

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

NED ELTON WEINER, M.D.,

Appellant

v.

STATE MEDICAL BOARD OF OHIO,

Appellee

Case No. 03CVF-05-5978

JUDGE D. O'NEILL

CLERK OF COURTS

2003 DEC -9 PM 4: 30

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO

**JUDGMENT ENTRY AFFIRMING THE STATE MEDICAL BOARD'S
MAY 14, 2003 ORDER PERMANENTLY REVOKING
APPELLANT'S LICENSE TO PRACTICE MEDICINE AND SURGERY IN OHIO**

This case is before the Court upon the appeal, pursuant to R.C. 119.12, of the May 14, 2003 Order of the State Medical Board of Ohio which permanently revoked Appellant, Ned Elton Weiner, M.D.'s license to practice medicine and surgery in Ohio. For the reasons stated in the decision of this Court rendered on November 10, 2003, and filed on November 12, 2003, which decision is incorporated by reference as if fully rewritten herein, it is hereby

ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of Appellee, State Medical Board of Ohio, and the May 14, 2003 Order of the State Medical Board in the matter of Ned Elton Weiner, M.D., is hereby AFFIRMED. Costs to Appellant.

IT IS SO ORDERED.

Date

JUDGE O'NEILL

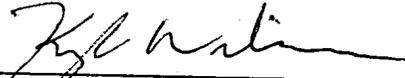
APPROVED:

Submitted but not returned

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Counsel for the State Medical Board

COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

NED ELTON WEINER, M.D.,

CASE NO. 03CVF05-5978

HEALTH & HUMAN

APPELLANT,

JUDGE JOHNSON

NOV 18 2003

vs.

SERVICES SECTION

STATE MEDICAL BOARD OF OHIO,

APPELLEE.

DECISION ON THE MERITS OF APPEAL

Entered this 10th day of November, 2003.

This action comes before the Court upon appeal pursuant to R.C. 9.12 by Appellant, Ned Weiner, M.D., from a revocation of his medical license by the State Medical Board of Ohio ("Board") by Order dated May 14, 2003. Briefs have been filed by counsel and the record of proceedings has been submitted.

The Order permanently revoked Appellant's license to practice medicine. The Board considered and adopted the Report and Recommendation of its Hearing Examiner. The Hearing Examiner conducted a hearing on March 10, 2002 based upon allegations that Appellant had an impaired ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, as contemplated by R.C. 4731.22(B)(26).

This Court's review of a decision of an administrative agency, such as the Board, is governed by R.C. 119.12 and the multitude of cases addressing that section. The most often cited case is that of *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St. 2d 108, 407 N.E.2d 1265. The *Conrad* decision states that in an administrative appeal filed pursuant

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FRANKLIN CO., OHIO
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CLERK OF COURTS

to R.C. 119.12, the trial court must review the agency's order to determine whether it is supported by reliable, probative and substantial evidence and is in accordance with law.

The Court states at pages 111 and 112 that “In undertaking this hybrid form of review, the Court of Common Pleas must give due deference to the administrative resolution of evidentiary conflicts. For example, when the evidence before the court consists of conflicting testimony of approximately equal weight, the court should defer to the determination of the administrative body, which, as the fact-finder, had the opportunity to observe the demeanor of the witnesses and weigh their credibility. However, the findings of the agency are by no means conclusive. Where the court, in its appraisal of the evidence, determines that there exist legally significant reasons for discrediting certain evidence relied upon by the administrative body, and necessary to its determination, the court may reverse, vacate or modify the administrative order. Thus, where a witness' testimony is internally inconsistent, or is impeached by evidence of a prior inconsistent statement, the court may properly decide that such testimony should be given no weight. Likewise, where it appears that the administrative determination rests upon inferences improperly drawn from the evidence adduced, the court may reverse the administrative order.”

The *Conrad* case has been cited with approval numerous times. *Ohio Historical Soc. v. State Emp. Relations Bd.* (1993), 66 Ohio St. 3d 466, 471, 613 N.E.2d 591 noted *Conrad* and stated that although a review of applicable law is de novo, the reviewing court should defer to the agency's factual findings. See *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 614 N.E.2d 748. Rehearing denied by: *Pons v. State*

Medical Bd. (1993), 67 Ohio St. 3d 1439, 617 N.E.2d 688. See also *Gipe v. State Medical Board* (July 31, 2003), Franklin App.No. 02AP-1315,

A number of facts salient to the instant appeal are not in controversy. Appellant had entered into a Consent Agreement with the Board effective July 14, 2000. That agreement was entered into because of prior chemical dependency. On June 12, 2002, the Board notified Appellant of a Summary Suspension of his license and an opportunity for a hearing. The result of that action was a permanent revocation which was stayed and a minimum three-year suspension was imposed. The basis for the Board's action was a relapse into drug usage, and more particularly an incident in Rochester, New York, where Appellant had been found unresponsive due to drug injection.

As to the instant Board Order, the Hearing Examiner determined that Appellant had tested positive for the chemical Darvon in a urine screen on July 30, 2002. The Hearing Examiner also concluded that Appellant had attempted to obtain drugs from a waste container in Good Samaritan Hospital using the pretext of visiting a friend on the floor. The testimony of Appellant was that he had gone to the floor to see a friend who had been on that floor some years earlier. Although Appellant denied that he had attempted to obtain drugs or that he had used Darvon, his past history indicated that he had previously removed drugs for his personal use from waste containers.

Appellant has assigned two errors as to the Board's decision. Appellant posits that the Board's Order is a violation of the American With Disabilities Act ("ADA"). Appellant also offers that the Board's Order disciplined Appellant for the same impairment in its three-year suspension.

Appellant relies upon the provisions of the ADA and particularly, 42 U.S.C. §12132, “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” Appellant maintains that he is under a disability, presumably his addiction to drugs, and that the medical license falls into the category of a service, program or activity. Appellant cites the case of *Hason v. Medical Board of California* (9th Cir. 2002), 27 F.3d 1167. The Board has offered the case of *Landefeld v. State Med Board* (June 15, 2000), Franklin App. No 99AP-612; Stay Granted by *Landefeld v. State Med. Bd.* (2000), 89 Ohio St. 3d 1440, 731 N.E.2d 686; Dismissed by *Landefeld v. State Med. Bd.*, 89 Ohio St. 3d 1474, 733 N.E.2d 249; Followed by: *Gipe v. State Med. Bd.*, July 31, 2003), Franklin App. No. 02AP-1315 in contrast to the California case. Appellee has also cited the case of *Florida Bar v. Clement* (1995), 662 So.2d 690 for the proposition that a disability, in that case a bi-polar disorder, does not prevent disbarment of an attorney even if the condition or impairment diminished the ability to adhere to a code of conduct. In the *Landefeld* case, the Court held that even if the doctor’s bipolar condition placed him within the ambit of the ADA, the Board was still entitled to protect the public from misconduct by the physician. The overwhelming majority of courts that have considered drug-addicted physicians have concluded that drug-impaired medical practitioners present a clear and obvious danger to the public. Moreover, the accessibility to controlled substances by medical practitioners presents a great danger to the public. *Firman v. Department of State, State Board of Medicine*, 697 A.2d 291, 1997 Pa. Commw. LEXIS 301, 24 Am. Disabilities Dec. 1093 (Pa. Commw. Ct. 1997); Appeal denied: *Firman v.*

State Bd. of Med., 550 Pa. 722, 706 A.2d 1215, 1998 Pa. LEXIS 243 (1998) The same conclusion has been reached as to other professionally licensed individuals including attorneys. *Doe v. Attorney Discipline Bd.*, 78 F.3d 584, 1996 U.S. App. LEXIS 10272 (6th Cir. Mich. 1996); Writ of certiorar denied: *Mouradian v. Michigan Atty. Discipline Bd.*, 519 U.S. 835, 136 L. Ed. 2d 60, 117 S. Ct. 107, 1996 U.S. LEXIS 5003, 65 U.S.L.W. 3258 (1996)

The record does not reflect that Appellant sought to have an accommodation to his claimed disability. The history of Appellant's actions would suggest that an accommodation would not be successful. In light of the record and case law, Appellant's first assignment of error is not well founded and is rejected.

Appellant also contends that he has been twice disciplined for the same impairment. R.C. 4731.22 states in pertinent part:

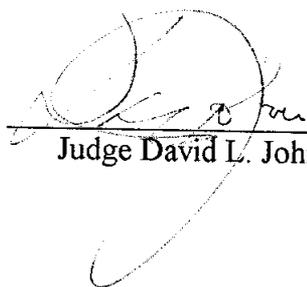
"Grounds for discipline; investigations; reinstatement; withdrawal of application; quality intervention program.

(B) The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, 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."

While it is true that it is the impairment for which discipline has been imposed, the discipline has been progressive in that Appellant was disciplined by the Board for new actions by Appellant, not for actions for which discipline had been imposed. The Court finds that Appellant's position is not well taken and likewise rejects the second assigned error.

Upon review of the arguments of counsel, case law, and record of the proceedings below, the Court must find that the Order of the Board is supported by reliable, probative, and substantial evidence and is in accordance with applicable law. Counsel for the Board shall prepare and submit a Judgment Entry pursuant to Local Rule 25.01.



Judge David L. Johnson

Appearances:

Eric J. Plinke
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Columbus, OH 43215-6194
Attorney for Appellant

Kyle C. Wilcox
Assistant Attorney General
30 East Broad Street, 26th Floor
Columbus, OH 43215
Attorney for Appellee

BEFORE THE STATE MEDICAL BOARD OF OHIO

Ned E. Weiner, M.D.
2423 Bromley Road
University Heights, OH 44118

Case No. 0304505 05978

Appellant,

Judge _____

vs.

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

Appeal from the Entry of Order
of May 14, 2003

Appellee.

STATE MEDICAL BOARD
OF OHIO
2003 JUN 24 P 2:09

APPELLANT'S NOTICE OF APPEAL

Pursuant to Ohio Revised Code § 119.12, notice is hereby given that Appellant, Ned E. Weiner, M.D., appeals the State Medical Board of Ohio's Entry of Order dated May 14, 2003, and mailed May 16, 2003 (copy attached as Exhibit A). The State Medical Board of Ohio Entry Order is not supported by the requisite quantum of reliable, probative, and substantial evidence nor is it in accordance with law.

Respectfully submitted,



Eric J. Plinke (0059463)
PORTER, WRIGHT, MORRIS & ARTHUR, LLP
41 South High Street
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(614) 227-2000 Fax (614) 227-2100
Attorney for Appellant
Ned E. Weiner, M.D.

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COLUMBUS, OHIO
2003 MAY 23 11:31 AM
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2003 MAY 29 P 2:22

STATE MEDICAL BOARD
OF OHIO

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of May, 2003, the foregoing Notice of Appeal was filed via hand delivery with the State Medical Board of Ohio, and with the Court of Common Pleas, Franklin County, Ohio, and that a copy was served via ordinary U.S. Mail, postage prepaid, upon:

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

STATE MEDICAL BOARD
OF OHIO
2003 JUN 24 P 2:04



Eric J. Plinke (0059463)



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6107 • (614) 466-1934 • Web-site: www.state.oh.us/mbo

May 14, 2003

Ned Elton Weiner, M.D.
2423 Bromley Road
University Heights, OH 44118

Dear Doctor Weiner:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on May 14, 2003, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO

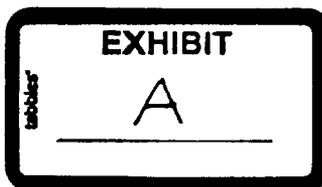
Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL NO. 7000 0600 0024 5151 1398
RETURN RECEIPT REQUESTED

Cc: Eric J. Plinke, Esq.
CERTIFIED MAIL NO. 7000 0600 0024 5151 1381
RETURN RECEIPT REQUESTED

STATE MEDICAL BOARD
OF OHIO
2003 JUN 24 P 2:04

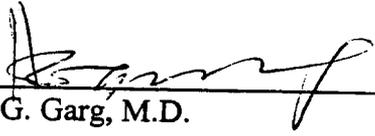


Mailed 5/14/03

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on May 14, 2003, 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 Ned Elton Weiner, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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



Anand G. Garg, M.D.
Secretary

(SEAL)

May 14, 2003

Date

STATE MEDICAL BOARD
OF OHIO
2003 JUN 24 P 2:04



State Medical Board of Ohio

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

May 14, 2003

Ned Elton Weiner, M.D.
2423 Bromley Road
University Heights, OH 44118

Dear Doctor Weiner:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on May 14, 2003, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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THE STATE MEDICAL BOARD OF OHIO

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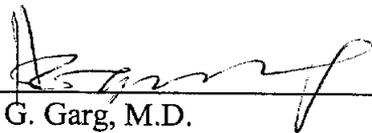
Mailed 5/14/03

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on May 14, 2003, 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 Ned Elton Weiner, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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

(SEAL)



Anand G. Garg, M.D.
Secretary

May 14, 2003

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

NED ELTON WEINER, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on May 14, 2003.

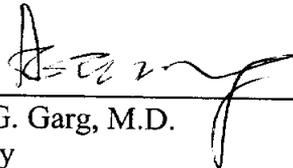
Upon the Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the 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 Ned Elton Weiner, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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

(SEAL)



Anand G. Garg, M.D.
Secretary

May 14, 2003

Date

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**REPORT AND RECOMMENDATION
IN THE MATTER OF NED ELTON WEINER, M.D.**

The Matter of Ned Elton Weiner, M.D., was heard by R. Gregory Porter, Attorney Hearing Examiner for the State Medical Board of Ohio, on March 10, 2003.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated November 13, 2002, the State Medical Board of Ohio [Board] notified Ned Elton Weiner, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board based its proposed action upon allegations concerning Dr. Weiner's history of impairment; previous actions taken against his certificate by the Board; a July 30, 2002, toxicology screen that tested positive for Darvon; and upon conduct observed by personnel at Good Samaritan Hospital in Cincinnati, Ohio, on August 3, 2002.

The Board further alleged that Dr. Weiner's conduct constitutes "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,' as that clause is used in Section 4731.22(B)(26), Ohio Revised Code." Accordingly, the Board advised Dr. Weiner of his right to request a hearing in this matter. (State's Exhibit 1A).

- B. By document received by the Board on December 9, 2002, Eric J. Plinke, Esq., requested a hearing on behalf of Dr. Weiner. (State's Exhibit 1B)

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Kyle C. Wilcox and D.J. Hildebrandt, Assistant Attorneys General.
- B. On behalf of the Respondent: Eric J. Plinke, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State

1. Ned Elton Weiner, M.D., as upon cross-examination
2. Patricia Schulthies, R.N.
3. Danielle Bickers
4. Robert Siefke, via deposition in lieu of live testimony

B. Presented by the Respondent

Ned Elton Weiner, M.D.

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A through 1R: Procedural exhibits.
2. State's Exhibit 2: Certified copies of documents maintained by the Board concerning Dr. Weiner.
3. State's Exhibit 3: Copy of a urine toxicology report.
4. State's Exhibit 4: Transcript of the February 14, 2003, deposition in lieu of live testimony of Robert Siefke. Attached to this transcript are two deposition exhibits:
 - a. State's Exhibit 4, Deposition Exhibit 1: Copy of a February 14, 2003, Notice of Appearance of Counsel for D.J. Hildebrandt, Assistant Attorney General.
 - b. State's Exhibit 4, Deposition Exhibit 2: Copy of an Incident Report dated August 3, 2002.

B. Presented Jointly by the Parties

Joint Exhibit I: March 10, 2003, Stipulation of the Parties.

PROCEDURAL MATTERS

An objection made by the Respondent during the February 14, 2003, deposition of Robert Siefke is overruled. (See States Exhibit 4 at page 24.)

SUMMARY OF THE EVIDENCE

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

Background Information

1. Ned Elton Weiner, M.D., testified that he had obtained his medical degree from the Tulane University School of Medicine in New Orleans, Louisiana. Dr. Weiner further testified that in July 1994, he had entered a residency in neurosurgery at the University of Cincinnati in Cincinnati, Ohio. Dr. Weiner testified that he had been terminated from the residency in late 1999 or early 2000, during his sixth year of residency, for relapsing on opiates. Moreover, Dr. Weiner testified that, during this residency, he had worked at, among other places, Good Samaritan Hospital in Cincinnati. (Hearing Transcript [Tr.] at 10-11, 20)

Dr. Weiner testified that, following the termination of his residency at the University of Cincinnati, he had taken time off from training for about one and one-half years, and participated in a research fellowship at the Cleveland Clinic Foundation. Dr. Weiner further testified that, in 2001, he had entered the University of Rochester to complete his remaining one year of neurosurgery residency. Finally, Dr. Weiner testified that he had been terminated from that program in about February 2002 prior to completing that program because he "ran into some problems with depression and an attempted suicide." (Tr. at 11-13)

Dr. Weiner testified that he is currently studying law, and is in his first year of law school at the Cleveland State, Marshall School of Law in Cleveland, Ohio. (Tr. at 13)

2. Dr. Weiner testified that he is not licensed to practice medicine and surgery in any state other than Ohio. (Tr. at 15)

Dr. Weiner's July 14, 2000, Step I Consent Agreement with the Board

3. Effective July 14, 2000, Dr. Weiner entered into a Step I Consent Agreement with the Board. The Consent Agreement was executed in lieu of formal proceedings based upon Dr. Weiner's violations of Sections 4731.22(B)(5), (B)(9) and (B)(26), Ohio Revised Code.

