

**STATE OF OHIO
THE STATE MEDICAL BOARD
PERMANENT SURRENDER OF CERTIFICATE
TO PRACTICE MEDICINE AND SURGERY
CASE NO. 08-CRF-018**

I, Stephen Randall Porter, M.D., am aware of my rights to representation by counsel and to a formal adjudicative hearing, do hereby freely execute this document and choose to take the actions described herein.

I, Stephen Randall Porter, M.D., do hereby voluntarily, knowingly, and intelligently surrender my certificate to practice medicine and surgery, License 35.069802, to the State Medical Board of Ohio [Board], thereby relinquishing all rights to practice medicine and surgery in Ohio.

I understand that as a result of the surrender herein I am no longer permitted to practice medicine and surgery in any form or manner in the State of Ohio.

I agree that I shall be ineligible for, and shall not apply for, reinstatement or restoration of certificate to practice medicine and surgery License 35.069802 or issuance of any other certificate pursuant to the authority of the State Medical Board of Ohio, on or after the date of signing this Permanent Surrender of Certificate to Practice Medicine and Surgery. Any such attempted reapplication shall be considered null and void and shall not be processed by the Board.

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

This document shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. I, Stephen Randall Porter, M.D., acknowledge that my social security number will be used if this information is so reported and agree to provide my social security number to the Board for such purposes.

I stipulate and agree that I am taking the action described herein in lieu of further formal disciplinary proceedings in Case No. 08-CRF-018, pursuant to Sections 4731.22(B)(9), (B)(15) and (B)(26) Ohio Revised Code, as set forth in the Notice issued by the Board on February 13, 2008, a copy of which is attached hereto and fully incorporated herein. I hereby admit to the factual and legal allegations set forth in the Notice letter dated February 13, 2008, which is attached as Exhibit A.

EFFECTIVE DATE

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



STEPHEN RANDALL PORTER, M.D.



LANCE A. TALMAGE, M.D.
Secretary

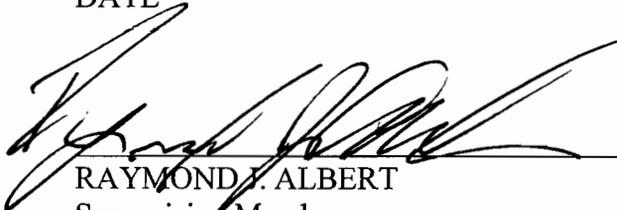
DATE

12-13-08

DATE



ERIC J. PLINKE
Attorney for Dr. Porter



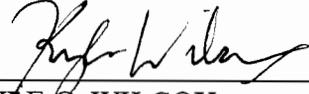
RAYMOND J. ALBERT
Supervising Member

11/21/8

DATE

12/11/08

DATE



KYLE C. WILCOX
Assistant Attorney General

12-4-08

DATE

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

February 13, 2008

Case number: 08-CRF- 018

Stephen Randall Porter, M.D.
609 William Henry Dixon Blvd.
Paintsville, KY 41240

Dear Doctor Porter:

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

- (1)(a) On or about August 14, 2002, you entered into a Step I Consent Agreement [August 2002 Step I Consent Agreement] with the Board based upon your violations of Sections 4731.22(B)(20) and (B)(26), Ohio Revised Code, related to your relapse on alcohol and your failure to report such relapse to the Board.
- (b) On or about January 10, 2003, you entered into a second Step I Consent Agreement [January 2003 Step I Consent Agreement], based upon your violations of Sections 4731.22(B)(15) and (B)(26), Ohio Revised Code, related to your relapse on alcohol and marijuana, and your violation of the conditions of limitation placed upon your certificate to practice.
- (c) On or about September 10, 2003, you entered into a Step II Consent Agreement with the Board [September 2003 Step II Consent Agreement], related to your history as noted above as well as your acts related to publishing a false, deceptive, or misleading statement in securing a certificate to practice medicine. The September 2003 Step II Consent Agreement reprimanded you for your admitted false statement to the Board, and reinstated your certificate to practice medicine and surgery in the state of Ohio subject to certain terms, conditions, and limitations, including, *inter alia*, the requirements that you abstain completely from the use of alcohol and that you submit to random urine screenings for drugs and alcohol on a weekly basis.
- (d) Despite the requirements of the September 2003 Step II Consent Agreement summarized in Paragraph (1)(c), above, on or about September 7, 2004, the Board received notice that the urine specimen you submitted for drug screening on or about August 20, 2004, was reported as positive for alcohol and was GC/FID confirmed for the presence of alcohol. Further, a representative from the Ohio Physicians Effectiveness Program informed a Board Enforcement Attorney that you had relapsed

Mailed 2-14-08

on alcohol approximately ten days prior to the aforementioned positive drug screen, and reported that you had ceased submitting to random urine screenings for drugs and alcohol. Further, on or about September 23, 2004, your attorney communicated to the Board Enforcement Attorney that you no longer wanted to be monitored by the Board.

- (e) On or about October 13, 2004, the Board issued a Notice of Summary Suspension and Opportunity for Hearing and an Entry of Order which summarily suspended your certificate to practice medicine or surgery in the state of Ohio. Following the Board's attempts to obtain service upon you, on or about April 13, 2005, the Board issued Findings, Order and Journal Entry, revoking your Ohio certificate to practice medicine and surgery [April 2005 Order]. On or about April 28, 2005, you appealed the April 2005 Order of the Board to the Court of Common Pleas, Franklin County, Ohio.
- (f) On or about November 21, 2005, the Court of Common Pleas, Franklin County, Ohio, [Common Pleas Court] entered a Decision and Judgment Entry on the appeal, which was then appealed to the Court of Appeals of Franklin County, Tenth Appellate District [10th District Court of Appeals]. On or about October 10, 2006, the 10th District Court of Appeals remanded the matter to the Common Pleas Court with instructions to enter a judgment that includes language ordering the Board to vacate its order of April 13, 2005. On or about April 16, 2007, the Common Pleas Court entered an Amended Judgment Entry ordering the Board to vacate its April 2005 Order which had revoked your Ohio certificate to practice medicine and surgery. On or about August 8, 2007, the Board vacated April 2005 Order of revocation [August 2007 Board Order].
- (g) Additionally, on or about April 1, 2006, your certificate to practice medicine and surgery in the state of Ohio became inactive for failure to renew.

Copies of the August 2002 Step I Consent Agreement, January 2003 Step I Consent Agreement, September 2003 Step II Consent Agreement, and August 2007 Board Order are attached hereto and incorporated herein.

- (2) On or about August 8, 2007, the effective date of the Board order vacating its April 2005 Order of revocation of your Ohio certificate to practice medicine and surgery, you again became subject to all terms, conditions, and limitations contained in the September 2003 Step II Consent Agreement, despite the inactive status of your Ohio certificate to practice medicine and surgery. Pursuant to the terms of your September 2003 Step II Consent Agreement, you are required to submit, or to ensure the submission of, quarterly documentation to the Board of the following:
 - (a) Your quarterly declaration to the Board, in conformance with Paragraph 2;
 - (b) Your drugs logs for all controlled substances prescribed, in conformance with Paragraph 5;
 - (c) Drug and alcohol screens, demonstrating that you undertook random weekly urine screens in conformance with Paragraph 9;
 - (d) Report from your supervising physician, in conformance with Paragraph 9;
 - (e) Report from your psychiatrist in conformance with Paragraph 10;

- (f) Your AA logs demonstrating that you attended at least three AA, NA, CA, or Caduceus meetings, in conformance with Paragraph 14.

From on or about August 8, 2007, through on or about at least November 1, 2007, you failed to submit, or failed to ensure the submission of, the items listed in Paragraph 2(a) through (f), above, to the Board.

- (3) On or about August 19, 2005, in the Dearborn Superior Court, Dearborn County, Indiana, a finding of guilt was entered against you following trial by jury for the offense of Operating While Intoxicated, a Class D Felony, in violation of Indiana Code 9-30-5-3.
- (4) On or about August 21, 2007, in Butler County Court, Area III, Butler County, Ohio, you pled no contest to, and were found guilty of, Operating Vehicle Under the Influence of Alcohol or Drugs, in violation of Section 4511.19(A)(1)(a), Ohio Revised Code.
- (5) On or about January 3, 2007, in the Circuit Court of Franklin County, Indiana, you pled guilty to, and the Court accepted your plea for, Battery, a Class C Felony, in violation of Indiana Code 35-42-2-1(a)(3).

Your acts, conduct, and/or omissions as alleged in paragraphs (1), (2), (3) and (4) above, individually and/or collectively, constitute “[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,” as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

Your plea of guilty or the judicial finding of guilt as alleged in paragraphs (3) and (5) above, individually and/or collectively, constitute “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony,” as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

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

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

Stephen Randall Porter, M.D.

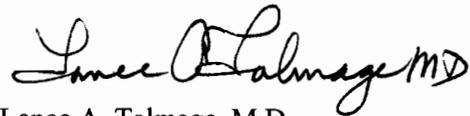
Page 4

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.
Secretary

LAT/KHM/flb

Enclosures

CERTIFIED MAIL #91 7108 2133 3934 3690 5128
RETURN RECEIPT REQUESTED

cc: Eric Plinke, Esq.
Buckingham, Doolittle & Burroughs, LLP
Attorneys and Counselors at Law
191 West Nationwide Boulevard
PO Box 151120
Columbus, OH 43215-8120

CERTIFIED MAIL #91 7108 2133 3934 3690 5135
RETURN RECEIPT REQUESTED

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

STEPHEN R. PORTER, M.D.

*

ORDER AND ENTRY

On April 13, 2005, the State Medical Board of Ohio issued a Final Order revoking the license of Stephen R. Porter, M.D., to practice medicine and surgery in Ohio. Counsel for Dr. Porter appealed the Board's Order. Subsequently, the Franklin County Court of Common Pleas issued an Amended Judgment Entry, ordering the State Medical Board of Ohio to vacate its April 13, 2005, Order of revocation.

It is hereby ORDERED that the April 13, 2005, Final Order revoking the license of Stephen R. Porter, M.D., be and is hereby VACATED.

This Order is entered by the State Medical Board of Ohio and on its behalf.

So ORDERED this 8th day of August 2007.

(SEAL)



Lance A. Talmage, M.D.
Secretary

August 8, 2007
Date

Stephen R. Porter, M.D.
CERTIFIED MAIL NO. 91 7108 2133 3933 8825 0796
RETURN RECEIPT REQUESTED

Eric J. Plinke, Esq.
CERTIFIED MAIL NO. 91 7108 2133 3933 8825 0802
RETURN RECEIPT REQUESTED

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

Stephen R. Porter, M.D., :

Appellant :

-v- :

The State Medical Board of Ohio, :

Appellee. :

Case No. 05CVF04-4765

JUDGE PFEIFFER
APR 16 2007
8
[Signature]

AMENDED JUDGMENT ENTRY

Pursuant to the Tenth District's opinion in Porter v. State Med. Bd. of Ohio, Franklin App. No. 05-1339, 2006-Ohio-5296, the Court's previous Decision reversing Appellee's revocation of Appellant's medical license is hereby amended to the extent that Appellee is ORDERED to vacate its April 13, 2005 order revoking Appellant's medical license.

[Signature]

BEVERLY Y. PFEIFFER, JUDGE

Copies to:

Eric J. Plinke
Counsel Appellant

Damion Clifford
Counsel for Appellee

FILED
COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
2007 APR 16 PM 12:43
CLERK OF COURTS

HEALTH & HUMAN
APR 16 2007
SERVICES SECTION

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

Stephen R. Porter, M.D., :
 Appellant : Case No. 05CVF04-4765
 -v- : JUDGE PFEIFFER
 The State Medical Board of Ohio, :
 Appellee. :

FILED
 COMMON PLEAS COURT
 FRANKLIN COUNTY, OHIO
 2007 APR 16 PM 12:43
 CLERK OF COURT

DECISION AND ENTRY OVERRULING APPELLANT'S OBJECTIONS TO
 MAGISTRATE'S DECISION FILED JANUARY 22, 2007
 AND
ENTRY OVERRULING APPELLEE'S OBJECTION TO MAGISTRATE'S DECISION
 FILED JANUARY 26, 2007
 AND
ENTRY FINDING APPELLEE'S MOTION TO STRIKE FILED JANUARY 26, 2007 TO
 BE MOOT

Rendered this 13th day of April, 2007

PFEIFFER, J.

This matter is before the Court on Appellant's Objections to Magistrate's Decision filed January 22, 2007, Appellee's Objection to Magistrate's Decision filed January 26, 2007, and Appellee's Motion to Strike filed January 26, 2007.

This administrative appeal stemmed from Appellee the State Medical Board's (the Board) revocation of Appellant's medical license. The Board initiated the revocation proceedings based on the following facts. On September 10, 2003, Appellant entered into a Step II Consent Agreement with the Board in lieu of formal disciplinary proceedings. The Agreement reinstated Appellant's license to practice subject to certain conditions, including that he abstain from alcohol and submit to

HEALTH & HUMAN
 APR 16 2007
 SERVICES SECTION

random weekly drug and alcohol screenings. On September 7, 2004, the Board received a toxicology report indicating that Appellant had tested positive for alcohol.

The Board then issued a Summary Suspension and Notice of Opportunity for Hearing. Certified mail service of the Notice upon Appellant was returned marked "unclaimed." Thereafter, the Board sent Appellant a letter advising him that it would attempt to serve him via certified mail one more time. The Board indicated that if Appellant refused service, the Board would then be required to publish the contents of the Notice in a newspaper of general circulation in compliance with R.C. 119.07.

The Board had also sent Appellant's counsel a copy of the Notice, and on November 12, 2004, counsel submitted a request for a hearing. In subsequent conversations with the Board, Appellant's counsel indicated that he had not been able to locate Appellant but had filed the request for hearing in order to preserve Appellant's rights. The Board informed Appellant's counsel that it still needed to perfect service upon Appellant. On November 15, 2004, the Board mailed the Notice to both Appellant's address of record as well as a second address obtained from an internet search. Certified mail service was obtained at both addresses. No request for hearing was submitted following service of the second Notice, and the Board proceeded without a hearing.

On appeal, Appellant argued that the license revocation was contrary to law as he had timely requested but was denied his right to a hearing. The Court found in favor of Appellant without reaching the issue of whether he had timely requested a hearing based on the Court's finding that service of the second Notice was not in compliance with R.C. 119.07. The statutory provision mandates that when a notice sent by

registered mail is returned not served, the agency shall then attempt either personal service or cause the notice to be published. Thus, the second attempts at certified mail service, though received by Appellant, were ineffective. The Court's Decision remanded this matter to the Board for further proceedings.

Appellant then filed an appeal with the Tenth District Court of Appeals asserting that the Court had erred in not entering an order specifically vacating the revocation of his medical license. The Board filed a cross-appeal arguing that the Court erred in finding that service was not proper. The Tenth District issued a decision affirming the Court's finding of ineffective service, but sustaining Appellant's assignment of error, holding that the Court should have included express language requiring the Board to vacate the revocation order.

At issue here is Appellant's Motion for Attorney's Fees. The Motion was referred to Magistrate Edwin Skeens for a hearing, which was conducted on December 15, 2006. On January 8, 2007, the Magistrate issued comprehensive Findings of Fact and Conclusions of Law recommending that Appellant's Motion be denied. The Magistrate found that an award of attorney's fees was not appropriate as the Board was substantially justified in initiating this matter, special circumstances rendered an award of fees unjust, and Appellant had not submitted sufficient evidence to determine the amount and reasonableness of the fees.

The Board now objects to the Magistrate's Decision arguing that the Magistrate erred in not also finding that attorney's fees should be denied due to the fact that Appellant unreasonably protracted this litigation through his appeal to the Tenth District. Appellant raises the following objections to the Magistrate's Decision: 1) the Magistrate

erred in determining that the Board was substantially justified in initiating the matter in controversy; 2) the Magistrate erred in determining that special circumstances exist that render an award of attorney's fees unjust; and 3) the Magistrate erroneously determined that the itemization of fees was insufficient. With regard to this latter objection, Appellant has submitted a more detailed itemization of his attorney's fees, and the Board has moved to strike this Exhibit.

The Supreme Court of Ohio has described the role of the trial court in reviewing objections to a Magistrate's Decision as follows:

[t]he findings of fact, conclusions of law, and other rulings of a [magistrate] before and during trial are all subject to the independent review of the trial judge. Thus, a [magistrate's] oversight of an issue or issues, even an entire trial, is not a substitute for the judicial functions but only an aid to them. A trial judge who fails to undertake a thorough independent review of the [magistrate's] report violates the letter and spirit of Civ. R. 53, and we caution against the practice of adopting [magistrate's] reports as a matter of course, especially where a [magistrate] has presided over an entire trial.

Hartt v. Munobe (1993), 67 Ohio St.3d 3, 6.

