State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
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February 9, 2011

Scott Robert Welden, M.D.
2406 Grandview Avenue
Cincinnati, OH 45206

RE: Case Nos. 10-CRF-029
10-CRF-092

Dear Doctor Welden:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Patricia A. Davidson, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on February 9, 2011, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

Such an appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board and the Franklin County Court of Common Pleas. The Notice of Appeal must set forth the Order appealed from and state that the State Medical Board's Order is not supported by reliable, probative, and substantive evidence and is not in accordance with law. The Notice of Appeal may, but is not required to, set forth the specific grounds of the appeal. 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, MD by authorization

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3936 3160 1979
RETURN RECEIPT REQUESTED

Mailed 2.10.11

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Patricia A. Davidson, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on February 9, 2011, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Scott Robert Welden, M.D., Case Nos. 10-CRF-029 and 10-CRF-092, 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, M.D. by authorization
Secretary

February 9, 2011
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF	*	
	*	CASE NOS. 10-CRF-029 10-CRF-092
SCOTT ROBERT WELDEN, M.D.	*	

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on February 9, 2011.

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

It is hereby ORDERED that:

The certificate of Scott Robert Welden, M.D., to practice allopathic medicine and surgery in Ohio is hereby REVOKED.

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

Lance A. Talmage, M.D. by authorization
Secretary

(SEAL)

February 9, 2011
Date

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
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EXCERPT FROM THE DRAFT MINUTES OF FEBRUARY 9, 2011

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

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

Dr. Suppan asked whether each member of the Board had received, read and considered the hearing records; the Findings of Fact, Conclusions of Law, Proposed Orders, and any objections filed in the matters of: Carol M. Gaines, D.O.; Scott Robert Welden, M.D.; and the Reconsideration of Order in the matter of Bruce T. Faure, M.D. A roll call was taken:

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Suppan	- aye
	Mr. Albert	- aye
	Dr. Madia	- aye
	Dr. Amato	- aye
	Dr. Ramprasad	- aye

Dr. Suppan 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:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Suppan	- aye
	Mr. Albert	- aye
	Dr. Madia	- aye
	Dr. Amato	- aye
	Dr. Ramprasad	- aye

Dr. Suppan noted that, in accordance with the provision in section 4731.22(F)(2), Ohio 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, Mr. Albert served as Supervising Member, and Dr. Amato served as Acting Supervising Member.

Dr. Suppan reminded all parties that no oral motions may be made during these proceedings.

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

.....

SCOTT ROBERT WELDEN, M.D., Case No. 10-CRF-029 and Case No. 10-CRF-092

.....

Dr. Steinbergh moved to approve and confirm Ms. Davidson's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Scott Robert Welden, M.D. Mr. Hairston seconded the motion.

.....

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

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Suppan	- aye
	Mr. Albert	- abstain
	Dr. Madia	- aye
	Dr. Amato	- abstain
	Dr. Ramprasad	- aye

The motion carried.

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Consolidated Matters of	*	**Case Nos. 10-CRF-029 & 10-CRF-092**
Scott Robert Welden, M.D.,	*	**Hearing Examiner Davidson**
Respondent.	*	

2010 DEC 22 PM 1:42
STATE MEDICAL BOARD OF OHIO

REPORT AND RECOMMENDATION

Basis for Hearing

In a notice of opportunity for hearing dated March 10, 2010, the State Medical Board of Ohio notified Scott Robert Welden, M.D., that it intended to determine whether to take disciplinary action against his certificate to practice allopathic medicine and surgery in Ohio. The Board alleged, among other things, that Dr. Welden had given false information on his application to restore his certificate and further alleged that he had violated a 2008 consent agreement by engaging in conduct including consumption of alcohol, failing to comply with the call-in procedures for random urine screens, failing to submit to all random urine screens as scheduled, failing to provide quarterly declarations as required, and failing to provide documentation that he had attended drug/alcohol rehabilitation meetings as required. (St. Ex. 1A) The Board charged that Dr. Welden's conduct and omissions demonstrated:

- "[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 language is used in Ohio Revised Code Section [R.C.] 4731.22(B)(26);
- "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that language is used in R.C. 4731.22(B)(15); and
- "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in R.C. 4731.22(B)(5). (St. Ex. 1A)

The matter was assigned Case Number 10-CRF-029, and the Board received Dr. Welden's hearing request on March 15, 2010. (St. Ex. 1B)

On July 14, 2010, the Board issued another notice of opportunity to Dr. Welden, alleging that he had further violated his consent agreement, based on a urine specimen collected from him on June 23, 2010, which had tested positive for alcohol. In this new matter, which was assigned Case Number 10-CRF-092, the Board again charged violations of R.C. 4731.22(B)(26) and 4731.22(B)(15). Dr. Welden requested a hearing on July 23, 2010. (St. Exs. 1D, 1E). By Entry filed July 27, 2010, the two matters were consolidated.

Appearances

Richard Cordray, Attorney General, and Melinda R. Snyder, Assistant Attorney General, for the State. The Respondent represented himself.

Hearing Date: August 31, 2010.

SUMMARY OF THE EVIDENCE

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

Background

1. In 1998, Scott Robert Welden, M.D., received his certificate to practice medicine and surgery in Ohio (certificate number 35-075182), prior to completing his four-year residency program in emergency medicine at the University of Cincinnati. With regard to his employment history, Dr. Welden testified that he had established an emergency-medicine group that staffed an outlying emergency department and that he had also served as the medical director of three hospital emergency departments between 2001 and 2006. He testified that, in 2005, he opened his own urgent-care facility in Cincinnati, where he worked most of the shifts, and he also opened a laser cosmetic center in late 2005. In addition, Dr. Welden began having "problems with opiates" in 2005. (Tr. at 15-16, 22-24, 143-144; St. Ex. 5 at 11)

2. Dr. Welden testified that he has not practiced medicine since 2007 (due to consent agreements described below), and he no longer holds any ownership interest in the laser cosmetic center or any medical clinic. Dr. Welden stated that he now works about 20 hours per week as an independent contractor for a Cincinnati law firm specializing in medical malpractice. He testified that he confers with clients and helps the attorneys prepare their cases. (Tr. at 20-26)

2007 Consent Agreement & 2008 Administrative Action

3. Dr. Welden has admitted that he began abusing narcotics in 2005 and began abusing Ativan and Versed in 2006. In 2007, he was diagnosed with opiate dependence. In July 2007, he entered into a Step I Consent Agreement with the Board. In the agreement, Dr. Welden admitted that, without appropriate treatment and monitoring, he is impaired in his ability to practice medicine according to acceptable and prevailing standards of care due to habitual or excessive use or abuse of drugs. (St. Ex. 2 at 17-18; Tr. at 26-31)

   Dr. Welden stated that his drug of choice was Demerol, which he had injected. He admitted that, when Demerol was unavailable, he used other opiates/opioids such as Vicodin, Morphine, Dilaudid and Fentanyl. In addition, Dr. Welden admitted that he had improperly obtained controlled substances for his own use. Specifically, Dr. Welden admitted that he had obtained narcotics and benzodiazepines by ordering them from wholesale distributors. Dr. Welden also acknowledged that he had been diagnosed in 2006 with dysthymia and ADHD, for which he receives treatment and medication. (St. Ex. 2 at 18)

4. The Board entered into the 2007 Consent Agreement in lieu of formal proceedings under R.C. 4731.202(B)(26) (substance-related impairment) and 4731.22(B)(10) (commission of an act constituting a felony) with reference to Deception to Obtain a Dangerous Drug in violation of R.C. 2925.22 and/or Illegal Processing of Drug Documents in violation of R.C. Section 2925.23. Pursuant to the 2007 Consent Agreement, Dr. Welden's certificate to practice in Ohio was suspended for an indefinite period not less than 180 days, along with other terms and conditions. (St. Ex. 2)

5. The 2007 Consent Agreement also summarizes Dr. Welden's deposition testimony regarding his treatment for chemical dependency, as follows: 17 days of treatment in 2007 at Hazelden Springbrook in Oregon; five days of treatment in 2007 at The Woods at Parkside in Ohio; and 28 days of inpatient treatment completed in April 2007 at the Hazelden Foundation, a board-approved treatment provider in Minnesota. (St. Ex. 2 at 18)

6. Danielle Bickers, the Board's Compliance Supervisor, testified that, after Dr. Welden entered into the 2007 Consent Agreement, the Board had some difficulty getting him to comply with the procedures for random urine screens. She explained that, prior to the current urine-screening program managed through a company called FirstLab, the process had involved a supervising physician who would telephone the impaired physician once per week and tell him to come in and provide a urine sample. The impaired physician was then expected to provide the specimen on that day. However, Dr. Welden did not always comply. For example, sometimes he would not report on that day but would report on the following day. Ms. Bickers testified that compliance personnel had talked with Dr. Welden about his failure to comply with testing requirements. (Tr. at 57-58, 62-64)

7. In March 2008, the Board issued a notice of opportunity for hearing to Dr. Welden (prior to the two notices addressed in the present report). In the 2008 action, which was assigned Case No. 08-CRF-030, the Board alleged, among other things, that Dr. Welden had practiced medicine during his suspension, had refused to provide a urine screen to Board investigators, and had failed to provide accurate information to a Board investigator during an interview. The Board charged violations of R.C. 4731.22(B)(10) (commission of an act that constitutes a felony), 4731.22(B)(15) (violation of consent agreement), 4731.22(B)(5) (making a false statement), and 4731.22(B)(20) (violating or attempting to violate, or assisting in or abetting the violation of, or conspiring to violate, R.C. Chapter 4731 or a Board rule, with reference to the practice of medicine without a license). (St. Ex. 2 at 2-3, 14-16)

Dr. Welden's Use of Alcohol in 2007 and 2008

8. Dr. Welden admitted that, after his discharge from Hazelden in April 2007, he had resumed using alcohol in late 2007. (Note: Dr. Welden initially testified that this drinking began in 2008, but, on further consideration, he stated that it had started in late 2007.] Dr. Welden testified that he had resumed using alcohol due to "anger and resentment" at his circumstances. He explained that his wife had filed for divorce in October 2007 and that he had been "very angry" about "a lot of things that had happened," and that, although he was

probably angry mostly at himself, he was also angry "with the other outside things with the Board and with all the criminal charges." Dr. Welden testified that he ceased using alcohol when he entered into the Superseding Step I Consent Agreement and began EtG testing in July or August 2008.[1] (Tr. at 36, 51, 55-56, 126-127, 148)