In the Step I Consent Agreement, Dr. Weiner made a number of admissions. Among these, Dr. Weiner admitted that:

- from in or about May 1999 until October 1999, he had abused Percocet, which he had diverted from family members;
- he had completed 28 days of inpatient treatment for chemical dependency at Glenbeigh Health Sources, a Board approved treatment provider, and had entered into an Intensive Outpatient Program with Bethesda Hospital Alcohol and Drug Treatment Program, a Board approved treatment provider, in November 1999;
- he had failed to notify the Board of his illegal use of controlled substances and his chemical dependency treatment while an application for a certificate to practice medicine and surgery in Ohio was pending;
- on or about December 21, 1999, Dr. Weiner had submitted to a urine toxicology test after being confronted by officials at University Hospitals, Cincinnati, due to suspicions that he had been stealing drugs from sharps containers, and that said toxicology test was positive for morphine;
- he had admitted to hospital officials that he had stolen two syringes filled with Fentanyl from patients' rooms on or about December 21, 1999, and that he had been stealing narcotic waste from the sharps containers since at least June 1999; and
- he had requested and been granted treatment in lieu of conviction on April 17, 2000, for one felony count of Theft, in violation of Section 2913.02(A)(2), Ohio Revised Code, related to his theft of Fentanyl for his own use.

(State's Exhibit [St. Ex.] 2 at 51-53)

The Step I Consent Agreement revoked Dr. Weiner's certificate to practice medicine and surgery in the State of Ohio, stayed such revocation, suspended his certificate for a minimum of six months, and provided conditions for reinstatement. (St. Ex. 2 at 53-60)

Dr. Weiner's December 28, 2000, Step II Consent Agreement with the Board

4. Effective December 28, 2000, Dr. Weiner entered into a Step II Consent Agreement with the Board based upon his violations of Sections 4731.22(B)(5), (B)(9) and (B)(26), Ohio Revised Code, as set forth in the July 14, 2000, Step I Consent Agreement. The Step II Consent Agreement provided that Dr. Weiner's certificate to practice medicine be reinstated subject to certain probationary terms, conditions, and limitations for a minimum of five years. Among these probationary terms, conditions, and limitations, paragraph 9 of the Step II Consent Agreement provided that Dr. Weiner "shall abstain completely from the personal use or

possession of drugs, except those prescribed, personally furnished or administered to him by another so authorized by law who has full knowledge of [his] history of chemical dependency[.]” (St. Ex. 2 at 40-50)

The October 9, 2002, Board Order Concerning Dr. Weiner.

5. On June 12, 2002, the Board issued to Dr. Weiner a Notice of Summary Suspension and Opportunity for Hearing. (St. Ex. 2 at 61-68)

On October 9, 2002, following an administrative hearing, the Board issued an Order that Dr. Weiner’s certificate to practice medicine and surgery in the State of Ohio be permanently revoked. Such permanent revocation was stayed, and Dr. Weiner’s certificate was suspended for an indefinite period of time, but not less than three years, based upon findings that his acts, conduct, and/or omissions, as set forth in the Board’s June 12, 2002, Notice of Summary Suspension and Opportunity for Hearing, violated Sections 4731.22(B)(15) and (B)(26), Ohio Revised Code. The Board’s Order became effective on October 24, 2002. (St. Ex. 2 at 4-39)

The Order included findings that, on November 21, 2001, Dr. Weiner had self-injected a drug and had been found unresponsive by colleagues in the restroom of the on-call room of the hospital in Rochester, New York, where Dr. Weiner had been employed as a resident; that he had been subsequently treated and/or assessed at Strong Memorial Hospital, St. Mary’s Hospital, and the Eisenhower Medical Center, Betty Ford Center; that in May 2002 he had relapsed on Percocet; and that on May 13, 2002, he had been admitted for evaluation to The Cleveland Clinic Foundation Alcohol and Drug Recovery Center. (St. Ex. 2 at 23-25)

Toxicology Report Concerning Dr. Weiner’s July 30, 2002, Urine Sample

6. On July 30, 2002, Dr. Weiner submitted a urine sample for toxicology screening. The report, dated August 7, 2002, indicates a positive result for Darvon. The report further states that the test “GC/MS PROPOXYPHENE” yielded the result “POSITIVE NG/ML NORPROPOXYPHENE 3150.” Dr. Weiner’s name is not typed anywhere on that report, but the name “Weiner” is handwritten at the top of the form in the area labeled “Patient.” (St. Ex. 3) (Emphases in original)

On March 10, 2003, the parties stipulated as follows:

The parties stipulate that Jonathan Myles, M.D., supervising physician with [the Ohio Physicians Effectiveness Program (OPEP)], observed Ned Elton Weiner, M.D., submit a urine sample on July 30, 2002, at 1:00 p.m. The split sample was placed into the OPEP kit, and mailed to the lab. Dr. Myles is positive the sample he mailed was Dr. Weiner’s urine. Therefore, the parties

agree that Dr. Weiner's urine sample collected on July 30, 2002, was sent directly to Bendiner & Schlesinger, Inc. Laboratories for testing. The test result from this sample is reflected in State's Exhibit #3.

(Joint Exhibit 1)

7. Danielle Bickers testified that she is the Compliance Officer for the Board. Ms. Bickers testified that her job responsibilities include monitoring the Board's licensees who have probationary obligations with the Board. Ms. Bickers further testified that she collects drug screen toxicology reports for licensees who are required to submit them. (Tr. at 61-62)

Ms. Bickers testified that the toxicology report for Dr. Weiner's July 30, 2002, sample indicates that the urine sample had tested positive for Darvon, and was GC/MS confirmed for propoxyphene. Ms. Bickers further testified that a handwritten note on the report indicates that a re-test had been ordered, although Ms. Bickers does not recall having received any report of a retest. (Tr. at 63-65)

8. Ms. Bickers testified that the name "Weiner" that is handwritten on the toxicology report was added by OPEP. She noted that OPEP determines the client name based upon an identification number (Tr. at 65)
9. Dr. Weiner testified that, on July 30, 2002, he had been asked by Dr. Jonathan Myles, Dr. Weiner's OPEP monitor and sponsor, to submit his weekly urine screen. Dr. Weiner testified that he had submitted his sample at the Cleveland Clinic, as usual. Dr. Weiner testified that he had subsequently been informed that that sample had tested positive for Darvon. (Tr. at 16-18)

Dr. Weiner denied that he had used any medications that contained Darvon or Darvocet. When asked to explain how his urine sample had tested positive for that substance, Dr. Weiner testified:

I have no good explanation as to why. I have not used Darvon. It's not my drug of choice. As Mr. Plinke pointed out [in his opening statement], I reported all my relapses [to the Board] in the past, every single last one, you know, in a timely fashion. This is not a drug that I would use and it's not a drug that I did use.

(Tr. at 17-18)

Dr. Weiner testified that he had informed Dr. Myles that he disagreed with the positive result of the toxicology report. Dr. Weiner testified that he did not submit another test sample to confirm or disprove that result because he had not learned of the positive result until well after the sample had been submitted, and by then it had been too late. (Tr. at 18)

10. Dr. Weiner testified that he has continued to submit urine samples on a weekly, random basis since July 30, 2002. Dr. Weiner further testified that, to the best of his knowledge, there have been no other positive results. (Tr. at 19)

Dr. Weiner's August 3, 2002, Visit to Good Samaritan Hospital

11. Patricia Schulthies, R.N., testified that she is a registered nurse, and that she has worked at Good Samaritan Hospital for about nineteen months. Ms. Schulthies testified that her duties include patient assessment and distribution of medication. Ms. Schulthies testified that she had never worked with Dr. Weiner. (Tr. at 45-47)

Ms. Schulthies testified that, on August 3, 2002, she had been working the 7:00 pm to 7:00 am shift on the twelfth floor of Good Samaritan Hospital. Ms. Schulthies testified that she had been working in section 12D, which is the "neurosurgical step down[]" unit. Ms. Schulthies testified that 12D shares the same hallway with, and is separated by doors from, 12C, which is the neurosurgical ICU. (Tr. at 47-48, 53, 58)

Ms. Schulthies testified that, around 8:00 pm, she had first noticed a man looking at a patient chart across the hall from the patient room where Ms. Schulthies had been working. Ms. Schulthies testified, "I didn't really pay much attention. I just thought he was a doctor looking in a chart for some reason." Ms. Schulthies noted that the man had been wearing a sports coat and had "looked professional." Ms. Schulthies further testified that another nurse, Jim Fleming, had identified the man to her as Dr. Weiner, and had told Ms. Schulthies that he was going to call security. (Tr. at 47-48, 53, 55)

Ms. Schulthies testified that, after Dr. Weiner "looked in the chart, he walked further down the hall to the very last room, 1267. He kind of looked in the room and then turned back around and went toward the elevators." Ms. Schulthies testified that, by the time Mr. Fleming returned after calling security, Dr. Weiner had gotten on an elevator and left the floor. (Tr. at 48)

Ms. Schulthies testified that, shortly thereafter, she had seen Dr. Weiner a second time. This time, he was standing next to a crash cart that sits in the hallway, with a patient census in his hand. Ms. Schulthies testified that next, while she was in a patient's room, she had "heard some rummaging around around the crash cart. So [Ms. Schulthies] walked out in the hall, and [Dr. Weiner] just kind of quickly moved a little bit and looked at the census." Ms. Schulthies testified that security had not yet arrived, and that she had proceeded back to the neurosurgical ICU section and told the nurses there to call security. Ms. Schulthies testified, "When I came back out, * * * [Dr. Weiner] was standing at the crash cart with his hand in the sharps container. And then when he saw me, he just took his hand out, turned around and got a drink at the water fountain." (Tr. at 49-52)

Ms. Schulthies testified that she had walked into one of her patient's rooms and, by the time she had come back out, "security was there along with another nurse." Ms. Schulthies testified that she believes another security officer appeared shortly thereafter. (Tr. at 52-53)

Ms. Schulthies testified that the top of the sharps container was not off, but that "[y]ou could tell it was kind of popped up." (Tr. at 52)

12. Ms. Schulthies testified that she had completed and signed a report for security immediately after the incident. (Tr. at 54) Ms. Schulthies' written report, dated August 3, 2002, states as follows:

Ned Weiner was seen 8/3/02 at approximately 2000 on 12D. He walked down the hall and was asked by another RN if he could be helped, Ned replied "no." He then continued to walk down the hall. I saw him stop and look in the chart of the [patient] in 1269. He then walked down to 1267, looked in the room and turned around to walk back towards the main hallway. He walked to the second set of elevators, approximately 5 minutes later he returned to 12D with a patient census in hand, he stood by the crash cart looking at the census. I was in 1262-1 and heard some rummaging in the crash cart or near it. I walked out of the room (1262-1) and he quickly moved his hand away from the crash cart and looked down at the census. I walked back to the NSICU and asked the nurses to call security. I walked out of the ICU doors and saw Ned Weiner pull his hand out of the sharps container on the crash cart. He turned around and took a drink at the water fountain. I then walked in to 1261 and heard more rummaging in the sharps container. He again stopped when he saw me. At this point security appeared.

(State's Exhibit 4, Deposition Exhibit 2)

13. Ms. Schulthies testified that she had not spoken with Dr. Weiner on August 3, 2002. (Tr. at 58)
14. Ms. Schulthies testified that a crash cart is a "red metal cart that holds medicines in it for a code blue. It has a defibrillator on the top, masks, that kind of stuff." (Tr. at 49)

Ms. Schulthies further testified that sharps containers are clear plastic containers with pop-off tops. She noted that almost all of the sharps containers in patient rooms lock, but the one on the crash cart does not. (Tr. at 51)

Ms. Schulthies testified that there is a sharps container in every patient room, and that she generally uses those sharps containers after administering an injection to a patient. When asked if she had ever used the sharps container on the crash cart to dispose of waste

administered in a patient room, Ms. Schulthies replied:

I rarely did. The only time that I use it is if—I mean, if you happen to be wasting a medication with another nurse and you're standing in the hallway, sometimes you just drop it in there because there's no use to go into a room to do that.

(Tr. at 57)

15. Ms. Schulthies testified that she had believed that Dr. Weiner had been banned from the twelfth floor of Good Samaritan Hospital, but that she had had no first hand knowledge concerning that issue. Ms. Schulthies further testified, "I knew it ever since I started working there. It was kind of just something that I had known." (Tr. at 53-54, 56-57) Moreover, Ms. Schulthies testified:

When I first started working there we had a picture of a doctor's I.D. up in our like nurse report room, and I had asked who it was and they said that's Dr. Weiner. If he is seen, security is supposed to be called. He's not supposed to be here.

(Tr. at 60)

16. Robert Siefke testified on behalf of the State via deposition in lieu of live testimony. Mr. Siefke testified that he has worked part-time as a security officer for Good Samaritan Hospital for five years. Mr. Siefke testified that he had previously worked as a police officer for the City of Madeira, Ohio, for 27 years, and as a security officer for Kroger and Thriftway for about five years each. (St. Ex. 4 at 4-6)

Mr. Siefke testified that he had been on duty at Good Samaritan Hospital on August 3, 2002. Mr. Siefke further testified that, on that day, he had been dispatched to the twelfth floor concerning a call "that Dr. Weiner was in the building and that he was not supposed to be in the building." Mr. Siefke testified that, when he arrived on the twelfth floor, hospital personnel pointed Dr. Weiner out to him. Mr. Siefke testified that Dr. Weiner was standing next to a crash cart, leaning against the sharps container. Moreover, Mr. Siefke testified that "[h]is hand was on top of the box itself, leaning on the box." (St. Ex. 4 at 6-12)

Mr. Siefke further testified:

So I talked to Dr. Weiner and asked him why he was not supposed to be there. And he said he was looking for a friend of his who was a patient. And I said, okay. What's their name. He did not give me a name of who the patient was. We had a small conversation as to why he was there. And I asked him to

respond down to my office with me so I could find out why he was not supposed to be there.

* * *

We went down to my office. Dr. Weiner, at that time, was very agitated and kept saying, why am I going down there? Why am I doing this? I said, Doctor, I said, we've got to find out, to my own satisfaction, why you're not supposed to be in this hospital.

