


State Medical Board of Ohio
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Richard A. Whitehouse, Esq.
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November 12, 2008

Steven Edward Schwartz, P.A.
20011 New Gottengen Road
Salesville, NC 43778

Case No. 08-CRF-047

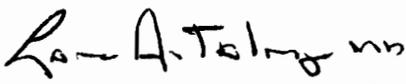
Dear Mr. Schwartz:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Gretchen L. Petrucci, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 12, 2008, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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

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

THE STATE MEDICAL BOARD OF OHIO


Lance A. Talmage, M.D. RW
Secretary

LAT:jam
Enclosures

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RETURN RECEIPT REQUESTED

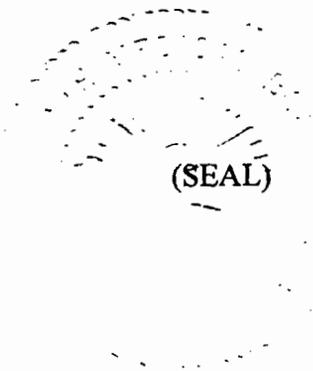
Cc: Kevin P. Byers, Esq.
CERTIFIED MAIL NO. 91 7108 2133 3934 3486 2928
RETURN RECEIPT REQUESTED

Mailed 12-11-08

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Gretchen L. Petrucci, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 12, 2008, 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 Steven Edward Schwartz, P.A., Case No. 08-CRF-047, as it appears in the Journal of the State Medical Board of Ohio.

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



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

November 12, 2008
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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CASE NO. 08-CRF-047

STEVEN EDWARD SCHWARTZ, P.A.

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ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on November 12, 2008.

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

It is hereby ORDERED, that:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Steven Edward Schwartz, P.A., to practice as a physician assistant in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than six months.¹
- B. **INTERIM MONITORING:** During the period that Mr. Schwartz's certificate to practice as a physician assistant in Ohio is suspended, Mr. Schwartz shall comply with the following terms, conditions, and limitations:
 1. **Obey the Law:** Mr. Schwartz shall obey all federal, state, and local laws, and all rules governing the practice of physician assistants in Ohio.
 2. **Quarterly Appearances:** Mr. Schwartz shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Order, or as otherwise requested 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.

¹An indefinite suspension of at least six months is recommended in light of the fact that Mr. Schwartz's PA certificate has been suspended for the past six months.

3. **Quarterly Declarations:** Mr. Schwartz shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective, or as otherwise requested by the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

4. **Sobriety**
 - a. **Abstention from Drugs:** Mr. Schwartz 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 Mr. Schwartz's history of chemical dependency. Further, in the event that Mr. Schwartz is so prescribed, dispensed or administered any controlled substance, carisoprodol, or tramadol, Mr. Schwartz shall notify the Board in writing within seven days, providing the Board with the identity of the prescriber; the name of the drug Mr. Schwartz received; the medical purpose for which he received the drug; the date the drug was initially received; and the dosage, amount, number of refills, and directions for use. Further, within 30 days of the date said drug is so prescribed, dispensed, or administered to him, Mr. Schwartz shall provide the Board with either a copy of the written prescription or other written verification from the prescriber, including the dosage, amount, number of refills, and directions for use.

 - b. **Abstention from Alcohol:** Mr. Schwartz shall abstain completely from the use of alcohol.

5. **Drug & Alcohol Screens; Drug Testing Facility and Collection Site**
 - a. Mr. Schwartz shall submit to random urine screenings for drugs and alcohol at least four times per month, or as otherwise directed by the Board. Mr. Schwartz shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug-testing panel utilized must be acceptable to the Secretary of the Board, and shall include Mr. Schwartz's drug(s) of choice.

 - b. Mr. Schwartz shall submit, at his expense and on the day selected, urine specimens for drug and/or alcohol analysis. (The term "toxicology screen" is also used herein for "urine screen" and/or "drug screen.")

All specimens submitted by Mr. Schwartz shall be negative, except for those substances prescribed, administered, or dispensed to him in conformance with the terms, conditions and limitations set forth in this Order.

Refusal to submit such specimen, or failure to submit such specimen on the day he is selected or in such manner as the Board may request, shall constitute a violation of this Order.

- c. Mr. Schwartz shall abstain from the use of any substance that may produce a positive result on a toxicology screen, including the consumption of poppy seeds or other food or liquid that may produce a positive result on a toxicology screen.

Mr. Schwartz shall be held to an understanding and knowledge that the consumption or use of various substances, including but not limited to mouthwashes, hand-cleaning gels, and cough syrups, may cause a positive toxicology screen and that unintentional ingestion of a substance is not distinguishable from intentional ingestion on a toxicology screen, and that, therefore, consumption or use of substances that may produce a positive result in a toxicology screen is prohibited under this Order.

- d. All screenings for drugs and alcohol shall be conducted through a Board-approved drug-testing facility and a Board-approved collection site, except as provided in Paragraph 6 below (“Alternative Drug-testing and/or Collection Site”). Further, the screening process shall require a daily call-in procedure.
- e. Within 30 days of the effective date of this Order, Mr. Schwartz shall enter into the necessary financial and/or contractual arrangements with the Board-approved drug-testing facility and/or collection site (“DFCS”) in order to facilitate the screening process in the manner required by this Order.

Further, within 30 days of making such arrangements, Mr. Schwartz shall provide to the Board written documentation of completion of such arrangements, including a copy of any contract entered into between Mr. Schwartz and the Board-approved DFCS. Mr. Schwartz’s failure to timely complete such arrangements, or failure to timely provide written documentation to the Board of completion of such arrangements, shall constitute a violation of this Order.

- f. Mr. Schwartz shall ensure that the urine-screening process performed through the Board-approved DFCS requires a daily

call-in procedure; that the urine specimens are obtained on a random basis; and that the giving of the specimen is witnessed by a reliable person.

In addition, Mr. Schwartz and the Board-approved DFCS shall ensure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

- g. Mr. Schwartz shall ensure that the Board-approved DFCS provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Order, and whether all urine screens have been negative.
 - h. In the event that the Board-approved DFCS becomes unable or unwilling to serve as required by this Order, Mr. Schwartz must immediately notify the Board in writing, and make arrangements acceptable to the Board, pursuant to Paragraph 6 below, as soon as practicable. Mr. Schwartz shall further ensure that the Board-approved DFCS also notifies the Board directly of its inability to continue to serve and the reasons therefor.
 - i. Mr. Schwartz acknowledges that the Board expressly reserves the right to withdraw its approval of any DFCS in the event that the Secretary and Supervising Member of the Board determine that the DFCS has demonstrated a lack of cooperation in providing information to the Board or for any other reason.
6. **Alternative Drug-testing Facility and/or Collection Site:** It is the intent of this Order that Mr. Schwartz shall submit urine specimens to the Board-approved DFCS chosen by the Board. However, in the event that using the Board-approved DFCS creates an extraordinary hardship on Mr. Schwartz, as determined in the sole discretion of the Board, then, subject to the following requirements, the Board may approve an alternative DFCS or a supervising physician to facilitate the urine-screening process for Mr. Schwartz.
- a. Within 30 days of the date on which Mr. Schwartz is notified of the Board's determination that utilizing the Board-approved DFCS constitutes an extraordinary hardship on Mr. Schwartz, he shall submit to the Board in writing for its prior approval the identity of either an alternative DFCS or the name of a proposed supervising physician to whom Mr. Schwartz shall submit the required urine specimens.

In approving a facility, entity, or an individual to serve in this capacity, the Board will give preference to a facility located near Mr. Schwartz's residence or employment location, or to a physician who practices in the same locale as Mr. Schwartz. Mr. Schwartz shall ensure that the urine-screening process performed through the alternative DFCS or through the supervising physician requires a daily call-in procedure; that the urine specimens are obtained on a random basis; and that the giving of the specimen is witnessed by a reliable person. In addition, Mr. Schwartz acknowledges that the alternative DFCS or the supervising physician shall ensure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

- b. Mr. Schwartz shall ensure that the alternative DFCS or the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Order, and whether all urine screens have been negative.
- c. In the event that the designated alternative DFCS or the supervising physician becomes unable or unwilling to so serve, Mr. Schwartz must immediately notify the Board in writing. Mr. Schwartz shall further ensure that the previously designated alternative DFCS or the supervising physician also notifies the Board directly of the inability to continue to serve and the reasons therefor. Further, in the event that the approved alternative DFCS or supervising physician becomes unable to serve, Mr. Schwartz shall, in order to ensure that there will be no interruption in his urine-screening process, immediately commence urine screening at the Board-approved DFCS chosen by the Board, until such time, if any, that the Board approves a different DFCS or supervising physician, if requested by Mr. Schwartz.
- d. The Board expressly reserves the right to disapprove any entity or facility proposed to serve as Mr. Schwartz's designated alternative DFCS or any person proposed to serve as her supervising physician, or to withdraw approval of any entity, facility or person previously approved to so serve in the event that the Secretary and Supervising Member of the Board determine that any such entity, facility or person has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

7. **Reports Regarding Drug & Alcohol Screens:** All screening reports required under this Order from the Board-approved DFCS, the alternative DFCS and/or

supervising physician must be received in the Board's offices no later than the due date for Mr. Schwartz's quarterly declaration. It is Mr. Schwartz's responsibility to ensure that reports are timely submitted.

8. **Additional Screening without Prior Notice:** On the Board's request and without prior notice, Mr. Schwartz must provide a specimen of his blood, breath, saliva, urine, and/or hair for screening for drugs and alcohol, for analysis of therapeutic levels of medications that may be prescribed for Mr. Schwartz, or for any other purpose, at Mr. Schwartz's expense. Mr. Schwartz's refusal to submit a specimen on request of the Board shall result in a minimum of one year of actual license suspension. Further, the collection of such specimens shall be witnessed by a representative of the Board, or another person acceptable to the Secretary or Supervising Member of the Board.
9. **Rehabilitation Program:** Mr. Schwartz shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., or C.A., no less than three times per week, or as otherwise ordered by the Board. Substitution of any other specific program must receive prior Board approval.

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

10. **Releases:** Mr. Schwartz 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 Mr. Schwartz's chemical dependency, impairment, 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. To the extent permitted by law, the above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. Mr. Schwartz further shall 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.
11. **Absences from Ohio:** Mr. Schwartz shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.

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

12. **Required Reporting of Change of Address:** Mr. Schwartz shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.
13. **Comply with the Terms of Treatment and Aftercare Contract:** Mr. Schwartz shall maintain continued compliance with: (a) the terms of any treatment contract entered into with Spencer Recovery Centers of Florida Inc./Dr. Paul's by the Bay; and (b) the aftercare contract entered into with Alcohol and Drug Services of Guernsey County, provided that, where terms of the treatment and aftercare contracts conflict with terms of this Order, the terms of this Order shall control.

C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Mr. Schwartz's certificate to practice as a physician assistant in Ohio until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration:** Mr. Schwartz shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Compliance with Interim Conditions:** Mr. Schwartz shall have maintained compliance with all the terms, conditions and limitations set forth in Paragraph B of this Order.
3. **Evidence of Unrestricted Licensure in Other States:** At the time he submits his application for reinstatement or restoration, Mr. Schwartz shall provide written documentation acceptable to the Board verifying that Mr. Schwartz otherwise holds a full and unrestricted license to practice as a physician assistant in all other states in which he is licensed at the time of application or has been in the past licensed, or that he would be entitled to such license but for the nonpayment of renewal fees.
4. **Demonstration of Ability to Resume Practice:** Mr. Schwartz shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the

provisions of his certificate. Such demonstration shall include but shall not be limited to the following:

- a. Certification from a treatment provider approved under Section 4731.25, Ohio Revised Code, that Mr. Schwartz has successfully completed any required inpatient treatment, including at least twenty-eight days of inpatient or residential treatment (completed consecutively) for chemical abuse/dependence at a treatment provider approved by the Board.
- b. Evidence of continuing full compliance with an aftercare contract with a treatment provider approved under Section 4731.25, Ohio Revised Code, or a consent agreement. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with Rule 4731-16-10, Ohio Administrative Code.²
- c. Evidence of continuing full compliance with this Order.
- d. Two written reports indicating that Mr. Schwartz'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 have been made by physicians knowledgeable in the area of addictionology and who are either affiliated with a current Board-approved treatment provider or otherwise have been approved in advance by the Board to provide an assessment of Mr. Schwartz. Further, the two aforementioned physicians shall not be affiliated with the same treatment provider or medical group practice. Prior to the assessments, Mr. Schwartz shall provide the evaluators with copies of patient records from any evaluation and/or treatment that he has received, and a copy of this Order. The reports of the evaluators shall include any recommendations for treatment, monitoring, or supervision of Mr. Schwartz, and any conditions, restrictions, or limitations that should be imposed on Mr. Schwartz's practice. The reports shall also describe the basis for the evaluator's determinations.

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

²Mr. Schwartz's current aftercare contract with Alcohol and Drug Services of Guernsey County does not appear to comply with Rule 4731-16-10, Ohio Administrative Code.

restoration. Further, at the discretion of the Secretary and Supervising Member of the Board, the Board may request an updated assessment and report if the Secretary and Supervising Member determine that such updated assessment and report is warranted for any reason.

5. **Additional Evidence of Fitness To Resume Practice:** In the event that Mr. Schwartz has not been engaged in active practice as a physician assistant for a period in excess of two year prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4730.28, Ohio Revised Code, to require additional evidence of his fitness to resume practice.

- D. **PROBATION:** Upon reinstatement or restoration, Mr. Schwartz's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
 1. **Obey the Law:** Mr. Schwartz shall obey all federal, state, and local laws, and all rules governing the practice as a physician assistant in Ohio.

 2. **Terms, Conditions, and Limitations Continued from Suspension Period:** Mr. Schwartz shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.

 3. **Practice Plan:** Prior to Mr. Schwartz's commencement of practice in Ohio, or as otherwise determined by the Board, Mr. Schwartz shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Mr. Schwartz's activities will be directly supervised and overseen by a monitoring physician approved by the Board. Mr. Schwartz shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

At the time Mr. Schwartz submits his practice plan, he shall also 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 Mr. Schwartz and who is engaged in the same or similar practice specialty.

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

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Mr. Schwartz must immediately so notify the Board in writing. In addition, Mr. Schwartz shall make arrangements acceptable to the Board for another monitoring physician within 30 days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Mr. Schwartz 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.

4. **Tolling of Probationary Period while Out of Compliance:** In the event Mr. Schwartz 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 under this Order.
- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Mr. Schwartz's certificate will be fully restored.
- F. **VIOLATION OF THE TERMS OF THIS ORDER:** If Mr. Schwartz violates the terms of this Order 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.
- G. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER**
 1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Mr. Schwartz shall provide a copy of this Order to all employers or entities with which he is under contract to provide health-care services (including but not limited to third-party payors), or is receiving training, and the chief of staff at each hospital or health-care center where he has privileges or appointments.