The trial court does not sit in the position of a reviewing court when reviewing the [magistrate's] report; rather, the trial court must conduct a de novo review of the facts and conclusions contained in the report. DeSantis v. Soller (1990), 70 Ohio App.3d 226, 232. The trial court, as the ultimate finder of fact, must make its own factual determinations through an independent analysis of the issues and should not adopt the findings of the magistrate unless the trial court fully agrees with them. Id. at 233. The court's role is to determine whether the magistrate has properly determined the factual issues and appropriately applied the law, and, where the magistrate has failed to do so,

the trial court must substitute its judgment for that of the magistrate. Coronet Ins. Co. v. Richards (1991), 766 Ohio App.3d 578, 585.

R.C. 2335.39(B)(1) provides in pertinent part that:

in a civil action, or appeal of a judgment in a civil action, to which the state is a party, or in an appeal of an adjudication order of an agency pursuant to section 119.12 of the Revised Code, the prevailing eligible party is entitled, upon filing a motion in accordance with this division, to compensation for fees incurred by that party in connection with the action or appeal.

After a party files a motion for attorney fees:

[t]he court shall review the request for the award of compensation for fees and determine whether the position of the state in initiating the matter in controversy was substantially justified, whether special circumstances make an award unjust, and whether the prevailing eligible party engaged in conduct during the course of the action or appeal that unduly and unreasonably protracted the final resolution of the matter in controversy. * * *

* * * The state has the burden of proving that its position in initiating the matter in controversy was substantially justified [or] that special circumstances make an award unjust * * *.

R.C. 2335.39(B)(2).

If the court determines that the state has sustained its burden of proving that its position in initiating the underlying matter was substantially justified or that special circumstances otherwise make an award of fees unjust, the court must deny the motion for attorney fees. R.C. 2335.39(B)(2)(a).

As required by law, the Magistrate examined whether the Board was substantially justified in initiating the matter in controversy. Upon reviewing relevant

case law, the Magistrate determined that the Board initiated this matter when it sent out the Notice and Opportunity for Hearing. In reaching this conclusion, the Magistrate primarily relied upon Gilmore v. Ohio State Dental Board, 161 Ohio App.3d 551, 2005-Ohio-2856, where the appellate court stated:

[t]he intent of the attorney-fees section of R.C. 2335.39 is to protect citizens from unjustified state action and to censure frivolous government action. See State ex rel. R.T.G., Inc. v. Ohio, 98 Ohio St.3d 1, 2002-Ohio-6716 * * *. The issue is whether the board had good reason to bring the action in the first instance. * * *.

"In order to determine whether an administrative board was 'substantially justified,' a court must look at the information the Board had in its possession and the investigation the Board conducted at the time the action was initiated." See Linden Medical Pharmacy, Inc. v. Ohio State Bd. of Pharmacy, supra. * * *.

"To initiate" means to commence an action, not to continue a proceeding already begun. See State ex rel. Ohio Dep't of Health v. Sowald, 65 Ohio St.3d 338, 1992-Ohio-1. In Sowald, the Ohio Department of Health ("ODH") issued a notice letter to a nursing home operator on October 26, 1987, stating that ODH intended to decertify the home after annual certification surveys had revealed Medicaid deficiencies. Subsequently, a resurvey of the nursing home showed that the home had been brought into substantial compliance with the certification-provisions. The Ohio Supreme Court held that the October 26, 1987, letter was the initiation of the matter in controversy and that the resurveys were merely a continuation of the process.

In deciding a motion for attorney fees pursuant to R.C. 2335.39, the trial court must rely on the investigation, evidence and information an administrative board had in its possession at the time it initiated the charges and not upon evidence introduced during or after the administrative hearing. See Warren's Eastside Auto Sales v. Ohio Dept. of

Public Safety, supra. In Warren's Eastside Auto Sales, prior to the administrative hearing, the Ohio Department of Public Safety possessed evidence that Warren's owner had been convicted of three crimes involving the sale of motor vehicles. The Eleventh Appellate District held that in determining whether the owner was entitled to attorney fees under R.C. 2335.39, the trial court could not consider evidence that the convictions were later vacated. The trial court had to consider the evidence the administrative board possessed when it initiated the action by notifying the owner that his convictions could result in the revocation of his motor vehicle dealer's license.

In this case, we hold that the board initiated the matter in controversy on July 29, 1999, when it sent Gilmore the notice of opportunity for a hearing. Any proceedings occurring after that time constituted a continuation of the matter in controversy, not its initiation. The trial court was required to consider the information the Board had in its possession at the time it issued the notice of opportunity for a hearing.

Id. at ¶¶13-17.

Based on Gilmore, the Magistrate determined that the matter in controversy was initiated when the Board issued the Notice of Hearing and further that the Board was substantially justified in taking that action based on the results of Appellant's toxicology report.

In objecting to these conclusions, Appellant argues that Gilmore is not the "appropriate framework" for purposes of analyzing whether the Board was substantially justified in initiating the matter in controversy. Appellant draws a distinction between cases where a party prevails against a state agency on the merits versus a procedural victory. He contends that as the appellant in Gilmore prevailed on the merits, then it was appropriate for the court to consider whether the state agency had substantial

justification for initiating disciplinary proceedings against the appellant's dental license in determining whether he was entitled to attorney's fees. Appellant contends that his appeal was not based upon the merits, but rather upon the Board's violation of his due process right to a hearing. He argues that, based on his assignment of error and the Court's ruling that service was defective, the matter in controversy was not broadly the Board's actions in initiating the discipline proceedings but rather the Board's conduct in failing to properly obtain service and denying him a hearing. Appellant contends that support for his position can be found in the Ohio Supreme Court's decision in State ex rel. R.T.G. v. State of Ohio, 98 Ohio St.3d 1, 2002-Ohio-6716.

In that case, the State issued a regulation designating a large portion of the plaintiff's land unsuitable for mining. The plaintiff, a coal mining company, then initiated a mandamus action arguing that the State's designation amounted to a taking of its coal, and thus, that the State should be compelled to commence appropriation proceedings so that it could be properly compensated. The plaintiff ultimately prevailed, obtaining a judgment that the State's designation resulted in a compensable taking of its coal. The plaintiff then sought attorney's fees pursuant to R.C. 2335.39. The State argued that fees are recoverable under the statute only when the State initiates the legal action. As the State had not initiated the mandamus action, it contended fees were not recoverable. The Supreme Court disagreed, stating:

[w]e construe this language to permit fees where the state initiates either the conduct that gave rise to the litigation or initiates the litigation caused by the controversy. Had the General Assembly intended to permit fees only where the state initiates the litigation, then it could have indicated that fees would be awarded only where the state initiated "litigation," as

opposed to the more general language of "matter in controversy" that was actually used.

Furthermore, to construe this language otherwise would lead to an absurd result in this case. Clearly the purpose of R.C. 2335.39 is to protect citizens from unjustified state action. If fees under R.C. 2335.39 were permitted only where the state initiated the legal action, the protection that R.C. 2335.39 would not be available where landowners, such as in the instant case, were compelled to initiate legal action to get relief from the state.

Id. at ¶¶67, 68. (Emphasis in original).

Appellant argues that, pursuant to the above holding, fees can be awarded when a state agency initiates either the litigation or the conduct that gave rise to the litigation. He contends that it was the Board's conduct in failing to perfect service and depriving him of a hearing that gave rise to this litigation.

After careful consideration and review, the Court finds that the outcome is the same regardless of which definition of "matter in controversy" is utilized. Assuming the Magistrate is correct, then clearly the Board was substantially justified in initiating these proceedings due to the results of the toxicology report. If the Court agreed with Appellant that the matter in controversy was both the Board's failure to perfect proper service and to afford him a hearing, the record reveals the Board's actions were substantially justified.

It must be emphasized that Appellant is not automatically entitled to fees simply because the Board's actions were improper or not in accordance with the law. "The intent of the attorney-fees subsection of R.C. 2335.39 is to protect citizens from unjustified state action and to censure frivolous government action." Linden Med.

Pharm., Inc. v. Ohio State Bd. of Pharm., Franklin App. No., 2005-Ohio-6961, at ¶28.

The Board's failure to strictly comply with R.C. 119.07's service requirements does not rise to the level of an unjustified or frivolous government action. Support for this finding can be found in the Tenth District's decision overruling the Board's assignment of error:

[i]n the present case, the trial court held that since the second notice was not personally delivered or published, said notice was ineffective, and thus, Dr. Porter did not lose his right to a hearing by failing to make a separate hearing request within 30 days of the second notice. The Board suggests that in rendering its decision, the trial court ignores the extraordinary costs associated with service by publication and/or personal service; costs that the Board contends, will likely require state agencies to weigh whether or not to continue to pursue disciplinary actions against licensees, or forgo them due to budgetary concerns.

We understand the Board's position and the frustration it expresses as a result of the trial court's decision. However, it is important to remain mindful of the judiciary's responsibility with respect to statutory interpretation. When this court is called on to give effect to an act of the General Assembly, a standard of judicial restraint has developed when the wording of the enactment is clear and unambiguous. Bernardini v. Bd. of Edn.(1979), 58 Ohio St.2d 1, 387 N.E.2d 1222. This court is required to look at the statute itself to determine the intent of the General Assembly, and if the intent is clearly expressed in the statute, the statute may not be enlarged or abridged. Athens Cty. Bd. of Commrs. v. Schregardus (1992), 83 Ohio App.3d 861, 866 * * *. In ascertaining the legislative intent of a statute, it is the duty of this court to give effect to the words used in the statute and not to delete words used, or to insert words that are not used. Id. * * *.

Though the Board makes persuasive arguments for a different interpretation, the statute at issue is clear. While logic would seem to dictate a change in the service requirements set forth in R.C. 119.07, a

change in the language of the statute is beyond the purview of this court. We are constrained by the plain language of the statute, and, accordingly, must overrule the Board's assignment of error.

Porter v. State Med. Bd. of Ohio, Franklin App. No. 05-1339, 2006-Ohio-5296, at ¶¶9-11. (Emphasis added).

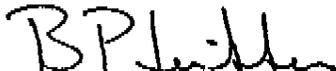
The Tenth District's dissatisfaction with the outcome of the appeal could not be any clearer. Based on the appellate court's obviously strong opinion that the Board's position was understandable, logical, and persuasive, this Court would be hard pressed to find that the Board's conduct was not substantially justified. The Court would further independently reach this conclusion based on the factual record demonstrating that the Board, although failing to strictly comply with R.C. 119.07, did make extra effort to achieve service upon Appellant. Additionally, the Board was justified in proceeding without a hearing based on the information before it. Specifically, Appellant's counsel submitted the hearing request before Appellant was served with the Notice and without having actually communicated with Appellant. Counsel further stated to the Board that he could not locate Appellant. Thus, the Board had justification for disregarding that hearing request.

Based on the foregoing, the Court finds that the Board has met its burden of demonstrating that it was substantially justified in initiating the matter in controversy. Therefore, Appellant is not entitled to attorney's fees under R.C. 2335.39, and it is not necessary to address Appellant's remaining objections. Appellant's objections are hereby OVERRULED, and the Board's Motion to Strike is rendered MOOT.

Finally, the Board objects to the Magistrate's failure to determine whether Appellant unreasonably protracted this litigation by appealing this Court's decision to the

Tenth District. The Court finds the Magistrate did not commit any error by not addressing the Board's argument. Having already set forth three reasons for denying Appellant's request for fees, the Magistrate was not required to also address this issue. Accordingly, the Board's objection is OVERRULED.

Based on the foregoing, Appellant's Motion for Attorney's Fees is DENIED.



BEVERLY Y. PFEIFFER, JUDGE

Copies to:

Eric J. Plinke
Counsel Appellant

Damion Clifford
Counsel for Appellee

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

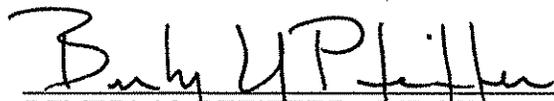
Stephen R. Porter, M.D., :
Appellant : Case No. 05CVF04-4765
-v- : JUDGE PFEIFFER
The State Medical Board of Ohio, :
Appellee. :

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2006 NOV 29 AM 11:11
CLERK OF COURTS

ENTRY GRANTING APPELLANT'S MOTION TO LIFT STAY
AND
NOTICE OF REFERRAL OF APPELLANT'S MOTIONS FOR ATTORNEY'S FEES

In this administrative appeal, the Court previously stayed Appellant's Motion for Attorney's Fees filed December 20, 2005 pending resolution of the parties' cross-appeals. As the cross-appeals have been decided, Appellant now moves the Court to lift the stay and consider both his prior Motion as well as a subsequent Motion for Attorney's Fees Incurred on Appeal.

Upon review, the Motion to Lift the Stay is GRANTED. Additionally, Appellant's Motions for Attorney's Fees shall be referred to Magistrate Edwin Skeens for a hearing on Dec 15, 2006 at 1:30 PM 6th Floor, 375 S. High Street, Columbus, Ohio.


BEVERL Y. PFEIFFER, JUDGE

Copies to:

Eric J. Plinke
Counsel Appellant

HEALTH & HUMAN
DEC 04 2006
SERVICES SECTION

Kyle Wilcox
Counsel for Appellee

18932A08
FILED
COURT OF APPEALS
FRANKLIN CO. OHIO
2006 OCT 10 PM 3:56
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

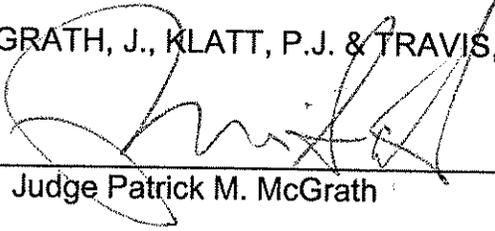
Stephen R. Porter, M.D., :
 :
 Appellant-Appellant, :
 (Cross-Appellee). :
 :
 v. :
 :
 State Medical Board of Ohio, :
 :
 Appellee-Appellee, :
 (Cross-Appellant). :

No. 05AP-1339
(C.P.C. No. 05CV-4765)

(REGULAR CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the opinion of this court rendered herein on October 10, 2006, appellant's single assignment of error is sustained and the appellee's single assignment of error is overruled, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed in part, reversed in part, and this matter is remanded to that court with instructions to enter judgment that includes language ordering the appellee to vacate its order of April 13, 2005, which revoked Dr. Porter's license. Costs shall be assessed against appellee.

McGRATH, J., KLATT, P.J. & TRAVIS, J.
By 

Judge Patrick M. McGrath

ON COMPUTER 5

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT
FILED
COURT OF APPEALS
FRANKLIN CO. OHIO
2006 OCT 10 PM 3:50
CLERK OF COURTS

Stephen R. Porter, M.D.,
Appellant-Appellant,
(Cross-Appellee).
v.
State Medical Board of Ohio,
Appellee-Appellee,
(Cross-Appellant).

No. 05AP-1339
(C.P.C. No. 05CV-4765)

(REGULAR CALENDAR)

O P I N I O N

Rendered on October 10, 2006

Porter, Wright, Morris & Arnold, and Eric J. Plinke, for appellant (cross-appellee).

Jim Petro, Attorney General, and Damion M. Clifford, for appellee (cross-appellant).

APPEAL from the Franklin County Court of Common Pleas.

McGRATH, J.

{¶1} Appellant-appellant, Stephen R. Porter, M.D., appeals from the judgment of the Franklin County Court of Common Pleas dismissing his appeal and remanding the matter back to the State Medical Board of Ohio("the Board"), for further proceedings. The Board has filed a cross-appeal.

HEALTH & HUMAN

OCT 16 2006

SERVICES SECTION

{¶2} On October 13, 2004, the Board issued a notice of summary suspension and opportunity for hearing ("first notice"). The hearing notice was based on the allegation that Dr. Porter was in violation of a probationary consent agreement by virtue of a positive urine drug screen that indicated the presence of alcohol. Dr. Porter, through counsel, requested a hearing in writing on November 12, 2004. However, certified mail service of the first notice was not completed, as the certified mail was returned and marked "unclaimed." The Board informed Dr. Porter's counsel that certified mail service of the first notice had not been achieved, and asked him if he would get a service waiver from his client, and Dr. Porter's counsel refused. Therefore, on November 16, 2004, the Board issued another notice of summary suspension and opportunity for hearing ("second notice"). This time, certified mail service was completed.¹ No hearing request was made after the second notice was received via certified mail. Therefore, the Board proceeded without a hearing, and adopted the proposed findings of its hearing examiners. On April 13, 2005, the Board issued an order permanently revoking Dr. Porter's license to practice medicine. Dr. Porter appealed the Board's decision to the Franklin County Court of Common Pleas in accordance with R.C. Chapter 119. The trial court held that, although signed for, certified mail service of the second notice was ineffective. The trial court reasoned that the first notice was returned for failure of delivery, and, therefore, pursuant to R.C. 119.07, the Board was required to either publish, or make personal delivery of the notice. Because the second notice was ineffective, the trial court concluded that Dr. Porter did not lose his right to a hearing by failing to make a separate

¹ While the Board received the signed green cards on December 2, 2004, they were undated as to the date of delivery.

hearing request. Consequently, the trial court dismissed the appeal, and remanded the matter to the Board for further proceedings. Dr. Porter timely appealed to this court, and the Board filed a cross-appeal.