(St. Ex. 4 at 12-13)

Mr. Siefke testified that Dr. Weiner had accompanied Mr. Siefke to Mr. Siefke's office on the fifth floor. Mr. Siefke made some telephone calls. Mr. Siefke testified that "[m]eanwhile Dr. Weiner got very antsy." Mr. Siefke stated that Dr. Weiner had been standing and "pacing back and forth" while Mr. Siefke made the calls. Mr. Siefke testified that, while he was still on the telephone, Dr. Weiner announced that he was leaving "and ran from the office." When asked if Dr. Weiner had actually run or if he had just walked fast, Mr. Siefke replied that he had left "[h]urriedly." (St. Ex. 4 at 13-16)

Mr. Siefke testified that he had had another security officer follow Dr. Weiner. After Mr. Siefke finished his call, "[a] couple minutes [later] at the most[,] he joined the other officer in following Dr. Weiner. Mr. Siefke testified that Dr. Weiner "was actually trying to run a little bit. But it's up hill so he wasn't running very fast." Mr. Siefke testified that the route that Dr. Weiner traveled on foot was "a half mile or better[]" before Dr. Weiner got to his car. Mr. Siefke testified that, when Dr. Weiner drove away, Mr. Siefke and the other security officer had followed in a marked Good Samaritan Hospital security vehicle, and followed Dr. Weiner down Clifton Avenue. (St. Ex. 4 at 16-20)

Mr. Siefke testified that, at some point, Dr. Weiner had turned into a parking lot, had gotten out of his car, and "hollered at" Mr. Siefke and the other security officer to stop following him. Mr. Siefke testified that they had nevertheless continued to follow Dr. Weiner, but eventually lost him in traffic. Mr. Siefke explained that they had continued to follow Dr. Weiner "[b]ecause [Mr. Siefke] had put in a call for [the] Cincinnati [Police Department] to have him arrested for trespassing. Because at that time [Mr. Siefke had] found out he was not supposed to be there." (St. Ex. 4 at 20, 30-31)

17. Mr. Siefke testified that he had not told Dr. Weiner to stop when Dr. Weiner left. Mr. Siefke further testified that it did not really bother him that Dr. Weiner had left, but that he had called the other security officer to ascertain where Dr. Weiner went. (St. Ex. 4 at 30-31)
18. Mr. Siefke testified that Dr. Weiner had contacted him by telephone at 9:20 pm that evening. Mr. Siefke testified that Dr. Weiner had told him that he had been there to visit a friend who,

it turned out, was not in the hospital. Mr. Siefke testified that he had advised Dr. Weiner to call the manager of security. Moreover, Mr. Siefke testified that Dr. Weiner had called the manager of security the following morning “and apologized[.]” (St. Ex. 4 at 22-24)

19. Dr. Weiner testified that he lives in University Heights, Ohio, which is in the Cleveland metropolitan area, and had been living there in July and August 2002. (Tr. at 19)

Dr. Weiner further testified that, on August 3, 2002, he had visited Good Samaritan Hospital. Dr. Weiner noted that he had worked at that institution, among others, during his residency at the University of Cincinnati. (Tr. at 20)

Dr. Weiner testified that, earlier that day, he had met with his ex-wife in Nashville, Tennessee, to drop off one of his children with her. Dr. Weiner noted that his ex-wife lives in Louisiana, and he and she had met halfway. Dr. Weiner further testified that his ex-wife had informed him that a mutual friend was in the hospital. Dr. Weiner testified that, during the time Dr. Weiner had worked at Good Samaritan Hospital as a resident, that friend had suffered from a significant stroke and had been treated at Good Samaritan Hospital on the floor where Dr. Weiner had worked. Dr. Weiner further testified, “I figured on my way back I would stop and see her. That was my only purpose in stopping there.” Moreover, Dr. Weiner testified that, upon arriving at Good Samaritan Hospital, he had proceeded to the twelfth floor because “that’s where she had been to my knowledge.” (Tr. at 20-21, 24, 79)

20. Dr. Weiner testified that, while on the twelfth floor at Good Samaritan Hospital, he had checked patient names on charts outside of patient rooms, looking for his friend’s name. When that failed, Dr. Weiner picked up a patient census. Dr. Weiner described a patient census as a listing of all of the patients on the floor. Dr. Weiner testified that the census had been kept at the reception desk on that floor, “right out in the open.” (Tr. at 24-26, 31) The following exchange occurred concerning this conduct:

Q. (by Mr. Wilcox) I am curious why you didn’t go into the hospital and check with the front desk. Normally when a person visits someone in the hospital, they would do that to find out what room the patient is in. Obviously you didn’t do that. What made you go to the twelfth floor?

A. (by Dr. Weiner) That’s where she was before.

Q. This was how many years ago?

A. A few. I don’t know exactly.

Q. Back when you worked there you said as a resident?

A. You’re right. I assumed that’s where she would be again.

Q. So three years. You hadn't been there since '99. This is 2002. So three years prior. So your thought was to go and not check with the administrator of the hospital to ask if this patient was there, you thought to go to the room?

A. Yeah, go up there and look for her.

(Tr. at 30-31) Moreover, Dr. Weiner later testified concerning why he had not gone to the front desk to inquire about his friend:

Bad habit. Habits die hard in that that's my habit just to, you know, kind of go and do things on my own and not ask for help. That was a bad decision in retrospect to not go about it differently. But, again, that was a habit of mine to just go—just do it on my own, try to figure it out, you know, assume that she was there and figure out where she might be on my own.

(Tr. at 74-75)

21. Dr. Weiner testified that he had only looked “at a couple[]” of patient charts before obtaining the patient census. Dr. Weiner further testified that he did not see his friend's name on the census. (Tr. at 31)

22. Dr. Weiner testified that a crash cart sits “out in the open” near the reception desk on the twelfth floor. Dr. Weiner testified that the crash cart holds a defibrillator and “would have some basic resuscitation medicine like epinephrine or bicarb, atropine. Nothing controlled.” Dr. Weiner further testified that “[t]here probably is a sharps container attached to it.” (Tr. at 26-27)

Dr. Weiner testified that a sharps container is a plastic, sealed container with a one-way opening into which used syringes are discarded. Dr. Weiner further testified that the sharps container on the crash cart would be utilized for discarding used epinephrine and bicarb syringes. (Tr. at 28)

23. Dr. Weiner testified that he had not in any way attempted to get drugs from the crash cart or from the sharps container on August 3, 2002. (Tr. at 44) Dr. Weiner further testified that he believes that the testimony of Ms. Schulthies had been “grossly inaccurate.” Moreover, Dr. Weiner testified:

Number one, her description of the sharps container is inaccurate as having a lid that just pops open. A sharps container has a lid that is very strongly attached to the—the lid is strongly attached to the main part of the container itself with an opening that has a valve in essence where the sharps are passed through. And in

order to open this lid would take a great amount of force. A force that would in essence take—would mean removing the entire container from the crash cart, putting it on the floor and would take two hands to rip it off.

Being in a very public area, wide open as was described by [Ms. Schulthies] and myself, I think that's very unrealistic and was not done by myself. That's why I find that to be ridiculous. And to have my hand through the area where the sharps are passed, it's a very small space and I did not do that. I could not do that with my adult size hands.

(Tr. at 72-73) Finally, Dr. Weiner denied that he had handled the sharps container “directly with [his] hands[.]” Dr. Weiner acknowledged that he had stood next to the crash cart, and that his body may have touched the crash cart or the sharps container. (Tr. at 28-29)

24. Dr. Weiner acknowledged that, in past Consent Agreements with the Board, he had admitted to having taken items from sharps containers. However, Dr. Weiner testified:

I've done it, number one, in much more private areas, in places where I knew there were a higher probability where those things that I was after were disposed of. That would not be one of them.

A crash cart, that would not be a place, at least that I would predict those things would be disposed of and certainly not in a wide open area. For those reasons, that's basically it. It would have been in a much more private area where I would do such a thing.

(Tr. at 73-74)

25. Dr. Weiner denied that he had been looking for drugs when he visited Good Samaritan Hospital that day: “That would not be a place I would come to look for drugs, a place where people knew me, no.” (Tr. at 29)
26. Dr. Weiner testified that at some point a security officer had approached him. Dr. Weiner testified that, at that time, Dr. Weiner had probably been standing next to the crash cart. Dr. Weiner testified that he does not remember the exact conversation that he had had with the security officer, but that he thought the security officer had asked him questions concerning who Dr. Weiner was and why he was there. Dr. Weiner testified that he had told the security officer that he was there to see a patient, and had told him who the patient was. (Tr. at 31-35) [Note that Mr. Siefke had testified that Dr. Weiner would not identify the patient that he had purportedly gone to the hospital to see. See Summary of the Evidence 16, above.]

Dr. Weiner testified that the security officer had asked Dr. Weiner to accompany him to the security office. Dr. Weiner further testified that Dr. Weiner had called the hospital operator from the security office and had “found out that [the patient] wasn’t there.” (Tr. at 33-35)

Dr. Weiner testified that “it seemed to be a real slow process” at the security office. Dr. Weiner testified that he had explained to the security officer why he had been at the hospital. Dr. Weiner further testified that he had not believed that he had done anything wrong, and that the security officer “didn’t say anything to the contrary.” Dr. Weiner testified that he recalls that the security officer had told Dr. Weiner that he was not supposed to be on the floor looking at patient charts. Dr. Weiner testified that he replied that he had not been looking through any charts, just “a few names.” (Tr. at 35-36)

Dr. Weiner testified that, after having been in the security office for a while, he had told the security officer that there was no reason for Dr. Weiner to remain there, and that the security officer had no reason to keep him there any longer. Dr. Weiner testified that he had informed the security officer that, unless the security officer could inform him otherwise, he was going to leave. Dr. Weiner testified that the security officer had had one of his colleagues escort Dr. Weiner out of the hospital. Dr. Weiner testified that they had walked, and that Dr. Weiner had not run. Moreover, Dr. Weiner testified that no one had tried to detain him. (Tr. at 36-37)

Dr. Weiner testified that he would be surprised to learn that the security officer had testified that Dr. Weiner had informed him that Dr. Weiner was leaving, and that Dr. Weiner then ran from the office. Dr. Weiner testified that such testimony “would be an all out lie.” (Tr. at 37)

Dr. Weiner further testified that, after he had left the hospital building, he had walked to his car. Dr. Weiner testified that he had had to walk a “[m]edium distance[]” to get to his car. When asked if he had been running at any time during this time, Dr. Weiner replied, “I might have been walking pretty quickly because there was somebody following me, yes.” Dr. Weiner further testified that he had had “no idea why they were following [him] other than to make sure [he] left the premises.” Dr. Weiner testified that he could not recall if one or two security officers had been following him. (Tr. at 37-39)

Dr. Weiner testified that, after he had reached his car, he got in and drove off. Dr. Weiner further testified that security personnel had followed him in a marked security vehicle. Moreover, Dr. Weiner testified that, at some point, he had put down his window and told the security personnel to stop following him. Dr. Weiner denied that he had gotten out of his car to do that. Dr. Weiner testified that, thereafter, he had driven home. (Tr. at 39-40)

27. Dr. Weiner testified that, some time after he had left the hospital, he had pulled his car over and called the friend that he had tried to visit at Good Samaritan Hospital. Dr. Weiner

testified that he had learned from his friend that, not only had the friend been in a different hospital, but that she had already been discharged. (Tr. at 41-42, 75)

Dr. Weiner further testified that he had also called the hospital security office that day because he had “had these guys chasing after [him],” and that, in his recovery program, he had been taught to make amends and to apologize. Dr. Weiner further testified that he had called because “obviously, you know, I upset them in some way.” (Tr. at 41-42)

Moreover, Dr. Weiner testified that he had called the security office the following day “to talk to the supervisor[.]” Concerning the reasons why the security personnel had chased him, Dr. Weiner testified that the supervisor had told Dr. Weiner “[t]hat he felt that he believed this could be perceived as some sort of a trespass.” Dr. Weiner testified that he had “just clarified his intentions” with the supervisor and apologized for any trouble he had caused. (Tr. at 42-43)

28. Dr. Weiner testified that, when he had been in the security office, the only hurry he had been in was to get back to Cleveland by a reasonable hour. Dr. Weiner further testified:

I was there going round and round with an individual, and I felt I answered his questions adequately. There weren't any other questions being asked in essence that were pertinent or there just weren't any other questions.

(Tr. at 78-79)

29. Dr. Weiner testified that, to his knowledge, he has never been barred from the premises of Good Samaritan Hospital. Dr. Weiner further testified that, when he spoke to the security office supervisor, he had told the supervisor that if he ever had to go to Good Samaritan Hospital again, he would notify the security office of his presence. Moreover, Dr. Weiner testified that the supervisor “was okay with that.” Dr. Weiner testified, “That’s basically how we left it. I’m entitled to come to a hospital to visit a patient. They can’t keep me from there. That’s the bottom line.” (Tr. at 43-44, 77)
30. Dr. Weiner testified that he had never actually been terminated or suspended from Good Samaritan Hospital, but he had worked there during a time when he had entered treatment, people at the hospital knew about that, and “there were some questionable occurrences there[.]” Dr. Weiner testified that he had abused Percocet at first, then also used morphine. Dr. Weiner testified that there had been some occasions when he had obtained medication “at the hospital.” Dr. Weiner denied, however, that any formal discipline or investigation occurred at Good Samaritan Hospital:

Never at that hospital. There was somebody, you know, at security at that hospital who spoke with me and one or two of my superiors, for lack of a

better term, but that individual kind of left it to us to figure out what was going to happen at that point.

(Tr. at 21-23)

Additional Information

31. Ms. Bickers acknowledged that Dr. Weiner has previously reported relapses to her. Ms. Bickers further testified that, with regard to Dr. Weiner's relapses of which the Board is aware, all were reported to the Board by Dr. Weiner. (Tr. at 66-67)
32. Dr. Weiner testified that he is currently attending law school full time. Dr. Weiner further testified that his 10-year-old son lives with him, and Dr. Weiner currently lives with his parents. Moreover, Dr. Weiner testified that he attends Alcoholics Anonymous meetings regularly, "at least three meetings a week including Caduceus meetings." In addition, Dr. Weiner testified that he has regular contact with his sponsor, and is subject to weekly random urine screens. (Tr. at 71-72)

Dr. Weiner testified that he is currently in the second semester of his first year of law school. Dr. Weiner testified that he is on this Dean's List for his performance the first semester. (Tr. at 71-72)

33. Dr. Weiner testified that he has been sober since his relapse in May 2002. Dr. Weiner further testified that he is working the best program he can and has "made a few bad decisions." Dr. Weiner testified that he would still like to practice medicine again someday. (Tr. at 77-78)

FINDINGS OF FACT

1. Effective July 14, 2000, Ned Elton Weiner, M.D., entered into a Step I Consent Agreement with the Board. The Consent Agreement was executed in lieu of formal proceedings based upon Dr. Weiner's violations of Sections 4731.22(B)(5), (B)(9) and (B)(26), Ohio Revised Code. In the Step I Consent Agreement, Dr. Weiner made a number of admissions. Among these, Dr. Weiner admitted that:
 - from in or about May 1999 until October 1999, he had abused Percocet, which he had diverted from family members;
 - he had completed 28 days of inpatient treatment for chemical dependency at Glenbeigh Health Sources, a Board approved treatment provider, and entered into an Intensive Outpatient Program with Bethesda Hospital Alcohol and Drug Treatment Program, a Board approved treatment provider, in November 1999;

- he had failed to notify the Board of his illegal use of controlled substances and his chemical dependency treatment while an application for a certificate to practice medicine and surgery in Ohio was pending;
- on or about December 21, 1999, Dr. Weiner had submitted to a urine toxicology test after being confronted by officials at University Hospitals, Cincinnati, due to suspicions that he had been stealing drugs from sharps containers, and that said test was positive for morphine;
- he had admitted to hospital officials that he had stolen two syringes filled with Fentanyl from patients' rooms on or about December 21, 1999, and that he had been stealing narcotic waste from the sharps containers since at least June 1999; and
- he had requested and been granted treatment in lieu of conviction on April 17, 2000, for one felony count of Theft, in violation of Section 2913.02(A)(2), Ohio Revised Code, related to his theft of Fentanyl for his own use.

The Step I Consent Agreement revoked Dr. Weiner's certificate to practice medicine and surgery in the State of Ohio, stayed such revocation, suspended his certificate for a minimum of six months, and provided conditions for reinstatement.

2. Effective December 28, 2000, Dr. Weiner entered into a Step II Consent Agreement with the Board based upon his violations of Sections 4731.22(B)(5), (B)(9) and (B)(26), Ohio Revised Code, as set forth in the July 14, 2000, Step I Consent Agreement. The Step II Consent Agreement provided that Dr. Weiner's certificate to practice medicine be reinstated subject to certain probationary terms, conditions, and limitations for a minimum of five years. Among these probationary terms, conditions, and limitations, paragraph 9 of the Step II Consent Agreement provided that Dr. Weiner "shall abstain completely from the personal use or possession of drugs, except those prescribed, personally furnished or administered to him by another so authorized by law who has full knowledge of [his] history of chemical dependency[.]"
3. On October 9, 2002, following an administrative hearing on July 23, 2002, the Board ordered that Dr. Weiner's certificate to practice medicine and surgery in the State of Ohio be permanently revoked. Such permanent revocation was stayed, and Dr. Weiner's certificate was suspended for an indefinite period of time, but not less than three years, based upon findings that his acts, conduct, and/or omissions, as set forth in the Board's June 12, 2002, Notice of Summary Suspension and Opportunity for Hearing, had violated Sections 4731.22(B)(15) and (B)(26), Ohio Revised Code.

The Order included findings that, on November 21, 2001, Dr. Weiner had self-injected a drug and had been found unresponsive by colleagues in the restroom of the on-call room of

the hospital in Rochester, New York, where Dr. Weiner had been employed as a resident; that he had been subsequently treated and/or assessed at Strong Memorial Hospital, St. Mary's Hospital, and the Eisenhower Medical Center, Betty Ford Center; that in May 2002 he had relapsed on Percocet; and that on May 13, 2002, he had been admitted to the Cleveland Clinic Foundation Alcohol and Drug Recovery Center for evaluation.

4. A urine toxicology report dated August 7, 2002, which reflects the test results for a urine sample submitted by Dr. Weiner on July 30, 2002, indicated a positive result for Darvon.

Dr. Weiner testified that he had not ingested Darvon or any related substances. However, Dr. Weiner's testimony is not persuasive. The test results yielded a positive result for Darvon, which was confirmed to be propoxyphene by GC/MS. Moreover, the parties stipulated that Dr. Weiner's monitoring physician is certain that the urine sample submitted to the testing laboratory had been Dr. Weiner's, and the parties further stipulated that the toxicology report reflected the test result from that sample. Finally, a few days after Dr. Weiner submitted that urine sample, he was seen engaging in drug-seeking behavior, as set forth in Findings of Fact 5, below.

