

BEFORE THE STATE MEDICAL BOARD OF OHIO

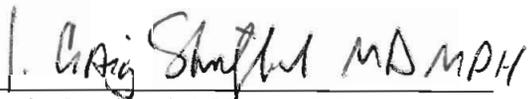
IN THE MATTER OF :
:
MARK STEPHEN MCALLISTER, M.D. :

ENTRY OF ORDER

On December 1, 2012, Mark Stephen McAllister, M.D., executed a Surrender of his license to practice medicine and surgery in Ohio with consent to permanent revocation, which document is attached hereto and fully incorporated herein.

Wherefore, upon ratification by the Board of the surrender, it is hereby ORDERED that Certificate No. 35-072741 authorizing Mark Stephen McAllister, M.D., to practice medicine and surgery in the state of Ohio be permanently REVOKED.

This Order is hereby entered upon the Journal of the State Medical Board of Ohio for the 12th day of December 2012, and the original thereof shall be kept with said Journal.



J. Craig Strafford, M.D., M.P.H.
Secretary

(SEAL)

December 12, 2012

Date

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

Do not sign this agreement without reading it. An individual who permanently surrenders a certificate issued by the Board is forever thereafter ineligible to hold a certificate to practice or to apply to the Board for reinstatement of the certificate or issuance of any new certificate. You are permitted to be accompanied, represented and advised by an attorney, at your own expense, before deciding to sign this voluntary agreement.

I, Mark Stephen McAllister, M.D., am aware of my rights to representation by counsel, the right of being formally charged and having a formal adjudicative hearing, and do hereby freely execute this document and choose to take the actions described herein.

I, Mark Stephen McAllister, M.D., do hereby voluntarily, knowingly, and intelligently surrender my certificate to practice medicine and surgery, License #35.072741, to the State Medical Board of Ohio [Board], thereby relinquishing all rights to practice medicine and surgery in Ohio. Further, I acknowledge that I have not been legally authorized to practice medicine or surgery in Ohio since or about March 10, 2009, the date the Board initially suspended my license to practice.

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

I agree that I shall be ineligible for, and shall not apply for, reinstatement or restoration of certificate to practice medicine and surgery License #35.072741 or issuance of any other certificate pursuant to the authority of the State Medical Board of Ohio, on or after the date of signing this Permanent Surrender of Certificate to Practice Medicine and Surgery. Any such attempted reapplication shall be considered null and void and shall not be processed by the Board.

I stipulate and agree that I am currently subject to the terms of a Board Order, effective on or about March 10, 2009, and admit that I am currently not in full compliance with the terms of that Board Order.

I hereby authorize the State Medical Board of Ohio to enter upon its Journal an Order permanently revoking my certificate to practice medicine and surgery, License #35.072741, in conjunction with which I expressly waive the provision of Section 4731.22(B), Ohio Revised Code, requiring that six (6) Board Members vote to revoke said certificate, and further expressly and forever waive all rights as set forth in Chapter 119., Ohio Revised Code, including but not limited to my right to counsel, right to a hearing, right to present evidence, right to cross-examine witnesses, and right to appeal the Order of the Board revoking my certificate to practice medicine and surgery.

MEDICAL BOARD

DEC 10 2012

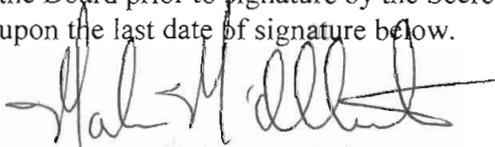
I, Mark Stephen McAllister, M.D., hereby release the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

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

I further stipulate and agree that I am taking the action described herein in lieu of formal disciplinary proceedings pursuant to Section 4731.22(B)(15), Ohio Revised Code.

EFFECTIVE DATE

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



MARK STEPHEN MCALLISTER, M.D.

12/11/12

DATE



J. CRAIG STRAFFORD, M.D., M.P.H.
Secretary

12/12/12

DATE



MARK A. BECHTEL, M.D.
Supervising Member

12/11/12

DATE



SHELDON SAFKO REBECCA J. MARSHALL
CHIEF Enforcement Attorney

December 11, 2012

DATE



MELINDA RYANS-SNYDER
Assistant Attorney General
December 11, 2012

DATE

State Medical Board of Ohio

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

(614) 466-3934
med.ohio.gov

November 14, 2012

Case number: 12-CRF- 123

Mark Stephen McAllister, M.D.
2733 Matthew Drive
Vinton, VA 24179

Dear Doctor McAllister:

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

(1) You are currently subject to a Board Order, which permanently revoked your medical license, stayed said permanent revocation, and indefinitely suspended your certificate for not less than three years, and became effective on or about March 10, 2009, [March 2009 Board Order]. Said Order arose from your non-compliance with monitoring, relapse on Fentanyl, and diversion of Fentanyl, in violation of Sections 4731.22(B)(10), (15), and (26), Ohio Revised Code. Your formal disciplinary history with the Board includes:

- A Consent Agreement, effective in or around March 1999, that permanently revoked your medical license, stayed the revocation, then indefinitely suspended your license for at least two years, related to impairment and medical misuse by falsifying medication computer records to obtain controlled substances for self-use;
- A Consent Agreement, effective in or around May 2001, that reinstated your certificate to practice subject to probationary terms, conditions, and limitations;
- A Consent Agreement, effective in or around May 2004, that suspended your license for at least one year based on your relapse and theft of drugs;

Mailed 11-15-12

- A Consent Agreement, effective in or around June 2005, that reinstated your certificate to practice subject to probationary terms, conditions, and limitations;
- A Consent Agreement, effective in or around November of 2005, that suspended your license for 90 days based on your engaging in the practice of medicine and surgery while your license was suspended; and,
- The Summary Suspension of your certificate to practice medicine and surgery by the Board on or about February 13, 2008, arising from your relapse on Fentanyl, acts constituting the felonies of Theft of Drugs and/or Deception to Obtain, and violation of your November 2005 Consent Agreement with the Board.

(2) As part of the March 2009 Board Order, you must comply with specified conditions and limitations for the period of your suspension. Paragraph 6 of the March 2009 Board Order requires that you submit to random urine screens for drugs and alcohol at least four times per month. Further, you were required to ensure that the urine screening process be performed through a Board-approved drug testing facility requiring a daily call-in procedure; that the urine specimens be obtained on a random basis and that the collection be witnessed by a reliable person.

Despite this provision, you have not called into the Board-approved drug testing facility from on or about September 21, 2012, through at least on or about October 30, 2012. Furthermore, you were scheduled to provide a urine specimen on six occasions from September 21, 2012, through October 17, 2012, which you failed to provide on any of the scheduled days.

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.

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

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

or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



J. Craig Strafford, M.D., M.P.H.
Secretary

JCS/SRS/pv
Enclosures

CERTIFIED MAIL #91 7199 9991 7031 2767 9653
RETURN RECEIPT REQUESTED

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

February 11, 2009

Mark Stephen McAllister, M.D.
138 Summit Way SW
Roanoke, VA 24014

RE: Case No. 08-CRF-017

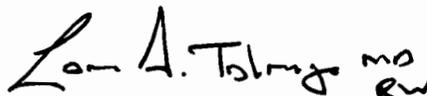
Dear Doctor McAllister:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Gretchen L. Petrucci, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on February 11, 2009, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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

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

THE STATE MEDICAL BOARD OF OHIO



Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3934 3683 6491
RETURN RECEIPT REQUESTED

Cc: John R. Irwin, Esq.
CERTIFIED MAIL NO. 91 7108 2133 3934 3683 6507
RETURN RECEIPT REQUESTED

Mailed 3-10-09

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Gretchen L. Petrucci, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on February 11, 2009, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Mark Stephen McAllister, M.D., Case No. 08-CRF-017, 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.



(SEAL)

Lance A. Talmage MD

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

February 11, 2009

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

CASE NO. 08-CRF-017

MARK STEPHEN MCALLISTER, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on February 11, 2009.

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

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Mark Stephen McAllister, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. McAllister's certificate shall be SUSPENDED for an indefinite period of time, but not less than three years.
- B. **INTERIM MONITORING:** During the period that Dr. McAllister's certificate to practice medicine and surgery in Ohio is suspended, Dr. McAllister shall comply with the following terms, conditions, and limitations:
 1. **Obey the Law:** Dr. McAllister shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 2. **Personal Appearances:** Dr. McAllister shall appear in person for interviews before the Board or its designated representative. The first such appearance shall take place during the third month following the effective date of this Board Order. Subsequent personal appearances must occur every six 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.

3. **Quarterly Declarations:** Dr. McAllister shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
4. **Abstention from Drugs:** Dr. McAllister shall abstain completely from the personal use or personal possession of drugs, except those prescribed, dispensed or administered to him/her by another so authorized by law who has full knowledge of Dr. McAllister's history of chemical dependency. Further, in the event that Dr. McAllister is so prescribed, dispensed or administered any controlled substance, carisoprodol, or tramadol, Dr. McAllister shall notify the Board in writing within seven days, providing the Board with the identity of the prescriber; the name of the drug Dr. McAllister received; the medical purpose for which he received said drug; the date such drug was initially received; and the dosage, amount, number of refills, and directions for use. Further, within thirty days of the date said drug is so prescribed, dispensed, or administered to him, Dr. McAllister shall provide the Board with either a copy of the written prescription or other written verification from the prescriber, including the dosage, amount, number of refills, and directions for use.
5. **Abstention from Alcohol:** Dr. McAllister shall abstain completely from the use of alcohol.
6. **Drug & Alcohol Screens; Drug Testing Facility and Collection Site:** Dr. McAllister shall submit to random urine screenings for drugs and alcohol at least four times per month, or as otherwise directed by the Board. Dr. McAllister 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 Dr. McAllister's drug(s) of choice.

Dr. McAllister shall abstain from the use of any substance and the consumption of poppy seeds or any other food or liquid that may produce a low level positive result in a toxicology screen. Dr. McAllister acknowledges that he understands that the consumption or use of such substances, including but not limited to substances such as mouthwash or hand cleaning gel, may cause a positive drug screen that may not be able to be differentiated from intentional ingestion, and therefore such consumption or use is prohibited.

All such urine screenings for drugs and alcohol shall be conducted through a Board-approved drug testing facility and collection site, except as provided in Paragraph 7 below, and the screening process shall require a daily call-in procedure.

Dr. McAllister shall submit, at his expense and on the day selected, urine specimens for drug and/or alcohol analysis. All specimens submitted by Dr. McAllister shall be negative, except for those substances prescribed, administered, or dispensed to him in conformance with the terms, conditions and limitations set forth in this Board Order. Refusal to submit such specimen, or failure to submit such specimen on the day he is selected or in such manner as the Board may request, shall constitute a violation of this Board Order.

Further, within thirty days of the effective date of this Board Order, Dr. McAllister shall enter into the necessary financial and/or contractual arrangements with the Board-approved drug testing facility and/or collection site in order to facilitate the urine screening process in the manner required by this Board Order. Further, Dr. McAllister shall promptly provide to the Board written documentation of completion of such arrangements, including a copy of any contract entered into between Dr. McAllister and the Board-approved drug testing facility and/or collection site. Dr. McAllister's failure to timely complete such arrangements, or failure to timely provide written documentation to the Board of completion of such arrangements, shall constitute a violation of this Board Order.

Dr. McAllister shall ensure that the urine screening process performed through the Board-approved drug testing facility and/or collection site requires a daily call-in procedure; 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, Dr. McAllister and the Board-approved drug testing facility and collection site shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Dr. McAllister shall ensure that the Board-approved drug testing facility and/or collection site provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Board Order, and whether all urine screens have been negative.

In the event that the Board-approved drug testing facility and/or collection site becomes unable or unwilling to serve as required by this Board Order, Dr. McAllister must immediately notify the Board in writing, and make arrangements acceptable to the Board, pursuant to Paragraph 7 below, as soon as practicable. Dr. McAllister shall further ensure that the Board-approved drug testing facility and/or collection site also notifies the Board directly of its inability to continue to serve and the reasons therefore.

Dr. McAllister acknowledges that the Board expressly reserves the right to withdraw its approval of any drug testing facility and/or collection site in the event that the Secretary and Supervising Member of the Board determine that the drug testing facility and/or collection site has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

7. In the event that utilizing the Board-approved drug testing facility and/or collection site as set forth in Paragraph 6 above creates an extraordinary hardship upon Dr. McAllister, as determined in the sole discretion of the Board, then subject to the following requirements, the Board may approve an alternate drug testing facility and/or collection site, or a supervising physician, to facilitate the urine screening process for Dr. McAllister:
 - a. Within thirty days of the date upon which Dr. McAllister is notified of the Board's determination that utilizing the Board-approved drug testing facility and/or collection site constitutes an extraordinary hardship upon Dr. McAllister, he shall submit to the Board in writing for its prior approval the identity of either an alternate drug testing facility and collection site, or the name of a proposed supervising physician, to whom Dr. McAllister shall submit the required urine specimens. In approving a facility, entity, or an individual to serve in this capacity, the Board will give preference to a facility located near Dr. McAllister's residence or employment location, or to a physician who practices in the same locale as Dr. McAllister. Dr. McAllister shall ensure that the urine screening process performed through the alternate drug testing facility and/or collection site, or through the supervising physician, requires a daily call-in procedure; 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, Dr. McAllister acknowledges that the alternate drug testing facility and collection site, or the supervising physician, shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.
 - b. Dr. McAllister shall ensure that the alternate drug testing facility and/or collection site, or the supervising physician, provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Board Order, and whether all urine screens have been negative.
 - c. In the event that the designated alternate drug testing facility and/or collection site, or the supervising physician, becomes unable or unwilling to so serve, Dr. McAllister must immediately notify the Board in writing. Dr. McAllister shall further ensure that the previously designated alternate drug testing facility and collection site, or the supervising physician, also notifies the Board directly of the inability to continue to serve and the reasons therefore. Further, in order to ensure that there will be no interruption in his urine screening process, upon the previously approved alternate drug testing facility, collection site, or supervising physician becoming unable to serve, Dr. McAllister shall immediately commence urine screening at the Board-approved drug testing facility and collection site chosen by the Board, until such time, if any, that the Board approves a subsequent alternate drug testing facility, collection site, or supervising physician, if requested by Dr. McAllister.

- d. The Board expressly reserves the right to disapprove any entity or facility proposed to serve as Dr. McAllister's designated alternate drug testing facility and/or collection site, or any person proposed to serve as his supervising physician, or to withdraw approval of any entity, facility or person previously approved to so serve in the event that the Secretary and Supervising Member of the Board determine that any such entity, facility or person has demonstrated a lack of cooperation in providing information to the Board or for any other reason.
8. All screening reports required under this Consent Agreement from the Board-approved drug testing facility and/or collection site, or from the alternate drug testing facility and/or collection site or supervising physician, must be received in the Board's offices no later than the due date for Dr. McAllister's quarterly declaration. It is Dr. McAllister's responsibility to ensure that reports are timely submitted.
9. **Submission of Blood or Urine Specimens upon Request:** The Board retains the right to require, and Dr. McAllister agrees to submit, blood, urine, breath, saliva and/or hair specimens for screening for drugs and alcohol, for analysis of therapeutic levels of medications that may be prescribed for Dr. McAllister, or for any other purpose, at Dr. McAllister's expense upon the Board's request and without prior notice. Dr. McAllister's refusal to submit a specimen upon request of the Board shall result in a minimum of one year of actual license suspension. Further, the collection of such specimens shall be witnessed by a representative of the Board, or another person acceptable to the Secretary or Supervising Member of the Board.
10. **Rehabilitation Program:** Dr. McAllister shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than four times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Dr. McAllister 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. McAllister's quarterly declarations.
11. **Psychiatric Assessment/Treatment:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. McAllister shall submit to the Board for its prior approval the name and curriculum vitae of a psychiatrist of Dr. McAllister's choice.

Upon approval by the Board, Dr. McAllister shall obtain from the approved psychiatrist an assessment of Dr. McAllister's current psychiatric status. Prior to the initial assessment, Dr. McAllister shall furnish the approved psychiatrist copies of the Board's Order, including the Summary of the Evidence, Findings of Fact, and Conclusions, and any other documentation from the hearing record which the Board may deem appropriate or helpful to that psychiatrist.

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

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

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

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

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

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

- C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. McAllister's certificate to practice medicine and surgery until all of the following conditions have been met:
1. **Application for Reinstatement or Restoration:** Dr. McAllister shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
 2. **Compliance with Interim Conditions:** Dr. McAllister shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order.
 3. **Demonstration of Ability to Resume Practice:** Dr. McAllister shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. McAllister has successfully completed any required inpatient treatment.
 - b. Evidence of continuing full compliance, if applicable, with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
 - c. Evidence of continuing full compliance with this Order.
 - d. Two written reports indicating that Dr. McAllister's ability to practice has been evaluated for chemical dependency and/or impairment and that he has been found capable of practicing according to acceptable and prevailing standards of care. The evaluations shall have been performed by individuals or providers approved by the Board for making such evaluations. Moreover, the evaluations shall have been performed within sixty days prior to Dr. McAllister's application for reinstatement or restoration. The reports of evaluation shall describe with particularity the bases for the determination that Dr. McAllister has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon his practice.
 - e. Two written reports of evaluation by two psychiatrists acceptable to the Board indicating that Dr. McAllister's ability to practice has been assessed and that he has been found capable of practicing in accordance with acceptable and prevailing standards of care. Such evaluations shall have been performed within sixty days prior to Dr. McAllister's application for reinstatement or restoration. The reports of evaluation shall describe with

particularity the bases for the determination that Dr. McAllister has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon his practice.

4. **Additional Evidence of Fitness To Resume Practice:** Prior to submitting his application for reinstatement or restoration, Dr. McAllister shall take and pass the SPEX examination or any similar written examination which the Board may deem appropriate to assess Dr. McAllister's clinical competency.
- D. **PROBATION:** Upon reinstatement or restoration, Dr. McAllister's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least six years:
1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. McAllister shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order, and shall continue to comply with the terms of any aftercare contract as specified in Paragraph C.3.b of this Order.
 2. **Absence from Ohio:** Dr. McAllister 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.
 3. **Violation of Terms of Probation:** If Dr. McAllister violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. McAllister's certificate will be fully restored.
- F. **RELEASES:** Dr. McAllister shall provide continuing 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. McAllister's chemical dependency and/or related conditions, or for purposes of complying with this Order, whether such treatment or evaluations occurred before or after the effective date of this Order. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.

Dr. McAllister shall also provide the Board written consent permitting any treatment provider from whom Dr. McAllister obtains treatment to notify the Board in the event he fails to agree to or comply with any recommended treatment or with any treatment or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Order.