{¶3} Dr. Porter advances the following single assignment of error for our review:

THE TRIAL COURT'S FAILURE TO VACATE, REVERSE,
OR OTHERWISE INVALIDATE THE BOARD'S ORDER
REVOKING DR. PORTER'S LICENSE IS ERROR.

{¶4} The Board, in its cross-appeal, asserts the following assignment of error:

THE TRIAL COURT'S JUDGMENT ENTRY, HOLDING THAT
SERVICE OBTAINED BY CERTIFIED MAIL WAS
IMPROPER AFTER AN INITIAL FAILURE OF SERVICE BY
CERTIFIED MAIL WAS ERROR.

{¶5} Our standard of review in this matter is well-established. In an administrative appeal pursuant to R.C. 119.12, the court of common pleas reviews a Board's order to determine whether it is supported by reliable, probative, and substantial evidence and is in accordance with law. R.C. 119.12. In applying this standard, the court must "give due deference to the administrative resolution of evidentiary conflicts." *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 111.

{¶6} On further appeal to this court, our standard of review is more limited. Unlike the court of common pleas, a court of appeals does not determine the weight of the evidence. *Bd. of Edn. of Rossford Exempted Village School Dist. v. State Bd. of Edn.* (1992), 63 Ohio St.3d 705, 707. Our role is limited to a determination of whether the court of common pleas abused its discretion in finding that the Board's order was or was not supported by reliable, probative, and substantial evidence. *Roy v. Ohio State Med. Bd.* (1992), 80 Ohio App.3d 675, 680. The term "abuse of discretion" connotes more than an

error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. However, on the question of whether the commission's order was in accordance with the law, this court's review is plenary. *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.* (1992), 63 Ohio St.3d 339, 343.

{¶7} Reliable, probative, and substantial evidence has been defined as follows:

* * * "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. * * * "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. * * * "Substantial" evidence is evidence with some weight; it must have importance and value.

Our Place, Inc. v. Ohio Liquor Control Comm. (1992), 63 Ohio St. 3d, 570, 571 (footnotes omitted).

{¶8} For ease of discussion, we will first address the Board's cross-appeal.²

Relevant to the Board's argument is R.C. 119.07, which states, in pertinent part:

When any notice sent by registered mail, as required by sections 119.01 to 119.13 of the Revised Code, is returned because of failure of delivery, the agency either shall make personal delivery of the notice by an employee of the agency or shall cause the notice to be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known place of residence or business of the party is located. * * *

{¶9} In the present case, the trial court held that since the second notice was not personally delivered or published, said notice was ineffective, and thus, Dr. Porter did not

² Dr. Porter's brief indicates that he does not oppose the Board's assignment of error, and thus, he has not filed a responsive brief thereto.

lose his right to a hearing by failing to make a separate hearing request within 30 days of the second notice. The Board suggests that in rendering its decision, the trial court ignores the extraordinary costs associated with service by publication and/or personal service; costs that the Board contends, will likely require state agencies to weigh whether or not to continue to pursue disciplinary actions against licensees, or forgo them due to budgetary concerns.

{¶10} We understand the Board's position and the frustration it expresses as a result of the trial court's decision. However, it is important to remain mindful of the judiciary's responsibility with respect to statutory interpretation. When this court is called on to give effect to an act of the General Assembly, a standard of judicial restraint has developed when the wording of the enactment is clear and unambiguous. *Bernardini v. Bd. of Edn.* (1979), 58 Ohio St.2d 1. This court is required to look at the statute itself to determine the intent of the General Assembly, and if the intent is clearly expressed in the statute, the statute may not be enlarged or abridged. *Athens Cty. Bd. of Commrs. v. Schregardus* (1992), 83 Ohio App.3d 861, 866, citing *Ohio State Bd. of Pharmacy v. Frantz* (1990), 51 Ohio St.3d 143. In ascertaining the legislative intent of a statute, it is the duty of this court to give effect to the words used in the statute and not to delete words used, or to insert words that are not used. *Id.*, citing *Columbus-Suburban Coach Lines v. Public Utilities Comm.* (1969), 20 Ohio St.2d 125.

{¶11} Though the Board makes persuasive arguments for a different interpretation, the statute at issue is clear. While logic would seem to dictate a change in the service requirements set forth in R.C. 119.07, a change in the language of the statute

is beyond the purview of this court. We are constrained by the plain language of the statute, and, accordingly, must overrule the Board's assignment of error.

{¶12} We now direct our attention to Dr. Porter's assignment of error. Dr. Porter contends that although the trial court remanded the matter to the Board for further proceedings, it failed to instruct the Board to reverse or vacate its order revoking Dr. Porter's license to practice medicine. We agree.

{¶13} R.C. 119.07 provides, in part:

Except when a statute prescribes a notice and the persons to whom it shall be given, in all cases in which section 119.06 of the Revised Code requires an agency to afford an opportunity for a hearing prior to the issuance of an order, the agency shall give notice to the party informing him of his right to a hearing. * * *

* * *

The failure of an agency to give the notices for any hearing required by sections 119.01 to 119.13 of the Revised Code in the manner provided in this section shall invalidate any order entered pursuant to the hearing.

{¶14} Because we have found that certified mail service of the first notice was not achieved, and the certified mail service of the second notice was ineffective, there was no valid notice informing Dr. Porter of his right to a hearing. Therefore, the Board's April 13, 2005 order entered pursuant to the hearing is not valid, and pursuant to R.C. 119.07, the trial court should have included language reflecting such in its decision. Consequently, we sustain Dr. Porter's single assignment of error.

{¶15} To summarize, Dr. Porter's single assignment of error is sustained, and the Board's single assignment of error is overruled. The judgment of the Franklin County

Court of Common Pleas is affirmed in part and reversed in part, and this matter is remanded to that court with instructions to enter judgment that includes language ordering the Board to vacate its order of April 13, 2005, which revoked Dr. Porter's license.

*Judgment affirmed in part, reversed in part,
and cause remanded with instructions.*

KLATT, P.J., and TRAVIS, J., concur.

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

FILED COURT
FRANKLIN CO., OHIO
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CLERK OF COURTS

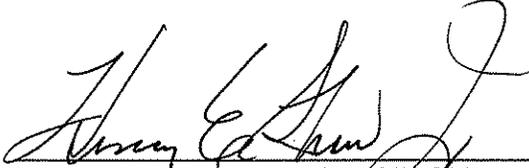
Stephen R. Porter, M.D., :
Appellant : Case No. 05CVF04-4765
-v- : JUDGE PFEIFFER
The State Medical Board of Ohio, :
Appellee. :

TERMINATION NO. 18
BY [Signature]

ENTRY GRANTING APPELLEE'S MOTION TO STAY FILED JANUARY 3, 2006

In this administrative appeal, the Court issued a Decision on November 23, 2005 finding that Appellant was not properly served with the notice of hearing in the underlying administrative proceeding and further remanding this matter to Appellee for further action. The parties have filed cross-appeals of that Decision to the Tenth District Court of Appeals. On December 20, 2005, Appellant filed a Motion for Attorney's Fees pursuant to R.C. 2335.39. Appellee opposes the Motion, or, in the alternative, seeks to stay the ruling during the pendency of the cross-appeals.

Under R.C. 2335.39, Appellant is entitled to attorney's fees only if he can establish he was the prevailing party. As the Tenth District Appellate Court is currently reviewing the Court's Decision, a stay of the Motion for Attorney's Fees is appropriate. Accordingly, Appellee's Motion to Stay is GRANTED, and a ruling upon Appellant's Motion for Attorney's Fees shall be held in abeyance pending the outcome of the parties' cross-appeals.


BEVERLY PFEIFFER, JUDGE
By Assignment

IN THE COURT OF COMMON PLEAS FRANKLIN COUNTY, OHIO

Stephen R. Porter, M.D.
6120 Holland Road
Brookville, IN 47012

Appellant,

vs.

State Medical Board of Ohio
77 South High Street, 17th Floor
Columbus, OH 43215-6127,

Appellee.

Case No. 05CVF-04-4765

JUDGE PFEIFFER

Appeal from the Decision and Entry
of November 21, 2005

FILED
COURT OF APPEALS
FRANKLIN CO. OHIO
05 DEC 20 PM 4:44
CLERK OF COURTS

APPELLANT'S NOTICE OF APPEAL

Notice is hereby given that Appellant, Stephen R. Porter, M.D., hereby appeals to the Court of Appeals of Franklin County, Tenth Appellate District, from the Decision and Entry entered in this action on the 21st day of November, 2005.

Respectfully submitted,

PORTER, WRIGHT, MORRIS & ARTHUR, LLP
Eric J. Plinke (0059463)
41 South High Street
Columbus, Ohio 43215-6194
(614) 227-2000 Fax (614) 227-2100
Attorney for Appellant
Stephen R. Porter, M.D.

HEALTH & HUMAN
DEC 23 2005
SERVICES SECTION

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
05 DEC 20 PM 4:39
CLERK OF COURTS

05 APE - 12 - 1339

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of December, 2005 the foregoing Notice of Appeal was filed via hand delivery with the Court of Common Pleas of Franklin County, Court of Appeals of Franklin County, Tenth Appellate District, and that a copy was served via regular mail, upon:

Kyle Wilcox, Esq.
Assistant Attorney General
Health & Human Services Section
Ohio Attorney General
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3428



Eric J. Plinke (0059463)

issued an order permanently revoking Appellant's license to practice medicine. On April 28, 2005, Appellant filed this appeal of the Board's Order.

Appellant argues that the Board's failure to hold a hearing deprived him of due process. The Board argues that because service of the First Notice was not completed upon Appellant, that notice, and Appellant's November 12, 2004 hearing request were ineffective. The Board contends that to properly request a hearing, Appellant had to make another request following service of the Second Notice.

The requirements for service of the agency's order are set forth in R.C. 119.07, which states as follows:

... When a statute specifically permits the suspension of a license without a prior hearing, **notice of the agency's order shall be sent to the party by registered mail, return receipt requested**, not later than the business day next succeeding such order. The notice shall state the reasons for the agency's action, cite the law or rule directly involved, and state that the party will be afforded a hearing if he requests it within thirty days of the time of mailing the notice. **A copy of the notice shall be mailed to attorneys or other representatives of record representing the party.**

... When any notice sent by registered mail, as required by sections 119.01 to 119.13 of the Revised Code, is returned because of failure of delivery, the agency either shall make personal delivery of the notice by an employee of the agency or shall cause the notice to be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known place of residence or business of the party is located. When notice is given by publication, a copy of the newspaper, with the first publication of the notice marked, shall be mailed to the party at the last known address and the notice shall be deemed received as of the date of the last publication.

The failure of an agency to give the notices for any hearing required by sections 119.01 to 119.13 of the Revised Code in the manner provided in this section shall invalidate any order entered pursuant to the hearing. [emphasis added]

Under R.C. 119.07, the Board was required to serve the First Notice on Appellant by certified mail. The certified mail was returned unclaimed. Following the failure of service of the First Notice, the Board issued the Second Notice and served it upon Appellant by certified mail.

R.C. 119.07 addresses the procedure to be followed upon failure of delivery of the First Notice. R.C. 119.07 provides that “When any notice sent by registered mail ... is returned because of failure of delivery, **the agency either shall make personal delivery of the notice by an employee of the agency or shall cause the notice to be published ...**” (emphasis added). The Second Notice was not personally delivered or published. Accordingly, the Second Notice was ineffective, and Appellant did not lose his right to a hearing by failing to make a separate hearing request within thirty days of the Second Notice.

The Court’s power to reverse or vacate a decision of the Board under R.C. 119.12 includes the power to remand the case to the administrative level for further proceedings. *Chapman v. Ohio State Dental Board* (1986), 33 Ohio App.3d 324.

For the foregoing reasons, this case is dismissed and this matter is remanded to the Board for further proceedings. This is a final, appealable Order. Costs to Appellee. Pursuant to Civil Rule 58, the Clerk of Court shall serve upon all parties notice of this judgment and its date of entry.

IT IS SO ORDERED.

Copies to:
Eric J. Plinke, Counsel for Appellant
Kyle C. Wilcox, Counsel for Appellee


BEVERLY Y. PREIFFER, JUDGE

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

Stephen R. Porter, M.D.,

Appellant, : Case No. 05CVF04-4765

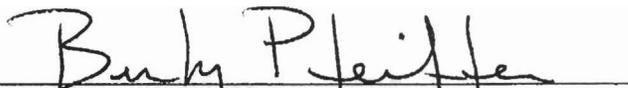
-v- : JUDGE PFEIFFER

State Medical Board of Ohio,

Appellee.

ENTRY GRANTING APPELLANT'S MOTION TO STRIKE SURREPLY BRIEF FILED
SEPTEMBER 20, 2005

This matter is before the Court on Appellant's unopposed Motion to Strike Surreply Brief filed September 20, 2005. Upon review, the Motion is well-taken and is GRANTED. Appellee's Surreply Brief is ORDERED STRICKEN from the record.


BEVERLY Y. PFEIFFER, JUDGE

Copies to:

Eric J. Plinke
Counsel for Appellant

Kyle C. Wilcox
Counsel for Appellee

FILED
COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
2005 NOV 23 AM 9:54
CLERK OF COURTS

HEALTH & HUMAN

NOV 30 2005

BEFORE THE STATE MEDICAL BOARD OF OHIO
STATE MEDICAL BOARD OF OHIO

Stephen R. Porter, M.D.
15021 U.S. 62
Metamora, IN 47030

2005 MAY -6 A 11: 20

05CVF 04 4765

Case No. _____

Judge _____

Appellant,
vs.

State Medical Board of Ohio
77 South High Street, 17th Floor
Columbus, OH 43215-6127,

Appeal from the Findings, Order and
Journal Entry of April 13, 2005, mailed
April 14, 2005

Appellee.

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO
05 APR 28 PM 3:27
CLERK OF COURTS

APPELLANT'S NOTICE OF APPEAL

Pursuant to Ohio Revised Code § 119.12, notice is hereby given that Appellant, Stephen R. Porter, M.D., appeals the State Medical Board of Ohio's Findings, Order and Journal Entry dated April 13, 2005, and mailed April 14, 2005 (copy attached as Exhibit A). The State Medical Board of Ohio's Findings, Order and Journal Entry is not supported by the requisite quantum of reliable, probative, and substantial evidence and is not in accordance with law because a hearing was not provided to Appellant despite a timely made request for hearing that was received by the State Medical Board of Ohio.

Respectfully submitted,



Eric J. Plinke (0059463)
PORTER, WRIGHT, MORRIS & ARTHUR, LLP
41 South High Street
Columbus, Ohio 43215-6194
(614) 227-2000 Fax (614) 227-2100
Attorney for Appellant
Stephen R. Porter, M.D.

STATE MEDICAL BOARD
OF OHIO
2005 MAY 20 PM 2:20

CERTIFICATE OF SERVICE

STATE MEDICAL BOARD
OF OHIO

2005 MAY -6 AM 11: 20

I hereby certify that on this 28th day of April, 2005 the foregoing Notice of Appeal was filed via hand delivery with the State Medical Board of Ohio, and with the Court of Common Pleas, Franklin County, Ohio, and that a copy was served via ordinary U.S. Mail, postage prepaid, upon:

Rebecca Albers, Esq.
Assistant Attorney General
Health & Human Services Section
Ohio Attorney General
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3428



Eric J. Plinke (0059463)



State Medical Board of Ohio

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

April 13, 2005

Stephen Randall Porter, M.D.
15021 U.S. 62
Metamora, IN 47030

Dear Doctor Porter:

Please find enclosed a certified copy of the Findings, Order and Journal Entry approved and confirmed by the State Medical Board meeting in regular session on April 13, 2005.

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

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

Very truly yours,

Lance A. Talmage, M.D.
Lance A. Talmage, M.D.
Secretary */LAT*

LAT:jam
Enclosures

CERTIFIED MAIL NO. 7002 2410 0002 3141 3079
RETURN RECEIPT REQUESTED

Cc: Eric J. Plinke, Esq.
CERTIFIED MAIL NO. 7002 2410 0002 3141 3680
RETURN RECEIPT REQUESTED

Duplicate mailing: 6120 Holland Road
Brookville, IN 47012
CERTIFIED MAIL NO. 7002 2410 0002 3141 3086
RETURN RECEIPT REQUESTED

MAILED 4-14-05

CERTIFICATION

I hereby certify that the attached copy of the Findings, Order and Journal Entry approved by the State Medical Board, meeting in regular session on April 13, 2005, constitutes a true and complete copy of the Findings, Order and Journal Entry in the Matter of Stephen Randall Porter, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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


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

(SEAL)

April 13, 2005
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :
:
STEPHEN RANDALL PORTER, M.D. :

FINDINGS, ORDER AND JOURNAL ENTRY

This matter came on for consideration before the State Medical Board of Ohio on April 13, 2005, pursuant to a Notice of Summary Suspension and Opportunity for Hearing issued to Stephen Randall Porter, M.D., on October 13, 2004. No request for hearing having been received within the statutorily mandated time period, Hearing Examiner R. Gregory Porter, Esq., on behalf of the Board, reviewed and summarized evidence supporting the Notice, and prepared Proposed Findings and a Proposed Order.

