

**STATE OF OHIO
THE STATE MEDICAL BOARD
REQUEST FOR PERMANENT WITHDRAWAL OF
APPLICATION FOR PHYSICIAN ASSISTANT LICENSURE
CASE NO. 10 CRF-137**

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

I, Kevin C. Smith, P.A., hereby request that my pending application for a certificate to practice as a physician assistant in the State of Ohio be withdrawn.

Further, I agree that I will not at any time apply for a certificate to practice as a physician assistant in the State of Ohio, or issuance of any other certificate pursuant to the authority of the State Medical Board of Ohio, and that any such attempted reapplication shall be considered null and void and shall not be processed by the Board.

I, Kevin C. Smith, P.A., hereby release the State Medical Board of Ohio, its members, employees, agents and officers, jointly and severally, from any and all liability arising from the within matter.

It is understood and agreed that this Request for Permanent Withdrawal of Application shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. I, Kevin C. Smith, P.A., acknowledge that my social security number will be used if this information is so reported and agree to provide my social security number to the Board for such purposes.

I stipulate and agree that I am taking the action described herein in lieu of further formal disciplinary proceedings in Case No. 10-CRF-137, pursuant to Sections 4730.05(J); 4730.05(P); 4730.05(N); and 4730.25(B)(5), Ohio Revised Code, as set forth in the Notice of Opportunity for Hearing issued by the Board on November 10, 2010, a copy of which is attached hereto as Exhibit A and fully incorporated herein. I hereby admit to the factual and legal allegations set forth in the November 10, 2010, Notice of Opportunity for Hearing.

EFFECTIVE DATE

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

Kevin C. Smith P.A. - C
KEVIN P. SMITH, P.A.

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

2-14-2011
DATE

3-9-11
DATE

Raymond J. Albert
RAYMOND J. ALBERT
Supervising Member

3/9/11
DATE

Kyle Wilcox
KYLE C. WILCOX
Assistant Attorney General

2-16-2011
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

November 10, 2010

Case number: 10-CRF- 137

Kevin C. Smith, P.A.
231 Felton Street
Michigan City, IN 46360

Dear Mr. Smith:

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

- (1) On or about May 14, 1992, you entered into the Consent Agreement Between Kevin C. Smith, P.A. - C. and The State Medical Board of Ohio [1992 Ohio Consent Agreement] in lieu of formal proceedings based upon violations including Section 4730.05(C), Ohio Revised Code, for "inability to function as a physician's assistant, by reason of illness, drunkenness, excessive use of controlled substances, chemicals, or any other type of material." The facts underlying the 1992 Ohio Consent Agreement included your theft of controlled substances from a former employer, your personal use of controlled substances, and your plea of guilty to Theft of Drugs, for which you received treatment in lieu of conviction. According to the 1992 Ohio Consent Agreement, you received treatment at Dettmer Hall, Upper Valley Medical Center, Troy, Ohio, where you were diagnosed as chemically dependent. As part of the 1992 Ohio Consent Agreement, you were required to submit witnessed, random urine screens, required to have a supervising physician monitor the results of the urine screens and inform the Board of any positive results. Additionally, you were required to submit quarterly declarations to the Board stating whether or not there had been compliance with all the conditions of the 1992 Ohio Consent Agreement.
- (2) On or about April 18, 1995, the Board issued an Entry of Order [1995 Ohio Order] permanently revoking your certificate to practice as a physician's assistant in the state of Ohio. The facts underlying the 1995 Ohio Order included that you

Mailed 11-12-10

submitted to the Board a document purportedly signed by your supervising physician in order to demonstrate that you were in compliance with your 1992 Ohio Consent Agreement, but your supervising physician had not prepared the document, had not authorized the use of his stamped signature on the document, and portions of the document were false. Further, you submitted a quarterly declaration stating you were in compliance with your 1992 Ohio Consent Agreement, but the physician for whom you had obtained Board approval to monitor your drug screens was not aware of his duties and certain urine screens had not been performed on a random basis. Additionally, a written request you provided to the Board in which you referred to your supervising physician by name was also false, in that such physician was never aware he was to serve in that capacity and he had not given you permission to submit his curriculum vitae for that purpose.

- (3) Although in the 1995 Ohio Order the Board directed that your certificate to practice was permanently revoked, appellate decisions interpreting the Board's authority to permanently revoke a certificate to practice under statutes in effect prior to March 9, 1999, held, *inter alia*, that some revocations are subject to reinstatement and in some circumstances a new license may be obtained following revocation.

On or about November 17, 2009, you caused to be submitted to the Board an Application for Physician Assistant Certificate to Practice in the state of Ohio [Application]. Your Application is currently pending.