9. Dr. Welden asserted that his use of alcohol during this period was "occasional" and that he would "have a few drinks" with friends. He stated that his drinking "never escalated" and that he was not "drinking alcoholically." He further stated: "After getting my August 2008 Superseding Step I Consent Agreement, I stopped drinking and have remained clean and sober since then except for on June 23rd, 2010, when I tested positive for EtOH." (Tr. at 37, 126)

2008 Consent Agreement

10. As set forth above, in March 2008 the Board formally notified Dr. Welden of allegations against him in Case No. 08-CRF-030. The charges were resolved pursuant to a Superseding Step I Consent Agreement, which was entered in lieu of formal disciplinary proceedings. Dr. Welden admitted the truth of all the factual and legal allegations in the March 2008 notice. The 2008 Consent Agreement became effective on August 14, 2008, and remains in effect to the present time. (St. Ex. 2 at 1-3, 11-13)

11. Pursuant to the 2008 Consent Agreement, Dr. Welden's certificate to practice medicine was suspended for an indefinite period not less than one year. The 2008 Consent Agreement also includes terms and conditions governing the period of suspension as well as conditions for reinstatement/restoration of his certificate. (St. Ex. 2 at 3-8) The terms and limitations for the suspension include the following:

- Paragraph 3 of the 2008 Consent Agreement requires Dr. Welden to abstain from the personal use or possession of drugs, except those properly prescribed to him by an authorized practitioner with full knowledge of Dr. Welden's history of chemical dependency. In addition, whenever Dr. Welden receives such a prescription, he must notify the Board in writing within seven days. Further, within 30 days of the prescription date, Dr. Welden must provide to the Board a copy of the prescription or other written verification from the prescriber stating the dosage, amount, number of refills, directions for use and other information. (St. Ex. 2 at 4)

- Paragraph 4 of the 2008 Consent Agreement requires that Dr. Welden "shall abstain completely from the use of alcohol." (St. Ex. 2 at 4)

- Paragraph 7 of the 2008 Consent Agreement provides that Dr. Welden "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," and the "quarterly declarations must be received in the Board's offices on or before the first day of every third month." (St. Ex. 2 at 5) Ms. Bickers

[1] "EtG" refers to ethyl glucuronide, a metabolite of ethyl alcohol. EtOH refers to ethyl alcohol, also known as ethanol.

explained that Dr. Welden must submit a declaration even when not in full compliance, specifying the areas in which he has not been compliant. (Tr. at 57-58, 85)

- Paragraph 9 of the 2008 Consent Agreement provides, in part:

> Dr. Welden shall submit to random urine screenings for drugs and alcohol *at least four times per month*, or as otherwise directed by the Board.
>
> * * *
>
> All such urine screenings for drugs and alcohol shall be conducted through a Board-approved drug testing facility and collection site, * * * and the screening process shall require *a daily call-in procedure*.
>
> Dr. Welden shall submit, at his expense and on the day selected, urine specimens for drug and/or alcohol analysis. * * * *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 Consent Agreement.

(St. Ex. 2 at 5-6, emphasis added)

- In addition, pursuant to Paragraph 13 of the 2008 Consent Agreement, Dr. Welden must participate in an alcohol/drug rehabilitation program such as Alcoholics Anonymous or Narcotics Anonymous no less than three times per week, and he must submit "acceptable documentary evidence of continuing compliance with this program, including submission to the Board of meeting attendance logs, which must be received in the Board's offices no later than the due date for [his] quarterly declarations." (St. Ex. 2 at 7-8)

Violation of the 2008 Consent Agreement

Failure to Call In As Required & Failure to Submit to Urine Screens At Least 4 Times Per Month

12. Ms. Bickers testified that, under the 2008 Consent Agreement, Dr. Welden's program of random urine screens is managed through FirstLab and that Dr. Welden must call FirstLab every day to determine whether he must submit a urine specimen on that day. (Tr. at 63, 73-82)

13. Ms. Bickers testified, and the FirstLab records show, that Dr. Welden failed to satisfy the requirement that he must call FirstLab every day to learn whether he must provide a urine specimen that day. From July 2, 2009, through February 1, 2010, Dr. Welden failed to call in on 31 occasions: he missed seven times in July, four times in August, twice in September, three times in October, four times in November, eight times in December, and three in January 2010. On five of the days when he failed to call, Dr. Welden had been scheduled to provide a urine specimen, and he then failed to submit the specimen as required. Ms. Bickers testified

that Dr. Welden had failed to submit to a random urine screen at least four times per month. (St. Ex. 4 at 1-2; Tr. at 63, 73-82)

14. Dr. Welden admitted that he had missed many calls to FirstLab, but he asserted that there had been good explanations for some of the missed calls. For instance, he testified that, on one occasion, he had dropped his phone into the ocean. He further testified that, because of the criminal actions in which he had been involved, he had been subject to urine-screening requirements from multiple agencies at one time, which had been confusing. Also, he said he had been jailed at one point and could not call in, and on other days his FirstLab account was on hold due to his nonpayment of fees. He stated that, since then, he has tried to become better at making sure he makes the call every day. (Tr. at 47, 74-75, 119, 131-133, 139-140)

Quarterly Declarations

15. With respect to quarterly declarations of compliance, Ms. Bickers testified that Dr. Welden has failed to provide timely declarations as required. Ms. Bickers testified that the Board received only one declaration from Dr. Welden in 2009, during the summer, and that his next declaration was submitted late, on February 22, 2010. (St. Ex. 3; Tr. at 83-85, 87-88) During the hearing, Dr. Welden admitted: "I have not been timely on my declarations." (Tr. at 47)

Attendance at Rehabilitation Meetings

16. Ms. Bickers testified that Dr. Welden did not submit attendance logs for participation in AA and NA from August 2009 to February 2010. However, on February 22, 2010, Dr. Welden submitted six months of attendance logs. However, in these logs submitted in February 2010, the entries state that Dr. Welden had attended meetings on dates in *August 2010* through *December 2010*, dates that had not yet occurred. These logs also listed attendance in January 2010. (St. Ex. 3; Tr. at 87-89)

17. During the hearing, Dr. Welden asserted that he had lost his attendance log and had simply attempted to recreate it, and had "copied in the wrong year" for August through December 2009.[2] (Tr. at 141) (See, also, in St. Ex. 3, the logs themselves, purporting to show Dr. Welden's dates of attendance and signatures of persons confirming his attendance at meetings.)

June 2010 Consumption of Alcohol: Testing of Urine Collected on June 23, 2010

18. On June 23, 2010, within a few months of the Board's notice of opportunity for hearing in March 2010 (described in the introductory materials above), Dr. Welden provided a urine specimen that tested positive for ethyl alcohol and amphetamine. (St. Ex. 6)

[2] Based on Dr. Welden's tone and demeanor at hearing, together with the content of his testimony and a review of the attendance logs, the Hearing Examiner finds that Dr. Welden's testimony was not credible and that the logs in their entirety are unreliable.

19. At the hearing, Dr. Welden did not dispute the validity of the urine screen, and he admitted that he had consumed alcohol. However, he expressed the belief that alcohol had never really been an "issue" for him. (Tr. at 35-37, 71-72, 127-128, 177, 179-180) Dr. Welden explained:

> Alcohol really doesn't do anything for me. It never really did. I tried to use it in June, the end of June, 'cause I was just -- you know, I was just feeling it was -- I was trying to numb something with, you know, everything that was going on, but it really doesn't work, you know, for me.

(Tr. at 180)

20. Dr. Welden, in discussing his use of alcohol generally, stated that he had never felt he had a problem with alcohol, in that he had never consumed more than a few drinks when socializing with friends. He explained that, although he had gotten drunk in college, such incidents had not really occurred since he had been in medicine. (Tr. at 35-37, 125-126)

21. Dr. Welden asserted that his episode of drinking alcohol in June 2010 did not signal a problem with chemical dependence but was merely a single lapse in judgment. He testified: "I view this incident as a one-time lapse in judgment as opposed to a return to a cycle of addiction." (Tr. at 127-128)

    However, Dr. Welden explained that, when he had chosen to drink alcohol in June 2010, he had been "in a very dark place." He said that he had felt hopeless and alone, and was resentful and angry at the Board, which he felt was not working with him to help him get back to practice but was "continuing to punish [him] harshly." (Tr. at 126-127) Dr. Welden stated that, in late June 2010, he had "just kind of given up" and did not care any more.[3] (Tr. at 39)

22. Dr. Welden asserted that, since June 2010, he had "gone from anger and depression, which were kind of the main stages that I was in for that period of time after getting cited, you know, just to more of an acceptance."[4] (Tr. at 127)

Amphetamine in the Urine Specimen Collected on June 23, 2010

23. With respect to the report of amphetamine in his urine in June 2010, Dr. Welden stated that he has been taking Adderall for ADHD since 2006 and that his physician had given him a monthly prescription for the drug. Dr. Welden conceded that he had been out of compliance with his 2008 Consent Agreement with respect to his failure to provide updated prescriptions for Adderall; he acknowledged that he did not provide documentation to the Board for each

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[3] The Hearing Examiner is not convinced that the June 2010 relapse was simply a one-time lapse in judgment. The numb feeling that Dr. Welden said he sought when using alcohol in June 2010 (*see* par. 19 above) sounds very similar to the numb feeling he sought when using opiates. *See, e.g.,* Tr. at 40 ("Opiates gave me that kind of comfortably numb feeling that I needed at that point in my life."); Tr. at 144 (testifying that, throughout 2006, "my use of Opiates became more regular to numb my emotion pain"); Tr. at 127 (stating that the "only thing that drinking did was very temporarily numb the pain").