WHEREFORE, having reviewed Mr. Porter's Proposed Findings and Proposed Order, which is attached hereto and incorporated herein, the Board hereby finds that there is reliable, probative and substantial evidence to support the allegations as set forth in the October 13, 2004, Notice of Summary Suspension and Opportunity for Hearing.

Accordingly, it is hereby ORDERED that:

The certificate of Stephen Randall Porter, M.D., to practice medicine and surgery in the State of Ohio shall be REVOKED.

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


Lance A. Talmage, M.D.
Secretary

(SEAL)

April 13, 2005
Date

PROPOSED FINDINGS AND PROPOSED ORDER
IN THE MATTER OF STEPHEN RANDALL PORTER, M.D. 2005 MAR -3 A 9 38

The Matter of Stephen Randall Porter, M.D., was reviewed by R. Gregory Porter, Esq., Chief Hearing Examiner for the State Medical Board of Ohio.

INTRODUCTION

I. Basis for the Review

- A. In a Notice of Summary Suspension and Opportunity for Hearing [Notice], dated October 13, 2004, the State Medical Board of Ohio [Board] notified Stephen Randall Porter, M.D., that the Secretary and the Supervising Member of the Board had determined that there is clear and convincing evidence that Dr. Porter had violated Section 4731.22(B)(26), Ohio Revised Code, and that Dr. Porter's continued practice presents a danger of immediate and serious harm to the public. The Board advised Dr. Porter that, pursuant to Section 4731.22(G), Ohio Revised Code, the Board had adopted an Order of Summary Suspension of Dr. Porter's certificate to practice medicine and surgery in Ohio. The Board further advised Dr. Porter that continued practice would be considered practicing without a certificate, in violation of Section 4731.41, Ohio Revised Code.

Moreover, the Board notified Dr. Porter that the Board had proposed to take disciplinary action against his certificate because of his history of treatment for substance abuse, and for his having violated a September 2003 Step II Consent Agreement with the Board by relapsing on alcohol.

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

Finally, the Board advised Dr. Porter that he would be entitled to a hearing if he requested the hearing within thirty days of the mailing of the Notice. (Exhibit 3-1)

- B. On October 14, 2004, in accordance with Section 119.07, Ohio Revised Code, the Notice was sent via certified mail, return receipt requested, to the address of record for Dr. Porter at 15021 U.S. 52, Metamora, Indiana 47030; however, this notice was returned to the Board unclaimed on November 8, 2004. Subsequently, on November 12, 2004, Eric J. Plinke, Esq., submitted to the Board a written hearing request on behalf of Dr. Porter. On that date, Jacqueline A. Moore, Disciplinary Information Assistant, contacted Mr. Plinke and left a voice mail message stating,

among other things, that service had not yet been obtained on Dr. Porter. Later, on November 15, 2004, Ms. Moore spoke to Mr. Plinke on the telephone concerning the service issue. (Exhibits 2, 3, and 3-1 through 3-5)

On November 15, 2004, the Notice was remailed to Dr. Porter via certified mail, return receipt requested, to the address of record for Dr. Porter at 15021 U.S. Highway 52, Metamora, Indiana 47030-9744; and to 6120 Holland Road, Brookville, Indiana 47012. On December 2, 2004, both certified mail receipts were returned to the Board evidencing service of the Notice. (St. Exs. 2, 3 and 3-5)

- C. More than thirty days have elapsed since the second mailing of the Notice; however, Dr. Porter has not submitted a written hearing request to the Board. (Exhibit 3)

PROCEDURAL MATTERS

Note that Chief Hearing Examiner Porter is not related to Dr. Porter.

EVIDENCE EXAMINED

1. Exhibit 1A: December 29, 2004, Certification of William J. Schmidt, Assistant Executive Director, with the following attachments:
 - a. Exhibit 1B: Certified copy of Dr. Porter's August 2002, Step I Consent Agreement with the Board.
 - b. Exhibit 1C: Certified copy of Dr. Porter's January 2003 Step I Consent Agreement with the Board.
 - c. Exhibit 1D: Certified copy of Dr. Porter's September 2003 Step II Consent Agreement with the Board.
 - d. Exhibit 1E: Certified copy of the Board's October 13, 2004, Notice of Summary Suspension and Opportunity for Hearing sent to Dr. Porter, and attached related documents.
2. Exhibit 2: December 29, 2004, Affidavit of Debra L. Jones, Continuing Medical Education and Renewal Officer.
3. Exhibit 3: January 4, 2005, Affidavit of Jacqueline A. Moore, Disciplinary Information Assistant, with the following attachments:
 - a. Exhibit 3-1: Copy of the Board's October 13, 2004, Notice of Summary Suspension and Opportunity for Hearing, and attached related documents, as mailed to Dr. Porter via certified mail, return receipt requested, on October 14, 2004.

- b. Exhibit 3-2: Copy of the envelope from the October 14, 2004, mailing, marked by the U.S. Postal Service as unclaimed.
 - c. Exhibit 3-3: Copy of a November 9, 2004, letter sent to Dr. Porter via regular mail by Ms. Moore, informing Dr. Porter that refusal to accept delivery of the Board's notice will result in publication of the notice in a newspaper of general circulation in Metamora, Indiana.
 - d. Exhibit 3-4: Copy of a November 12, 2004, request for hearing filed by Eric J. Plinke, Esq., on behalf of Dr. Porter.
 - e. Exhibit 3-5: Copy of the Board's October 13, 2004, Notice of Summary Suspension and Opportunity for Hearing, and attached related documents, as mailed to Dr. Porter via certified mail, return receipt requested, on November 15, 2004.
4. Exhibit 4: December 29, 2004, Affidavit of Danielle C. Bickers, Compliance Officer, with the following attachment:
 - Exhibit 4-A: Copy of a September 3, 2004, urine toxicology report concerning a urine specimen submitted by Dr. Porter on August 20, 2004.
 5. Exhibit 5: January 20, 2005, Affidavit of Rebecca J. Marshall, Enforcement Attorney.
 6. Exhibit 6: January 21, 2005, Memorandum from Barbara A. Jacobs, Public Services Administrator, to Gregory Porter, Chief Hearing Officer.

SUMMARY OF THE EVIDENCE

All exhibits, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Proposed Findings and Proposed Order.

1. On August 14, 2002, Stephen Randall Porter, M.D., entered into a Step I Consent Agreement with the Board [2002 Step I Consent Agreement] in lieu of formal proceedings based upon Dr. Porter's violations of Sections 4731.22(B)(20) and (B)(26), Ohio Revised Code. The conduct that gave rise to these violations related to Dr. Porter's relapse on alcohol and his failure to report such relapse to the Board. In the 2002 Step I Consent Agreement, Dr. Porter agreed to certain terms, conditions, and limitations, including that his certificate to practice medicine and surgery in the State of Ohio would be suspended for an indefinite period of time, but not less than ninety days. (Exhibit 1B)
2. On January 10, 2003, Dr. Porter entered into a second Step I Consent Agreement [2003 Step I Consent Agreement] in lieu of formal proceedings based upon his violations of Sections 4731.22(B)(15) and (B)(26), Ohio Revised Code. The conduct that gave rise to

these violations related to Dr. Porter's relapse on alcohol and marijuana, and his violation of the conditions of limitation placed upon his certificate to practice in the 2002 Step I Consent Agreement. In the 2003 Step I Consent Agreement, Dr. Porter agreed to certain terms, conditions, and limitations, including that the suspension of his certificate to practice medicine and surgery in the State of Ohio pursuant to the 2002 Step I Consent Agreement was terminated, and that his certificate to practice medicine and surgery in the State of Ohio would be suspended for an indefinite period of time, but not less than 180 days from October 22, 2002, the date he had re-entered treatment at Greene Hall, a Board-approved treatment provider. (Exhibit 1C)

3. On September 10, 2003, Dr. Porter entered into a Step II Consent Agreement with the Board [Step II Consent Agreement] in lieu of formal proceedings based upon his violations of Sections 4731.22(B)(5), (B)(15), and (B)(26), Ohio Revised Code. The conduct that gave rise to these violations related to Dr. Porter's history of relapse on alcohol and marijuana and violation of the conditions of limitation placed upon his certificate to practice, as well as his having published a false, deceptive, or misleading statement in securing a certificate to practice medicine. The Step II Consent Agreement reprimanded Dr. Porter for what he admitted had been a false statement to the Board. Further, the Step II Consent Agreement reinstated Dr. Porter's certificate to practice medicine and surgery in the State of Ohio subject to certain terms, conditions, and limitations, including, among other things, requirements that he abstain completely from the use of alcohol and that he submit to random urine screenings for drugs and alcohol on a weekly basis. (Exhibit 1D)
4. On September 7, 2004, the Board received a urine toxicology report concerning a urine sample submitted by Dr. Porter on August 20, 2004. The report states that the urine had tested positive for alcohol, and had been GC/FID confirmed for the presence of alcohol. (Exhibit 4)
5. In a January 20, 2005, Affidavit, Rebecca J. Marshall, Esq., stated that she is an Enforcement Attorney for the Board. Ms. Marshall further stated that her job duties include investigating complaints against the Board's licensees. Moreover, Ms. Marshall stated that she had investigated the complaint filed against Dr. Porter that formed the basis for the current matter. Furthermore, Ms. Marshall stated, in part,
 - 6) As part of my investigation into the complaint filed against Dr. Porter, on or about September 10, 2004, I contacted Mr. Barron Farrier with the Ohio Physicians Effectiveness Program to discuss the results of a drug and alcohol urine screen submitted by Dr. Porter on August 20, 2004, that had been reported as positive for alcohol * * *. At that time, Mr. Farrier informed me that he had received a message from Dr. Porter's monitor earlier that day reporting that Dr. Porter had failed to appear as requested to provide a urine specimen for screening. On or about September 21, 2004, I again contacted Mr. Farrier, who at that time informed me that he had reviewed his case notes regarding Dr. Porter, which demonstrated that he had spoken with Dr. Porter on September 5, 2004, at which time he had

specifically instructed Dr. Porter to contact me concerning this matter, and again on September 15, 2004, at which time Dr. Porter had reported to Mr. Farrier that he had been drinking for approximately one and one-half weeks prior to the August 20, 2004, drug and alcohol urine screen.

- 7) In response to the information that had been gathered during the course of my investigation, I contacted Eric J. Plinke, Esq., attorney for Dr. Porter, on or about September 23, 2004. Mr. Plinke advised me that Dr. Porter had expressed that he was no longer interested in practicing medicine in Ohio at this time and no longer wished to be monitored by the Board.

(Exhibit 5) Finally, Ms. Marshall presented the information that she had gathered during the course of her investigation of Dr. Porter to the Secretary and the Supervising Member of the Board. (Exhibit 5)

PROPOSED FINDINGS

1. On August 14, 2002, Stephen Randall Porter, M.D., entered into a Step I Consent Agreement with the Board [2002 Step I Consent Agreement] in lieu of formal proceedings based upon Dr. Porter's violations of Sections 4731.22(B)(20) and (B)(26), Ohio Revised Code. The conduct that gave rise to these violations related to Dr. Porter's relapse on alcohol and his failure to report such relapse to the Board. In the 2002 Step I Consent Agreement, Dr. Porter agreed to certain terms, conditions, and limitations, including that his certificate to practice medicine and surgery in the State of Ohio would be suspended for an indefinite period of time, but not less than ninety days.
2. On January 10, 2003, Dr. Porter entered into a second Step I Consent Agreement [2003 Step I Consent Agreement] in lieu of formal proceedings based upon his violations of Sections 4731.22(B)(15) and (B)(26), Ohio Revised Code. The conduct that gave rise to these violations related to Dr. Porter's relapse on alcohol and marijuana, and his violation of the conditions of limitation placed upon his certificate to practice. In the 2003 Step I Consent Agreement, Dr. Porter agreed to certain terms, conditions, and limitations, including that the suspension of his certificate to practice medicine and surgery in the State of Ohio pursuant to the 2002 Step I Consent Agreement was terminated, and that his certificate to practice medicine and surgery in the State of Ohio would be suspended for an indefinite period of time, but not less than 180 days from October 22, 2002, the date he had re-entered treatment at Greene Hall, a Board-approved treatment provider.
3. On September 10, 2003, Dr. Porter entered into a Step II Consent Agreement with the Board [Step II Consent Agreement] in lieu of formal proceedings based upon his violations of Sections 4731.22(B)(5), (B)(15), and (B)(26), Ohio Revised Code. The conduct that gave rise to these violations related to Dr. Porter's history of relapse on alcohol and marijuana and violation of the conditions of limitation placed upon his certificate to practice, as well as his having published a false, deceptive, or misleading statement in securing a certificate to practice

medicine. The Step II Consent Agreement reprimanded Dr. Porter for what he admitted had been a false statement to the Board, and reinstated his certificate to practice medicine and surgery in the State of Ohio subject to certain terms, conditions, and limitations, including, among other things, requirements that he abstain completely from the use of alcohol and that he submit to random urine screenings for drugs and alcohol on a weekly basis.

4. On September 7, 2004, the Board received a urine toxicology report concerning a urine sample submitted by Dr. Porter on August 20, 2004. The report states that the urine had tested positive for alcohol, and had been GC/FID confirmed for the presence of alcohol.
5. The conduct of Dr. Porter as described in Findings of Fact 1 through 4, above, constitutes “[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,” as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.
6. Further, the conduct of Dr. Porter as described in Findings of Fact 4, above, constitutes a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

* * * * *

Dr. Porter submitted a urine sample that tested positive for alcohol, in violation of his Step II Consent Agreement with the Board. Subsequently, Dr. Porter did not respond to the Board’s Notice of Summary Suspension and Opportunity for Hearing. This does not bode well for any further regulatory relationship between Dr. Porter and the Board at the present time. Accordingly, Dr. Porter’s certificate should be revoked, and the Board should not grant an application for a new certificate until, at the very least, Dr. Porter is able to prove that he is in a stable recovery program and has maintained continuous sobriety for at least two years.

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Stephen Randall Porter, M.D., to practice medicine and surgery in the State of Ohio shall be REVOKED.

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



R. Gregory Porter, Esq.
Chief Hearing Examiner



State Medical Board of Ohio

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

October 13, 2004

Stephen Randall Porter, M.D.
15021 U.S. 52
Metamora, Indiana 47030

Dear Doctor Porter:

Enclosed please find certified copies of the Entry of Order, the Notice of Summary Suspension and Opportunity for Hearing, and an excerpt of the Minutes of the State Medical Board, meeting in regular session on October 13, 2004, including a Motion adopting the Order of Summary Suspension and issuing the Notice of Summary Suspension and Opportunity for Hearing.

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

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

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D., Secretary

LAT:blt
Enclosures

Mailed 10-14-04
REMAILED 11-15-04

CERTIFICATION

I hereby certify that the attached copies of the Entry of Order of the State Medical Board of Ohio and the Motion by the State Medical Board, meeting in regular session on October 13, 2004, to Adopt the Order of Summary Suspension and to Issue the Notice of Summary Suspension and Opportunity for Hearing, constitute true and complete copies of the Motion and Order as they appear in the Journal of the State Medical Board of Ohio.

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


Lance A. Talmage, M.D., Secretary

(SEAL)

October 13, 2004

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :
:
STEPHEN RANDALL PORTER, M.D. :
:

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 13th day of October, 2004.

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

Pursuant to their determination that there is clear and convincing evidence that Stephen Randall Porter, M.D., has violated Sections 4731.22(B)(26), Ohio Revised Code, as alleged in the Notice of Summary Suspension and Opportunity for Hearing which is enclosed herewith and fully incorporated herein, which determination is based upon review of information received pursuant to an investigation; and

Pursuant to their further determination that Dr. Porter's continued practice presents a danger of immediate and serious harm to the public;

The following Order is hereby entered on the Journal of the State Medical Board of Ohio for the 13th day of October, 2004:

It is hereby ORDERED that the certificate of Stephen Randall Porter, M.D., to practice medicine or surgery in the State of Ohio be summarily suspended.

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

This Order shall become effective immediately.

(SEAL)


Lance A. Talmage, M.D., Secretary

October 13, 2004
Date



State Medical Board of Ohio

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EXCERPT FROM DRAFT MINUTES OF OCTOBER 13, 2004

STEPHEN RANDALL PORTER, M.D. – ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

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

DR. BUCHAN MOVED TO APPROVE THE ORDER OF SUMMARY SUSPENSION AND TO SEND THE NOTICE OF OPPORTUNITY FOR HEARING TO DR. PORTER. DR. BHATI SECONDED THE MOTION. A vote was taken:

Vote:	Dr. Egner	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- abstain
	Ms. Sloan	- aye

The motion carried.