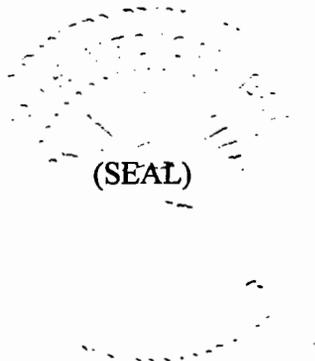
In the event that Mr. Schwartz provides any health-care services or health-care direction or medical oversight to any emergency medical services organization or emergency medical services provider, Mr. Schwartz shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.
 2. **Required Reporting To Other Licensing Authorities:** Within 30 days of the effective date of this Order, Mr. Schwartz shall provide a copy of this Order to the proper licensing authority of any State or jurisdiction in which he currently

holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate.

Mr. Schwartz further shall provide a copy of this Order at the time of application to the proper licensing authority of any State or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license. This requirement shall continue until Mr. Schwartz received from the Board written notification of the successful completion of the probation.

3. **Required Reporting to Treatment Providers/Monitors:** Within 30 days of the effective date of this Order, Mr. Schwartz shall promptly provide a copy of this Order to all persons and entities that provide chemical-dependency treatment to or monitoring of Mr. Schwartz.
4. **Required Documentation of the Reporting Required by Paragraph G:** Mr. Schwartz shall provide the Board with one of the following documents as proof of each required notification within 30 days of the date of each such notification: (1) the return receipt of certified mail within 30 days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

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



Lance A. Talmage, M.D.
Lance A. Talmage, M.D. RW
Secretary

November 12, 2008
Date

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**REPORT AND RECOMMENDATION
IN THE MATTER OF STEVEN EDWARD SCHWARTZ, P.A.
Case No. 08-CRF-047**

The Matter of Steven Edward Schwartz, P.A., was heard by Gretchen L. Petrucci, Hearing Examiner for the State Medical Board of Ohio, on September 22, 2008.

INTRODUCTION

Basis for Hearing

By letter dated April 9, 2008, the State Medical Board of Ohio [Board] notified Steven Edward Schwartz, P.A., that it had adopted an order summarily suspending his certificate to practice as a physician assistant in Ohio. The Board stated that it had taken that action based on a determination that there was clear and convincing evidence that Mr. Schwartz had violated Section 4730.25(B)(5), Ohio Revised Code, and that his continued practice as a physician assistant presented a danger of immediate and serious harm to the public.

Additionally, the Board notified Mr. Schwartz that he had failed to appear at a Board-ordered impairment examination, and that he had failed to notify the Board of circumstances beyond his control that prevented him from submitting to the examination. Further, the Board stated that it had found, based on a legal presumption under Section 4730.25(F)(2), Ohio Revised Code, that Mr. Schwartz's acts, conduct and/or omissions 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 set forth in Section 4730.25(B)(5), Ohio Revised Code.

The Board explained that Mr. Schwartz could rebut the legal presumption by proving, at hearing, that his failure to submit to the examination was caused by circumstances beyond his control, which, if established, would merit termination of the summary suspension and merit rescheduling the examination. The Board also explained that, if it were determined that Mr. Schwartz's failure to submit to the examination was caused by circumstances within his control, that determination would "render the legal presumption of impairment conclusive" and result in a determination by the Board to limit, revoke, permanently revoke, suspend, refuse to register or reinstate his certificate, or reprimand him, or placed him on probation. Accordingly, the Board advised Mr. Schwartz of his right to request a hearing in this matter. (State's Exhibit 1A)

By letter received by the Board on May 6, 2008, Mr. Schwartz requested a hearing. (State's Exhibit 1B)

Appearances at the Hearing

Nancy H. Rogers, Attorney General, by Karen A. Unver, Assistant Attorney General, on behalf of the State of Ohio.

Kevin P. Byers, Esq., on behalf of Mr. Schwartz.

EVIDENCE EXAMINED

Testimony Heard

Steven Edward Schwartz, P.A.

Exhibits Examined

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

State's Exhibit 2: March 12, 2008, letter to Steven Edward Schwartz, P.A., from Karen Mortland, Board Enforcement Attorney, with enclosures.

State's Exhibit 3: April 2, 2008, letter to Ms. Mortland from Glenbeigh Hospital.

State's Exhibit 4: Affidavit of Ms. Mortland, with attachments.

Respondent's Exhibit A: Cover letter and Mr. Schwartz's treatment records from Spencer Recovery Centers Florida, Inc. [Admitted under seal.]

Respondent's Exhibit B: Statement of standards and services for inpatient treatment at Spencer Recovery Centers Florida, Inc./Dr. Paul's at the Bay.

Respondent's Exhibit C: August 21, 2008, letter from Alcohol and Drug Services of Guernsey County. [Admitted under seal.]

Respondent's Exhibit D: August 12, 2008, letter from David D. Goldberg, D.O.

Respondent's Exhibits E and E1: Recovery support group attendance logs from August 11 through September 21, 2008. [Admitted under seal.]

Respondent's Exhibits F1 and F2: Drug screen results from August and September 2008.

Respondent's Exhibit G: June 2008 aftercare contract between Mr. Schwartz and Alcohol and Drug Services of Guernsey County. [Admitted under seal.]

Respondent's Exhibit H: Mr. Schwartz's examination records from Glenbeigh Hospital.
[Admitted under seal.]

PROCEDURAL MATTER

The Hearing Examiner held the record open to allow the Respondent the opportunity to provide additional exhibits. (Hearing Transcript at 78-86) Two additional exhibits were submitted: (1) an aftercare contract between Mr. Schwartz and Alcohol and Drug Services of Guernsey County was marked as Respondent's Exhibit G, and (2) Mr. Schwartz's examination records from Glenbeigh Hospital were marked as Respondent's Exhibit H. During a conference call held on October 9, 2008, the State reasserted its previous argument regarding the relevance of Respondent's Exhibit H. The State did not object to Respondent's Exhibit G. The Hearing Examiner overruled the objection and admitted both additional exhibits. The record closed on October 10, 2008.

SUMMARY OF THE EVIDENCE

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

Mr. Schwartz's Background and His Physician Assistant Certificate

1. Steven Edward Schwartz, P.A., was born in 1949. He attended the University of Michigan for three years, but did not earn a degree. After travelling and working in several positions in the Cleveland, Ohio area, he returned to school and, in approximately 1975, earned a nursing degree from a community college in the Cleveland area. He practiced as a registered nurse for approximately two years in the Cleveland area. (Hearing Transcript [Tr.] at 10-12; Ohio E-License Center, Sept. 23, 2008, <<https://license.ohio.gov/Lookup>>)
2. In approximately 1977, Mr. Schwartz entered the Cuyahoga County Community College Surgical Physician Assistant Program. He graduated in 1979 with a physician assistant [PA] degree. (Tr. at 11)
3. Although he had a PA degree, Mr. Schwartz continued to work as a registered nurse for five more years, noting that he had enjoyed emergency medicine, and therefore had not immediately taken a PA position. During those five years, he worked in emergency rooms in the Cleveland area and worked as a "house officer" for the Lakewood Hospital System in Painesville, Ohio. (Tr. at 12-14)
4. In the mid-1980s, the Board issued a certificate to Mr. Schwartz, authorizing him to practice as a PA in Ohio. Also in the mid-1980s, he began working as a PA with Lake Emergency Services, in the emergency rooms of several northeast Ohio medical centers. He remained in that position for 12 years. (Tr. at 12; Ohio E-License Center, Sept. 23, 2008, <<https://license.ohio.gov/Lookup>>)

5. In approximately 1997, Mr. Schwartz took a PA position with Southeastern Ohio Regional Medical Center in Cambridge, Ohio. He has worked there for approximately 11.5 years. (Tr. at 12-13)
6. The Board summarily suspended Mr. Schwartz's PA certificate on April 9, 2008. (State's Exhibit [St. Ex.] 1 at 3)

2008 Board-Ordered Impairment Examination and Mr. Schwartz's Responses

7. In a letter dated March 7, 2008, the Board Secretary ordered Mr. Schwartz to submit to a 72-hour, inpatient examination at Glenbeigh Hospital [Glenbeigh] in Rock Creek, Ohio, on March 17, 2008. (St. Ex. 2 at 2-5; St. Ex. 4 at 3-6) The basis for ordering an inpatient examination was set forth in the letter and is summarized as follows:
 - In March 1997, Mr. Schwartz pleaded guilty and was found guilty of Driving under the Influence [DUI], a misdemeanor, in violation of Section 4511.19(A), Ohio Revised Code.
 - Despite that DUI conviction, Mr. Schwartz answered "No" in December 1999 to the question on his PA certificate renewal application, which asked: "At any time since signing your last application for renewal of your registration, have you * * * [b]een found guilty of, or pled guilty or no contest to a felony or misdemeanor?"
 - In February 2008, Mr. Schwartz appeared at the offices of the Board in order to renew his PA certificate. Two staff members assisting him noticed an odor of alcohol on him. His appearance was disheveled and his clothing appeared dirty.
 - On March 5, 2008, a Board Investigator spoke with Mr. Schwartz at his home. The Investigator noticed empty beer cans and beer cases near the driveway and in the garage. Additionally, the investigator observed Mr. Schwartz consuming beer, smelled alcohol on him, noticed that his eyes were bloodshot and watery, and noticed his speech was slurred. During the conversation, Mr. Schwartz made a number of admissions regarding his past and then-present consumption of alcohol.

The letter also explained that the estimated cost for the evaluation was \$1,800, which must be paid prior to beginning the examination. Mr. Schwartz was required to confirm his plan to appear for the examination by contacting Glenbeigh. Additionally, Mr. Schwartz was informed that failure to submit to the examination "constitutes an admission of the allegations against [him] unless the failure is due to circumstances beyond [his] control." (St. Ex. 2 at 5; St. Ex. 4 at 6)

8. The March 7 letter was personally served upon Mr. Schwartz on March 10, 2008, by a Board Investigator. (St. Ex. 4 at 7)
9. Karen Mortland was the Board Enforcement Attorney who coordinated the investigation of Mr. Schwartz. In an affidavit, Ms. Mortland stated that she had spoken with Mr. Schwartz on March 10, 2008, and he had told her that “he was leaving for Florida on March 11, 2008, for an education seminar and family visit, and that he would not return until the evening of March 18, 2008.” She further stated that, after she had received, via facsimile, further information from Mr. Schwartz regarding his trip and his work schedule, she obtained permission from the Board’s Secretary and Supervising Member to reschedule his inpatient examination to a time that was more workable for Mr. Schwartz. (St. Ex. 4 at 1)

At hearing, Mr. Schwartz confirmed this summary of the events and conversation. (Tr. at 19-20, 48-49)

10. The inpatient examination at Glenbeigh was rescheduled for March 31, 2008, at 10:00 a.m. Ms. Mortland averred that she had spoken with Mr. Schwartz a second time on March 10, 2008, and informed him of the new examination date/time. Additionally, she confirmed the new examination date in a letter dated March 12, 2008, which was personally served upon Mr. Schwartz on March 20, 2008. (St. Ex. 4 at 1-2, 8-13)
11. On March 31, 2008, Ms. Mortland received, via facsimile, a letter from Mr. Schwartz, stating that he would not be attending the inpatient examination at Glenbeigh because he could not afford it. Mr. Schwartz also stated that he had notified Glenbeigh directly that he would not attend. (St. Ex. 4 at 2, 14-16)
12. Glenbeigh confirmed that Mr. Schwartz had not appeared for the Board-ordered examination, and Glenbeigh further stated that Mr. Schwartz had not contacted Glenbeigh directly. (St. Ex. 4 at 2, 17)
13. Mr. Schwartz acknowledged that he did not appear for the Board-ordered examination. Also, Mr. Schwartz testified that he had fully intended to inform Glenbeigh that he would not attend the examination. He admitted that he had not in fact notified Glenbeigh, and admitted that he should have notified Glenbeigh. (Tr. at 21, 22, 51)

Mr. Schwartz’s Admissions and Explanation

14. Mr. Schwartz admitted that he is an alcoholic. He explained that, until recently, he had been a “binge drinker,” and, typically on his days off, he had started drinking in the mornings and got drunk. (Tr. at 18, 46, 54, 65-66)
15. Mr. Schwartz also testified that he had planned to attend the Glenbeigh examination as rescheduled. However, approximately two days before March 31, 2008, he concluded that, financially, he simply could not afford it. He explained that he had no money and had nearly \$70,000 of debt at that time. (Tr. at 21, 50-51, 54)

16. Mr. Schwartz noted that, in March 2008, he was still drinking, and was being treated for depression. He described his world at that time as not on “an even keel,” and noted that he was not making good decisions. (Tr. at 21) Mr. Schwartz testified that, instead of rationally handling his affairs, he drank alcohol:

John Q Public would say I was drunk. You're never drunk enough when you're an alcoholic. You know, I mean, it's not enough. I was under the influence, yes. And I blew [the examination] off as I did a lot of things in my life when I was in active drinking, and I blew it off. I should have called the people at Glenbeigh. That definitely was another one of my mistakes.

(Tr. at 21-22)

17. Mr. Schwartz testified, however, that a subsequent event on April 4, 2008, caused him to realize that he truly needed help for chemical dependency/substance abuse.¹ Mr. Schwartz explained that, on April 4, 2008, he went to work as scheduled. However, he had consumed alcohol the prior evening, and had been under the influence of alcohol the following morning. Mr. Schwartz stated that, shortly after his arrival at work, he had realized that he was under the influence and had notified his employer that he needed to leave for the day. Mr. Schwartz returned home and looked in the telephone book for professional assistance. (Tr. at 23, 54)

Mr. Schwartz stated that he had called an 800 telephone number that was listed in his telephone book under “Alcohol Services.” He spoke at length with a man named “Michael Day.” Mr. Schwartz could not explain what entity Mr. Day works for, but noted that they had had several conversations. Mr. Schwartz agreed to enter an inpatient treatment program (as he believed his insurance would provide coverage), and Mr. Day proposed a program called Spencer Recovery Centers Florida Inc./Dr. Paul's at the Bay [Spencer], located in Florida. Mr. Schwartz agreed to the Spencer program because he has family members who reside nearby in Florida. Mr. Schwartz also testified that he did not contact Glenbeigh, the Board, or any other treatment facilities in Ohio or elsewhere. Nor did he look into the costs and availability of different treatment programs. Mr. Schwartz did, however, determine that the Spencer program was accredited by the Joint Commission on the Accreditation of Healthcare Organizations, with which he was familiar due to his employment. (Tr. at 24-26, 31, 55-58, 70, 72-73)

18. Mr. Schwartz testified that his “sobriety date” for alcohol is April 7, 2008. He explained that he had stopped using alcohol on April 4, 2008, but it took several days for him to “taper down” or “detox.” He also testified that he had last used marijuana in March 2008. (Tr. at 22-23, 30)
19. Mr. Schwartz acknowledged that the cost of the Spencer program was greater than the cost of the three-day evaluation at Glenbeigh. He explained that, in order to pay for the Spencer

¹Mr. Schwartz stated unequivocally that the Board-ordered examination did not play a role in his April 4, 2008, decision to seek treatment for chemical dependency/substance abuse. (Tr. at 55)

program, he had “cashed in” a retirement annuity that he had held for many years. He testified that he had had no other means to pay for treatment, and had concluded in April 2008 that his need for treatment was a priority. He also noted that, prior to entering the Spencer program, he had paid bills in advance so that he would not fall into a worse financial status. (Tr. at 24, 69)

20. Mr. Schwartz testified that he did not select the Spencer program in order to avoid Board scrutiny or otherwise be noncompliant with Board requirements. He believes that he had not been thinking rationally due to his alcoholism. However, he stated that he had tried to be aggressive in obtaining treatment for his survival, and “someone threw me a life ring, and I grabbed it.” (Tr. at 26-27, 59, 69) The following exchange reflects that explanation:

Q. So if you could cash in the annuity to go to the Spencer Group, why couldn't you cash the annuity in to go to the three-day evaluation in March at Glenbeigh?