G. REQUIRED REPORTING AND DOCUMENTATION OF REPORTING:

1. **Required Reporting to Employers and Hospitals:** Within 30 days of the effective date of this Board Order, Dr. McAllister shall provide a copy of this Board Order to all employers or entities with which he is under contract to provide health care services (including but not limited to third party payors) or is receiving training, and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. McAllister shall promptly provide a copy of this Board Order 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. In the event that Dr. McAllister provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Board Order, Dr. McAllister shall provide a copy of this Board Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

This requirement shall continue until Dr. McAllister receives from the Board written notification of his successful completion of probation as set forth in Paragraph E, above.

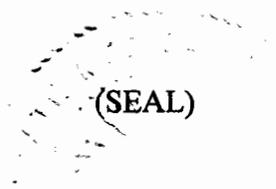
2. **Required Reporting to Other State Licensing Authorities:** Within 30 days of the effective date of this Board Order, Dr. McAllister shall provide a copy of this Board Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Dr. McAllister further agrees to provide a copy of this Board Order 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.

This requirement shall continue until Dr. McAllister receives from the Board written notification of his successful completion of probation as set forth in Paragraph E, above.

3. **Documentation that the Required Reporting Has Been Performed:** Dr. McAllister shall provide the Board with **one** of the following documents as proof of each required notification within 30 days of the date of each notification required above: (1) the return receipt of certified mail within 30 days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Board Order was hand

delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was emailed.

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



(SEAL)

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

February 11, 2009
Date

2009 JAN 15 P 3: 52

**REPORT AND RECOMMENDATION
IN THE MATTER OF MARK STEPHEN MCALLISTER, M.D.
CASE NO. 08-CRF-017**

The Matter of Mark Stephen McAllister, M.D., was heard by Gretchen L. Petrucci, Hearing Examiner for the State Medical Board of Ohio, on December 19, 2008.

INTRODUCTION

Basis for Hearing

By letter dated February 13, 2008, the State Medical Board of Ohio [Board] notified Mark Stephen McAllister, M.D., that it had adopted an order summarily suspending his certificate to practice medicine and surgery in Ohio. The Board stated that it had taken that action based on a determination that there was clear and convincing evidence that Dr. McAllister had violated Sections 4731.25(B)(26), (15), and (10), Ohio Revised Code, and that his continued practice presented a danger of immediate and serious harm to the public. Furthermore, the Board notified Dr. McAllister that it had proposed to take other disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board's actions were based on allegations that Dr. McAllister had relapsed, and had admitted to relapsing and to diverting Fentanyl from patients at his workplace for at least two weeks. Moreover, the Board alleged that Dr. McAllister's acts, conduct, and/or omissions constitute:

- (a) Impairment as set forth in Section 4731.22(B)(26), Ohio Revised Code;
- (b) Violation of "the conditions of limitation placed by the board upon a certificate to practice," as set forth in Section 4731.22(B)(15), Ohio Revised Code; and
- (c) "Comission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed," as set forth in Section 4731.22(B)(10), Ohio Revised Code.

In particular, the Board alleged that Dr. McAllister had committed acts constituting Theft of Drugs and/or Deception to Obtain a Dangerous Drug, as set forth respectively in Sections 2913.02 and 2925.22, Ohio Revised Code. Accordingly, the Board advised Dr. McAllister of his right to request a hearing. (State's Exhibit 1A)

In February 2008, Dr. McAllister filed a written hearing request.¹ (State's Exhibit 1B)

¹Dr. McAllister first e-mailed his hearing request to the Board, and it was received on February 20, 2008. A hard copy of that same hearing request was filed with the Board on February 27, 2008. Both requests for a hearing were timely submitted to the Board. Inadvertently, a hearing date was not scheduled within seven to 15 days of the hearing request being received by the Board, as required by Section 4731.22(G), Ohio Revised Code. However, both parties agreed that the hearing could be scheduled for a later date, and that the summary suspension of Dr. McAllister's Ohio certificate would remain in effect. (State's Exhibit 1C)

Appearances at the Hearing

Richard Cordray, Attorney General, by Kyle C. Wilcox, Assistant Attorney General, on behalf of the State of Ohio.

John R. Irwin, M.D., Esq., on behalf of Dr. McAllister.

EVIDENCE EXAMINED

Testimony Heard

Mark Stephen McAllister, M.D.
Hanna Lloyd, C.S.A.C.
Samuel D. Rogers, Jr., Ph.D.
David Clohessy
Monica McAllister

Exhibits Examined

State's Exhibits 1A through 1E: Procedural exhibits.

State's Exhibit 2: Certified copy of the January 2, 2008, report of Dr. McAllister's noncompliance from the Virginia Health Practitioners' Intervention Program.

State's Exhibit 3: Not admitted.

State's Exhibit 4: Certified copies of five consent agreements executed by Dr. McAllister and the Board between March 1999 and November 2005.

State's Exhibit 5: Stipulations between the State and Dr. McAllister.

Respondent's Exhibit A: Office reports of Hannah Lloyd, C.S.A.C. [Admitted under seal.]

Respondent's Exhibit B: Curriculum vitae of Ms. Lloyd.

Respondent's Exhibit C: Letter of support from Ms. Lloyd. [Admitted under seal.]

Respondent's Exhibit D: Psychiatric evaluation of Dr. McAllister by Robert L. Murdoch, M.D. [Admitted under seal.]

Respondent's Exhibit E: Dr. McAllister's treatment record from COPAC, Inc. [Admitted under seal.]

Respondent's Exhibit F: Dr. McAllister's treatment record from The William J. Farley Center. [Admitted under seal.]

Respondent's Exhibits G through S: Thirteen letters of support.

Respondent's Exhibit T: Written report of Samuel B. Rogers, Jr., Ph.D. [Admitted under seal.]

Respondent's Exhibit U: Curriculum vitae of Dr. Rogers.

Respondent's Exhibit V: Letter from the Virginia Health Practitioners' Intervention Program.

Respondent's Exhibit W: Dr. McAllister's statement.

Respondent's Exhibit X: August 2008 recovery monitoring agreement between Dr. McAllister and the Virginia Health Practitioners' Intervention Program.

PROCEDURAL MATTERS

The Hearing Examiner held the record open at the conclusion of the hearing in order to allow Dr. McAllister to present an additional exhibit. (Tr. at 151, 158) That exhibit was provided on December 22, 2008. The State had no objection to the exhibit. The additional exhibit was marked as Respondent's Exhibit X and admitted to the record.

Additionally, the Hearing Examiner noted, upon review of the record, that Respondent's Exhibit T should have been admitted under seal because it pertains to treatment. Accordingly, the Hearing Examiner, *sua sponte*, modified her earlier ruling to admit Respondent's Exhibit T under seal. The hearing record closed on December 22, 2008.

SUMMARY OF THE EVIDENCE

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

Background

1. Mark Stephen McAllister, M.D., was born in 1970. He testified that he had started using drugs when he was a teenager. He earned his medical degree from the University of Missouri in 1994. He began medical training in Cleveland, Ohio, in July 1994, in a surgical residency at The Cleveland Clinic Foundation [Cleveland Clinic]. He testified that he had "lost" his surgical residency position, and then entered into an anesthesiology residency program at the Cleveland Clinic in 1997. (Hearing Transcript [Tr.] at 20, 27, 30, 37-38, 39, 51, 69, 74)

2. Dr. McAllister first sought treatment for chemical dependency in late 1997, after abusing Fentanyl in the beginning of his anesthesiology residency program at the Cleveland Clinic. In 1998, the Board first initiated action against Dr. McAllister's Ohio certificate due to his chemical dependency. Thereafter, Dr. McAllister and the Board entered into a series of consent agreements pursuant to which they agreed to certain disciplinary actions and to reinstatement of his Ohio certificate under various terms and conditions. (State's Exhibit [St. Ex.] 4; Tr. at 38, 42)
3. A summary of Dr. McAllister's medical training, his drug use, and his disciplinary history with the Board from mid-1997 to mid-2007 is as follows:

Date	Event
1997	Abused Fentanyl during the first year of his anesthesiology residency program at the Cleveland Clinic. He obtained the drug from the hospital anesthesia supply, and had documented the drug as being administered to patients or returned to stock, but he had kept part of the drug for personal use.
December 1997 – January 1998	Underwent treatment for chemical dependency at the Cleveland Clinic.
February 1998-May 1998	Underwent treatment for chemical dependency at Talbott Recovery Campus, Atlanta, Georgia.
1998	Resumed anesthesiology residency at the Cleveland Clinic and began participating in an aftercare program at the Cleveland Clinic.
October, 8, 1998	Self-administered Propofol, an intravenous sedative-hypnotic anesthesia agent, that he had obtained from hospital stock. ²
1998	Resigned from the Cleveland Clinic anesthesiology residency.
December 1998	Notice of Opportunity for Hearing [NOH] issued, in which the Board alleged that Dr. McAllister had procured Fentanyl from the Cleveland Clinic anesthesia supply and had documented the drug as being administered to patients or returned to stock, but he had kept part of the drug for personal use.
March 1999	Step 1 Consent Agreement with the Board to resolve the December 1998 NOH. Dr. McAllister admitted the allegations in the December 1998 NOH, admitted the October 1998 self-administration of Propofol, and admitted that his ability to practice according to acceptable and prevailing standards of care was impaired. His certificate was permanently revoked, but the revocation was stayed, and his certificate was suspended for an indefinite period of time, but not less than two years. The agreement imposed conditions for reinstatement, and imposed other terms and conditions.
May 2001	Step 2 Consent Agreement with the Board, pursuant to which Dr. McAllister's certificate was reinstated, subject to monitoring terms, conditions and limitations for seven years.

²Dr. McAllister described Propofol as a rapid-acting, non-narcotic anesthetic. (Tr. at 49)

Date (continued)	Event (continued)
July 2002	Entered into a surgical residency program at Fairview General Hospital in Cleveland, Ohio.
January 2004	Administered Versed to a patient in violation of hospital policy and the May 2001 Step 2 Consent Agreement.
March 21, 2004	Relapsed by diverting Fentanyl from the intravenous drip of a surgical patient and self-administering it in a hospital restroom.
March 23, 2004- April 6, 2004	Completed the "day treatment program" at the Cleveland Clinic.
May 2004	Step 1 Consent Agreement with the Board, pursuant to which Dr. McAllister's certificate was suspended for an indefinite period of time, but not less than one year. This was based on his administration of Versed to a patient and his relapse on Fentanyl. The agreement imposed conditions for reinstatement, and imposed other terms and conditions.
May 18, 2005	Participated as first assistant in a surgical procedure at Fairview General Hospital.
June 2, 2005	Investigatory office conference with Board.
June 8, 2005	Step 2 Consent Agreement with the Board, pursuant to which Dr. McAllister's certificate was reinstated, subject to monitoring terms, conditions and limitations for five years.
Mid-June 2005	Terminated from surgical residency program at Fairview General Hospital because of his participation in a surgical procedure prior to the reinstatement of his Ohio certificate.
November 2005	Consent Agreement with the Board, pursuant to which Dr. McAllister's Ohio certificate was suspended for 90 days because of his participation in a surgical procedure before his certificate had been reinstated, and for failure to disclose such participation at the June 2005 investigatory office conference. The agreement imposed interim monitoring terms, and probationary terms and conditions for five years.
February 9, 2006	Dr. McAllister's Ohio certificate was reinstated.
January 2007	Dr. McAllister entered the surgical residency program at The Carilion Clinic, in Roanoke, Virginia. He entered as a fourth-year resident. Later, he was promoted to chief resident.

(St. Exs. 4, 5; Tr. at 28, 39-43, 46, 51, 68-71; Respondent's Exhibit [Resp. Ex.] E at 175)

4. On February 13, 2008, the Board issued an order summarily suspending Dr. McAllister's certificate to practice in Ohio, and a notice of opportunity for hearing, which initiated the current action. Dr. McAllister currently holds a suspended Ohio certificate and a suspended license in Virginia. (Tr. at 35-36, 77)

Stipulations Regarding the December 2007 Events and the Underlying Criminal Statutes Referenced in the Allegations

5. Dr. McAllister does not dispute the specific allegations set forth in the Board's February 2008 NOH with respect to his noncompliance with the November 2005 Consent Agreement. (Tr. at 9, 11) Moreover, in December 2008, Dr. McAllister agreed and stipulated, among other things, to the following:
- Paragraph 2d of the November 2005 Consent Agreement provides that Dr. McAllister "shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of [his] history of chemical dependency."
 - Despite this provision, on or about January 2, 2008, the Board was notified by the Virginia Health Practitioners' Intervention Program [HPIP] that Dr. McAllister had relapsed on Fentanyl, and that he had admitted to relapsing and to diverting Fentanyl from patients at his workplace for at least two weeks.³
 - Dr. McAllister agrees that he has violated his November 2005 Consent Agreement and he further agrees that the Supervising Member and Secretary had clear and convincing evidence of said violation and therefore the Board was justified in proceeding to summarily suspend his certificate to practice on February 13, 2008.
 - Dr. McAllister's acts, conduct, and/or omissions individually and/or collectively, constitute:
 - (a) "Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.
 - (b) "Violation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

³The HPIP report of noncompliance was dated January 2, 2008, but there was no evidence presented that the Board was notified of that noncompliance on that date. Instead, the evidence established that the Board received notice of the noncompliance approximately 40 days later, on February 11, 2008. (St. Ex. 2)

- (c) “Commission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Theft of Drugs, Section 2913.02, Ohio Revised Code, and/or Deception to Obtain a Dangerous Drug, Section 2925.22, Ohio Revised Code.

(St. Ex. 5)

6. Section 2913.02, Ohio Revised Code, states in pertinent part:

- (A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways:
 - (1) Without the consent of the owner or person authorized to give consent;
 - (2) Beyond the scope of the express or implied consent of the owner or person authorized to give consent;
 - (3) By deception;
 - (4) By threat;
 - (5) By intimidation.

* * *

- (B)(6) If the property stolen is any dangerous drug, a violation of this section is theft of drugs, a felony of the fourth degree, or, if the offender previously has been convicted of a felony drug abuse offense, a felony of the third degree.

7. Section 2925.22, Ohio Revised Code, states in pertinent part:

- (A) No person, by deception, shall procure the administration of, a prescription for, or the dispensing of, a dangerous drug or shall possess an uncompleted preprinted prescription blank used for writing a prescription for a dangerous drug.
- (B) Whoever violates this section is guilty of deception to obtain a dangerous drug. The penalty for the offense shall be determined as follows:

* * *

- (3) If the drug involved is a compound, mixture, preparation, or substance included in schedule III, IV,

or V or is marijuana, the penalty for deception to obtain a dangerous drug is one of the following:

- (a) Except as otherwise provided in division (B)(3)(b), (c), or (d) of this section it is a felony of the fifth degree, * * *.

HPIP's Report of Noncompliance

8. On January 2, 2008, Dr. McAllister's HPIP case manager wrote a report regarding the 2007 relapse, and provided it to the Board in February 2008. (St. Ex. 2). That report reflects the following as to Dr. McAllister's December 2007 relapse and the manner in which the relapse was reported to HPIP:

[Dr. McAllister's] therapist reported to the on-call case manager on December 31, 2007 that client [Dr. McAllister] had relapsed and was instructed to contact Williamsburg Place for treatment immediately. The therapist reports client admitted that he had relapsed and had been diverting from his work place for at least two weeks.

On January 2, 2008, HPIP spoke with client's work site monitor who reports that on Sunday, December 30, 2007, client was seen by a nurse taking a syringe and drawing Fentanyl from a patient's IV bag. He was then witnessed entering the bathroom. About 15 minutes later the nurse witnessed the client repeat drawing Fentanyl from the patient's IV bag then enter the bathroom. The on-call doctor was contacted and came to the hospital and spoke with the doctor in charge. At that time, both doctors went to the [operating room] where the client *was getting ready for surgery* and pulled him from the procedure. When they confronted him, he admitted to diverting and relapsing.

(St. Ex. 2 at 2, emphasis added)

9. Dr. McAllister agreed with the HPIP report regarding how his relapse occurred. He stated that he could not recall how many times he had diverted Fentanyl from patients, but it was more than 10 times.⁴ He further explained that the involved patients were critically ill patients in the intensive care unit of the hospital. He also stated that they were unconscious and being given Fentanyl for pain control, sedation, tolerance of the ventilator, and control of intracranial pressure. Dr. McAllister also noted that, before being confronted by hospital personnel for diverting Fentanyl on December 30, 2007, he had been preparing to assist in a surgery. (Tr. at 44-47)

⁴During treatment in 2008, Dr. McAllister provided more details about his relapse on Fentanyl in 2007. At the William J. Farley Center, Dr. McAllister reported that he had used 120 mcg of Fentanyl once to twice daily over a three-week period. (Resp. Ex. F at 6) At COPAC, Inc., he reported that he had used 750 mcg to 1 mg each day for one month. (Resp. Ex. E at 2)

10. Dr. McAllister stated that he did not have any different concern for those patients from whom he had taken Fentanyl than he had for any other patient under his care. However, he also stated that it troubled him that he had taken medication from those patients and he did not like doing it. (Tr. at 61) He elaborated as follows:

You know, I had been sober a good number of years at that point, and I knew what the consequences were. I just didn't know what to do, you know. I mean, once this monster gets activated, you lose the power of choice. You really do. I didn't like what I was doing. I was -- I hated myself even more. I hated myself for feeling that I was responsible for what happened to me, and I hated myself even more for the way I was handling it.

(Tr. at 61-62)

11. Dr. McAllister also acknowledged that, at the time he had diverted Fentanyl in December 2007, he had been taking Naltrexone, an opiate antagonist that blocks the effects of opiates. He explained that the blocking effect can be overcome with higher doses of opiates. Dr. McAllister did not know whether the amount of Fentanyl he had diverted had overcome the impact of the Naltrexone. (Tr. at 67-68)

Dr. McAllister's Explanation

12. Dr. McAllister testified that, in the fall of 2007, he had begun to lose control over his thoughts and had had terrifying dreams. He stated that he had eventually realized that they were repressed memories of sexual abuse he had suffered for five years, from the age of 13 until he went to college. He explained that the abuse had occurred almost daily and had been carried out by a Catholic priest, who had given him drugs to lower his inhibitions. In addition, Dr. McAllister testified that he had felt that he had played an active role in allowing the priest to continue the abuse because he had not spoken up at the time and for many years thereafter. He stated that he had believed "no one could ever understand what [he] had suffered as a child and what [he] was suffering as an adult." (Tr. at 19-21, 27, 30-31, 53; Resp. Ex. W) In addition, he stated:

Nor did I have the skills to see beyond the tactics this man used to keep me silent all those years. The relapse, in this sense, was fortuitous in that it finally broke my silence, my guilt, and my denial. It freed me to get help. * * * I freely admit that I made a conscious decision last year to medicate mental and emotional anguish with opiates. What I hope you can understand is that I didn't know any other way at the time. I was terrified, simply terrified. And confused and ashamed and overwhelmed and thinking of suicide almost daily. I didn't know help was available. Given what I was experiencing, I was too afraid and ashamed to ask.