5. The evidence is sufficient to support a finding that, on August 3, 2002, at the Good Samaritan Hospital, Cincinnati, Ohio, a nurse noticed Dr. Weiner wandering down the hallway, looking randomly and briefly at patient charts. He temporarily left the area and returned with a patient census. Dr. Weiner stood in the hallway next to a crash cart, ostensibly reading the patient census. The nurse, who was in a patient room, heard rummaging in or around the crash cart, entered the hallway, and observed Dr. Weiner quickly move his hand away from the crash cart. The nurse went to the nurses' station in an adjacent area to notify security of Dr. Weiner's presence and behavior. Upon returning from the nurses' station, the nurse saw Dr. Weiner remove his hand from the sharps container on the crash cart. The nurse then entered a patient room, and heard rummaging in the sharps container. She returned to the hallway, and Dr. Weiner again stopped when he saw her.

Dr. Weiner denied that he had gone to Good Samaritan Hospital on August 3, 2002, seeking drugs, or that he had tampered with a sharps container while he was there. Dr. Weiner argued that he had instead gone to Good Samaritan Hospital to visit a sick friend. However, Dr. Weiner's testimony concerning this visit is simply not credible. For example:

- Even if one were to believe that Dr. Weiner had learned earlier that day that a friend in Cincinnati was ill and in the hospital, it defies logic that Dr. Weiner would then immediately go to the neurosurgical unit of Good Samaritan Hospital to look for her without first ascertaining that the friend was in that hospital, and on that unit. Dr. Weiner testified that he had done so because, years before, his friend had had a serious stroke and had been hospitalized in the neurosurgical unit of Good Samaritan Hospital.

- Dr. Weiner denied that he had handled the sharps container on the crash cart. This contradicts the testimony of the nurse, Ms. Schulthies, who testified that she had seen Dr. Weiner with his hand in that sharps container, and had heard Dr. Weiner rummaging through the sharps container. Ms. Schulthies appears to have had no motive to falsely report such behavior, or to come to the hearing and lie under oath about Dr. Weiner—she did not know Dr. Weiner, although she knew *of* Dr. Weiner. Further, Dr. Weiner has a history of obtaining medication from sharps containers.

Dr. Weiner further testified that he would not have been able to fit his hand through the attached lid of the sharps container, and would not have been able to remove the lid of the sharps container without considerable effort. Ms. Schulthies testified that she had seen Dr. Weiner with his hand in the sharps container, and that the lid to the sharps container, although still attached, was “popped up.” Ms. Schulthies’ testimony is deemed to be the more credible account.

- Dr. Weiner testified that the sharps container on the crash cart would not contain the type of medication that he would look for. However, Ms. Schulthies testified that the sharps container on the crash cart is sometimes used to waste medication if the medication must be wasted in the presence of a second nurse. Accordingly, that sharps container may have held exactly the sort of medication that Dr. Weiner would be looking for. Moreover, since Dr. Weiner had previously worked on that floor, he had had an opportunity to learn that that sharps container may be used for that purpose.
- Dr. Weiner’s testimony concerning his exit from the security office and the hospital is not credible. According to Dr. Weiner, Dr. Weiner informed the security officer, Mr. Siefke, that he was leaving, and Mr. Siefke had another security officer accompany Dr. Weiner. Dr. Weiner and the security officer calmly walked to a building exit. Nevertheless, after Dr. Weiner exited the building, a chase of sorts began. Dr. Weiner swiftly walked or ran “a medium distance” to his car followed by one or two security officers. As Dr. Weiner drove away, the security officers pursued him in a marked vehicle through the streets of Cincinnati. Although these events have no direct bearing on the Board’s allegations, Dr. Weiner’s fantastic story further undermines his credibility.

Mr. Siefke’s version of Dr. Weiner’s hasty exit is credible. Moreover, Mr. Siefke does not know Dr. Weiner, and has no reason to lie under oath about Dr. Weiner’s conduct.

CONCLUSIONS OF LAW

The conduct of Ned Elton Weiner, M.D., as set forth in Findings of Fact 1 through 5, 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.

* * * * *

Dr. Weiner presents a tragic case of a young physician whose career has been destroyed by substance abuse. Unfortunately, given Dr. Weiner’s past history with the Board, along with the positive urine screen and drug-seeking conduct evident in this matter, and his denial of same, the Board has little choice but to remove Dr. Weiner from practice.

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Ned Elton Weiner, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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



R. Gregory Porter
Attorney Hearing Examiner



State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF MAY 14, 2003

REPORTS AND RECOMMENDATIONS

Mr. Browning announced that the Board would now consider the findings and orders appearing on the Board's agenda. He noted that the matters of Ashfaq Taj Ahmed, M.D., and Ryan Hanson, M.D., have been postponed and will be considered at the Board's June 11, 2003 meeting. Also, the Board has been unable to obtain verification of service of the Report and Recommendation in the Matter of Rezso Spruch, M.D., so that matter is also postponed this month. He asked that Board members retain their hearing materials until such time as these matters are considered by the Board.

Mr. Browning asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Raleigh Shipp Callion, M.D.; Claude B. Guidi, M.D.; Sam Hill, D.O.; Venu G. Menon, M.D.; John P. Moore, III, M.D.; and Ned E. Weiner, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Ms. Sloan	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Mr. Browning	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye

Ms. Sloan	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye
Mr. Browning	- aye

Mr. Browning noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters.

Mr. Browning stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and orders in the above matters. No objections were voiced by Board members present.

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

.....

NED ELTON WEINER, M.D.

.....

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF NED ELTON WEIENR, M.D. DR. BUCHAN SECONDED THE MOTION.

.....

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Ms. Sloan	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye
	Mr. Browning	- aye

The motion carried.



State Medical Board of Ohio

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November 13, 2002

Ned Elton Weiner, M.D.
2423 Bromley Road
University Heights, Ohio 44118

Dear Doctor Weiner:

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

- (1)(A) On or about July 14, 2000, you entered into a Step I Consent Agreement with the State Medical Board of Ohio [Board] in lieu of formal proceedings based upon your violations of Sections 4731.22(B)(5), (B)(9) and (B)(26), Ohio Revised Code.

You made certain admissions in this Step I Consent Agreement, including that you abused Percocet, which you diverted from family members, from May 1999 until October 1999; you completed 28 days of inpatient treatment for chemical dependency at Glenbeigh Health Sources, a Board approved treatment provider, and you entered into an Intensive Outpatient Program with Bethesda Hospital Alcohol and Drug Treatment Program, a Board approved treatment provider, in November 1999; and you failed to notify the Board of your illegal use of controlled substances and your chemical dependency treatment while your application was pending. You further admitted that, on or about December 21, 1999, you submitted to a urine toxicology test after being confronted by officials at University Hospitals, Cincinnati, due to suspicions that you were stealing drugs from sharps containers, and that said test was positive for morphine. You admitted to hospital officials that you had stolen two syringes filled with Fentanyl from patients' rooms on or about December 21, 1999, and that you had been stealing narcotic waste from the sharps containers since at least June 1999. You further admitted that you received treatment in lieu of conviction on or about April 17, 2000, for one felony count of Theft, related to your theft of Fentanyl for your own use, in violation of Section 2913.02(A)(2), Ohio Revised Code.

The Step I Consent Agreement revoked your certificate to practice medicine and surgery in the State of Ohio, stayed such revocation, suspended your certificate for a minimum of six months, and provided conditions for reinstatement. A copy of this Step I Consent Agreement is attached hereto and incorporated herein.

- (B) On or about December 28, 2000, you entered into a Step II Consent Agreement with the Board based upon your violation of Sections 4731.22(B)(5), (B)(9) and (B)(26), Ohio Revised Code,

Mailed 11-14-02

as set forth in the Step I Consent Agreement discussed above. The Step II Consent Agreement provided that your certificate to practice medicine be reinstated subject to certain probationary terms, conditions and limitations for a minimum of five years. The Step II Consent Agreement further provided that you "shall abstain completely from the personal use or possession of drugs, except those prescribed, personally furnished or administered to [you] by another so authorized by law who has full knowledge of [your] history of chemical dependency," as set forth in Paragraph 9 of that agreement. A copy of this Step II Consent Agreement is attached hereto and incorporated herein.

- (C) On or about October 9, 2002, following an administrative hearing on July 23, 2002, the Board ordered that your certificate to practice medicine and surgery in the State of Ohio be permanently revoked, such permanent revocation was stayed, and your certificate was suspended for an indefinite period of time, but not less than three years, based upon findings that your acts, conduct, and/or omissions as set forth in the Notice of Summary Suspension and Opportunity for Hearing [Notice] issued by the Board on or about June 12, 2002, violated Sections 4731.22(B)(15), and (B)(26), Ohio Revised Code.

The Order included findings that on or about November 21, 2001, you self-injected a drug and were found unresponsive by colleagues in the restroom of the on-call room of the hospital in Rochester, New York, where you were employed as a resident; that subsequently, you were treated and/or assessed at Strong Memorial Hospital, St. Mary's Hospital and the Eisenhower Medical Center, Betty Ford Center; that in or about May 2002, you relapsed on Percocet; and that you were admitted to the Cleveland Clinic Foundation Alcohol and Drug Recovery Center on May 13, 2002, for evaluation. Copies of the Board Order and Notice are attached hereto and incorporated herein.

- (2) On or about July 30, 2002, you tested positive for Darvon, a schedule four controlled substance.
- (3) On or about August 3, 2002, at the Good Samaritan Hospital, Cincinnati, Ohio, a nurse noticed you wandering down the hallway, looking randomly and briefly at patient charts. You temporarily left the area and returned with a patient census. In the hallway, you stood by a sharps container on a crash cart ostensibly reading the patient census. The nurse, who was in a patient room, heard rummaging in the crash cart, entered the hallway, and observed you quickly moving your hand away from the crash cart. When returning from the nurses' station, after notifying security of your presence and behavior, the nurse saw you remove your hand from the sharps container on the crash cart. After entering a patient room, the nurse again heard rummaging in the sharps container, returned to the hallway, and again saw you move your hand from the sharps container on the crash cart.

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

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 30 days of the time of mailing of this notice.

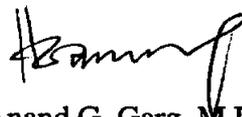
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at 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 30 days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand 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,



Anand G. Garg, M.D.
Secretary

AGG/blt
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5140 4966
RETURN RECEIPT REQUESTED

cc: Eric J. Plinke, Esq.
Porter, Wright, Morris & Arthur
41 South High Street
Columbus, Ohio 43215-6194

CERTIFIED MAIL # 7000 0600 0024 5140 4973
RETURN RECEIPT REQUESTED



State Medical Board of Ohio

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October 9, 2002

Ned Elton Weiner, M.D.
2423 Bromley Road
University Heights, OH 44118

Dear Doctor Weiner:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Daniel Roberts, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on October 9, 2002, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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

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

THE STATE MEDICAL BOARD OF OHIO

Anand G. Garg, M.D. /TAG

Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5146 2560
RETURN RECEIPT REQUESTED

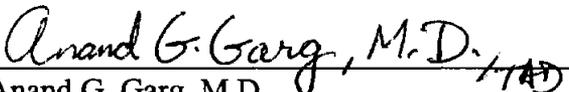
Cc: Eric J. Plinke, Esq.
CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5146 2553
RETURN RECEIPT REQUESTED

Mailed 10/24/02

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Daniel Roberts, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on October 9, 2002, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Ned Elton Weiner, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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


Anand G. Garg, M.D.
Secretary

(SEAL)

October 9, 2002
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

NED ELTON WEINER, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on October 9, 2002.

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

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Ned Elton Weiner, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Weiner's certificate shall be SUSPENDED for an indefinite period of time, but not less than three (3) years.
- B. **INTERIM MONITORING:** During the period that Dr. Weiner's certificate to practice medicine and surgery in Ohio is suspended, Dr. Weiner shall comply with the following terms, conditions, and limitations:
 - 1. **Obey Laws in Ohio:** Dr. Weiner shall obey all federal, state, and local laws; and all rules governing the practice of medicine in Ohio.
 - 2. **Quarterly Declarations:** Dr. Weiner shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. 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 Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. **Appearances**: Dr. Weiner shall appear in person for quarterly interviews before the Board or its designated representative, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
4. **Abstention from Drugs**: Dr. Weiner 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. Weiner's history of chemical dependency.
5. **Abstention from Alcohol**: Dr. Weiner shall abstain completely from the use of alcohol.
6. **Rehabilitation Program**: Dr. Weiner shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval. Dr. Weiner 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. Weiner's quarterly declarations.
7. **Drug & Alcohol Screens; Supervising Physician**: Dr. Weiner shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Weiner shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

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

8. **Provision of Blood or Urine for Screening without Prior Notice:**
Dr. Weiner shall submit blood and/or urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Weiner's expense.
9. **Continue Relationship with an Appropriate Aftercare Provider:**
Dr. Weiner shall maintain compliance with a post-discharge aftercare contract which complies with Rule 4731-16-10, Ohio Administrative Code, with a treatment provider approved under Section 4731.25, Ohio Revised Code, who has access to Dr. Weiner's treatment records.
10. **Continue Relationship with an Appropriate Impaired Physicians Committee:** Dr. Weiner shall continue his relationship with an appropriate impaired physicians committee, approved by the Board, for assistance in recovery and/or aftercare.
11. **Continue Psychiatric Treatment:** Within thirty days of the effective date of this Order, unless otherwise determined by the Board, Dr. Weiner shall submit to the Board for its prior approval the name and curriculum vitae of a psychiatrist of Dr. Weiner's choice.

Upon approval by the Board, Dr. Weiner shall obtain from the approved psychiatrist an assessment of Dr. Weiner's current psychiatric status. The assessment shall take place within thirty days of the Board's approval of a psychiatrist, unless otherwise determined by the Board. Prior to the initial assessment, Dr. Weiner shall furnish the approved psychiatrist copies of the Board's Order, including the Summary of the Evidence, Findings of Fact, and Conclusions, and any other documentation from the hearing record which the Board may deem appropriate or helpful to that psychiatrist.

Dr. Weiner shall continue in psychiatric treatment with the psychiatrist approved by the Board until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require reports from the approved treating psychiatrist. The psychiatric reports shall contain information describing Dr. Weiner's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Weiner's compliance with the treatment plan; Dr. Weiner's psychiatric status; Dr. Weiner's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. Weiner shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Weiner's quarterly declaration.

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

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

12. **Releases**: Dr. Weiner 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. Weiner's chemical dependency or related conditions, or for purposes of complying with this Order, whether such treatment or evaluation occurred before or after the effective date of this Order. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.

Dr. Weiner shall also 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 Order.

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

1. **Application and Fees:** Dr. Weiner shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Continued Compliance with Interim Monitoring Conditions:** Dr. Weiner shall have maintained continuing compliance with all terms of Paragraph B of this Order, unless otherwise determined by the Board.
3. **Demonstration of Ability to Resume Practice:** Dr. Weiner shall demonstrate to the satisfaction of the Board that he can practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include, but not be limited to, the following:
 - a. 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 post-discharge aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
 - b. Evidence of continuing full compliance with this Order.
 - c. Two written reports indicating that Dr. Weiner's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the Board for making such assessments and shall describe the basis for this determination.
5. **Absence from Practice:** In the event that Dr. Weiner has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to the submission of his application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Weiner's fitness to resume practice.

D. **PROBATIONARY TERMS:** Upon reinstatement or restoration, Dr. Weiner's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:

1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Weiner shall continue to be subject to the terms, conditions, and limitations specified in paragraph B of this Order.
2. **Prior Approval of Employment:** Dr. Weiner shall obtain the approval of the Board for any medical practice or employment related to the health care fields. The Board shall consider, among other factors, the adequacy and continuity of supervision and the feasibility of restricted access to controlled substances which will ensure the protection of the public, prior to approval or disapproval of the proposed employment.
3. **Ban on Purchasing, Administering, Furnishing, or Possessing Controlled Substance; Log:** Dr. Weiner shall not, without prior Board approval, administer, personally furnish, or possess, except as allowed under Paragraph B.4 of this Order, any controlled substances as defined by state or federal law.

In the event that the Board agrees at a future date to modify this Order to allow Dr. Weiner to administer or personally furnish controlled substances, Dr. Weiner shall keep a log of all controlled substances administered or personally furnished. Such log shall be submitted in a format approved by the Board thirty days prior to Dr. Weiner's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Weiner shall make his patient records with regard to such prescribing, administering, or personally furnishing available for review by an agent of the Board upon request.

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

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

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

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

5. **Absence from Ohio:** In the event that Dr. Weiner should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Weiner must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this period under the Order, unless otherwise determined by the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
 6. **Violation of Probation; Discretionary Sanction Imposed:** If Dr. Weiner violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
 7. **Tolling of Probationary Period while Out of Compliance:** In the event Dr. Weiner is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period.
- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Weiner's certificate will be fully restored.
- F. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, unless otherwise determined by the Board, Dr. Weiner shall provide a copy of this Order 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. Weiner shall provide a copy of this Order

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

G. REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING

AUTHORITIES: Within thirty days of the effective date of this Order, unless otherwise determined by the Board, Dr. Weiner shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license.