- (4) In or about April 1993, you were issued a registration to practice as a physician assistant in the state of Indiana subject to probationary terms and conditions related, *inter alia*, to your chemical dependence, including that you abstain from the use of alcohol.

From in or about 1997 to in or about 2002, you relapsed by consuming alcohol, and eventually found that you were unable to stop drinking. In or about May 2002, you reported to your supervising physician that you were "drinking [yourself] to death." You underwent detoxification at St. Margaret's Hospital in Dyer, Indiana. On or about May 31, 2002, you entered treatment at Forrest General Hospital, Hattiesburg, Mississippi, and were discharged on or about August 20, 2002, with diagnoses of alcohol and opioid dependence.

Rule 4731-16-02(B)(2), Ohio Administrative Code, provides that if an individual has relapsed during or following treatment, it shall constitute independent proof of impairment and shall support license suspension or denial without the need for an examination.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute “[s]oliciting patients or publishing a false, fraudulent, deceptive, or misleading statement,” as that clause is used in Section 4730.05(J), Ohio Revised Code, as in effect prior to March 9, 1999.

Further, your acts, conduct and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute “[c]ommission of an act that constitutes a misdemeanor in this states regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice,” as that clause is used in Section 4730.05(P), Ohio Revised Code, as in effect prior to March 9, 1999, to wit: Section 2921.13, Ohio Revised Code, Falsification, as in effect prior to March 9, 1999.

Further, your acts, conduct and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute “[c]ommission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4730.05(N), Ohio Revised Code, as in effect prior to March 9, 1999, to wit: Section 2913.31(A)(2), Forgery, as in effect prior to March 9, 1999.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1), (3), and (4) above, individually and/or collectively, constitute “[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,” as that clause is used in Section 4730.25(B)(5), Ohio Revised Code.

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

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

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

Kevin C. Smith, P.A.
Page 4

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.”

Further, pursuant to Section 4730.50, Ohio Revised Code, “If a sanction under section 4730.25 of the Revised Code applies to a physician assistant’s certificate to practice, the same sanction is placed on the physician assistant’s certificate to prescribe while the sanction applies to the certificate to practice.”

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 3938 3018 1562
RETURN RECEIPT REQUESTED

Duplicate mailing:

Kevin C. Smith, P.A.
3699 South Nancy Lane
La Porte, IN 46350

CERTIFIED MAIL #91 7108 2133 3938 3018 1555
RETURN RECEIPT REQUESTED
RESTRICTED DELIVERY

STATE MEDICAL BOARD
OF OHIO
IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
95 SEP -1 PM 1:57

Kevin C. Smith,

Appellant,

v.

Case No. 95CVF-05-3398 (Millard, J.)

State Medical Board of Ohio,

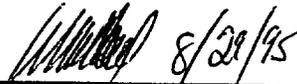
Appellee.

TERMINATION NO. <u>9</u>
BY <u>MS</u>

ORDER OF DISMISSAL

Review of this file 8-29-1995 reveals on more recent activity from Appellant than submission of "additional documentation" to the previous Brief, upon request from Appellant, pro se, filed 7-31-1995. Specifically, notice was given to Appellant that the case would be dismissed unless he certified service of his pleadings upon counsel for Appellee not later than 8-15-1995. This has not been accomplished, and counsel for Appellee has, by Motion filed 8-21-1995, sought dismissal for such failure.

It is ORDERED that this case is dismissed for Appellant's failure to comply with appropriate procedural rules, without excuse or reason, even after specifically being given opportunity to comply with such rules. Costs are taxed to Appellant. This is a final Order.



W. MILLARD, JUDGE

Copies to:

Kevin C. Smith, Pro Se Appellant

Anne Berry Strait, Assistant Attorney General

FILED
COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
95 AUG 30 PM 12: 00
JESSE D. ODDI
CLERK OF COURTS

KEVIN C. SMITH
165 SOUTH CLAY STREET
BR: KVILLE, OHIO 45309
(513-) 833-4599

STATE MEDICAL BOARD OF OHIO
369 SOUTH HIGH STREET
COLUMBUS, OHIO 43215

Dear State Medical Board:

It is my opinion that the decision rendered against me was unfair and unnecessary, as the evidence in the form of a letter from Dr. Tatoyan with the explanations of his misunderstood comments made to the Ohio State Medical Board per phone conversation in December 1994. This will further shed light on my complete innocence, as well as other obtainable evidence.

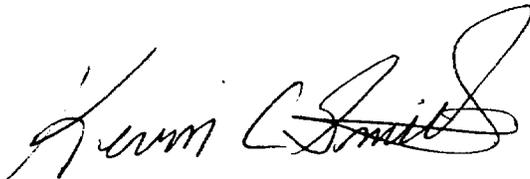
I am formally appealing that the decision made on April 18, 1995 against my license to practice as a Physicians Assistant in the State of Ohio.