A. I was in active alcoholism. I didn't have any money. I guess I just didn't comb things out.

Q. You didn't have any money but for the annuity that you didn't want to cash in?

A. Well, I had [the annuity] since 1967, when I first started going to the University of Michigan. And that's supposed to be left for your retirement. And that's the – that is the last, you know, that is the last resort that kind of thing.

Q. You've taken that last resort to go to Spencer?

A. Yes, I did. That is what I paid for Spencer with.

(Tr. at 35-36)

Mr. Schwartz's 2008 Inpatient Treatment in Florida

21. On April 16, 2008, Mr. Schwartz entered the treatment program at a Spencer location in St. Pete Beach, Florida, to undergo inpatient treatment.² That facility is not a Board-approved treatment provider. A drug screen taken upon admission to Spencer was positive for marijuana and negative for alcohol. All subsequent drug screens taken during treatment were negative. (Resp. Ex. A at 1, 8; Tr. at 29)

22. Mr. Schwartz successfully completed that 28-day treatment and was discharged on May 14, 2008. The treatment program at Spencer included family, group and individual counseling.

²This treatment began shortly after the Board ordered a summary suspension of Mr. Schwartz's PA certificate on April 9, 2008.

In particular, Mr. Schwartz participated in group therapy, one-on-one sessions with the primary counselor, 12-step recovery group sessions, and random drug screens and breathalyzer tests. The program also provided life skills training, such as anger management, communication skills, “employable skills,” problem solving, recovery management, decision-making, relationship skills, symptom management, nutrition, and health/medical issues. The primary counselor at Spencer stated that Mr. Schwartz was “cooperative, engaged, and motivated throughout treatment, and his prognosis upon discharge on 05/14/08 was good.” (Resp. Ex. A at 1-3; Resp. Ex. B)

23. Mr. Schwartz described the typical day in the Spencer treatment program as follows:

We have two [Alcoholics Anonymous] meetings a day. We get up. Our first [Alcoholics Anonymous] meeting is at 7:00 o’clock, a.m. We have an hour long [Alcoholics Anonymous] meeting.

After that, we break for breakfast. After that, we go to a – sometimes it’s a meditation class, it will be on meditation and how it relates to recovery. Other times, it may be a film or it could be a therapy class, like, say, we cut things out of magazines, but it was like all the words that pertain to before recovery. And on the other side of the three by five card, the way we hope it to be, what we wish recovery to be. So it’s the positive – both sides of the coin. So we have various little therapies.

Then the next hour, we will have a – it will be a lecture on the pitfalls to recovery and recovery-related issues. We have an optional class, which is an independent bible study, which I took place in bible study. We read from our recovery bible, that is specifically related to the 12 different steps in the bible verses. We had a preacher that led that. A pastor, preacher. And then I went to his church on Sundays. I started attending church while I was in there.

In the evening – we also had another [Alcoholics Anonymous] meeting in the evening. In the evening, we had free time, we can attend the gym or read or study. I managed to read the Big Book [a recovery-related text] in my free time cover to cover while I was in there.

* * *

We would have to be in our room, ready to call it a day at 10:00 p.m., at which time they’d come around with [an] alcohol meter, something that you blow in and recorded your readings, you know, in a logbook for everyone, and that would be it.

* * *

Once or twice a week we would have – they would do a swab, a buccal swab that would read drugs and alcohol. And when I came in, I had a urine test. And when I went out, I had a urine test.

(Tr. at 27-29) Mr. Schwartz also stated that he had met with a licensed physician three or four times during his stay. (Tr. at 60)

24. Mr. Schwartz’s diagnosis from Spencer was “alcohol dependence” and “cannabis abuse.” Depression, resentment and “PRN involvement”³ were also noted as problems for Mr. Schwartz. (Resp. Ex. A at 3, 7)

Mr. Schwartz’s Post-Treatment Activities

25. Mr. Schwartz explained that he abstains from alcohol and drugs except for aspirin, Naprosyn, and other prescribed medications. He noted that he feels healthy and strong in his recovery. Mr. Schwartz noted that, between the time he had returned to Ohio in May 2008 and the hearing in September 2008, he had not experienced any “shaky” moments in his recovery. Moreover, he feels that he has the tools to deal with things, such as coping skills, not being resentful, and accepting that there is a “higher power.” (Tr. at 38, 61, 64) He testified:

I feel so much happier since I got some tools from this and realize this is definitely a problem. Yeah, I feel good about it. And I think a three-day eval would give the medical board something to go on. I mean, I feel confident enough that I suggested it myself that if they want an eval, I’d go get one.

(Tr. at 42)

26. Mr. Schwartz executed an aftercare contract with Alcohol and Drug Services of Guernsey County, which requires among other things that he participate in a treatment program and participate in all prescribed therapy programs and activities. (Tr. at 31, 33, 70-71; Resp. Ex. G)
27. Mr. Schwartz receives counseling, on average once every 10 days, from a licensed counselor at Alcohol and Drug Services of Guernsey County. (Tr. at 31, 33) That counselor, Marianna Williamson, wrote a letter in August 2008 regarding Mr. Schwartz’s status, stating in part:

He appears very motivated to maintain his recovery. * * * Steven has a determination to make his recovery work and is working toward that. If he continues his prognosis is very good.

(Resp. Ex. C)

³It is not clear from the Spencer documentation what “PRN involvement” means. It is possible that it is a reference to the Physicians Recovery Network. Mr. Schwartz stated that he had been working with that group to address disability insurance and licensure issues. (Tr. at 68)

28. Mr. Schwartz attends, on average, seven recovery group meetings each week, and finds them helpful to teach him and reinforce the principles of recovery. He noted that he is active at those meetings – he shares and volunteers. He also pointed out that he has been encouraging others to attend certain local meetings. Additionally, Mr. Schwartz noted that he spends time reading recovery-related materials, including “The Big Book.” (Tr. at 31-32, 34, 36; Resp. Exs. E, E1)
29. In early August 2008, Mr. Schwartz met with two physicians (David D. Goldberg, D.O., and Edna Jones, M.D.) for evaluation of his ability to practice according to acceptable and prevailing standards of care. As of the close of the record in this matter, Mr. Schwartz had not received a report from Dr. Jones. (Tr. at 34, 78) In a report dated August 12, 2008, Dr. Goldberg stated the following:

Mr. Schwartz indicated that he chose to attend a treatment facility in Florida which is called Spencer Recovery Center Inc. He is well aware that this center is not approved by the [Board] for substance abuse treatment. I have reviewed the material provided to me by either Mr. Schwartz or from Spencer. The information is unfortunately not very thorough in their description of how well Mr. Schwartz performed during his time there. * * *

Although I admit Mr. Schwartz has certainly done most of what the Medical Board requires for treatment following the loss of his PA license as a result of violating the Ohio Revised Code regarding the use of alcohol, I have some trouble with his situation.

He falsely answered a question on his PA renewal application form at least once regarding his 1997 DUI event.
He has a history of 4 DUIs.
He attempted to renew his PA license while under the influence of alcohol.
He neglected to attend to the 3 day assessment at Glenbeigh as directed by the [Board].
He attended a treatment center that was not approved by the [Board].
His aftercare is not structured as the [Board] requires, i.e. 104 sessions.
Based upon the review of one drug screening lab report, it was not an observed specimen.
Based on the review of the drug testing at Spencer, marijuana was detected in the first specimen.

After reviewing my notes and the documents provided by Mr. Schwartz, I must state that I am bothered by this case. Even though Steven has gone through the motions of going for treatment plus attending some aftercare and some 12 Step meetings, he has several stressful issues preying on him at the

moment: no PA license, money problems and a recent divorce. Unfortunately, I cannot fully recommend reinstate[ment] of his PA license without some additional consultation or evaluation. Therefore, I am proposing to the medical board that two additional evaluations need to take place. One is a 3 day evaluation at one of the centers in Ohio such as Glenbeigh or Cleveland Clinic. The other evaluation is by a psychologist, recommended and approved by the [Board], to assess Mr. Schwartz's emotional state and stability. Both of these evaluations would need to indicate that Mr. Schwartz is capable of returning to work as a physician assistant according to acceptable and prevailing standards of care. If both agree to this, I will feel comfortable in recommending reinstatement myself.

(Resp. Ex. D)

30. Mr. Schwartz also presented the results of two drug screens that he voluntarily had performed in August and September 2008. The results were negative for alcohol; the documentation does not clearly list the various other drugs that were tested. (Resp. Exs. F1, F2; Tr. at 39-41)

Mr. Schwartz's 72-Hour, Inpatient Examination

31. Mr. Schwartz stated at hearing that he was willing to undergo a 72-hour, inpatient examination and an evaluation by a psychologist. (Tr. at 34-35, 42, 59, 64; Resp. Ex. H)
32. After the hearing, Mr. Schwartz attended a 72-hour, inpatient examination at Glenbeigh. He was discharged on October 2, 2008. The documentation from that examination does not include a report from the medical director/addictionologist. However, the psychiatrist diagnosed "alcohol dependence in early remission, anxiety disorder not otherwise specified." Additionally, both the licensed counselor and the psychiatrist who examined Mr. Schwartz saw no need for follow-up chemical dependency/substance abuse treatment. The licensed counselor stated that Mr. Schwartz "needs to continue to do what he is now doing to maintain long term sobriety," including attendance at recovery group meetings and participating in social/recreational activities by such recovery groups. (Resp. Ex. H at 1, 3, 4, 15)

Other Information

33. Mr. Schwartz reported to Dr. Goldberg and Glenbeigh that he had had difficulties with chemical dependency/substance abuse in the past. In the 1980s, he obtained outpatient treatment and remained sober for the following four years. (Resp. Ex. D at 1; Resp. Ex. H at 3, 12)
34. Mr. Schwartz noted that he would like to continue to practice as a PA because he has much to offer, his patients like him, and he enjoys his job. (Tr. at 47)
35. Mr. Schwartz agreed that the Board Secretary and Supervising Member had had clear and convincing evidence that he had violated Section 4730.25(B)(5), Ohio Revised Code, and that

his continued practice as a PA presented a danger of immediate and serious harm to the public. (Tr. at 6)

THE RELEVANT STATUTORY AND ADMINISTRATIVE PROVISIONS

Section 4730.25, Ohio Revised Code, provides in pertinent part:

- (B) The board * * * shall * * * limit, revoke, or suspend an individual's certificate to practice as a physician assistant or certificate to prescribe, refuse to issue a certificate to an applicant, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for any of the following reasons:

* * *

- (5) 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:

* * *

- (F) For purposes of this division, any individual who holds a certificate issued under this chapter, or applies for a certificate issued under this chapter, shall be deemed to have given consent to submit to a mental or physical examination when ordered to do so in writing by the board and to have waived all objections to the admissibility of testimony or examination reports that constitute a privileged communication.

* * *

- (2) For purposes of division (B)(5) of this section, if the board has reason to believe that any individual who holds a certificate issued under this chapter or any applicant for a certificate suffers such impairment, the board may compel the individual to submit to a mental or physical examination, or both. The expense of the examination is the responsibility of the individual compelled to be examined. Any mental or physical examination required under this division shall be undertaken by a treatment provider or physician who is qualified to conduct the examination and chosen by the board.

Failure to submit to a mental or physical examination ordered by the board constitutes an admission of the allegations against the

individual unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence. If the board determines that the individual's ability to practice is impaired, the board shall suspend the individual's certificate or deny the individual's application and shall require the individual, as a condition for initial, continued, reinstated, or renewed certification to practice, to submit to treatment.

Before being eligible to apply for reinstatement of a certificate suspended under this division, the physician assistant shall demonstrate to the board the ability to resume practice or prescribing in compliance with acceptable and prevailing standards of care. The demonstration shall include the following:

- (a) Certification from a treatment provider approved under section 4731.25 of the Revised Code that the individual has successfully completed any required inpatient treatment;
- (b) Evidence of continuing full compliance with an aftercare contract or consent agreement;
- (c) Two written reports indicating that the individual's ability to practice has been assessed and that the individual has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the board for making such assessments and shall describe the basis for their determination.

* * *

When the impaired physician assistant resumes practice or prescribing, the board shall require continued monitoring of the physician assistant. The monitoring shall include compliance with the written consent agreement entered into before reinstatement or with conditions imposed by board order after a hearing and, upon termination of the consent agreement, submission to the board for at least two years of annual written progress reports made under penalty of falsification stating whether the physician assistant has maintained sobriety.

In addition, Rule 4731-16-01(A), Ohio Administrative Code, defines the term “impairment” as used in Chapter 4731-16, Ohio Administrative Code:

“Impairment” means impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice. Impairment includes inability to practice in accordance with such standards, and inability to practice in accordance with such standards without appropriate treatment, monitoring or supervision.

Further, Rule 4731-16-02, Ohio Administrative Code, provides in part:

- (A) Should the board have reason to believe that any licensee or applicant suffers from impairment, as that term is used in division (B)(5) of section 4730.25 of the Revised Code, * * * it may compel the individual to submit to a mental or physical examination, or both. Such examinations shall be undertaken by an approved treatment provider designated by the board. The notice issued ordering the individual to submit to examination shall delineate acts, conduct or behavior committed or displayed which establish reason to believe that the individual is impaired. Failure to submit to examination ordered by the board constitutes an admission of impairment unless the failure is due to circumstances beyond the individual’s control.
- (B) * * * [T]he following general pattern of action shall be followed:
 - (1) Upon identification by the board of reason to believe that a licensee or applicant is impaired it may compel an examination or examinations as set forth in paragraph (A) of this rule. The examination must include monitoring in an inpatient setting for at least seventy-two hours, and must meet all other requirements of rule 4731-16-05 of the Administrative Code.

FINDINGS OF FACT

1. Mr. Schwartz received, in the mid-1980s, a certificate from the Board authorizing him to practice as a physician assistant [PA] in Ohio. The Board summarily suspended Mr. Schwartz’s PA certificate on April 9, 2008, based on a determination that Mr. Schwartz’s continued practice presented a danger of immediate and serious harm to the public.
2. By letter dated March 7, 2008, the Board notified Mr. Schwartz of its determination that it had reason to believe that he has an “impairment” as that term is used in Section 4730.25(B)(5), Ohio Revised Code. The Board ordered him to attend a 72-hour inpatient examination at Glenbeigh Hospital, a board-approved treatment provider, beginning on March 17, 2008, to

determine whether he is impaired. The Board provided the address, time, and location for the examination.