Dr. Weiner shall also provide a copy of this Order 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 or restoration of any professional license. Further, Dr. Weiner shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon the mailing of notification of approval by the Board.

(SEAL)

Anand G. Garg, M.D.
Anand G. Garg, M.D. *AGD*
Secretary

October 9, 2002

Date

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**REPORT AND RECOMMENDATION
IN THE MATTER OF NED ELTON WEINER, M.D.**

The Matter of Ned Elton Weiner, M.D., was heard by Daniel Roberts, Attorney Hearing Examiner for the State Medical Board of Ohio, on July 23, 2002.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated June 12, 2002, the State Medical Board of Ohio [Board] notified Ned Elton Weiner, M.D., that his certificate to practice medicine and surgery in this state had been summarily suspended. The Board further notified Dr. Weiner that it had proposed to take disciplinary action against his certificate, based on one or more of the following allegations:
1. On or about July 14, 2000, Dr. Weiner entered into a Step I Consent Agreement with the Board in lieu of formal proceedings based upon violation of Sections 4731.22(B)(5), (B)(9) and (B)(26), Ohio Revised Code. The Step I Consent Agreement revoked Dr. Weiner's certificate to practice medicine and surgery in the State of Ohio, stayed such revocation, suspended his certificate for a minimum of six months, and provided conditions for reinstatement.
 2. On or about December 28, 2000, Dr. Weiner entered into a Step II Consent Agreement with the Board based upon his violation of Sections 4731.22(B)(5), (B)(9) and (B)(26), Ohio Revised Code, as set forth in the July 14, 2000, Step I Consent Agreement. The Step II Consent Agreement provided that Dr. Weiner's certificate to practice medicine and surgery be reinstated subject to certain probationary terms, conditions and limitations for a minimum of five years.
 3. Paragraph 9 of the Step II Consent Agreement states that Dr. Weiner "shall abstain completely from the personal use or possession of drugs, except those prescribed, personally furnished or administered to him by another so authorized by law who has full knowledge of [his] history of chemical dependency."

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On or about November 21, 2001, Dr. Weiner self-injected a drug and was found unresponsive by colleagues at Strong Memorial Hospital in Rochester, New York.

Subsequently, Dr. Weiner reported that, in or about May 2002, he had relapsed on Percocet.

The Board alleged that the acts, conduct, and/or omissions of Ned Elton Weiner, M.D., in self injecting a drug in November 2001 and using Percocet in May 2002, individually and/or collectively, constitute “[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.”

The Board further alleged that Dr. Weiner’s acts, conduct, and/or omissions 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.”

Accordingly, the Board advised Dr. Weiner of his right to request a hearing in this matter. (State’s Exhibit 1A)

- B. On July 9, 2002, Eric J. Plinke, Esq., submitted a written hearing request on behalf of Dr. Weiner. (State’s Exhibit 1B)

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Kyle C. Wilcox, Assistant Attorney General.
- B. On behalf of the Respondent: Eric J. Plinke, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

- A. Presented by the State

Ned Elton Weiner, M.D., as on cross-examination.

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B. Presented by the Respondent

Ned Elton Weiner, M.D.

II. Exhibits Examined

A. Presented by the State:

1. State's Exhibits 1A-1I: Procedural exhibits.
2. State's Exhibit 2: Certified copy of the July 14, 2000, Step I Consent Agreement between Dr. Weiner and the Board.
3. State's Exhibit 3: Certified copy of the December 28, 2000, Step II Consent Agreement between Dr. Weiner and the Board
4. State's Exhibit 4: Treatment records for Dr. Weiner from Strong Memorial Hospital. This exhibit is under seal pursuant to Section 4731.22(F)(5), Ohio Revised Code.

B. Presented by the Respondent:

Respondent's Exhibit A: Evaluation Report for Dr. Weiner from the Betty Ford Center, Professional Recovery Program. This exhibit is under seal pursuant to Section 4731.22(F)(5), Ohio Revised Code.

PROCEDURAL MATTERS

The record in this matter was held open to allow Counsel for Dr. Weiner to submit additional exhibits if those exhibits became available in a timely manner. Counsel did not submit any additional exhibits. Accordingly, the record closed on August 9, 2002. (Hearing Transcript at pages 59-65)

SUMMARY OF THE EVIDENCE

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

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Background

1. Ned Elton Weiner, M.D., testified that he had completed medical school at Tulane University and completed the majority of a neurosurgery residency at the University of Cincinnati. He subsequently completed five or six months of a neurosurgery residency at the University of Rochester. Dr. Weiner testified that, because he did not complete his final year of residency at either Cincinnati or Rochester, he would be required to complete an additional full year to finish his residency. (Hearing Transcript [Tr.] at 10-11, 46)

Dr. Weiner testified that no license or training certificate had been required by the State of New York for him to work as a resident at Rochester.¹ Dr. Weiner testified that he is licensed to practice medicine only in Ohio. Dr. Weiner testified that he has not practiced medicine since November 2001. (Tr. 11, 40, 51-53)

The Step I Consent Agreement

2. Dr. Weiner entered into a Step I Consent Agreement with the Board, effective July 14, 2000, in lieu of formal proceedings based upon violation of Sections 4731.22(B)(5), (B)(9) and (B)(26), Ohio Revised Code. (State's Exhibit [St. Ex.] 2)

Dr. Weiner made certain admissions in his Step I Consent Agreement, including the following:

- he had abused Percocet, which he had diverted from family members, from May until October 1999.
- he had completed twenty-eight days of inpatient treatment for chemical dependency at Glenbeigh Health Sources, a Board approved treatment provider, on November 18, 1999.
- he had entered into an Intensive Outpatient Program at Bethesda Hospital Alcohol and Drug Treatment Program, a Board approved treatment provider, in November 1999.
- he had failed to notify the Board of his illegal use of controlled substances and his chemical dependency treatment while his application for licensure had been pending.
- on or about December 21, 1999, Dr. Weiner had tested positive for morphine in a urine toxicology test.

¹ Dr. Weiner's counsel interjected that, in spite of the fact that no formal license or training certificate had been required for Dr. Weiner to work as a resident in New York; he believes that the New York Board will take formal action based on the November 21, 2001, incident described below.

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- he had admitted to hospital officials that he had stolen two syringes filled with fentanyl from patients' rooms on or about December 21, 1999.
- he had admitted to hospital officials that he had been stealing narcotic waste from the sharps containers since at least June 1999.
- he had received treatment in lieu of conviction on or about April 17, 2000, for one felony count of Theft, related to his theft of fentanyl for his own use, in violation of Section 2913.02(A)(2), Ohio Revised Code.

(Tr. 11-13; St. Ex. 2)

The Step I Consent Agreement revoked Dr. Weiner's certificate to practice medicine and surgery in the State of Ohio, stayed such revocation, suspended his certificate for a minimum of six months, and provided conditions for reinstatement. (Tr. 11, St. Ex 2)

The Step II Consent Agreement

3. Dr. Weiner entered into a Step II Consent Agreement with the Board, which became effective December 28, 2000, based upon his violation of Sections 4731.22(B)(5), (B)(9) and (B)(26), Ohio Revised Code, as set forth in the July 14, 2000, Step I Consent Agreement. The Step II Consent Agreement provided that Dr. Weiner's certificate to practice medicine and surgery be reinstated subject to certain probationary terms, conditions and limitations for a minimum of five years. (Tr. 12-14; St. Ex. 3)
4. Paragraph 9 of the Step II Consent Agreement states that Dr. Weiner "shall abstain completely from the personal use or possession of drugs, except those prescribed, personally furnished or administered to him by another so authorized by law who has full knowledge of [his] history of chemical dependency." (St. Ex. 3)
5. Dr. Weiner testified that he had been subject to the Step II Consent Agreement in November 2001. (Tr. 12-14; St. Ex. 3)

Strong Memorial Hospital

6. Dr. Weiner testified that, beginning in July 2001, he had been the senior resident in neurosurgery at Strong Memorial Hospital in Rochester, New York [Strong], which is associated with the University of Rochester. He explained that his duties included performing or assisting in surgery, overseeing care of the inpatient neurosurgical services, working in the outpatient clinic, and some educational and administrative duties. Dr. Weiner noted that he had been working "[s]omewhere over 100" hours a week. Dr. Weiner further noted that had been incredibly difficult for him to obtain the Rochester position. (Tr. 14, 44)

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Dr. Weiner testified that, while working at Strong, he had continued substance abuse treatment. He elaborated that he had been seeing a psychiatrist/addictionologist at least once a month. He added that he had also been attending AA or Caduceus meetings at least three times a week. He noted that he had been subject to weekly random urine screens and had had a practice monitor. Dr. Weiner testified that he had had an agreement with the Committee for Physicians' Health [CPH], which he described as the New York equivalent of the Ohio Physicians Effectiveness Program [OPEP]. (Tr. 14-16, 48, 51)

Stress Affecting Dr. Weiner in November 2001

7. Dr. Weiner testified that he had traveled to Mississippi shortly before November 21, 2001, to sign a contract for post-residency employment. He explained that at the time of that trip his children had been living in Baton Rouge, Louisiana, and he had specifically sought employment that would allow him to be near the children. While on this trip he had seen his children and his wife. Dr. Weiner testified that his contact with his "soon to be ex-wife and her boyfriend" had been very upsetting and had made him "pretty despondent". He explained that he had been going through a period of major grieving over the loss of his marriage and had been affected by being separated from his children. Dr. Weiner noted that he had failed to bring with him medications he had been prescribed for depression. He testified that when he had arrived back in New York "it really hit me and I became very depressed and suicidal for the first time in my life." (Tr. 36-37, 47-48)

The November 21, 2001 Incident

8. Dr. Weiner testified that on November 21, 2001, he had taken both a vial and a syringe of propofol from an anesthesia cart in an operating room after the last surgery of the day had been completed. Dr. Weiner asserted that propofol is not a controlled substance. As a result it is not uncommon to find it left out in the operating room. Dr. Weiner noted that the vial had been labeled and probably contained between 25 and 50 ccs of propofol. The syringe had not been labeled. Dr. Weiner explained that at that point he had wanted kill himself and believed that the propofol would accomplish that goal. (Tr. 17-20)

Dr. Weiner explained that propofol is an induction agent that is used to "knock people out". In addition propofol is used to make someone unaware of his or her surroundings during surgery. He explained that propofol is not in itself a painkiller and is used in conjunction with painkillers. Dr. Weiner testified that propofol is a short acting drug and that an overdose kills by stopping a person's breathing. (Tr. 17-18, 29-30, St. Ex. 4)

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Dr. Weiner testified that he had waited until the end of his shift before going into the on-call restroom with the propofol. Dr. Weiner testified that he had self-injected the propofol. (Tr. 16-18, 20-22, 29-30; St. Ex. 4)

9. Dr. Weiner testified that a colleague had found him and had "called the code team" He further testified that he had been "pretty out of it" when he had been found. Dr. Weiner also testified that he believes that he had flushed the propofol vial and syringe. Dr. Weiner commented that his memories of the events in the on-call restroom are unclear. (Tr. 16-18, 20-22, 29-30; St. Ex. 4)

Dr. Weiner testified that he had been pretty upset and scared when he had awakened. He explained that he believes he wanted to engage in some kind of damage control. Dr. Weiner testified that he believes that he had not been talkative or cooperative with the emergency treatment team. Dr. Weiner testified that, later that day, a psychiatrist had seen him. He believes that the psychiatrist may have been the first person he told that he had injected propofol. He is certain that he had eventually disclosed this to someone on the medical team later on the same day he had injected it. (Tr. 22-23; St. Ex. 4)

10. Dr. Weiner testified that, as part of his emergency treatment, his urine had been screened and that screen had been positive for barbiturates. Dr. Weiner asserted that confirmatory testing had been negative for barbiturates. He also noted that neither propofol nor Percocet are barbiturates. (Tr. 24-27; St. Ex. 4)

Dr. Weiner subsequently testified that testing at Strong during his emergency treatment had detected a small amount of fentanyl in his blood. Dr. Weiner explained that he had removed a syringe that had been hooked to a stopcock with IV tubing and believes that it had been cross-contaminated with fentanyl. He asserted that he had not intentionally used fentanyl. (Tr. 27-29; St. Ex 4)

11. Dr. Weiner testified that after the emergency treatment he had been placed in intensive care and then transferred to a regular hospital room. Subsequently he had been transferred to St. Mary's Hospital, an inpatient psychiatric facility. Dr. Weiner testified that he stayed at the psychiatric hospital for one or two weeks. (Tr. 23, 30-31; St. Ex. 4)

Dr. Weiner asserted that his memory of dates surrounding his psychiatric hospitalization and the period immediately after that is unclear. He stated that CPH and his employer knew immediately about his hospitalization. He stated that he believes that he notified OPEP and spoken to a staff member at the Board about what had occurred, one or two week after he had been released from the psychiatric hospital. (Tr. 30-31)

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12. Dr. Weiner testified that he had been advised by CPH to go to the Betty Ford Center [Ford] in California for assessment and evaluation. He had spent a week at Ford and had been evaluated by Anne Linton, M.D., and a large staff of psychologists and counselors. After his stay at Ford he returned to Cleveland. (Tr. 31, 55-58; Respondent's Exhibit [Resp. Ex.] A)

By letter dated December 10, 2001, Dr. Linton, Medical Director, Professional Recovery Program, Betty Ford Center at the Eisenhower Medical Center, addressed CPH. Dr. Linton summarized a "Through [sic] Psychiatric and Addiction Medicine Assessment" and a "through [sic] Psychologic and Neropsychologic evaluation and assessment." Dr. Linton noted that the discharge diagnosis for Dr. Weiner included "(1) Depressive Disorder NOS, (2) General Anxiety Disorder, and (3) Opiate Dependence in remission." Attached to Dr. Linton's letter is an eight-page document titled "Neuropsychological Evaluation" which expands on Dr. Linton's comments.² (Resp. Ex. A)

13. Dr. Weiner testified that he never returned to his employment at Strong. He explained that he had been suspended and then subsequently terminated by Strong. (Tr. 31)
14. Dr. Weiner testified that between November 2001 and May 2002, he had returned to Cleveland, reinstated himself in the Cleveland Clinic Foundation [CCF] aftercare program and concentrated on working his recovery program. Dr. Weiner also began working as an independent contractor reviewing charts for attorneys. He noted that there had never been any lapses in his urine monitoring or treatment during this period. (Tr. 31-33)

The Percocet Relapse

15. Dr. Weiner testified that, in May 2002, his divorce had just become final; he had believed that his career had been completely lost; he had been staying at his parents' home in Cleveland and had been "pretty despondent." Dr. Weiner testified that, because another family member is a recovering alcoholic, his parents' home normally contains no alcohol, or narcotics. However, his mother had had surgery and had received narcotic pain medications to bring home from the hospital. She had hidden the medication to keep it away from Dr. Weiner. However, Dr. Weiner had discovered the hidden Percocet and took them himself over a period of weeks. Dr. Weiner testified that his mother had not learned that he had taken her medications until later because she had not been using them—she had chosen to use non-controlled medications to treat her pain. (Tr. 32-35)

² It should be noted that both Dr. Linton's letter and the Neuropsychological Evaluation incorporate by reference several other reports and evaluations which are not included in the record.

