

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



April 8, 2009

Mark Andrew Banks, M.D.
7762 Laurelwood Drive
Canal Winchester, OH 43110

RE: Case No. 08-CRF-116

Dear Doctor Banks:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Siobhan R. Clovis, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 8, 2009, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO

A handwritten signature in black ink that reads "Lance A. Talmage M.D." The signature is written in a cursive style.

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

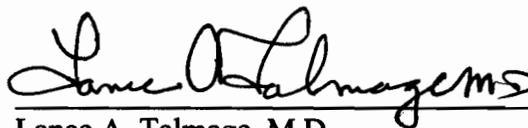
CERTIFIED MAIL NO. 91 7108 2133 3936 3066 4111
RETURN RECEIPT REQUESTED

Mailed 4-14-09

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Siobhan R. Clovis, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 8, 2009, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Mark Andrew Banks, M.D., Case No. 08-CRF-116, as it appears in the Journal of the State Medical Board of Ohio.

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



Lance A. Talmage, M.D.
Secretary

(SEAL)

April 8, 2009

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

CASE NO. 08-CRF-116

MARK ANDREW BANKS, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on April 8, 2009.

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

It is hereby ORDERED that:

The certificate of Mark Andrew Banks, M.D., to practice medicine and surgery in the State of Ohio is hereby REVOKED.

This Order shall supersede the terms and conditions set forth in the May 10, 2006, Step II Consent Agreement between Dr. Banks and the Board.

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

(SEAL)



Lance A. Talmage, M.D.
Secretary

April 8, 2009

Date

2009 FEB 26 P 12: 06

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of

*

Case No. 08-CRF-116

Mark Andrew Banks, M.D.,

*

Hearing Examiner Clovis

Respondent.

*

REPORT AND RECOMMENDATION

Basis for Hearing

In a letter and entry dated September 10, 2008, the State Medical Board of Ohio notified Mark Andrew Banks, M.D., that the Board had summarily suspended his certificate to practice medicine and surgery in Ohio. The Board stated that its action was based on clear and convincing evidence including the following: that Dr. Banks is currently under a May 10, 2006, Step II Consent Agreement with the Board based upon a relapse on tramadol and anabolic steroids; that Dr. Banks had previously been under Step I and Step II Consent Agreements with the Board for opiate addiction; that Dr. Banks violated his most recent Consent Agreement by submitting on or about August 26, 2008, a urine specimen that tested positive for Fentanyl; and that Dr. Banks had failed to subsequently complete residential treatment and had failed to produce evidence to the Board that he had been deemed capable to practice in accordance with acceptable and prevailing standards of care. The Board further stated that, based upon the foregoing, it had determined that Dr. Banks' continued practice presents a danger of immediate and serious harm to the public. (State's Exhibit [St. Ex.] 1A)

In addition, the Board notified Dr. Banks that it intended to determine whether to limit, revoke, permanently revoke, suspend, refuse to register or reinstate his certificate, or to reprimand him or place him on probation due to his alleged violation of the May 10, 2006, Step II Consent Agreement and the alleged impairment of his ability to practice medicine and surgery. The Board advised Dr. Banks of his right to request a hearing, and received his hearing request on October 7, 2008. (St. Exs. 1A, 1B)

Appearances

Richard Cordray, Attorney General, by Barbara J. Pfeiffer, Assistant Attorney General, on behalf of the State of Ohio.

Dr. Banks represented himself.

Hearing Date: February 4, 2009

PROCEDURAL MATTER

The Hearing Examiner placed Respondent's Exhibits A, C through J, and T under seal post-hearing to protect patient confidentiality. These exhibits are Dr. Banks' personal medical records.

SUMMARY OF EVIDENCE

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

1. Mark Andrew Banks, M.D., has had an Ohio certificate to practice medicine and surgery since 1995. He has never held a license to practice in any other state. He has been board-certified in physical medicine and rehabilitation, with a secondary subspecialty in pain management, since 2001. Dr. Banks' certificate is currently suspended pursuant to the Board's September 10, 2008, order of summary suspension, discussed in more detail below. Prior to this suspension, Dr. Banks operated a solo pain-management practice in Lancaster, Ohio. (St. Ex. 1A; Respondent's Exhibit [Resp. Ex.] Q; Hearing Transcript [Tr.] at 12, 41)
2. Dr. Banks has a disciplinary history with the Board which began with a Step I Consent Agreement, effective August 11, 2004, following a diagnosis of opiate addiction. Per the terms of that agreement, the Board indefinitely suspended Dr. Banks' certificate to practice medicine for not less than 180 days. Dr. Banks' certificate was reinstated on February 9, 2005, when he entered into a Step II Consent Agreement with the Board. (St. Ex. 2 at 32, 34, 40-42, 47; Tr. at 14-15)
3. On July 13, 2005, the Board summarily suspended Dr. Banks' license due to his submission of two urine samples that tested positive for the presence of anabolic steroids. On November 10, 2005, Dr. Banks entered a Step I Consent Agreement with the Board, which included an indefinite suspension of his license for not less than 150 days from the effective date of the Agreement. (St. Ex. 2 at 12-13, 21, 24-28; Tr. at 15-16)
4. Dr. Banks is currently under a Step II Consent Agreement with the Board, which became effective May 10, 2006, based upon his violation of Sections 4731.22(B)(15) and (26) related to his relapse on tramadol and anabolic steroids. The agreement requires Dr. Banks to comply with specified probationary terms, conditions and limitations for a period of at least five years. Paragraph 8 of the agreement requires abstention from the personal use or possession of drugs which have not been legally prescribed, dispensed, or administered to Dr. Banks by a primary care or treating physician with full knowledge of Dr. Banks' history of chemical dependency. (St. Ex. 2 at 1-2, 4, 10-11; Tr. at 16)
5. Despite Paragraph 8 of the May 2006 Step II Consent Agreement, Dr. Banks provided a urine specimen on August 26, 2008, that tested positive for Fentanyl. At hearing, Dr. Banks

admitted to the use of Fentanyl, and stipulated to the lab report showing the positive result. (St. Ex. 3; Tr. at 16-19, 29-30)

6. Dr. Banks admitted that, since his most recent relapse, he has not entered residential treatment. Accordingly, he has also failed to complete a subsequent program of recommended or required treatment, and failed to enter into an aftercare contract with a Board-approved treatment provider. Dr. Banks did not present any evidence that he has been determined to be capable of practicing in accordance with acceptable and prevailing standards of care. (Tr. at 26-27)
7. In the "Failure to Comply" provision of the May 2006 Step II Consent Agreement, Dr. Banks contractually agreed that, if the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that he has violated any term, condition or limitation of the agreement, such alleged violation constitutes clear and convincing evidence that Dr. Banks' continued practice presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension of Dr. Banks' license to practice medicine in Ohio, pursuant to Section 4731.22(G), Ohio Revised Code. Accordingly, after the positive urine screen, the Board summarily suspended Dr. Banks' certificate effective as of September 10, 2008. (St. Ex. 1A; St. Ex. 2 at 10)
8. At hearing, Dr. Banks presented the testimony of one of his patients, Patient 1, and support letters from several other patients. His patients praise his methods, his results, and his kind and encouraging manner. Patient 1 testified that she had never received such individualized care or compassion from any of her other physicians. One of the reasons that Dr. Banks' patients give for their appreciation of him is that Dr. Banks suffers from serious pain himself. His patients have expressed great dismay that he will no longer be practicing. (Resp. Exs. K through P, R; Tr. at 35-43)
9. Dr. Banks testified that he suffers from chronic pain that has been "untreated or undertreated." His written statement explains that, between May 2005 and December 2007, he had undergone several surgeries, including "bilateral knee arthroscopy (x 2), left shoulder repair / reconstruction, complete right shoulder reconstruction / stabilization, anterior cervical discectomy with fusion at two levels (ACDF x 2), and anterior and subsequent posterior lumbar discectomy with fusion / fixation (ALDFF/PLIFF) at two levels." His most recent surgery, lumbar spine surgery in December 2007, was for spine instability and non-fusion treatment, and "[t]here continues to be severe foraminal stenosis at the L5-S1 level (L>R)." Dr. Banks submitted some of his own medical records to further explain his physical problems. (Resp. Exs. A, C through J, Q; Tr. at 18-19)
10. Dr. Banks explained in his written statement that he does not take drugs to "feel high," but rather to address his pain. He advised that, despite his efforts to alleviate his pain through measures other than controlled substances, he had not been able to resist temptation after finding several Fentanyl patches that he had hidden behind some books in his home office before his previous treatment for substance abuse. He testified that he had forgotten that he had hidden the patches there until he came across them while cleaning his office. He said that

he had used only one of the patches, on a weekend, about a week before he submitted the urine that tested positive for Fentanyl. (Resp. Ex. Q; Tr. at 18-26)