The Board explained, in detail, that its determination had been based on a prior conviction for driving under the influence, Mr. Schwartz's failure to disclose that conviction in a subsequent certificate renewal application, his 2008 appearance at the Board's offices while under the influence, and a 2008 conversation he had with a Board Investigator. In the March 2008 letter, the Board further informed Mr. Schwartz that failure to submit to the examination as directed constitutes an admission of the allegations against him, unless the failure is due to circumstances beyond his control.

3. Mr. Schwartz received and signed for the Board's March 7, 2008, letter.
4. At Mr. Schwartz's request, the inpatient examination was rescheduled for March 31, 2008, at 10:00 a.m., at Glenbeigh. Mr. Schwartz was informed of the new examination date by telephone and by letter.
5. On March 31, 2008, Mr. Schwartz notified the Board Enforcement Attorney that, for financial reasons, he would not attend the examination. Mr. Schwartz did not attend the examination as rescheduled.
6. Mr. Schwartz presented no evidence to warrant a finding that he had failed to attend the examination due to circumstances beyond his control. Rather, the evidence presented at hearing supports a finding that Mr. Schwartz failed to attend the examination by choice, including the following:
 - (a) Mr. Schwartz entered a Florida treatment program approximately two weeks after the Board-ordered examination was to be held;
 - (b) Mr. Schwartz paid for that treatment program himself and made advance payments on a number of his obligations in anticipation of the Florida treatment; and
 - (c) The Florida treatment program was more expensive than the Board-ordered examination.
7. On April 16, 2008, Mr. Schwartz entered Spencer Recovery Centers Florida, Inc./Dr. Paul's at the Bay [Spencer], a treatment provider in St. Pete Beach, Florida, to undergo inpatient treatment. That facility is not a Board-approved treatment provider.

A urine specimen obtained from Mr. Schwartz upon his admission to Spencer tested positive for the presence of marijuana and negative for alcohol. After 28 days, Mr. Schwartz successfully completed the Spencer treatment program and was discharged on May 14, 2008. The evaluators at Spencer diagnosed Mr. Schwartz with alcohol dependence and cannabis abuse.

8. Mr. Schwartz admitted that he is an alcoholic.
9. Mr. Schwartz executed an aftercare contract with Alcohol and Drug Services of Guernsey County in June 2008. He regularly attends counseling sessions and recovery group meetings. In August and September 2008, he obtained two drug screens, which were negative for alcohol and other drugs.
10. One physician who evaluated Mr. Schwartz in August 2008 does not recommend reinstatement of his PA certificate without a 72-hour inpatient examination and an evaluation by a Board-recommended/Board-approved psychologist and their recommendations for reinstatement of Mr. Schwartz's PA certificate.
11. Mr. Schwartz voluntarily obtained a 72-hour, inpatient examination at Glenbeigh from September 29 to October 2, 2008. The documentation from that examination does not include a report from the medical director/addictionologist. However, the psychiatrist who examined Mr. Schwartz diagnosed "alcohol dependence in early remission, anxiety disorder not otherwise specified." The licensed counselor and the psychiatrist who examined Mr. Schwartz did not recommend additional, follow-up chemical dependency/substance abuse treatment or psychiatric care.

CONCLUSIONS OF LAW

1. The Board lawfully ordered Steven Edward Schwartz, P.A., pursuant to Section 4730.25(F)(2), Ohio Revised Code, to attend a 72-hour inpatient examination to assess impairment.
2. Mr. Schwartz's failure to submit to the Board-ordered examination, for reasons within his control, constitutes an admission by Mr. Schwartz of the truth of the allegations in the Board's letters dated March 7 and 12, 2008.
3. Mr. Schwartz has not rebutted the legal presumption under Section 4730.25(F)(2), Ohio Revised Code, that his acts, conduct, and/or omissions as set forth in Finding of Fact 2 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 language is set forth in Section 4730.25(B)(5), Ohio Revised Code. Moreover, Section 4730.25(B)(5), Ohio Revised Code, the applicable administrative rules, Findings of Fact 8 through 13 and the foregoing Conclusions of Law establish that Mr. Schwartz is impaired.

* * * * *

Mr. Schwartz admits that he is impaired. The record supports a conclusion that he is in the early stages of recovery for his impairment, and that he has taken significant steps on his own to address and control his impairment. He has been clean and sober for six months as of the date of this Report

and Recommendation. Mr. Schwartz seeks reinstatement of his PA certificate, given his efforts at recovery during the past six months.

As noted previously, if the Board determines that the PA's ability to practice is impaired, the Board is required by statute to suspend his certificate. That has occurred in this case – Mr. Schwartz's PA certificate has been suspended since April 9, 2008.

If the Board determines that a PA's ability to practice is impaired, the Board is required by statute to impose treatment as a condition for reinstatement. However, in this matter, Mr. Schwartz entered and successfully completed a 28-day, inpatient program before any order to do so. The program was not at a facility that the Board had already approved, although counsel for Mr. Schwartz stated that the facility was "board-approved in Florida." Two of the evaluators involved in Mr. Schwartz's October 2008 examination at Glenbeigh suggest that he does not require further treatment. Based upon the evidence from both treatment facilities, the Board may wish to conclude that Mr. Schwartz has sufficiently submitted to inpatient treatment and successfully completed that treatment.

Ohio law requires the PA, before being eligible to reapply for reinstatement, to demonstrate an ability to resume practice or prescribing in compliance with acceptable and prevailing standards of care. Mr. Schwartz did not sufficiently make this demonstration at hearing. The only information from a treatment provider approved under Section 4731.25, Ohio Revised Code—Glenbeigh Hospital—did not recommend further inpatient treatment. However, the information did not include a crucial element, a report from the medical director/addictionologist. Moreover, Mr. Schwartz did not present two written assessment reports (from individuals/providers approved by the Board for making such assessments), which found him capable of practicing according to acceptable and prevailing standards of care.

Mr. Schwartz has put forth great effort to recover from his impairment, but it is not yet time to reinstate his PA certificate.

PROPOSED ORDER

It is hereby ORDERED, that:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Steven Edward Schwartz, P.A., to practice as a physician assistant in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than six months.⁴

⁴An indefinite suspension of at least six months is recommended in light of the fact that Mr. Schwartz's PA certificate has been suspended for the past six months.

B. **INTERIM MONITORING:** During the period that Mr. Schwartz's certificate to practice as a physician assistant in Ohio is suspended, Mr. Schwartz shall comply with the following terms, conditions, and limitations:

1. **Obey the Law:** Mr. Schwartz shall obey all federal, state, and local laws, and all rules governing the practice of physician assistants in Ohio.
2. **Quarterly Appearances:** Mr. Schwartz shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Order, or as otherwise requested 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.
3. **Quarterly Declarations:** Mr. Schwartz shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective, or as otherwise requested by the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
4. **Sobriety**
 - a. **Abstention from Drugs:** Mr. Schwartz 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 Mr. Schwartz's history of chemical dependency. Further, in the event that Mr. Schwartz is so prescribed, dispensed or administered any controlled substance, carisoprodol, or tramadol, Mr. Schwartz shall notify the Board in writing within seven days, providing the Board with the identity of the prescriber; the name of the drug Mr. Schwartz received; the medical purpose for which he received the drug; the date the drug was initially received; and the dosage, amount, number of refills, and directions for use. Further, within 30 days of the date said drug is so prescribed, dispensed, or administered to him, Mr. Schwartz shall provide the Board with either a copy of the written prescription or other written verification from the prescriber, including the dosage, amount, number of refills, and directions for use.
 - b. **Abstention from Alcohol:** Mr. Schwartz shall abstain completely from the use of alcohol.

5. **Drug & Alcohol Screens; Drug Testing Facility and Collection Site**

- a. Mr. Schwartz shall submit to random urine screenings for drugs and alcohol at least four times per month, or as otherwise directed by the Board. Mr. Schwartz shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug-testing panel utilized must be acceptable to the Secretary of the Board, and shall include Mr. Schwartz's drug(s) of choice.
- b. Mr. Schwartz shall submit, at his expense and on the day selected, urine specimens for drug and/or alcohol analysis. (The term "toxicology screen" is also used herein for "urine screen" and/or "drug screen.")

All specimens submitted by Mr. Schwartz shall be negative, except for those substances prescribed, administered, or dispensed to him in conformance with the terms, conditions and limitations set forth in this Order.

Refusal to submit such specimen, or failure to submit such specimen on the day he is selected or in such manner as the Board may request, shall constitute a violation of this Order.

- c. Mr. Schwartz shall abstain from the use of any substance that may produce a positive result on a toxicology screen, including the consumption of poppy seeds or other food or liquid that may produce a positive result on a toxicology screen.

Mr. Schwartz shall be held to an understanding and knowledge that the consumption or use of various substances, including but not limited to mouthwashes, hand-cleaning gels, and cough syrups, may cause a positive toxicology screen and that unintentional ingestion of a substance is not distinguishable from intentional ingestion on a toxicology screen, and that, therefore, consumption or use of substances that may produce a positive result in a toxicology screen is prohibited under this Order.

- d. All screenings for drugs and alcohol shall be conducted through a Board-approved drug-testing facility and a Board-approved collection site, except as provided in Paragraph 6 below ("Alternative Drug-testing and/or Collection Site"). Further, the screening process shall require a daily call-in procedure.
- e. Within 30 days of the effective date of this Order, Mr. Schwartz shall enter into the necessary financial and/or contractual arrangements with the Board-approved drug-testing facility and/or collection site

(“DFCS”) in order to facilitate the screening process in the manner required by this Order.

Further, within 30 days of making such arrangements, Mr. Schwartz shall provide to the Board written documentation of completion of such arrangements, including a copy of any contract entered into between Mr. Schwartz and the Board-approved DFCS. Mr. Schwartz’s failure to timely complete such arrangements, or failure to timely provide written documentation to the Board of completion of such arrangements, shall constitute a violation of this Order.

- f. Mr. Schwartz shall ensure that the urine-screening process performed through the Board-approved DFCS requires a daily call-in procedure; that the urine specimens are obtained on a random basis; and that the giving of the specimen is witnessed by a reliable person.

In addition, Mr. Schwartz and the Board-approved DFCS shall ensure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

- g. Mr. Schwartz shall ensure that the Board-approved DFCS provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Order, and whether all urine screens have been negative.
- h. In the event that the Board-approved DFCS becomes unable or unwilling to serve as required by this Order, Mr. Schwartz must immediately notify the Board in writing, and make arrangements acceptable to the Board, pursuant to Paragraph 6 below, as soon as practicable. Mr. Schwartz shall further ensure that the Board-approved DFCS also notifies the Board directly of its inability to continue to serve and the reasons therefor.
- i. Mr. Schwartz acknowledges that the Board expressly reserves the right to withdraw its approval of any DFCS in the event that the Secretary and Supervising Member of the Board determine that the DFCS has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

- 6. **Alternative Drug-testing Facility and/or Collection Site:** It is the intent of this Order that Mr. Schwartz shall submit urine specimens to the Board-approved DFCS chosen by the Board. However, in the event that using the Board-approved DFCS creates an extraordinary hardship on Mr. Schwartz, as determined in the sole discretion of the Board, then, subject to the following requirements, the Board may

approve an alternative DFCS or a supervising physician to facilitate the urine-screening process for Mr. Schwartz.

- a. Within 30 days of the date on which Mr. Schwartz is notified of the Board's determination that utilizing the Board-approved DFCS constitutes an extraordinary hardship on Mr. Schwartz, he shall submit to the Board in writing for its prior approval the identity of either an alternative DFCS or the name of a proposed supervising physician to whom Mr. Schwartz shall submit the required urine specimens.

In approving a facility, entity, or an individual to serve in this capacity, the Board will give preference to a facility located near Mr. Schwartz's residence or employment location, or to a physician who practices in the same locale as Mr. Schwartz. Mr. Schwartz shall ensure that the urine-screening process performed through the alternative DFCS or through the supervising physician requires a daily call-in procedure; that the urine specimens are obtained on a random basis; and that the giving of the specimen is witnessed by a reliable person. In addition, Mr. Schwartz acknowledges that the alternative DFCS or the supervising physician shall ensure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

- b. Mr. Schwartz shall ensure that the alternative DFCS or the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Order, and whether all urine screens have been negative.
- c. In the event that the designated alternative DFCS or the supervising physician becomes unable or unwilling to so serve, Mr. Schwartz must immediately notify the Board in writing. Mr. Schwartz shall further ensure that the previously designated alternative DFCS or the supervising physician also notifies the Board directly of the inability to continue to serve and the reasons therefor. Further, in the event that the approved alternative DFCS or supervising physician becomes unable to serve, Mr. Schwartz shall, in order to ensure that there will be no interruption in his urine-screening process, immediately commence urine screening at the Board-approved DFCS chosen by the Board, until such time, if any, that the Board approves a different DFCS or supervising physician, if requested by Mr. Schwartz.
- d. The Board expressly reserves the right to disapprove any entity or facility proposed to serve as Mr. Schwartz's designated alternative DFCS or any person proposed to serve as her supervising physician, or

to withdraw approval of any entity, facility or person previously approved to so serve in the event that the Secretary and Supervising Member of the Board determine that any such entity, facility or person has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

7. **Reports Regarding Drug & Alcohol Screens:** All screening reports required under this Order from the Board-approved DFCS, the alternative DFCS and/or supervising physician must be received in the Board's offices no later than the due date for Mr. Schwartz's quarterly declaration. It is Mr. Schwartz's responsibility to ensure that reports are timely submitted.
8. **Additional Screening without Prior Notice:** On the Board's request and without prior notice, Mr. Schwartz must provide a specimen of his blood, breath, saliva, urine, and/or hair for screening for drugs and alcohol, for analysis of therapeutic levels of medications that may be prescribed for Mr. Schwartz, or for any other purpose, at Mr. Schwartz's expense. Mr. Schwartz's refusal to submit a specimen on request of the Board shall result in a minimum of one year of actual license suspension. Further, the collection of such specimens shall be witnessed by a representative of the Board, or another person acceptable to the Secretary or Supervising Member of the Board.
9. **Rehabilitation Program:** Mr. Schwartz shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., or C.A., no less than three times per week, or as otherwise ordered by the Board. Substitution of any other specific program must receive prior Board approval.

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

10. **Releases:** Mr. Schwartz 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 Mr. Schwartz's chemical dependency, impairment, 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. To the extent permitted by law, the above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. Mr. Schwartz further shall 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.

11. **Absences from Ohio:** Mr. Schwartz shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.

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

12. **Required Reporting of Change of Address:** Mr. Schwartz shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.

13. **Comply with the Terms of Treatment and Aftercare Contract:** Mr. Schwartz shall maintain continued compliance with: (a) the terms of any treatment contract entered into with Spencer Recovery Centers of Florida Inc./Dr. Paul's by the Bay; and (b) the aftercare contract entered into with Alcohol and Drug Services of Guernsey County, provided that, where terms of the treatment and aftercare contracts conflict with terms of this Order, the terms of this Order shall control.