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Dr. Weiner testified that he had told his sponsor about his relapse. His sponsor had advised him to enter CCF for evaluation. Dr. Weiner stated that he had entered CCF on May 13, 2002, where he had received a three or four day inpatient evaluation. Dr. Weiner testified that he believes that he had reported this relapse to the Board during the evaluation at CCF. Dr. Weiner commented that the treatment providers at CCF had been aware that he was not then practicing medicine and "felt comfortable" with stepping up his outpatient treatment rather than continuing him as an inpatient. (Tr. 34-36)

Dr. Weiner testified that he had signed a new treatment agreement with CCF after the May 2002 relapse. Since that time he has increased the number of meetings he attends and has daily contact with his sponsor. (Tr. 35-36, 50-51)

Additional Information

16. Dr. Weiner testified that Gregory Collins, M.D., at CCF, is presently treating him. He described Dr. Collins as a psychiatrist/addictionologist. He explained that Dr. Collins manages his medications and is the treatment team leader. (Tr. 40-41, 48)

Dr. Weiner testified that Joe Janesz, Ph.D., is a psychologist who runs the health care providers recovery group at CCF. Dr. Weiner explained that he meets with Dr. Janesz and the recovery group at least once a week and that he meets with Dr. Janesz separately on occasion. Dr. Weiner testified that he has urine monitoring through OPEP randomly once a week and has a supervising physician who is also his sponsor in recovery. Dr. Weiner testified that he attends meetings every week. He explained that his goal is to attend five meetings a week. He further testified that his minimum is three meetings a week. He explained that he attends a variety of twelve step-based meetings. Dr. Weiner testified that he has continued to maintain a paper trail of his recovery activities and has continued to make his quarterly reports to the Board under the terms of his Step II Consent Agreement. Dr. Weiner testified that OPEP is presently handling urine screens for him. He noted that Ed Poczepak is his OPEP field representative. Dr. Weiner testified that he is in compliance with the terms of his present CCF and OPEP aftercare contracts. (Tr. 40-42, 49-51)

17. Dr. Weiner testified that he had tried alcohol and marijuana in the past. However, he further testified that he had never had an addiction problem with anything except opiates. Dr. Weiner testified that his initial use of opiates had come late in his training and had only lasted for a relatively short time. He noted that he has not used alcohol since signing his Step I Consent Agreement. (Tr. 36, 39-40)
18. Dr. Weiner testified that he has not had any further suicidal thoughts. Dr. Weiner further testified that he is currently doing some work for a law firm. Dr. Weiner explained that his

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work involves reviewing medical charts in potential malpractice actions. He further testified that he is registered to attend law school full time beginning in August 2002. However he is considering changing to a part time program. (Tr. 36, 39-43, 53)

19. Dr. Weiner believes that it will be nearly impossible for him to find a position in another residency program similar to what he had at Rochester. Dr. Weiner stated that he does not plan to look for a residency in another specialty. Dr. Weiner commented that he does not know what he would do if offered another neurosurgery residency opportunity while attending law school. He explained that he would have to consult with Dr. Collins, Dr. Janesz and others to access what the best course of action would be should such an opportunity arise. Dr. Weiner testified about the risk to his sobriety if he were to return to employment in a hospital at this time. He explained that it is not the practice of medicine itself that concerns him as much as the access to drugs in a hospital setting. (Tr. 38, 45-46)
20. At hearing, Dr. Weiner's counsel asked him if he believed that it would be wise for continued psychiatric treatment to be a condition of the restoration of his license. Dr. Weiner responded that he would not object to such a condition. He explained that it would be wise for him to continue treatment regardless of whether the Board required it or not.³ (Tr. 48-49)
21. Dr. Weiner testified that he has taken his recovery seriously in the past. However, he further testified that he is now working more intensively, approaching risks more conservatively, and trying to establish more discipline in his program. Dr. Weiner noted that he has never pretended that his efforts are perfect but that he is working hard. He commented that he had been "doing what [he] was supposed to do, but had let down [his] guard." (Tr. 37-39, 58-59)

Dr. Weiner testified that he is asking the Board to give him the opportunity to practice medicine again and that he is working hard to get to the point where the Board could permit him to have that opportunity. (Tr. 49-50)

FINDINGS OF FACT

1. On July 14, 2000, Ned Elton Weiner, M.D., entered into a Step I Consent Agreement with the Board in lieu of formal proceedings based upon violation of Sections 4731.22(B)(5), (B)(9) and (B)(26), Ohio Revised Code.

³ Subsequently Dr. Weiner waived any objection to the Board imposing a condition that he continue psychiatric treatment as part of any Final Order in this matter. (Tr. 53-54)

Dr. Weiner made certain admissions in his Step I Consent Agreement, including the following:

- he had abused Percocet, which he had diverted from family members, from May until October 1999.
- he had completed twenty-eight days of inpatient treatment for chemical dependency at Glenbeigh Health Sources, a Board approved treatment provider, on November 18, 1999.
- he had entered into an Intensive Outpatient Program at Bethesda Hospital Alcohol and Drug Treatment Program, a Board approved treatment provider, in November 1999.
- he had failed to notify the Board of his illegal use of controlled substances and his chemical dependency treatment while his application for licensure had been pending.
- on or about December 21, 1999, Dr. Weiner had tested positive for morphine in a urine toxicology test.
- he had admitted to hospital officials that he had stolen two syringes filled with Fentanyl from patients' rooms on or about December 21, 1999.
- he had admitted to hospital officials that he had been stealing narcotic waste from the sharps containers since at least June 1999.
- he had received treatment in lieu of conviction on or about April 17, 2000, for one felony count of Theft, related to his theft of Fentanyl for his own use, in violation of Section 2913.02(A)(2), Ohio Revised Code.

The Step I Consent Agreement revoked Dr. Weiner's certificate to practice medicine and surgery in the State of Ohio, stayed such revocation, suspended his certificate for a minimum of six months, and provided conditions for reinstatement.

2. On December 28, 2000, Dr. Weiner entered into a Step II Consent Agreement with the Board based upon his violation of Sections 4731.22(B)(5), (B)(9) and (B)(26), Ohio Revised Code, as set forth in the July 14, 2000, Step I Consent Agreement as described in Findings of Fact 1. The Step II Consent Agreement provided that Dr. Weiner's certificate to practice medicine and surgery be reinstated subject to certain probationary terms, conditions and limitations for a minimum of five years.
3. Paragraph 9 of the Step II Consent Agreement states that Dr. Weiner "shall abstain completely from the personal use or possession of drugs, except those prescribed, personally furnished or administered to him by another so authorized by law who has full knowledge of his history of chemical dependency."

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On November 21, 2001, Dr. Weiner self-injected a drug and was found unresponsive by colleagues in the restroom of the on-call room of the Strong Memorial Hospital in Rochester, New York, where Dr. Weiner was employed as a resident. Dr. Weiner was subsequently treated and/or assessed at Strong Memorial Hospital, St. Mary's Hospital and the Eisenhower Medical Center, Betty Ford Center.

During May 2002, Dr. Weiner relapsed on Percocet, which had belonged to another family member. Dr. Weiner had been admitted to the Cleveland Clinic Foundation Alcohol and Drug Recovery Center on May 13, 2002, for evaluation.

CONCLUSIONS OF LAW

1. The acts, conduct, and/or omissions of Ned Elton Weiner, M.D., as described in Findings of Fact 3, 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.
2. Dr. Weiner's acts, conduct, and/or omissions 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.

* * * * *

There is no evidence in the record that Ned Elton Weiner, M.D., used drugs improperly between December 21, 1999, and November 21, 2001 when he had self-injected propofol in an apparent suicide attempt. There is no evidence in the record that Dr. Weiner relapsed on opiates between December 21, 1999, and May 2002.

Dr. Weiner has demonstrated his ability to comply with the requirements of probation and aftercare for a period of time. However, he has also relapsed twice and engaged in self-destructive behavior. The safety of the public requires that Dr. Weiner further demonstrate his ability to maintain his sobriety and practice appropriately prior to any resumption of the practice of medicine.

PROPOSED ORDER

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Ned Elton Weiner, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Weiner's certificate shall be SUSPENDED for an indefinite period of time, but not less than one year.
- B. **INTERIM MONITORING:** During the period that Dr. Weiner's certificate to practice medicine and surgery in Ohio is suspended, Dr. Weiner shall comply with the following terms, conditions, and limitations:
1. **Obey Laws in Ohio:** Dr. Weiner shall obey all federal, state, and local laws; and all rules governing the practice of medicine in Ohio.
 2. **Quarterly Declarations:** Dr. Weiner shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. 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 Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
 3. **Appearances:** Dr. Weiner shall appear in person for quarterly interviews before the Board or its designated representative, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
 4. **Abstention from Drugs:** Dr. Weiner 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. Weiner's history of chemical dependency.
 5. **Abstention from Alcohol:** Dr. Weiner shall abstain completely from the use of alcohol.
 6. **Rehabilitation Program:** Dr. Weiner shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three

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times per week. Substitution of any other specific program must receive prior Board approval. Dr. Weiner 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. Weiner's quarterly declarations.

7. **Drug & Alcohol Screens; Supervising Physician**: Dr. Weiner shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Weiner shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

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

8. **Provision of Blood or Urine for Screening without Prior Notice:** Dr. Weiner shall submit blood and/or urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Weiner's expense.
9. **Continue Relationship with an Appropriate Aftercare Provider:** Dr. Weiner shall maintain compliance with a post-discharge aftercare contract which complies with Rule 4731-16-10, Ohio Administrative Code, with a treatment provider approved under Section 4731.25, Ohio Revised Code, who has access to Dr. Weiner's treatment records.
10. **Continue Relationship with an Appropriate Impaired Physicians Committee:** Dr. Weiner shall continue his relationship with an appropriate impaired physicians committee, approved by the Board, for assistance in recovery and/or aftercare.
11. **Continue Psychiatric Treatment:** Within thirty days of the effective date of this Order, unless otherwise determined by the Board, Dr. Weiner shall submit to the Board for its prior approval the name and curriculum vitae of a psychiatrist of Dr. Weiner's choice.

Upon approval by the Board, Dr. Weiner shall obtain from the approved psychiatrist an assessment of Dr. Weiner's current psychiatric status. The assessment shall take place within thirty days of the Board's approval of a psychiatrist, unless otherwise determined by the Board. Prior to the initial assessment, Dr. Weiner shall furnish the approved psychiatrist copies of the Board's Order, including the Summary of the Evidence, Findings of Fact, and Conclusions, and any other documentation from the hearing record which the Board may deem appropriate or helpful to that psychiatrist.

Dr. Weiner shall continue in psychiatric treatment with the psychiatrist approved by the Board until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require reports from the approved treating psychiatrist. The psychiatric reports shall contain information describing Dr. Weiner's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Weiner's compliance with the treatment plan; Dr. Weiner's psychiatric status; Dr. Weiner's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. Weiner shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Weiner's quarterly declaration.

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

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

12. **Releases**: Dr. Weiner 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. Weiner's chemical dependency or related conditions, or for purposes of complying with this Order, whether such treatment or evaluation occurred before or after the effective date of this Order. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.

Dr. Weiner shall also 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 Order.

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

1. **Application and Fees**: Dr. Weiner shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Continued Compliance with Interim Monitoring Conditions**: Dr. Weiner shall have maintained continuing compliance with all terms of Paragraph B of this Order, unless otherwise determined by the Board.
3. **Demonstration of Ability to Resume Practice**: Dr. Weiner shall demonstrate to the satisfaction of the Board that he can practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include, but not be limited to, the following:

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- a. 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 post-discharge aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
 - b. Evidence of continuing full compliance with this Order.
 - c. Two written reports indicating that Dr. Weiner's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the Board for making such assessments and shall describe the basis for this determination.
5. **Absence from Practice**: In the event that Dr. Weiner has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to the submission of his application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Weiner's fitness to resume practice.
- D. **PROBATIONARY TERMS**: Upon reinstatement or restoration, Dr. Weiner's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
1. **Terms, Conditions, and Limitations Continued from Suspension Period**: Dr. Weiner shall continue to be subject to the terms, conditions, and limitations specified in paragraph B of this Order.
 2. **Prior Approval of Employment**: Dr. Weiner shall obtain the approval of the Board for any medical practice or employment related to the health care fields. The Board shall consider, among other factors, the adequacy and continuity of supervision and the feasibility of restricted access to controlled substances which will ensure the protection of the public, prior to approval or disapproval of the proposed employment.
 3. **Ban on Purchasing, Administering, Furnishing, or Possessing Controlled Substance; Log**: Dr. Weiner shall not, without prior Board approval, administer, personally furnish, or possess, except as allowed under Paragraph B.4 of this Order, any controlled substances as defined by state or federal law.

In the event that the Board agrees at a future date to modify this Order to allow Dr. Weiner to administer or personally furnish controlled substances, Dr. Weiner shall

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keep a log of all controlled substances administered or personally furnished. Such log shall be submitted in a format approved by the Board thirty days prior to Dr. Weiner's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Weiner shall make his patient records with regard to such prescribing, administering, or personally furnishing available for review by an agent of the Board upon request.

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

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

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

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

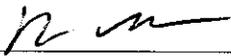
5. **Absence from Ohio**: In the event that Dr. Weiner should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Weiner must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this period under the Order, unless otherwise determined by the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.

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6. **Violation of Probation; Discretionary Sanction Imposed:** If Dr. Weiner violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
 7. **Tolling of Probationary Period while Out of Compliance:** In the event Dr. Weiner is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period.
- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Weiner's certificate will be fully restored.
- F. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, unless otherwise determined by the Board, Dr. Weiner shall provide a copy of this Order 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. Weiner shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
- G. **REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, unless otherwise determined by the Board, Dr. Weiner shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Weiner shall also provide a copy of this Order 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 or restoration of any professional license. Further, Dr. Weiner shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon the mailing of notification of approval by the Board.



Daniel Roberts
Attorney Hearing Examiner



State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF OCTOBER 9, 2002

REPORTS AND RECOMMENDATIONS

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

Dr. Somani asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Gene A. Germano, M.D.; Stephen J. Sveda, M.D.; and Ned Elton Weiner, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Garg	- aye
	Dr. Somani	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Garg	- aye

Dr. Somani - aye

Dr. Somani noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters.

Dr. Somani stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and orders in the above matters. No objections were voiced by Board members present.

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

.....
NED ELTON WEINER, M.D.

Dr. Somani directed the Board's attention to the matter of Ned Elton Weiner, M.D. He advised that no objections were filed to Hearing Examiner Roberts' Report and Recommendation.

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

Dr. Weiner was accompanied by his attorney, Eric J. Plinke.

Dr. Weiner stated that he feels that the recommendations handed down by Mr. Roberts were fair, and that the hearing was conducted fairly. Dr. Weiner stated that he has a disease with which he has struggled for some time. Unfortunately, he was unable to finish the last part of a neurosurgical residency as a consequence of suffering from that disease.

Dr. Weiner stated that he currently lives in Cleveland. He has been continuing at the Cleveland Clinic with all of the recommendations of Dr. Collins and Dr. Janesz. He also maintains an agreement with OPEP. He's continuing under all of the guidelines of his previous Consent Agreement. Dr. Weiner stated that he's been doing everything he can to maintain his recovery since this relapse. That is of utmost importance to him.

Dr. Weiner stated that he has started law school in Cleveland. He doesn't know what will ultimately happen to his medical career. He hopes that he can have the option to go back and try to finish his residency or do something else in medicine, if that's possible. In the meantime he is focusing on his recovery and going back to school. Fortunately, his relapse occurred when he wasn't practicing medicine. His previous relapse also occurred while he wasn't practicing medicine. Now his focus is on his recovery.

Dr. Weiner stated that he feels that he has been honest with the Board and reported this relapse in a timely fashion. He added that he would be grateful if he would be left with the option to return to medicine at some point. He is willing to do whatever that takes. He added that he agrees with the terms of the recommendations handed down by the Attorney Hearing Examiner.

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

In Mr. Wilcox' absence, Mr. Michael stated that the State is in agreement with the Report and Recommendation.

DR. BHATI MOVED TO APPROVE AND CONFIRM MR. ROBERTS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF NED ELTON WEINER, M.D. DR. BUCHAN SECONDED THE MOTION.

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

Dr. Egner stated that whenever she reads Reports and Recommendations, she likes to not know what the final recommendation is. She added that, as she was reading this case, she fully expected the recommendation to be for permanent revocation, and she would not have disagreed with that. Dr. Weiner has a very serious problem and he relapses rather easily. As she reads the hearing record, the personal stresses he had are those that many in medicine have. Many marriages end in divorce and many go through difficult times, but these put Dr. Weiner into a relapse situation. Dr. Egner stated that she can't think of a specialty much more stressful than neurosurgery. It is hard for her to believe that he is going to be able to withstand the stresses of medicine without relapsing because he hasn't shown he can handle the stress in his personal life much less in his professional life. Dr. Egner stated that there were a few questions to which she could not find answers and that concerns her; i.e., leaving his residency program at U.C. after having the majority of it done. She'd like to know why.

Dr. Egner stated that Dr. Weiner's addiction and relapse are very, very serious. He took drugs from a sharps container, using Fentanyl, another case of being found overdosed in the hospital. Dr. Egner commented that it's amazing to her that in a two-month period of time, the Board has seen three such cases. Dr. Egner stated that she doesn't feel much differently from the way she felt about last month's cases. She could go along with the Recommendation, but her feeling is that Dr. Weiner will continue to relapse. She doesn't think that he will make it. Certainly another relapse would definitely mean permanent revocation as far as she is concerned.

Dr. Bhati stated that Dr. Weiner has come as close as anyone came to having his license permanently revoked. He added that he was surprised that the Hearing Examiner didn't recommend permanent revocation. He was also surprised that the Hearing Examiner recommends only a one-year suspension. He felt that a three to five years' suspension would be more appropriate. Dr. Bhati noted that Dr. Weiner has done too many things and he does not feel comfortable about Dr. Weiner's chances of getting better. Dr. Bhati suggested either a permanent revocation or the current Proposed Order with a five-year

suspension rather than a one-year suspension.