[4] The Hearing Examiner observed that Dr. Welden repeatedly displayed signs of agitation and frustration during the hearing, and his anger kept surfacing despite his efforts to suppress it. In other words, the Hearing Examiner did not observe the alleged acceptance.

prescription as required. He testified that he had not understood that his 2008 Consent Agreement required him to notify the Board each time he received another prescription. He stated that all of his urine specimens would have tested positive for amphetamines, and he acknowledged that a FirstLab report showed that many urine specimens had tested positive. However, he said he was "never asked for an updated prescription" and that all his probationary-conference information sheets had listed Adderall and Lexapro as his medications. (Tr. at 34-42, 47, 70, 118)

24. Ms. Bickers testified that Dr. Welden had not been compliant with regard to the requirement in the 2008 Consent Agreement that he must provide documentation regarding prescriptions. She stated that the Board had received only three prescriptions—one in March 2009, one in July 2009, and one in April 2010. Ms. Bickers noted that she had told Dr. Welden on at least four occasions that the Board needed copies of his prescriptions. Afterwards, he would provide a copy of a prescription, except for maybe one occasion. (Tr. at 68-70)

Application for Restoration of Licensure - 2009

25. On or about September 11, 2009, Dr. Welden submitted to the Board an application for restoration of his license to practice allopathic medicine and surgery in Ohio, which remains pending. The application includes an affidavit, signed by Dr. Welden before a notary public on September 2, 2009, affirming that all his statements in the application are true. (St. Ex. 5 at 2, 12, 56-58)

26. In his application, Dr. Welden answered "Yes" to a number of questions, including the following:

- Question 2 regarding whether he had ever been censured, disciplined, had privileges suspended or terminated, etc.;
- Question 6 regarding whether he had ever lost specialty board certification;
- Question 7 regarding whether any board, department, agency or other body had limited, restricted, suspended or revoked any professional license, certificate or registration;
- Question 10 regarding whether he had ever been requested to appear before any board, bureau, department, agency or other body concerning allegations against him;
- Question 11 regarding whether he had ever entered into an agreement with respect to a profession license in lieu of formal disciplinary action;
- Questions 12 and 13 regarding whether he had ever been notified of any investigation, charges, or allegations made with respect to a professional license;
- Questions 15 and 17 regarding whether there had been legal actions against him; and
- Question 19 regarding limitation, suspension or revocation of participation in a third-party reimbursement program.

(St. Ex. 5 at 7-9) Dr. Welden not only answered "yes" to these and other questions, but he also submitted explanations and details regarding his affirmative answers. (St. Ex. 5 at 11, 18-55)

27. When asked in Question 16 whether he had ever "been summoned into court as a defendant" or had any lawsuit filed against him other than a malpractice suit, Dr. Welden answered, "No." (St. Ex. 5 at 8)

    However, on or about August 26, 2009, Dr. Welden had been arrested in Clermont County, Ohio, for allegedly practicing medicine without a license in October 2008. Dr. Welden admitted that his answer to Question 16 was incorrect, but he explained that he had merely made a mistake. Dr. Welden testified that it was his general recollection that he had filled out most of the application before being arrested and then submitted the application after getting out of jail, without updating the information in the application, although he testified that his recollection of the events surrounding his arrest, arraignment and indictment are "a little fuzzy." Further, Dr. Welden testified that he may not have understood the question, because he had been taken to jail in handcuffs rather than being "summoned into court." (St. Ex. 5 at 8, 12, 57; Tr. at 17-19, 43-48, 142)

28. Dr. Welden explained that it would have made no sense for him to try to deceive the Board about that arrest, because it had involved the alleged practice of medicine without a license, and it was his understanding that the Board had contacted the prosecutor's office to instigate that criminal action against him. In addition, Dr. Welden emphasized that, in completing the restoration application, he had given many affirmative answers and had disclosed other court actions and had disclosed suspensions of licenses, certificates, and privileges. (St. Ex. 5 at 11; Tr. at 45-46)

29. The hearing exhibits do not include court documents regarding the criminal action referenced in the notice or regarding the criminal actions described by Dr. Welden during his testimony. However, Dr. Welden testified during the hearing regarding the criminal actions in which he had been involved. He stated that he had been arrested in early 2008 for practicing medicine without a license in Clermont County, Ohio, and he explained that he had pleaded guilty in order to receive intervention in lieu of conviction (ILC). He explained that he was eligible for ILC because his drug abuse had caused the suspension of his medical license. In addition, Dr. Welden testified that he had been arrested for practicing without a license in Warren County, Ohio, and that the court's final order of ILC in that case was entered in June 2009. [5] (Tr. at 17-19, 119, 150-152, 213-215)

30. Dr. Welden further testified that there had been a third arrest in August 2009 for practicing without a license in Clermont County. However, he testified that the trial judge had dismissed the charges after the State presented its case at trial. (Tr. at 19-20, 45)

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[5]The notices of opportunity for hearing in the present matters, Case Nos. 10-CRF-029 and 10-CRF-092, do *not* allege that Dr. Welden is subject to discipline under R.C. 4731.22(B)(9) with regard to a "judicial finding of eligibility for intervention in lieu of conviction for a felony." However, this may be due to the fact that, in an earlier administrative action, Case No. 08-CRF-030, the Board had previously alleged—and Dr. Welden had agreed—that he had practiced medicine during his suspension, which constituted the commission of an act constituting a felony pursuant to R.C. 4731.22(B)(10). *See* 2008 Consent Agreement.

31. In support of the restoration application, a letter was submitted to the Board in September 2009 by J. Stephen Meredith, M.D., a psychiatrist, who stated in full:

> Dr. Welden has been under my professional care since 1/26/07.[6] He has a history of chronic depression, attention deficit disorder and polysubstance abuse. He was admitted to Hazelden for two brief admissions where he discharged himself, relapsed, and finally was admitted for a third time on 3/20/07. He was able to stay throughout the program and was discharged on 4/17/07. His substance problem primarily has been opiate dependence but also alcohol dependence and sedative hypnotic abuse. He also will carry a diagnosis of personality disorder, not otherwise specified.
>
> He did well on his one-month program at Hazelden and since that time has been followed with a once a week outpatient monitoring professional group with a chemical dependency counselor as a monitor and a 3 times a week AA and/or group meetings.
>
> He sees me every one to two months for medication for his depressive disorder for which he takes Lexapro 10 mg/day and for his attention deficit disorder for which he takes Adderall XR 60 mg/day. I believe he has made good progress since Hazelden and seems well motivated and I see no evidence of any regression. I believe he's made good progress and should be allowed to resume his medical license.[7] Any questions, feel free to give me a call.

(Resp. Ex. G; Tr. at 120)

32. In support of his application for restoration, Dr. Welden also took and passed the Special Purpose Examination in March 2009. (St. Ex. 5 at 66)

Additional Evidence from Dr. Welden

33. Dr. Welden testified that, after he entered into the 2007 Consent Agreement with the Board, his specialty board certification in emergency medicine was suspended. In addition, the Florida Board of Medicine took action against Dr. Welden's Florida license based on the suspension in Ohio. Further, Dr. Welden testified that his Kentucky license, which he had obtained in order to work in an emergency department in Kentucky during his fourth year of residency in Cincinnati, is no longer active. (Tr. at 15-16, 23; St. Ex. 5 at 11) The hearing exhibits include documents regarding the Florida Board's administrative action (St. Ex. 5 at 18-55), as well as a

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[6]It is important to note that the notices of opportunity for hearing in the present consolidated matters, Case Nos. 10-CRF-029 and 10-CRF-092, do not allege impairment related to a psychiatric condition under R.C. 4731.22(B)(19). However, Dr. Welden asserted during the hearing that his "fitness to return to practice" had been documented by evidence including the letter from his psychiatrist, and Dr. Welden requested that the psychiatrist's letter be admitted into evidence. (Tr. at 120, 182)

[7]Dr. Meredith's letter gives no indication that he was aware that Dr. Welden had resumed using alcohol in 2007 and continued using alcohol until about August 2008. Further, his opinion was rendered prior to Dr. Welden's documented use of alcohol in June 2010.

document from the Kentucky Board indicating that the Kentucky license expired in 2005 and that no action has been taken by that Board. (St. Ex. 5 at 56)

34. Dr. Welden testified that, since March 2007, he has refrained from using any nonprescribed drugs or medications. He presented letters of support from individuals involved in his recovery program, who stated that Dr. Welden has shown commitment to sobriety and to doing what needs to be done to keep his life on track. (Resp. Exs. E, G, H; Tr. at 33-34) Dr. Welden also presented letters of support from physicians with whom he had worked in the past and attorneys with whom he currently works. These colleagues describe him as hard-working, dedicated, and having superior medical knowledge and skills. Dr. Welden testified that he had practiced in an underserved area in rural southern Ohio, and that he would like to continue to make a difference by resuming his practice there. (Resp. Exs. B, C, D, F, I, J; Tr. at 115-117)

35. Dr. Welden stated that he participates in an outpatient program at Bethesda Oak Alcohol Treatment Center in Cincinnati. (Tr. at 222) He submitted an August 2009 letter from Raymond H. Hellman, M.D., the medical director of the program, who stated that Dr. Welden has been an active participant in the Recovering Professionals Continuing Care Group since May 2007. Dr. Hellman opined that Dr. Welden "demonstrates the ability to use support systems to sustain abstinence-based problem solving" and that Dr. Welden "is capable of practice according to acceptable and prevailing standards of care."[8] (Resp. Ex. H)

36. Dr. Welden testified at the hearing that his recent compliance with the 2008 Consent Agreement has been excellent, and he wants to return to practice soon:

> I have been in excellent compliance for the last two months, even cancelling a trip to see my son in Florida because the Board would not grant me permission to go.
>
> I want desperately to return to practice and I hope that you will work to allow me to do this soon. I believe I have made great progress over the last three years and have done many things right.
>
> I have not been perfect and realize that I need to improve in prioritizing my compliance with my Consent Agreement. * * * [W]e say in the program, "It's about progress, not perfection."
>
> I hope the Board considers the efforts I have made in recovery and the potential I have to make a positive impact to the healthcare of citizens in Ohio when making a final determination regarding the future of my medical license.

[8]However, Dr. Hellman's letter gives no indication that he was aware that Dr. Welden, after joining the continuing-care group, had resumed the use of alcohol in 2007 and continued to use alcohol through mid-2008, in violation of his consent agreement at that time. Further, Dr. Hellman's letter was written prior to Dr. Welden's documented use of alcohol in June 2010 in violation of the 2008 consent agreement.