I am also asking for an immediate stay of execution against my license, and a immediate reinstatement of it.

I am attaching a copy of a letter I recieved from the State Medical Board, as this is my understanding of what was to take place, I thought the hearing was for June 1, 1995. I was shocked that my license was revoked after receiving this information.

Thank you.

Sincerely,



KEVIN C. SMITH

STATE MEDICAL BOARD
OF OHIO
MAY -9 PM12:23

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

FILED
COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
12:28
95 AUG -3 AM 9:35
STATE MEDICAL BOARD
OHIO
95 AUG 11 PM 12:28

Kevin C. Smith,

Appellant,

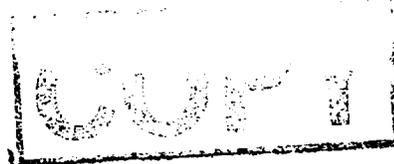
JESSE D. ODDI
CLERK OF COURTS

v.

Case No. 95CVF-05-3398 (Millard, J.)

State Medical Board of Ohio,

Appellee.



PROGRESS MONITORING ORDER AND NOTICE

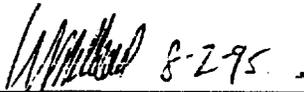
Review of this file 8-2-1995 reveals that on 5-15-1995 Appellant, pro se, wrote the Clerk of Courts "formally appealing that the decision made on 4-18-1995 against my license to practice is a physicians assistant in the State of Ohio." (Sic). The Court file contains a certified mail receipt indicating that the State Medical Board received notice of this appeal. On 6-12-1995 Appellant filed a Motion to Stay Execution of the Judgment, which has reached the "motions docket" of the Court. This Motion is not, however, accompanied by any certificate of service. Neither is the document designated as "Appellant's Brief" filed 7-24-1995. Civil Rule 5(D) provides that papers filed with the Court cannot be considered until proof of service is endorsed on them.

Appellant may represent himself, pro se, if he wishes, without assistance of an attorney, but will be required to follow all applicable procedures and Court rules. He may be at a distinct disadvantage in attempting to represent himself, as is illustrated by the problems noted here. See Justice v. Lutheran Social Services of Central Ohio,

92AP-1153, 1993 Ohio App. LEXIS 2029 (April 8, 1993), unreported; Meyers v. First National Bank, (1981) 3 Ohio App. 3d 209.

By the 5-15-1995 Clerks Original Briefing Schedule, Appellee's Brief is due herein on 8-7-1995. Until the Appellant's Brief is served on Appellee, the State Medical Board may very well not know that it has been filed. NOTICE is given that Appellant must certify service of his previous pleadings, as required by the Rules, by 8-15-1995. Upon failure to do so, the appeal here may thereafter be dismissed. Assuming certification establishing service is accomplished, Appellee's Brief shall be due by 8-29-1995.

Appellant is, again, is encouraged to retain counsel so that his interest herein may be properly represented.



W. MILLARD, JUDGE

Copies to:

Kevin C. Smith, Pro Se Appellant

Ohio State Medical Board, Appellee

Betty Montgomery, Attorney General

for reposition millard

ERVIN C. SMITH (appellant)
165 SOUTH CLAY STREET
BROCKVILLE, OHIO 45309
(513) 333-4533

VS
STATE MEDICAL BOARD OF OHIO
77 S. HIGH STREET
COLUMBUS, OHIO 43260
(appellant)

FRANKLIN COUNTY COURTS
CIVIL DIVISION
369 SOUTH HIGH STREET
COLUMBUS, OHIO 43215

95CVF05-3398

FILED
MAY 15 1995
3:02
CLERK OF COURTS
FRANKLIN COUNTY
OHIO

May 4, 1995

Dear Franklin County Courts:

It is my opinion that the State Medical Board's decision to recently revoke my license was unfair and extremely harsh. Due to new evidence, in the form of a letter from Dr. Tatoyan, addressed to the Ohio State Medical Board dated the 27th of April, 1995, I am appealing the board's decision. Further, in a letter dated April 4th, 1995, from the State Medical Board, I was told that my initial hearing scheduled for April 12th at 1:30 P.M. was postponed and I would be advised of a rescheduled date. In a letter dated April 6th, I was told that my formal hearing had been rescheduled for June 1, 1995. Due to the information of these letters, I had no idea that the Board was meeting. With out my knowledge of the meeting or the ability to be present, I do not feel I had a fair chance to defend myself. I believe that this new evidence, (copies inclosed), will show that the comments made in my defense were true.