(Tr. at 21; Resp. Ex. W at 1-2)

13. Furthermore, Dr. McAllister testified that his substance abuse and addiction started when the sexual abuse ended (when he went to college). Thus, Dr. McAllister believes that substance abuse was one of the self-destructive ways in which he had dealt with the sexual abuse. He pointed out that his other reactions to the sexual abuse have imposed serious obstacles to his sobriety. In particular, he testified that he had had a fear of men, which has made group therapy, friendships and sponsoring relationships ineffective. Similarly, he explained that he had been unable to place reliance on a higher power (a cornerstone of the 12-step recovery process), which impeded his ability to benefit from the recovery process. (Tr. at 22-23; Resp. Ex. W at 2)
14. Dr. McAllister noted that, since the December 2007 relapse, he has obtained extensive treatment and therapy. He stated that they have been designed to address his drug addiction and the other “self-destructive manifestations of [his] reaction to the [sexual] abuse.” (Tr. at 23-24; Resp. Ex. W at 2)

2008 Inpatient Treatment and Monitoring

15. Dr. McAllister entered inpatient treatment at the William J. Farley Center [Farley Center] in Williamsburg, Virginia⁵ on January 1, 2008. He remained there until March 5, 2008. He was diagnosed with opioid dependence, propofol abuse (remote [history]), nicotine dependence, post-traumatic stress disorder [PTSD], and major depressive disorder, severe recurrent without psychotic features. (Tr. at 29; Resp. Ex. F at 1-2, 54)
16. His treatment at the Farley Center included treatment for his chemical dependency and the sexual abuse. Dr. McAllister testified that, initially, he had done well in treatment at the Farley Center. He also testified that, as the sexual abuse memories “flooded him,” his feelings became more uncomfortable and he had an affair with a female patient. Dr. McAllister stated that he had needed something to distract him and, perhaps, he also needed to prove to himself that he is a man. He further explained that the relationship had been discovered and, appropriately, he had been removed from that program. (Tr. at 31, 57-58)
17. The Farley Center discharge summary states:

Dr. McAllister completed approximately 10 weeks in treatment and was not fully compliant with the treatment team, violating rules relating to pairing and boundaries and was placed on Level III of concern on 2/21/08. He met with staff again on 3/4/08 for continued violation of his boundary contract and was given several options to explore for transfer. He worked on identified treatment problems through participation in the following treatment modalities: individual therapy weekly, daily psychotherapy, didactic therapy daily (including Twelve Step education, education regarding the disease of addiction, coping and stress management skills, relapse prevention skills

⁵Administrative notice is taken that the William J. Farley Center is not a Board-approved treatment provider. (Board website, December 24, 2008, <http://med.ohio.gov/pdf/treatment_compliance/TREATMNT.pdf>)

training and family education). Additionally he participated in family therapy, recreation therapy, art therapy, and an outdoor adventure program. Treatment approaches utilized included: insight-oriented psychotherapy, behavioral and cognitive treatment techniques, experiential therapy and attendance at daily Twelve Step meetings of AA/NA and Caduceus.

(Resp. Ex. F at 2; see also Resp. Ex. F at 54, 70, 79-80)

18. Dr. McAllister then entered inpatient treatment at COPAC, Inc. [COPAC] in Brandon, Mississippi on March 6, 2008.⁶ That program was an all-male program.⁷ He was discharged on June 27, 2008. He was diagnosed with opioid dependence and history of PTSD. His prognosis at discharge was “guarded.” During his treatment at COPAC, Dr. McAllister underwent eye movement desensitization and reprocessing (EMDR)⁸ and a sex addiction program. (Resp. Ex. W at 2; Tr. at 23-24, 58-59; Resp. Ex. E at 170, 179, 180, 182)
19. He explained how things transpired during this treatment program:

I was now surrounded by nothing but men. Men that I didn't trust. Men that I was afraid of. Men that had every bit of potential to do the same thing to me. I was guarded. I was distrustful. I wasn't an A-plus student there, but I was honest, you know. I didn't say what they wanted me to say. I didn't do what they wanted me to do.

* * *

I've been in treatment before, and I said the things that I thought they wanted me to say, and I did the things I thought they wanted me to do because my sole objective the entire time I was there was getting out.

* * *

This time I didn't do that. If it was on my mind that, you know, if I thought a counselor was wrong, I said it. I didn't keep secrets.

(Tr. at 32-33)

⁶Administrative notice is taken that COPAC is not a Board-approved treatment provider. (Board website, December 24, 2008, <http://med.ohio.gov/pdf/treatment_compliance/TREATMNT.pdf>)

⁷Hannah Lloyd, one of Dr. McAllister's counselors, testified that COPAC has had long-standing programs separately designed for men and women. Additionally, she stated that COPAC also has a well-known program for sexual compulsivity. (Tr. at 85)

⁸Dr. McAllister explained that EMDR is a “fairly new” technique by which one relives the traumatic events, while receiving bilateral brain stimulation (shock). He likened it to hypnosis. (Tr. at 58-59)

20. The discharge summary from COPAC stated the following regarding Dr. McAllister's participation in treatment there:

Patient appeared to be going [through] the motions to return back home to his life. Patient broke several small rules and only when patient was given concern about difficulty at Copac, Inc. advocating him with his limited participation, and minimization of rule violations is when he started getting more involved in the treatment process[,] so questionable with his motives. This appears to be a recurring theme with this patient and his level of arrogance and self-centered behaviors [do] not address his patterns of behaviors.

* * *

He continues to blame others when he's called into question and continues to feel like he's misunderstood when in fact his patterns are continuing from his life as well as from his experience through his last treatment all the way through Copac, Inc. * * * He appears to be deceptive in nature and keeps to himself and peers as well as staff had to work hard to get any information.

(Resp. Ex. E at 182)

21. In August 2008, Dr. McAllister executed a five-year, recovery monitoring contract with HPIP. (Tr. at 29) It provides, among other things, the following monitoring terms and conditions:

- He shall "abstain from alcohol, marijuana, stimulants, cocaine, narcotics, sedatives, tranquilizers, and all other potentially addicting or mind-altering medications or drugs."
- He will participate in an aftercare program for the period determined by his therapist, Hannah Lloyd.
- He will attend three, 12-step program meetings per week and two health professional recovery group meetings months, and provide documentation to HPIP on a monthly basis.
- He will provide urine or blood samples on a random, observed basis for drug testing. (The agreement does not specify the frequency of the drug screens.)
- He will assure that his physician(s) provide HPIP with required reports.
- He will have contact with a designated peer monitor three times per month and the peer monitor will provide monthly reports to HPIP.

(Resp. Ex. X)

Testimony of Dr. McAllister's Counselors

22. Hannah Lloyd, C.S.A.C., is Dr. McAllister's primary counselor. She is a certified substance abuse counselor in Virginia, providing services to impaired professionals. In December 2006, HPIP referred Dr. McAllister to Ms. Lloyd for continuing care and monitoring during his efforts to obtain a medical license in Virginia. (Tr. at 79; Resp. Ex. B at 1, 3)
23. Ms. Lloyd stated that, for the first year, Dr. McAllister participated in the HPIP-required monitoring program, but his attendance was irregular, and he was aloof and isolated. She stated that, by September 2007, his physical appearance concerned her and they moved from group therapy sessions to individual therapy sessions. In September 2007, Dr. McAllister disclosed to her the sexual abuse he had suffered as a child. She continued to meet with Dr. McAllister, and also referred him to several other professionals for treatment. (Tr. at 81-83; Resp. Ex. A at 1, 6; Resp. Ex. D)
24. Dr. McAllister spoke with Ms. Lloyd in December 2007 and disclosed his relapse on Fentanyl, and she recommended that he immediately enter residential treatment at the Farley Center. Ms. Lloyd opined that the resurfaced memories of the sexual abuse were the primary contributor to Dr. McAllister's relapse in December 2007. (Tr. at 84, 96)
25. Currently, Dr. McAllister meets with Ms. Lloyd weekly in individual and in group therapy sessions, working primarily on recovery-related issues, but also supporting the PTSD, sexual compulsivity and family issues he has. She noted that Dr. McAllister is part of an all-male group of healthcare professionals who meet with her regularly. (Tr. at 62, 65, 86-90)
26. Ms. Lloyd described how Dr. McAllister has changed over the period of time that she has known him:

The man that I met in December of '06, as I think I stated before, he was aloof, isolated, not particularly participatory in the group process. He was able to let people know that he knows the recovery process very well, and that seemed to be more at an intellectual level. His interaction with his peers was limited, and there were times where I was really concerned about his state of his recovery and his life in general.

At this point, Mark is a man I feel like I'm really beginning to get to know. He's more open. He has utilized all of the resources available to him and continues to do so. Since he returned from treatment at COPAC, he has continued to grow in his willingness to assert his own needs for time from his peers in group. He has been evident and available in the other settings in the community, such as Caduceus, which is medical professionals, physicians and medical providers in recovery.

He is volunteering to help in a hospital program and is there weekly to do that. He has managed his time in a much more appropriate manner taking care of

himself. I see that his relationships with others are markedly different. He is present rather than being aloof and withdrawn. I also know that Mark knows he has a lot work to do and will continue to do that. My hopefulness about Mark is that what I see that's so different is that his tenaciousness, his courage, and his integrity of following through makes it not a problem for me to advocate for him. So there's a huge difference.

(Tr. at 90-91) She noted that, since Dr. McAllister's return after treatment, he has been fully compliant with her treatment requirements. She is very optimistic about his continued recovery, and stated that, with appropriate treatment, counseling, drug screens, and psychiatric treatment, she believes he will be able to return to the practice of medicine. (Tr. at 92, 94; Resp. Ex. C)

27. Samuel B. Rogers, Jr., Ph.D., is Dr. McAllister's psychologist. He is a licensed clinical psychologist in Virginia. He works in a small, independent clinical practice, providing a full range of psychotherapy services to adults, primarily. For the past 20 years, he has focused mostly on anxiety disorders, and a number of his patients have been sexually abused. (Tr. at 65, 101, 105; Resp. Ex. U)
28. Dr. Rogers has diagnosed Dr. McAllister with: (1) PTSD, as a result of the childhood sexual abuse, and (2) adjustment reaction with depressed and anxious mood. Upon referral by Ms. Lloyd, Dr. Rogers began seeing Dr. McAllister in July 2008, and he saw him 15 times in 2008. Dr. Rogers stated that the treatment has thus far involved exposure therapy, whereby Dr. McAllister recounts in detail the events that had occurred. Eventually, the treatment will involve guided imagery and visualizing the experiences. Currently, Dr. McAllister sees Dr. Rogers every two weeks. (Tr. at 65, 104, 116, 122)
29. He noted that Dr. McAllister had started working with him just after having left two treatment centers that had addressed the PTSD thoroughly. He has found Dr. McAllister to be forthright and direct, and completely compliant. He stated that he believes Dr. McAllister has made remarkable progress with the issues, but he anticipates working with Dr. McAllister for several more years. He is highly optimistic of Dr. McAllister's future. (Tr. 109-111, 123)
30. Dr. Rogers explained that, when repressed memories resurface, the person typically has a "nervous breakdown," and falls back on coping mechanisms that are often maladaptive or destructive. In Dr. McAllister's case, Dr. Rogers stated that he fell back to abusing drugs. Dr. Rogers believes that Dr. McAllister has begun to address the underlying psychological issues that had prompted and had caused his problems with substance abuse and, therefore, he is in a position to bring it under control. (Tr. at 107, 111)
31. Dr. Rogers wrote a letter regarding Dr. McAllister, in which he states the following:

Although repression of traumatic events was to some degree effective, substance abuse has remained a key mechanism by which Dr. McAllister has coped with the lasting psychological effects of the [sexual] abuse. This is a

common response among trauma survivors and is often difficult to treat effectively without acknowledgement of the underlying psychological issues. * * * It is of great significance that Dr. McAllister is finally addressing what I consider to be the major contributor to his recurrent substance abuse.

Dr. McAllister has been in active treatment for his substance abuse and his PTSD since January of [2008], including six months in two residential treatment programs. He had already made excellent progress on the issues associated with his childhood abuse and on his substance abuse by the time he started working with me at the end of July. * * * I am optimistic about Dr. McAllister's capacity to resolve the trauma from his extremely unfortunate childhood, and to bring his substance abuse under control once and for all.

(Resp. Ex. T at 2) Further, Dr. Rogers opined that Dr. McAllister is capable of returning to the practice of medicine "in accordance with all prevailing and acceptable standards of care," but retracted that statement in part because he is not a physician and he cannot determine the standard of care for physicians. (Tr. at 118-119, 121-122; Resp. Ex. T at 2-3)

Testimony of Mrs. McAllister

32. Dr. and Mrs. McAllister have been married for eight years and have one child. Mrs. McAllister learned of Dr. McAllister's repressed memories in January 2008, after he had entered the Farley Center. (Tr. at 27-28, 138-139)
33. She described the changes in her husband between 2007 and 2008 as follows:

The change I've seen in Mark has been the nothing short of astronomical. If I might just reflect, and it's been touched on a bit, in the latter months of 2007, Mark was becoming progressively withdrawn. He was losing weight. He wasn't sleeping. Mark has always been a very reserved, quiet, cerebral, intellectual person, but even that was becoming much more amplified to me. And, you know, many of these sort[s] of symptoms, if you will, you can easily chalk up to a very demanding surgical residency. The only symptom, if you will, that stood out were these thrashing, horrific nightmares that he was having, and getting up and pacing in the night. * * * So when he came home, it was truly -- the comparison that I had in what I will try to describe for you is that much more vivid to me. It's only been getting better over the six months essentially since he's been back working with Sam and Hannah. My husband today -- bear with me. He likes himself. He loves himself.

* * * Because he no longer loathes himself, he's able to receive the love that myself, our son, even being two, his family, and his friends try to give him, and he's able to give love back. * * * It's what I believe has allowed him to thrive and grow in these relationships with the men in the programs that he's

participating in. He's a daddy now. Whereas, before, he was merely a father for the most part. * * *

(Tr. at 141-142) Additionally, she noted that Dr. McAllister "belly laughs," has thrown himself into the 12-step recovery process, he prays, and is empowered. (Tr. at 143-144)

Testimony of David Clohessy

34. David Clohessy is the National Director of the Survivors Network of those Abused by Priests [SNAP], a self-help group that attempts to "heal the wounded and protect the vulnerable." He has known Dr. McAllister for approximately one year, and spoken with him on numerous occasions. (Tr. at 62-63, 127, 130; Resp. Ex. G)

35. Mr. Clohessy noted his observations regarding Dr. McAllister over the period of time that he has known him:

[At] first, he was absolutely paralyzed and very confused and just in a lot of pain, and still is, of course, in terms of feeling the pain. But, you know, he has this steely determination to get better, and I think, you know, he's just attacking the root cause of his addictions and other problems in one of the most admirable and direct and consistent ways. * * * Mark has just jumped in feet first, and I think he's doing an amazing job of just doing literally everything a survivor can do to get better.

(Tr. at 131-132) Mr. Clohessy further noted that, of the numerous victims/survivors with whom he has dealt, Dr. McAllister is doing much better than most and he is doing what he should be doing. (Tr. at 132-134)

36. Additionally, Mr. Clohessy wrote a letter of support for Dr. McAllister. Mr. Clohessy states that his prognosis of Dr. McAllister is very positive because Dr. McAllister acted quickly after his memories surfaced, he has tremendous family support, he has a high degree of self-awareness and is addressing the other impacts of the sexual abuse, he entered a "top notch inpatient treatment" program, he is taking steps to deal with church officials, he has reached out to and is trusting others, and the memories surfaced at a time when Dr. McAllister was able to begin dealing with them. (Resp. Ex. G at 2)

Other Letters of Support

37. Dr. McAllister presented 12 other letters of support from friends and colleagues. The State did not have the opportunity to cross-examine the authors of those letters.

38. Many wrote of Dr. McAllister's active participation in the 12-step recovery process, his commitment to recovery from the substance abuse and the sexual abuse, and his humility. (Resp. Exs. I-L, N-S)

39. Two colleagues wrote of Dr. McAllister's talent as a physician, noting that they had worked with him during his residency in Virginia. They described Dr. McAllister as "conscientious,

thorough, extremely knowledgeable, and skilled,” and “exceptionally bright, [and] motivated.” (Resp. Exs. H, M)

Dr. McAllister’s Position

40. Dr. McAllister testified that the enlightenment he has received in the past year has given him an effective way of living that he has not known before. He explained:

An understanding of how I got to this point, and more importantly, that the abuse wasn’t my fault, has opened up a world of coping mechanisms that are infinitely more effective than the use of drugs. I by no means am done with the process, but I’ve experienced enough of the results to know that I never, never want to return to my old way of living.

Today, I treat my recurrent drug addiction and the effects of the trauma in every way available to me. Although I made the six months I spent in residential treatment very difficult for myself, I didn’t fake my way through it this time. I allowed my defects to be seen by professionals instead of merely playing the game. For the first time ever, I was honest in my words and actions.

For someone who has kept themselves hidden their entire adult life, the acknowledgement of my many issues was a considerable achievement in six-month’s time.

(Tr. at 23; Resp. Ex. W at 2; see also Tr. at 34)

41. Currently, Dr. McAllister actively participates in Alcoholics Anonymous, Narcotics Anonymous, Sexaholics Anonymous, and a health professionals’ group. Dr. McAllister explained that he is active in a home group, volunteers at two treatment centers, and attends recovery group meetings nearly every day. Also, he attends weekly group therapy for his addictions, individual therapy sessions for recovery from the childhood abuse, and marital counseling. He also provides random urine specimens for screening. He prays daily. Furthermore, he testified that he is in compliance with the HPIP contract, and HPIP confirms his compliance. (Tr. at 24, 56, 59-60, Resp. Ex. T at 2; Resp. Ex. V)
42. In summary, Dr. McAllister stated:

I humbly ask for your thoughtful consideration [of] where I have been, and the direction I am heading today. * * *

I realize my history has not been elegant, but I was facing demons I never knew I had. Today, I have found a better, easier way, and I no longer walk alone in this endeavor. It is my sincere desire to return to my surgical residency program and be of service again with the God-given talent I have.