State Medical Board of Ohio

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NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING

October 13, 2004

Stephen Randall Porter, M.D.
15021 U.S. 52
Metamora, Indiana 47030

Dear Doctor Porter:

Notice of Summary Suspension

The Secretary and the Supervising Member of the State Medical Board of Ohio [Board] have determined that there is clear and convincing evidence that you have violated Section 4731.22(B)(26), Ohio Revised Code, and have further determined that your continued practice presents a danger of immediate and serious harm to the public. Such determinations were made upon review of information received pursuant to an investigation, including the following information:

- (1) You hold an active certificate to practice medicine or surgery in the State of Ohio, subject to certain terms, conditions, and limitations, and as such are authorized by the Board to practice medicine and surgery in the State of Ohio.
- (2) On or about August 14, 2002, you entered into a Step I Consent Agreement with the Board [August 2002 Step I Consent Agreement], in lieu of formal proceedings based upon your violations of Sections 4731.22(B)(20) and (B)(26), Ohio Revised Code, related to your relapse on alcohol and your failure to report such relapse to the Board. In this Step I Consent Agreement, you agreed to certain terms, conditions, and limitations, including that your certificate to practice medicine and surgery in the State of Ohio would be suspended for an indefinite period of time, but not less than ninety days. A copy of the August 2002 Step I Consent Agreement is attached hereto and fully incorporated herein.
- (3) On or about January 10, 2003, you entered into a second Step I Consent Agreement [January 2003 Step I Consent Agreement], in lieu of formal

proceedings based upon your violations of Sections 4731.22(B)(15) and (B)(26), Ohio Revised Code, related to your relapse on alcohol and marijuana, and your violation of the conditions of limitation placed upon your certificate to practice. In the January 2003 Step I Consent Agreement, you agreed to certain terms, conditions, and limitations, including that the suspension of your certificate to practice medicine and surgery in the State of Ohio pursuant to the August 2002 Step I Consent Agreement was terminated and your certificate to practice medicine and surgery in the State of Ohio would be suspended for an indefinite period of time, but not less than 180 days from October 22, 2002, the date you had re-entered treatment at a Board-approved treatment provider. A copy of the January 2003 Step I Consent Agreement is attached hereto and fully incorporated herein.

- (4) On or about September 10, 2003, you entered into a Step II Consent Agreement with the Board [September 2003 Step II Consent Agreement], in lieu of formal proceedings based upon your violations of Sections 4731.22(B)(5), (B)(15), and (B)(26), Ohio Revised Code, related to your history of relapse on alcohol and marijuana and violation of the conditions of limitation placed upon your certificate to practice, as well as your acts related to publishing a false, deceptive, or misleading statement in securing a certificate to practice medicine. The September 2003 Step II Consent Agreement reprimanded you for your admitted false statement to the Board, and reinstated your certificate to practice medicine and surgery in the State of Ohio subject to certain terms, conditions, and limitations, including, *inter alia*, the requirements that you abstain completely from the use of alcohol and that you submit to random urine screenings for drugs and alcohol on a weekly basis. A copy of the September 2003 Step II Consent Agreement is attached hereto and fully incorporated herein.
- (5) Despite the requirements set forth in the September 2003 Step II Consent Agreement, on or about September 7, 2004, the Board received notice that the urine specimen you submitted for drug screening on or about August 20, 2004, was reported as positive for alcohol and was GC/FID confirmed for the presence of alcohol. Further, a representative from the Ohio Physicians Effectiveness Program informed a Board Enforcement Attorney that you had relapsed on alcohol approximately ten days prior to the aforementioned positive drug screen, and reported that you had ceased submitting to random urine screenings for drugs and alcohol. Further, on or about September 23, 2004, your attorney communicated to the Board Enforcement Attorney that you no longer want to be monitored by the Board.
- (6) In the September 2003 Step II Consent Agreement, you agreed that if the Secretary and Supervising Member of the Board determine that there is clear and

convincing evidence that you have violated any term, condition, or limitation of the agreement, that violation, as alleged, also constitutes clear and convincing evidence that your continued practice presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension pursuant to Section 4731.22(G), Ohio Revised Code.

- (7) Section 4731.22(B)(26), Ohio Revised Code, provides that if the Board determines that an individual's ability to practice is impaired, the Board shall suspend the individual's certificate and shall require the individual, as a condition for continued, reinstated, or renewed certification to practice, to submit to treatment and, before being eligible to apply for reinstatement, to demonstrate to the Board the ability to resume practice in compliance with acceptable and prevailing standards of care, including completing required treatment, providing evidence of compliance with an aftercare contract or written consent agreement, and providing written reports indicating that the individual's ability to practice has been assessed by individuals or providers approved by the Board and that the individual has been found capable of practicing according to acceptable and prevailing standards of care.

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

Further, Rule 4731-16-02(B)(3), Ohio Administrative Code, provides that if an examination discloses impairment, or if the Board has other reliable, substantial and probative evidence demonstrating impairment, the Board shall initiate proceedings to suspend the licensee, and may issue an order of summary suspension as provided in Section 4731.22(G), Ohio Revised Code.

Therefore, pursuant to Section 4731.22(G), Ohio Revised Code, and upon recommendation of Lance A. Talmage, M.D., Secretary, and Raymond J. Albert, Supervising Member, you are hereby notified that, as set forth in the attached Entry of Order, your certificate to practice medicine or surgery in the State of Ohio is summarily suspended.

Notice of Opportunity for Hearing

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

- (A) On or about August 14, 2002, you entered into a Step I Consent Agreement with the Board [August 2002 Step I Consent Agreement], in lieu of formal proceedings based upon your violations of Sections 4731.22(B)(20) and (B)(26), Ohio Revised Code, related to your relapse on alcohol and your failure to report such relapse to the Board. In this Step I Consent Agreement, you agreed to certain terms, conditions, and limitations, including that your certificate to practice medicine and surgery in the State of Ohio would be suspended for an indefinite period of time, but not less than ninety days. A copy of the August 2002 Step I Consent Agreement is attached hereto and fully incorporated herein.
- (B) On or about January 10, 2003, you entered into a second Step I Consent Agreement [January 2003 Step I Consent Agreement], in lieu of formal proceedings based upon your violations of Sections 4731.22(B)(15) and (B)(26), Ohio Revised Code, related to your relapse on alcohol and marijuana, and your violation of the conditions of limitation placed upon your certificate to practice. In the January 2003 Step I Consent Agreement, you agreed to certain terms, conditions, and limitations, including that the suspension of your certificate to practice medicine and surgery in the State of Ohio pursuant to the August 2002 Step I Consent Agreement was terminated and your certificate to practice medicine and surgery in the State of Ohio would be suspended for an indefinite period of time, but not less than 180 days from October 22, 2002, the date you had re-entered treatment at a Board-approved treatment provider. A copy of the January 2003 Step I Consent Agreement is attached hereto and fully incorporated herein.
- (C) On or about September 10, 2003, you entered into a Step II Consent Agreement with the Board [September 2003 Step II Consent Agreement], in lieu of formal proceedings based upon your violations of Sections 4731.22(B)(5), (B)(15), and (B)(26), Ohio Revised Code, related to your history of relapse on alcohol and marijuana and violation of the conditions of limitation placed upon your certificate to practice, as well as your acts related to publishing a false, deceptive, or misleading statement in securing a certificate to practice medicine. The September 2003 Step II Consent Agreement reprimanded you for your admitted false statement to the Board, and reinstated your certificate to practice medicine and surgery in the State of Ohio subject to certain terms, conditions, and limitations, including, *inter alia*, the requirements that you abstain completely from the use of alcohol and that you submit to random urine screenings for drugs and alcohol on a weekly basis. A copy of the September 2003 Step II Consent Agreement is attached hereto and fully incorporated herein.

- (D) Despite the requirements set forth in the September 2003 Step II Consent Agreement, on or about September 7, 2004, the Board received notice that the urine specimen you submitted for drug screening on or about August 20, 2004, was reported as positive for alcohol and was GC/FID confirmed for the presence of alcohol. Further, a representative from the Ohio Physicians Effectiveness Program informed a Board Enforcement Attorney that you had relapsed on alcohol approximately ten days prior to the aforementioned positive drug screen, and reported that you had ceased submitting to random urine screenings for drugs and alcohol. Further, on or about September 23, 2004, your attorney communicated to the Board Enforcement Attorney that you no longer want to be monitored by the Board.

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

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

Pursuant to Chapter 119., Ohio Revised Code, and Chapter 4731., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice.

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

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

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that “[w]hen the board refuses to grant a certificate to an

Suspension
Stephen Randall Porter, M.D.
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applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.
Secretary

LAT/blt
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5143 8343
RETURN RECEIPT REQUESTED

cc: Eric Plinke, Esq.
Porter, Wright, Morris & Arthur
41 South High Street
Columbus, Ohio 43215

CERTIFIED MAIL # 7000 0600 0024 5143 8350
RETURN RECEIPT REQUESTED

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Stephen Randall Porter, M.D.
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Second mailing: CERTIFIED MAIL NO. 7000 0600 0024 5149 8705
RETURN RECEIPT REQUESTED

Duplicate mailing: 6120 Holland Road
Brookville, IN 47012
CERTIFIED MAIL NO 7000 0600 0024 5149 8699
RETURN RECEIPT REQUESTED

**STEP I
CONSENT AGREEMENT
BETWEEN
STEPHEN RANDALL PORTER, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO**

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

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

BASIS FOR ACTION

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

- A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4731.22(B)(26), Ohio Revised Code, "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice;" or Section 4731.22(B)(20), Ohio Revised Code, "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board."
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violations of Section 4731.22(B)(26), Ohio Revised Code; and Section 4731.22(B)(20), Ohio Revised Code, to wit: Section 4731-15-01, Ohio Administrative Code, Licensee Reporting Requirement; as set forth in Paragraph E below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement.
- C. Dr. Porter is licensed to practice medicine and surgery in the State of Ohio, License #35-069802.

- D. Dr. Porter states that he is also licensed to practice medicine and surgery in the State of Indiana, and has voluntarily surrendered such license for a period of three months.
- E. Dr. Porter states that during or about August 2001, he initially entered treatment for alcohol dependency at Rush Behavioral Health, a Board-approved treatment provider in Downers Grove, Illinois, successfully completing treatment during or about October 2001, and that contemporaneous with his initial treatment, he entered into a monitoring agreement with the impaired physicians program in Indiana. Dr. Porter further states that although he maintained sobriety for several months following treatment, he then relapsed, reverting back to alcohol use during or about March 2002. Dr. Porter admits that during or about March 2002, he was arrested for Driving Under the Influence and that such criminal matter remains pending at this time.

Dr. Porter further admits that on or about June 12, 2002, he again entered treatment at Rush Behavioral Health, where he underwent approximately two weeks of treatment before leaving that facility in order to seek care elsewhere. Dr. Porter admits that he has not yet initiated treatment at another Board approved treatment provider, but attests that since leaving Rush Behavioral Health, he has maintained uninterrupted sobriety and that he has initiated contact with the Ohio Physicians Effectiveness Program in order to maintain continuous monitoring through random drug screening.

Dr. Porter attests that the aforementioned relapse constitutes his first and only relapse since his initial treatment for chemical dependency. Dr. Porter admits that although he reported such relapse to the medical board in Indiana where he also practices, he failed to self-report such relapse to this Board as required.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Dr. Porter knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

SUSPENSION OF CERTIFICATE

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

Sobriety

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

Releases; Quarterly Declarations and Appearances

4. Dr. Porter shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Porter's chemical dependency or related conditions, or for purposes of complying with this Consent Agreement, whether such treatment or evaluation occurred before or after the effective date of this Consent Agreement. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. Dr. Porter further agrees to provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Consent Agreement.
5. Dr. Porter shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective, provided that if the effective date is on or after the 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.
6. Dr. Porter shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

Drug & Alcohol Screens; Supervising Physician

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

Within thirty days of the effective date of this Consent Agreement, Dr. Porter shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Porter shall submit the required urine specimens. In approving an

individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Porter. Dr. Porter and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Dr. Porter shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Porter must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Porter shall further ensure that the previously designated supervising physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

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

Rehabilitation Program

8. Within thirty days of the effective date of this Consent Agreement, Dr. Porter shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval.

Dr. Porter shall submit acceptable documentary evidence of continuing compliance with this program which must be received in the Board's offices no later than the due date for Dr. Porter's quarterly declarations.

CONDITIONS FOR REINSTATEMENT

9. The Board shall not consider reinstatement of Dr. Porter's certificate to practice medicine and surgery until all of the following conditions are met:
 - a. Dr. Porter shall submit an application for reinstatement, accompanied by appropriate fees, if any.

- b. Dr. Porter shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - i. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Porter has successfully completed any required inpatient treatment, as set forth in Section 4731-16-08(A)(13), Ohio Administrative Code, to include no less than twenty-eight consecutive days of in-patient or residential treatment for chemical dependence.
 - ii. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
 - iii. Evidence of continuing full compliance with this Consent Agreement.
 - iv. Two written reports indicating that Dr. Porter's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the Board for making such assessments and shall describe the basis for this determination.
- c. Dr. Porter shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the Board or, if the Board and Dr. Porter are unable to agree on the terms of a written Consent Agreement, then Dr. Porter further agrees to abide by any terms, conditions and limitations imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code.

Further, upon reinstatement of Dr. Porter's certificate to practice medicine and surgery in this state, the Board shall require continued monitoring which shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Revised Code. Moreover, upon termination of the consent agreement or Board Order, Dr. Porter shall submit to the Board for at least two years annual progress reports made under penalty of Board disciplinary action or criminal prosecution stating whether Dr. Porter has maintained sobriety.

10. In the event that Dr. Porter has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Porter's fitness to resume practice.

REQUIRED REPORTING BY LICENSEE

11. Within thirty days of the effective date of this Consent Agreement, Dr. Porter shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Porter further agrees to provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Porter shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
12. Within thirty days of the effective date of this Consent Agreement, Dr. Porter shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Porter shall provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

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

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Porter appears to have violated or breached any term or condition of this Consent Agreement, the Board reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Consent Agreement.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Porter acknowledges that he has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

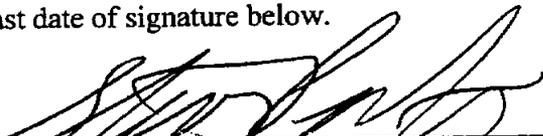
Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

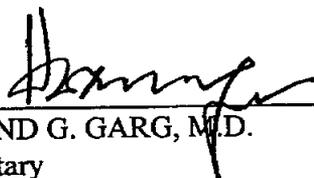
Dr. Porter hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

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

EFFECTIVE DATE

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


STEPHEN RANDALL PORTER, M.D.


ANAND G. GARG, M.D.
Secretary

8/8/2
DATE

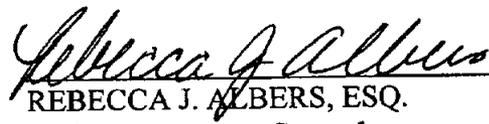
8/14/02
DATE


ERIC PLINKE, ESQ.
Attorney for Dr. Porter


RAYMOND J. ALBERT
Supervising Member

8/8/2
DATE

8/14/02
DATE


REBECCA J. ALBERS, ESQ.
Assistant Attorney General

8/14/02
DATE

**JANUARY 2003 STEP I CONSENT AGREEMENT
BETWEEN
STEPHEN RANDALL PORTER, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO**

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

Dr. Porter enters into this Consent Agreement [January 2003 Step I Consent Agreement] being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

BASIS FOR ACTION

This January 2003 Step I Consent Agreement is entered into on the basis of the following stipulations, admissions and understandings:

- A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4731.22(B)(26), Ohio Revised Code, "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice;" and/or Section 4731.22(B)(15), Ohio Revised Code, a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice."
- B. The Board enters into this Consent Agreement in lieu of further formal proceedings based upon the violations of Section 4731.22(B)(15) and (B)(26), Ohio Revised Code, as set forth in Paragraphs F and G below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement.
- C. Dr. Porter admits that his certificate to practice medicine and surgery in the State of Ohio, License #35-069802, is currently suspended pursuant to the terms of a Step I Consent Agreement into which he entered with the Board on August 14, 2002, as discussed in Paragraph E below.
- D. Dr. Porter states that he is also licensed to practice medicine and surgery in the State of Indiana, and has voluntarily surrendered such license for a period of three months.

- E. Dr. Porter admits that on or about August 14, 2002, he entered into a Step I Consent Agreement with the Board in lieu of formal proceedings based upon his violation of Sections 4731.22(B)(20) and (B)(26), Ohio Revised Code. A copy of this August 14, 2002, Step I Consent Agreement Between Stephen Randall Porter, M.D., and The State Medical Board of Ohio [August 2002 Step I Consent Agreement] is attached hereto and incorporated herein.