11. Dr. Banks describes his pain as “incapacitating.” He advises in his written statement that, although he had received some relief from ibuprofen at therapeutic doses, he has developed kidney failure from that drug. He further explained that he had been suffering from depression at the time of his most recent relapse, due to his physical pain and the recent suicide of a close friend whom Dr. Banks had considered a mentor. (Resp. Ex. Q; Tr. at 19)
12. Dr. Banks admitted that, because of his pain, he is currently unable to practice as a physician or to comply with a Board order. He testified that it will probably take about two years for his spine to form a fusion after his most recent surgery. He is optimistic that at some point his condition will change for the better. (Resp. Ex. Q; Tr. at 66-69)

FINDINGS OF FACT

1. Mark Andrew Banks, M.D., has a disciplinary history with the Board which began with a Step I Consent Agreement, effective August 11, 2004, following a diagnosis of opiate addiction. Dr. Banks’ Ohio certificate to practice medicine and surgery was indefinitely suspended for not less than 180 days, and was later reinstated on February 9, 2005, when he entered into a Step II Consent Agreement with the Board. On July 13, 2005, the Board summarily suspended Dr. Banks’ license based upon two urine screens that tested positive for the presence of anabolic steroids, and on November 10, 2005, Dr. Banks entered a Step I Consent Agreement with the Board, which included an indefinite suspension of his license for not less than 150 days from the effective date of that Step I Consent Agreement.

Dr. Banks is currently under a Step II Consent Agreement with the Board, which became effective May 10, 2006 [May 2006 Step II Consent Agreement], based upon his violation of Sections 4731.22(B)(15) and (26) related to his relapse on tramadol and anabolic steroids.

2. As a part of the May 2006 Step II Consent Agreement, Dr. Banks agreed to comply with specified probationary terms, conditions and limitations for a period of at least five years. In Paragraph 8 of the May 2006 Step II Agreement, Dr. Banks agreed to abstain 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. Banks’ history of chemical dependency and who is Dr. Banks’ primary care physician or treating physician.

Despite the requirement to abstain completely from the personal use or possession of drugs as contained in Paragraph 8 of the May 2006 Step II Consent Agreement, a urine specimen that Dr. Banks provided on August 26, 2008, tested positive for Fentanyl.

3. Dr. Banks has not entered residential treatment or completed the recommended / required treatment and entered into an aftercare contract with a Board-approved treatment provider. In

addition, no evidence establishes that the Board has received information that Dr. Banks has been determined to be capable of practicing in accordance with acceptable and prevailing standards of care.

4. In the "Failure to Comply" provision of the May 2006 Step II Consent Agreement, Dr. Banks contractually agreed that, if the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that he has violated any term, condition or limitation of the agreement, such violation, as alleged, also constitutes clear and convincing evidence that Dr. Banks' continued practice presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension pursuant to Section 4731.22(G), Ohio Revised Code.

CONCLUSIONS OF LAW

1. 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. It further provides that, before being eligible to apply for reinstatement, the individual must 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), 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. Rule 4731-16-02(B)(3), Ohio Administrative Code, further provides that an individual's relapse following treatment constitutes independent proof of impairment and shall support license suspension without the need for an examination.

2. Dr. Banks' acts, conduct, and/or omissions as alleged in Findings of Fact 1 and 2 above, constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.
3. Further, Dr. Banks' acts, conduct, and/or omissions as alleged in Findings of Fact 1 through 4 above, 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.

Rationale for the Proposed Order

Dr. Banks appeared sincere in his desire to return to the practice of medicine while being abstinent from drugs of abuse, but only after he is able to get well. He admitted that, at this time, he simply cannot alleviate his pain effectively while complying with a Board impairment order. The letters and testimony from his patients show that he is a much-loved physician. Accordingly, he should be allowed the opportunity to return to practice if and when he is able to demonstrate a continuous period of sobriety and an ability to practice medicine unimpaired and in compliance with acceptable and prevailing standards of care.

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Mark Andrew Banks, M.D., to practice medicine and surgery in the State of Ohio is hereby REVOKED.

This Order shall supersede the terms and conditions set forth in the May 10, 2006, Step II Consent Agreement between Dr. Banks and the Board.

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


Siobhan R. Clovis
Hearing Examiner

State Medical Board of Ohio

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



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Executive Director

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EXCERPT FROM THE DRAFT MINUTES OF APRIL 8, 2009

REPORTS AND RECOMMENDATIONS

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

Dr. Madia asked whether each member of the Board had received, read and considered the hearing record; the Findings of Fact, Conclusions of Law and Proposed Orders, and any objections filed in the matters of Mark Andrew Banks, M.D.; Scott Brian Lindsay, D.P.M.; Al Muzzammel, M.D.; David P. Olson, M.D.; Lisa A. Simpson, M.D.; Julie A. Taylor, M.D.; and David Antonio Velasquez, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Varyani	- aye
	Mr. Jacobson	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Madia	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Varyani	- aye
	Mr. Jacobson	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye

Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Madia	- aye

Dr. Madia noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters. He advised that they may participate in the case of Dr. Simpson, as that case is not disciplinary in nature and concerns only the doctor's qualifications for licensure. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

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

MARK ANDREW BANKS, M.D.

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DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. CLOVIS' FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF MARK ANDREW BANKS, MD. DR. VARYANI SECONDED THE MOTION.

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

ROLL CALL:	Mr. Albert	- abstain
	Dr. Egner	- nay
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Dr. Varyani	- aye
	Mr. Jacobson	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Madia	- aye

The motion carried.

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

September 10, 2008

Case number: 08-CRF- *116*

Mark Andrew Banks, M.D.
422 North Columbus Street
Lancaster, Ohio 43130

Dear Doctor Banks:

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 September 10, 2008, 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

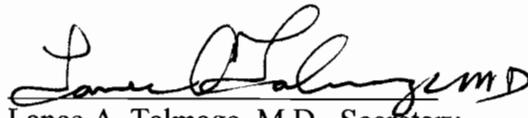
LAT/AMM/flb
Enclosures

Mailed 9-11-08

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 September 10, 2008, to Adopt the Order of Summary Suspension and to Issue the Notice of Summary Suspension and Opportunity for Hearing, constitute true and complete copies of the Motion and Order in the Matter of Mark Andrew Banks, M.D., Case number: 08-CRF- 116 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)

September 10, 2008

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :
 :
 MARK ANDREW BANKS, M.D. :
 :
 Case number: 08-CRF- 116 :

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 10th day of September, 2008.

Pursuant to Section 4731.22(G), Ohio Revised Code, and pursuant to the contractual terms of the May 2006 Step II Consent Agreement Between Mark Andrew Banks, M.D., and the State Medical Board Of Ohio, effective May 10, 2006, and upon recommendation of Lance A. Talmage, M.D., Secretary, and Raymond J. Albert, Supervising Member; and

Pursuant to their determination, based upon their review of the information supporting the allegations as set forth in the Notice of Summary Suspension and Opportunity for Hearing, that there is clear and convincing evidence that Mark Andrew Banks, M.D., has violated Section 4731.22(B)(15) and (26), Ohio Revised Code, as alleged in the Notice of Summary Suspension and Opportunity for Hearing that is enclosed herewith and fully incorporated herein; and,

Pursuant to their further determination, based upon their review of the information supporting the allegations as set forth in the Notice of Summary Suspension and Opportunity for Hearing, that Dr. Banks' 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 10th day of September, 2008:

It is hereby ORDERED that the certificate of Mark Andrew Banks, M.D., to practice medicine or surgery in the State of Ohio be summarily suspended.