> I am ready and willing to work cooperatively with the Board to show my compliance, my fitness to resume practicing, and my strong recovery program.

(Tr. at 160-161)

37. Dr. Welden further testified:

> In the AA/NA program we often say acceptance is the solution to all my problems. I cannot fight the Board any more. I worked hard to achieve my dream of being a physician, and I want more than anything to get back to my passion as soon as I can.
>
> The break from being a physician has not been all bad. Three years ago my identity was mainly composed of the fact that I was a "physician." I was a workaholic and only gained validation and personal satisfaction through my career. I had neglected the other areas in my life that were important. * * * Through recovery * * * I have been able to find a better balance in my life.
>
> * * *
>
> My addiction has resulted in a cascade of challenging consequences for me, including divorce, suspension of license, loss of financial security, jail time, having to defend myself in criminal cases, in civil cases, alienation from colleagues, and many other serious consequences. I truly believe that "whatever doesn't kill you makes you stronger." I hope that I get back to medical practice soon.
>
> In addition to looking at the disciplinary guidelines, I would also like you to consider the fact that the Board sat on my Reinstatement Application—and I don't know what happened then—from August 2009 until I had my criminal trial in January 2010.

(Tr. at 158-159)

38. In addition, Dr. Welden testified that he believes his compliance has been good under the circumstances, and that, when he returns to practice, he will be a better doctor:

> I realize I have missed many call-ins for FirstLab, but I feel that I have done pretty well with the amount of stress I have been under at times. Regardless, I feel I am mentally healthier than ever and that I have gone through a tremendously difficult time in my life and have emerged with resilience.
>
> When I go back to practice, I will be a better doctor. I will have greater depth of experience, greater insight into myself, more compassion, and a very good grasp of the complex nature of addiction that touches so many people in different ways.

> Documentation of my fitness to return to practice has been documented with letters to the Board, and I should say on two occasions, not several. Most recently, in the summer of 2009, the Board received letters from two addiction specialists and my psychiatrist attesting to my fitness to practice.
>
> * * *
>
> Even in the middle of all the turmoil, I did call in 90 percent of the days and I did perform 32 tests in an eight-month period from June 2009 until February 2010, of which all were negative for EtG, alcohol, and any other non-prescribed drug.
>
> I am disappointed in myself for not doing better in the call-in procedure but as they say in the program, it's about progress, not perfection, and I know that I was doing the best I could during that time. Things have changed and I am no longer under the stress of criminal charges and I feel I can do better with the call-in procedure now.
>
> After seeing these results I have tried to be extremely vigilant in the call-in procedure and over the past two months I have only missed two days. I plan to continue this trend into the future, as I am dedicated to getting my life and schedule more organized.[9]

(Tr. at 119-120, 140)

39. When Dr. Welden was asked what action the Board should take, if it should find that he had been significantly noncompliant with his consent agreement and had relapsed on alcohol, he responded that he has "done a crappy job at being compliant with this agreement" and that it would be fair for him to have some consequences. Nonetheless, he believes that he is "safe to practice" and that being taken away from medical practice for three years has been excessive. He said that he "can't see" the Board "instituting more suspension." However, he then stated that a six-month suspension would be fair because it would allow him to demonstrate compliance. He testified that he had been "really serious" about compliance for the two months preceding the hearing and just needed a little time to demonstrate compliance. (Tr. at 219-220)

    Dr. Welden also stated that he cannot afford to complete another 28 days of residential treatment. He emphasized that he has already completed "fifty days" of residential treatment and that the outpatient program at Bethesda is sufficient.[10] (Tr. at 221-222)

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[9] Although Dr. Welden was pleased with this level of compliance, the Hearing Examiner was troubled by it. Despite purported strong efforts to be vigilant and the fact that compliance issues would be a central focus during the hearing, Dr. Welden still missed two days of calling in during the two months preceding the hearing by his own admission. The Hearing Examiner was persuaded that the evidence, in its entirety, demonstrated that Dr. Welden was unable to be compliant for *two months* despite alleged vigilance and strong motivation, which is not a good sign.

[10] Although Dr. Welden may have been in treatment centers for a total of fifty days, the record indicates that the first two admissions were unsuccessful, in that he left both programs without completing them and suffered a relapse before he finally completed 28 days at a third facility. (St. Ex. 2 at 18; Resp. Ex. G)

Dr. Welden further testified:

> And there's other things that, you know, I could do to demonstrate -- you know, I'm just trying to stop. There's other things I could try to do to try to demonstrate, you know, that I want to practice again and that I'm a good physician.
>
> I mean, I think -- I think people around me -- I think, again, if you look at the paper and you look at all that, you look at my mug shots that you can pull up on the Web, or whatever, you kind of -- you can get a certain perspective. I think the people around me and certainly the people I work with and all that have a very high respect for me and think that I do great, I'm not impaired at all.
>
> And, actually, I hate that word, impaired. I just don't think -- I think that word, impaired, should actually be stricken. I'm not an impaired physician. I'm a very good physician with addiction. And if I'm in active addiction I should not be treating patients. I think "impaired" is just a way to put the scarlet letter on someone. And, again, I think that if I can demonstrate to the Board that I'm serious about, you know, their compliance and my recovery then, you know, suspend me for a period of time to allow me to demonstrate that.

(Tr. at 222-223)

SELECTED STATUTES AND RULES

1. R.C. 4731.22(B) provides, in part:

> The board * * * shall * * * limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:
>
> * * *
>
> (26) 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.
>
> For the purposes of this division, any individual authorized to practice by this chapter accepts the privilege of practicing in this state subject to supervision by the board. * * *
>
> * * * If the board determines that the individual's ability to practice is impaired, the board shall suspend the individual's certificate or deny the individual's application and shall require the individual, as a condition for initial, continued, reinstated, or renewed certification to practice, to submit to treatment.

> ***Before being eligible to apply for reinstatement of a certificate suspended under this division, the impaired practitioner shall demonstrate*** to the board the ability to resume practice in compliance with acceptable and prevailing standards of care under the provisions of the practitioner's certificate. The 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 the individual has successfully completed any required inpatient treatment;
>
> (b) ***Evidence of continuing full compliance with*** an aftercare contract or ***consent agreement;***
>
> (c) Two written reports indicating that the individual's ability to practice has been assessed and that the individual 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 the assessments and shall describe the basis for their determination. (Emphasis added)

2. Ohio Administrative Code Section [Rule] 4731-16-01(A) defines the term "impairment" as used in Revised Code 4731:

> (A) "Impairment" means 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. Impairment includes inability to practice in accordance with such standards, and inability to practice in accordance with such standards without appropriate treatment, monitoring or supervision.

3. Rule 4731-16-01(B) defines the term "relapse" as follows:

> "Relapse" means any use of, or obtaining for the purpose of using, alcohol or a drug or substance that may impair ability to practice, by someone who has received a diagnosis of and treatment for chemical dependency or abuse, except pursuant to the directions of a treating physician who has knowledge of the patient's history and of the disease of addiction, or pursuant to the direction of a physician in a medical emergency. * * *

In addition, Rule 4731-16-02(B)(2) provides that, if an examination discloses impairment or the Board has other reliable, substantial and probative evidence demonstrating impairment, the Board "shall initiate proceedings to suspend the license or deny the applicant." The rule further provides that a relapse following treatment "***shall constitute independent proof of impairment and shall support license suspension or denial without the need for an examination.***" (Emphasis added)

4. With regard to eligibility for re-licensure, Rule 4731-16-02(B)(3) provides in part:

> Before being eligible to apply for reinstatement of a license suspended under this paragraph the impaired individual must demonstrate to the board that the individual can resume practice in compliance with acceptable and prevailing standards of care under the provisions of the individual's certificate. Such demonstrations 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 the individual has successfully completed all required treatment, as follows:***
>
> (i) Except as provided in paragraph (B)(3)(a)(ii) of this rule [relating to massage therapists and other non-physicians], the required treatment shall include inpatient or residential treatment that extends a minimum of twenty-eight days with the following exception: If the individual has previously completed an inpatient or residential treatment program of at least twenty-eight days and maintained sobriety for at least one year following completion of that inpatient or residential treatment, the treatment required shall be determined by the treatment provider.[11]
> * * *
>
> (b) ***Evidence of continuing full compliance*** with an aftercare contract that meets the requirements of rule 4731-16-10 of the Administrative Code, and ***with any consent agreement or order of the board then in effect***;
> * * *.

5. In addition, Rule 4731-16-02(D) provides that an individual who has relapsed following treatment shall be "ineligible to apply for reinstatement" for at least ninety days following the date of license suspension for a first relapse.[12]

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[11] In the present matter, the evidence establishes that Dr. Welden completed 28 days of inpatient treatment in April 2007. Dr. Welden resumed using alcohol by November 2007 and continued using alcohol to an unknown extent until July or August 2008. (The Hearing Examiner found, with respect to this use of alcohol in late 2007 through mid-2008, that Dr. Welden's testimony was unreliable, and it is more likely than not that he minimized the extent of his drinking.)

[12] The Hearing Examiner recognizes that the relapse in June 2010 does not appear to be a "first relapse" following treatment. However, for the following reasons, the Hearing Examiner views the use of alcohol in June 2010 as part of a lengthy, ongoing relapse that began in late 2007. First, with respect to the drinking from late 2007 through mid-2008, it appears that disciplinary action was not taken at that time because it was not discovered and/or documented by lab results at that time, due in large part to Dr. Welden's lack of full compliance with his urine-testing obligations. (Dr. Welden was cited in March 2008 for refusal to provide a urine specimen to a Board investigator, but there is no indication of a positive screen for alcohol until June 2010.) Second, after the relapse began in late 2007, there has not been further inpatient/residential treatment. Third, Dr. Welden entered into a new consent agreement in August 2008, but he was again unable to comply with significant parts of it. Thus, the consumption of alcohol in June 2010 is more appropriately viewed as part of an ongoing pattern rather than a second relapse.