I am formally appealing that the decision made on April 18th, 1995 against my license to practice as a Physicians Assistant in the State of Ohio.

I am also asking for an immediate Stay of Execution against my license, and an immediate reinstatement of it.

I am urgently awaiting your correspondence on this matter!

Sincerely,

Ervin C. Smith

STATE MEDICAL BOARD
OF OHIO
95 MAY 19 PM 12:13

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF:

KEVIN C. SMITH, P.A.

NOTICE OF DISMISSAL

The State Medical Board of Ohio, meeting in regular session March 8, 1995, issued a Notice of Opportunity for hearing to licensee Kevin C. Smith, P.A.

The license of Kevin C. Smith, P.A., was permanently revoked by the State Medical Board of Ohio, meeting in regular session April 12, 1995, following a hearing regarding the allegations provided in the State Medical Board of Ohio Notice of Opportunity for Hearing issued to Mr. Smith on March 9, 1994, regarding an earlier matter.

In furtherance of the orderly conduct of this matter, it is hereby **ORDERED** that the March 8, 1995, Notice of Opportunity for Hearing issued to Mr. Smith be and is hereby **DISMISSED WITHOUT PREJUDICE** to future action.

So ORDERED this 11th day of May, 1995.

(SEAL)



THOMAS E. GRETTER, M.D.
Secretary



RAYMOND J. ALBERT
Supervising Member



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

KEVIN C. SMITH, P.A.-C

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on the 12th day of April, 1995.

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

It is hereby ORDERED that the certificate of Kevin C. Smith, P.A.-C., to practice as a physician's assistant in the State of Ohio shall be permanently REVOKED. This Order shall become effective immediately upon the mailing of notification of approval by the State Medical Board of Ohio.

Thomas E. Gretter, M.D.
Secretary

(SEAL)

4/18/95

Date

95 FEB 13 AM 9: 17

REPORT AND RECOMMENDATION
IN THE MATTER OF KEVIN C. SMITH, P.A.-C.

The Matter of Kevin C. Smith, P.A.-C., came on for hearing before me, R. Gregory Porter, Esq., Hearing Examiner for the State Medical Board of Ohio, on September 1, 1994.

INTRODUCTION

I. Basis for Hearing

A. By letter dated March 9, 1994 (State's Exhibit 1), the Board notified Kevin C. Smith, P.A.-C., that it proposed to take disciplinary action against his certificate to practice as a physician's assistant in Ohio based on one or more of the following allegations:

1. On or about May 14, 1992, Mr. Smith entered into a consent agreement with the Board, based upon a theft of controlled substances from an employer for personal use, and subsequent plea of guilty to a fourth-degree felony, for which he received treatment in lieu of conviction.
2. Clause 7 of the Consent Agreement, as amended, required Mr. Smith to submit random urine screens on a weekly basis; after March 1993, Mr. Smith received permission to submit urine screens bi-weekly. Clause 7 also required that Mr. Smith ensure that his supervising physician monitor the results of his urine screens and inform the Board of positive results.

In August 1993, the Board approved Mr. Smith's request to change supervising physicians.

Since March 1993, Mr. Smith failed to have his urine screens conducted randomly or bi-weekly. "Further, the physician [Mr. Smith] proposed to the Board as [his] supervising physician in August, 1993, had no knowledge that he was required to direct or monitor [Mr. Smith's] urine screens. [The physician] did not consent to become [Mr. Smith's] supervising physician for purposes of the May 4, 1992, Consent Agreement. Rather, he understood that he was [Mr. Smith's] supervisor in accordance with Section 4730.05(A), Ohio Revised Code."

3. On or about December 9, 1993, in an attempt to convince the Board that he was in compliance with Clause 7 of his Consent Agreement, Mr. Smith submitted an undated document stamped with the name of

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the supervising physician referred to in paragraph (2), above, stating that weekly random urine screens had been performed with negative results.

4. On or about December 9, 1993, Mr. Smith submitted a quarterly declaration to the Board, signed by Mr. Smith, stating that he was in compliance with the Consent Agreement. In fact, the supervising physician referred to in paragraph (2), above, was never aware of his duties.