It is hereby ORDERED that Mark Andrew Banks, M.D., shall immediately cease the practice of medicine and surgery in Ohio and immediately refer all active patients to other appropriate physicians.

This Order shall become effective immediately.

(SEAL)


Lance A. Talmage, M.D., Secretary

September 10, 2008
Date

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov



EXCERPT FROM THE DRAFT MINUTES OF SEPTEMBER 10, 2008

MARK ANDREW BANKS, M.D. – ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

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

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

ROLL CALL:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Madia	- aye
	Mr. Browning	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

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NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING

September 10, 2008

Case number: 08-CRF- 116

Mark Andrew Banks, M.D.
422 North Columbus Street
Lancaster, Ohio 43130

Dear Doctor Banks:

The Secretary and the Supervising Member of the State Medical Board of Ohio [Board] have determined that there is clear and convincing evidence that you have violated Sections 4731.22(B)(15) and (26), Ohio Revised Code, and have further determined that your continued practice presents a danger of immediate and serious harm to the public, as set forth in paragraphs (1) through (4), below.

Therefore, pursuant to Section 4731.22(G), Ohio Revised Code, and pursuant to the contractual terms of the May 2006 Step II Consent Agreement Between Mark Andrew Banks, M.D., and the State Medical Board Of Ohio, effective May 10, 2006, a copy of which is attached hereto and incorporated herein, 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 and surgery in the State of Ohio is summarily suspended. Accordingly, at this time, you are no longer authorized to practice medicine and surgery in Ohio.

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

- (1) You are currently under a Step II Consent Agreement with the Board, which became effective May 10, 2006 [May 2006 Step II Consent Agreement], based upon your violation of Sections 4731.22(B)(15) and (26) related to your relapse on tramadol and anabolic steroids.

You have a disciplinary history with the Board which began with a Step I Consent Agreement, effective August 11, 2004, for your initial diagnosis of opiate addiction. Your certificate to practice medicine and surgery in the state of Ohio was indefinitely suspended, but not less than 180 days, and later was reinstated on February 9, 2005 when you entered into a Step II Consent Agreement with the Board. On or about July 13, 2005, the Board summarily suspended your license based upon two urine screens that tested positive for the presence of anabolic steroids, and on or about November 10, 2005, you entered into a Step I Consent Agreement with the Board, which included an indefinite suspension, but not less than 150 days from the effective date of that Step I Consent Agreement.

- (2) As part of the May 2006 Step II Consent Agreement, you agreed to comply with specified probationary terms, conditions and limitations for a period of at least five years. In Paragraph 8 of the May 2006 Step II Consent Agreement, you agreed that you shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to you by another so authorized by law who has full knowledge of your history of chemical dependency and who is your primary care physician or treating physician.

Despite the requirement to abstain completely from the personal use or possession of drugs as contained in Paragraph 8 of the May 2006 Step II Consent Agreement, a urine specimen that you provided on or about August 26, 2008, tested positive for Fentanyl.

- (3) You have not entered residential treatment or you have not completed the recommended/required treatment and entered into an aftercare contract with a Board-approved treatment provider. In addition, the Board has not received information that you have been determined to be capable of practicing in accordance with acceptable and prevailing standards of care.
- (4) In the "Failure to Comply" provision of your May 2006 Step II Consent Agreement, you contractually 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, such 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.

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

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.

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

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

You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted 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.

Notice of Summary Suspension
& Opportunity for Hearing
Mark Andrew Banks, 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,

A handwritten signature in black ink, appearing to read "Lance A. Talmage, M.D.", written in a cursive style.

Lance A. Talmage, M.D.
Secretary

LAT/AMM/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3934 3688 6229
RETURN RECEIPT REQUESTED

**STEP II
CONSENT AGREEMENT
BETWEEN
MARK ANDREW BANKS, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO**

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

Dr. Banks 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)(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)(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.”
- B. The Board enters into this Step II Consent Agreement in lieu of formal proceedings based upon the violation of Sections 4731.22 (B)(15) and (B)(26), Ohio Revised Code, as set forth in the Step I Consent Agreement Between Mark Andrew Banks, M.D., and The State Medical Board of Ohio, effective on or about November 10, 2005 [November 2005 Step I Consent Agreement], and as set forth herein. The Board expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Consent Agreement. A copy of the November 2005 Step I Consent Agreement is attached hereto and fully incorporated herein.
- C. Dr. Banks is applying for the reinstatement of his license to practice medicine and surgery in the State of Ohio, License # 35-071099, which is currently suspended pursuant to the terms of the above-referenced November 2005 Step I Consent Agreement.

- D. Dr. Banks states that he is not licensed to practice medicine and surgery in any state or jurisdiction other than Ohio.
- E. Dr. Banks states that, after relapsing on tramadol and anabolic steroids, he entered residential treatment for chemical dependence on or about September 10, 2005, at the Toledo Hospital, a Board-approved treatment provider in Toledo, Ohio. Dr. Banks states that he completed twenty-eight days of in-patient treatment for opiate dependence and was discharged on or about October 7, 2005.
- F. Dr. Banks states, and the Board acknowledges receipt of information to support, that Dr. Banks entered into an aftercare contract with the Toledo Hospital, and that said aftercare contract remains in effect to date.
- G. Dr. Banks states, and the Board acknowledges, that Richard N. Whitney, M.D., of Shepherd Hill Hospital, a Board-approved treatment provider in a Newark, Ohio, has provided a written report indicating that Dr. Banks' ability to practice has been assessed and that he has been found capable of practicing medicine and surgery according to acceptable and prevailing standards of care, so long as certain treatment and monitoring requirements are in place.
- H. Dr. Banks states, and the Board acknowledges, that Alvin D. Pelt, M.D., of Maryhaven, a Board-approved treatment provider in a Columbus, Ohio, has provided a written report indicating that Dr. Banks' ability to practice has been assessed and that he has been found capable of practicing medicine and surgery according to acceptable and prevailing standards of care, so long as certain treatment and monitoring requirements are in place.
- I. Dr. Banks further states, and the Board acknowledges receipt of information to support, that Dr. Banks originally entered into an agreement on or about October 12, 2004, with the Ohio Physicians Effectiveness Program, which subsequently changed its name to the Ohio Physicians Health Program [OPHP]. Dr. Banks further states, and the Board acknowledges receipt of information to support, that Dr. Banks has remained compliant with the OPHP agreement since he completed inpatient treatment in October 2005.
- J. Dr. Banks further states, and the Board acknowledges receipt of information to support, that Dr. Banks has substantially fulfilled the conditions for reinstatement of his certificate to practice medicine and surgery as set forth in the November 2005 Step I Consent Agreement.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, the certificate of Dr. Banks to practice medicine and

surgery in the State of Ohio shall be reinstated, and Dr. Banks knowingly and voluntarily agrees with the Board to the following PROBATIONARY terms, conditions and limitations:

1. Dr. Banks shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
2. Dr. Banks shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the date his quarterly declaration would have been due pursuant to his November 2005 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. Banks shall appear in person for an interview before the full Board or its designated representative. The first such appearance shall take place on the date his appearance would have been scheduled pursuant to his November 2005 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. Dr. Banks shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.
5. In the event Dr. Banks is found by the Secretary of the Board to have failed to comply with any provision of this Consent Agreement, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Consent Agreement.

MONITORING OF REHABILITATION AND TREATMENT

Drug Associated Restrictions

6. Dr. Banks 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. Banks's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Banks shall make his patient records with regard to such prescribing available for review by an agent of the Board upon request.

7. Dr. Banks shall not, without prior Board approval, administer, personally furnish, or possess (except as allowed under Paragraph 8 below) any controlled substances as defined by state or federal law. In the event that the Board agrees at a future date to modify this Consent Agreement to allow Dr. Banks to administer or personally furnish controlled substances, Dr. Banks 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. Banks' personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Banks shall make his patient records with regard to such prescribing, administering, or personally furnishing available for review by an agent of the Board upon request.

Sobriety

8. Dr. Banks 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. Banks' history of chemical dependency and who is Dr. Banks' primary care physician or treating physician.