FINDINGS OF FACT

1. In July 2007, Scott Robert Welden, M.D., entered into a Step I Consent Agreement with the Board in lieu of formal proceedings based on violations of R.C. 4731.22(B)(26) and (B)(10). In the 2007 Consent Agreement, Dr. Welden made admissions including that he is chemically dependent and that he inappropriately obtained controlled substances for his own use. Under the 2007 Consent Agreement, Dr. Welden's certificate to practice medicine and surgery in Ohio was suspended for an indefinite period of time not less than 180 days.

   In March 2008, the Board issued a notice of opportunity for hearing to Dr. Welden in Case Number 08-CRF-030, alleging among other things that he had practiced medicine during his suspension, had refused to provide a urine specimen to Board investigators, and had not provided accurate information to a Board investigator during an interview. The Board alleged violations of R.C. 4731.22(B)(5), (B)(10), (B)(15), and (B)(20).

2. Dr. Welden and the Board resolved the allegations in Case Number 08-CRF-030 by entering into a Superseding Step I Consent Agreement [the 2008 Consent Agreement]. Dr. Welden admitted the truth of all the factual and legal allegations set forth in the March 2008 notice. Dr. Welden's certificate to practice in Ohio was suspended for an indefinite period of time but not less than one year from the effective date of the agreement. The 2008 Consent Agreement became effective on August 14, 2008, and remains in effect to date.

3. Paragraph 4 of the 2008 Consent Agreement provides that Dr. Welden shall abstain completely from the use of alcohol. In violation of this provision, Dr. Welden consumed alcohol in June 2010.

4. Paragraph 3 of the 2008 Consent Agreement provides:

   > Dr. Welden 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. Welden's history of chemical dependency. Further, in the event that Dr. Welden is so prescribed, dispensed or administered any controlled substance, carisoprodol, or tramadol, Dr. Welden shall notify the Board in writing within seven days, providing the Board with the identity of the prescriber; the name of the drug Dr. Welden 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. Welden 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.

In violation of this provision, Dr. Welden used Adderall without providing to the Board and/or without timely providing to the Board, a copy of a prescription for Adderall or other written verification from the prescriber, during the time period from in or around October 2009 through in or around February 2010.

5. Paragraph 7 of the 2008 Consent Agreement provides that Dr. Welden "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," and the "quarterly declarations must be received in the Board's offices on or before the first day of every third month."

However, Dr. Welden failed to provide and/or failed to timely provide quarterly declarations to the Board as required. In 2009, he provided only one declaration, and a declaration due in early 2010 was submitted late, on February 22, 2010.

6. Paragraph 9 of the 2008 Consent Agreement provides, in pertinent part:

> Dr. Welden shall submit to random urine screenings for drugs and alcohol at least four times per month, or as otherwise directed by the Board.
>
> * * *
>
> All such urine screenings for drugs and alcohol shall be conducted through a Board-approved drug testing facility and collection site, * * * and the screening process shall require a daily call-in procedure.
>
> Dr. Welden shall submit, at his expense and on the day selected, urine specimens for drug and/or alcohol analysis. * * * 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 Consent Agreement.

Dr. Welden failed to comply with the daily call-in requirement and failed to submit urine specimens for random urine screens for drugs and alcohol as required. From July 2, 2009, through February 17, 2010, Dr. Welden failed on 31 occasions to make the required daily call to FirstLab, the Board-approved drug-testing facility. Five of those occasions were dates on which he had been scheduled to provide a random urine specimen, which he then failed to provide.

7. Paragraph 13 of the 2008 Consent Agreement requires Dr. Welden to undertake and maintain participation in an alcohol and drug rehabilitation program no less than three times per week, and that he must "submit acceptable documentary evidence of continuing compliance with this program, including submission to the Board of meeting attendance logs, which must be received in the Board's offices no later that the due date for [his] quarterly declarations."

However, Dr. Welden has failed to submit acceptable documentary evidence of his attendance as required and/or has failed to submit timely evidence of compliance. After submitting an attendance log in August 2009, Dr. Welden did not submit another attendance log until February 22, 2010. The log submitted in February 2010 was late, and its contents do not constitute acceptable evidence of continuing compliance with the program.

8. On or about September 11, 2009, Dr. Welden submitted to the Board an application for license restoration, which is currently pending. In his application, Dr. Welden answered "No" to Question 16, which asked, in part, whether he had ever "been summoned into court as a defendant or had any lawsuit filed against" him other than a malpractice suit.

   However, on or about August 26, 2009, Dr. Welden had been arrested by authorities in Clermont County, Ohio, on charges of practicing medicine without a license.

   During the hearing, Dr. Welden admitted that his answer to Question 16 was incorrect. However, he stated a recollection that he had filled out most of the application before being arrested and had subsequently submitted the application without updating the information. Further, Dr. Welden testified that he may not have understood the question, because he had been taken to jail in handcuffs rather than being "summoned into court." Dr. Welden further noted that he had provided substantial details in his application about numerous other unfavorable actions against him and that he had reason to believe that the Board was well aware of the August 2009 charges against him.

   The Hearing Examiner found that, while Dr. Welden was somewhat vague and confused in his testimony regarding the events in August and September 2009, his testimony was credible that he had not intentionally withheld information regarding the August 2009 arrest when he submitted his September 2009 application.

   In addition, there was no evidence presented during the hearing to contradict Dr. Welden's testimony that he did not know of the charges set forth the 2009 indictment until he was informed of the charges upon arrest.

CONCLUSIONS OF LAW

1. The acts, conduct, and/or omissions of Scott Robert Welden, M.D., as set forth above in Findings of Fact 1 through 7, individually and/or collectively, demonstrate "[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 language is used in R.C. 4731.22(B)(26).

2. Further, Dr. Welden's acts, conduct, and/or omissions as set forth above in paragraphs 2 through 7, individually and/or collectively, constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that language is used in R.C. 4731.22(B)(15).

3. However, the evidence is not sufficient to establish that Dr. Welden's acts, conduct, and/or omissions, as set forth above in Finding of Fact 8, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery * * *; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that language is used in R.C. 4731.22(B)(5).

Rationale for Proposed Order

The Hearing Examiner recognizes Dr. Welden's genuine efforts to recover from chemical dependency. However, the risks presented by Dr. Welden remain significant:

- As of 2007, Dr. Welden was dependent on narcotics and had engaged in illegal conduct to obtain them. Although he completed inpatient treatment and agreed to refrain from using alcohol, he had relapsed on alcohol by November 2007 and continued to use alcohol through mid-2008.

- Dr. Welden failed to comply with important terms of his 2007 Consent Agreement. He refused to cooperate with required urine-testing, and he practiced medicine when his license was suspended, which was not only a violation of his consent agreement but constituted criminal conduct. After entering into a new consent agreement in 2008, he again failed to comply with important terms.

- Dr. Welden's violations have been serious and pervasive. Due to his repeated lack of compliance with the Board's urine-screening program, the Board has no reasonable assurance that Dr. Welden refrained from using alcohol and unauthorized drugs during the periods when he failed to provide urine specimens as required. In addition, Dr. Welden's AA logs are unreliable. His blatant dishonesty in trying to fake six months of attendance logs indicates that his recovery is shaky and that he cannot be trusted to practice medicine.

- Although the treating psychiatrist reported that Dr. Welden's recovery is going well and there has been no sign of regression following inpatient treatment, the psychiatrist's opinion lacks a reliable factual foundation. Among other things, the report includes no mention of the fact that Dr. Welden used alcohol from late 2007 through mid-2008. Similarly, the letter from the director of the outpatient program at a Cincinnati hospital lacks a reliable factual foundation. The fact that Dr. Welden could maintain a façade that was convincing to two experienced professionals is cause for concern.

- During the hearing, Dr. Welden appeared to believe that most of his violations were *de minimus* and that he should be permitted to return to practice in six months or less. He emphasized the progress he has made in the last three years. However, such statements demonstrated to the Hearing Examiner that Dr. Welden lacks understanding of how very deficient his compliance has been for the past three years, and how many signs of unresolved problems continue to be evident. For example, Dr. Welden

> minimized the significance of his June 2010 relapse, appearing to lack understanding that his own words have revealed that he used alcohol in the same way he used narcotics, to numb emotional pain and escape reality in a manner that is dangerously self-destructive.

During the hearing, Dr. Welden's expressions of strong desire to return to practice, and his earnest promises of future compliance, were eloquent. His situation evokes sympathy and compassion. Nonetheless, on consideration of all the evidence, the Hearing Examiner cannot recommend that the Board order a period of indefinite suspension with conditions for license restoration followed by probationary terms.

First and foremost, in the present circumstances, Ohio law requires that Dr. Welden must complete an additional program of inpatient/residential treatment for at least 28 days. However, Dr. Welden was emphatic that he cannot return for further inpatient treatment and sees no need for it. Even so, the treatment is mandatory, as Dr. Welden experienced a relapse following inpatient treatment, and there is no reliable evidence of 12 months of sobriety following his completion of treatment in 2007.

Second, the Hearing Examiner has serious concerns regarding Dr. Welden's submission of false AA attendance logs. It would be extremely difficult to devise a reasonable method for the Board to obtain reliable proof in the future that Dr. Welden has actually attended the required AA meetings. Also, as noted above, it is worrisome that, in 2009, the treating psychiatrist and the medical director of an alcohol/drug recovery program were apparently unaware of Dr. Welden's extended relapse on alcohol in 2007 and 2008 in violation of his consent agreement.

Further, Dr. Welden has shown a lack of sufficient comprehension of the significance of his history of violations of consent agreements and Ohio law. While participants in rehabilitation may focus on progress rather than perfection, the Board must focus primarily on protecting the public. Although the Board endeavors to assist impaired physicians to recover and return to practice, the Board's first priority is public safety.

In sum, the Hearing Examiner believes that Dr. Welden's conduct has rendered it impossible as a practical matter for the Board to supervise and monitor his recovery adequately. Accordingly, a non-permanent revocation of the certificate is recommended, and the pending application for restoration is in effect denied in the proposed order.