(Tr. at 25-26; Resp. Ex. W at 3; see also Tr. 34-35)

Other Information

43. Dr. McAllister reported during recent treatment/evaluations that he had smoked marijuana daily for “much of medical school” and during the first year of his surgery residency program in 1994. He reported losing the surgical residency position after being defiant and having a poor attitude. He testified that the marijuana usage ceased shortly after he had discovered Fentanyl. (Tr. at 52-53; Resp. Ex. E at 175; Resp. D. at 2)
44. Dr. McAllister explained that he last worked in his surgical residency program at The Carilion Clinic in Virginia, on December 29, 2007. Since then, he has been “loosely connected” with the residency program through some writing opportunities. He further stated that the surgery department wants him to return to the program as soon as possible. (Tr. at 28-29, 35)
45. Dr. McAllister testified that he has been encouraged by HPIP to pursue reinstatement of his Virginia license, but the status of his Ohio certificate must be resolved first. (Tr. at 35)

FINDINGS OF FACT

1. On November 9, 2005, Mark Stephen McAllister, M.D., entered into a Consent Agreement with the Board based upon his violation of Section 4731.22(B)(15), Ohio Revised Code. The November 2005 Consent Agreement terminated the Step 2 Consent Agreement that he had entered into with the Board on June 8, 2005; suspended his certificate to practice medicine and surgery for 90 days; set forth interim monitoring terms, conditions and limitations for the 90-day period; and set forth probationary terms conditions, and limitations.

Prior to the November 2005 Consent Agreement, Dr. McAllister entered into a Step 1 Consent Agreement with the Board on March 10, 1999, based upon his violation of Sections 4731.22(B)(26) and (10), Ohio Revised Code. On May 9, 2001, Dr. McAllister entered into a Step 2 Consent Agreement based upon his violation of Sections 4731.22(B)(26) and (10), Ohio Revised Code. On May 12, 2004, he entered into a Step 1 Consent Agreement with the Board based upon his violation of Sections 4731.22(B)(26), (15), and (10), Ohio Revised Code. Dr. McAllister entered into the June 8, 2005 Step 2 Consent Agreement based upon his violation of Sections 4731.22(B)(26), (15), and (10), Ohio Revised Code.

To date, Dr. McAllister remains subject to the November 2005 Consent Agreement.

2. Paragraph 2(d) of the November 2005 Consent Agreement provides that Dr. McAllister “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. McAllister’s history of chemical dependency.”

Despite this provision, on February 11, 2008, the Board was notified by the Virginia Health Practitioners' Intervention Program that Dr. McAllister had relapsed on Fentanyl, and that he had admitted to relapsing and to diverting Fentanyl at his workplace for at least two weeks.

3. In the "Failure to Comply" provision of the November 2005 Consent Agreement, Dr. McAllister contractually agreed that, if the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that Dr. McAllister has violated any term, condition or limitation of the agreement, such violation, as alleged, also constitutes clear and convincing evidence that his continued practice presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension pursuant to Section 4731.22(G), Ohio Revised Code.

Further, 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.

Moreover, Rule 4731-16-02(B)(3), Ohio Administrative Code, provides that if an examination disclosed 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.

The parties agreed and stipulated that the Supervising Member and Secretary had clear and convincing evidence of Dr. McAllister's violation of his November 2005 Consent Agreement and, therefore, the Board was justified in proceeding to summarily suspend his certificate to practice on February 13, 2008.

4. Dr. McAllister entered inpatient treatment at the William J. Farley Center in Virginia on January 1, 2008, and remained there until March 5, 2008. Dr. McAllister then entered inpatient treatment at COPAC in Mississippi on March 6, 2008, and was discharged on June 27, 2008. Neither treatment provider is approved by the Board. Dr. McAllister executed a five-year, recovery monitoring agreement with the Virginia Health Professionals' Intervention Program in August 2008, which requires, among other things, participation in an aftercare program, attendance at 12-step recovery group meetings, random drug testing, and peer monitoring.

CONCLUSIONS OF LAW

The acts, conduct, and/or omissions of Mark Stephen McAllister, M.D., as set forth above in Findings of Fact 1 through 3:

- (a) establish “[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.
- (b) constitute “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” as set forth in Section 4731.22(B)(15), Ohio Revised Code.
- (c) constitute “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Theft of Drugs, Section 2913.02, Ohio Revised Code, and Deception to Obtain a Dangerous Drug, Section 2925.22, Ohio Revised Code.

* * * * *

The Board has often supported impaired physicians in their recovery process, so long as no patient or public harm results. In Dr. McAllister’s case, the Board has entered into multiple agreements to support and monitor his recovery. However, Dr. McAllister has relapsed multiple times while being monitored by the Board and failed to comply with requirements. Dr. McAllister testified that, as his repressed memories resurfaced in 2007, he did not know any way to deal with them other than to divert medications from patients at his workplace, and he did not know that help was available. The Hearing Examiner does not find this testimony credible. Dr. McAllister has spent extensive time in treatment and years in recovery. He had multiple avenues for help, but he failed to obtain it. The evidence demonstrates that Dr. McAllister made a conscious decision in December 2007 to divert medications from critically ill, unconscious patients, even though he knew that his actions could result in the loss of his Ohio certificate to practice medicine. Further, he proceeded to prepare for surgery immediately following misuse of Fentanyl.

Dr. McAllister has been given several opportunities by this Board to maintain his sobriety and his Ohio certificate to practice medicine. He not only has relapsed multiple times and failed to comply with Board requirements, but he has put patients at risk multiple times. Even when Dr. McAllister received treatment anew in 2008, he struggled to comply with the requirements of the two treatment programs. The Hearing Examiner is not convinced that the public in Ohio will be free from the risk of harm if Dr. McAllister is again allowed to practice medicine and surgery in Ohio.

PROPOSED ORDER

It is hereby **ORDERED** that:

The certificate of Mark Stephen McAllister, M.D., to practice medicine and surgery in Ohio is **PERMANENTLY REVOKED**.

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



Gretchen L. Petrucci
Hearing Examiner

State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF FERUARY 11, 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 David Carl Ernst, M.D.; Gary Charles Gelesh, D.O.; Mark Stephen McAllister, M.D.; and Kerrie Van Wagoner, P.A. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Varyani	- 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. 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. 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 STEPHEN MCALLISTER, M.D.

Dr. Madia directed the Board's attention to the matter of Mark Stephen McAllister, M.D. He advised that objections were filed to Hearing Examiner Petrucci's Report and Recommendation and were previously distributed to Board members. He added, however that these objections were not filed in a timely manner. He asked whether the Assistant Attorney General objected to the admission of these objections into the record.

Mr. Wilcox stated that he does not.

DR. STEINBERGH MOVED TO ADMIT THE OBJECTIONS INTO THE HEARING RECORD. DR. VARYANI SECONDED THE MOTION. All members voted aye. The motion carried.

Dr. Madia advised that the objections will be admitted into the record.

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

Dr. McAllister was accompanied by his attorney, John R. Irwin, M.D. Dr. Irwin thanked the Board for the opportunity to address it. He stated that Dr. McAllister would address the Board.

Dr. McAllister read the following statement into the record:

First allow me to thank the Board for the opportunity to stand before you today. It is my hope that you can not only have compassion for what I have faced, but also appreciate that this is the first opportunity that I've had to confront it. Probably much like yourselves, I have little insight into why I seem doomed to a path of continuous destruction, given so much potential and so many opportunities. I had no idea why I relapsed, why I secretly feared other men, why I had no self esteem, why I couldn't trust anyone or why I never allowed God into my life. All these things have posed serious and

previously insurmountable roadblocks to my recovery. Today, I finally have the answer to these questions and, more importantly, a clear-cut path to their resolution.

I was abused by a Catholic priest. I endured beatings, sodomy, forced oral sex and countless other acts of humiliation, and threats of disclosure throughout my entire adolescence. Being merely a child, I had neither the courage nor the maturity to question what was happening to me. The only tool I was given by this man to assist in his seductions was illicit drugs, and I quickly learned to apply that tool in blotting out reality. Drug use and a self-protective amnesia were how I coped for the next 20 years.

I can't explain to you the phenomenon of recovered memory. What I can tell you is that no professional I've seen in the past year and a half has found it at all surprising that such a period of devastating injury could be completely repressed. You might ask, "why did it happen now?" I've posed the same question many times. I can only provide you with what I've learned. Most importantly, it is not a matter of choice, and it cannot be provoked. It simply happens when it happens. Furthermore, my life's circumstances, most notably bearing the responsibility of protecting my own newborn son were significant catalysts in bringing these issues forward. What I endured was tragic and humiliating. To stand here and publicly disclose these events is not something I would normally choose to do. Unfortunately, this very real sense of indignity and a fear of dismissal is what keeps many victims silent and perpetuates their sickness.

As knowledgeable health professionals, you might understand how such an experience would manifest in a fear of people that are supposed to help you, or a lack of faith in God, or an unwillingness to ever place reliance again upon anything outside of oneself. Recovery can only occur through becoming a member of the group, through faith and reliance on a higher power, through trust in a way of living that doesn't come naturally, and through a sincere desire to help others along the way. I had no concept of the scars blocking my path to these things until now. Finally, though, I can acknowledge that all my struggles have a cause, a treatable cause.

What I hope is most evident to you today is not the dramatic nature of what I've been through, but rather what I'm doing about it now. My claims to these revelations have been backed up by action, and the actions I have taken have produced tangible results. The testimony of my therapist and my wife, as well as the many letters written by men on my behalf should demonstrate this to you. I've made use of every available modality because I finally understand why I've struggled for so long, not only in recovery but in my relationships, parenting and self-confidence. To expect a seamless transition to a better way of life when confronting such demons would be unrealistic. It has been difficult for me. At last, however, there is a healing path for me to follow to the freedom I've been searching for my entire adult life.

I'm not asking you to overlook my troubled history with this Board, only to consider it in the context that a major source of my difficulties was, until recently, unidentified, and that same source is eminently treatable. Also consider the courage and the diligence in my efforts thus far, and the overwhelming optimism I now have for myself as a result.

Dr. Madia advised Dr. McAllister that he has one minute to conclude his address.

It would be extremely regrettable to me if my potential as a physician could not be met, given I now have a fighting chance at living up to what others have always expected. Having survived one of the worst experiences a human being can be dealt, I am confident in my ability to now overcome it.

Again, I sincerely thank the members for your thoughtful consideration of where I've been and where I'm going today. I'm grateful for the support I've been given by this Board through the years, and I humbly ask that you continue that support as I am finally dealing with the true source of my troubles. I am confident that with ongoing therapy and a period of probationary monitoring, I can again competently practice medicine, and can do so according to acceptable standards of care.

Thank you.

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

Mr. Wilcox advised that he did. He stated that he supports the Report and Recommendation of the Hearing Examiner in this matter. He believes that it does a thorough job of examining the issues in this case. He also noted that this hearing took place on December 19, and he commended the Hearing Examiner on a quick turn around.

Mr. Wilcox stated that he thinks that the proposed discipline in this matter is appropriate. He added that, if you look at this Report and Recommendation, specifically pages four and five, it outlines an incredibly long history of Dr. McAllister with this Board, going back to 1997. He stated that he feels that that is telling and also alarming. The fact that supports this Proposed Order is the diversion from patients. Obviously, Dr. McAllister came forth with some compelling information at this hearing, but the bottom line is that this is a relapse, and a second relapse where he has diverted medication from seriously or critically ill patients. Mr. Wilcox stated that he thinks the Hearing Examiner summed it up appropriately on page 20 of her Report and Recommendation wherein she stated:

Dr. McAllister has been given several opportunities by this Board to maintain his sobriety and his Ohio certificate to practice medicine. He not only has relapsed multiple times and failed to comply with Board requirements, but he has put patients at risk multiple times. Even when Dr. McAllister received treatment anew in 2008 [Mr. Wilcox at this time noted that this was after Dr. McAllister's revelations], he struggled to comply with the

requirements of the two treatment programs. The Hearing Examiner is not convinced that the public in Ohio will be free from the risk of harm if Dr. McAllister is again allowed to practice medicine and surgery in Ohio.

Mr. Wilcox stated that he thinks that this is the most appropriate statement one could make in this case, and he does support the Report and Recommendation.

DR. VARYANI MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF MARK STEPHEN MCALLISTER, M.D. MR. HAIRSTON SECONDED THE MOTION.

Dr. Madia stated that he would now entertain discussion in the above matter.

Dr. Egner stated that this was a difficult case. The Board is looking at a young man who was a surgery resident, then an anesthesia resident, and then returned to surgery. He's had three relapses. His diversion of drugs from patients was so serious. Another problem was that on one occasion, Dr. McAllister took Fentanyl just prior to going into surgery.

Dr. Egner stated that she can't, however, get past his underlying issue. She stated that she's not in agreement with permanent revocation. Dr. Egner stated that Dr. McAllister has to have treatment for his years and years of abuse. Dr. Egner stated that she thinks that the Board has to give him the chance to do that.

Dr. Egner stated that she has prepared an alternative order. She stated that she doesn't take this case lightly, but she does feel that Dr. McAllister was set up for failure without ever having truly addressed his underlying problem. She stated that she believes that her Proposed Order is fairly strict.

DR. EGNER MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF MARK STEPHEN MCALLISTER, M.D., BY SUBSTITUTING THE FOLLOWING:

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Mark Stephen McAllister, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. McAllister's certificate shall be SUSPENDED for an indefinite period of time, but not less than three years.
- B. **INTERIM MONITORING:** During the period that Dr. McAllister's certificate to practice medicine and surgery in Ohio is suspended, Dr. McAllister shall comply with the following terms, conditions, and limitations:

1. **Obey the Law:** Dr. McAllister shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
2. **Personal Appearances:** Dr. McAllister shall appear in person for interviews before the Board or its designated representative. The first such appearance shall take place during the third month following the effective date of this Board Order. Subsequent personal appearances must occur every six 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.
3. **Quarterly Declarations:** Dr. McAllister shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
4. **Abstention from Drugs:** Dr. McAllister shall abstain completely from the personal use or personal possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. McAllister's history of chemical dependency. Further, in the event that Dr. McAllister is so prescribed, dispensed or administered any controlled substance, carisoprodol, or tramadol, Dr. McAllister shall notify the Board in writing within seven days, providing the Board with the identity of the prescriber; the name of the drug Dr. McAllister received; the medical purpose for which he received said drug; the date such drug was initially received; and the dosage, amount, number of refills, and directions for use. Further, within thirty days of the date said drug is so prescribed, dispensed, or administered to him, Dr. McAllister shall provide the Board with either a copy of the written prescription or other written verification from the prescriber, including the dosage, amount, number of refills, and directions for use.
5. **Abstention from Alcohol:** Dr. McAllister shall abstain completely from the use of alcohol.
6. **Drug & Alcohol Screens; Drug Testing Facility and Collection Site:**
Dr. McAllister shall submit to random urine screenings for drugs and alcohol at least four times per month, or as otherwise directed by the Board.
Dr. McAllister 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 Dr. McAllister's drug(s) of choice.

Dr. McAllister shall abstain from the use of any substance and the consumption of poppy seeds or any other food or liquid that may produce a low level positive result in a toxicology screen. Dr. McAllister acknowledges that he understands that the consumption or use of such substances, including but not limited to substances such as mouthwash or hand-cleaning gel, may cause a positive drug screen that may not be able to be differentiated from intentional ingestion, and therefore such consumption or use is prohibited.

All such urine screenings for drugs and alcohol shall be conducted through a Board-approved drug testing facility and collection site, except as provided in Paragraph 7 below, and the screening process shall require a daily call-in procedure.

Dr. McAllister shall submit, at his expense and on the day selected, urine specimens for drug and/or alcohol analysis. All specimens submitted by Dr. McAllister shall be negative, except for those substances prescribed, administered, or dispensed to him in conformance with the terms, conditions and limitations set forth in this Board Order. Refusal to submit such specimen, or failure to submit such specimen on the day he is selected or in such manner as the Board may request, shall constitute a violation of this Board Order.

Further, within thirty days of the effective date of this Board Order, Dr. McAllister shall enter into the necessary financial and/or contractual arrangements with the Board-approved drug testing facility and/or collection site in order to facilitate the urine screening process in the manner required by this Board Order. Further, Dr. McAllister shall promptly provide to the Board written documentation of completion of such arrangements, including a copy of any contract entered into between Dr. McAllister and the Board-approved drug testing facility and/or collection site. Dr. McAllister's failure to timely complete such arrangements, or failure to timely provide written documentation to the Board of completion of such arrangements, shall constitute a violation of this Board Order.

Dr. McAllister shall ensure that the urine screening process performed through the Board-approved drug testing facility and/or collection site requires a daily call-in procedure; 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, Dr. McAllister and the Board-approved drug testing facility and collection site shall assure that appropriate control over the specimen is maintained and shall

immediately inform the Board of any positive screening results.

Dr. McAllister shall ensure that the Board-approved drug testing facility and/or collection site provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Board Order, and whether all urine screens have been negative.

In the event that the Board-approved drug testing facility and/or collection site becomes unable or unwilling to serve as required by this Board Order, Dr. McAllister must immediately notify the Board in writing, and make arrangements acceptable to the Board, pursuant to Paragraph 7 below, as soon as practicable. Dr. McAllister shall further ensure that the Board-approved drug testing facility and/or collection site also notifies the Board directly of its inability to continue to serve and the reasons therefor.

Dr. McAllister acknowledges that the Board expressly reserves the right to withdraw its approval of any drug testing facility and/or collection site in the event that the Secretary and Supervising Member of the Board determine that the drug testing facility and/or collection site has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

7. In the event that utilizing the Board-approved drug testing facility and/or collection site as set forth in Paragraph 6 above creates an extraordinary hardship upon Dr. McAllister, as determined in the sole discretion of the Board, then subject to the following requirements, the Board may approve an alternate drug testing facility and/or collection site, or a supervising physician, to facilitate the urine screening process for Dr. McAllister:
 - a. Within thirty days of the date upon which Dr. McAllister is notified of the Board's determination that utilizing the Board-approved drug testing facility and/or collection site constitutes an extraordinary hardship upon Dr. McAllister, he shall submit to the Board in writing for its prior approval the identity of either an alternate drug testing facility and collection site, or the name of a proposed supervising physician, to whom Dr. McAllister shall submit the required urine specimens. In approving a facility, entity, or an individual to serve in this capacity, the Board will give preference to a facility located near Dr. McAllister's residence or employment location, or to a physician who practices in the same locale as Dr. McAllister. Dr. McAllister shall ensure that the urine screening process performed through the alternate drug testing facility and/or collection site, or through the supervising physician, requires a daily call-

in procedure; 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, Dr. McAllister acknowledges that the alternate drug testing facility and collection site, or the supervising physician, shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

- b. Dr. McAllister shall ensure that the alternate drug testing facility and/or collection site, or the supervising physician, provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Board Order, and whether all urine screens have been negative.
 - c. In the event that the designated alternate drug testing facility and/or collection site, or the supervising physician, becomes unable or unwilling to so serve, Dr. McAllister must immediately notify the Board in writing. Dr. McAllister shall further ensure that the previously designated alternate drug testing facility and collection site, or the supervising physician, also notifies the Board directly of the inability to continue to serve and the reasons therefor. Further, in order to ensure that there will be no interruption in his urine screening process, upon the previously approved alternate drug testing facility, collection site, or supervising physician becoming unable to serve, Dr. McAllister shall immediately commence urine screening at the Board-approved drug testing facility and collection site chosen by the Board, until such time, if any, that the Board approves a subsequent alternate drug testing facility, collection site, or supervising physician, if requested by Dr. McAllister.
 - d. The Board expressly reserves the right to disapprove any entity or facility proposed to serve as Dr. McAllister's designated alternate drug testing facility and/or collection site, or any person proposed to serve as his supervising physician, or to withdraw approval of any entity, facility or person previously approved to so serve in the event that the Secretary and Supervising Member of the Board determine that any such entity, facility or person has demonstrated a lack of cooperation in providing information to the Board or for any other reason.
8. All screening reports required under this Board Order from the Board-approved drug testing facility and/or collection site, or from the alternate drug testing facility and/or collection site or supervising physician, must be received in the Board's offices no later than the due date for Dr. McAllister's quarterly declaration. It is Dr. McAllister's responsibility to ensure that reports are

timely submitted.