In the event that Dr. Banks' treating physician is not the primary care physician approved by the Board pursuant to Paragraph 13 of this Consent Agreement, Dr. Banks shall ensure that his treating physician immediately provides his Board-approved primary care physician and his Board-approved supervising physician and/or appropriate physician health program with information describing Dr. Banks' current treatment plan and a list of all medications prescribed, administered, or dispensed to Dr. Banks by the treating physician. In addition, Dr. Banks shall ensure that his treating physician immediately notifies his Board-approved primary care physician and his Board-approved supervising physician and/or appropriate physician health program of any changes to Dr. Banks' treatment plan; any changes to his medications; and the results of any laboratory studies or tests that have been conducted on Dr. Banks. Dr. Banks shall ensure that his treating physician immediately notifies the Board, his Board-approved primary care physician, the appropriate physician health program and/or supervising physician, his Board-approved monitoring physician and Toledo Hospital or Dr. Banks' current treatment provider of Dr. Banks' failure to comply with his treatment plan; of any use by Dr. Banks of medications not prescribed, administered, or dispensed by the Board-approved primary care physician or any treating physician; and/or any excessive use or abuse of medications approved by the Board-approved primary care physician or any treating physician.

9. Dr. Banks shall provide continuing authorization, through appropriate written consent forms, for disclosure by his treating physician(s) to his Board-approved primary care physician, to the Board, to the appropriate physician health program and/or supervising physician, to his monitoring physician, to Toledo Hospital or Dr. Banks'

current treatment provider, and to others involved in the treatment and/or monitoring process, of information necessary for them to fulfill their respective duties and obligations.

10. Dr. Banks shall abstain completely from the use of alcohol.

Drug and Alcohol Screens/Supervising Physician

11. Dr. Banks shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Banks 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 and shall include screenings specific for oxycodone, methodone, tramadol and all drugs prescribed to Dr. Banks that could be considered potential drugs of abuse. The detection level for the initial screening for opiates or their metabolites shall be at the level of no more than 300 nanograms per milliliter.

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

Dr. Banks and the Board agree that the person or entity previously approved by the Board to serve as Dr. Banks' supervising physician pursuant to the November 2005 Step I Consent Agreement is hereby approved to continue as Dr. Banks' designated supervising physician under this Consent Agreement, unless within thirty days of the effective date of this Consent Agreement, Dr. Banks submits to the Board for its prior approval the name and curriculum vitae of an alternative supervising physician to whom Dr. Banks 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. Banks. Dr. Banks 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. Further, the supervising physician shall ensure that additional testing of urine specimens for steroids is done on a random basis to include at least one urine specimen per month. The Board expressly reserves the right to disapprove any person or entity proposed to serve as Dr. Banks' designated supervising physician, or to withdraw approval of any person or entity previously approved to serve as Dr. Banks' designated supervising physician, in the event that the Secretary and Supervising Member of the Board determine that any such supervising physician has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

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

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

Primary Care Physician

13. Dr. Banks and the Board agree that the person or entity previously approved by the Board to serve as Dr. Banks' primary care physician pursuant to the November 2005 Step I Consent Agreement is hereby approved to continue as Dr. Banks' designated primary care physician under this Consent Agreement, unless within thirty days of the effective date of this Consent Agreement, Dr. Banks submits to the Board for its prior approval the name and qualifications of an alternative primary care physician. The primary care physician shall coordinate all of Dr. Banks' medical care and be knowledgeable of his recovery. Upon approval of this Consent Agreement by the Board, Dr. Banks shall immediately furnish a copy to the approved primary care physician.

Dr. Banks shall ensure that his primary care physician immediately provides his treating physician(s) and his Board-approved supervising physician and/or appropriate physician health program with a list of all medications prescribed, administered, or dispensed to Dr. Banks by his primary care physician and that his primary care physician immediately notifies his treating physician(s) and his Board-approved supervising physician and/or appropriate physician health program of any changes to his medications. Further, Dr. Banks shall ensure that his primary care physician submits reports to the Board, the appropriate physician health program and/or supervising physician, Toledo Hospital or Dr. Banks' current treatment provider, his

monitoring physician and his treating physician(s) on a quarterly basis, or as otherwise directed by the Board. The reports shall contain information describing Dr. Banks' current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Banks' compliance with his treatment plan; Dr. Banks' progress in treatment; and a list of all medications prescribed, administered, or dispensed to Dr. Banks by the primary care physician and/or any treating physician. Dr. Banks shall ensure that the quarterly reports are received in the Board's offices and the offices of the appropriate physician health program and/or supervising physician, Toledo Hospital or Dr. Banks' current treatment provider, his treating physician(s), and his monitoring physician no later than the due date for Dr. Banks' quarterly declaration.

In addition, Dr. Banks shall ensure that his primary care physician immediately notifies the Board, the appropriate physician health program and/or supervising physician, Toledo Hospital or Dr. Banks' current treatment provider, his monitoring physician and his treating physician(s) of Dr. Banks' failure to comply with his treatment plan; of any use by Dr. Banks of medications not prescribed, administered, or dispensed by the primary care physician and/or by any treating physician; and/or of any excessive use or abuse of medications approved by the primary care physician and/or by any treating physician.

In the event that the designated primary care physician becomes unable or unwilling to serve in this capacity, Dr. Banks must immediately so notify the Board, the appropriate physician health program and/or supervising physician, Toledo Hospital or Dr. Banks' current treatment provider, his monitoring physician and his treating physician(s) in writing. In addition, Dr. Banks shall make arrangements acceptable to the Board for another primary care physician within thirty days after the previously designated primary care physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Banks shall ensure that the previously designated primary care physician also notifies the Board, the appropriate physician health program and/or supervising physician, Toledo Hospital or Dr. Banks' current treatment provider, his monitoring physician and his treating physician(s) directly of his or her inability to continue to serve and the reasons therefore.

14. Dr. Banks shall provide continuing authorization, through appropriate written consent forms, for disclosure by his primary care physician to the Board, to Toledo Hospital or Dr. Banks' current treatment provider, to his treating physician(s), to the appropriate physician health program and/or his supervising physician, to his monitoring physician, and to others involved in the treatment and/or monitoring process, of information necessary for them to fulfill their respective duties and obligations.

Monitoring Physician

15. Before engaging in any medical practice, Dr. Banks shall submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary and/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. Banks and who is engaged in the same or similar practice specialty. The monitoring physician shall not be Dr. Banks' primary care physician, treating physician, or supervising physician.

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

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

Rehabilitation Program

16. Within thirty days of the effective date of this Consent Agreement, Dr. Banks 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. Banks 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. Banks' quarterly declarations.

Aftercare/ Physician Health Program

17. Dr. Banks shall maintain continued compliance with the terms of the aftercare contract entered into with Toledo Hospital or his current treatment provider, provided

that, where terms of the aftercare contract conflict with terms of this Consent Agreement, the terms of this Consent Agreement shall control.

18. Dr. Banks shall maintain continued compliance with the terms of the advocacy agreement entered into with the Ohio Physicians Health Program, or, if approved in advance by the Board, another physicians health program, provided that, where terms of the advocacy agreement conflict with terms of this Consent Agreement, the terms of this Consent Agreement shall control.

Releases

19. Dr. Banks shall provide continuing authorization, through appropriate written consent forms, for disclosure by Toledo Hospital or his current treatment provider to the Board, to his primary care physician, to treating and monitoring physicians, and to others involved in the treatment and monitoring process, of information necessary for them to fulfill their respective duties and obligations. Further, Dr. Banks shall provide continuing authorization, through appropriate written consent forms, for disclosure by the Ohio Physicians Health Program to the Board, to his primary care physician, to Toledo Hospital or his current treatment provider, to treating and monitoring physicians, and to others involved in the treatment and monitoring process, of information necessary for them to fulfill their respective duties and obligations.

Required Reporting by Licensee

20. Within thirty days of the effective date of this Consent Agreement, Dr. Banks 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. Banks 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.
21. Within thirty days of the effective date of this Consent Agreement, Dr. Banks 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. Banks 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. Banks shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

22. Dr. Banks shall provide a copy of this Consent Agreement to his primary care physician, to his treating physician(s), to his supervising physician and/or the appropriate physician health program, to his monitoring physician, and to all persons and entities that provide Dr. Banks chemical dependency treatment or monitoring.

FAILURE TO COMPLY

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

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. Dr. Banks acknowledges that his social

security number will be used if this information is so reported and agrees to provide his social security number to the Board for such purposes.