Dr. Welden can reapply for licensure in the future, when he can demonstrate that he is ready and able to comply with a Board-monitored rehabilitation program, including completion of the required inpatient/residential treatment for 28 days with a Board-approved provider. During the time that Dr. Welden considers when and if he will undertake the required treatment, he can progress in his recovery in the absence of Board supervision. At present, however, there is little point in requiring Dr. Welden to undergo months of expensive urine-screening during an ongoing suspension when he is unable and/or unwilling to submit to a condition of license restoration, which is a post-relapse course of inpatient/residential treatment for 28 days, which is mandatory before the Board may consider returning him to the practice of medicine.

PROPOSED ORDER

It is hereby **ORDERED** that:

The certificate of Scott Robert Welden, M.D., to practice allopathic medicine and surgery in Ohio is hereby REVOKED.

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

PA Davidson

Patricia A. Davidson
Hearing Examiner

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

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July 14, 2010

Case number: 10-CRF- 092

Scott Robert Welden, M.D.
2406 Grandview Avenue
Cincinnati, OH 45206

Dear Doctor Welden:

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

(1) On or about March 10, 2010, the Board issued to you a Notice of Opportunity for Hearing [March 2010 Notice of Opportunity], and the hearing is currently pending. The March 2010 Notice of Opportunity alleged, in part, that you had failed to comply with the terms, conditions and limitations of a Superseding Step I Consent Agreement that you entered into with the Board on or about August 14, 2008.

(2) Before the Board issued to you the March 2010 Notice of Opportunity, you had an extensive history with the Board, which included the following:

(a) On or about July 11, 2007, you entered into a Step I Consent Agreement [July 2007 Step I Consent Agreement] with the Board in lieu of formal proceedings based upon your violations of Sections 4731.22(B)(26) and (B)(10), Ohio Revised Code, which suspended your certificate to practice medicine and surgery for an indefinite period of time, but not less than 180 days. In the July 2007 Step I Consent Agreement, you made certain admissions, including that you were chemically dependent, and that you had inappropriately obtained controlled substances for your own use.

(b) On or about March 12, 2008, the Board issued a Notice of Opportunity for Hearing [March 2008 Notice of Opportunity], in which it was alleged, in part, that you had practiced medicine during your indefinite suspension, you had refused to provide a urine screen to Board investigators, you had not

Mailed 7-15-10

provided accurate information to a Board investigator during an interview, and you had violated Sections 4731.22(B)(10), (B)(15), (B)(5), and (B)(20), Ohio Revised Code.

(c) On or about August 14, 2008, you entered into a Superseding Step I Consent Agreement [August 2008 Superseding Step I Consent Agreement] with the Board in lieu of formal proceedings, in which you admitted to all of the factual and legal allegations as set forth in the March 2008 Notice of Opportunity.

Pursuant to the August 2008 Superseding Step I Consent Agreement, your certificate to practice medicine was suspended for an indefinite period of time, but not less than one year from the effective date of the Agreement, a copy of which is attached hereto and incorporated herein. Since August 14, 2008, you have been subject to all the probationary terms, conditions and limitations of the August 2008 Superseding Step I Consent Agreement.

(3) Paragraph 4 of the August 2008 Superseding Step I Consent Agreement provides that you "shall abstain completely from the use of alcohol."

Despite this provision, a urine screen collected from you on or about June 23, 2010, tested positive and was subsequently GC/MS confirmed for alcohol.

Pursuant to Rule 4731-16-02(B)(2), Ohio Administrative Code, 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 paragraph (3) above, individually and/or collectively, constitutes "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (2) through (3) 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,

Lance A. Talmage, M.D.
Secretary

LAT/MRB/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3938 3020 4940
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

March 10, 2010

Case number: 010-CRF- 029

Scott Robert Welden, M.D.
2406 Grandview Avenue
Cincinnati, OH 45206

Dear Doctor Welden:

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

(1) On or about July 11, 2007, you entered into a Step I Consent Agreement [July 2007 Step I Consent Agreement] with the Board in lieu of formal proceedings based upon your violations of Sections 4731.22(B)(26) and (B)(10), Ohio Revised Code, which suspended your certificate to practice medicine and surgery for an indefinite period of time, but not less than 180 days. In the July 2007 Step I Consent Agreement, you made certain admissions, including that you were chemically dependent, and that you had inappropriately obtained controlled substances for your own use.

On or about March 12, 2008, the Board issued a Notice of Opportunity for Hearing [March 2008 Notice of Opportunity], in which it was alleged, in part, that you had practiced medicine during your indefinite suspension, you had refused to provide a urine screen to Board investigators, you had not provided accurate information to a Board investigator during an interview, and you had violated Sections 4731.22(B)(10), (B)(15), (B)(5), and (B)(20), Ohio Revised Code.

(2) On or about August 14, 2008, you entered into a Superseding Step I Consent Agreement [August 2008 Superseding Step I Consent Agreement] with the Board in lieu of formal proceedings, in which you admitted to all of the factual and legal allegations as set forth in the March 2008 Notice of Opportunity.

Pursuant to the August 2008 Superseding Step I Consent Agreement, your certificate to practice medicine was suspended for an indefinite period of time,

Mailed 3-11-10

but not less than one year from the effective date of the Agreement, a copy of which is attached hereto and incorporated herein. Since August 14, 2008, you have been subject to all the probationary terms, conditions and limitations of the August 2008 Superseding Step I Consent Agreement.

(3) Paragraph 4 of the August 2008 Superseding Step I Consent Agreement provides that you "shall abstain completely from the use of alcohol."

Despite this provision, you have consumed alcohol since on or about August 14, 2008, the effective date of your August 2008 Superseding Step I Consent Agreement.

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

(4) Paragraph 3 of the August 2008 Superseding Step I Consent Agreement provides that you shall abstain completely from the personal use or personal 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; that in the event you are prescribed, dispensed or administered any controlled substance, you shall notify the Board in writing within seven days, providing the Board with certain information regarding the prescriber and the drug you received; and that within thirty days of the date a controlled substance is prescribed, dispensed, or administered to you, you 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.

Despite this provision in the August 2008 Superseding Step I Consent Agreement, some of your urine screens that were collected from in or around October 2009 through February 2010 have tested positive for Adderall and have subsequently been GC/MS confirmed for that drug. While you had previously provided the Board, for an earlier time period, with copies of prescriptions for Adderall that were written by one of your physicians, you have failed to notify and/or timely notify the Board in writing within seven days that you had been prescribed Adderall, for the time period of in or around October 2009 through February 2010; nor have you provided and/or timely provided the Board with a copy of any prescription for Adderall or other written verification from the prescriber during the aforementioned time period.

(5) Paragraph 7 of the August 2008 Superseding Step I Consent Agreement provides that you "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," and the "quarterly

declarations must be received in the Board's offices on or before the first day of every third month."

Despite this provision, you have failed to provide and/or timely provide quarterly declarations to the Board. For example, in or around 2009, you only provided one declaration of compliance, which you signed on or about July 7, 2009, and was received by the Board on two separate dates; i.e., on or about August 12, 2009, and on or about August 28, 2009. Further, you failed to timely provide a declaration of compliance that was due no later than January 1, 2010, although you subsequently provided a declaration to the Board on or about February 22, 2010.

(6) Paragraph 9 of the August 2008 Superseding Step I Consent Agreement provides, in pertinent part, as follows:

> Dr. Welden shall submit to random urine screenings for drugs and alcohol at least four times per month, or as otherwise directed by the Board.
>
> * * *
>
> All such urine screenings for drugs and alcohol shall be conducted through a Board-approved drug testing facility and collection site, * * *, and the screening process shall require a daily call-in procedure.
>
> Dr. Welden shall submit, at his expense and on the day selected, urine specimens for drug and/or alcohol analysis. * * * 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 Consent Agreement.

Despite the aforementioned provisions in the August 2008 Superseding Step I Consent Agreement, from on or about July 2, 2009, to on or about February 17, 2010, you failed on approximately 30 separate occasions to call in and/or to timely call-in to FirstLab, the Board-approved drug testing facility, and on approximately five of the aforementioned occasions, you were scheduled to provide a random urine specimen, which you then failed to provide. As such, you have also failed to submit to random urine screenings for drugs and alcohol at least four times per month.

(7) Paragraph 13 of the August 2008 Superseding Step I Consent Agreement requires you to undertake and maintain participation in an alcohol and drug rehabilitation program no less than three times per week, and you "shall submit acceptable documentary evidence of continuing compliance with this program, including submission to the Board of meeting attendance logs, which must be

received in the Board's offices no later that the due date for Dr. Welden's quarterly declarations."

Despite the aforementioned provisions in the August 2008 Superseding Step I Consent Agreement, you have failed to timely provide the Board with documentary evidence of continuing compliance with the program. For example, on or about August 28, 2009, you submitted to the Board an attendance log that included meetings though on or about August 9, 2009; however, you did not submit another attendance log to the Board until or about February 22, 2009. In addition, the attendance log that you submitted to the Board on or about February 22, 2010, is not acceptable evidence of continuing compliance with the program during the months prior to such date of submission, as the purported dates of attendance are inaccurate and reflect dates in the year 2010 that have not yet occurred.

(8) On or about September 11, 2009, you caused to be submitted to the Board an Application for License Restoration Medicine or Osteopathic Medicine [Application], which is currently pending. In your Application, you answered "no" to question 16, which asked, in part, whether you had ever "been summoned into court as a defendant or had any lawsuit filed against you (other than a malpractice suit)"?

In fact, on or about August 26, 2009, in the Clermont County Court of Common Pleas, Clermont County, Ohio, an Indictment was filed against you for the practice of medicine or surgery without certificate. In or around October 2009, you stated under oath that you first learned of the Indictment on or about August 27, 2009, when you were arrested. Thereafter, in or around November 2009, a representative or the Board asked you why you did not inform the Board in your Application of the fact that you had been arrested on or about August 27, 2009. You responded by stating that you did not recall where the Application asked for that specific information. In addition, you stated that you may have submitted your Application before August 27, 2009.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) through (7) 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, our acts, conduct, and/or omissions as alleged in paragraphs (2) through (7) 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 (8) above, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or

misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

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

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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Lance A. Talmage, M.D.
Secretary

LAT/MRB/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3936 3067 2512
RETURN RECEIPT REQUESTED

SUPERSEDING STEP I
CONSENT AGREEMENT
BETWEEN
SCOTT ROBERT WELDEN, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO
08-CRF-030

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

Dr. Welden 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)(5), Ohio Revised Code, "[m]aking a false fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board;" 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;" and/or 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)(20), Ohio Revised Code, "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provisions of this chapter or any rule promulgated by the board;" and/or Section 4731.22(B)(26), Ohio Revised Code, "[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.