9. **Submission of Blood or Urine Specimens upon Request:** The Board retains the right to require, and Dr. McAllister agrees to submit, blood, urine, breath, saliva and/or hair specimens for screening for drugs and alcohol, for analysis of therapeutic levels of medications that may be prescribed for Dr. McAllister, or for any other purpose, at Dr. McAllister's expense upon the Board's request and without prior notice. Dr. McAllister's refusal to submit a specimen upon request of the Board shall result in a minimum of one year of actual license suspension. Further, the collection of such specimens shall be witnessed by a representative of the Board, or another person acceptable to the Secretary or Supervising Member of the Board.
10. **Rehabilitation Program:** Dr. McAllister shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than four times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Dr. McAllister 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. McAllister's quarterly declarations.
11. **Psychiatric Assessment/Treatment:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. McAllister shall submit to the Board for its prior approval the name and curriculum vitae of a psychiatrist of Dr. McAllister's choice. Upon approval by the Board, Dr. McAllister shall obtain from the approved psychiatrist an assessment of Dr. McAllister's current psychiatric status. Prior to the initial assessment, Dr. McAllister shall furnish the approved psychiatrist copies of the Board's Order, including the Summary of the Evidence, Findings of Fact, and Conclusions, and any other documentation from the hearing record which the Board may deem appropriate or helpful to that psychiatrist.

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

- a. A detailed report of the evaluation of Dr. McAllister's current psychiatric status and condition;
- b. A detailed plan of recommended psychiatric treatment, if any, based upon the psychiatrist's informed assessment of Dr. McAllister's current needs;

- c. A statement regarding any recommended limitations upon his practice, and
- d. Any reports upon which the treatment recommendation is based, including reports of physical examination and psychological or other testing.

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

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

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

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

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

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

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

4. **Additional Evidence of Fitness To Resume Practice:** Prior to submitting his application for reinstatement or restoration, Dr. McAllister shall take and pass the SPEX examination or any similar written examination which the Board may deem appropriate to assess Dr. McAllister's clinical competency.
- D. **PROBATION:** Upon reinstatement or restoration, Dr. McAllister's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least six years:
1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. McAllister shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order, and shall continue to comply with the terms of any aftercare contract as specified in Paragraph C.3.b of this Order.
 2. **Absence from Ohio:** Dr. McAllister 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.
 3. **Violation of Terms of Probation:** If Dr. McAllister violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. McAllister's certificate will be fully restored.
- F. **RELEASES:** Dr. McAllister shall provide continuing 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. McAllister's chemical dependency and/or related conditions, or for purposes of complying with this Order, whether such treatment or evaluations occurred before or after the effective date of this Order. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.

Dr. McAllister shall also provide the Board written consent permitting any treatment provider from whom Dr. McAllister obtains treatment to notify the Board in the event he fails to agree to or comply with any recommended treatment or with any treatment or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Order.

G. REQUIRED REPORTING AND DOCUMENTATION OF REPORTING:

1. **Required Reporting to Employers and Hospitals:** Within 30 days of the effective date of this Board Order, Dr. McAllister shall provide a copy of this Board Order to all employers or entities with which he is under contract to provide health care services (including but not limited to third party payors) or is receiving training, and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. McAllister shall promptly provide a copy of this Board Order 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. In the event that Dr. McAllister provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Board Order, Dr. McAllister shall provide a copy of this Board Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

This requirement shall continue until Dr. McAllister receives from the Board written notification of his successful completion of probation as set forth in Paragraph E, above.

2. **Required Reporting to Other State Licensing Authorities:** Within 30 days of the effective date of this Board Order, Dr. McAllister shall provide a copy of this Board Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Dr. McAllister further shall

provide a copy of this Board Order 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.

This requirement shall continue until Dr. McAllister receives from the Board written notification of his successful completion of probation as set forth in Paragraph E, above.

3. **Documentation that the Required Reporting Has Been Performed:**

Dr. McAllister shall provide the Board with one of the following documents as proof of each required notification within 30 days of the date of each notification required above: (1) the return receipt of certified mail within 30 days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Board Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was emailed.

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

Dr. Egner reviewed the terms of her Proposed Order, stating that the one thing that is different about this proposal is that Dr. McAllister needs psychiatric care. He needs an assessment, and he needs treatment. Dr. Egner stated that she personally believes that Dr. McAllister needs intensive treatment, so much so that he couldn't be a resident right now anyway. Dr. Egner stated that she thinks that Dr. McAllister needs to devote all of his time to treatment. The Board needs an assessment by a professional to advise the Board as to what type of treatment Dr. McAllister needs. If and when he can return to practice, he would be on probation for six years. Dr. Egner stated that that's a little bit longer than the Board usually requires.

Dr. Egner stated that one of the big considerations in this case is that Dr. McAllister was not charged with a (B)(19) violation of mental or physical impairment. In order for this proposed order to be accepted, Dr. McAllister and his attorney must also accept the psychiatric requirements. She commented that, since they used this as his defense as to why this is all happening, she would think that Dr. McAllister would want to be treated. Dr. Egner stated that, in accepting that, Dr. McAllister and Dr. Irwin would need to waive any right to appeal on the basis that the state did not include such a charge in the notice of opportunity for hearing.

Dr. Egner stated that even though Dr. McAllister is presently out of state, no one knows where he'll be located at the time he requests reinstatement. Therefore, she's included a probationary condition that his

being out of state tolls the time unless he specifically requests otherwise. That provides the Board with more control over the process of monitoring his probation. Dr. Egner stated that the Board should keep a close eye on Dr. McAllister while his license is suspended in Ohio.

Dr. Stephens agreed with Dr. Egner. She stated that the injury Dr. McAllister sustained was devastating, and she thinks that he shouldn't feel ashamed anymore. Part of his recovery is talking about it. Dr. Egner stated that she thinks that Dr. McAllister deserves a second chance, and she thinks that he needs to really focus on his mental recovery and treatment. Dr. Stephens stated that she thinks that he can do it, and she encouraged him to reach out to other people who have been similarly affected.

Dr. Suppan stated that she supports both Dr. Egner's and Dr. Stephens' positions. She stated that the thing that really struck her in Dr. McAllister's story is that the Board is really dealing with two people here: the old Dr. McAllister who went through all of this, and now the enlightened individual who has recovered these memories. She stated that this is a new start for Dr. McAllister, and she thinks he deserves another chance.

DR. VARYANI SECONDED DR. EGNER'S MOTION TO AMEND.

Dr. Steinbergh stated that she agrees with not permanently revoking Dr. McAllister's license. She stated that when she came to this meeting, she was of the same mindset as Dr. Egner regarding the revocation. She stated that she does not disagree with the proposed motion at all, but she added that the seriousness of Dr. McAllister's actions cannot be removed. He's had multiple relapses and multiple difficulties, he's had to leave surgical programs, and he's had problems for many, many years. Dr. Steinbergh stated that she is extremely sensitive to the fact that Dr. McAllister has obviously been mentally injured. There's no question about that. She added that she thinks that the Board can understand where part of his chemical dependency comes from. Dr. Steinbergh stated that Dr. McAllister is an ill man and needs to be out of practice for a long time. He needs to recover on several levels. Dr. Steinbergh stated that Dr. McAllister is simply not appropriate to practice medicine, and that's something the Board has to continue to remember. She stated that this is not a dispassionate thing the Board is doing. But it recognizes the Board's responsibility to the State of Ohio. Dr. Steinbergh stated that she does agree with the proposed amendment.

Ms. Debolt suggested that, before the Board continues more discussion about the proposed amendment, it have on the record a statement from Dr. McAllister and his attorney that they would agree to the amendment.

Dr. Irwin stated that he and Dr. McAllister have reviewed the proposed amended order, and he has discussed the matter with his client. They are both in agreement with the terms proposed in that order recognizing the (B)(19) issue.

Dr. McAllister stated that he concurs with Dr. Irwin.

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

VOTE:	Mr. Albert	- abstain
	Dr. Egner	- 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

The motion carried.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF MARK STEPHEN MCALLISTER, M.D. MR. HAIRSTON SECONDED THE MOTION. A vote was taken

VOTE:	Mr. Albert	- abstain
	Dr. Egner	- 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

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



February 13, 2008

Case Number: 08-CRF- **017**

Mark Stephen McAllister, M.D.
138 Summit Way, SW
Roanoke, VA 24014

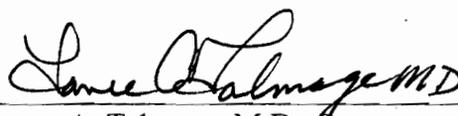
Dear Doctor McAllister:

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 February 13, 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

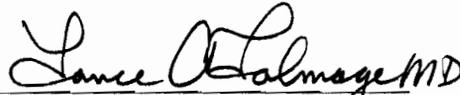
LAT/LAZ/flb
Enclosures

Mailed 2-14-08

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 February 13, 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 Stephen McAllister, M.D., Case Number 08-CRF- **017** , 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)

February 13, 2008

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :
 :
MARK STEPHEN McALLISTER, M.D. :
 :
Case Number: 08-CRF- **017** :

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 13th day of February, 2008.

Pursuant to Section 4731.22(G), Ohio Revised Code, and pursuant to the contractual terms of the Consent Agreement Between Mark Stephen McAllister, M.D., and the State Medical Board of Ohio, effective November 9, 2005, 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 Stephen McAllister, M.D., has violated Sections 4731.22(B)(26), (B)(15), and (B)(10), 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. McAllister's continued practice presents a danger of immediate and serious harm to the public;

The following Order is hereby entered on the Journal of the State Medical Board of Ohio for the 13th day of February, 2008:

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

It is hereby ORDERED that Mark Stephen McAllister, 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

February 13, 2008

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 FEBRUARY 13, 2008

MARK STEPHEN MCALLISTER, 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. KUMAR MOVED TO ENTER AN ORDER OF SUMMARY SUSPENSION IN THE MATTER OF MARK STEPHEN MCALLISTER, 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. STEINBERGH SECONDED THE MOTION. A vote was taken:

ROLL CALL:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Mr. Browning	- aye
	Mr. Hairston	- aye
	Dr. Robbins	- aye
	Dr. Kumar	- 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

(614) 466-3934
med.ohio.gov

NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING

February 13, 2008

Case number: 08-CRF-017

Mark Stephen McAllister, M.D.
138 Summit Way, SW
Roanoke, VA 24014

Dear Doctor McAllister:

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)(26), (B)(15), and (B)(10), 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 (3), below.

Therefore, pursuant to Section 4731.22(G), Ohio Revised Code, and pursuant to the contractual terms of the Consent Agreement Between Mark Stephen McAllister, M.D., and the State Medical Board of Ohio, effective November 9, 2005, 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) On or about November 9, 2005, you entered into a Consent Agreement with the Board [November 2005 Consent Agreement] based upon your violation of Section

4731.22(B)(15), Ohio Revised Code. The November 2005 Consent Agreement terminated the Step II Consent Agreement that you had entered into with the Board on or about June 8, 2005 [June 2005 Step II Consent Agreement]; suspended your certificate to practice medicine and surgery for ninety days; set forth interim monitoring terms, conditions, and limitations for the ninety day period during which your license was suspended; and set forth probationary terms, conditions, and limitations to apply once your license was reinstated. On or about February 9, 2006, your license was reinstated pursuant to the terms of the November 2005 Consent Agreement.

Prior to the November 2005 Consent Agreement, you entered into a Step I Consent Agreement with the Board on or about March 10, 1999, based upon your violation of Section 4731.22(B)(26) and (B)(10), Ohio Revised Code. On or about May 9, 2001, you entered into a Step II Consent Agreement based upon your violation of Sections 4731.22(B)(26) and (B)(10), Ohio Revised Code. On or about May 12, 2004, you entered into a Step I Consent Agreement with the Board based upon your violation of Sections 4731.22(B)(26), (B)(15), and (B)(10), Ohio Revised Code. You entered into the June 2005 Step II Consent Agreement based upon your violation of Sections 4731.22(B)(26), (B)(15), and (B)(10), Ohio Revised Code.

To date, you remain subject to the November 2005 Consent Agreement.

- (2) Paragraph 2.d. of the November 2005 Consent Agreement provides that you “shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to [you] by another so authorized by law who has full knowledge of [your] history of chemical dependency.”

Despite this provision, on or about January 2, 2008, the Board was notified by the Virginia Health Practitioners’ Intervention Program that you had relapsed on Fentanyl, and that you had admitted to relapsing and to diverting Fentanyl at your work place for at least two weeks.

- (3) In the “Failure to Comply” provision of the November 2005 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.

Further, 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) through (3) above, individually and/or collectively, constitute "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (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 (2) above, individually and/or collectively, constitute "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Theft of Drugs, Section 2913.02, Ohio Revised Code, and/or Deception to Obtain a Dangerous Drug, Section 2925.22, 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

Notice of Summary Suspension
& Opportunity for Hearing
Mark Stephen McAllister, M.D.
Page 4

in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.
Secretary

LAT/LAZ/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3934 3690 5104
RETURN RECEIPT REQUESTED

cc: John R. Irwin, J.D., M.D.
John R. Irwin, M.D., Co., LPA
8401 Chagrin Rd.
Chagrin Falls, OH 44023

CERTIFIED MAIL #91 7108 2133 3934 3690 5111
RETURN RECEIPT REQUESTED

**CONSENT AGREEMENT
BETWEEN
MARK STEPHEN MCALLISTER, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO**

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

Dr. McAllister 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 “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice.”
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Section 4731.22(B)(15), Ohio Revised as set forth in Paragraph E below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement. Such express reservation includes, but is not limited to, the right to institute formal proceedings based upon any violations related to patient care, regardless of whether the acts underlying such additional violations are related to the aforementioned violation.
- C. Dr. McAllister’s certificate to practice medicine and surgery in the State of Ohio, License #35-072741, was reinstated pursuant to the Step II Consent Agreement Between Mark Stephen McAllister, M.D., and The State Medical Board of Ohio, effective June 8, 2005 [June 2005 Step II Consent Agreement], a copy of which is attached hereto and incorporated herein. Dr. McAllister admits that his certificate is presently subject to certain terms, conditions and limitations pursuant to said consent agreement.

- D. Dr. McAllister states that he is not licensed to practice medicine and surgery in any other state or jurisdiction.
- E. Dr. McAllister admits that on or about May 18, 2005, while his certificate to practice medicine and surgery remained suspended pursuant to the May 2004 Step I Consent Agreement, Dr. McAllister reported for duty at his residency training program at Fairview General Hospital in Cleveland, Ohio, and participated as first assistant in a surgical procedure. Dr. McAllister states that he assumed his license had been reinstated on May 18, 2005, because he had signed a consent agreement proposal from the Board on or about April 28, 2005, which would have reinstated his license if it had been ratified by the Board, which met on May 18, 2005, and signed by the appropriate representatives of the Board. Dr. McAllister admits that he reported for duty without seeking to verify his assumption that such consent agreement proposal had been ratified and signed, and that his license had been reinstated, despite his knowledge that the consent agreement proposal specifically stated that the consent agreement was subject to ratification by the Board prior to signature by the Secretary and Supervising Member and that the consent agreement would be effective on the last date of signature.

Further, Dr. McAllister admits that, although he had not confirmed whether his license had, in fact, been reinstated prior to reporting for duty at Fairview Hospital on May 18, 2005, he failed to communicate these circumstances to the primary operating surgeon. Dr. McAllister further admits that after his residency program director learned that Dr. McAllister had reported for duty, Dr. McAllister was instructed to leave the hospital immediately. Further, Dr. McAllister admits that in or about mid-June 2005 he was terminated from his residency training program related to the conduct described herein.

Dr. McAllister further admits that on or about June 2, 2005, as is more fully described in the June 2005 Step II Consent Agreement and prior to the time the Board was aware that he had participated in the May 18, 2005 surgical procedure, Dr. McAllister appeared before representatives of the Board for an investigatory office conference related to Board concerns with the results of initial toxicology analysis of certain urine specimens he had submitted in April 2005. Dr. McAllister further admits that following said investigatory office conference, the June 2005 Step II Consent Agreement was proposed to him and he signed it in replacement of the prior proposed agreement he had signed on or about April 28, 2005, which had not been presented to the full Board due to pending resolution of the toxicology analysis issue.

Dr. McAllister further admits that during the June 2, 2005 investigatory office conference he did not voluntarily disclose any information related to his conduct of reporting for work at Fairview General Hospital on May 18, 2005, despite his

awareness at the time of the investigatory office conference that he had practiced while his license was suspended and that it was highly probable the document he signed on June 2, 2005, would be presented to the Board for consideration on June 8, 2005.

Dr. McAllister states, and the Board acknowledges, that the June 2005 Step II Consent Agreement was ratified by the Board at approximately 1:30 p.m. on June 8, 2005, and that at approximately 6:30 p.m. that evening, Dr. McAllister's former attorney transmitted a facsimile to the Board's office requesting to be contacted, which subsequently resulted in the Board being informed that Dr. McAllister had engaged in the practice of medicine and surgery at Fairview General Hospital on May 18, 2005.

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

SUSPENSION OF CERTIFICATE

1. The June 2005 Step II Consent Agreement that reinstated Dr. McAllister's certificate to practice medicine and surgery is hereby TERMINATED upon the effective date of the instant Consent Agreement. Further, Dr. McAllister's certificate to practice medicine and surgery in the State of Ohio shall be SUSPENDED for 90 days.

INTERIM MONITORING TERMS

2. During the period of time that Dr. McAllister's certificate to practice medicine and surgery is suspended, Dr. McAllister shall comply with the following terms, conditions and limitations:
 - a. Dr. McAllister shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
 - b. Dr. McAllister 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 June 2005 Step II 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.

- c. Dr. McAllister 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 June 2005 Step II 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.