EFFECTIVE DATE

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



MARK ANDREW BANKS, M.D.



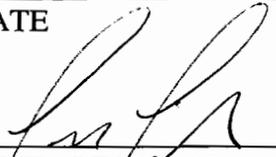
LANCE A. TALMAGE, M.D.
Secretary

5-4-06

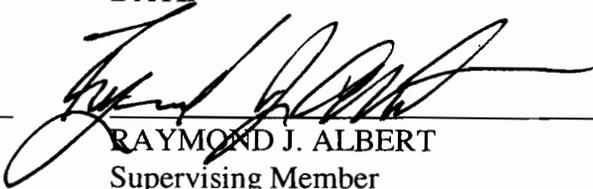
DATE

5-10-06

DATE



JAMES LINEHAN
Attorney for Dr. Banks



RAYMOND J. ALBERT
Supervising Member

5/4/06

DATE

5/10/06

DATE



KATHLEEN S. PETERSON
Enforcement Attorney

5/5/06

DATE

STEP I
CONSENT AGREEMENT
BETWEEN
MARK ANDREW BANKS, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO

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

Dr. Banks 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)(15), 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 a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice.”
- B. The Board is empowered by Section 4731.22(B)(26), 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 “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.”
- C. On or about July 13, 2005, the Board issued to Dr. Banks an Entry of Order and Notice of Summary Suspension and Opportunity for Hearing, a copy of which is attached hereto and fully incorporated herein.
- D. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violations of Sections 4731.22(B)(15) and 4731.22(B)(26), Ohio Revised Code, as set forth in the Notice of Summary Suspension and Opportunity for Hearing issued by the Board to Dr. Banks on or about July 13, 2005. The Board expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Ohio Revised Code, whether occurring before or after the effective date of this Agreement.

STEP I CONSENT AGREEMENT

Mark Andrew Banks, M.D.

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- E. Dr. Banks states, and the Board acknowledges, that his certificate to practice medicine and surgery in the State of Ohio, License No. 35-071099, is currently suspended pursuant to the terms of the Entry of Order issued by the Board on or about July 13, 2005, referenced in Paragraph C, above.
- F. Dr. Banks states that he holds no other licenses to practice medicine and surgery.
- G. Dr. Banks states that, on or about September 10, 2005, he entered the Toledo Hospital, a Board-approved treatment provider under Section 4731.25 of the Ohio Revised Code, for twenty-eight days of inpatient treatment for opiate dependency, and was released on or about October 7, 2005.
- H. Dr. Banks further states that, after completing the twenty-eight days of inpatient treatment, he entered into an aftercare contract with the Toledo Hospital, and that said aftercare contract remains in effect to date.
- I. Dr. Banks admits to the factual and legal allegations set forth in the Notice of Summary Suspension and Opportunity for Hearing issued on or about July 13, 2005.

AGREED CONDITIONS

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

SUMMARY SUSPENSION TERMINATED AND SUSPENSION OF CERTIFICATE IMPOSED

1. The summary suspension of Dr. Banks' certificate to practice medicine and surgery in the State of Ohio, which was imposed by Order of the Board on July 13, 2005, is hereby terminated. Further, Dr. Banks' certificate to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than 150 days from the effective date of this Consent Agreement.

Sobriety

2. Dr. Banks 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. Banks' history of chemical dependency and who is Dr. Banks' treating physician.

STEP I CONSENT AGREEMENT

Mark Andrew Banks, M.D.

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In the event that Dr. Banks' treating physician is not his primary care physician approved by the Board, pursuant to paragraph 11 of this Consent Agreement, Dr. Banks shall ensure that his treating physician immediately provides his Board-approved primary care physician with information describing Dr. Banks' current treatment plan and a list of all medications prescribed, administered, or dispensed to Dr. Banks by the treating physician. In addition, Dr. Banks shall ensure that his treating physician immediately notifies his Board-approved primary care physician of any changes to Dr. Banks' treatment plan; any changes to his medications; and the results of any laboratory studies or tests that have been conducted on Dr. Banks. Dr. Banks shall ensure that his treating physician immediately notifies the Board, his Board-approved primary care physician, the appropriate physician health program, and his treatment provider of Dr. Banks' failure to comply with his treatment plan; of any use by Dr. Banks of medications not prescribed, administered, or dispensed by the Board-approved primary care physician or any treating physician; and/or any excessive use or abuse of medications approved by the Board-approved primary care physician or any treating physician.

Dr. Banks shall provide continuing authorization, through appropriate written consent forms, for disclosure by his treating physician to his Board-approved primary care physician, to the Board, to the appropriate physician health program, to his treatment provider, and to others involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations.

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

Releases; Quarterly Declarations and Appearances

4. Dr. Banks 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. Banks' 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. Banks 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. Banks shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance

STEP I CONSENT AGREEMENT

Mark Andrew Banks, M.D.

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with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective, provided that if the effective date is on or after the sixteenth day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

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

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

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

STEP I CONSENT AGREEMENT

Mark Andrew Banks, M.D.

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

Rehabilitation Program

8. Dr. Banks shall continue participation in an alcohol and drug rehabilitation program, such as A.A., N.A., or C.A., no less than three times per week and Caduceus no less than once a week. Substitution of any other specific program must receive prior Board approval.

Dr. Banks 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. Banks' quarterly declarations.

Aftercare / Physician Health Program

9. Dr. Banks shall maintain continued compliance with the terms of the agreement he entered into with the Ohio Physicians Health Program [OPHP], on or about October 12, 2004, or, if approved in advance by the Board, an agreement with another appropriate physician health program, provided that, where terms of Dr. Banks' agreement with a physician health program conflict with the terms of this Consent Agreement, the terms of this Consent Agreement shall control.
10. Dr. Banks shall maintain continued compliance with the terms of the aftercare contract entered into with his treatment provider, the Toledo Hospital, provided that, where the terms of the aftercare contract conflict with terms of this Consent Agreement, the terms of this Consent Agreement shall control.

Primary Care Physician

11. Within thirty days of the effective date of this Consent Agreement, Dr. Banks shall submit to the Board for its prior approval the name and qualifications of a primary care physician of his choice. The primary care physician shall coordinate all of Dr. Banks' medical care and be knowledgeable of his recovery. Upon approval by the Board, Dr. Banks shall furnish the approved primary care physician a copy of this Consent Agreement.

STEP I CONSENT AGREEMENT

Mark Andrew Banks, M.D.

Page 6

Dr. Banks shall ensure that his primary care physician submits reports to the Board, the appropriate physician health program, Dr. Banks' treatment provider, and his treating physician, if any, on a quarterly basis, or as otherwise directed by the Board. The reports shall contain information describing Dr. Banks' current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Banks' compliance with his treatment plan; Dr. Banks' progress in treatment; and a list of all medications prescribed, administered, or dispensed to Dr. Banks by the primary care physician or any treating physician. Dr. Banks shall ensure that the quarterly reports are received in the Board's offices and the offices of the appropriate physician health program, Dr. Banks' treatment provider, and any treating physician no later than the due date for Dr. Banks' quarterly declaration.

In addition, Dr. Banks shall ensure that his primary care physician immediately notifies the Board, the appropriate physician health program, his treatment provider, and any treating physician of Dr. Banks' failure to comply with his treatment plan; of any use by Dr. Banks of medications not prescribed, administered, or dispensed by the primary care physician or another treating physician; and/or of any excessive use or abuse of medications approved by the primary care physician or any treating physician.

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

Dr. Banks shall provide continuing authorization, through appropriate written consent forms, for disclosure by his primary care physician to the Board, the appropriate physician health program, his treatment provider, any treating physician, and to others involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations.

CONDITIONS FOR REINSTATEMENT

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

STEP I CONSENT AGREEMENT

Mark Andrew Banks, M.D.