Ms. Sloan agreed with Dr. Bhati about the one-year suspension. She added that Dr. Egner is correct; this case is no different from others the Board has seen in the past month. The only thing that is not the same is that the Board doesn't have as much history on Dr. Weiner as it did in the other cases. She stated that she cannot support a one-year suspension.

Dr. Egner stated that she does believe this case is a little different from last month's in that those cases involved much longer and more serious addiction problems.

Dr. Egner spoke against imposing long suspensions. She stated that, as a Board dealing with impaired physicians, the Board members should look at the facts and the person and ask whether the Board believes that this individual can demonstrate his or her ability to stay in recovery and practice medicine. If evidence shows that he or she can, the Board should be able to tell that in a year's time, knowing that for the next five years the Board will be closely monitoring this person. If the Board says that it doesn't see this person as recovering, or that the person will pose too much of a threat to people in Ohio, then the Board should permanently revoke him or her. Dr. Egner again stated that she disagrees with four to five years' suspension because, essentially, the Board will be taking the person out of medicine. In that case, the Board has made the decision without it being as difficult a decision as permanent revocation is. Dr. Egner stated that she understands the reasoning behind lengthy suspensions, but she doesn't think it's the right thing for the Board to do. The Board should make the judgment, make the call and go either way.

Dr. Buchan stated that his notes in reviewing this case were similar to what has been echoed this afternoon. This fellow is fighting for his life, and he would suggest that Dr. Weiner's license not be the topic of Dr. Weiner's concern for two years. He suggested that the Order be amended to require a two-year suspension period. He added that he agrees with Dr. Egner that four or five years just prolongs the inevitable. Dr. Weiner should think about his recovery and his survival and put his practice on the shelf for two years, after which time he can apply for reinstatement.

Dr. Talmage agreed. He stated that in September the Board imposed a couple of very long suspension periods. If the Board doesn't know after two years, it will never know.

DR. BUCHAN MOVED TO AMEND PARAGRAPH A OF MR. ROBERTS' PROPOSED ORDER IN THE MATTER OF NED ELTON WEINER, M.D., BY IMPOSING A SUSPENSION PERIOD OF TWO YEARS, RATHER THAN ONE YEAR. DR. TALMAGE SECONDED THE MOTION.

Dr. Bhati spoke against the motion. He stated that Dr. Weiner has relapsed, he has compromised a patient, and he has done things on duty that were not acceptable. If the Board allows this physician to go back to work within two years, it will be exposing the public of the State of Ohio to a very high-risk situation. Dr. Bhati stated that Dr. Weiner needs more time to sit down and think about what he did, and he recommended a three-year suspension at least.

Dr. Talmage suggested that the Board get guidance from an addictionologist in such cases. As he understands it, most relapses occur in the first year, and a few in the second year. If individuals make it through two years of sobriety, chances of them staying clean and sober are good. After reinstatement, the Board puts such individuals on probation for five years. The Board isn't putting them out there unsupervised. They are under very close and tight supervision. If they come in with a positive drug screen, they're back out of practice. Dr. Talmage stated that he doesn't see that Dr. Buchan's motion will put the public in danger. If you're out of anything for four years, you would pretty much have to go back and train again. He doesn't think that that's what the Board really wants.

Dr. Davidson stated that these are very long, confusing and distressing stories. The fundamental difference between this case and the ones considered last month is that Dr. Weiner has failed the Board's efforts. He's been involved with the Board and he's been involved with treatment. The two physicians last month had big histories and had done heinous things but, to her knowledge, had had no experience with treatment. They hadn't been given a chance at treatment by the Board. Dr. Davidson stated that she believes that the five-year suspension in those cases resulted from the Board's feelings about the nature of those physicians' acts. Dr. Davidson stated that the Board can't judge the acts by themselves. It needs to be consistent in offering physicians a shot at treatment and redemption for themselves and all of the good interaction they can get with the Board in their probationary period.

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- nay
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- nay
	Dr. Davidson	- nay
	Dr. Garg	- abstain

The motion carried.

DR. TALMAGE MOVED TO APPROVE AND CONFIRM MR. ROBERTS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF NED ELTON WEINER, M.D. DR. BUCHAN SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- nay
	Dr. Buchan	- aye

Mr. Browning	- aye
Ms. Sloan	- nay
Dr. Davidson	- nay
Dr. Garg	- abstain

Needing six affirmative votes to pass a motion to take action against a practitioner, the motion failed.

DR. BHATI MOVED TO AMEND PARAGRAPH A OF MR. ROBERTS' PROPOSED ORDER IN THE MATTER OF NED ELTON WEINER, M.D., BY IMPOSING A SUSPENSION PERIOD OF THREE YEARS, RATHER THAN ONE YEAR. MR. BROWNING SECONDED THE MOTION.

Dr. Talmage asked whether it was the intent of those who voted against the two-year suspension to impose a longer suspension.

Dr. Davidson stated that she thought it was consistent with last month's actions.

Dr. Buchan spoke against the longer suspension times. He stated that part of the recovery for these people is, indeed, the monitoring to which Dr. Davidson referred after some period of suspension. He believes 24 months of suspension is reasonable, and he would like to understand where these people are at that point in their lives and monitor them closely, because he believes that what the Board does is part of the recovery program. The Board has five years from that point on to monitor. Dr. Buchan added that his thoughts were that if two-years didn't go, he would vote to revoke because at that point he's done with this. Dr. Buchan stated that two years is a significant period of time. Three to five years is too long.

Dr. Bhati stated that the issue is what percentage of people relapse after a one-year suspension, a two-year suspension, a three-year suspension or a five-year suspension. Dr. Bhati stated that he doesn't have the statistics, but his perception is that the people who stay clean for five years have a very small chance of relapse in comparison to those with one year of suspension. A person taking drugs in the course of practice shows how severe the impairment is. This gentleman needs a little more time to get treated and get back to normal. Dr. Bhati stated that he believes that three years would make a difference in this situation.

Ms. Sloan stated that in all of the reading that she does have to do on chemical dependency, a lot of it recommends three years of monitoring in any situation. She agreed with Dr. Talmage that the Board needs to get someone in to give the Board some guidance on this.

Mr. Dilling asked Ms. Sloan whether, when she says "three years of monitoring," she means suspension time.

Ms. Sloan stated that she means out of practice in any medical field.

Dr. Somani asked how long it takes to figure out if the person will recover or relapse again and again. Dr. Somani stated that some of the Board members feel that the longer the time the physician has to think

things over, the better the chance for recovery.

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- nay
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Garg	- abstain

The motion carried.

DR. BUCHAN MOVED TO APPROVE AND CONFIRM MR. ROBERTS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF NED ELTON WEINER, M.D. DR. BHATI SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- nay
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Garg	- abstain

The motion carried.



State Medical Board of Ohio

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NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING

June 12, 2002

Ned Elton Weiner, M.D.
2423 Bromley Road
University Heights, Ohio 44118

Dear Doctor Weiner:

Enclosed please find certified copies of the Entry of Order, the Notice of Opportunity for Hearing, and an excerpt of the Minutes of the State Medical Board, meeting in regular session on June 12, 2002, including a Motion adopting the Order of Summary Suspension and issuing the Notice of Opportunity for Hearing pursuant to Section 4731.22(G), Ohio Revised Code.

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

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

Additionally, pursuant to Chapter 119, Ohio Revised Code, you are hereby advised that you are entitled to a hearing on the allegations set forth in the Notice of Opportunity for Hearing. If you wish to request such hearing, that request must be made in writing and be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice. Further information concerning such hearing is contained within the Notice of Opportunity for Hearing.

THE STATE MEDICAL BOARD OF OHIO



Anand G. Garg, M.D., Secretary

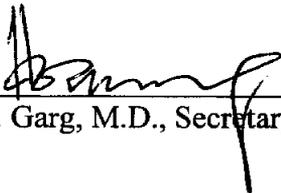
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Enclosures

CERTIFICATION

I hereby certify that the attached copies of the Entry of Order of the State Medical Board of Ohio and the Motion by the State Medical Board, meeting in regular session on June 12, 2002, to Adopt the Order of Summary Suspension and to Issue the Notice of Opportunity for Hearing, constitute true and complete copies of the Motion and Order as they appear in the Journal of the State Medical Board of Ohio.

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



Anand G. Garg, M.D., Secretary

(SEAL)

JUNE 12, 2002
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :

Ned Elton Weiner, M.D. :

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 12th day of June, 2002.

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

Pursuant to their determination that there is clear and convincing evidence that Ned Elton Weiner, M.D., has violated Sections 4731.22(B)(15) and (B)(26), Ohio Revised Code, as alleged in the Notice of Summary Suspension and Opportunity for Hearing which is enclosed herewith and fully incorporated herein, which determination is based upon review of information received pursuant to an investigation;

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

Pursuant to the Step II Consent Agreement between Dr. Weiner and the State Medical Board of Ohio, effective December 28, 2000, which states:

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

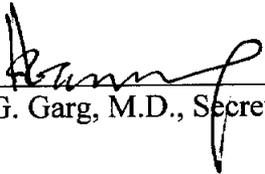
The following Order is hereby entered on the Journal of the State Medical Board of Ohio for the 12th day of June, 2002;

It is hereby ORDERED that the certificate of Ned Elton Weiner, M.D., to practice medicine or surgery in the State of Ohio be summarily suspended.

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

This Order shall become effective immediately.

(SEAL)



Anand G. Garg, M.D., Secretary

JUNE 12, 2002
Date



State Medical Board of Ohio

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

EXCERPT FROM THE DRAFT MINUTES OF JUNE 12, 2002

NED ELTON WEINER, M.D. ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

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

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

Vote:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye
	Dr. Somani	- aye

The motion carried.



State Medical Board of Ohio

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

NOTICE OF OPPORTUNITY FOR HEARING

June 12, 2002

Ned Elton Weiner, M.D.
2423 Bromley Road
University Heights, Ohio 44118

Dear Doctor Weiner:

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

- (1) On or about July 14, 2000, you entered into a Step I Consent Agreement with the State Medical Board of Ohio [Board] in lieu of formal proceedings based upon your violations of Sections 4731.22(B)(5), (B)(9) and (B)(26), Ohio Revised Code.

You made certain admissions in this Step I Consent Agreement, including that you abused Percocet, which you diverted from family members, from May 1999 until October 1999; you completed 28 days of inpatient treatment for chemical dependency at Glenbeigh Health Sources, a Board approved treatment provider, and you entered into an Intensive Outpatient Program with Bethesda Hospital Alcohol and Drug Treatment Program, a Board approved treatment provider, in November 1999; and you failed to notify the Board of your illegal use of controlled substances and your chemical dependency treatment while your application was pending. You further admitted that, on or about December 21, 1999, you submitted to a urine toxicology test after being confronted by officials at University Hospitals, Cincinnati, due to suspicions that you were stealing drugs from sharps containers, and that said test was positive for morphine. You admitted to hospital officials that you had stolen two syringes filled with Fentanyl from patients' rooms on or about December 21, 1999, and that you had been stealing narcotic waste from the sharps containers since at least June 1999. You further admitted that you received treatment in lieu of conviction on or about April 17, 2000, for one felony count of Theft, related to your theft of Fentanyl for your own use, in violation of Section 2913.02(A)(2), Ohio Revised Code.

The Step I Consent Agreement revoked your certificate to practice medicine and surgery in the State of Ohio, stayed such revocation, suspended your certificate for a minimum of six months, and provided conditions for reinstatement. A copy of this Step I Consent Agreement is attached hereto and incorporated herein.

- (2) On or about December 28, 2000, you entered into a Step II Consent Agreement with the Board based upon your violation of Sections 4731.22(B)(5), (B)(9) and (B)(26), Ohio Revised Code, as set forth in the Step I Consent Agreement discussed above. The Step II Consent Agreement provided that your certificate to practice medicine be reinstated subject to certain probationary terms, conditions and limitations for a minimum of five years. A copy of this Step II Consent Agreement is attached hereto and incorporated herein.
- (3) Paragraph 9 of the Step II Consent Agreement states that you “shall abstain completely from the personal use or possession of drugs, except those prescribed, personally furnished or administered to [you] by another so authorized by law who has full knowledge of [your] history of chemical dependency.”
 - (A) Despite this provision, on or about November 21, 2001, you self-injected a drug and were found unresponsive by colleagues in the restroom of the on-call room of the Strong Memorial Hospital in Rochester, New York, where you were employed as a resident. You were subsequently treated and/or assessed at Strong Memorial Hospital, St. Mary’s Hospital and the Eisenhower Medical Center, Betty Ford Center.
 - (B) In addition, you reported that, in or about May 2002, you relapsed on Percocet, which belonged to another family member. You were admitted to the Cleveland Clinic Foundation Alcohol and Drug Recovery Center on May 13, 2002, for stabilization, and were discharged on May 17, 2002.

Your acts, conduct, and/or omissions as alleged in paragraph (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.

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

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

You are further advised that, 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

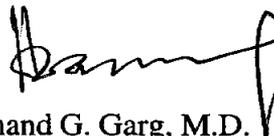
before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

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

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, effective March 9, 1999, 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,



Anand G. Garg, M.D.
Secretary

AGG/blt
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5141 8130
RETURN RECEIPT REQUESTED

cc: Eric J. Plinke, Esq.
Porter, Wright, Morris & Arthur
41 South High Street
Columbus, Ohio 43215-6194

CERTIFIED MAIL # 7000 0600 0024 5141 8147
RETURN RECEIPT REQUESTED

STATE MEDICAL BOARD
DEC 21 2000

**STEP II
CONSENT AGREEMENT
BETWEEN
NED ELTON WEINER, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO**

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

NED ELTON WEINER, M.D., enters into this CONSENT AGREEMENT being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

BASIS FOR ACTION

This CONSENT AGREEMENT is entered into on the basis of the following stipulations, admissions and understandings:

- A. THE STATE MEDICAL BOARD OF OHIO is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, permanently revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for a violation of Section 4731.22(B)(5), Ohio Revised Code, "making a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board;" Section 4731.22(B)(9), Ohio Revised Code, "a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony," to wit: Section 2913.02, Ohio Revised Code, "Theft;" and Section 4731.22(B)(26), Ohio Revised Code, "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice."
- B. THE STATE MEDICAL BOARD OF OHIO enters into this CONSENT AGREEMENT in lieu of formal proceedings based upon the violations

of Sections 4731.22(B)(5), (9), and (26), Ohio Revised Code, as set forth in Paragraph E of the July 2000 Consent Agreement between NED ELTON WEINER, M.D., and THE STATE MEDICAL BOARD OF OHIO, a copy of which is attached hereto and incorporated herein, and based upon the stipulations set forth in Paragraphs D, E, F, and G, below. THE STATE MEDICAL BOARD OF OHIO expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement.

- C. NED ELTON WEINER, M.D., is applying for reinstatement of his license to practice medicine and surgery in the State of Ohio, which was suspended pursuant to the terms of the above referenced July 2000 Consent Agreement.
- D. NED ELTON WEINER, M.D., STATES and THE STATE MEDICAL BOARD OF OHIO ACKNOWLEDGES that DOCTOR WEINER has substantially complied with the reinstatement conditions as set forth in his July 2000 Consent Agreement.
- E. Pursuant to paragraph 8.b.i. of the July 2000 Consent Agreement, the STATE MEDICAL BOARD OF OHIO received a letter on or about October 6, 2000, in which Glenbeigh Health Sources, a Board approved treatment provider, states that that DOCTOR WEINER was admitted to Glenbeigh Health Sources on October 21, 1999, and was discharged on November 18, 1999, after successfully completing a twenty-eight day program of treatment for his chemical dependency.
- F. Pursuant to paragraph 8.b.ii. of the July 2000 Consent Agreement, the STATE MEDICAL BOARD OF OHIO received a letter dated October 3, 2000, from the Cleveland Clinic Foundation, a Board approved treatment provider, stating that DOCTOR WEINER is in compliance with the terms of his aftercare agreement.
- G. Pursuant to paragraph 8.b.iii. of the July 2000 Consent Agreement, DOCTOR WEINER obtained the following evaluations from Board approved treatment providers:
 - 1. On or about October 10, 2000, THE STATE MEDICAL BOARD OF OHIO received an assessment report concerning DOCTOR WEINER from Gregory B. Collins, M.D., of the Cleveland Clinic Foundation, a Board approved treatment provider. Dr. Collins opined that DOCTOR WEINER is fit for duty and can return to the practice of medicine.