C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Mr. Schwartz's certificate to practice as a physician assistant in Ohio until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration:** Mr. Schwartz shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Compliance with Interim Conditions:** Mr. Schwartz shall have maintained compliance with all the terms, conditions and limitations set forth in Paragraph B of this Order.
3. **Evidence of Unrestricted Licensure in Other States:** At the time he submits his application for reinstatement or restoration, Mr. Schwartz shall provide written documentation acceptable to the Board verifying that Mr. Schwartz otherwise holds a full and unrestricted license to practice as a physician assistant in all other states in which he is licensed at the time of application or has been in the past licensed, or that he would be entitled to such license but for the nonpayment of renewal fees.

4. **Demonstration of Ability to Resume Practice:** Mr. Schwartz shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
- a. Certification from a treatment provider approved under Section 4731.25, Ohio Revised Code, that Mr. Schwartz has successfully completed any required inpatient treatment.
 - b. Evidence of continuing full compliance with an aftercare contract with a treatment provider approved under Section 4731.25, Ohio Revised Code, or a consent agreement. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with Rule 4731-16-10, Ohio Administrative Code.⁵
 - c. Evidence of continuing full compliance with this Order.
 - d. Two written reports indicating that Mr. Schwartz'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 have been made by physicians knowledgeable in the area of addictionology and who are either affiliated with a current Board-approved treatment provider or otherwise have been approved in advance by the Board to provide an assessment of Mr. Schwartz. Further, the two aforementioned physicians shall not be affiliated with the same treatment provider or medical group practice. Prior to the assessments, Mr. Schwartz shall provide the evaluators with copies of patient records from any evaluation and/or treatment that he has received, and a copy of this Order. The reports of the evaluators shall include any recommendations for treatment, monitoring, or supervision of Mr. Schwartz, and any conditions, restrictions, or limitations that should be imposed on Mr. Schwartz's practice. The reports shall also describe the basis for the evaluator's determinations.

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

⁵Mr. Schwartz's current aftercare contract with Alcohol and Drug Services of Guernsey County does not appear to comply with Rule 4731-16-10, Ohio Administrative Code.

5. **Additional Evidence of Fitness To Resume Practice:** In the event that Mr. Schwartz has not been engaged in active practice as a physician assistant for a period in excess of two year prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4730.28, Ohio Revised Code, to require additional evidence of his fitness to resume practice.
- D. **PROBATION:** Upon reinstatement or restoration, Mr. Schwartz's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
1. **Obey the Law:** Mr. Schwartz shall obey all federal, state, and local laws, and all rules governing the practice as a physician assistant in Ohio.
 2. **Terms, Conditions, and Limitations Continued from Suspension Period:** Mr. Schwartz shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
 3. **Practice Plan:** Prior to Mr. Schwartz's commencement of practice in Ohio, or as otherwise determined by the Board, Mr. Schwartz shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Mr. Schwartz's activities will be directly supervised and overseen by a monitoring physician approved by the Board. Mr. Schwartz shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

At the time Mr. Schwartz submits his practice plan, he shall also 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 Mr. Schwartz and who is engaged in the same or similar practice specialty.

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

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

In addition, Mr. Schwartz shall make arrangements acceptable to the Board for another monitoring physician within 30 days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Mr. Schwartz 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 therefor.

4. **Tolling of Probationary Period while Out of Compliance:** In the event Mr. Schwartz 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 under this Order.
- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Mr. Schwartz's certificate will be fully restored.
- F. **VIOLATION OF THE TERMS OF THIS ORDER:** If Mr. Schwartz violates the terms of this Order 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.
- G. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER**
 1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Mr. Schwartz shall provide a copy of this Order to all employers or entities with which he is under contract to provide health-care services (including but not limited to third-party payors), or is receiving training, and the chief of staff at each hospital or health-care center where he has privileges or appointments.

In the event that Mr. Schwartz provides any health-care services or health-care direction or medical oversight to any emergency medical services organization or emergency medical services provider, Mr. Schwartz shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.
 2. **Required Reporting To Other Licensing Authorities:** Within 30 days of the effective date of this Order, Mr. Schwartz shall provide a copy of this Order to the proper licensing authority of any State or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate.

Mr. Schwartz further shall provide a copy of this Order at the time of application to the proper licensing authority of any State or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license. This

requirement shall continue until Mr. Schwartz received from the Board written notification of the successful completion of the probation.

3. **Required Reporting to Treatment Providers/Monitors:** Within 30 days of the effective date of this Order, Mr. Schwartz shall promptly provide a copy of this Order to all persons and entities that provide chemical-dependency treatment to or monitoring of Mr. Schwartz.

4. **Required Documentation of the Reporting Required by Paragraph G:** Mr. Schwartz shall provide the Board with one of the following documents as proof of each required notification within 30 days of the date of each such notification: (1) the return receipt of certified mail within 30 days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

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



Gretchen L. Petrucci
Hearing Examiner

State Medical Board of Ohio

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

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EXCERPT FROM THE APPROVED MINUTES OF NOVEMBER 12, 2008

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDER

Dr. Varyani announced that the Board would now consider the Reports and Recommendations and the Proposed Findings and Proposed Order appearing on its agenda. He asked whether each member of the Board had received, read and considered the hearing record; the Findings of Fact, Conclusions of Law and Proposed Orders, and any objections filed in the matters of Maryam Bakhshandeh, M.D.; Brenda Louise Banks, M.D.; Donald E. Higgs, M.D.; Robert Wayne Miller, L.M.T.; Steven Edward Schwartz, P.A.; and Robert Nelson Wachsberger; and the Proposed Findings & Proposed Order in the consolidated matters of Lynda Lee Dean, M.T. A roll call was taken:

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

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

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

Dr. Mahajan - aye
Dr. Steinbergh - aye
Dr. Varyani - aye

Dr. Varyani 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. They may, however, participate in the matters of Dr. Bakhshandeh and Dr. Higgs, as those cases are not disciplinary in nature and concern only the doctors' qualifications for licensure. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

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

.....

STEVEN EDWARD SCHWARTZ, P.A.

Dr. Varyani directed the Board's attention to the matter of Steven Edward Schwartz, P.A. He advised that no objections were filed to Hearing Examiner Petrucci's Report and Recommendation.

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

Mr. Schwartz was accompanied by his attorney, Kevin P. Byers.

Mr. Byers stated that there have been no objections filed in this matter because Mr. Schwartz and he heartily endorse the Hearing Examiner's recommendation. Mr. Byers stated that, subsequent to the hearing, Mr. Schwartz went through a 72-hour evaluation, as originally mandated by the Board. It was with a Board-approved evaluation provider, and it was actually with the provider originally arranged for Mr. Schwartz in March 2008, i.e., Glenbeigh. Mr. Byers stated that Glenbeigh found no cause to alter his current course of recovery in the least and, significantly, did not reject the 28-day program that Mr. Schwartz went through in Florida. Mr. Byers stated that Mr. Schwartz will address the reasons he went to a non-Board-approved program in Florida.

Mr. Byers stated that it's significant to highlight for the Board that Mr. Schwartz has been out of practice for over seven months because of the summary suspension levied by this Board. He also has seven months of documented abstinence and sobriety.

Mr. Schwartz stated that he realizes that he made a mistake when he did not attend the Glenbeigh evaluation. He stated that at that time he was in active alcoholism and in denial. Subsequently, on April 4,

he found himself in a position where he reported for work, he started early because they were busy, and he found himself impaired. Realizing that he couldn't do this to his patient or to his employer of the past eleven years, he excused himself from work that day, called the other P.A., and left. After going home and realizing the gravity of the situation, he got on the phone with the only "800" number under alcoholic services in the phone book in Cambridge, OH. He spoke with someone about a treatment center, the Spencer Recovery Group in Florida. There was a two-week waiting period to get into this program. In the meantime, having no funds (he'd recently gotten divorced after 18 years and was living paycheck to paycheck), he cashed in a retirement annuity that he'd had since his senior year of high school. He was placed on the waiting list to go to treatment at Spencer. He paid some bills in advance so that he wouldn't fall further behind in his debts, and he paid for Spencer with those funds. He stated that he went to Spencer, got totally involved in their program and was enthusiastic about it. He did everything that was required and then some elective things. He followed Spencer's recovery program and got with a recovery program when he got out. He's had negative drug test since he left Spencer. He's attended five to eight A.A. meetings per week, and he's attended social events that were A.A. functions. Mr. Schwartz stated that he's trying to keep alive a meeting group in the hospital on Sunday mornings that was faltering. Mr. Schwartz stated that he's been attending church regularly, and he has a study group midweek.

Mr. Schwartz stated that he's totally gotten involved in this recovery and in this new way of looking at life and appreciating the life that he's come to know since April 4, 2008. Mr. Schwartz stated that he realizes that he should have gone to the Board-ordered evaluation, but at the time he wasn't thinking clearly.

Mr. Schwartz stated that he's anxious to get back to work. He stated that he feels that he's come a long way. He's still very much interested in his program, as well as in his church. He again stated that he's anxious to get back to work, adding that it will be a benefit to his patients and his employer, and he knows that it will do him a lot of good to get back to work, as well. He advised that he's been sincere about this from the very start. He's applied himself.

Mr. Schwartz thanked the Board for its time and consideration, and advised that he will answer any questions Board members may have.

Dr. Steinbergh noted that Mr. Schwartz was ordered to an evaluation at Glenbeigh, and he didn't do that. She stated that she's trying to understand why he didn't have money to do that in regard to this Board and its certified programs, and why, when he decided to cash in his annuity, he didn't enter treatment in Ohio. She asked why he didn't follow the guidance of this Board, who holds his certificate. She asked whether he has a certificate in Florida.

Mr. Schwartz replied that he doesn't.

Dr. Steinbergh asked why, when he realized that he was going to have to do this, he would choose to go to Florida, and not act according to Board recommendations.

Mr. Schwartz stated that, after the realization that he was in deep trouble and that he had a very severe

problem, he was thrown a “life ring,” the recovery program happened to be in Florida, it was JCAHO-approved, and he grabbed it. In the meantime, he called Mutual of New York, got his money from his retirement annuity, so that he could afford to attend the recovery program.

Dr. Steinbergh commented that he seized the moment.

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

Ms. Unver stated that the main issue of the recent hearing in this case was to determine whether Mr. Schwartz’ failure to submit to the Board-ordered evaluation was due to circumstances beyond his control. She stated that it’s clear from the testimony at hearing that Mr. Schwartz knew about the 72-hour Board-ordered examination. In fact, he called the Enforcement Attorney when the exam was first scheduled in order to get a rescheduling of the exam, due to the fact that he was going to be out of state during the time. The Secretary and Supervising Member agreed to reschedule that examination, and a new date was set up for Mr. Schwartz to attend the 72-hour evaluation at Glenbeigh.

Ms. Unver stated that Mr. Schwartz did not attend the scheduled exam, he was drinking that day, and it was clear from his testimony that his failure to attend the exam was not due to circumstances beyond his control. Ms. Unver advised that Mr. Schwartz eventually sought treatment, but the problem is that he sought treatment from an out-of-state treatment facility in Florida, which is not Board-approved, as required by O.R.C. §4730.25. Mr. Schwartz went to Glenbeigh for a 72-hour inpatient evaluation, but that occurred after the hearing in this matter. Ms. Unver stated that the Report and Recommendation states that the Board may wish to conclude that Mr. Schwartz has sufficiently submitted to inpatient treatment and successfully completed that treatment, but the State objects to this suggestion because the statute does not allow recognition of a non-Board-approved treatment provider. There are widespread ramifications of allowing a licensee to pick and choose a non-Board-approved treatment provider. The Board just had a case that dealt with this issue, and she urged the Board to look at the statute involved here. In order to comply with the statute, Mr. Schwartz needs to be required to go to a 28-day inpatient treatment provider that is approved by this Board. Ms. Unver commented that, if a licensee is allowed to select their own treatment provider who is not Board-approved, this Board will start to see licensees who will ignore the impairment statutes and create their own treatment plan that suits their own agenda, and the Board will lose control of monitoring the quality of those programs.

Ms. Unver stated that the statute requires that a license go to a Board-approved treatment provider for a reason. Mr. Schwartz needs to attend a 28-day inpatient treatment program that is Board-approved. The Report and Recommendation states that Mr. Schwartz is in the early stages of recovery for his impairment, and one of the physicians who has opined on Mr. Schwartz’ ability to practice according to acceptable and prevailing standards of care, has stated that Mr. Schwartz needs further evaluation prior to any recommendation of reinstatement at this time. Ms. Unver stated that the State agrees that further evaluation is necessary, and added that it should start with the requirement of completing 28 days of treatment with an inpatient treatment provider approved by this Board.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF STEVEN EDWARD SCHWARTZ, P.A. DR. MADIA SECONDED THE MOTION.

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

Dr. Steinbergh stated that she does have some concerns about this Board Order. She stated that she doesn't find it to be totally inappropriate, but she is concerned about the treatment program. There is no question that Mr. Schwartz is an impaired individual. When he came into the Medical Board offices to renew his P.A. certificate, he was under the influence of alcohol. Dr. Steinbergh stated that, in her mind, he was out of control and screaming for some help. Dr. Steinbergh stated that she does have some concerns that he made the choice to go to a provider that was not approved by the State of Ohio. He successfully completed that program, but then Dr. Goldberg, who is an approved physician to evaluate Ohio's practitioners, had significant concerns. Mr. Schwartz falsely answered a question on his P.A. renewal application, rejecting the fact that he had a 1997 DUI event. He did not appropriately reapply. Dr. Steinbergh continued that Mr. Schwartz has a history of four DUIs. He neglected to attend the three-day assessment at Glenbeigh.

Dr. Steinbergh noted that Dr. Goldberg has concerns that Mr. Schwartz attended an unapproved treatment provider; and as he reviewed the program, Dr. Goldberg did not feel that it was as structured as the Board requires. He had one drug screening report, but it was not an observed specimen and was not tested for marijuana. When he went into the program in Florida, not only did he test positive for alcohol, but he tested positive for marijuana.

Dr. Steinbergh stated that, after the Glenbeigh 72-hour assessment, the Board still doesn't have a report from the addictionologist, the medical director. A psychiatrist did diagnose alcohol dependence in early remission, anxiety and so forth. There are opinions from Glenbeigh that he would just need to attend an outpatient program, but, again, the Board doesn't have a report from the medical director.

Dr. Steinbergh referred to paragraph C of the Board Order, "Demonstration of Ability to Resume Practice." She directed the Board's attention to subparagraph 4.b, which states:

Evidence of continuing full compliance with an aftercare contract with a treatment provider approved under Section 4731.25, Ohio Revised Code, or a **consent agreement**. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with Rule 4731-16-10, Ohio Administrative Code. (emphasis added)

Dr. Steinbergh stated that she's not sure that the language, "or a consent agreement," is appropriate in a Board Order. She stated that it seems to her that the language is just boilerplate.

Ms. Debolt stated that that language could be scratched. She stated that reinstatement would be by Board Order.

Ms. Pfeiffer recommended a motion to amend the language.