Page 7

- a. Dr. Banks shall submit an application for reinstatement, accompanied by appropriate fees, if any.
- b. Dr. Banks 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 the Toledo Hospital that Dr. Banks has successfully completed the required inpatient treatment, including at least twenty-eight days of inpatient or residential treatment for chemical dependency, as set forth in Rules 4731-16-02(B)(3)(a) and 4731-16-08(A)(13), Ohio Administrative Code.
 - ii. Evidence of continuing full compliance with his post-discharge aftercare contract with the Toledo Hospital. 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, Ohio Administrative Code.
 - iii. Evidence of continuing full compliance, since the effective date of this Consent Agreement, with the terms of the agreement he entered into with the OPHP on or about October 12, 2004, or another appropriate physician health program, approved by the Board in advance.
 - iv. Evidence of continuing full compliance with this Consent Agreement.
 - v. Two written reports indicating that Dr. Banks' 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 physicians knowledgeable in the area of addictionology and who are either affiliated with a current Board-approved treatment provider or otherwise have been approved in advance by the Board to provide an assessment of Dr. Banks. Prior to the assessments, Dr. Banks shall provide the evaluators with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The reports from the evaluators shall include any recommendations for treatment, monitoring, or supervision of Dr. Banks, and any conditions, restrictions, or limitations that should

STEP I CONSENT AGREEMENT

Mark Andrew Banks, M.D.

Page 8

All reports required pursuant to this paragraph shall be based upon examinations occurring within the three months immediately preceding any application for reinstatement.

- c. Dr. Banks shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the Board or, if the Board and Dr. Banks are unable to agree on the terms of a written consent agreement, then Dr. Banks 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. Banks' 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 Ohio Revised Code. Any written consent agreement or Board Order reinstating Dr. Banks' certificate to practice medicine and surgery in this state shall include a term of probation of at least five years. Moreover, upon termination of the consent agreement or Board Order, Dr. Banks 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. Banks has maintained sobriety.

REQUIRED REPORTING BY LICENSEE

13. Within thirty days of the effective date of this Consent Agreement, Dr. Banks 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. Banks 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. Banks shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
14. Within thirty days of the effective date of this Consent Agreement, Dr. Banks 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. Banks shall provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or

STEP I CONSENT AGREEMENT

Mark Andrew Banks, M.D.

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applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Banks 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. Banks 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 Ohio Administrative Procedure Act, Chapter 119., Ohio Revised Code.

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

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

EFFECTIVE DATE

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



MARK ANDREW BANKS, M.D.



LANCE A. TALMAGE, M.D.
Secretary

10-31-05

DATE

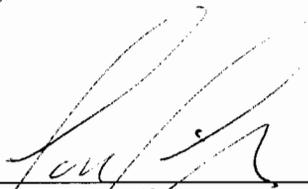
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DATE

STEP I CONSENT AGREEMENT

Mark Andrew Banks, M.D.

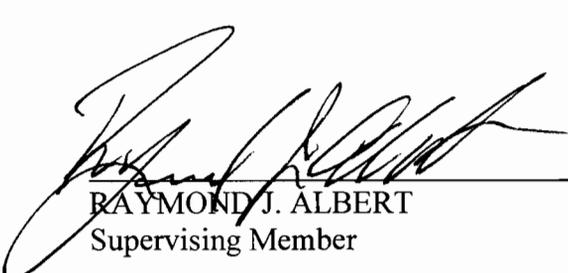
Page 10



JAMES LINEHAN
Attorney for Dr. Banks

10/31/05

DATE



RAYMOND J. ALBERT
Supervising Member

11/09/05

DATE



TARA L. BERRIEN
Assistant Attorney General

11/10/05

DATE



State Medical Board of Ohio

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

July 13, 2005

Mark Andrew Banks, M.D.
422 N. Columbus Street
Lancaster, OH 43130

Dear Doctor Banks:

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 July 13, 2005, including a Motion adopting the Order of Summary Suspension and issuing the Notice of Summary Suspension and Opportunity for Hearing.

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

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

THE STATE MEDICAL BOARD OF OHIO


Lance A. Talmage, M.D., Secretary

LAT:blt
Enclosures

Mailed 7-14-05



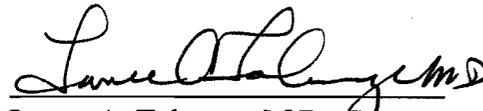
State Medical Board of Ohio

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CERTIFICATION

I hereby certify that the attached copies of the Entry of Order of the State Medical Board of Ohio and the Motion by the State Medical Board, meeting in regular session on July 13, 2005, to Adopt the Order of Summary Suspension and to Issue the Notice of Summary Suspension and Opportunity for Hearing, constitute true and complete copies of the Motion and Order in the Matter of Mark Andrew Banks, M.D., as they appear in the Journal of the State Medical Board of Ohio.

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


Lance A. Talmage, M.D., Secretary

(SEAL)

July 13, 2005

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :
 :
MARK ANDREW BANKS, M.D. :

ENTRY OF ORDER

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

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

Pursuant to their determination, based upon their review of the information supporting the allegations as set forth in the Notice of Summary Suspension and Opportunity for Hearing, that there is clear and convincing evidence that Mark Andrew Banks, M.D., has violated Sections 4731.22(B)(15) and (B)(26), Ohio Revised Code, as alleged in the Notice of Summary Suspension and Opportunity for Hearing that is enclosed herewith and fully incorporated herein; and

Pursuant to their further determination, based upon their review of the information supporting the allegations as set forth in the Notice of Summary Suspension and Opportunity for Hearing, that Dr. Banks' continued practice presents a danger of immediate and serious harm to the public; and

Pursuant to the terms of the Step II Consent Agreement Between Mark Andrew Banks, M.D., and the State Medical Board of Ohio, effective February 9, 2005, which states:

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

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

It is hereby ORDERED that the certificate of Mark Andrew Banks, M.D., to practice medicine or surgery in the State of Ohio be summarily suspended.

Entry of Order
Mark Andrew Banks, M.D.
Page 2

It is hereby ORDERED that Mark Andrew Banks, M.D., shall immediately cease the practice of medicine and surgery in Ohio and immediately refer all active patients to other appropriate physicians.

This Order shall become effective immediately.

(SEAL)



Lance A. Talmage, M.D., Secretary

July 13, 2005

Date



State Medical Board of Ohio

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

EXCERPT FROM DRAFT MINUTES OF JULY 13, 2005

CITATIONS, PROPOSED DENIALS AND ORDERS OF SUMMARY SUSPENSION

.....

MARK ANDREW BANKS, M.D. – ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

.....

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

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

The motion carried.



State Medical Board of Ohio

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NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING

July 13, 2005

Mark Andrew Banks, M.D.
422 N. Columbus Street
Lancaster, OH 43130

Dear Doctor Banks:

The Secretary and the Supervising Member of the State Medical Board of Ohio [Board] have determined that there is clear and convincing evidence that you have violated Sections 4731.22(B)(15) and (B)(26), Ohio Revised Code, and have further determined that, in accordance with the February 2005 Step II Consent Agreement as referenced in paragraph (2) below, your continued practice presents a danger of immediate and serious harm to the public, as set forth in paragraphs (1) through (7), below.

Therefore, pursuant to Section 4731.22(G), Ohio Revised Code, and upon recommendation of Lance A. Talmage, M.D., Secretary, and Raymond J. Albert, Supervising Member, you are hereby notified that, as set forth in the attached Entry of Order, your certificate to practice medicine or surgery in the State of Ohio is summarily suspended. Accordingly, at this time, you are no longer authorized to practice medicine and surgery in Ohio.

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

- (1) On or about August 11, 2004, you entered into a Step I Consent Agreement with the Board in lieu of formal proceedings based upon your violation of Section 4731.22(B)(26), Ohio Revised Code. A copy of the Step I Consent Agreement is attached hereto and fully incorporated herein. In the Step I Consent Agreement you made certain admissions, including that, on or about July 16, 2004, you were evaluated at Shepherd Hill, a Board-approved treatment provider in Newark, Ohio; that the purpose of the evaluation was to determine if you suffer from opiate addiction; that, as a result of the evaluation, you were determined to be opiate dependant and to require inpatient or residential treatment; and that, on or about July 19, 2004, you entered inpatient or residential treatment for chemical

Mailed 7-14-05

dependence at The Woods at Parkside [Parkside], a Board-approved treatment provider in Columbus, Ohio.

In the Step I Consent Agreement, you also agreed to certain specified terms, conditions, and limitations, including that your certificate to practice medicine and surgery was suspended for an indefinite period of time, but not less than 180 days. In Paragraph 2 of the Step I Consent Agreement, you agreed that you shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to you by another so authorized by law who has full knowledge of your history of chemical dependency.