Sobriety

- d. Dr. McAllister 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. McAllister's history of chemical dependency.
- e. Dr. McAllister shall abstain completely from the use of alcohol.

Drug and Alcohol Screens/Supervising Physician

- f. Dr. McAllister shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. McAllister 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. McAllister shall abstain from consumption of poppy seeds or any other food or liquid that may produce false results in a toxicology screen.

Dr. McAllister and the Board again expressly agree, as set forth in the June 2005 Step II Consent Agreement, that Gregory Collins, M.D. (of the Cleveland Clinic Foundation, the facility providing Dr. McAllister's aftercare), shall not be eligible to serve as Dr. McAllister's designated supervising physician under this Consent Agreement. Further, Dr. McAllister and the Board again expressly agree, as set forth in the June 2005 Step II Consent Agreement, that the Ohio Physicians Health Program [formerly the Ohio Physicians Effectiveness Program] shall serve as his supervising physician and that no designee of his advocacy contract with the Ohio Physicians Health Program who has responsibility for collecting, witnessing, receiving and/or submitting Dr. McAllister's specimens for drug and alcohol screens shall be affiliated with The Cleveland Clinic Foundation. The supervising physician shall assure that appropriate

control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

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

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

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

Rehabilitation Program

- h. Dr. McAllister shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board

approval.

Dr. McAllister 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. McAllister's quarterly declarations.

Aftercare / Physician Assistance Program

- i. Dr. McAllister shall maintain continued compliance with the advocacy contract he entered into with the Ohio Physicians Health Program and with the terms of the aftercare contract entered into with his treatment provider, provided that, where terms of the aftercare contract and/or advocacy contract conflict with terms of this Consent Agreement, the terms of this Consent Agreement shall control.

Releases

- j. Dr. McAllister 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

- k. Within thirty days of the effective date of this Consent Agreement, Dr. McAllister 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. McAllister 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.
- l. Within thirty days of the effective date of this Consent Agreement, Dr. McAllister 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. McAllister 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. McAllister shall provide this Board

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

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

PROBATIONARY TERMS

- 3. Upon reinstatement of Dr. McAllister's certificate to practice medicine and surgery in Ohio pursuant to this Consent Agreement, Dr. McAllister's certificate shall be subject to the following probationary terms, conditions and limitations:
 - a. Dr. McAllister shall continue to be subject to all of the terms, conditions and limitations set forth in Paragraphs 2.a. through 2.m. of this Consent Agreement.
 - b. Dr. McAllister 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.
 - c. In the event Dr. McAllister 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 Physician

- d. Before engaging in any medical practice, Dr. McAllister 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. McAllister and who is engaged in the same or similar practice specialty.

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

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. McAllister and his medical practice, and on the review of Dr. McAllister's patient charts. Dr. McAllister 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. McAllister's quarterly declaration.

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

Drug Associated Restrictions

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

- f. Dr. McAllister shall not, without prior Board approval, administer, personally furnish, or possess (except as allowed under Paragraph 2.d. above) any controlled substances as defined by state or federal law. In the event that the Board agrees at a future date to modify this Consent Agreement to allow Dr. McAllister to administer or personally furnish controlled substances, Dr. McAllister 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. McAllister's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. McAllister 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.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. McAllister 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. McAllister has violated any term, condition or limitation of this Consent Agreement, Dr. McAllister 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. McAllister shall not request termination of this Consent Agreement for a minimum of five years from the date upon which his certificate to practice medicine and surgery in Ohio is reinstated pursuant to this Consent Agreement. In addition, Dr. McAllister shall not request modification to the probationary terms, limitations, and conditions contained herein until he has completed at least one year of probation pursuant to this Consent Agreement. 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. McAllister 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.

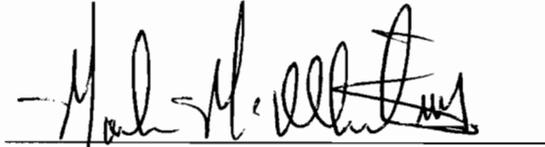
Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

Dr. McAllister 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. McAllister 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 STEPHEN McALLISTER, M.D.

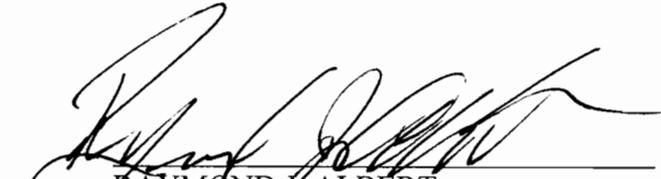
11/4/05
DATE


LANCE A. TALMAGE, M.D.
Secretary

11-9-05
DATE


JOHN R. IRWIN, M.D., ESQ.
Attorney for Dr. McAllister

11/4/05
DATE


RAYMOND J. ALBERT
Supervising Member

11/09/05
DATE


REBECCA J. MARSHALL, ESQ.
Chief Enforcement Attorney

November 7, 2005
DATE

STEP II
CONSENT AGREEMENT
BETWEEN
MARK STEPHEN MCALLISTER, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO

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

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

BASIS FOR ACTION

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

- A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation(s) of Section 4731.22(B)(26), Ohio Revised Code, "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice;" Section 4731.22.(B)(15), Ohio Revised Code, "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice;" and/or Section 4731.22(B)(10), Ohio Revised Code, "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed," to wit: Theft of Drugs, Section 2913.02, Ohio Revised Code.
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violations of Section 4731.22(B)(15), Ohio Revised Code, Section 4731.22(B)(26), Ohio Revised Code, and Section 4731.22(B)(10), Ohio Revised Code, to wit: Theft of Drugs, Section 2913.02, Ohio Revised Code, as set forth in Paragraph F in the Step I Consent Agreement Between Mark Stephen McAllister, M.D., and The State Medical Board of Ohio, effective May 12, 2004, [May 2004 Step I Consent Agreement], a copy of which is attached hereto and incorporated herein, and as set forth in Paragraph E below. The Board expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement. Such express reservation includes, but is not limited to, the right to institute formal

proceedings based upon any violations related to patient care, regardless of whether the acts underlying such additional violations are related to the aforementioned violations.

- C. Dr. McAllister is applying for reinstatement of his certificate to practice medicine and surgery in the State of Ohio, License #35-072741, which was suspended pursuant to the aforementioned May 2004 Step I Consent Agreement.
- D. Dr. McAllister states that he is not licensed to practice medicine and surgery in any other state or jurisdiction.
- E. Dr. McAllister admits that after experiencing a relapse by diverting Fentanyl with the intent to use, he entered the day treatment program at the Alcohol and Drug Recovery Center at The Cleveland Clinic, a Board-approved treatment provider, on or about March 23, 2004, and was discharged from that program, treatment complete, on or about April 6, 2004. Dr. McAllister states, and the Board acknowledges receipt of information to support, that Gregory Collins, M.D., of The Cleveland Clinic Foundation, has assessed Dr. McAllister, as related to his chemical dependency status, and has opined Dr. McAllister is capable of practicing medicine and surgery according to acceptable and prevailing standards of care, subject to certain monitoring and conditions, and has stated that Dr. McAllister has been in full compliance with the aftercare contract he entered into with that treatment provider on or about April 8, 2004. Dr. McAllister additionally states, and the Board acknowledges receipt of information to support, that Dr. Collins, who also currently serves as Dr. McAllister's Board-approved treating psychiatrist pursuant to Dr. McAllister's May 2004 Step I Consent Agreement with the Board, has assessed Dr. McAllister, as related to his psychiatric status, and has opined that Dr. McAllister is capable of practicing medicine and surgery according to acceptable and prevailing standards of care, that Dr. McAllister's chronic low grade depression has been under good control, and that in the absence of demonstrable psychiatric problems at this time, Dr. McAllister no longer requires ongoing psychiatric supervision other than continued participation in The Cleveland Clinic Caduceus/aftercare meetings, or on an as needed basis determined by Dr. McAllister.

Dr. McAllister further states, and the Board further acknowledges receipt of information to support, that Chris Adelman, M.D., of St. Vincent Charity Hospital, Rosary Hall, a Board-approved treatment provider, has assessed Dr. McAllister and has opined that Dr. McAllister is capable of practicing medicine and surgery according to acceptable and prevailing standards of care, subject to certain monitoring and conditions, including that Dr. McAllister continue his participation in aftercare at The Cleveland Clinic Foundation, and that Dr. McAllister resume utilization for the monitoring of his drug and alcohol screens through the Ohio Physicians Health Program [formerly known as the Ohio Physicians Effectiveness Program], and that

Dr. McAllister's OPHP physician monitor not be associated with the facility providing his aftercare treatment.

Dr. McAllister admits that on or about April 28, 2005, the Board proposed to him a Step II Consent Agreement intended for consideration at the Board's May 2005 meeting. Dr. McAllister further admits that after he executed his signature on the aforementioned agreement, the urine specimens that he had previously provided for drug testing on or about April 8, 2005, and on or about April 20, 2005, were reported as positive for the presence of amphetamines based upon initial toxicology analysis. Dr. McAllister further admits that, pending further investigation, the Board consequently withdrew the aforementioned agreement from possible consideration. Dr. McAllister further admits that when questioned about these positive results, he denied that he had used amphetamines, but did state that he had ingested an over-the-counter cold medication and an over-the-counter fitness supplement as part of his personal physical conditioning program. Dr. McAllister states, and the Board acknowledges receipt of information to support, that subsequent GC/MS analysis of the aforementioned urine specimens determined that they were, in fact, negative for the presence of amphetamines; that Dr. McAllister's treating addictionologist submitted a letter to the Board opining that it was unlikely the aforementioned cold medication or fitness supplement was the cause of the positive screens for amphetamines; and that review of a published medical journal article implicates that the smoking cessation prescription Zyban (bupropion), which had been prescribed to Dr. McAllister shortly before the date of his first positive urine specimen and has since been discontinued, may result in metabolites that can potentially cause a false positive initial amphetamine screen.

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

1. Dr. McAllister shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
2. Dr. McAllister 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 May 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. McAllister 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 May 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. McAllister 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. McAllister 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. McAllister 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. McAllister's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. McAllister shall make his patient records with regard to such prescribing available for review by an agent of the Board upon request.
7. Dr. McAllister 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. McAllister to administer or personally furnish controlled substances, Dr. McAllister 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. McAllister's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. McAllister 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. McAllister 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. McAllister's history of chemical dependency.
9. Dr. McAllister shall abstain completely from the use of alcohol.

Drug and Alcohol Screens/Supervising Physician

10. Dr. McAllister shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. McAllister 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. McAllister shall abstain from consumption of poppy seeds or any other food or liquid that may produce false results in a toxicology screen.

Dr. McAllister and the Board expressly agree that Gregory Collins, M.D. (of the Cleveland Clinic Foundation, the facility providing Dr. McAllister's aftercare), who was previously approved by the Board to serve as Dr. McAllister's supervising physician pursuant to the May 2004 Step I Consent Agreement, shall not be eligible to serve as Dr. McAllister's designated supervising physician under this Step II Consent Agreement. Further, Dr. McAllister and the Board agree that within seven days of the effective date of this Step II Consent Agreement, Dr. McAllister shall enter into an advocacy contract with the Ohio Physicians Health Program [formerly known as the Ohio Physicians Effectiveness Program] subject to the express condition that no designee of such advocacy contract who has responsibility for collecting, witnessing, receiving and/or submitting Dr. McAllister's specimens for drug and alcohol screens shall be affiliated with The Cleveland Clinic Foundation. Contingent upon Dr. McAllister and the Ohio Physicians Health Program so entering into the aforementioned advocacy contract, Dr. McAllister and the Board agree that the Board shall deem the Ohio Physicians Health Program as Dr. McAllister's Board-approved supervising physician under this Step II Consent Agreement. In the event that, for any reason, Dr. McAllister does not so enter into such advocacy contract with the Ohio Physicians Health Program, then within fourteen days of the effective date of this Consent Agreement, Dr. McAllister shall submit to the Board for its prior approval the name of an alternative supervising physician, who is not affiliated with The Cleveland Clinic Foundation, to whom Dr. McAllister shall submit the required urine specimens. The supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

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

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

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

Monitoring Physician

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

The monitoring physician shall monitor Dr. McAllister and his medical practice, and shall review Dr. McAllister's patient charts. The chart review may be done on a

random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. McAllister and his medical practice, and on the review of Dr. McAllister's patient charts. Dr. McAllister 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. McAllister's quarterly declaration.

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

Rehabilitation Program

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

Aftercare

14. Dr. McAllister shall contact an appropriate impaired physicians committee, approved by the Board, to arrange for assistance in recovery or aftercare.
15. Dr. McAllister 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

16. Dr. McAllister shall provide continuing authorization, through appropriate written consent forms, for disclosure by his treatment provider to the Board, to treating and

monitoring physicians, and to others involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations.

Required Reporting by Licensee

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

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. McAllister 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. McAllister has violated any term, condition or limitation of this Consent Agreement, Dr. McAllister 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. McAllister shall not request termination of this Consent Agreement for a minimum of five years. In addition, Dr. McAllister 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. McAllister 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.

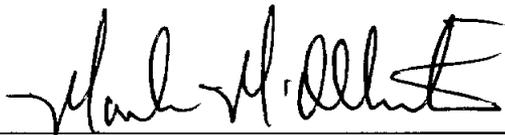
Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

Dr. McAllister 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. McAllister 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

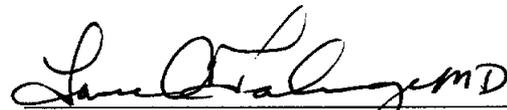
It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.



MARK STEPHEN McALLISTER, M.D.

6/2/05

DATE



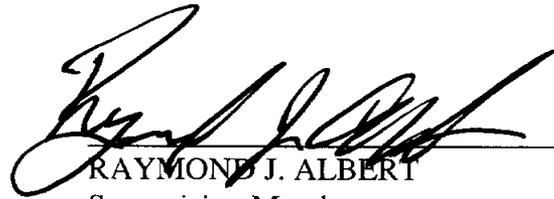
LANCE A. TALMAGE, M.D.
Secretary

6-8-05

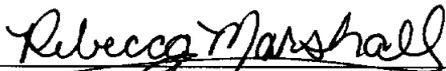
DATE

KBYERS
KEVIN BYERS, ESQ.
Attorney for Dr. McAllister

6/2/05
DATE


RAYMOND J. ALBERT
Supervising Member

6/8/05
DATE


REBECCA J. MARSHALL, ESQ.
Enforcement Attorney

June 2, 2005
DATE

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

OHIO STATE MEDICAL BOARD
MAY 10 2004

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

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

BASIS FOR ACTION

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

- A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation(s) of Section 4731.22(B)(26), Ohio Revised Code, "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice;" Section 4731.22.(B)(15), Ohio Revised Code, "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice;" and/or Section 4731.22(B)(10), Ohio Revised Code, "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed," to wit: Theft of Drugs, Section 2913.02, Ohio Revised Code.
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violations of Section 4731.22(B)(15), Ohio Revised Code, Section 4731.22(B)(26), Ohio Revised Code, and/or Section 4731.22(B)(10), Ohio Revised Code, to wit: Theft of Drugs, Section 2913.02, Ohio Revised Code, as set forth in Paragraph F below. The Board expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement. Such express reservation includes, but is not limited to, the right to institute formal proceedings based upon any violations related to patient care, regardless of whether the acts underlying such additional violations are related to the violations of Section

4731.22(B)(15), Ohio Revised Code, Section 4731.22(B)(26), Ohio Revised Code, and/or Section 4731.22(B)(10), Ohio Revised Code, to wit: Theft of Drugs, Section 2913.02, Ohio Revised Code, as set forth herein.

- C. Dr. McAllister is licensed to practice medicine and surgery in the State of Ohio, License #35-072741, and admits that his license is currently subject to certain probationary terms, conditions, and limitations.
- D. Dr. McAllister states that he is not licensed to practice medicine and surgery in any other state or jurisdiction.
- E. Dr. McAllister admits that pursuant to the Step I Consent Agreement Between Mark S. McAllister, M.D., and The State Medical Board of Ohio effective on or about March 10, 1999, [March 1999 Step I Consent Agreement], a copy of which is attached hereto and fully incorporated herein, his license to practice medicine and surgery in Ohio was permanently revoked, such permanent revocation was stayed, and his license to practice medicine and surgery in Ohio was indefinitely suspended for not less than two years. Dr. McAllister further admits that pursuant to the Step II Consent Agreement Between Mark S. McAllister, M.D., and The State Medical Board of Ohio effective on or about May 9, 2001, [May 2001 Step II Consent Agreement], a copy of which is attached hereto and fully incorporated herein, his license to practice medicine and surgery in Ohio was reinstated subject to certain probationary terms, conditions, and limitations. Dr. McAllister further admits that the May 2001 Step II Consent Agreement remains in effect to date.
- F. Dr. McAllister admits that during or about January 2004, at the hospital where he is a surgical resident, he personally administered Versed to a patient despite his knowledge that such behavior was in violation of hospital policy. Dr. McAllister further admits that such behavior constituted a violation of Paragraph 7 of the May 2001 Step II Consent Agreement, which mandates that Dr. McAllister shall not, without prior Board approval, administer any controlled substances. Dr. McAllister further admits that he asked a hospital staff member who had witnessed his administration of the Versed to keep secret Dr. McAllister's aforementioned behavior. Dr. McAllister further admits that after such behavior was reported, he was reprimanded by his training program director and referred for a chemical dependency consultation, at which time Dr. McAllister's urine toxicology screens were negative and it was determined that he could return to work.

Dr. McAllister further admits that on or about March 21, 2004, he relapsed by diverting into a syringe Fentanyl he obtained from the intravenous drip of a surgical patient under his care, that he then went into a hospital restroom with such syringe in his personal possession, and that promptly thereafter he left the hospital premises. Dr. McAllister further admits that such behavior constituted violations of Paragraphs 7

and 8 of the May 2001 Step II Consent Agreement, which mandate, respectively, that Dr. McAllister shall not, without prior Board approval, possess any controlled substances, and that Dr. McAllister shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed, or administered to him by another so authorized by law who has full knowledge of his history of chemical dependency. Dr. McAllister further admits that upon his return to the hospital a few hours later, he learned that although unknown to him at the time, a witness had observed his conduct related to such diversion. Dr. McAllister further admits that he was confronted by hospital representatives about this act of diversion, at which time Dr. McAllister admitted diverting the Fentanyl from his patient, but asserted that he had discarded it in the restroom due to an attack of conscience. Dr. McAllister further admits that, thereafter, he was referred by his residency training program for another chemical dependency consultation, and that he entered the day treatment program at the Alcohol and Drug Recovery Center at The Cleveland Clinic on or about March 23, 2004.

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

SUSPENSION OF CERTIFICATE

1. The probationary terms, conditions and limitations upon Dr. McAllister's certificate to practice medicine and surgery in the State of Ohio stemming from the May 2001 Step II Consent Agreement are hereby terminated. Further, the certificate of Dr. McAllister to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than one year.

