine in addition to a mandatory fine imposed pursuant to division (D)(1) of this section if the total of the additional and mandatory fines does not exceed the maximum fine that could be imposed pursuant to section 2929.21 or 2929.31 of the Revised Code.

(3) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, fifty per cent of any mandatory fine imposed pursuant to division (D)(1) of this section shall be paid by the clerk of the court in accordance with and subject to the requirements of, and shall be used as specified in, division (J) of section

2925.03 of the Revised Code, and fifty per cent shall be disbursed as provided in section 3719.21 of the Revised Code. Any additional fine imposed pursuant to division (D)(2) of this section shall be disbursed by the clerk of the court as otherwise provided by law.

(4) If a person is charged with any violation of this section and posts bail pursuant to sections 2937.22 to 2937.46 of the Revised Code or Criminal Rule 46, and if the person forfeits the bail, the forfeited bail shall be paid by the clerk of the court in accordance with and subject to the requirements of, and shall be used as specified in, division (D)(3) of this section.

(5) No court shall impose a mandatory fine pursuant to division (D)(1) of this section upon an offender who alleges, in an affidavit filed with the court prior to his sentencing, that he is indigent and is unable to pay any mandatory fine imposed pursuant to that division, if the court determines the offender is an indigent person and is unable to pay the fine.

(E) In addition to any other penalty imposed for a violation of this section, the court shall suspend for not less than six months nor more than five years the driver's or commercial driver's license of any person who is convicted of or has pleaded guilty to a violation of this section. If the offender is a professionally licensed person or a person who has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules, in addition to any other penalty imposed for a violation of this section, the court forthwith shall comply with section 2925.38 of the Revised Code.

HISTORY: 136 v H 300 (Eff 7-1-76); 143 v S 258 (Eff 11-20-90); 145 v H 377 (Eff 9-30-93); 145 v H 391, Eff 7-21-94.

§ 2925.13 Permitting drug abuse.

(A) No person who is the owner, operator, or person in charge of a locomotive, watercraft, aircraft, or other vehicle as defined in division (A) of section 4501.01 of the Revised Code, shall knowingly permit the vehicle to be used for the commission of a felony drug abuse offense.

(B) No person who is the owner, lessee, or occupant, or who has custody, control, or supervision, of premises or real estate, including vacant land, shall knowingly permit the premises or real estate, including vacant land, to be used for the commission of a felony drug abuse offense by another person.

(C) Whoever violates this section is guilty of permitting drug abuse, a misdemeanor of the first degree, except that permitting drug abuse is a felony of the fourth degree, if any of the following apply:

(1) The offender previously has been convicted of a drug abuse offense;

(2) The felony drug abuse offense in question is a violation of section 2925.02 or division (A)(1), (5), (7), or (10) of section 2925.03 of the Revised Code that was committed in either of the following ways:

(a) On school premises, in a school building, or within one thousand feet of the boundaries of any school premises;

(b) Within one hundred feet of any juvenile or within