- (2) On or about February 9, 2005, you entered into a Step II Consent Agreement with the Board whereby your certificate to practice medicine and surgery in the State of Ohio was reinstated. A copy of the February 2005 Step II Consent Agreement is attached hereto and fully incorporated herein. In the February 2005 Step II Consent Agreement, you made certain admissions, including that, for the past several years, you were prescribed opiates by your treating physician for purposes of pain management, and that, from about February through April of 2004, you obtained additional opiates from two of your patients, who gave you a portion of the hydrocodone or oxycodone that you were prescribing for their pain management. You further admitted that, after your treating physician refused to give you any more prescriptions for opiates in or about May of 2004, you gave prescriptions, for either oxycodone or hydrocodone, to two additional patients, had the patients fill the prescriptions, and had the patients return the pills to you for your own use. In addition, you admitted that, while in treatment at Parkside, you were diagnosed with opiate dependency.

As part of the February 2005 Step II Consent Agreement, you agreed to comply with specified probationary terms, conditions and limitations for a period of five years. In Paragraph 8 of the February 2005 Step II Consent Agreement, you agreed that you shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to you by another so authorized by law who has full knowledge of your history of chemical dependency.

- (3) Despite the requirement to abstain completely from the personal use or possession of drugs as contained in Paragraph 2 of your August 2004 Step I Consent Agreement and/or despite the requirement to abstain completely from the personal use or possession of drugs as contained in Paragraph 8 of your February 2005 Step II Consent Agreement, urine specimens that you provided on or about March 8, 2005, and May 23, 2005, tested positive for the presence of anabolic steroids.
- (4) Beginning in or about August of 2004, your treating physician dispensed and or prescribed to you 400 mg of tramadol per day for treatment of chronic pain. On or about June 23, 2005, you advised Board investigators that your treating physician

was not prescribing enough tramadol and admitted that you were taking approximately 200 to 400 mg more of tramadol per day than was prescribed by your treating physician. You further admitted that you obtained the additional tramadol by using samples delivered to you for use in your practice and that your treating physician was unaware that you were self-medicating with tramadol samples.

Despite the requirements of Paragraph 2 of your August 2004 Step I Consent Agreement and/or the requirements of Paragraph 8 of your February 2005 Step II Consent Agreement, you failed to abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to you by another so authorized by law who has full knowledge of your history of chemical dependency.

- (5) In Paragraph 15 of your February 2005 Step II Consent Agreement, you agreed to comply with the terms of the agreement that you entered into, on or about October 12, 2004, with the Ohio Physicians Health Program [OPHP], formerly known as the Ohio Physicians Effectiveness Program. Paragraph 5 of your agreement with OPHP requires you to immediately notify OPHP when any medication is prescribed for you, submit to OPHP written verification of medical need for said medication from the prescribing physician, and provide OPHP with a copy of the prescription. Despite the requirements of Paragraph 5 of your agreement with OPHP and Paragraph 15 of your February 2005 Step II Consent Agreement, you failed to notify OPHP that your treating physician was prescribing tramadol to you for treatment of chronic pain.
- (6) In Paragraph 16 of your February 2005 Step II Consent Agreement, you agreed to comply with the terms of the aftercare agreement that you entered into, on or about September 17, 2004, with your treatment provider, Parkside. Paragraph 2 of your aftercare agreement with Parkside requires you to immediately notify Parkside when any potential mood-altering drug is prescribed for you, submit to Parkside written verification that the prescribing physician is aware of your addiction history, and provide Parkside with a copy of the prescription. Despite the requirements of Paragraph 2 of your agreement with Parkside and Paragraph 16 of your February 2005 Step II Consent Agreement, you failed to notify Parkside that your treating physician was prescribing tramadol to you for treatment of chronic pain.
- (7) In the "Failure to Comply" provision of your February 2005 Step II Consent Agreement, you contractually 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.

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), 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.

Your acts, conduct, and/or omissions as alleged in paragraphs (3) through (6) above, individually and/or collectively, constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1) through (6) above, individually and/or collectively, constitute "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

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

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

In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke,

Notice of Summary Suspension
& Opportunity for Hearing
Mark Andrew Banks, M.D.
Page 5

suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand you or place you on probation.

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.
Secretary

LAT/blt
Enclosures

CERTIFIED MAIL # 7003 0500 0002 4340 7438
RETURN RECEIPT REQUESTED

James M. Linehan, Esq.
Linehan & Assoc.,
120 ½ E. Main St.
Lancaster, OH 43130

CERTIFIED MAIL # 7003 0500 0002 4340 7421
RETURN RECEIPT REQUESTED

**STEP II
CONSENT AGREEMENT
BETWEEN
MARK ANDREW BANKS, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO**

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

Dr. Banks 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)(26), 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 "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."
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Section 4731.22(B)(26), Ohio Revised Code, as set forth in Paragraph E of the August 2004 Step I Consent Agreement between Dr. Banks and the Board. 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. A copy of the August 2004 Step I Consent Agreement between Dr. Banks and the Board is attached hereto and fully incorporated herein.
- C. Dr. Banks is applying for the reinstatement of his license to practice medicine and surgery in the State of Ohio, License # 35-071099, which is currently suspended pursuant to the terms of the above-referenced August 2004 Step I Consent Agreement.

- D. Dr. Banks states that he is not licensed to practice medicine and surgery in any other state.
- E. Dr. Banks admits that, for the past several years, he was prescribed opiates by his treating physician for purposes of pain management. Dr. Banks states that, from about February through April of 2004, he obtained additional opiates from two of his patients, for whom he was prescribing opiates for their pain management. Dr. Banks states that the two patients gave him a portion of their prescribed hydrocodone or oxycodone, and that he obtained opiates in this manner twice from each patient. Further, Dr. Banks states that, after his treating physician refused to give him any more prescriptions for opiates in or about May of 2004, he gave prescriptions, for either oxycodone or hydrocodone, to two additional patients, had the patients fill the prescriptions, and had the patients return the pills to him for his own use. Dr. Banks admits that he involved only five patients in improperly obtaining opiates for his self-use, including the four patients described above. Further, Dr. Banks denies that he obtained opiates for self-use by any other means than that described above.
- F. Dr. Banks admits that he entered residential treatment for chemical dependence on July 19, 2004, at The Woods at Parkside [Parkside], a Board-approved treatment provider in Columbus, Ohio. Dr. Banks further admits that, while in treatment at Parkside, he was diagnosed with opiate dependency. Dr. Banks states, and the Board acknowledges receipt of information to support, that he successfully completed inpatient treatment at Parkside and was discharged on August 16, 2004.
- G. Dr. Banks admits that, after completing inpatient treatment, he entered into an aftercare contract, entitled "Continuing Care Contract," with Parkside on September 17, 2004, and that said aftercare contract remains in effect to date. Dr. Banks further states, and the Board acknowledges receipt of information to support, that he has remained compliant with the terms of said aftercare contract.
- H. Dr. Banks states, and the Board acknowledges, that Edna Jones, M.D., of Parkside, has provided a written report indicating that Dr. Banks' ability to practice has been assessed and that he has been found capable of practicing medicine and surgery according to acceptable and prevailing standards of care, so long as certain treatment and monitoring requirements are in place.
- I. Dr. Banks states, and the Board acknowledges, that David D. Goldberg, D.O., of Green Memorial Hospital, a Board-approved treatment provider in Xenia, Ohio, has provided a written report indicating that Dr. Banks' ability to practice has been assessed and that he has been found capable of practicing medicine and surgery according to acceptable and prevailing standards of care, so long as

certain treatment and monitoring requirements are in place, which includes a requirement that, for the next 12 to 24 months, Dr. Banks maintain a log of all controlled substances that he prescribes.

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. Banks to practice medicine and surgery in the State of Ohio shall be reinstated, and Dr. Banks knowingly and voluntarily agrees with the Board to the following PROBATIONARY terms, conditions and limitations:

1. Dr. Banks shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
2. Dr. Banks 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 2004 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. Banks 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 August 2004 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. Dr. Banks shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.
5. In the event Dr. Banks is found by the Secretary of the Board to have failed to comply with any provision of this Consent Agreement, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Consent Agreement.