Dr. Steinbergh referred to paragraph C.4.a, which requires Mr. Schwartz to submit: "Certification from a treatment provider approved under Section 4731.25, Ohio Revised Code, that Mr. Schwartz has successfully completed any required inpatient treatment." She asked whether this would compel him to go to another 28-day inpatient treatment program approved by the Board.

Ms. Debolt stated that that is correct.

Dr. Mahajan left the room during the previous discussion.

DR. STEINBERGH MOVED TO AMEND PARAGRAPH C.4.b. OF THE PROPOSED ORDER TO REMOVE THE LANGUAGE, "OR A CONSENT AGREEMENT." DR. MADIA SECONDED THE MOTION. A vote was taken:

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

The motion carried.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF STEVEN EDWARD SCHWARTZ, P.A. DR. AMATO SECONDED THE MOTION. Dr.

Varyani stated that he would entertain further discussion in the above matter.

Dr. Madia stated that he agrees with the Report and Recommendation.

Dr. Egner stated that she will say the same thing here as she said in the previous case. It does, perhaps, seem like a waste of Mr. Schwartz' time and money to have to go through a second 28-day program. Dr. Egner added that she's so distraught over, not what's happening today, but what's going to happen six months from now and a year from now, when the Board is just suspending its rules. She stated that this is a government agency. She added that she understands having a heart, but the Board members are here in a

bigger picture, on a bigger mission. Dr. Egner stated that she thinks that the Board is doing itself a disservice by not sticking to the rules that are in place today. If the Board doesn't like those rules, the Board has the opportunity to change them so that the next time it can make those exceptions. Dr. Egner stated that, where the Board stands today, these are the rules and she will vote in favor of the Board's rules until they change.

Mr. Whitehouse stated that he completely agrees with Dr. Egner. He stated that when the Board makes decisions here, and someone is appearing before it, it is natural and not inappropriate for the Board members to feel compassion. As a body making decisions as to that individual, the Board has to follow its rules. He advised that with each decision the Board makes, it is setting policy. People who come before will be asking why an exception wasn't made for them. People who follow will ask why the exception can't be made for them. Mr. Whitehouse stated that there will always be exceptions, and there will be a lot of reasons why the Board is going to want to find exceptions; but the rules are not meant to hinder the Board. They're meant to ensure that there is fairness in the Board's process.

Dr. Suppan stated that she understands what Mr. Whitehouse is saying, but if that were true, they wouldn't need the Board members to come in. All he'd have to do is take the rules and apply them. She stated that the Board's job is to analyze all the facts and make the best decision that they can, based on the facts before them. Dr. Suppan commented that each Board member brings something different to the table. Each Board member has a different practice experience, and has a different perspective. The trust was put in the Board to make those decisions. Dr. Suppan stated that for her to act in any way other than what she thinks is the right thing to do would be the wrong thing to do.

Mr. Whitehouse stated that he's not saying that the Board should disregard the human element of the equation. He's only saying that the Board has to keep that in check. He understands that there is a natural inclination towards compassion, but the rules were put in place for a reason. He's not suggesting blind adherence to the rules. He also suggested changing the rules if the Board is not doing the right thing as a result of applying them. Mr. Whitehouse stated that Dr. Suppan is right in that the Board doesn't have a computer making these decisions, and he added that he's not advocating for that.

Ms. Debolt stated that she will backtrack on her previous advice. She stated that the language of paragraph 4.a. does not reference specific rules that talk about doing the 28-day treatment program. What it does say is that "any required inpatient treatment." Ms. Debolt stated that that gives discretion to the evaluator.

Dr. Steinbergh stated that she has concerns about this. She stated that Mr. Schwartz did not go to a 28-day program that has been certified in the state of Ohio. The Board does not have good evidence, even after six months, that he is not currently impaired. Dr. Steinbergh again stated that she has great concerns about this. She indicated that she shares the same concerns as does Dr. Goldberg. Dr. Steinbergh stated that the Proposed Order does not give her what she wants from this individual. Dr. Steinbergh stated that she thinks that Mr. Schwartz made the wrong decision. She commented that the Board's rules are done for a reason, and added that the Board has spent a good deal of time and money certifying these programs. The Spencer program does not meet the Board's standards. Dr. Steinbergh stated that there are also some

outstanding evaluation concerns from her perspective.

A vote was taken on Dr. Steinbergh's motion to approve, as amended, the Hearing Examiner's Findings of Fact, Conclusions of Law and Proposed Order:

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

The motion failed.

Dr. Varyani suggested tabling this matter to draft an alternative order.

DR. STEINBERGH MOVED TO TABLE THE MATTER OF MR. SCHWARTZ. DR. MAHAJAN SECONDED THE MOTION. All members voted aye. The motion carried.

The matter was removed from the table later in the meeting by Dr. Varyani, at the request of Dr. Steinbergh. Dr. Amato was absent from the room when the matter was removed from the table.

Dr. Steinbergh briefly summarized the case and the Board's earlier discussion.

DR. STEINBERGH MOVED TO AMEND PARAGRAPHS C.4.a. AND b. OF THE PROPOSED ORDER IN THE MATTER OF MR. SCHWARTZ BY SUBSTITUTING THE FOLLOWING:

- a. Certification from a treatment provider approved under Section 4731.25, Ohio Revised Code, that Mr. Schwartz has successfully completed any required inpatient treatment, including at least twenty-eight days of inpatient or residential treatment (completed consecutively) for chemical abuse/dependence at a treatment provider approved by the Board.
- b. Evidence of continuing full compliance with an aftercare contract with a treatment provider approved under Section 4731.25, Ohio Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with Rule 4731-16-10, Ohio Administrative Code.⁵

DR. EGNER SECONDED THE MOTION. A vote was taken:

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

The motion carried.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF STEVEN EDWARD SCHWARTZ, P.A. DR. MADIA SECONDED THE MOTION. A vote was taken:

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

The motion carried.

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

April 9, 2008

Case Number: 08-CRF-047

Steven Edward Schwartz, P.A.
20011 New Gottengen Road
Salesville, OH 43778

Dear Mr. Schwartz:

Enclosed please find certified copies of the Entry of Order, Opportunity for Hearing on Failure to Submit to an Examination and Notice of Summary Suspension Based Upon Presumption of an Admission of Impairment, and an excerpt of the Minutes of the State Medical Board, meeting in regular session on April 9, 2008, including a Motion adopting the Opportunity for Hearing on Failure to Submit to an Examination and Notice of Summary Suspension Based Upon Presumption of an Admission of Impairment.

You are advised that continued practice after receipt of this Order shall be considered practicing without a certificate, in violation of Section 4730.02, Ohio Revised Code.

Pursuant to Chapter 119, Ohio Revised Code, you are hereby advised that you are entitled to a hearing concerning whether your failure to submit to the examination as directed was due to circumstances beyond your control as set forth in the Opportunity for Hearing on Failure to Submit to an Examination and Notice of Summary Suspension Based Upon Presumption of an Admission of Impairment. If you wish to request such hearing, that request must be made in writing and be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice. Further information concerning such hearing is contained within the Opportunity for Hearing on Failure to Submit to an Examination and Notice of Summary Suspension Based Upon Presumption of an Admission of Impairment.

THE STATE MEDICAL BOARD OF OHIO



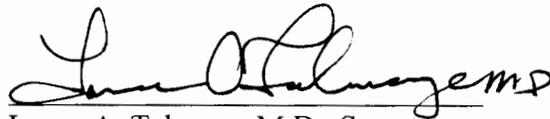
Lance A. Talmage, M.D., Secretary

Mailed 4-10-08

CERTIFICATION

I hereby certify that the attached copies of the Entry of Order of the State Medical Board of Ohio and the Motion by the State Medical Board, meeting in regular session on April 9, 2008, to Adopt the Opportunity for Hearing on Failure to Submit to an Examination and Notice of Summary Suspension Based Upon Presumption of an Admission of Impairment, constitute true and complete copies of the Motion and Order in the Matter of Steven Edward Schwartz, P.A., Case Number 08-CRF- **047** , as they appear in the Journal of the State Medical Board of Ohio.

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



Lance A. Talmage, M.D., Secretary

(SEAL)

April 9, 2008

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :
 :
STEVEN EDWARD SCHWARTZ, P.A. :
 :
Case Number: 08-CRF- 047 :

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 9th day of April, 2008.

Pursuant to Section 4730.25(G), Ohio Revised Code, and upon recommendation of Lance A. Talmage, M.D., Secretary, and Raymond J. Albert, Supervising Member; and

Pursuant to their determination, based upon their review of the information supporting the allegations as set forth in the Opportunity for Hearing on Failure to Submit to an Examination and Notice of Summary Suspension Based Upon Presumption of an Admission of Impairment, that there is clear and convincing evidence that Steven Edward Schwartz, P.A., has violated Section 4730.25(B)(5), Ohio Revised Code, as alleged in the Opportunity for Hearing on Failure to Submit to an Examination and Notice of Summary Suspension Based Upon Presumption of an Admission of Impairment that is enclosed herewith and fully incorporated herein; and

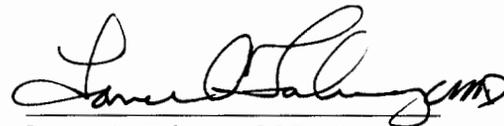
Pursuant to their further determination, based upon their review of the information supporting the allegations as set forth in the Opportunity for Hearing on Failure to Submit to an Examination and Notice of Summary Suspension Based Upon Presumption of an Admission of Impairment, that Mr. Schwartz's continued practice as a physician assistant presents a danger of immediate and serious harm to the public;

The following Order is hereby entered on the Journal of the State Medical Board of Ohio for the 9th day of April, 2008:

It is hereby ORDERED that the certificate of Steven Edward Schwartz, P.A., to practice as a physician assistant in the State of Ohio be summarily suspended.

It is hereby ORDERED that Steven Edward Schwartz, P.A., shall immediately cease to practice as a physician assistant in Ohio.

This Order shall become effective immediately.


Lance A. Talmage, M.D., Secretary

(SEAL)

April 9, 2008
Date

State Medical Board of Ohio

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



Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

EXCERPT FROM THE DRAFT MINUTES OF APRIL 9, 2009

STEVEN EDWARD SCHWARTZ, P.A. 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. MADIA MOVED TO ENTER AN ORDER OF SUMMARY SUSPENSION IN THE MATTER OF STEVEN EDWARD SCHWARTZ, P.A., IN ACCORDANCE WITH SECTION 4731.22(G), OHIO REVISED CODE, AND TO ISSUE THE NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

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

The motion carried.

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

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med.ohio.gov

OPPORTUNITY FOR HEARING ON FAILURE TO SUBMIT TO AN EXAMINATION AND NOTICE OF SUMMARY SUSPENSION BASED UPON PRESUMPTION OF AN ADMISSION OF IMPAIRMENT

April 9, 2008

Case number: 08-CRF- **047**

Steven Edward Schwartz, P.A.
20011 New Gottengen Road
Salesville, OH 43778

Dear Mr. Schwartz:

Due to your failure to submit to an examination on March 31, 2008, as ordered by the State Medical Board of Ohio [Board] (which had been originally scheduled for March 17, 2008 and rescheduled to accommodate a conflict in your schedule), and your failure to notify the Board of any circumstances beyond your control preventing you from submitting to said examination, pursuant to Section 4730.25(F)(2), Ohio Revised Code, a legal presumption has been established that you have admitted the factual and legal allegations demonstrating an impairment of your 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 alleged against you in the Board's letter dated March 7, 2008 and served upon you by personal delivery on March 10, 2008, so ordering you to submit to such examination. Accordingly, the Secretary and the Supervising Member of the Board have determined that there is clear and convincing evidence that you have violated Section 4730.25(B)(5), Ohio Revised Code, and have further determined that your continued practice presents a danger of immediate and serious harm to the public, as set forth in paragraphs (1) through (5), below.

Therefore, pursuant to Section 4730.25(G), Ohio Revised Code, and upon recommendation of Lance A. Talmage, M.D., Secretary, and Raymond J. Albert, Supervising Member, you are hereby notified that, as set forth in the attached Entry of Order, your certificate to practice as a physician assistant in the State of Ohio is summarily suspended. Accordingly, at this time, you are no longer authorized to practice as a physician assistant.

Furthermore, in accordance with Chapter 119., Ohio Revised Code, and Chapter 4730., Ohio Revised Code, you are hereby notified that the Board intends, for one or more of the following reasons, to determine whether your failure to submit to the aforementioned examination was due to circumstances beyond your control, which would rebut the legal presumption of impairment and merit termination of the instant summary suspension of your certificate in conjunction with rescheduling the examination as directed by the Board, or conversely, whether your failure to submit to the aforementioned examination was due to circumstances within your control, which would render the legal presumption of impairment conclusive and result in the Board further determining whether to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice as a physician assistant, or to reprimand you or place you on probation based upon your legally admitted impairment:

- (1) By letter dated March 7, 2008, the Board notified you of its determination that it had reason to believe that you are in violation of Section 4730.25(B)(5), Ohio Revised Code, and ordered you to undergo a 72-hour inpatient examination to determine if you are in violation of Section 4730.25(B)(5), Ohio Revised Code. The Board's determination was based upon one or more of the reasons outlined in such letter, which included:

On or about March 19, 1997, in the Carroll County Court, Carroll County, Ohio, you pled no contest to, and were found guilty of, Driving Under the Influence (DUI), a first degree misdemeanor, in violation of Section 4511.19(A), Ohio Revised Code. The Court ordered that you serve a three-day term of incarceration, which would be suspended in the event you successfully completed a residential treatment program for three days; imposed a fine in the amount of \$400.00 plus court costs, but giving you a \$150.00 credit in the event that you completed residential treatment; and suspended your driver's license for one year.

On or about January 15, 1997, at the time of your arrest underlying the aforementioned DUI conviction, you had been involved in a crash and you refused to take a test to determine your blood alcohol content.

In your Ohio application for renewal of your certificate to practice as a physician assistant signed by you on December 20, 1999, you answered "No" to Question 1, which asked:

At any time since signing your last application for renewal of your registration, have you:

. . .

Been found guilty of, or pled guilty or no contest to a felony or misdemeanor.

In fact, you failed to report your 1997 plea of no contest to, and finding of guilt of, DUI.

On or about February 4, 2008, at approximately 3:00 p.m., you appeared at the offices of the Board for the purpose of renewing your certificate to practice as a physician assistant. Your appearance was disheveled and your clothing appeared dirty. The Board staff member assisting you noted that you had an odor of alcoholic beverage about you, and suspecting that you had consumed alcohol, requested that a second Board staff member assist you as well. The second Board staff member confirmed that she could smell alcohol on your breath.

On or about March 5, 2008, a Board investigator interviewed you at your residence. Upon arriving, the Board investigator observed a small barn near the driveway with its contents open to view, and observed several empty beer cans along with crushed cardboard beer cases.

Upon encountering you in the garage of your home, the Board investigator noted several empty beer cans littering the table where you were sitting and noted empty beer cans and empty crushed beer cases on the floor of the garage. You invited the Board investigator to have a seat while you finished drinking beer from the can you were holding, removed the can from its sleeve, and replaced it with a full can of beer. The Board investigator smelled an extremely strong odor of alcoholic beverage coming from your person and your breath as you spoke. The Board investigator noted further that your eyes were bloodshot and watery, your speech was slurred, and that you seemed to have trouble focusing on the beer in your hand as you opened it.