The Board alleged that Mr. Smith's acts, conduct, and/or omissions as alleged above, individually, and/or collectively, constituted "'publishing a false, fraudulent, deceptive, or misleading statement,' as that clause is used in Section 4730.05(J), Ohio Revised Code." The Board further alleged that Mr. Smith's acts, conduct, and/or omissions, individually, and/or collectively, as alleged in paragraph (2), above, constituted "'(f)ailure to maintain employment under the physician, physicians, or group practice submitting the statement of employment under Section 4730.03 of the Revised Code, and under the conditions under which his certificate of registration was issued,' as required under Section 4730.05(A), Ohio Revised Code." The Board further alleged that Mr. Smith's acts, conduct, and/or omissions, individually, and/or collectively, as alleged in paragraph (3), above, constituted "'(c)ommission of an act that constitutes a felony,' as that clause is used in Section 4730.05(N), Ohio Revised Code, to wit: Section 2913.31(A)(2), Forgery." The Board further alleged that Mr. Smith's acts, conduct, and/or omissions, individually, and/or collectively, as alleged in paragraphs (2) and (4), above, constituted "'a misdemeanor 'committed in the course of practice,' as that clause is used in Section 4730.05(P), Ohio Revised Code, to wit: Section 2921.13, Falsification."

Mr. Smith was advised of his right to request a hearing in this Matter.

- B. By letter received by the Board on March 23, 1994 (State's Exhibit 2), Mr. Smith requested a hearing.

II. Appearances

- A. On behalf of the State of Ohio: Lee I. Fisher, Attorney General, by Ava W. Serrano, Assistant Attorney General.
- B. On behalf of Respondent, Douglas E. Graff, Esq.

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EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State:

1. Jan E. Sussex
2. Kevin C. Smith, P.A.-C., as on cross-examination

B. Presented by Respondent:

1. Kevin C. Smith, P.A.-C.
2. Edward J. Poczekaj

II. Exhibits Examined

In addition to State's Exhibits 1 and 2, noted above, the following exhibits were identified admitted into evidence in this Matter.

A. Presented by the State:

1. State's Exhibit 3: March 24, 1994 letter to Kevin Smith, P.A.-C. from the Board advising that a hearing initially set for April 6, 1994 was postponed pursuant to Section 119.09, Ohio Revised Code.
2. State's Exhibit 4: March 31, 1994 letter to Mr. Smith from the Board, scheduling the hearing for September 1, 1994.
3. State's Exhibit 5: May 14, 1992 Consent Agreement between Kevin C. Smith, P.A.-C. and the State Medical Board. (4 pp.)
4. State's Exhibit 6: June 17, 1993 and December 9, 1993 declarations of compliance signed by Kevin C. Smith.
5. State's Exhibit 7: February 19, 1993 Memorandum to the Board from Jan E. Sussex, regarding Mr. Smith's proposed change in the terms of his Consent Agreement by decreasing the frequency of his urine screens.
6. State's Exhibit 8: Excerpt from the minutes of the March 11, 1993 meeting of the State Medical Board, regarding Mr. Smith. (4 pp.)

STATE MEDICAL BOARD
OF OHIO

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7. State's Exhibit 9: June 28, 1993 letter to the Board from Mr. Smith regarding changes to his Consent Agreement.
8. State's Exhibit 9A: Curriculum Vitae of Krikor B. Tatoyan. (5 pp.)
9. State's Exhibit 10: July 9, 1993 Memorandum to the Board from Ms. Sussex regarding Mr. Smith's request to change his appearances from three-month intervals to six-month intervals, and his request that his supervising physician be changed to Dr. Krikor Tatoyan.
10. State's Exhibit 11: Excerpt from the minutes of the August 11, 1993 meeting of the State Medical Board, regarding Mr. Smith, approving his request for a change in his appearance schedule before the Board from three-month to six-month intervals, and approving Krikor Tatoyan, M.D., to serve as his supervising physician.
11. State's Exhibit 12: August 16, 1993 letter to Mr. Smith from the Board, notifying Mr. Smith of its approval of a change in appearance schedule from three to six months, and its approval of Dr. Tatoyan to serve as his supervising physician.
12. State's Exhibit 13: October 29, 1993 letter to the Board from Irving W. Harper III, M.D., in which Dr. Harper resigned as Mr. Smith's supervising physician.
13. State's Exhibit 14: October 28, 1993 letter to Mr. Smith from the Board, scheduling a probationary appearance before the Board on December 9, 1993.
14. State's Exhibit 15: Undated letter to the Board, which bears the stamped signature, "Krikor Tatoyan." Among other things, the letter refers to Mr. Smith's random drug screens, and reports that they have all been negative.
15. State's Exhibit 16: January 5, 1994 letter to the Board from Dr. Tatoyan, in which Dr. Tatoyan denied having seen any of Mr. Smith's urine screen results, among other things.
16. State's Exhibit 17: Kevin Smith's 1993 Consent Agreement compliance chart.

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17. State's Exhibit 18: "Discussion Paper – Biological Fluid Testing," by the State Medical Board.