Dr. Porter admits that in the August 2002 Step I Consent Agreement he made certain admissions, including that during or about August 2001, he initially entered treatment for alcohol dependency at Rush Behavioral Health, a Board-approved treatment provider in Downers Grove, Illinois, successfully completing treatment during or about October 2001; that contemporaneous with his initial treatment, he entered into a monitoring agreement with the impaired physicians program in Indiana; that although he maintained sobriety for several months following treatment, he then relapsed, reverting back to alcohol use during or about March 2002; that during or about March 2002, he was arrested for Driving Under the Influence; and that on or about June 12, 2002, he again entered treatment at Rush Behavioral Health, where he underwent approximately two weeks of treatment before leaving that facility in order to seek care elsewhere.

Dr. Porter admits that in the August 2002 Step I Consent Agreement, he further admitted that he had not yet initiated treatment at another Board approved treatment provider, but attested that since leaving Rush Behavioral Health, he had maintained uninterrupted sobriety and had initiated contact with the Ohio Physicians Effectiveness Program in order to maintain continuous monitoring through random drug screening; that the aforementioned relapse constituted his first and only relapse since his initial treatment for chemical dependency; and that although he reported such relapse to the medical board in Indiana where he also practiced, he failed to self-report such relapse to this Board as required.

Dr. Porter further admits that in the August 2002 Step I Consent Agreement he agreed that his certificate to practice medicine and surgery in Ohio would be suspended for an indefinite period of time, but not less than 90 days, and further agreed to certain specified terms, conditions, and limitations, including requirements that he abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of his history of chemical dependency; that he abstain completely from the use of alcohol; and that he submit quarterly declarations under penalty of Board disciplinary action, stating whether there has been compliance with all the conditions of the Consent Agreement.

- F. Dr. Porter admits that after he entered into the August 2002 Step I Consent Agreement, he resumed using alcohol and also smoked marijuana, as admitted on his first "Declaration of Compliance" dated on or about November 6, 2002, which stated,

in part, "... I used alcohol on an intermittent basis since approval of my agreement. My use was in Mid-September, [in] late September, and on Oct [sic] 21. . . I also smoked marijuana prior to my initiating treatment." Dr. Porter further admits that on October 22, 2002, he entered treatment for chemical dependency at Greene Hall, a Board-approved treatment provider in Xenia, Ohio, and that he was discharged, treatment complete, on November 18, 2002.

- G. Dr. Porter admits that his use of alcohol and marijuana as discussed in Paragraph F above, was in violation of Paragraphs 2 and 3 of the August 2002 Step I Consent Agreement which specify, respectively, that "Dr. Porter shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. Porter's history of chemical dependency," and "Dr. Porter shall abstain completely from the use of alcohol."

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Dr. Porter knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

SUSPENSION OF CERTIFICATE

1. The suspension of Dr. Porter's certificate to practice medicine and surgery in the State of Ohio for an indefinite period of time, but not less than 90 days, pursuant to the August 2002 Step I Consent Agreement is hereby terminated. Further, Dr. Porter's license to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than 180 days from October 22, 2002, the date he entered treatment at Greene Hall.

Sobriety

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

Releases; Quarterly Declarations and Appearances

4. Dr. Porter shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Porter's chemical dependency or related conditions, or for purposes of complying with this Consent

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

5. Dr. Porter shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the date his quarterly declaration would have been due pursuant to his August 2002 Step I Consent Agreement with the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
6. Dr. Porter shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

Drug & Alcohol Screens; Supervising Physician

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

Within thirty days of the effective date of this Consent Agreement, Dr. Porter shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Porter shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Porter. Dr. Porter and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Dr. Porter shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, as set forth in the materials provided by

the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Porter must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Porter shall further ensure that the previously designated supervising physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

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

Rehabilitation Program

8. Within thirty days of the effective date of this Consent Agreement, Dr. Porter shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval.

Dr. Porter shall submit acceptable documentary evidence of continuing compliance with this program which must be received in the Board's offices no later than the due date for Dr. Porter's quarterly declarations.

CONDITIONS FOR REINSTATEMENT

9. The Board shall not consider reinstatement of Dr. Porter's certificate to practice medicine and surgery until all of the following conditions are met:
 - a. Dr. Porter shall submit an application for reinstatement, accompanied by appropriate fees, if any.
 - b. Dr. Porter shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - i. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Porter has successfully completed any required inpatient treatment, as set forth in Section 4731-16-08(A)(13), Ohio

Administrative Code, to include no less than twenty-eight consecutive days of in-patient or residential treatment for chemical dependence.

- ii. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
 - iii. Evidence of continuing full compliance with this Consent Agreement.
 - iv. Two written reports indicating that Dr. Porter's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be based upon examinations occurring within the 90 days immediately preceding any application for reinstatement pursuant to Paragraph 9.a. above, and shall be made by individuals or providers approved by the Board for making such assessments, shall describe the basis for this determination, any recommendations for treatment, monitoring, or supervision of Dr. Porter, and any conditions, restrictions, or limitations that should be imposed on Dr. Porter's practice.
- c. Dr. Porter shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the Board or, if the Board and Dr. Porter are unable to agree on the terms of a written Consent Agreement, then Dr. Porter further agrees to abide by any terms, conditions and limitations imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code.

Further, upon reinstatement of Dr. Porter's certificate to practice medicine and surgery in this state, the Board shall require continued monitoring which shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Revised Code. Moreover, upon termination of the consent agreement or Board Order, Dr. Porter shall submit to the Board for at least two years annual progress reports made under penalty of Board disciplinary action or criminal prosecution stating whether Dr. Porter has maintained sobriety.

10. In the event that Dr. Porter has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Porter's fitness to resume practice.

REQUIRED REPORTING BY LICENSEE

11. Within thirty days of the effective date of this Consent Agreement, Dr. Porter shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Porter further agrees to provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Porter shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
12. Within thirty days of the effective date of this Consent Agreement, Dr. Porter shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Porter shall provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

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

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Porter appears to have violated or breached any term or condition of this Consent Agreement, the Board reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Consent Agreement.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Porter acknowledges that he has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

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

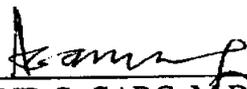
This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code, and may be reported to appropriate organizations, data banks, and governmental bodies. Dr. Porter agrees to provide his social security number to the Board and hereby authorizes the Board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

The August 2002 Step I Consent Agreement shall be terminated upon the last date of signature below, concurrent with this January 2003 Step I Consent Agreement becoming effective. Further, this January 2003 Step I Consent Agreement, upon becoming effective, shall contain the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this January 2003 Step I Consent Agreement.

EFFECTIVE DATE

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

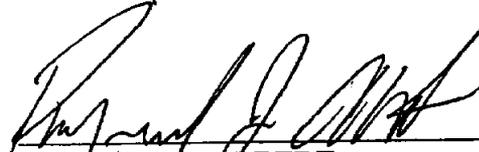

STEPHEN RANDALL PORTER, M.D.


ANAND G. GARG, M.D.
Secretary

12/23/02
DATE

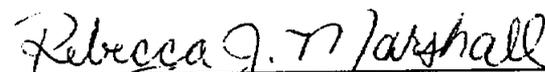
01/08/03
DATE


ERIC PLINKE, ESQ.
Attorney for Dr. Porter


RAYMOND J. ALBERT
Supervising Member

12/18/02
DATE

1/08/03
DATE


REBECCA J. MARSHALL, ESQ.
Enforcement Coordinator

01/10/03
DATE

2003 SEP -8 A 11: 21

**STEP II
CONSENT AGREEMENT
BETWEEN
STEPHEN RANDALL PORTER, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO**

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

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

BASIS FOR ACTION

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

- A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violations of Section 4731.22(B)(26), Ohio Revised Code, "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice;" Section 4731.22(B)(15), Ohio Revised Code, "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice;" and/or Section 4731.22(B)(5), Ohio Revised Code, "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board."
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violations of Sections 4731.22(B)(15) and (B)(26), Ohio Revised Code, as set forth in Paragraphs E, F, and G of the January 2003 Step I Consent Agreement Between Stephen Randall Porter, M.D., and The State Medical Board of Ohio that was effective on January 10, 2003, [January 2003 Step I Consent Agreement], a copy of which is attached hereto and fully incorporated herein, and as set forth in

Paragraphs E and F herein; and the violation of Section 4731.22(B)(5) as set forth in Paragraph F below. The Board expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Consent Agreement.

- C. Dr. Porter is applying for reinstatement of his license to practice medicine and surgery in the State of Ohio, License #35-069802, which was suspended pursuant to the terms of the aforementioned January 2003 Step I Consent Agreement.
- D. Dr. Porter states that he is also licensed to practice medicine and surgery in the State of Indiana, and admits that his license to practice in that state, which he had previously voluntarily surrendered for a period of 90 days, has since been suspended by the Medical Licensing Board of Indiana [Indiana Board].
- E. Dr. Porter admits that after experiencing a second relapse of his chemical dependence by consuming alcohol and smoking marijuana during September and October 2002, he received twenty-eight days of residential treatment at Greene Hall, a Board-approved treatment provider in Xenia, Ohio, from which he was discharged, treatment complete, on November 18, 2002. Dr. Porter further admits that he has been diagnosed with depression for which he is currently prescribed Effexor XR.

Dr. Porter admits that on December 5, 2002, the Indiana Board held an administrative hearing that resulted in a January 8, 2003, Order placing Dr. Porter's Indiana medical license on indefinite suspension and prohibiting him from seeking reinstatement of such license until on or after January 8, 2004. Dr. Porter further admits that this disciplinary action resulted because of the aforementioned second relapse of his chemical dependency.

Dr. Porter further admits that immediately upon leaving the December 5, 2002, administrative hearing of the Indiana Board, he discovered that his car had been towed and when he appeared at the police station in an attempt to retrieve it, he was arrested and incarcerated due to a warrant that had been issued based upon his failure to appear for a court hearing related to his prior arrest in Indiana during March 2002 for Driving Under the Influence. Dr. Porter asserts that it was his belief that the aforementioned court hearing was to have been rescheduled because he was at that time in residential treatment at Greene Hall, but he admits, in fact, the original hearing date had never been changed. Dr. Porter further admits that he thereafter remained incarcerated, and on December 16, 2002, he entered a plea of guilty to the aforementioned charge of Driving Under the Influence, for which the court suspended his license to operate a motor vehicle and sentenced him to 60 days in jail with 36 days suspended on the conditions that he timely pay the ordered fine and have no future criminal arrest for six months.

Dr. Porter states, and the Board acknowledges receipt of information to support, that since being discharged from Greene Hall on November 18, 2002, he has remained substantially compliant with his recovery plan, including participating in at least three AA meetings per week and submitting to random urine screens on a weekly basis, and that he has remained compliant with the terms of the Advocacy Contract he entered into with the Ohio Physicians Effectiveness Program during February 2003. Dr. Porter states, and the Board acknowledges receipt of information to support, that Dr. Porter began participating in the aftercare program at Bethesda Alcohol and Drug Treatment Program, a Board-approved treatment provider in Cincinnati, Ohio, during April 2003, and that he has remained compliant with the terms of such aftercare program and contract since that time; however, Dr. Porter admits that he did not enter into this written Aftercare Contract until June 16, 2003, despite the fact that it had been recommended upon his discharge from treatment in November 2002 and was required pursuant to his January 2003 Step I Consent Agreement. Further, Dr. Porter admits that the aforementioned advocacy and aftercare contracts remain in effect.

Dr. Porter states, and the Board acknowledges, that Raymond Hellmann, III, M.D., of Bethesda Alcohol and Drug Treatment Program, a Board-approved treatment provider in Cincinnati, Ohio, and David Goldberg, D.O., of Greene Memorial Hospital, a Board-approved treatment provider in Xenia, Ohio, have each provided written reports indicating that Dr. Porter's ability to practice has been assessed and he has been found capable of practicing medicine and surgery according to acceptable and prevailing standards of care, so long as certain treatment and monitoring conditions are in place, including that Dr. Porter undertake personal psychological counseling.

Accordingly, Dr. Porter states and the Board acknowledges that Dr. Porter has fulfilled the conditions for reinstatement of his certificate to practice medicine and surgery in the State of Ohio, as established in the January 2003 Step I Consent Agreement.

- F. Dr. Porter admits that in interrogatory responses he submitted to the State Medical Board of Ohio on or about July 23, 2003, he disclosed that, in addition to the aforementioned March 2002 charge for Driving Under the Influence in Indiana, he had previously entered pleas of guilty to other alcohol-related crimes, including Public Intoxication and Disorderly Conduct in Lexington, Kentucky, during 1989; Driving Under the Influence in Lexington, Kentucky, during 1989; and Driving Under the Influence in Huntington, West Virginia, during 1994. Dr. Porter further admits that, on or about November 13, 1995, when he submitted his initial application to practice medicine and surgery in the State of Ohio, he failed to disclose such information, answering "no" to the application question that asked whether he had ever been convicted or found guilty of a violation of federal law, state law, or a municipal ordinance other than a minor traffic violation. Dr. Porter asserts that at the time of such application he had a good faith belief that these convictions had been

expunged. Dr. Porter admits that he did not personally verify whether such convictions had been expunged prior to submitting his application, and that he subsequently learned that, in fact, such convictions had never been expunged. Dr. Porter further admits that his negative response to the aforementioned application question constitutes publishing a false, deceptive, or misleading statement in securing a certificate to practice medicine.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, the certificate of Dr. Porter to practice medicine and surgery in the State of Ohio shall be REINSTATED.

Stephen Randall Porter, M.D., is hereby REPRIMANDED based upon Dr. Porter's admitted false statement to the Board as set forth in Paragraph F above.

Further, Dr. Porter knowingly and voluntarily agrees with the Board to the following PROBATIONARY terms, conditions and limitations:

1. Dr. Porter shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio, and all terms of the December 16, 2002, Order imposed by Superior Court III, Wayne County, Indiana, in criminal case number Case #89D03-0204-CM-662.
2. Dr. Porter shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the date his quarterly declaration would have been due pursuant to his January 2003 Step I Consent Agreement with the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
3. Dr. Porter shall appear in person for an interview before the full Board or its designated representative. The first such appearance shall take place on the date his appearance would have been scheduled pursuant to his January 2003 Step I Consent Agreement with the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
4. In the event Dr. Porter is found by the Secretary of the Board to have failed to comply with any provision of this Consent Agreement, and is so notified of that deficiency in

writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Consent Agreement.

MONITORING OF REHABILITATION AND TREATMENT

Drug Associated Restrictions

5. Dr. Porter shall keep a log of all controlled substances prescribed. Such log shall be submitted, in the format approved by the Board, thirty days prior to Dr. Porter's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Porter shall make his patient records with regard to such prescribing available for review by an agent of the Board upon request.
6. Dr. Porter shall not, without prior Board approval, administer, personally furnish, or possess (except as allowed under Paragraph 7 below) any controlled substances as defined by state or federal law. In the event that the Board agrees at a future date to modify this Consent Agreement to allow Dr. Porter to administer or personally furnish controlled substances, Dr. Porter shall keep a log of all controlled substances prescribed, administered or personally furnished. Such log shall be submitted in the format approved by the Board thirty days prior to Dr. Porter's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Porter shall make his patient records with regard to such prescribing, administering, or personally furnishing available for review by an agent of the Board upon request.

Sobriety

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

Drug and Alcohol Screens/Supervising Physician

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

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

supervising physician to whom Dr. Porter shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Porter. Dr. Porter and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Dr. Porter shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Porter must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Porter shall further ensure that the previously designated supervising physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

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

Psychiatric Treatment

10. Within thirty days of the effective date of this Consent Agreement, Dr. Porter shall submit to the Board for its prior approval the name and qualifications of a psychiatrist of his choice. Upon approval by the Board, Dr. Porter shall undergo and continue psychiatric treatment at least weekly for a minimum of twelve consecutive weeks and at least once every four weeks thereafter, or as otherwise directed by the Board. Dr. Porter shall comply with his psychiatric treatment plan, including participating in psychotherapy/counseling as determined appropriate by his psychiatrist, but not less than once every four weeks or as otherwise determined by the Board, and taking medications as prescribed and/or ordered for his psychiatric disorder. Dr. Porter shall ensure that psychiatric reports are forwarded by his treating psychiatrist to the Board on a quarterly basis, or as otherwise directed by the Board. The psychiatric reports shall contain information describing Dr. Porter's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Porter's

compliance with his treatment plan; Dr. Porter's mental status; Dr. Porter's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. Porter shall ensure that his treating psychiatrist immediately notifies the Board of his failure to comply with his psychiatric treatment plan and/or any determination that Dr. Porter is unable to practice due to his psychiatric disorder. It is Dr. Porter's responsibility to ensure that quarterly reports are received in the Board's offices no later than the due date for Dr. Porter's quarterly declaration.