B. On or about March 12, 2008, the Board issued to Dr. Welden a Notice of Opportunity for Hearing [March 2008 Notice], a copy of which is attached hereto and fully incorporated herein.

C. Dr. Welden admits to all of the factual and legal allegations as set forth in the March 2008 Notice.

D. The Board enters into this Consent Agreement, in lieu of formal proceedings based upon the violations set forth in the aforementioned March 2008 Notice, as set forth in the Step I Consent Agreement Between Scott Robert Welden, M.D., and the State of Ohio, effective July 11, 2007 [July 2007 Step I Consent Agreement], and as set forth herein. The Board expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement. Such express reservation includes, but is not limited to, violations related to patient care, regardless of whether the acts underlying such additional violations are related to the violations set forth herein, and violations based on any methods used by Dr. Welden to obtain controlled substances or drugs for self-use other than those particularly described in the July 2007 Step I Consent Agreement.

E. Dr. Welden's certificate to practice medicine and surgery in the State of Ohio, License number 35.075182, is currently indefinitely suspended, but not less than 180 days, pursuant to the aforementioned July 2007 Step I Consent Agreement.

F. Dr. Welden states that he is also licensed to practice medicine and surgery in the State of Florida. In addition, Dr. Welden states that he holds an inactive license to practice medicine and surgery in the State of Kentucky.

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

SUSPENSION OF CERTIFICATE

1. The certificate of Dr. Welden 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 from the effective date of this Superseding Step I Consent Agreement. The previous suspension of Dr. Welden's certificate to practice medicine and surgery in the State of Ohio for an indefinite period of time, but not less than180 days, stemming from the July 2007 Step I Consent Agreement is hereby terminated upon the effective date of the instant Superseding Step I Consent Agreement.

Obey all Laws

2. Dr. Welden shall obey all federal, state, and local laws.

Sobriety

3. Dr. Welden 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. Welden's history of chemical dependency. Further, in the event that Dr. Welden is so prescribed, dispensed or administered any controlled substance, carisoprodol, or tramadol, Dr. Welden shall notify the Board in writing within seven days, providing the Board with the identity of the prescriber; the name of the drug Dr. Welden 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. Welden 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.

4. Dr. Welden shall abstain completely from the use of alcohol.

Absences from Ohio

5. Dr. Welden 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. Further, the Secretary and Supervising Member of the Board shall have the discretion to grant a waiver of part or all of the monitoring terms set forth in this Consent Agreement for occasional periods of absence of fourteen days or less. In the event that Dr. Welden resides and/or is employed at a location that is within fifty miles of the geographic border of Ohio and any of its contiguous states, Dr. Welden may travel between Ohio and that contiguous state without seeking prior approval of the Secretary or Supervising Member provided that Dr. Welden is able to otherwise maintain full compliance with all other terms, conditions and limitations set forth in this Consent Agreement.

Releases; Quarterly Declarations and Appearances

6 Dr. Welden 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. Welden'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. To the extent permitted by law, 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. Welden 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.

7. Dr. Welden 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 July 2007 Step I Consent Agreement with the Board, or as otherwise requested by the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

8. Dr. Welden 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 July 2007 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.

Drug & Alcohol Screens; Drug Testing Facility and Collection Site

9. Dr. Welden shall submit to random urine screenings for drugs and alcohol at least four times per month, or as otherwise directed by the Board. Dr. Welden 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. Welden's drug(s) of choice.

   Dr. Welden 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. Welden 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 under this Consent Agreement.

   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 10 below, and the screening process shall require a daily call-in procedure.

Dr. Welden shall submit, at his expense and on the day selected, urine specimens for drug and/or alcohol analysis. All specimens submitted by Dr. Welden 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 Consent Agreement. 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 Consent Agreement.

Further, within thirty days of the effective date of this Consent Agreement, Dr. Welden 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 Consent Agreement. Further, within thirty days of making such arrangements, Dr. Welden shall provide to the Board written documentation of completion of such arrangements, including a copy of any contract entered into between Dr. Welden and the Board-approved drug testing facility and/or collection site. Dr. Welden'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 Consent Agreement.

Further, in order to ensure that there will be no interruption in his current urine screening process, Dr. Welden shall continue to provide random urine screenings for drugs and alcohol at least once per week to the Supervising Physician previously approved pursuant to the July 2007 Step I Consent Agreement until such time that Dr. Welden has transitioned to the Board-approved drug testing facility and/or collection site as required pursuant to this Superseding Step I Consent Agreement.

Dr. Welden 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. Welden 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. Welden 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 Consent Agreement, 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 Consent Agreement, Dr. Welden must immediately notify the Board in writing, and make arrangements acceptable to the Board, pursuant to Paragraph 10 below, as soon as practicable. Dr.

Welden 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. Welden 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.

10. Dr. Welden and the Board agree that it is the intent of this Consent Agreement that Dr. Welden shall submit his urine specimens to the Board-approved drug testing facility and collection site chosen by the Board. However, in the event that utilizing said Board-approved drug testing facility and/or collection site creates an extraordinary hardship upon Dr. Welden, 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. Welden,

    a. Within thirty days of the date upon which Dr. Welden 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. Welden, 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. Welden 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. Welden's residence or employment location, or to a physician who practices in the same locale as Dr. Welden. Dr. Welden 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. Welden 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. Welden 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 Consent Agreement, 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. Welden must immediately notify the Board in writing. Dr. Welden 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. Welden 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. Welden.

d. The Board expressly reserves the right to disapprove any entity or facility proposed to serve as Dr. Welden'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.

11. 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. Welden's quarterly declaration. It is Dr. Welden's responsibility to ensure that reports are timely submitted.

12. The Board retains the right to require, and Dr. Welden 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. Welden, or for any other purpose, at Dr. Welden's expense upon the Board's request and without prior notice. Dr. Welden'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.

Rehabilitation Program

13. Dr. Welden shall continue to 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. Welden shall submit acceptable documentary evidence of continuing compliance with this program, including submission to the Board of meeting attendance logs, which must be received in the Board's offices no later than the due date for Dr. Welden's quarterly declarations.

14. Immediately upon completion of any required treatment for chemical dependency, Dr. Welden shall enter into an aftercare contract with a Board-approved treatment provider and shall maintain continued compliance with the terms of said aftercare contract, provided that, where the terms of the aftercare contract conflict with the terms of this Consent Agreement, the terms of this Consent Agreement shall control.

CONDITIONS FOR REINSTATEMENT

15. The Board shall not consider reinstatement or restoration of Dr. Welden's certificate to practice medicine and surgery until all of the following conditions are met:

    a. Dr. Welden shall submit an application for reinstatement or restoration, as appropriate, accompanied by appropriate fees, if any.

    b. Dr. Welden 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. Welden has successfully completed any required inpatient treatment, including at least twenty-eight days of inpatient or residential treatment for chemical abuse/dependence, as set forth in Rules 4731-16-02(B)(4) and 4731-16-08(A)(13), Ohio Administrative Code, completed consecutively.

        ii. Evidence of continuing full compliance with, or successful completion of, 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. Welden'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 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. Welden. Further, the two aforementioned physicians shall not be affiliated with the same treatment provider or medical group practice. Prior to the assessments, Dr. Welden 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. Welden, and any conditions, restrictions, or limitations that should be imposed on Dr. Welden's practice. The reports shall also describe the basis for the evaluator's determinations.

One report shall be made by a psychiatrist, approved in advance by the Board, who shall conduct a psychiatric examination of Dr. Welden. Prior to the examination, Dr. Welden shall provide the psychiatrist with copies of patient records from any prior evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The report from the evaluating psychiatrist shall include the psychiatrist's diagnoses and conclusions; any recommendations for care, counseling, and treatment for the psychiatric diagnoses; any conditions, restrictions, or limitations that should be imposed on Dr. Welden's practice; and the basis for the psychiatrist's determinations.

All reports required pursuant to this paragraph shall be based upon examinations occurring within the three months immediately preceding any application for reinstatement. Further, at the discretion of the Secretary and Supervising Member of the Board, the Board may request an updated assessment and report if the Secretary and Supervising Member determine that such updated assessment and report is warranted for any reason.

c. Dr. Welden shall enter into a written Consent Agreement including probationary terms, conditions and limitations as determined by the Board within 180 days of the date upon which all the above-specified conditions for reinstatement or restoration have been completed or, if the Board and Dr. Welden are unable to agree on the terms of a written Consent Agreement, then Dr. Welden 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. The Board shall provide notice to Dr. Welden that said hearing has been scheduled, advising Dr. Welden of his hearing rights, and stating the date, time, and location of the hearing at which the Board will present its evidence, after which the Board will make a determination of the matter by Board Order.

Further, upon reinstatement of Dr. Welden'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. Welden 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. Welden has maintained sobriety.

16. In the event that Dr. Welden 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. Welden's fitness to resume practice.

REQUIRED REPORTING BY LICENSEE

17. Within thirty days of the effective date of this Consent Agreement, Dr. Welden shall provide a copy of this Consent Agreement 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. Welden shall promptly 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. In the event that Dr. Welden provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within thirty days of the effective date of this Consent Agreement Dr. Welden shall provide a copy of this Consent Agreement to the Ohio Department of Public Safety, Division of Emergency Medical Services. Further, Dr. Welden shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty 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 Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.

18. Within thirty days of the effective date of this Consent Agreement, Dr. Welden shall provide a copy of this Consent Agreement 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. Welden further agrees to provide a copy of this Consent Agreement 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. Welden shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty 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 Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.

19. Dr. Welden shall promptly provide a copy of this Consent Agreement to all persons and entities that provide Dr. Welden chemical dependency treatment or monitoring. Further, Dr. Welden shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty 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 Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.

20. Dr. Welden shall notify the Board in writing of any change of principal practice address or residence address within thirty days of such change.