Sobriety

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

Releases; Quarterly Declarations and Appearances

4. Dr. McAllister 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. McAllister's chemical

dependency or related conditions, or for purposes of complying with this Consent Agreement, whether such treatment or evaluation occurred before or after the effective date of this Consent Agreement. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. Dr. McAllister 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. McAllister 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 such declaration would have been due pursuant to his May 2001 Step II Consent Agreement with the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
6. Dr. McAllister 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 May 2001 Step II 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. McAllister shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. McAllister 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. McAllister 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. McAllister shall notify the Board in writing of his request that the supervising physician previously approved by the Board pursuant to the May 2001 Step II Consent Agreement be allowed to continue as his supervising physician under this agreement, or alternatively, Dr. McAllister shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. McAllister 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. McAllister. Dr. McAllister 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. McAllister 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. McAllister must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. McAllister 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. McAllister's quarterly declaration. It is Dr. McAllister's responsibility to ensure that reports are timely submitted.

Psychiatric Treatment

8. Within thirty days of the effective date of this Consent Agreement, Dr. McAllister shall notify the Board in writing of his request that the treating psychiatrist previously approved by the Board pursuant to the May 2001 Step II Consent Agreement be allowed to continue as his treating psychiatrist under this agreement, or alternatively, within thirty days of the effective date of this Consent Agreement, Dr. McAllister shall submit to the Board for its prior approval the name and qualifications of a psychiatrist of his choice. Upon approval by the Board, Dr. McAllister shall undergo and continue psychiatric treatment at least once every four weeks or as otherwise directed by the Board. Dr. McAllister shall comply with his psychiatric treatment plan, including taking medications as prescribed and/or ordered for his psychiatric disorder. Dr. McAllister shall ensure that psychiatric reports are forwarded by his treating psychiatrist to the Board on a quarterly basis, or as otherwise directed by the Board. The psychiatric reports shall contain information describing Dr. McAllister's current treatment plan and any changes that have been made to the treatment plan

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

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

Rehabilitation Program

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

CONDITIONS FOR REINSTATEMENT

10. The Board shall not consider reinstatement of Dr. McAllister's certificate to practice medicine and surgery until all of the following conditions are met:
 - a. Dr. McAllister shall submit an application for reinstatement, accompanied by appropriate fees, if any.
 - b. Dr. McAllister 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. McAllister has successfully completed any required inpatient treatment.
- ii. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
- iii. Evidence of continuing full compliance with this Consent Agreement.
- iv. Three written reports indicating that Dr. McAllister's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. Two of the written 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. McAllister. Prior to the assessments, Dr. McAllister 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. McAllister, and any conditions, restrictions, or limitations that should be imposed on Dr. McAllister's practice. The reports shall also describe the basis for the evaluator's determinations.

One written report shall be made by the treating psychiatrist referenced in paragraph 10 of this Consent Agreement indicating that Dr. McAllister's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. This report shall include any recommendations for treatment, monitoring, or supervision of Dr. McAllister and any conditions, restrictions, or limitations that should be imposed on Dr. McAllister's practice. This report shall also describe the basis for such 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. McAllister shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the Board or, if

the Board and Dr. McAllister are unable to agree on the terms of a written Consent Agreement, then Dr. McAllister 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. McAllister's certificate to practice medicine and surgery in this state, the Board shall require continued monitoring which shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Revised Code. Moreover, upon termination of the consent agreement or Board Order, Dr. McAllister 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. McAllister has maintained sobriety.

11. In the event that Dr. McAllister 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. McAllister's fitness to resume practice.

REQUIRED REPORTING BY LICENSEE

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

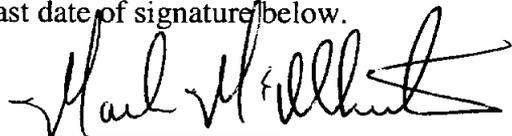
Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

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

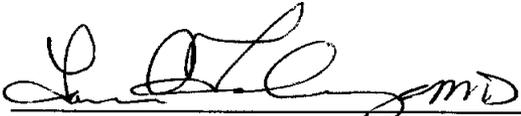
This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. Dr. McAllister acknowledges that his social security number will be used if 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 STEPHEN MCALLISTER, M.D.



LANCE A. TALMAGE, M.D.
Secretary

5/7/04

DATE

5-12-04

DATE

*Kevin Byers by telephone
authority on 05/07/04 by
Rebecca Marshall*

KEVIN BYERS, ESQ.
Attorney for Dr. McAllister

May 10, 2004

DATE

Raymond J. Albert

RAYMOND J. ALBERT
Supervising Member

5/12/04

DATE

Rebecca J. Marshall

REBECCA J. MARSHALL, ESQ.
Enforcement Attorney

May 10, 2004

DATE

STEP II
CONSENT AGREEMENT
BETWEEN
MARK S. MCALLISTER, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO

This CONSENT AGREEMENT is entered into by and between MARK S. MCALLISTER, M.D., and THE STATE MEDICAL BOARD OF OHIO, a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

MARK S. MCALLISTER, M.D., 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 STATE MEDICAL BOARD OF OHIO is empowered by Sections 4731.22(B)(26) and (B)(10), 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,” or “commission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed.”

- B. THE STATE MEDICAL BOARD OF OHIO enters into this CONSENT AGREEMENT in lieu of formal proceedings based upon the violation of Sections 4731.22(B)(26) and 4731.22(B)(10), Ohio Revised Code, as set forth in Paragraphs D and E of the March 1999 Consent Agreement between MARK S. MCALLISTER, M.D., and THE STATE MEDICAL BOARD OF OHIO, a copy of which is attached hereto and incorporated herein, and based upon the stipulations set forth in Paragraphs E through J below. THE STATE MEDICAL BOARD OF OHIO expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement.

STEP II CONSENT AGREEMENT

MARK S. MCALLISTER, M.D.

PAGE 2

- C. MARK S. MCALLISTER, M.D., is applying for reinstatement of his license to practice medicine and surgery in the State of Ohio, which was suspended pursuant to the terms of the above referenced March 1999 Consent Agreement.
- D. MARK S. MCALLISTER, M.D., STATES that he is not currently licensed to practice medicine and surgery in any other state or jurisdiction. DOCTOR MCALLISTER further STATES that he intends to apply for a training and/or permanent license in Michigan in order to enter a surgical training program there.
- E. MARK S. MCALLISTER, M.D., STATES and THE STATE MEDICAL BOARD OF OHIO ACKNOWLEDGES that DOCTOR MCALLISTER has substantially complied with the reinstatement conditions as set forth in his March 1999 Consent Agreement.
- F. Pursuant to Paragraph III.B.i of the March 1999 Consent Agreement, THE STATE MEDICAL BOARD OF OHIO received letters from Gregory B. Collins, M.D., of The Cleveland Clinic Foundation, a Board approved treatment provider, confirming that DOCTOR MCALLISTER had undergone inpatient treatment under Dr. Collins' care in both 1997 and 1998, as well as extended treatment at Talbot Recovery Campus in 1998.
- G. Pursuant to Paragraph III.B.ii of the March 1999 Consent Agreement, THE STATE MEDICAL BOARD OF OHIO received a letter on or about January 18, 2001, from Gregory B. Collins, M.D., of The Cleveland Clinic Foundation, stating that DOCTOR MCALLISTER has remained in full compliance with the March 1999 Consent Agreement.
- H. Pursuant to Paragraph III.B.iii of the March 1999 Consent Agreement, THE STATE MEDICAL BOARD OF OHIO has received the following reports from Board approved treatment providers:
 - 1. On or about January 18, 2001, THE STATE MEDICAL BOARD OF OHIO received an assessment report concerning DOCTOR MCALLISTER from Gregory Collins, M.D., of The Cleveland Clinic Foundation. Doctor Collins stated that he has been DOCTOR MCALLISTER's supervising and treating physician for the past three years and that DOCTOR MCALLISTER ". . . has recovered from the addiction malady and shows continuing efforts to address secondary recovery issues." Doctor Collins further stated that he has ". . . no doubt in [Doctor McAllister's] ability to practice according to the acceptable and prevailing standards of care."

2. On or about January 22, 2001, THE STATE MEDICAL BOARD OF OHIO received an assessment report concerning DOCTOR MCALLISTER from Ted Parran, M.D., of the Case Western Reserve University School of Medicine. Doctor Parran stated that DOCTOR MCALLISTER “. . . has done a tremendous amount in his recovery program, and has shown himself to be committed to do what ever is necessary to maintain sobriety. There is no doubt in [Dr. Parran’s] mind that Mark is fit to return to work as a physician at this point. It is [his] strong recommendation to the Board that they give every consideration to reinstate Dr. McAllister.”
- I. Pursuant to Paragraph I.G of the March 1999 Consent Agreement, THE STATE MEDICAL BOARD OF OHIO received a written report from Gregory B. Collins, M.D., based on a psychiatric evaluation of DOCTOR MCALLISTER on March 30, 1999. In that report, Doctor Collins stated that DOCTOR MCALLISTER’s diagnosis was substance abuse and dependency- mixed, marijuana, opiates and anesthetic agents; personality disorder- mixed, with immature, passive aggressive, and narcissistic features; and atypical depression. Doctor Collins also recommended a treatment plan. Pursuant to Paragraph III.C of the March 1999 Consent Agreement, THE STATE MEDICAL BOARD OF OHIO received a letter dated January 18, 2001, from Gregory Collins, M.D., of The Cleveland Clinic Foundation. Doctor Collins stated that DOCTOR MCALLISTER has remained in full compliance with his psychiatric treatment plan, which included monthly meetings with Dr. Collins for continued psychiatric assessment.
- J. Pursuant to Paragraph III.D of the March 1999 Consent Agreement, THE STATE MEDICAL BOARD OF OHIO received documentation from the Federation of State Medical Boards verifying that DOCTOR MCALLISTER took and passed the Special Purpose Examination (SPEX) on March 3, 2001.

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 MARK S. MCALLISTER, M.D., to practice medicine and surgery in the State of Ohio shall be reinstated, and MARK S. MCALLISTER, M.D., knowingly and voluntarily agrees with THE STATE MEDICAL BOARD OF OHIO, (hereinafter BOARD), to the following PROBATIONARY terms, conditions and limitations:

1. DOCTOR MCALLISTER shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio;

2. DOCTOR MCALLISTER shall submit quarterly declarations under penalty of BOARD disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this CONSENT AGREEMENT. The first quarterly declaration must be received in the BOARD's offices on the first day of the third month following the month in which the CONSENT AGREEMENT becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the BOARD's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the BOARD's offices on or before the first day of every third month;
3. DOCTOR MCALLISTER shall appear in person for quarterly interviews before the BOARD or its designated representative, or as otherwise directed by the BOARD;

If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. (Example: The first quarterly appearance is scheduled for February, but based upon the doctor's serious personal illness he is permitted to delay appearance until April. The next appearance will still be scheduled for May, three months after the appearance as originally scheduled.) Although the BOARD will normally give DOCTOR MCALLISTER written notification of scheduled appearances, it is DOCTOR MCALLISTER's responsibility to know when personal appearances will occur. If he does not receive written notification from the BOARD by the end of the month in which the appearance should have occurred, DOCTOR MCALLISTER shall immediately submit to the BOARD a written request to be notified of his next scheduled appearance;

Although DOCTOR MCALLISTER must appear before the STATE MEDICAL BOARD OF OHIO for his initial appearance and annual appearances thereafter, the BOARD agrees that DOCTOR MCALLISTER may otherwise appear for quarterly interviews before the Michigan Board of Medicine or its designated representative and have reports forwarded from the Michigan Board of Medicine to the STATE MEDICAL BOARD OF OHIO in fulfillment of the other required quarterly interviews. Reports must be received by the BOARD within thirty (30) days of the interview;

4. In the event that DOCTOR MCALLISTER should leave Ohio for three (3) continuous months, or reside or practice outside the State, DOCTOR MCALLISTER must notify the BOARD in writing of the dates of

departure and return. Periods of time spent outside Ohio will not apply to the reduction of this period under the CONSENT AGREEMENT, unless otherwise determined by motion of the BOARD in instances where the BOARD can be assured that probationary monitoring is otherwise being performed. Periods of time spent in Michigan shall apply to the reduction of this period under the CONSENT AGREEMENT as long as the BOARD can be assured that DOCTOR MCALLISTER is complying with this CONSENT AGREEMENT and probationary monitoring is being performed;

5. In the event DOCTOR MCALLISTER 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 the CONSENT AGREEMENT;

MONITORING OF REHABILITATION AND TREATMENT

Drug Associated Restrictions

6. DOCTOR MCALLISTER shall keep a log of all controlled substances prescribed. Such log shall be submitted in the format approved by the BOARD thirty (30) days prior to DOCTOR MCALLISTER 's personal appearance before the BOARD or its designated representative, or as otherwise directed by the BOARD;
7. DOCTOR MCALLISTER shall not, without prior BOARD approval, administer, dispense, 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 DOCTOR MCALLISTER to administer or dispense controlled substances, DOCTOR MCALLISTER shall keep a log of all controlled substances prescribed, administered or dispensed. Such log shall be submitted in the format approved by the BOARD thirty (30) days prior to DOCTOR MCALLISTER's personal appearance before the BOARD or its designated representative, or as otherwise directed by the BOARD;

Sobriety

8. DOCTOR MCALLISTER 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 DOCTOR MCALLISTER's history of chemical dependency;

9. DOCTOR MCALLISTER shall abstain completely from the use of alcohol;

Drug and Alcohol Screens/Supervising Physician

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

Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR MCALLISTER shall submit to the BOARD for its prior approval the name of a supervising physician to whom DOCTOR MCALLISTER 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 DOCTOR MCALLISTER. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the BOARD of any positive screening results;

DOCTOR MCALLISTER shall ensure that the supervising physician provides quarterly reports to the BOARD, on forms approved or provided by the BOARD, verifying whether all urine screens have been conducted in compliance with this CONSENT AGREEMENT, whether all urine screenings have been negative, and whether the supervising physician remains willing and able to continue in his/her responsibilities;

In the event that the designated supervising physician becomes unable or unwilling to so serve, DOCTOR MCALLISTER must immediately notify the BOARD in writing, and make arrangements acceptable to the BOARD for another supervising physician as soon as practicable. DOCTOR MCALLISTER shall further ensure that the previously designated supervising physician also notifies the BOARD directly of the 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 DOCTOR MCALLISTER's quarterly declaration. It is DOCTOR MCALLISTER's responsibility to ensure that reports are timely submitted;

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

Monitoring Physician

12. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR MCALLISTER shall submit for the BOARD's prior approval the name of a monitoring physician, who shall review DOCTOR MCALLISTER's patient charts and shall submit a written report of such review to the BOARD on a quarterly basis. In approving an individual to serve in this capacity, the BOARD will give preference to a physician who practices in the same locale as DOCTOR MCALLISTER and who is engaged in the same or similar practice specialty. Such chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the BOARD. It shall be DOCTOR MCALLISTER's responsibility to ensure that the monitoring physician's quarterly reports are submitted to the BOARD on a timely basis;

Further, the monitoring physician shall otherwise monitor DOCTOR MCALLISTER and provide the BOARD with quarterly reports on the doctor's progress and status. DOCTOR MCALLISTER shall ensure that such reports are forwarded to the BOARD on a quarterly basis. In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, DOCTOR MCALLISTER must immediately so notify the BOARD in writing, and make arrangements acceptable to the BOARD for another monitoring physician as soon as practicable. DOCTOR MCALLISTER shall further ensure that the previously designated monitoring physician also notifies the BOARD directly of the inability to continue to serve and the reasons therefore;

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

Approval of Employment

13. Prior to engaging in the practice of medicine in Ohio, DOCTOR MCALLISTER shall obtain the approval of the BOARD for such medical practice. 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 employment;

Rehabilitation Program

14. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR MCALLISTER shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., or Caduceus, no less than three (3) times per week. Substitution of any other specific program must receive prior BOARD approval.

DOCTOR MCALLISTER shall submit with each quarterly declaration required under Paragraph 2 of this CONSENT AGREEMENT acceptable documentary evidence of continuing compliance with this program;

Aftercare

15. DOCTOR MCALLISTER shall maintain continued compliance with the terms of the aftercare contract entered into with the Cleveland Clinic Foundation, provided that, where terms of the aftercare contract conflict with terms of this CONSENT AGREEMENT, the terms of this CONSENT AGREEMENT shall control;

Psychiatric Treatment

16. DOCTOR MCALLISTER shall undergo and continue psychiatric treatment with Gregory Collins, M.D., or another psychiatrist or psychologist approved in advance by the BOARD, monthly or as otherwise directed by the BOARD. DOCTOR MCALLISTER shall comply with his treatment plan. DOCTOR MCALLISTER shall ensure that psychiatric/psychological reports are forwarded by his treating psychiatrist/psychologist to the BOARD on a quarterly basis, or as otherwise directed by the BOARD. The reports shall contain information describing DOCTOR MCALLISTER's current treatment plan and any changes that have been made to the treatment plan since the prior report; DOCTOR MCALLISTER's compliance with his treatment plan; DOCTOR MCALLISTER's mental status; DOCTOR MCALLISTER's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. DOCTOR MCALLISTER shall ensure that his treating psychiatrist/psychologist immediately notifies the Board of his failure to comply with his treatment plan and/or any determination that DOCTOR MCALLISTER is unable to practice. It is DOCTOR MCALLISTER's responsibility to ensure that quarterly reports are

received in the BOARD's offices no later than the due date for DOCTOR MCALLISTER's quarterly declaration;

Releases

17. DOCTOR MCALLISTER 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 (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR MCALLISTER 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, DOCTOR MCALLISTER 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 (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR MCALLISTER 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. DOCTOR MCALLISTER 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, DOCTOR MCALLISTER shall provide this BOARD with a copy of the return receipt as proof of notification within thirty (30) days of receiving that return receipt;
20. Upon termination of this Consent Agreement, DOCTOR MCALLISTER 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 he has maintained sobriety;

VIOLATION OF PROBATIONARY TERMS

21. Any violation of Paragraph 8 or Paragraph 9 of this CONSENT AGREEMENT shall constitute grounds to revoke or permanently revoke DOCTOR MCALLISTER's certificate. DOCTOR MCALLISTER agrees that the minimum discipline for such a violation shall include actual license suspension. This paragraph does not limit the BOARD's authority to suspend, revoke or permanently revoke DOCTOR MCALLISTER's certificate based on other violations of this CONSENT AGREEMENT;
22. DOCTOR MCALLISTER AGREES that if any declaration or report required by this CONSENT AGREEMENT is not received in the BOARD's offices on or before its due date, DOCTOR MCALLISTER shall cease practicing beginning the day next following receipt from the BOARD of notice of non-receipt, either by writing, by telephone, or by personal contact until the declaration or report is received in the BOARD offices. Any practice during this time period shall be considered unlicensed practice in violation of Section 4731.41 of the Revised Code;
23. DOCTOR MCALLISTER AGREES that if, without prior permission from the BOARD, he fails to submit to random screenings for drugs and alcohol at least as frequently as required by Paragraph 10 of this CONSENT AGREEMENT, he shall cease practicing immediately upon receipt from the BOARD of notice of the violation and shall refrain from practicing for thirty (30) days for the first instance of a single missed screen. Practice during this time period shall be considered unlicensed practice in violation of Section 4731.41 of the Revised Code; and,
24. DOCTOR MCALLISTER AGREES that if he fails to participate in an alcohol and drug rehabilitation program at least as frequently as required by Paragraph 13 of this CONSENT AGREEMENT, he shall cease practicing immediately upon receipt from the BOARD of notice of the violation, and shall refrain from practicing for fifteen (15) days following a first missed meeting. Practice during this time period shall be considered unlicensed practice in violation of Section 4731.41 of the Revised Code.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the BOARD, DOCTOR MCALLISTER 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 DOCTOR MCALLISTER has violated any term, condition or limitation of this CONSENT AGREEMENT, DOCTOR MCALLISTER 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

DOCTOR MCALLISTER shall not request termination of this CONSENT AGREEMENT for a minimum of seven (7) years. In addition, DOCTOR MCALLISTER shall not request modification to the probationary terms, limitations and conditions contained herein for at least one (1) 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

DOCTOR MCALLISTER 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.