The psychotherapy/counseling required pursuant to this Consent Agreement may be delegated by Dr. Porter's treating psychiatrist to an appropriately licensed mental health professional approved in advance by the Board, so long as Dr. Porter's treating psychiatrist coordinates such psychotherapy/counseling as part of the comprehensive psychiatric treatment plan, includes information concerning Dr. Porter's participation and progress in such psychotherapy/counseling in the psychiatrist's quarterly reports, and continues to meet personally with Dr. Porter at least once every three months.

Should such psychotherapy/counseling be delegated to a licensed mental health professional, Dr. Porter shall ensure that psychotherapy/counseling reports are forwarded by his treating licensed mental health professional to the Board on a quarterly basis, or as otherwise directed by the Board. The psychotherapy/counseling reports shall contain information describing Dr. Porter's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Porter's compliance with his treatment plan; Dr. Porter's mental status; Dr. Porter's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. Porter shall ensure that his treating licensed mental health professional immediately notifies the Board of his failure to comply with his psychotherapy/counseling treatment plan. These psychotherapy/counseling reports shall be in addition to the psychiatric reports noted above.

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

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

Submission of Specimens

11. The Board retains the right to require, and Dr. Porter agrees to submit, blood or urine specimens for random drug and alcohol screening and/or for analysis for medication that may be prescribed for Dr. Porter, or for any other purpose, at Dr. Porter's expense, upon the Board's request and without prior notice. Dr. Porter's refusal to submit a specimen upon request of the Board shall result in a minimum of one year of actual license suspension.

Monitoring Physician

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

The monitoring physician shall monitor Dr. Porter and his medical practice, and shall review Dr. Porter's patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Porter and his medical practice, and on the review of Dr. Porter's patient charts. Dr. Porter shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Porter's quarterly declaration.

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

Annual Continuing Medical Education Course(s) in Personal and Professional Ethics

13. Before the end of each year of probation, or as otherwise determined by the Board, Dr. Porter shall provide documentation acceptable to the Board verifying his successful completion of at least five hours of Continuing Medical Education credit in personal and/or professional ethics during the prior twelve-month period. Any

course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for licensure renewal for the Continuing Medical Education acquisition period(s) in which they are completed and shall be approved in advance by the Board.

Rehabilitation Program / Aftercare Attendance

14. Within thirty days of the effective date of this Consent Agreement, Dr. Porter shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval.

Dr. Porter shall attend a minimum of one aftercare meeting per week, which shall be in addition to his participation in an alcohol and drug rehabilitation program as required above.

Dr. Porter shall submit acceptable documentary evidence of continuing compliance with this rehabilitation program and aftercare attendance which must be received in the Board's offices no later than the due date for Dr. Porter's quarterly declarations.

Compliance with Aftercare Contract / Physician Health Program

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

Releases

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

Required Reporting by Licensee

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

which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

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

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Porter appears to have violated or breached any term or condition of this Consent Agreement, the Board reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including, but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Consent Agreement.

If the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that Dr. Porter has violated any term, condition or limitation of this Consent Agreement, Dr. Porter agrees that the violation, as alleged, also constitutes clear and convincing evidence that his continued practice presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension pursuant to Section 4731.22(G), Ohio Revised Code.

DURATION/MODIFICATION OF TERMS

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

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Porter acknowledges that he has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

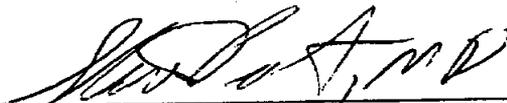
Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

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

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

EFFECTIVE DATE

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


STEPHEN RANDALL PORTER, M.D.

85403
DATE


LANCE A. TALMAGE, M.D.
Secretary

9-10-03
DATE


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

SEP 8, 2003
DATE


RAYMOND J. ALBERT
Supervising Member

7/10/03
DATE


REBECCA J. MARSHALL, ESQ.
Enforcement Coordinator

09/08/03
DATE

2003 SEP -8 A 11: 21

**STEP II
CONSENT AGREEMENT
BETWEEN
STEPHEN RANDALL PORTER, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO**

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

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

BASIS FOR ACTION

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

- A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violations of Section 4731.22(B)(26), Ohio Revised Code, "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice;" Section 4731.22(B)(15), Ohio Revised Code, "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice;" and/or Section 4731.22(B)(5), Ohio Revised Code, "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board."
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violations of Sections 4731.22(B)(15) and (B)(26), Ohio Revised Code, as set forth in Paragraphs E, F, and G of the January 2003 Step I Consent Agreement Between Stephen Randall Porter, M.D., and The State Medical Board of Ohio that was effective on January 10, 2003, [January 2003 Step I Consent Agreement], a copy of which is attached hereto and fully incorporated herein, and as set forth in

Paragraphs E and F herein; and the violation of Section 4731.22(B)(5) as set forth in Paragraph F below. The Board expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Consent Agreement.

- C. Dr. Porter is applying for reinstatement of his license to practice medicine and surgery in the State of Ohio, License #35-069802, which was suspended pursuant to the terms of the aforementioned January 2003 Step I Consent Agreement.
- D. Dr. Porter states that he is also licensed to practice medicine and surgery in the State of Indiana, and admits that his license to practice in that state, which he had previously voluntarily surrendered for a period of 90 days, has since been suspended by the Medical Licensing Board of Indiana [Indiana Board].
- E. Dr. Porter admits that after experiencing a second relapse of his chemical dependence by consuming alcohol and smoking marijuana during September and October 2002, he received twenty-eight days of residential treatment at Greene Hall, a Board-approved treatment provider in Xenia, Ohio, from which he was discharged, treatment complete, on November 18, 2002. Dr. Porter further admits that he has been diagnosed with depression for which he is currently prescribed Effexor XR.

Dr. Porter admits that on December 5, 2002, the Indiana Board held an administrative hearing that resulted in a January 8, 2003, Order placing Dr. Porter's Indiana medical license on indefinite suspension and prohibiting him from seeking reinstatement of such license until on or after January 8, 2004. Dr. Porter further admits that this disciplinary action resulted because of the aforementioned second relapse of his chemical dependency.

Dr. Porter further admits that immediately upon leaving the December 5, 2002, administrative hearing of the Indiana Board, he discovered that his car had been towed and when he appeared at the police station in an attempt to retrieve it, he was arrested and incarcerated due to a warrant that had been issued based upon his failure to appear for a court hearing related to his prior arrest in Indiana during March 2002 for Driving Under the Influence. Dr. Porter asserts that it was his belief that the aforementioned court hearing was to have been rescheduled because he was at that time in residential treatment at Greene Hall, but he admits, in fact, the original hearing date had never been changed. Dr. Porter further admits that he thereafter remained incarcerated, and on December 16, 2002, he entered a plea of guilty to the aforementioned charge of Driving Under the Influence, for which the court suspended his license to operate a motor vehicle and sentenced him to 60 days in jail with 36 days suspended on the conditions that he timely pay the ordered fine and have no future criminal arrest for six months.

Dr. Porter states, and the Board acknowledges receipt of information to support, that since being discharged from Greene Hall on November 18, 2002, he has remained substantially compliant with his recovery plan, including participating in at least three AA meetings per week and submitting to random urine screens on a weekly basis, and that he has remained compliant with the terms of the Advocacy Contract he entered into with the Ohio Physicians Effectiveness Program during February 2003. Dr. Porter states, and the Board acknowledges receipt of information to support, that Dr. Porter began participating in the aftercare program at Bethesda Alcohol and Drug Treatment Program, a Board-approved treatment provider in Cincinnati, Ohio, during April 2003, and that he has remained compliant with the terms of such aftercare program and contract since that time; however, Dr. Porter admits that he did not enter into this written Aftercare Contract until June 16, 2003, despite the fact that it had been recommended upon his discharge from treatment in November 2002 and was required pursuant to his January 2003 Step I Consent Agreement. Further, Dr. Porter admits that the aforementioned advocacy and aftercare contracts remain in effect.

Dr. Porter states, and the Board acknowledges, that Raymond Hellmann, III, M.D., of Bethesda Alcohol and Drug Treatment Program, a Board-approved treatment provider in Cincinnati, Ohio, and David Goldberg, D.O., of Greene Memorial Hospital, a Board-approved treatment provider in Xenia, Ohio, have each provided written reports indicating that Dr. Porter's ability to practice has been assessed and he has been found capable of practicing medicine and surgery according to acceptable and prevailing standards of care, so long as certain treatment and monitoring conditions are in place, including that Dr. Porter undertake personal psychological counseling.

Accordingly, Dr. Porter states and the Board acknowledges that Dr. Porter has fulfilled the conditions for reinstatement of his certificate to practice medicine and surgery in the State of Ohio, as established in the January 2003 Step I Consent Agreement.

- F. Dr. Porter admits that in interrogatory responses he submitted to the State Medical Board of Ohio on or about July 23, 2003, he disclosed that, in addition to the aforementioned March 2002 charge for Driving Under the Influence in Indiana, he had previously entered pleas of guilty to other alcohol-related crimes, including Public Intoxication and Disorderly Conduct in Lexington, Kentucky, during 1989; Driving Under the Influence in Lexington, Kentucky, during 1989; and Driving Under the Influence in Huntington, West Virginia, during 1994. Dr. Porter further admits that, on or about November 13, 1995, when he submitted his initial application to practice medicine and surgery in the State of Ohio, he failed to disclose such information, answering "no" to the application question that asked whether he had ever been convicted or found guilty of a violation of federal law, state law, or a municipal ordinance other than a minor traffic violation. Dr. Porter asserts that at the time of such application he had a good faith belief that these convictions had been

expunged. Dr. Porter admits that he did not personally verify whether such convictions had been expunged prior to submitting his application, and that he subsequently learned that, in fact, such convictions had never been expunged. Dr. Porter further admits that his negative response to the aforementioned application question constitutes publishing a false, deceptive, or misleading statement in securing a certificate to practice medicine.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, the certificate of Dr. Porter to practice medicine and surgery in the State of Ohio shall be REINSTATED.

Stephen Randall Porter, M.D., is hereby REPRIMANDED based upon Dr. Porter's admitted false statement to the Board as set forth in Paragraph F above.

Further, Dr. Porter knowingly and voluntarily agrees with the Board to the following PROBATIONARY terms, conditions and limitations:

1. Dr. Porter shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio, and all terms of the December 16, 2002, Order imposed by Superior Court III, Wayne County, Indiana, in criminal case number Case #89D03-0204-CM-662.
2. Dr. Porter shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the date his quarterly declaration would have been due pursuant to his January 2003 Step I Consent Agreement with the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
3. Dr. Porter shall appear in person for an interview before the full Board or its designated representative. The first such appearance shall take place on the date his appearance would have been scheduled pursuant to his January 2003 Step I Consent Agreement with the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
4. In the event Dr. Porter is found by the Secretary of the Board to have failed to comply with any provision of this Consent Agreement, and is so notified of that deficiency in

writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Consent Agreement.

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Drug Associated Restrictions

5. Dr. Porter shall keep a log of all controlled substances prescribed. Such log shall be submitted, in the format approved by the Board, thirty days prior to Dr. Porter's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Porter shall make his patient records with regard to such prescribing available for review by an agent of the Board upon request.
6. Dr. Porter shall not, without prior Board approval, administer, personally furnish, or possess (except as allowed under Paragraph 7 below) any controlled substances as defined by state or federal law. In the event that the Board agrees at a future date to modify this Consent Agreement to allow Dr. Porter to administer or personally furnish controlled substances, Dr. Porter shall keep a log of all controlled substances prescribed, administered or personally furnished. Such log shall be submitted in the format approved by the Board thirty days prior to Dr. Porter's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Porter shall make his patient records with regard to such prescribing, administering, or personally furnishing available for review by an agent of the Board upon request.

Sobriety

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

Drug and Alcohol Screens/Supervising Physician

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

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

supervising physician to whom Dr. Porter shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Porter. Dr. Porter and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Dr. Porter shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Porter must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Porter shall further ensure that the previously designated supervising physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

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

Psychiatric Treatment

10. Within thirty days of the effective date of this Consent Agreement, Dr. Porter shall submit to the Board for its prior approval the name and qualifications of a psychiatrist of his choice. Upon approval by the Board, Dr. Porter shall undergo and continue psychiatric treatment at least weekly for a minimum of twelve consecutive weeks and at least once every four weeks thereafter, or as otherwise directed by the Board. Dr. Porter shall comply with his psychiatric treatment plan, including participating in psychotherapy/counseling as determined appropriate by his psychiatrist, but not less than once every four weeks or as otherwise determined by the Board, and taking medications as prescribed and/or ordered for his psychiatric disorder. Dr. Porter shall ensure that psychiatric reports are forwarded by his treating psychiatrist to the Board on a quarterly basis, or as otherwise directed by the Board. The psychiatric reports shall contain information describing Dr. Porter's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Porter's

compliance with his treatment plan; Dr. Porter's mental status; Dr. Porter's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. Porter shall ensure that his treating psychiatrist immediately notifies the Board of his failure to comply with his psychiatric treatment plan and/or any determination that Dr. Porter is unable to practice due to his psychiatric disorder. It is Dr. Porter's responsibility to ensure that quarterly reports are received in the Board's offices no later than the due date for Dr. Porter's quarterly declaration.

The psychotherapy/counseling required pursuant to this Consent Agreement may be delegated by Dr. Porter's treating psychiatrist to an appropriately licensed mental health professional approved in advance by the Board, so long as Dr. Porter's treating psychiatrist coordinates such psychotherapy/counseling as part of the comprehensive psychiatric treatment plan, includes information concerning Dr. Porter's participation and progress in such psychotherapy/counseling in the psychiatrist's quarterly reports, and continues to meet personally with Dr. Porter at least once every three months.

Should such psychotherapy/counseling be delegated to a licensed mental health professional, Dr. Porter shall ensure that psychotherapy/counseling reports are forwarded by his treating licensed mental health professional to the Board on a quarterly basis, or as otherwise directed by the Board. The psychotherapy/counseling reports shall contain information describing Dr. Porter's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Porter's compliance with his treatment plan; Dr. Porter's mental status; Dr. Porter's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. Porter shall ensure that his treating licensed mental health professional immediately notifies the Board of his failure to comply with his psychotherapy/counseling treatment plan. These psychotherapy/counseling reports shall be in addition to the psychiatric reports noted above.

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

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

Submission of Specimens

11. The Board retains the right to require, and Dr. Porter agrees to submit, blood or urine specimens for random drug and alcohol screening and/or for analysis for medication that may be prescribed for Dr. Porter, or for any other purpose, at Dr. Porter's expense, upon the Board's request and without prior notice. Dr. Porter's refusal to submit a specimen upon request of the Board shall result in a minimum of one year of actual license suspension.

Monitoring Physician

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

The monitoring physician shall monitor Dr. Porter and his medical practice, and shall review Dr. Porter's patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Porter and his medical practice, and on the review of Dr. Porter's patient charts. Dr. Porter shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Porter's quarterly declaration.

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

Annual Continuing Medical Education Course(s) in Personal and Professional Ethics

13. Before the end of each year of probation, or as otherwise determined by the Board, Dr. Porter shall provide documentation acceptable to the Board verifying his successful completion of at least five hours of Continuing Medical Education credit in personal and/or professional ethics during the prior twelve-month period. Any

course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for licensure renewal for the Continuing Medical Education acquisition period(s) in which they are completed and shall be approved in advance by the Board.

Rehabilitation Program / Aftercare Attendance

14. Within thirty days of the effective date of this Consent Agreement, Dr. Porter shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval.

Dr. Porter shall attend a minimum of one aftercare meeting per week, which shall be in addition to his participation in an alcohol and drug rehabilitation program as required above.

Dr. Porter shall submit acceptable documentary evidence of continuing compliance with this rehabilitation program and aftercare attendance which must be received in the Board's offices no later than the due date for Dr. Porter's quarterly declarations.

Compliance with Aftercare Contract / Physician Health Program

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

Releases

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

Required Reporting by Licensee

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

which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

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

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Porter appears to have violated or breached any term or condition of this Consent Agreement, the Board reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including, but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Consent Agreement.

If the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that Dr. Porter has violated any term, condition or limitation of this Consent Agreement, Dr. Porter agrees that the violation, as alleged, also constitutes clear and convincing evidence that his continued practice presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension pursuant to Section 4731.22(G), Ohio Revised Code.

DURATION/MODIFICATION OF TERMS

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

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Porter acknowledges that he has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

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

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

EFFECTIVE DATE

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


STEPHEN RANDALL PORTER, M.D.