B. Presented by the Respondent

1. Respondent's Exhibit A: April 7, 1994 letter to Douglas E. Graff, Esq., from Edward J. Poczekaj, Assistant to the Medical Director, Ohio Physicians Effectiveness Program (OPEP), regarding Mr. Smith's participation in OPEP.
2. Respondent's Exhibit B: August 25, 1994 letter to the Board from Paul Zeeb, M.D., Medical Director, Emergency Medical Associates, Inc., in support of Mr. Smith.
3. Respondent's Exhibit C: March 24, 1994 letter to the Board from Dr. Zeeb, notifying the Board that Mr. Smith had been employed as a P.A. by Dr. Zeeb's group, Emergency Medical Associates, Inc., and indicating Dr. Zeeb's willingness to be Mr. Smith's supervising physician.
4. Respondent's Exhibit D: A number of Allied Clinical Laboratories urine screen reports for Mr. Smith.

III. Post-Hearing Exhibits

On the Hearing Examiner's own motion, the following additional exhibit is admitted to the record:

Board Exhibit A: Section 2913.31, Ohio Revised Code, entitled "Forgery."

PROCEDURAL MATTERS

- I. Both parties waived the thirty (30) day recommendation for filing of the Hearing Examiner's Report and Recommendation after the close of the hearing record, pursuant to Rule 4731-13-15, Ohio Administrative Code.
- II. All transcripts and exhibits, whether or not specifically discussed in the Report and Recommendation, were thoroughly reviewed and considered by the Hearing Examiner prior to issuing his findings, conclusions, and recommendations in this Matter.

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SUMMARY OF THE EVIDENCE

1. Mr. Smith is registered as a physician's assistant in the State of Ohio. On or about October 15, 1991, Mr. Smith took several doses of Demerol from a drug cabinet where he worked. The drugs were for his personal use. On October 22, 1991, he entered into an intensive outpatient rehabilitation program at the Dettmer Hall, Upper Valley Medical Center, in Troy, Ohio, at which time he was diagnosed as chemically dependent. (State's Exhibit 5) Mr. Smith successfully completed the inpatient program and the aftercare program. (Tr. at 73-74) On December 2, 1991, Mr. Smith pleaded guilty to one count of Theft of Drugs in violation of Ohio Revised Code Section 2913.02(A)(2), a fourth degree felony and received treatment in lieu of conviction. (State's Exhibit 5)
2. On or about May 14, 1992, Mr. Smith entered into a Consent Agreement with the Board in lieu of formal disciplinary action regarding his criminal activities. The Agreement required Mr. Smith to "submit quarterly declarations under penalty of perjury whether there has been compliance with all the conditions of the Consent Agreement;" to submit random urine screens on a weekly basis; and to ensure that his supervising physician monitor the results and inform the Board of any positive results. (State's Exhibit 5) The Consent Agreement states, in the second paragraph of clause 7: "MR. SMITH shall submit the required urine specimens to a supervising physician to be approved by the BOARD. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the BOARD of any positive screening results." (State's Exhibit 5, at p. 2)
3. In February 1993, Mr. Smith formally request a decrease in the frequency of his urine screens, based upon economic hardship. (State's Exhibit 7) At its March 1993, meeting, the Board approved Mr. Smith's request, and granted a reduction in urine screens from weekly to biweekly. (State's Exhibit 8) In July 1993, Mr. Smith requested a change in his personal appearance schedule before the Board from quarterly to semi-annually, and provided "my new Supervising Physician's CV/Resume," that of Dr. Krikor Tatoyan. (State's Exhibits 9 & 9A) He requested that Dr. Tatoyan be named his new supervising physician. (State's Exhibit 10) In August 1993, the Board approved these requests, and so notified Mr. Smith. (State's Exhibits 11 & 12)
4. On November 4, 1993, the Board received a letter dated October 29, 1993 from Mr. Smith's prior supervising physician, Dr. Irving W. Harper, III, M.D., in which Dr. Harper formally resigned as Smith's supervising physician, and informed the

95 FEB 13 AM 9:17

Board that he had not had contact with Mr. Smith for the preceding five months. (State's Exhibit 13).