2. On or about October 4, 2000, THE STATE MEDICAL BOARD OF OHIO received an assessment report concerning DOCTOR WEINER from Roberto Soria, M.D., Medical Director of Bethesda Alcohol and Drug Treatment Program, a Board approved treatment provider. Dr. Soria opined that DOCTOR WEINER is capable of returning to work as a physician in accordance with acceptable and prevailing standards of care.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, the certificate of NED ELTON WEINER, M.D., to practice medicine and surgery in the State of Ohio shall be reinstated, and NED ELTON WEINER, M.D., knowingly and voluntarily agrees with THE STATE MEDICAL BOARD OF OHIO, (hereinafter BOARD), to the following PROBATIONARY terms, conditions and limitations:

1. DOCTOR WEINER shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio, and all terms of probation imposed by the Hamilton County Court of Common Pleas in case number B 0000675;
2. DOCTOR WEINER shall submit quarterly declarations under penalty of BOARD disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this CONSENT AGREEMENT. The first quarterly declaration must be received in the BOARD's offices on the first day of the third month following the month in which the CONSENT AGREEMENT becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the BOARD's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the BOARD's offices on or before the first day of every third month;
3. DOCTOR WEINER shall appear in person for quarterly interviews before the BOARD or its designated representative, or as otherwise directed by the BOARD.

If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. (Example: The first quarterly appearance is scheduled for February, but based upon the doctor's serious personal illness he is permitted to delay appearance until April. The next appearance will still be scheduled for May, three months after the

appearance as originally scheduled.) Although the BOARD will normally give DOCTOR WEINER written notification of scheduled appearances, it is DOCTOR WEINER's responsibility to know when personal appearances will occur. If he does not receive written notification from the BOARD by the end of the month in which the appearance should have occurred, DOCTOR WEINER shall immediately submit to the BOARD a written request to be notified of his next scheduled appearance;

4. In the event that DOCTOR WEINER should leave Ohio for three (3) continuous months, or reside or practice outside the State, DOCTOR WEINER must notify the BOARD in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this period under the CONSENT AGREEMENT, unless otherwise determined by motion of the BOARD in instances where the BOARD can be assured that probationary monitoring is otherwise being performed;
5. In the event DOCTOR WEINER is found by the Secretary of the BOARD to have failed to comply with any provision of this CONSENT AGREEMENT, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under the CONSENT AGREEMENT;
6. As agreed upon in the July 2000 Consent Agreement, DOCTOR WEINER shall submit to an HIV test within four months of the effective date of this Consent Agreement, and he shall provide the results of said test to the BOARD one month after he submits to the HIV test. In addition, DOCTOR WEINER shall also submit to a Hepatitis B test within four months of the effective date of this Consent Agreement, and he shall provide the results of said test to the BOARD one month after he submits to the Hepatitis B test.

The above-mentioned test results are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.

MONITORING OF REHABILITATION AND TREATMENT

Drug Associated Restrictions

7. DOCTOR WEINER shall keep a log of all controlled substances prescribed. Such log shall be submitted in the format approved by the

BOARD with each quarterly declaration required under Paragraph 2 of this CONSENT AGREEMENT;

8. DOCTOR WEINER shall not, without prior BOARD approval, administer, personally furnish, or possess (except as allowed under Paragraph 9 below) any controlled substances as defined by state or federal law. In the event that the BOARD agrees at a future date to modify this CONSENT AGREEMENT to allow DOCTOR WEINER to administer or personally furnish controlled substances, DOCTOR WEINER shall keep a log of all controlled substances prescribed, administered or personally furnished. Such log shall be submitted in the format approved by the BOARD with each quarterly declaration required under Paragraph 2 of this CONSENT AGREEMENT;

Sobriety

9. DOCTOR WEINER shall abstain completely from the personal use or possession of drugs, except those prescribed, personally furnished or administered to him by another so authorized by law who has full knowledge of DOCTOR WEINER's history of chemical dependency;
10. DOCTOR WEINER shall abstain completely from the use of alcohol;

Drug and Alcohol Screens/Supervising Physician

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

Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR WEINER shall submit to the BOARD for its prior approval the name of a supervising physician to whom DOCTOR WEINER shall submit the required urine specimens. In approving an individual to serve in this capacity, the BOARD will give preference to a physician who practices in the same locale as DOCTOR WEINER. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the BOARD of any positive screening results;

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

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

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

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

Monitoring Physician

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

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

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

Rehabilitation Program

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

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

Aftercare

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

Releases

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

Required Reporting by Licensee

17. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR WEINER shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, DOCTOR WEINER shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments;
18. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR WEINER shall provide a copy of this CONSENT AGREEMENT by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. DOCTOR WEINER further agrees to provide a copy of this CONSENT AGREEMENT by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, DOCTOR WEINER shall provide this BOARD with a copy of the return receipt as proof of notification within thirty (30) days of receiving that return receipt;

VIOLATION OF PROBATIONARY TERMS

19. Any violation of Paragraph 9 or Paragraph 10 of this CONSENT AGREEMENT shall constitute grounds to revoke or permanently revoke DOCTOR WEINER's certificate. DOCTOR WEINER agrees that the minimum discipline for such a violation shall include actual license suspension. This paragraph does not limit the BOARD's authority to suspend, revoke or permanently revoke DOCTOR WEINER's certificate based on other violations of this CONSENT AGREEMENT;
20. DOCTOR WEINER AGREES that if any declaration or report required by this CONSENT AGREEMENT is not received in the BOARD's offices on or before its due date, DOCTOR WEINER shall cease practicing beginning the day next following receipt from the BOARD of notice of non-receipt, either by writing, by telephone, or by personal contact until the declaration or report is received in the BOARD offices. Any practice during this time period shall be considered unlicensed practice in violation of Section 4731.41 of the Revised Code;

21. DOCTOR WEINER AGREES that if, without prior permission from the BOARD, he fails to submit to random screenings for drugs and alcohol at least as frequently as required by Paragraph 11 of this CONSENT AGREEMENT, he shall cease practicing immediately upon receipt from the BOARD of notice of the violation and shall refrain from practicing for thirty (30) days for the first instance of a single missed screen. Practice during this time period shall be considered unlicensed practice in violation of Section 4731.41 of the Revised Code; and,
22. DOCTOR WEINER AGREES that if he fails to participate in an alcohol and drug rehabilitation program at least as frequently as required by Paragraph 14 of this CONSENT AGREEMENT, he shall cease practicing immediately upon receipt from the BOARD of notice of the violation, and shall refrain from practicing for fifteen (15) days following a first missed meeting. Practice during this time period shall be considered unlicensed practice in violation of Section 4731.41 of the Revised Code.

FAILURE TO COMPLY

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

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

DURATION/MODIFICATION OF TERMS

DOCTOR WEINER shall not request termination of this CONSENT AGREEMENT for a minimum of five (5) years. In addition, DOCTOR WEINER shall not request modification to the probationary terms, limitations and conditions contained herein for at least one (1) year. Otherwise, the above described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties.

ACKNOWLEDGMENTS/LIABILITY RELEASE

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

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

DOCTOR WEINER hereby releases THE STATE MEDICAL BOARD OF OHIO, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

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

EFFECTIVE DATE

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



NED ELTON WEINER, M.D.



ANAND G. GARG, M.D.
Secretary

12-14-00

DATE

12/19/00

DATE



ERIC J. PLINKE, Esq.
Attorney for Dr. WEINER



RAYMOND J. ALBERT
Supervising Member

DEC 11, 2000
DATE

12/16/00
DATE

Rebecca J. Allen for Anne Strait
ANNE B. STRAIT, ESQ.
Assistant Attorney General

12/28/00
DATE

STEP I
CONSENT AGREEMENT
BETWEEN
NED ELTON WEINER, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO

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

NED ELTON WEINER, M.D., enters into this CONSENT AGREEMENT being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

BASIS FOR ACTION

This CONSENT AGREEMENT is entered into on the basis of the following stipulations, admissions and understandings:

- A. THE STATE MEDICAL BOARD OF OHIO is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, permanently revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for a violation of Section 4731.22(B)(5), Ohio Revised Code, "making a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board;" Section 4731.22(B)(9), Ohio Revised Code, "a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony," to wit: Section 2913.02, Ohio Revised Code, "Theft;" and Section 4731.22(B)(26), Ohio Revised Code, "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice."
- B. THE STATE MEDICAL BOARD OF OHIO enters into this CONSENT AGREEMENT in lieu of formal proceedings based upon the violation of Section 4731.22(B)(5), (9), and (26), Ohio Revised Code, as set forth in

Paragraph E below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement.

- C. NED ELTON WEINER, M.D., is licensed to practice medicine and surgery in the State of Ohio. Such license was granted on or about November 26, 1999.
- D. NED ELTON WEINER, M.D., STATES that he is not licensed to practice medicine and surgery in any other state.
- E. NED ELTON WEINER, M.D., ADMITS that in or about December of 1998, he began diverting Percocet from family members. DOCTOR WEINER STATES that, although he initially did so out of curiosity, he began using Percocet on a daily basis in or about May 1999 until October 1999, at which time he entered treatment. DOCTOR WEINER further ADMITS that he had colleagues prescribe Percocet for his family members so that he could divert it to his own use.

NED ELTON WEINER, M.D., further ADMITS that on or about October 19, 1999, he entered a detoxification program at Bethesda Hospital Alcohol and Drug Treatment Program [Bethesda], a Board approved treatment provider. DOCTOR WEINER further ADMITS that he participated in a twenty-eight (28) day inpatient program at Glenbeigh Health Sources [Glenbeigh], a Board approved treatment provider, from October 20, 1999, to November 18, 1999. DOCTOR WEINER further ADMITS that he entered an Intensive Outpatient Program with Bethesda on November 29, 1999, which was due to end in January of 2000.

DOCTOR WEINER further ADMITS that, although his application for a certificate to practice medicine and surgery in Ohio was pending during this time period, he did not notify the STATE MEDICAL BOARD OF OHIO in accordance with question number twenty-five on his application that he was engaged in the illegal use of controlled dangerous substances, nor did he otherwise attempt to update question number twenty-four on his application to indicate that he received chemical dependency treatment.

NED ELTON WEINER, M.D., further ADMITS that on or about December 21, 1999, he submitted to a urine toxicology test at the request of the Assistant Director of Human Resources of University Hospital, Cincinnati, after he had been confronted about suspicions that he was stealing drugs from sharps containers. DOCTOR WEINER further ADMITS that the results of said test were positive for morphine.

DOCTOR WEINER further ADMITS that he then admitted to hospital officials that, on or about December 21, 1999, he had stolen a 5cc syringe and a 6cc syringe, both filled with Fentanyl though he mistakenly believed they were filled with morphine, from patients' rooms, and that, in fact, he had been stealing narcotic waste from the sharps containers since at least June 1999. DOCTOR WEINER further STATES that he was taking PCA pumps from the sharps containers.

NED ELTON WEINER, M.D., further ADMITS that on or about December 29, 1999, he reported to the STATE MEDICAL BOARD OF OHIO that he had relapsed, that he had previously used and abused Percocet as mentioned in the above paragraph, that he had entered a detoxification program at Bethesda, that he received inpatient treatment at Glenbeigh, and that he had tested positive for morphine in a urine screen. DOCTOR WEINER further ADMITS that he failed to tell the STATE MEDICAL BOARD OF OHIO of the incidents occurring at University Hospital, Cincinnati.

NED ELTON WEINER, M.D., further ADMITS that on or about January 20, 2000, he was charged with one (1) count of Theft, in violation of Section 2913.02(A)(2), Ohio Revised Code, a fourth degree felony, due to the theft of Fentanyl. DOCTOR WEINER further ADMITS that he requested treatment in lieu of conviction, and that on April 17, 2000, the Court granted his request.

NED ELTON WEINER, M.D., further ADMITS that upon reporting his relapse to Bethesda his Intensive Outpatient Program was extended to February 2, 2000. DOCTOR WEINER further ADMITS that he subsequently entered into an aftercare contract with Bethesda. DOCTOR WEINER further ADMITS that, upon moving to the Cleveland, Ohio, area, he transferred his aftercare on or about May 5, 2000, to the Cleveland Clinic Foundation, a Board approved treatment provider. In a letter dated June 7, 2000, the Cleveland Clinic Foundation advised that DOCTOR WEINER was in compliance with all treatment recommendations, which included weekly Caduceus Group Therapy, weekly random urine screens, and attending A.A.

NED ELTON WEINER STATES that he has not practiced medicine since December 21, 1999.

AGREED CONDITIONS

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

SUSPENSION OF CERTIFICATE

1. The certificate of DOCTOR WEINER to practice medicine and surgery in the State of Ohio is hereby REVOKED. Said REVOCATION shall be STAYED, and DOCTOR WEINER's certificate to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than six (6) months, to take effect May 10, 2000.

Sobriety

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

Releases; Quarterly Declarations and Appearances

4. DOCTOR WEINER 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 DOCTOR WEINER's chemical dependency or related conditions, or for purposes of complying with the 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. DOCTOR WEINER 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. DOCTOR WEINER shall submit quarterly declarations under penalty of BOARD disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this CONSENT AGREEMENT. The first quarterly declaration must be received in the BOARD's offices on the first day of the third month following the month in which the CONSENT AGREEMENT becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the BOARD's offices on the first day of the fourth month following. Subsequent quarterly declarations must be

received in the BOARD's offices on or before the first day of every third month;

6. DOCTOR WEINER shall appear in person for quarterly interviews before the BOARD or its designated representative, or as otherwise directed by the BOARD.

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

Drug & Alcohol Screens; Supervising Physician

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

Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR WEINER shall submit to the BOARD for its prior approval the name of a supervising physician to whom DOCTOR WEINER shall submit the required urine specimens. In approving an individual to serve in this capacity, the BOARD will give preference to a physician who practices in the same locale as DOCTOR WEINER. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the BOARD of any positive screening results;

DOCTOR WEINER shall ensure that the supervising physician provides quarterly reports to the BOARD, on forms approved or provided by the BOARD, verifying whether all urine screens have been conducted in

compliance with this CONSENT AGREEMENT, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his responsibilities;

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

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

CONDITIONS FOR REINSTATEMENT

8. The BOARD shall not consider reinstatement of DOCTOR WEINER's certificate to practice medicine and surgery unless and until all of the following conditions are met:
 - a. DOCTOR WEINER shall submit an application for reinstatement, accompanied by appropriate fees, if any;
 - b. DOCTOR WEINER 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 DOCTOR WEINER has successfully completed any required inpatient treatment;
 - ii. Evidence of continuing full compliance with an aftercare contract or consent agreement;
 - iii. Two written reports indicating that DOCTOR WEINER's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by

individuals or providers approved by the BOARD for making such assessments and shall describe the basis for this determination.

- iv. DOCTOR WEINER shall submit to an HIV test and provide the results of said test to the BOARD.

- c. DOCTOR WEINER shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the BOARD. One such probationary term shall be that DOCTOR WEINER submits to a HIV test within four months after his reinstatement, and that the results of said test shall be provided to the BOARD. If the BOARD and DOCTOR WEINER are unable to agree on the terms of a written CONSENT AGREEMENT, then DOCTOR WEINER 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 DOCTOR WEINER's certificate to practice medicine and surgery in this state, the BOARD shall require continued monitoring which shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Revised Code and, upon termination of the consent agreement or Board Order, submission to the BOARD for at least two years of annual progress reports made under penalty of BOARD disciplinary action or criminal prosecution stating whether DOCTOR WEINER has maintained sobriety.

- 9. In the event that DOCTOR WEINER 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 DOCTOR WEINER's fitness to resume practice.

REQUIRED REPORTING BY LICENSEE

- 10. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR WEINER shall provide a copy of this CONSENT AGREEMENT by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. DOCTOR WEINER further agrees to

provide a copy of this CONSENT AGREEMENT by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, DOCTOR WEINER shall provide this BOARD with a copy of the return receipt as proof of notification within thirty (30) days of receiving that return receipt.

11. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR WEINER shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, DOCTOR WEINER shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

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

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the BOARD, DOCTOR WEINER 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

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

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

DOCTOR WEINER hereby releases THE STATE MEDICAL BOARD OF OHIO, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

This CONSENT AGREEMENT shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code.

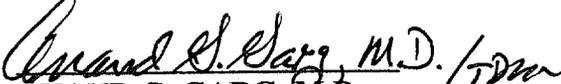
Further, this information may be reported to appropriate organizations, data banks and governmental bodies.

EFFECTIVE DATE

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



NED ELTON WEINER, M.D.



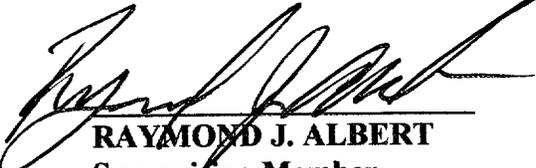
ANAND G. GARG, M.D.
Secretary
*TDW
7-14-00
Released
9:40AM*

7-7-00
DATE

7/14/00
DATE



ERIC J. PLINKE
Attorney for Dr. WEINER



RAYMOND J. ALBERT
Supervising Member

7/12/00
DATE

7/12/00
DATE



ANNE B. STRAIT, ESQ.
Assistant Attorney General

7/12/00
DATE

Rev. 10/99