8/5/03
DATE


LANCE A. TALMAGE, M.D.
Secretary

9-10-03
DATE


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

SEP 8, 2003
DATE


RAYMOND J. ALBERT
Supervising Member

7/10/03
DATE


REBECCA J. MARSHALL, ESQ.
Enforcement Coordinator

09/08/03
DATE

**JANUARY 2003 STEP I CONSENT AGREEMENT
BETWEEN
STEPHEN RANDALL PORTER, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO**

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

Dr. Porter enters into this Consent Agreement [January 2003 Step I Consent Agreement] being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

BASIS FOR ACTION

This January 2003 Step I Consent Agreement is entered into on the basis of the following stipulations, admissions and understandings:

- A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4731.22(B)(26), Ohio Revised Code, "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice;" and/or Section 4731.22(B)(15), Ohio Revised Code, a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice."
- B. The Board enters into this Consent Agreement in lieu of further formal proceedings based upon the violations of Section 4731.22(B)(15) and (B)(26), Ohio Revised Code, as set forth in Paragraphs F and G below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement.
- C. Dr. Porter admits that his certificate to practice medicine and surgery in the State of Ohio, License #35-069802, is currently suspended pursuant to the terms of a Step I Consent Agreement into which he entered with the Board on August 14, 2002, as discussed in Paragraph E below.
- D. Dr. Porter states that he is also licensed to practice medicine and surgery in the State of Indiana, and has voluntarily surrendered such license for a period of three months.

- E. Dr. Porter admits that on or about August 14, 2002, he entered into a Step I Consent Agreement with the Board in lieu of formal proceedings based upon his violation of Sections 4731.22(B)(20) and (B)(26), Ohio Revised Code. A copy of this August 14, 2002, Step I Consent Agreement Between Stephen Randall Porter, M.D., and The State Medical Board of Ohio [August 2002 Step I Consent Agreement] is attached hereto and incorporated herein.

Dr. Porter admits that in the August 2002 Step I Consent Agreement he made certain admissions, including that during or about August 2001, he initially entered treatment for alcohol dependency at Rush Behavioral Health, a Board-approved treatment provider in Downers Grove, Illinois, successfully completing treatment during or about October 2001; that contemporaneous with his initial treatment, he entered into a monitoring agreement with the impaired physicians program in Indiana; that although he maintained sobriety for several months following treatment, he then relapsed, reverting back to alcohol use during or about March 2002; that during or about March 2002, he was arrested for Driving Under the Influence; and that on or about June 12, 2002, he again entered treatment at Rush Behavioral Health, where he underwent approximately two weeks of treatment before leaving that facility in order to seek care elsewhere.

Dr. Porter admits that in the August 2002 Step I Consent Agreement, he further admitted that he had not yet initiated treatment at another Board approved treatment provider, but attested that since leaving Rush Behavioral Health, he had maintained uninterrupted sobriety and had initiated contact with the Ohio Physicians Effectiveness Program in order to maintain continuous monitoring through random drug screening; that the aforementioned relapse constituted his first and only relapse since his initial treatment for chemical dependency; and that although he reported such relapse to the medical board in Indiana where he also practiced, he failed to self-report such relapse to this Board as required.

Dr. Porter further admits that in the August 2002 Step I Consent Agreement he agreed that his certificate to practice medicine and surgery in Ohio would be suspended for an indefinite period of time, but not less than 90 days, and further agreed to certain specified terms, conditions, and limitations, including requirements that he abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of his history of chemical dependency; that he abstain completely from the use of alcohol; and that he submit quarterly declarations under penalty of Board disciplinary action, stating whether there has been compliance with all the conditions of the Consent Agreement.

- F. Dr. Porter admits that after he entered into the August 2002 Step I Consent Agreement, he resumed using alcohol and also smoked marijuana, as admitted on his first "Declaration of Compliance" dated on or about November 6, 2002, which stated,

in part, “. . . I used alcohol on an intermittent basis since approval of my agreement. My use was in Mid-September, [in] late September, and on Oct [sic] 21. . . I also smoked marijuana prior to my initiating treatment.” Dr. Porter further admits that on October 22, 2002, he entered treatment for chemical dependency at Greene Hall, a Board-approved treatment provider in Xenia, Ohio, and that he was discharged, treatment complete, on November 18, 2002.

- G. Dr. Porter admits that his use of alcohol and marijuana as discussed in Paragraph F above, was in violation of Paragraphs 2 and 3 of the August 2002 Step I Consent Agreement which specify, respectively, that “Dr. Porter shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. Porter’s history of chemical dependency,” and “Dr. Porter shall abstain completely from the use of alcohol.”

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Dr. Porter knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

SUSPENSION OF CERTIFICATE

1. The suspension of Dr. Porter’s certificate to practice medicine and surgery in the State of Ohio for an indefinite period of time, but not less than 90 days, pursuant to the August 2002 Step I Consent Agreement is hereby terminated. Further, Dr. Porter’s license to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than 180 days from October 22, 2002, the date he entered treatment at Greene Hall.

Sobriety

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

Releases; Quarterly Declarations and Appearances

4. Dr. Porter shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Porter’s chemical dependency or related conditions, or for purposes of complying with this Consent

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

5. Dr. Porter shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the date his quarterly declaration would have been due pursuant to his August 2002 Step I Consent Agreement with the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
6. Dr. Porter shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

Drug & Alcohol Screens; Supervising Physician

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

Within thirty days of the effective date of this Consent Agreement, Dr. Porter shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Porter shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Porter. Dr. Porter and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Dr. Porter shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, as set forth in the materials provided by

the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Porter must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Porter shall further ensure that the previously designated supervising physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

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

Rehabilitation Program

8. Within thirty days of the effective date of this Consent Agreement, Dr. Porter shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval.

Dr. Porter shall submit acceptable documentary evidence of continuing compliance with this program which must be received in the Board's offices no later than the due date for Dr. Porter's quarterly declarations.

CONDITIONS FOR REINSTATEMENT

9. The Board shall not consider reinstatement of Dr. Porter's certificate to practice medicine and surgery until all of the following conditions are met:
 - a. Dr. Porter shall submit an application for reinstatement, accompanied by appropriate fees, if any.
 - b. Dr. Porter shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - i. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Porter has successfully completed any required inpatient treatment, as set forth in Section 4731-16-08(A)(13), Ohio

Administrative Code, to include no less than twenty-eight consecutive days of in-patient or residential treatment for chemical dependence.

- ii. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
 - iii. Evidence of continuing full compliance with this Consent Agreement.
 - iv. Two written reports indicating that Dr. Porter's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be based upon examinations occurring within the 90 days immediately preceding any application for reinstatement pursuant to Paragraph 9.a. above, and shall be made by individuals or providers approved by the Board for making such assessments, shall describe the basis for this determination, any recommendations for treatment, monitoring, or supervision of Dr. Porter, and any conditions, restrictions, or limitations that should be imposed on Dr. Porter's practice.
- c. Dr. Porter shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the Board or, if the Board and Dr. Porter are unable to agree on the terms of a written Consent Agreement, then Dr. Porter further agrees to abide by any terms, conditions and limitations imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code.

Further, upon reinstatement of Dr. Porter's certificate to practice medicine and surgery in this state, the Board shall require continued monitoring which shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Revised Code. Moreover, upon termination of the consent agreement or Board Order, Dr. Porter shall submit to the Board for at least two years annual progress reports made under penalty of Board disciplinary action or criminal prosecution stating whether Dr. Porter has maintained sobriety.

10. In the event that Dr. Porter has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Porter's fitness to resume practice.

REQUIRED REPORTING BY LICENSEE

11. Within thirty days of the effective date of this Consent Agreement, Dr. Porter shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Porter further agrees to provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Porter shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
12. Within thirty days of the effective date of this Consent Agreement, Dr. Porter shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Porter shall provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

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

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Porter appears to have violated or breached any term or condition of this Consent Agreement, the Board reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Consent Agreement.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Porter acknowledges that he has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

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

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

The August 2002 Step I Consent Agreement shall be terminated upon the last date of signature below, concurrent with this January 2003 Step I Consent Agreement becoming effective. Further, this January 2003 Step I Consent Agreement, upon becoming effective, shall contain the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this January 2003 Step I Consent Agreement.

EFFECTIVE DATE

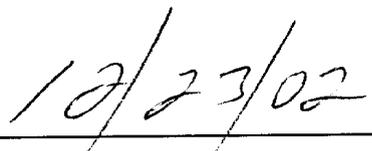
It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.



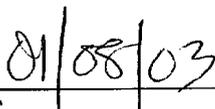
STEPHEN RANDALL PORTER, M.D.



ANAND G. GARG, M.D.
Secretary



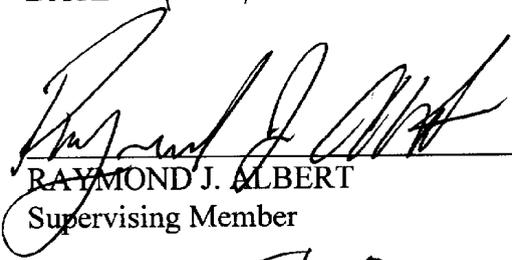
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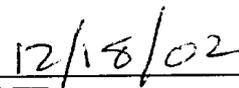
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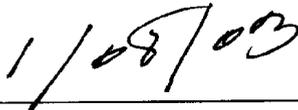
ERIC PLINKE, ESQ.
Attorney for Dr. Porter



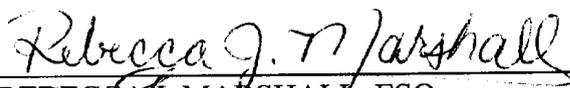
RAYMOND J. ALBERT
Supervising Member



DATE



DATE



REBECCA J. MARSHALL, ESQ.
Enforcement Coordinator



DATE

STEP I
CONSENT AGREEMENT
BETWEEN
STEPHEN RANDALL PORTER, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO

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

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

BASIS FOR ACTION

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

- A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4731.22(B)(26), Ohio Revised Code, "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice;" or Section 4731.22(B)(20), Ohio Revised Code, "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board."
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violations of Section 4731.22(B)(26), Ohio Revised Code; and Section 4731.22(B)(20), Ohio Revised Code, to wit: Section 4731-15-01, Ohio Administrative Code, Licensee Reporting Requirement; as set forth in Paragraph E below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement.
- C. Dr. Porter is licensed to practice medicine and surgery in the State of Ohio, License #35-069802.

- D. Dr. Porter states that he is also licensed to practice medicine and surgery in the State of Indiana, and has voluntarily surrendered such license for a period of three months.
- E. Dr. Porter states that during or about August 2001, he initially entered treatment for alcohol dependency at Rush Behavioral Health, a Board-approved treatment provider in Downers Grove, Illinois, successfully completing treatment during or about October 2001, and that contemporaneous with his initial treatment, he entered into a monitoring agreement with the impaired physicians program in Indiana. Dr. Porter further states that although he maintained sobriety for several months following treatment, he then relapsed, reverting back to alcohol use during or about March 2002. Dr. Porter admits that during or about March 2002, he was arrested for Driving Under the Influence and that such criminal matter remains pending at this time.

Dr. Porter further admits that on or about June 12, 2002, he again entered treatment at Rush Behavioral Health, where he underwent approximately two weeks of treatment before leaving that facility in order to seek care elsewhere. Dr. Porter admits that he has not yet initiated treatment at another Board approved treatment provider, but attests that since leaving Rush Behavioral Health, he has maintained uninterrupted sobriety and that he has initiated contact with the Ohio Physicians Effectiveness Program in order to maintain continuous monitoring through random drug screening.

Dr. Porter attests that the aforementioned relapse constitutes his first and only relapse since his initial treatment for chemical dependency. Dr. Porter admits that although he reported such relapse to the medical board in Indiana where he also practices, he failed to self-report such relapse to this Board as required.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Dr. Porter knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

SUSPENSION OF CERTIFICATE

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

Sobriety

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

Releases; Quarterly Declarations and Appearances

4. Dr. Porter shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Porter's chemical dependency or related conditions, or for purposes of complying with this Consent Agreement, whether such treatment or evaluation occurred before or after the effective date of this Consent Agreement. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. Dr. Porter further agrees to provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Consent Agreement.
5. Dr. Porter shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective, provided that if the effective date is on or after the 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.
6. Dr. Porter shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

Drug & Alcohol Screens; Supervising Physician

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

Within thirty days of the effective date of this Consent Agreement, Dr. Porter shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Porter shall submit the required urine specimens. In approving an

individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Porter. Dr. Porter and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Dr. Porter shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Porter must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Porter shall further ensure that the previously designated supervising physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

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

Rehabilitation Program

8. Within thirty days of the effective date of this Consent Agreement, Dr. Porter shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval.

Dr. Porter shall submit acceptable documentary evidence of continuing compliance with this program which must be received in the Board's offices no later than the due date for Dr. Porter's quarterly declarations.

CONDITIONS FOR REINSTATEMENT

9. The Board shall not consider reinstatement of Dr. Porter's certificate to practice medicine and surgery until all of the following conditions are met:
 - a. Dr. Porter shall submit an application for reinstatement, accompanied by appropriate fees, if any.

- b. Dr. Porter shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - i. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Porter has successfully completed any required inpatient treatment, as set forth in Section 4731-16-08(A)(13), Ohio Administrative Code, to include no less than twenty-eight consecutive days of in-patient or residential treatment for chemical dependence.
 - ii. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
 - iii. Evidence of continuing full compliance with this Consent Agreement.
 - iv. Two written reports indicating that Dr. Porter's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the Board for making such assessments and shall describe the basis for this determination.
- c. Dr. Porter shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the Board or, if the Board and Dr. Porter are unable to agree on the terms of a written Consent Agreement, then Dr. Porter further agrees to abide by any terms, conditions and limitations imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code.

Further, upon reinstatement of Dr. Porter's certificate to practice medicine and surgery in this state, the Board shall require continued monitoring which shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Revised Code. Moreover, upon termination of the consent agreement or Board Order, Dr. Porter shall submit to the Board for at least two years annual progress reports made under penalty of Board disciplinary action or criminal prosecution stating whether Dr. Porter has maintained sobriety.

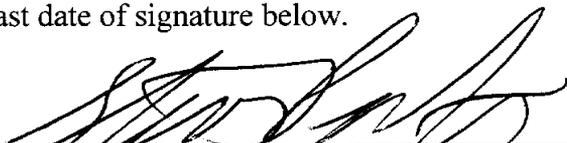
Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

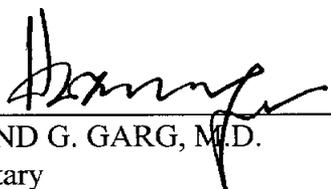
Dr. Porter hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

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

EFFECTIVE DATE

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

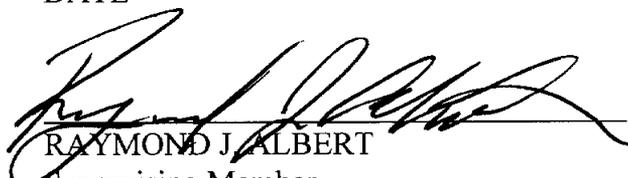

STEPHEN RANDALL PORTER, M.D.


ANAND G. GARG, M.D.
Secretary

8/8/2
DATE

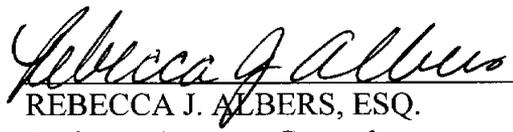
8/14/02
DATE


ERIC PLINKE, ESQ.
Attorney for Dr. Porter


RAYMOND J. ALBERT
Supervising Member

8/8/2
DATE

8/14/02
DATE


REBECCA J. ALBERS, ESQ.
Assistant Attorney General

8/14/02
DATE

10. In the event that Dr. Porter has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Porter's fitness to resume practice.

REQUIRED REPORTING BY LICENSEE

11. Within thirty days of the effective date of this Consent Agreement, Dr. Porter shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Porter further agrees to provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Porter shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
12. Within thirty days of the effective date of this Consent Agreement, Dr. Porter shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Porter shall provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

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

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Porter appears to have violated or breached any term or condition of this Consent Agreement, the Board reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Consent Agreement.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Porter acknowledges that he has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

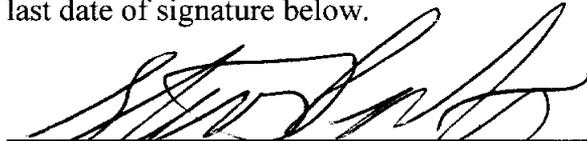
Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

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

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

EFFECTIVE DATE

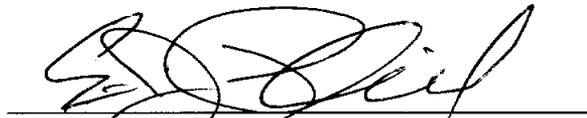
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STEPHEN RANDALL PORTER, M.D.


ANAND G. GARG, M.D.
Secretary

8/8/2
DATE

8/14/02
DATE


ERIC PLINKE, ESQ.
Attorney for Dr. Porter


RAYMOND J. ALBERT
Supervising Member

8/8/2
DATE

8/14/02
DATE


REBECCA J. ALBERS, ESQ.
Assistant Attorney General

8/14/02
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