DOCTOR MCALLISTER hereby releases THE STATE MEDICAL BOARD OF OHIO, 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.

EFFECTIVE DATE

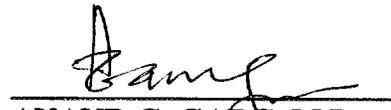
It is expressly understood that this CONSENT AGREEMENT is subject to ratification by the BOARD prior to signature by the Secretary and Supervising Member and that it shall become effective upon the last date of signature below.



MARK S. MCALLISTER, M.D.

5/4/01

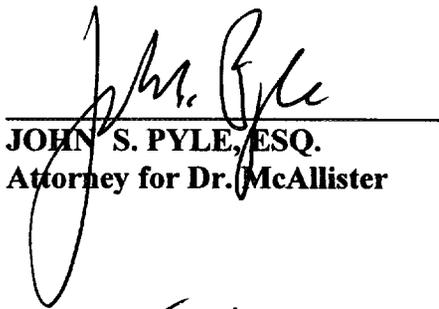
DATE



ANAND G. GARG, M.D.
Secretary

5/9/01

DATE



JOHN S. PYLE, ESQ.
Attorney for Dr. McAllister

5-4-01

DATE



RAYMOND J. ALBERT
Supervising Member

5/9/01

DATE



REBECCA ALBERS, ESQ.
Assistant Attorney General

5/9/01

DATE

**STEP I CONSENT AGREEMENT
BETWEEN
MARK S. MCALLISTER, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO**

This Consent Agreement is entered into by and between MARK S. MCALLISTER, M.D., and THE STATE MEDICAL BOARD OF OHIO, a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

MARK S. MCALLISTER, M.D., enters into this 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.

This Consent Agreement contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Consent Agreement.

BASIS FOR ACTION

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

- A. THE STATE MEDICAL BOARD OF OHIO 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 any of the enumerated violations.
- B. THE STATE MEDICAL BOARD OF OHIO enters into this Consent Agreement in lieu of further formal proceedings based upon the violations of Section 4731.22(B), Ohio Revised Code, as set forth in the Notice of Opportunity for Hearing dated December 9, 1998, attached hereto as Exhibit A and incorporated herein by this reference, and upon the violation of Section 4731.22(B)(26), Ohio Revised Code, as set forth in paragraph E below. The BOARD expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement.
- C. MARK S. MCALLISTER, M.D., is licensed to practice medicine and surgery in the State of Ohio.

MARK S. MCALLISTER, M.D., STATES that he is licensed to practice medicine and surgery, and/or has applications pending for licenses to practice medicine and surgery, in the following states or jurisdictions:

- D. MARK S. MCALLISTER, M.D., ADMITS the allegations set forth in the Notice of Opportunity for Hearing, attached hereto as Exhibit A. MARK S. MCALLISTER, M.D., further ADMITS that he underwent treatment for chemical dependency at the Cleveland Clinic Foundation from December 31, 1997 until January 30, 1998, and at the Talbott Recovery Campus, Atlanta, Georgia from February 2, 1998 until May 23, 1998.
- E. MARK S. MCALLISTER, M.D., further ADMITS that after completing this treatment, he returned to his anesthesiology residency at the Cleveland Clinic and began participating in the aftercare program at that institution. However, on October 8, 1998, while on duty at the Cleveland Clinic, he self-administered Propofol, an intravenous sedative-hypnotic anesthesia agent, which he obtained from hospital stock. He subsequently resigned from the anesthesiology residency program at the Cleveland Clinic. He also thereafter was discharged from the aftercare program at that institution, and as of the date of this Agreement is not participating in any Board-approved aftercare program.

MARK S. MCALLISTER, M.D., further ADMITS that his ability to practice according to acceptable and prevailing standards of care is impaired by his excessive or habitual use of drugs or alcohol, as set forth in Section 4731.22(B)(26), Ohio Revised Code.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any further formal proceedings at this time, MARK S. MCALLISTER, M.D., (hereinafter DOCTOR MCALLISTER) knowingly and voluntarily agrees with THE STATE MEDICAL BOARD OF OHIO (hereinafter BOARD), to the following terms, conditions, and limitations:

STAYED REVOCATION; SUSPENSION OF CERTIFICATE

- I. The certificate of DOCTOR MCALLISTER to practice medicine and surgery in the State of Ohio is hereby PERMANENTLY REVOKED. Such revocation is STAYED, and DOCTOR MCALLISTER's certificate is hereby SUSPENDED for an indefinite period of time, but not less than TWO (2) years from the effective date of this Agreement. During the period of suspension, DOCTOR MCALLISTER shall comply with the following terms, conditions and limitations:

Sobriety

- A. DOCTOR MCALLISTER 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 DOCTOR MCALLISTER's history of chemical dependency.
- B. DOCTOR MCALLISTER shall abstain completely from the use of alcohol.

Releases; Quarterly Declarations and Appearances

- C. DOCTOR MCALLISTER shall provide continued 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 DOCTOR MCALLISTER's chemical dependency, psychiatric diagnoses, or related conditions, or for purposes of complying with this Consent Agreement, whether such treatment or evaluation occurred before or after the 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. DOCTOR MCALLISTER 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.

- D. DOCTOR MCALLISTER shall submit quarterly declarations under penalty of BOARD disciplinary action or criminal prosecution stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the BOARD's offices on the first day of the third month following the month in which this Consent Agreement becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the BOARD's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the BOARD's offices on or before the first day of every third month;
- E. DOCTOR MCALLISTER shall appear in person for quarterly interviews before the BOARD or its designated representative, or as otherwise directed by the BOARD.

If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. (Example: The first quarterly appearance is scheduled for February, but based upon the doctor's serious personal illness he is permitted to delay appearance until April. The next appearance will still be scheduled for May, three months after the appearance as originally scheduled.) Although the BOARD will normally give DOCTOR MCALLISTER written notification of scheduled appearances, it is DOCTOR MCALLISTER's responsibility to know when personal appearances will occur. If he does not receive written notification from the BOARD by the end of the month in which the appearance should have occurred, DOCTOR MCALLISTER shall immediately submit to the BOARD a written request to be notified of his next scheduled appearance.

Drug and Alcohol Screens; Supervising Physician

- F. DOCTOR MCALLISTER shall submit daily urine specimens for screenings for drugs and alcohol, with two (2) of the specimens to be randomly selected per week by DOCTOR MCALLISTER's Board-approved supervising physician for actual testing. The BOARD reserves the right to increase the number of weekly specimens that are required to be tested. DOCTOR MCALLISTER 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 Fentanyl, Versed, and Propofol, as well as alcohol and all other drugs of abuse.

Within thirty (30) days of the effective date of this Consent Agreement, DOCTOR MCALLISTER shall submit to the BOARD for its prior approval the name of a supervising physician to whom DOCTOR MCALLISTER shall submit the required urine specimens. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the BOARD of any positive screening results.

DOCTOR MCALLISTER shall ensure that the supervising physician provides quarterly reports to the BOARD, on forms approved or provided by the BOARD, 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 responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to so serve, DOCTOR MCALLISTER must immediately notify the BOARD in writing, and make arrangements acceptable to the BOARD for another supervising physician as soon as practicable. DOCTOR MCALLISTER shall further ensure that the previously designated supervising

physician also notifies the BOARD directly of the inability to continue to serve and the reasons therefor;

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 DOCTOR MCALLISTER's quarterly declaration. It is DOCTOR MCALLISTER's responsibility to ensure that the reports are timely submitted.

Psychiatric Evaluation /Treatment

- G. Within sixty (60) days of the effective date of this Consent Agreement, DOCTOR MCALLISTER shall provide to the BOARD a written evaluation from a psychiatrist approved in advance by the BOARD, assessing his psychiatric condition. The evaluation will be at DOCTOR MCALLISTER's own expense. Prior to the evaluation, DOCTOR MCALLISTER shall provide the evaluating psychiatrist with copies of this Consent Agreement, including all attachments and documents incorporated herein, as well as with copies of all of his treatment records from the Cleveland Clinic, Talbott Recovery Campus, and any other facilities or providers where or with whom he has undergone chemical dependency and/or psychological treatment. DOCTOR MCALLISTER expressly agrees that the BOARD may also provide any other documentation which it may deem appropriate or helpful to the approved evaluating psychiatrist. The evaluation must address:
- (i) The existence or nonexistence of any psychiatric or emotional illness or disorder;
 - (ii) The amenability of such illness or disorder, if any, to treatment; the treatment, if any, completed by DOCTOR MCALLISTER, and the need, if any, for additional treatment;
 - (iii) A plan of recommended treatment, if any, based upon the evaluating psychiatrist's informed assessment of DOCTOR MCALLISTER's current needs.

- H. If the evaluating psychiatrist recommends that DOCTOR MCALLISTER undergo any type of treatment, DOCTOR MCALLISTER shall submit to the BOARD for its prior approval the name and qualifications of a psychiatrist or psychologist of his choice, along with a plan of treatment developed by that psychiatrist or psychologist. DOCTOR MCALLISTER shall provide the psychiatrist or psychologist with copies of this Consent Agreement, as well as with copies of the evaluation required by Paragraph I.G. above. The plan of treatment shall incorporate the recommendations of the evaluation required by Paragraph I.G. above. Upon approval by the BOARD of the psychiatrist or psychologist and the plan of treatment, DOCTOR MCALLISTER shall commence treatment in accordance with that plan by the approved psychiatrist or psychologist at such intervals as are deemed appropriate by the treating psychiatrist or psychologist, but not less than once per month.

Rehabilitation Programs

- I. DOCTOR MCALLISTER shall provide the BOARD with satisfactory documentation of continuous participation in a drug and alcohol rehabilitation program, such as AA, NA or Caduceus, or another program approved in advance by the BOARD, at least FOUR (4) times per week, or as otherwise directed by the BOARD. Substitution of any specific program must receive prior BOARD approval

Aftercare

- J. Within thirty (30) days of the effective date of this Consent Agreement, DOCTOR MCALLISTER shall contract with and begin participation in the aftercare program of a Board-approved treatment provider.

DEA CERTIFICATE

- II. DOCTOR MCALLISTER shall immediately surrender his United States Drug Enforcement Administration Certificate.

CONDITIONS FOR REINSTATEMENT

- III. The BOARD shall not consider reinstatement of DOCTOR MCALLISTER's certificate to practice medicine and surgery unless and until all of the following conditions are met:
- A. DOCTOR MCALLISTER shall submit an application for reinstatement, accompanied by appropriate fees. Such application shall not be submitted for a minimum period of two years from the effective date of this Agreement.
 - B. DOCTOR MCALLISTER 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 provider approved under Section 4731.25 of the Revised Code that DOCTOR MCALLISTER has successfully completed any required inpatient treatment;
 - ii. Evidence of continuing full compliance with an aftercare contract or consent agreement;
 - iii. Two written reports indicating that DOCTOR MCALLISTER's present ability to practice (that is, as of the date that the application for reinstatement is submitted) has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the BOARD for making such assessments and shall describe the basis for this determination.

- C. In addition to the reports required by paragraph III.B.iii. above, DOCTOR MCALLISTER shall provide the BOARD with acceptable documentation evidencing compliance with the plan of recommended psychiatric or psychological treatment, if any, as required under paragraph I.H. above.
- D. No more than ninety (90) days prior to the date of the submission of his application for reinstatement, DOCTOR MCALLISTER shall take and pass the Special Purpose Examination (SPEX) or any similar written examination that the BOARD may deem appropriate to assess DOCTOR MCALLISTER's clinical competency. In addition, the BOARD may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of DOCTOR MCALLISTER's fitness to resume practice.
- E. DOCTOR MCALLISTER shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the BOARD for a minimum period of seven (7) years, or, if the BOARD and DOCTOR MCALLISTER are unable to agree on terms of a written CONSENT AGREEMENT, then DOCTOR MCALLISTER 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.
- F. Further, upon reinstatement of DOCTOR MCALLISTER's certificate to practice medicine and surgery in this state, the BOARD shall require continued monitoring which shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Revised Code and, upon termination of the consent agreement or Board Order, submission to the BOARD for at least two years of annual progress reports made under penalty of BOARD disciplinary action or criminal prosecution stating whether DOCTOR MCALLISTER has maintained sobriety.

REQUIRED REPORTING

- IV. Within thirty (30) days of the effective date of this Agreement, DOCTOR MCALLISTER 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 a license to practice or has an application for licensure pending. DOCTOR MCALLISTER 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 licensure or reinstatement of licensure. Further, DOCTOR MCALLISTER shall provide this BOARD with a copy of the return receipt as proof of notification within thirty (30) days of receiving that return receipt.
- V. Within thirty (30) days of the effective date of this Agreement, DOCTOR MCALLISTER shall provide a copy of this Agreement to all employers or entities with which he is under contract to provide physician services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments.

DURATION/MODIFICATION OF TERMS

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

Periods of time during which DOCTOR MCALLISTER's certificate to practice medicine and surgery is inactive due to nonpayment of renewal fees will not apply to the reduction of the time periods set forth in this Consent Agreement, unless otherwise determined by motion of the BOARD in instances where the BOARD can be assured that the purposes of the monitoring required by this Agreement will be fulfilled.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of THE STATE MEDICAL BOARD OF OHIO, DOCTOR MCALLISTER appears to have violated or breached any term or condition of this Agreement, THE STATE MEDICAL BOARD OF OHIO 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 Agreement.

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.

ACKNOWLEDGMENTS/LIABILITY RELEASE

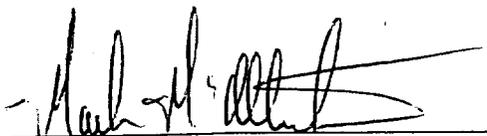
DOCTOR MCALLISTER acknowledges that he has had an opportunity to ask questions concerning the terms of this Agreement and that all questions asked have been answered in a satisfactory manner.

DOCTOR MCALLISTER hereby releases THE STATE MEDICAL BOARD OF OHIO, 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.

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 that it shall become effective upon the last date of signature below.



MARK S. MCALLISTER, M.D.



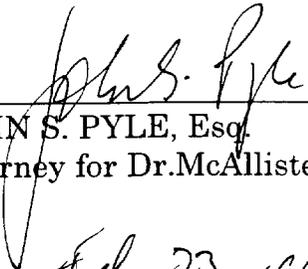
ANAND G. GARG, M.D.
Secretary

2/23/99

DATE

3-10-99

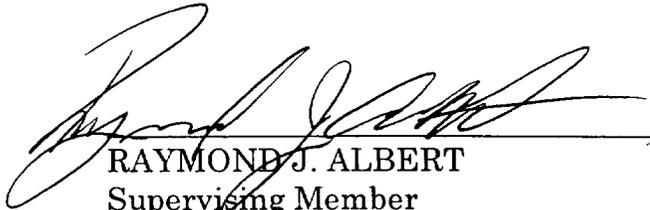
DATE



JOHN S. PYLE, Esq.
Attorney for Dr. McAllister

Feb 23, 1999

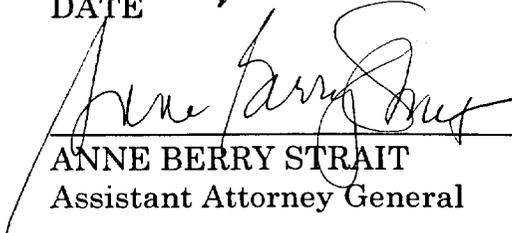
DATE



RAYMOND J. ALBERT
Supervising Member

3/10/99

DATE



ANNE BERRY STRAIT
Assistant Attorney General

3/10/99

DATE



State Medical Board of Ohio

77 S. High Street, 17th Floor • Columbus, Ohio 43266-0315 • 614/466-3934 • Website: www.state.oh.us/med/

December 9, 1998

Mark S. McAllister, M.D.
22455 Lake Road
Apt. #206A
Rocky River, OH 44116

Dear Doctor McAllister:

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

- (1) In a June 1998 letter to the State Medical Board of Ohio, you admitted that you began abusing Fentanyl, a Schedule II controlled substance, in December 1997, during your first year as an anesthesia resident at The Cleveland Clinic Foundation, in Cleveland, Ohio; that you were procuring the drug from the anesthesia supply system at the hospital; and that your acts were discovered through audits by the hospital pharmacy.

You also admitted that you received treatment at The Cleveland Clinic Foundation and Talbot Recovery Campus in Atlanta, Georgia, and that you are currently participating in an aftercare program.

- (2) In an interview with agents for the Ohio State Board of Pharmacy in January 1998, you admitted that you had documented doses of Fentanyl as being administered to patients but that you were keeping part of the drug for personal use. You also admitted that you obtained medications for your personal use by falsifying medication computer records to reflect that drugs were returned to stock when in fact they were not.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) 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.

Mailed 12/10/98

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute “[c]ommission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2913.02, Ohio Revised Code, Theft of Drugs, and Section 2925.23(A), Ohio Revised Code, Illegal Processing of Drug Documents.

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

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

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Anand G. Garg, M.D.
Secretary

AGG/bjs
Enclosures

CERTIFIED MAIL #Z 395 591 052
RETURN RECEIPT REQUESTED

cc: John S. Pyle, Esq.
CERTIFIED MAIL #Z 395 591 047
RETURN RECEIPT REQUESTED