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. In the event that the Board initiates future formal proceedings against Dr. Welden, including but not limited to issuance of a Notice of Opportunity for Hearing, this Consent Agreement shall continue in full force and effect until such time that it is superseded by ratification by the Board of a subsequent Consent Agreement or issuance by the Board of a final Board Order.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Welden 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. Welden 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. Welden 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. Welden 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.

SCOTT ROBERT WELDEN, M.D.

7/10/08
DATE

LANCE A. TALMAGE, M.D.
Secretary

8-13-08
DATE

RAYMOND J. ALBERT
Supervising Member

8/13/08
DATE

BARBARA J. PFEIFFER
Assistant Attorney General

08/14/08
DATE

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

March 12, 2008

Case number: 08-CRF- 030

Scott Robert Welden, M.D.
3444 W. Legendary Run
Cincinnati, OH 45245

Dear Doctor Welden:

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

(1) On or about July 11, 2007, you entered into a Step I Consent Agreement [July 2007 Step I Consent Agreement] with the Board in lieu of formal proceedings based upon your violations of Sections 4731.22(B)(26) and (B)(10), Ohio Revised Code, which suspended your certificate to practice medicine and surgery for an indefinite period of time, but not less than 180 days.

To date you remain subject to all terms, conditions, and limitations of the July 2007 Step I Consent Agreement, a copy of which is attached hereto and incorporated herein.

(2) Despite the aforementioned suspension of your certificate, you continued to practice medicine and surgery in Ohio, which included rendering medical services to patients. Such medical services, which took place during your indefinite suspension, included, but were not limited to, performing a lip augmentation and injecting a patient with a local anesthetic, performing laser tattoo removal and laser hair removal procedures, and examining and treating a staff member for a possible eye infection.

(3) In or around November 2007, you were interviewed by a Board investigator. Although you informed the investigator that you provided general advice to others on laser tattoo removal procedures and had assisted another physician on one occasion by holding an ultrasound probe during a procedure on a patient, you denied that you had practiced medicine during your indefinite suspension.

On or about February 19, 2008, you were interviewed by two Board investigators. During this interview, you admitted that you had practiced medicine during your indefinite suspension, which included performing a lip augmentation and injecting a patient with a local anesthetic, and performing laser tattoo removal and laser hair removal procedures.

Mailed 3.13.08

(4) Paragraph 8 of the Step I Consent Agreement provides that "The Board retains the right to require, and Dr. Welden agrees to submit, blood or urine specimens for analysis at Dr. Welden's expense upon the Board's request and without prior notice."

Despite the requirements of Paragraph 8, on or about February 19, 2008, you refused to supply a urine specimen as requested by the Board investigators.

(5) You and a family member are the two shareholders and equal owners of your medical practice. Following the suspension of your certificate to practice medicine and surgery, said family member practiced medicine without a license by performing laser tattoo removal procedures, and you were aware of and/or permitted the family member's activities.

Your acts, conduct, and/or omissions as alleged in paragraphs (1), (2) and (3) 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: Practice of Medicine or Surgery Without Certificate, Section 4731.41, Ohio Revised Code, to wit: Penalties, Section 4731.99, Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1), (2), (3) and (4) 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 (3) above, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (5) above, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Practice of Medicine or Surgery Without Certificate, Section 4731.41, Ohio Revised Code, and Rule 4731-18-02, Ohio Administrative Code.

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

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

practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Lance A. Talmage, M.D.
Secretary

LAT/MRB/flb

Enclosures

CERTIFIED MAIL #91 7108 2133 3934 3685 0060
RETURN RECEIPT REQUESTED

cc: Douglas E. Graff, Esq.
Graff & Associates, LPA
604 East Rich Street
Columbus, Ohio 43215

CERTIFIED MAIL #91 7108 2133 3934 3685 0077
RETURN RECEIPT REQUESTED

STATE MEDICAL BOARD
OF OHIO
2007 JUL 11 A 10:47

STEP I
CONSENT AGREEMENT
BETWEEN
SCOTT ROBERT WELDEN, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO

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

Dr. Welden 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; 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."

B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violations of Section 4731.22(B)(26), Ohio Revised Code, as set forth in Paragraph E below; and Section 4731.22(B)(10), Ohio Revised Code, to wit: Deception to Obtain a Dangerous Drug, Section 2925.22, Ohio Revised Code, and/or Illegal Processing of Drug Documents, Section 2925.23, 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. Such express reservation includes, but is not limited to, violations related to patient care, regardless of whether the acts underlying such additional violations are related to the violations set forth herein, and violations based on any methods used by Dr. Welden to obtain controlled substances or drugs for self-use other than those particularly described in Paragraph E below.

C. Dr. Welden is licensed to practice medicine and surgery in the State of Ohio, License # 35-075182.

D. Dr. Welden states that he is also licensed to practice medicine and surgery in the State of Florida. In addition, Dr. Welden states that he holds an inactive license to practice medicine and surgery in the State of Kentucky.

E. Dr. Welden admits that he is chemically dependent and that he has inappropriately obtained controlled substances for his own use. Dr. Welden testified during his June 19, 2007 deposition by a Board representative that on or about February 5, 2007, he voluntarily entered treatment for chemical dependence at Hazelden Springbrook, a Board-approved treatment provider in Newberg, Oregon; however, he states that he only completed approximately seventeen days of inpatient treatment at that facility, as he left on or about February 22, 2007. Dr. Welden further states that he received treatment for chemical dependence at The Woods at Parkside, a Board-approved treatment provider in Columbus, Ohio, for approximately five days from on or about February 23, 2007, to on or about February 28, 2007. Dr. Welden further states that on or about March 20, 2007, he entered inpatient treatment at Hazelden Foundation, a Board-approved treatment provider in Center City, Minnesota. Dr. Welden further testified during his June 19, 2007 deposition that he completed twenty-eight days of inpatient treatment at Hazelden Foundation, on or about April 17, 2007. Dr. Welden further admits that, without appropriate treatment and monitoring, he is impaired in his ability to practice medicine according to acceptable and prevailing standards of care due to habitual or excessive use or abuse of drugs.

Dr. Welden admits that his drug of choice is Demerol, which he injected, and that he testified has also used other opiates, such as Vicodin, morphine, Dilaudid and Fentanyl, when Demerol was unavailable. Dr. Welden further admits that he began inappropriately using opiates in or about late 2005, and that his last improper use was on or about March 11, 2007. Dr. Welden further admits that he testified during his deposition that he inappropriately used Ativan and Versed beginning in approximately early 2006, and that his last use was on or about March 17, 2007. Dr. Welden further admits that he obtained the opiates and benzodiazipines for self-use exclusively by ordering them from wholesale pharmacies/medical supply companies, which filled the orders and sent the medications to him. Dr. Welden specifically denies obtaining any controlled substances for self-use by any other methods, and he specifically attests that at no time did he ever divert, sell, or give any controlled substances to anyone else. Dr. Welden further states that he never directly or indirectly involved patients or other individuals in any of his efforts to obtain controlled substances for self-use.

Dr. Welden further admits that he was diagnosed with dysthmia and ADHD in or around late 2006, which he treats with a psychiatrist, and that he is currently prescribed Lexapro.

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

SUSPENSION OF CERTIFICATE

1. The certificate of Dr. Welden to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than 180 days.

Sobriety

2. Dr. Welden 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. Welden's history of chemical dependency.

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

Releases; Quarterly Declarations and Appearances

4. Dr. Welden 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. Welden'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. Welden 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. Welden shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective, provided that if the effective date is on or after the sixteenth day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

6. Dr. Welden shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

Drug & Alcohol Screens; Supervising Physician

7. Dr. Welden shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Welden 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. Welden 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. Welden shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Welden 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. Welden. Dr. Welden 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. Welden 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. Welden must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Welden 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. Welden's

quarterly declaration. It is Dr. Welden's responsibility to ensure that reports are timely submitted.

8. The Board retains the right to require, and Dr. Welden agrees to submit, blood or urine specimens for analysis at Dr. Welden's expense upon the Board's request and without prior notice.

Rehabilitation Program

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

CONDITIONS FOR REINSTATEMENT

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

    a. Dr. Welden shall submit an application for reinstatement, accompanied by appropriate fees, if any.

    b. Dr. Welden 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. Welden has successfully completed any required inpatient treatment, including at least twenty-eight days of inpatient or residential treatment for chemical dependence, as set forth in Rules 4731-16-02(B)(4)(a) and 4731-16-08(A)(13), Ohio Administrative Code, completed consecutively.

        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. Welden'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 reports shall be made by physicians who are 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. Welden. Prior to the assessments, Dr. Welden 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. Welden, and any conditions, restrictions, or limitations that should be imposed on Dr. Welden's practice. The reports shall also describe the basis for the evaluator's determinations.

One report shall be made by a psychiatrist, approved in advance by the Board, who shall conduct a psychiatric examination of Dr. Welden. Prior to the examination, Dr. Welden shall provide the psychiatrist with copies of patient records from any prior evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The report from the evaluating psychiatrist shall include the psychiatrist's diagnoses and conclusions; any recommendations for care, counseling, and treatment for psychiatric diagnoses; any conditions, restrictions, or limitations that should be imposed on Dr. Welden's practice; and the basis for the psychiatrist's determinations.

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

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

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

REQUIRED REPORTING BY LICENSEE

12. Within thirty days of the effective date of this Consent Agreement, Dr. Welden 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. Welden 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.

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

14. Dr. Welden shall provide a copy of this Consent Agreement to all persons and entities that provide Dr. Welden treatment, evaluation, or monitoring for his chemical dependency treatment or monitoring, psychiatric illness or mental health, or any related conditions.

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. Welden 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. Welden 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. Welden 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. Welden 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.

SCOTT ROBERT WELDEN, M.D.

7/9/07
DATE

LANCE A. TALMAGE, M.D.
Secretary

7-11-07
DATE

John R. Irwin M.D. J.D. per by Mark R. Blackmer per written authority
JOHN R. IRWIN, M.D., J.D.
Attorney for Dr. Welden

July 11, 2007
DATE

RAYMOND J. ALBERT
Supervising Member

7/11/07
DATE

Mark R. Blackmer

MARK R. BLACKMER
Enforcement Attorney

July 11, 2007

DATE

STATE MEDICAL BOARD
OF OHIO
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