The Board investigator advised you that the Board's office staff reported smelling an odor of alcohol on you on the aforementioned day when you visited the Board offices for your renewal application, and you replied that that was an accurate statement. You admitted that you had consumed alcohol on that day and when asked to quantify your alcohol consumption for that day, you responded that you would have no idea, that you had driven over one hundred miles to get to the Board's offices and could not estimate. You added that you liked a certain brand of beer and did not think that was a problem. When the Board investigator asked you where you had consumed the alcohol before your appearance at the Board's offices on the aforementioned day, you replied that you started at home.

When the Board investigator asked how much alcohol you consumed daily, you asked if he wanted to know about your consumption on a work day or on your day

off. When the Board investigator asked about your alcohol consumption on a work day, you replied that you would not incriminate yourself, and further refused to answer as to your alcohol consumption on your days off from work, adding that such information was not the Board investigator's concern because you were over age twenty-one.

When the Board investigator asked you about your 1997 conviction for DUI in Carroll County, Ohio, you first replied that that one had been dismissed, then said, no, that one was not dismissed, it was the others. When asked what led to your arrest for driving while intoxicated, you responded that you just got caught.

When the Board investigator asked you if you believed that you had an alcohol problem, you became agitated, slowly rose to your feet, and said loudly that you would show the Board investigator. You then brought out your divorce papers and showing the documents to the Board investigator, said that this was why you were drinking. Your mood changed, you began to cry and said that was the reason you drank. You added that you had been drinking a lot, that you have been cutting back a little, then qualified with "sort of" cutting back.

The Board investigator asked you why you had not reported your conviction for driving while intoxicated, and you questioned why, as it was not a felony. When you were showed the applicable question on the renewal form, you stated that you must have missed it.

The Board investigator asked you if the 1997 DUI arrest was your first, and you replied no, that most of them were dismissed. You declined to answer any further questions about your DUI arrests.

The Board investigator asked you twice to provide a voluntary urine sample and you refused, adding the second time that you did not give one to the "cops" and you would not give one to the Board investigator.

At the conclusion of the interview, you said that you had been a physician assistant for over thirty years, and if the Board was going to push, you would just retire.

- (2) The March 7, 2008 letter from the Board that was personally delivered to you further notified you that, pursuant to Section 4730.25(F)(2), Ohio Revised Code, you were ordered to submit to a 72-hour inpatient examination. The examination was scheduled to take place at Glenbeigh Hospital, Rock Creek, Ohio, a Board-approved treatment provider, on Monday, March 17, 2008 at 10:00 a.m. To accommodate a conflict with

your schedule, the date of the examination was changed to Monday, March 31, 2008, at Glenbeigh Hospital. You were apprised of the change of the examination date by telephone on March 10, 2008, and on March 20, 2008, you were personally served with a copy of a letter notifying you that the exam had been rescheduled.

The March 7, 2008 letter from the Board personally delivered to you further notified you that failure of an individual to submit to an examination as directed constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control. Finally, the March 7, 2008 letter notified you that if you failed to submit to the examination, and such failure was not due to circumstances beyond your control, the Board would be authorized to enter a default and final order without the taking of testimony or presentation of evidence.

- (3) You were duly notified of the examination order and its scheduled date. The personal delivery to you of the March 7, 2008 letter was made by a Board investigator on March 10, 2008, and a certificate of receipt was signed by you and dated March 10, 2008. Further, the personal delivery to you of the March 12, 2008 letter rescheduling your examination was made by Board investigator on March 20, 2008, and a certificate of receipt was signed by you and dated March 20, 2008.
- (4) By letter dated April 2, 2008, from Glenbeigh, the Board was notified that you failed to appear for the March 31, 2008, Board-ordered examination. Although you asserted that you were unable to appear for the examination that the Board scheduled for you due to your personal financial concerns, at no time did you establish that your failure to appear was due to any circumstances beyond your control. Accordingly, pursuant to Section 4730.25(F)(2), Ohio Revised Code, and in consideration of the affidavit of Karen Mortland, Enforcement Attorney, a copy of which are attached hereto and fully incorporated herein, the Board hereby FINDS that you have admitted the truth of the allegations demonstrating impairment as set forth in the March 7, 2008 letter from the Board. The Board FINDS that pursuant to Section 4730.25(F)(2), Ohio Revised Code, your failure to appear for the examination ordered by the Board as directed 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 4730.25(B)(5), Ohio Revised Code.
- (5) Further, the Board has not received information indicating that you have entered treatment at a Board-approved treatment provider, or that you have completed the recommended/required treatment and entered into an aftercare contract with a Board-approved treatment provider. In addition, the Board has not received information that

you have been determined to be capable of practicing in accordance with acceptable and prevailing standards of care.

Section 4730.25(F), Ohio Revised Code, provides that any individual who holds a certificate shall be deemed to have given consent to submit to a mental or physical examination when ordered to do so by the Board in writing; and that the expense of the examination is the responsibility of the individual compelled to be examined. Failure to submit to a mental or physical examination ordered by the Board constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence.

Further, Section 4730.25(F)(2), Ohio Revised Code, additionally provides that if the Board determines that an individual's ability to practice is impaired, the Board shall suspend the individual's certificate and shall require the individual, as a condition for initial, continued, reinstated, or renewed certification to practice or prescribe, to submit to treatment and, before being eligible to apply for reinstatement, to demonstrate to the Board the ability to resume practice or prescribing in compliance with acceptable and prevailing standards of care, including completing required treatment, providing evidence of compliance with an aftercare contract or written consent agreement, and providing written reports indicating that the individual's ability to practice has been assessed by individuals or providers approved by the Board and that the individual has been found capable of practicing according to acceptable and prevailing standards of care.

Further, Rule 4731-16-02(B)(3), Ohio Administrative Code, provides that if an examination discloses impairment, or if the Board has other reliable, substantial and probative evidence demonstrating impairment, the Board shall initiate proceedings to suspend the licensee, and may issue an order of summary suspension as provided in Section 4730.25(G), Ohio Revised Code.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) through (5) 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 4730.25(B)(5), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, and Chapter 4730., Ohio Revised Code, you are hereby advised that you are entitled to a hearing concerning whether your failure to submit to the examination as directed was due to circumstances beyond your control. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice.

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

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

Please note that, whether or not you request a hearing, Section 4730.25(L), Ohio Revised Code, provides that “[w]hen the board refuses to grant to an applicant a certificate to practice as a physician assistant or a certificate to prescribe, revokes an individual’s certificate, refuses to issue a certificate, or refuses to reinstate an individual’s certificate, 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 the certificate and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate.”

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.
Secretary

LAT/KHM/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3934 3686 8478
RETURN RECEIPT REQUESTED

Duplicate by PERSONAL DELIVERY

AFFIDAVIT

The State of Ohio
Franklin County, SS

I, Karen Mortland, being duly cautioned and sworn, do hereby depose and state that the following is true based upon my first-hand knowledge:

- 1) I am employed by the State Medical Board of Ohio [Board].
- 2) I serve the Board in the position of Enforcement Attorney.
- 3) In the course of my regular duties, I am responsible for coordinating the investigation of complaints against applicants and licensees under the jurisdiction of the Board and assembling the evidence necessary to prove potential violations of the Medical Practices Act of Ohio, Chapters 4730., 4731., 4760., and 4762., Ohio Revised Code.
- 4) I coordinated the investigation of the complaint filed against Steven Edward Schwartz, P.A. [Mr. Schwartz], which resulted in the issuance of a letter dated March 7, 2008, from the Board ordering Mr. Schwartz to submit to a seventy-two-hour inpatient evaluation at Glenbeigh Hospital, 2863 State Route 45, Rock Creek, Ohio 44084, commencing March 17, 2008, at 10:00 a.m. A copy of the March 7, 2008 letter is attached hereto and fully incorporated herein.
- 5) On March 10, 2008, the aforementioned March 7, 2008 letter was personally delivered to Mr. Schwartz by Curtis Fortner [Mr. Fortner], an investigator employed by the Board, at Mr. Schwartz's place of work, Southeastern Medical Center, 1341 Clark Street, Cambridge, Ohio. At the time of the personal delivery of the March 7, 2008 letter, Mr. Schwartz informed Mr. Fortner that he would not be attending the scheduled exam because he had prior arrangements to go to Florida for a conference and a family visit. A copy of the Certificate of Receipt demonstrating acceptance by Mr. Schwartz of the March 7, 2008 letter is attached hereto and fully incorporated herein.
- 6) On March 10, 2008, I contacted Mr. Schwartz by telephone, and he told me that he was leaving for Florida on March 11, 2008, for an educational seminar and family visit, and that he would not return until the evening of March 18, 2008. After he faxed information about the aforementioned trip to Florida and his work schedule, together with a cover letter wherein he asserted he could schedule off the three days if I could give him a time frame, I obtained permission from the Board's Secretary and Supervising Member to reschedule his evaluation. Thereupon, I rescheduled his seventy-two hour inpatient evaluation at Glenbeigh Hospital for March 31, 2008, at 10:00 a.m. Again, on March 10, 2008, I phoned Mr. Schwartz and told him that evaluation was rescheduled for March 31, 2008, at 10:00 a.m. at Glenbeigh Hospital.
- 7) On March 20, 2008, a letter from me dated March 12, 2008, was personally delivered by Mr. Fortner to Mr. Schwartz at his place of work, Southeastern

Medical Center, 1341 Clark Street, Cambridge, Ohio. The March 12, 2008 letter informed Mr. Schwartz that he was now ordered to report to Glenbeigh Hospital, 2863 State Route 45, Rock Creek, Ohio 44084, on Monday, March 31, 2008, at 10:00 a.m., for a seventy-two-hour inpatient evaluation. The March 12, 2008 letter also informed him that all other terms, conditions and limitations of the March 7, 2008 letter continued to apply, and a copy of such letter was attached and incorporated into the March 12, 2008 letter. A copy of the March 12, 2008 letter, and a copy of the Certificate of Receipt demonstrating acceptance by Mr. Schwartz of the March 12, 2008 letter, are attached hereto and fully incorporated herein.

- 8) On March 31, 2008, I received a facsimile transmission from Mr. Schwartz wherein he indicated that he would not be attending the evaluation, that he had financial problems, that he was broke and that he lived paycheck to paycheck. However, at no time did Mr. Schwartz state that his failure to appear for the evaluation was due to circumstances beyond his control. A copy of said facsimile transmission from Mr. Schwartz is attached hereto and incorporated herein.
- 9) On March 31, 2008, I was notified telephonically by a representative from Glenbeigh Hospital that Mr. Schwartz failed to appear at Glenbeigh Hospital for the examination that the Board had scheduled for him. On April 3, 2008, I received written confirmation that Mr. Schwartz had not appeared at Glenbeigh Hospital for the evaluation, a copy of which is attached hereto and fully incorporated herein.
- 10) Between March 31, 2008, and April 2, 2008, I attempted to call Mr. Schwartz numerous times, including leaving three voicemail messages at Mr. Schwartz's home and one message at his place of employment asking that he return my calls. On April 4, 2008, Mr. Schwartz left a voicemail message for me stating that he would be at work that day beginning at 11:00 a.m. and that I could phone him there. On April 4, 2008, at 11:22 a.m., I phoned Mr. Schwartz at his place of employment and was told by a staff member that Mr. Schwartz was not there; that he had been there but he left; and that another physician assistant had come in to work in his place.
- 11) Further, Affiant Sayeth Naught.


Karen Mortland, Enforcement Attorney

Sworn to and signed before me, Daniel S. Zinsmaster, Notary Public, this 7th day of April, 2008.



DANIEL S. ZINSMASER, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.



Notary Public

State Medical Board of Ohio

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



Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

March 7, 2008

Personal and Confidential

Steven Edward Schwartz, P.A.
20011 New Gottengen Road
Salesville, OH 43778

Dear Mr. Schwartz:

The State Medical Board of Ohio [Board] has determined that it has reason to believe that you are in violation of Section 4730.25(B)(5), Ohio Revised Code, to wit: "[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."

This determination is based upon one or more of the following reasons:

- (1) On or about March 19, 1997, in the Carroll County Court, Carroll County, Ohio, you pled no contest to, and were found guilty of, Driving Under the Influence (DUI), a first degree misdemeanor, in violation of Section 4511.19(A), Ohio Revised Code. The Court ordered that you serve a three-day term of incarceration, which would be suspended in the event you successfully completed a residential treatment program for three days; imposed a fine in the amount of \$400.00 plus court costs, but giving you a \$150.00 credit in the event that you completed residential treatment; and suspended your driver's license for one year.

On or about January 15, 1997, at the time of your arrest underlying the aforementioned DUI conviction, you had been involved in a crash and you refused to take a test to determine your blood alcohol content.

- (2) In your Ohio application for renewal of your certificate to practice as a physician assistant signed by you on December 20, 1999, you answered "No" to Question 1, which asked:

At any time since signing your last application for renewal of your registration, have you:

Been found guilty of, or pled guilty or no contest to a felony or misdemeanor.

In fact, you failed to report your 1997 plea of no contest to, and finding of guilt of, DUI.

- (3) On or about February 4, 2008, at approximately 3:00 p.m., you appeared at the offices of the Board for the purpose of renewing your certificate to practice as a physician assistant. Your appearance was disheveled and your clothing appeared dirty. The Board staff member assisting you noted that you had an odor of alcoholic beverage about you, and suspecting that you had consumed alcohol, requested that a second Board staff member assist you as well. The second Board staff member confirmed that she could smell alcohol on your breath.
- (4) On or about March 5, 2008, a Board investigator interviewed you at your residence. Upon arriving, the Board investigator observed a small barn near the driveway with its contents open to view, and observed several empty beer cans along with crushed cardboard beer cases.

Upon encountering you in the garage of your home, the Board investigator noted several empty beer cans littering the table where you were sitting and noted empty beer cans and empty crushed beer cases on the floor of the garage. You invited the Board investigator to have a seat while you finished drinking beer from the can you were holding, removed the can from its sleeve, and replaced it with a full can of beer. The Board investigator smelled an extremely strong odor of alcoholic beverage coming from your person and your breath as you spoke. The Board investigator noted further that your eyes were bloodshot and watery, your speech was slurred, and that you seemed to have trouble focusing on the beer in your hand as you opened it.

The Board investigator advised you that the Board's office staff reported smelling an odor of alcohol on you on the aforementioned day when you visited the Board offices for your renewal application, and you replied that that was an accurate statement. You admitted that you had consumed alcohol on that day and when asked to quantify your alcohol consumption for that day, you responded that you would have no idea, that you had driven over one hundred miles to get to the Board's offices and could not estimate. You added that you liked a certain brand of beer and did not think that was a problem. When the Board investigator asked you where you had consumed the alcohol before your appearance at the Board's offices on the aforementioned day, you replied that you started at home.