MONITORING OF REHABILITATION AND TREATMENT

Drug Associated Restrictions

6. Dr. Banks 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. Banks' personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Banks shall make his patient records with regard to such prescribing available for review by an agent of the Board upon request.
7. Dr. Banks shall not, without prior Board approval, administer, personally furnish, or possess (except as allowed under Paragraph 8 below) any controlled substances as defined by state or federal law. In the event that the Board agrees at a future date to modify this Consent Agreement to allow Dr. Banks to administer or personally furnish controlled substances, Dr. Banks 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. Banks' personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Banks shall make his patient records with regard to such prescribing, administering, or personally furnishing available for review by an agent of the Board upon request.

Sobriety

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

Drug and Alcohol Screens/Supervising Physician

10. Dr. Banks shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Banks 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 and shall include screenings specific for oxycodone, methodone and steroids. The detection level for the initial screening for opiates or their metabolites shall be at the level of no more than 300 nanograms per milliliter.

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

Within thirty days of the effective date of this Consent Agreement, Dr. Banks shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Banks 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. Banks. Dr. Banks 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. Banks 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. Banks must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Banks 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. Banks' quarterly declaration. It is Dr. Banks' responsibility to ensure that reports are timely submitted.

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

Practice Plan

12. Before engaging in any medical practice, Dr. Banks shall submit a practice plan to the Board and receive its approval. Thereafter, Dr. Banks' practice of medicine shall be only in accordance with such practice plan. The Board shall consider, among other factors, the adequacy and continuity of supervision, and the feasibility of restricted access to controlled substances, which will ensure the protection of the public, prior to approval or disapproval of the proposed

practice plan. Further, Dr. Banks shall submit a revised practice plan to the Board and obtain the prior approval of the Board should he desire modification to any previously approved practice plan(s).

Monitoring Physician

13. Before engaging in any medical practice, Dr. Banks 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. Banks and who is engaged in the same or similar practice specialty.

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

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

Rehabilitation Program

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

Dr. Banks 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. Banks' quarterly declarations.

Aftercare/ Physician Health Program

15. Dr. Banks shall maintain continued compliance with the terms of the agreement that he entered into with the Ohio Physicians Health Program, or, if approved in advance by the Board, an agreement with another appropriate physician health program, provided that, where terms of Dr. Banks' agreement with a physician health program conflict with terms of this Consent Agreement, the terms of this Consent Agreement shall control.
16. Dr. Banks shall maintain continued compliance with the terms of the aftercare contract entered into with his treatment provider, provided that, where terms of the aftercare contract conflict with terms of this Consent Agreement, the terms of this Consent Agreement shall control.

Releases

17. Dr. Banks 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

18. Within thirty days of the effective date of this Consent Agreement, Dr. Banks 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. Banks shall provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
19. Within thirty days of the effective date of this Consent Agreement, Dr. Banks 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. Banks 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. Banks shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

20. Dr. Banks shall provide a copy of this Consent Agreement to all persons and entities that provide Dr. Banks chemical dependency treatment or monitoring.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Banks 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. Banks has violated any term, condition or limitation of this Consent Agreement, Dr. Banks 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. Banks shall not request termination of this Consent Agreement for a minimum of five years. Dr. Banks shall not request modification to the probationary terms, limitations, and conditions contained in Paragraph 6 for at least two years. Further, Dr. Banks shall not request modification to all other 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. Banks 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.

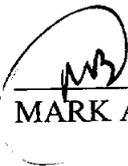
Dr. Banks hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. Dr. Banks acknowledges that his

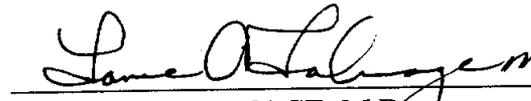
social security number will be used if this information is so reported and agrees to provide his social security number to the Board for such purposes.

EFFECTIVE DATE

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



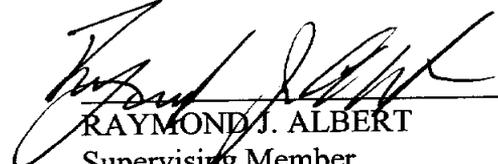
MARK ANDREW BANKS, M.D.



LANCE A. TALMAGE, M.D.
Secretary

2/8/05
DATE

2-9-05
DATE



RAYMOND J. ALBERT
Supervising Member

2/9/05
DATE



KATHLEEN S. PETERSON
Enforcement Attorney

2/8/05
DATE

STEP I
CONSENT AGREEMENT
BETWEEN
MARK ANDREW BANKS, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO

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

Dr. Banks 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)(26), 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 “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.”
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon violation of Section 4731.22(B)(26), Ohio Revised Code, as set forth in Paragraphs E below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, including any violations that may be related to the means, manner and/or method by which Dr. Banks obtained opiates, whether occurring before or after the effective date of this Agreement.
- C. Dr. Banks is licensed to practice medicine and surgery in the State of Ohio, License # 35-071099.
- D. Dr. Banks states that he is not licensed to practice medicine and surgery in any other state.

- E. Dr. Banks admits that he was evaluated on or about July 16, 2004, at Shepherd Hill, a Board-approved treatment provider in Newark, Ohio. Dr. Banks further admits that the purpose of the evaluation was to determine if he suffers from opiate addiction. Dr. Banks admits that, as a result of the evaluation, he was determined to be opiate dependant and to require inpatient or residential treatment. Dr. Banks further admits that, on or about July 19, 2004, he entered inpatient or residential treatment for chemical dependence at The Woods at Parkside [Parkside], a Board-approved treatment provider in Columbus, Ohio, and that said treatment continues to date.

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

SUSPENSION OF CERTIFICATE

1. The certificate of Dr. Banks 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.

Sobriety

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

Releases; Quarterly Declarations and Appearances

4. Dr. Banks 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. Banks' 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. Banks 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. Banks shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective, provided that if the effective date is on or after the sixteenth day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following the month in which this Consent Agreement becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
6. Dr. Banks 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. Banks shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Banks shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

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

Within thirty days of the effective date of this Consent Agreement, Dr. Banks shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Banks 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. Banks. Dr. Banks 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. Banks 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. Banks must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Banks 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. Banks' quarterly declaration. It is Dr. Banks' responsibility to ensure that reports are timely submitted.

Rehabilitation Program

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

CONDITIONS FOR REINSTATEMENT

9. The Board shall not consider reinstatement of Dr. Banks' certificate to practice medicine and surgery until all of the following conditions are met:
 - a. Dr. Banks shall submit an application for reinstatement, accompanied by appropriate fees, if any.
 - b. Dr. Banks 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. Banks has successfully completed at least twenty-eight days of in-patient or residential treatment for chemical dependence, as set forth in Rules 4731-16-02(B)(4)(a) and 4731-16-08(A)(13), Ohio Administrative Code.

- 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. Banks' 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 physicians knowledgeable in the area of addictionology and who are either affiliated with a current Board-approved treatment provider or otherwise have been approved in advance by the Board to provide an assessment of Dr. Banks. Prior to the assessments, Dr. Banks shall provide the evaluators with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The reports from the evaluators shall include any recommendations for treatment, monitoring, or supervision of Dr. Banks, and any conditions, restrictions, or limitations that should be imposed on Dr. Banks' practice. The reports shall also describe the basis for the evaluator's determinations.

All reports required pursuant to this paragraph shall be based upon examinations occurring within the three months immediately preceding any application for reinstatement.

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

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

REQUIRED REPORTING BY LICENSEE

11. Within thirty days of the effective date of this Consent Agreement, Dr. Banks 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. Banks 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. Banks 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. Banks 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. Banks 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. Banks 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. Banks 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. Banks hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

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

EFFECTIVE DATE

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

(ms) Mark A. Banks MD
MARK ANDREW BANKS, M.D.

Lance A. Talmage MD
LANCE A. TALMAGE, M.D.
Secretary

8/10/04
DATE

8-11-04
DATE

Raymond J. Albert
RAYMOND J. ALBERT
Supervising Member

8/11/04
DATE

Kathleen S. Peterson
KATHLEEN S. PETERSON
Enforcement Attorney

August 11, 2004
DATE