5. Mr. Smith was scheduled for an appearance before the Board on December 9, 1993, pursuant to the terms of his Consent Agreement. (State's Exhibit 14) At this appearance, Mr. Smith submitted a quarterly declaration stating that he was in compliance with the requirements of his Consent Agreement (State's Exhibit 6, p. 2); a letter on Dr. Tatoyan's letterhead stating that Mr. Smith was in compliance with his urine screen requirement (State's Exhibit 15); and his AA logs (State's Exhibit 6, p. 2, (on the back of the page)). (Tr. at 10 and 16) The letter purportedly from Dr. Tatoyan stated, in part "All of his random drug screens since that time [May 1993] which initially were every week and now are every two weeks, have been negative." (State's Exhibit 15)
6. The letter from Dr. Tatoyan was undated, and the signature of Dr. Tatoyan was stamped, not original. (State's Exhibit 15) Jan Sussex, Project Coordinator for the Board, called Dr. Tatoyan's office to verify the validity of the letter. When she first called, Dr. Tatoyan was unavailable, and Ms. Sussex spoke with Dr. Tatoyan's office manager. The office manager told Ms. Sussex that Mr. Smith had worked there, but said she did not believe that Dr. Tatoyan knew anything about the urine screens, and did not write the letter submitted to the Board. (Tr. at 17-18) Ms. Sussex spoke with Dr. Tatoyan himself on the telephone on or about December 14. He told Ms. Sussex that he did not consent to be the supervising physician for purposes of the consent agreement, only for purposes of the P.A. requirements, and was unaware of any letter being sent. He stated that he did not witness any urine screens, nor notify Mr. Smith when to submit urine samples. He further stated that he had never given Mr. Smith his curriculum vitae to be presented to the Board. Dr. Tatoyan requested Ms. Sussex discuss the matter with his office manager because she handled all communications. (Tr. at 12, 18-19) Ms. Sussex called the office manager again, and was told that the signature stamp was readily available to all office staff and that she had no knowledge of the letter being written. (Tr. at 19).

On January 10, 1994, the Board received a letter from Dr. Tatoyan. In that letter, Dr. Tatoyan stated that Mr. Smith worked for him from May 1, 1993 through September 13, 1993. Dr. Tatoyan stated there were no complications with Mr. Smith's job performance. Dr. Tatoyan also stated that "Kevin's drug screens were done at his discretion and I was under the impression that the State Medical Board of Ohio was monitoring the results. I personally have not seen any of the test results. At no time did I suspect any drug ingestion." (State's Exhibit 16)

7. Mr. Smith testified that during the late summer and fall of 1993, Dr. Tatoyan exhibited significant emotional stress concerning family matters. He appeared to

95 FEB 13 AM 9:17

be preoccupied, and became distant and withdrawn. (Tr. at 36) This occurred after Dr. Tatoyan had agreed to be Mr. Smith's supervising physician for purposes of the consent agreement. Mr. Smith believed that this stress caused Dr. Tatoyan to forget to tell him to submit urine samples. Mr. Smith said he had to remind him about it. (Tr. at 37-38)

Mr. Smith testified that, at first, he submitted his urine samples at the hospital where Dr. Tatoyan did surgery. Later, after Dr. Tatoyan had an in-house lab set up, Mr. Smith started giving his samples at work. He gave them unobserved. They were not taken on a random basis. The samples taken at Dr. Tatoyan's office were then processed by the office manager, Linda Bone, and the results forwarded to the Board by Mr. Smith. (Tr. at 37-39)

Mr. Smith testified that he does not know why Dr. Tatoyan denied being his supervising physician, or why he denied having seen the results of Mr. Smith's drug screens. Mr. Smith said "I do not think he remembers. That's all I can think of. And it does not surprise me considering his emotional state at that time." (Tr. at 80) Mr. Smith testified that he asked Dr. Tatoyan to become his supervising physician for purposes of the consent agreement in July 1993, and Dr. Tatoyan agreed. He provided Dr. Tatoyan with a copy of the consent agreement, and believed that Dr. Tatoyan understood what Dr. Tatoyan's responsibilities were. Mr. Smith testified that Dr. Tatoyan speaks good English, although it is not his mother tongue. Mr. Smith called Dr. Harper, his former supervising physician, thanked him, and told him that he no longer required him to provide that service. (Tr. at 33-35)

8. Mr. Smith stated that Dr. Tatoyan directed him to establish a protocol to meet the Board's requirements concerning the supervising physician's quarterly statement. Mr. Smith and Ms. Bone created the compliance letter submitted as State's Exhibit 15. Mr. Smith testified that he is not certain if Dr. Tatoyan ever saw or approved of the letter. Mr. Smith stated that when he received the letter from the office manager, it had the signature stamp on it. (Tr. at 40-41) Mr. Smith said that he does not know how the signature stamp became affixed to the letter. He did not recall if he stamped it. (Tr. at 41-42) He denied falsifying Dr. Tatoyan's signature. (Tr. at 83) Ms. Bone printed the letter and gave it to Mr. Smith. (Tr. at 42) Mr. Smith took a copy of the letter with him when he left Dr. Tatoyan's employ in September. He submitted it to the Board in December. (Tr. at 42, 86)