When the Board investigator asked how much alcohol you consumed daily, you asked if he wanted to know about your consumption on a work day or on your day off. When the Board investigator asked about your alcohol consumption on a work day, you replied that you would not incriminate yourself, and further refused to answer as to your alcohol consumption on your days off from work, adding that such information was not the Board investigator's concern because you were over age twenty-one.

When the Board investigator asked you about your 1997 conviction for DUI in Carroll County, Ohio, you first replied that that one had been dismissed, then said, no, that one was not dismissed, it was the others. When asked what led to your arrest for driving while intoxicated, you responded that you just got caught.

When the Board investigator asked you if you believed that you had an alcohol problem, you became agitated, slowly rose to your feet, and said loudly that you would show the Board investigator. You then brought out your divorce papers and showing the documents to the Board investigator, said that this was why you were drinking. Your mood changed, you began to cry and said that was the reason you drank. You added that you had been drinking a lot, that you have been cutting back a little, then qualified with "sort of" cutting back.

The Board investigator asked you why you had not reported your conviction for driving while intoxicated, and you questioned why, as it was not a felony. When you were showed the applicable question on the renewal form, you stated that you must have missed it.

The Board investigator asked you if the 1997 DUI arrest was your first, and you replied no, that most of them were dismissed. You declined to answer any further questions about your DUI arrests.

The Board investigator asked you twice to provide a voluntary urine sample and you refused, adding the second time that you did not give one to the "cops" and you would not give one to the Board investigator.

At the conclusion of the interview, you said that you had been a physician assistant for over thirty years, and if the Board was going to push, you would just retire.

By the authority vested in the State Medical Board of Ohio by Section 4730.25(F)(2), Ohio Revised Code, you are ordered to submit to an examination. This examination will take place at **Glenbeigh Hospital, 2863 St. Rt. 45, Rock Creek, Ohio 44084, telephone number (440) 563-3400.** You are to report to the **Glenbeigh Admissions Office, on Monday, March 17, 2008, at 10:00 a.m.** for a 72-hour in-patient evaluation. Please confirm your plan to appear for this scheduled examination by contacting Cathy Chambers, the Intake Coordinator for Glenbeigh, at the above-listed telephone number prior to your scheduled appointment. You may also direct any questions about Glenbeigh's location and admission procedures to Ms. Chambers.

Pursuant to Section 4730.25(F)(2), Ohio Revised Code, you are responsible for the expense of this evaluation. **The total estimated cost of this evaluation is \$1800.00.** You must present a certified check or money order in this amount made payable to **Glenbeigh Hospital** to the examiner prior to the beginning of the examination. Failure to present a certified check or money order in the amount specified to the examiner will

B26 Exam Letter
Steven Edward Schwartz, P.A.
Page 4

result in the examination being cancelled, and will be deemed by the Board to be a failure to submit to the examination as directed due to circumstances within your control.

Please be advised that failure to submit to this examination as directed constitutes an admission of the allegations against you unless the failure is due to circumstances beyond your control, and that a default and final order may thereupon be entered without the taking of testimony or presentation of evidence.

Copies of the applicable statute sections are enclosed for your information.

Very truly yours,



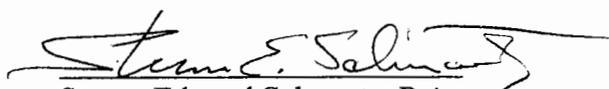
Lance A. Talmage, M.D.
Secretary

LAT/KHM/flb
Enclosures

BY PERSONAL DELIVERY

CERTIFICATE OF RECEIPT

By signing this form, I acknowledge that I, Steven Edward Schwartz, P.A., have received the hand-delivered copy of the letter from the State Medical Board of Ohio, dated March 7, 2008, ordering me to an examination pursuant to Section 4730.25(B)(5), Ohio Revised Code.


Steven Edward Schwartz, P.A.

3/10/08
Date


Witness

3/10/08
Date



State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

March 12, 2008

Personal and Confidential

Steven Edward Schwartz, P.A.
20011 New Gottengen Road
Salesville, OH 43778

Dear Mr. Schwartz:

At your request, the Secretary and Supervising Member of the Board have agreed to reschedule your Board-ordered examination. You are now ordered to report to Glenbeigh Hospital, 2863 St. Rt. 45, Rock Creek, Ohio 44084, telephone number (440) 563-3400, on **Monday, March 31, 2008, at 10:00 a.m.** for a 72-hour in-patient evaluation.

All other terms, conditions and limitations of the March 7, 2008 letter, a copy of which is attached hereto and incorporated herein, continue to apply.

A copy of the applicable section of the physician assistant statute is enclosed for your information.

If you have any questions, please feel free to contact me. My direct line is (614) 728-3678.

Sincerely,



Karen Mortland
Enforcement Attorney

Enclosures: March 7, 2008 letter to Steven Edward Schwartz, PA
Section 4730.25, Ohio Revised Code

BY PERSONAL DELIVERY

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

March 7, 2008

Personal and Confidential

Steven Edward Schwartz, P.A.
20011 New Gottengen Road
Salesville, OH 43778

Dear Mr. Schwartz:

The State Medical Board of Ohio [Board] has determined that it has reason to believe that you are in violation of Section 4730.25(B)(5), Ohio Revised Code, to wit: “[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.”

This determination is based upon one or more of the following reasons:

- (1) On or about March 19, 1997, in the Carroll County Court, Carroll County, Ohio, you pled no contest to, and were found guilty of, Driving Under the Influence (DUI), a first degree misdemeanor, in violation of Section 4511.19(A), Ohio Revised Code. The Court ordered that you serve a three-day term of incarceration, which would be suspended in the event you successfully completed a residential treatment program for three days; imposed a fine in the amount of \$400.00 plus court costs, but giving you a \$150.00 credit in the event that you completed residential treatment; and suspended your driver’s license for one year.

On or about January 15, 1997, at the time of your arrest underlying the aforementioned DUI conviction, you had been involved in a crash and you refused to take a test to determine your blood alcohol content.

- (2) In your Ohio application for renewal of your certificate to practice as a physician assistant signed by you on December 20, 1999, you answered “No” to Question 1, which asked:

At any time since signing your last application for renewal of your registration, have you:

Been found guilty of, or pled guilty or no contest to a felony or misdemeanor.

In fact, you failed to report your 1997 plea of no contest to, and finding of guilt of, DUI.

- (3) On or about February 4, 2008, at approximately 3:00 p.m., you appeared at the offices of the Board for the purpose of renewing your certificate to practice as a physician assistant. Your appearance was disheveled and your clothing appeared dirty. The Board staff member assisting you noted that you had an odor of alcoholic beverage about you, and suspecting that you had consumed alcohol, requested that a second Board staff member assist you as well. The second Board staff member confirmed that she could smell alcohol on your breath.
- (4) On or about March 5, 2008, a Board investigator interviewed you at your residence. Upon arriving, the Board investigator observed a small barn near the driveway with its contents open to view, and observed several empty beer cans along with crushed cardboard beer cases.

Upon encountering you in the garage of your home, the Board investigator noted several empty beer cans littering the table where you were sitting and noted empty beer cans and empty crushed beer cases on the floor of the garage. You invited the Board investigator to have a seat while you finished drinking beer from the can you were holding, removed the can from its sleeve, and replaced it with a full can of beer. The Board investigator smelled an extremely strong odor of alcoholic beverage coming from your person and your breath as you spoke. The Board investigator noted further that your eyes were bloodshot and watery, your speech was slurred, and that you seemed to have trouble focusing on the beer in your hand as you opened it.

The Board investigator advised you that the Board's office staff reported smelling an odor of alcohol on you on the aforementioned day when you visited the Board offices for your renewal application, and you replied that that was an accurate statement. You admitted that you had consumed alcohol on that day and when asked to quantify your alcohol consumption for that day, you responded that you would have no idea, that you had driven over one hundred miles to get to the Board's offices and could not estimate. You added that you liked a certain brand of beer and did not think that was a problem. When the Board investigator asked you where you had consumed the alcohol before your appearance at the Board's offices on the aforementioned day, you replied that you started at home.

When the Board investigator asked how much alcohol you consumed daily, you asked if he wanted to know about your consumption on a work day or on your day off. When the Board investigator asked about your alcohol consumption on a work day, you replied that you would not incriminate yourself, and further refused to answer as to your alcohol consumption on your days off from work, adding that such information was not the Board investigator's concern because you were over age twenty-one.

When the Board investigator asked you about your 1997 conviction for DUI in Carroll County, Ohio, you first replied that that one had been dismissed, then said, no, that one was not dismissed, it was the others. When asked what led to your arrest for driving while intoxicated, you responded that you just got caught.

When the Board investigator asked you if you believed that you had an alcohol problem, you became agitated, slowly rose to your feet, and said loudly that you would show the Board investigator. You then brought out your divorce papers and showing the documents to the Board investigator, said that this was why you were drinking. Your mood changed, you began to cry and said that was the reason you drank. You added that you had been drinking a lot, that you have been cutting back a little, then qualified with "sort of" cutting back.

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The Board investigator asked you if the 1997 DUI arrest was your first, and you replied no, that most of them were dismissed. You declined to answer any further questions about your DUI arrests.

The Board investigator asked you twice to provide a voluntary urine sample and you refused, adding the second time that you did not give one to the "cops" and you would not give one to the Board investigator.

At the conclusion of the interview, you said that you had been a physician assistant for over thirty years, and if the Board was going to push, you would just retire.

By the authority vested in the State Medical Board of Ohio by Section 4730.25(F)(2), Ohio Revised Code, you are ordered to submit to an examination. This examination will take place at **Glenbeigh Hospital, 2863 St. Rt. 45, Rock Creek, Ohio 44084, telephone number (440) 563-3400.** You are to report to the **Glenbeigh Admissions Office**, on **Monday, March 17, 2008, at 10:00 a.m.** for a 72-hour in-patient evaluation. Please confirm your plan to appear for this scheduled examination by contacting Cathy Chambers, the Intake Coordinator for Glenbeigh, at the above-listed telephone number prior to your scheduled appointment. You may also direct any questions about Glenbeigh's location and admission procedures to Ms. Chambers.

Pursuant to Section 4730.25(F)(2), Ohio Revised Code, you are responsible for the expense of this evaluation. **The total estimated cost of this evaluation is \$1800.00.** You must present a certified check or money order in this amount made payable to **Glenbeigh Hospital** to the examiner prior to the beginning of the examination. Failure to present a certified check or money order in the amount specified to the examiner will

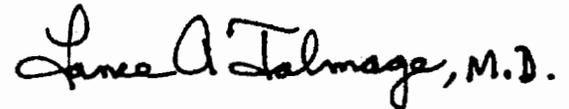
B26 Exam Letter
Steven Edward Schwartz, P.A.
Page 4

result in the examination being cancelled, and will be deemed by the Board to be a failure to submit to the examination as directed due to circumstances within your control.

Please be advised that failure to submit to this examination as directed constitutes an admission of the allegations against you unless the failure is due to circumstances beyond your control, and that a default and final order may thereupon be entered without the taking of testimony or presentation of evidence.

Copies of the applicable statute sections are enclosed for your information.

Very truly yours,



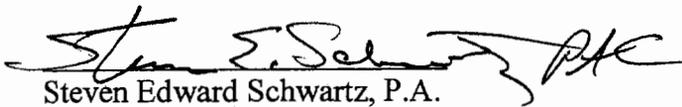
Lance A. Talmage, M.D.
Secretary

LAT/KHM/flb
Enclosures

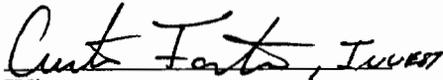
BY PERSONAL DELIVERY

CERTIFICATE OF RECEIPT

By signing this form, I acknowledge that I, Steven Edward Schwartz, P.A., have received the hand-delivered copy of: (a) the letter from the State Medical Board of Ohio, dated March 12, 2008, rescheduling my examination; (b) the letter from the State Medical Board of Ohio dated March 7, 2008, ordering me to an examination pursuant to Section 4730.25(B)(5), Ohio Revised Code; and (c) a copy of Section 4730.25, Ohio Revised Code.


Steven Edward Schwartz, P.A.

3/20/08
Date


Witness

3-20-2008
Date

OHIO STATE MEDICAL BOARD

MAR 26 2008

RECEIVED

OHIO STATE MEDICAL
BOARD HEALTH
CARE PROFESSIONALS

ATTN: KAREN MORTLAND.

2 PAGES.

James E. Schwartz
P.A.

OHIO STATE MEDICAL BOARD

MAR 31 2008

RECEIVED

3/29/08



HAWKS CAY

OHIO STATE MEDICAL BOARD

RESORT · MARINA · VILLAS

MAR 31 2008

KAREN MORTLAND

RECEIVED

THIS NOTE IS TO INFORM YOU THAT I HAVE NOTIFIED THE HOSPITAL THAT I WILL BE UNABLE TO ATTEND THEIR EVALUATION PROGRAM.

I'VE PAID MY LAWYER OVER 7000⁰⁰ FOR MY DIVORCE. ANNUAL PROPERTY TAXES LAST MONTH. BARR MY EX GOT 12500 \$ 400/MONTH FOR 3 YRS. I SIMPLY AM BROKE & LIVE PAY CHECK TO PAYCHECK.

THE FACTS ARE THE FACTS CONCERNING 1997'S UNFORTUNATE EVENT. I'VE PAID MY FINE, MY FINE & THE INTERVENTION PROGRAM. THAT WAS 11 YEARS AGO.

AS I ASKED YOU DURING OUR INTERVIEW - WHY DON'T YOU ASK MY CO WORKERS OF THE PAST 11 YEARS ABOUT MY WORK PERFORMANCE - OR JANET BROCKWELL, GUERNSEY COUNTY COONER WITH WHOM I'VE WORKED. OR DR MARK SLABINSKY - MY SUPERVISING PHYSICIAN FROM 1997 TO 2006 (NOW MY REGIONAL DIRECTOR.

I'VE HAD COUNSELING FOR MY DIVORCE. I'M TAKING MEDICATION FOR MY DEPRESSION. TRYING TO DIG MYSELF OUT OF DEBT & SAVE MY FARM.



HAWKS CAY

RESORT • MARINA • VILLAS

Doesn't the past 11 years count
for something?

RESPECTFULLY SUBMITTED

Stanna E. Schmeckel
20011 New GOTTENGEN RD
SALESVILLE, OHIO 43778

OHIO STATE MEDICAL BOARD

MAR 31 2008

RECEIVED

Glenbeigh

 **Cleveland Clinic affiliate**



Accredited by
Joint Commission

P.O. Box 298 • ROCK CREEK, OHIO 44084-0298 • 440-563-3400 • FAX 440-563-9619

April 2, 2008

Karen Mortland
Ohio Medical Board
30 South High Street
Columbus, Ohio 42215-6127

RE: Steven E. Schwartz

Dear Karen

This is to advise you that, Steven Schwartz, who you referred for a three-day inpatient evaluation on 03/31/08, at Glenbeigh Hospital of Rock Creek, was a no show for the evaluation, and there was not any contact with Glenbeigh..

If I can be of further assistance, please let me know.

Respectfully,


Kathy Chambers,
Admission Coordinator

OHIO STATE MEDICAL BOARD

APR 03 2008

RECEIVED