Mr. Smith expressed regret for any confusion and stated that he did not intend to deceive the Board. (Tr. at 95-96). He testified that his three-year probation in Darke County would be up in December [1994]. As part of his probation, Mr. Smith provided random, monthly urine screens. He characterized his relationship with his probation officer as excellent. (Tr. at 71-73)

95 FEB 13 AM 9:17

9. Ms. Sussex testified that licensees are given a discussion paper on biological fluid testing when they receive their consent agreement, a copy of which was submitted as State's Exhibit 18. A witnessed sample ensures that the specimen is unadulterated and has not been tampered with. Randomness ensures that the licensee does not know when he is to submit the specimen so that he cannot adjust his consumption to avoid detection. Without the appropriate procedures, the Board has no assurance that the results are reliable. (Tr. at 8-9)

Although Mr. Smith had apparently missed one bi-weekly drug screen for April 1993, and one for August 1993, those reports were provided at hearing. (State's Exhibit 17; Tr. at 20-21)

10. Edward Poczekaj, Assistant to the Medical Director of the Ohio Physicians Effectiveness Program (OPEP), testified on behalf of Mr. Smith. He testified that Mr. Smith is a participant in the program, having signed a contract on April 6, 1994. (Tr. at 56-57) He testified that Mr. Smith is doing well. (Tr. at 58) His urine samples are now witnessed, and random. There have been no positive results. Mr. Smith appears to be in compliance with the program. (Tr. at 58-59)
11. Mr. Smith currently works for EMAI at Grant Hospital as an emergency room physician's assistant. Dr. Paul Zeeb is his P.A./M.D. supervisor. He is aware of Mr. Smith's history of chemical dependency, and is supportive. Respondent's Exhibits B and C; Tr. at 69-71)

FINDINGS OF FACT

1. On or about May 14, 1992, Kevin C. Smith, P.A.-C., entered into a Consent Agreement with the State Medical Board of Ohio. This Agreement stemmed from Mr. Smith's theft of controlled substances from a former employer, his personal use of the controlled substances, and his plea of guilty to a fourth-degree felony, for which Mr. Smith received treatment in lieu of conviction.
2. Among its terms, the Consent Agreement, as amended, required Mr. Smith to submit random urine screens initially on a weekly, then, after March 1993, on a bi-weekly basis. Mr. Smith was required to ensure that the supervising physician monitor the results of the urine screens and inform the Board of any positive results; the urine specimens were to be obtained on a random basis, and the giving of the specimen was to be witnessed by a reliable person. Mr. Smith was required to submit quarterly declarations to the Board stating whether or not there had been compliance with all of the conditions of the Agreement.

95 FEB 13 AM 9:17

3. On or about December 9, 1993, Mr. Smith submitted to the Board an undated document with the stamped facsimile of the signature of "Krikor Tatoyan," the supervising physician approved by the Board in August 1993. The evidence supports a finding that the document was submitted in an attempt to convince the Board that Mr. Smith was in compliance with Clause 7 of his Consent Agreement. The evidence further supports a finding that Dr. Tatoyan did not prepare the document and did not authorize the stamped signature on the document.

The document was submitted on the physician's letterhead, and stated that random urine screens had been conducted on a weekly and later a bi-weekly basis with negative results. Compelling evidence was presented that this statement was not true. The tests were not random, and they were not supervised by Dr. Tatoyan. Mr. Smith himself testified that he was not sure if Dr. Tatoyan ever saw or approved the document. Mr. Smith had not worked for Dr. Tatoyan since the previous September. Mr. Smith admitted that he took a copy of this document when he left Dr. Tatoyan's employ.

4. Between May 1993 and April 1994, Mr. Smith's urine screens were not performed on a random basis. Additionally, Dr. Tatoyan, the physician named by Mr. Smith, and approved by the Board as Mr. Smith's supervising physician for purposes of the consent agreement, never consented to serve in that capacity, and had no knowledge that he was required to direct or monitor Mr. Smith's urine screens. He was only aware that he was Mr. Smith's P.A./M.D. supervisor in accordance with Section 4730.02(A), Ohio Revised Code.

Mr. Smith's uncorroborated testimony that Dr. Tatoyan simply forgot about an agreement to serve as Mr. Smith's supervising physician for purposes of the Consent Agreement is not credible, in light of the evidence presented. The office manager that Ms. Sussex talked to by telephone, (who may or may not have been Linda Bone), informed Ms. Sussex that she did not think that Dr. Tatoyan knew anything about Mr. Smith's urine screens. Dr. Tatoyan himself informed Ms. Sussex, first by telephone and later in writing, that he knew nothing about it. Mr. Smith's credibility is further undermined by his having previously submitted to the Board a falsified document, as set forth in Finding of Fact #3, above.

5. On or about December 9, 1993, Mr. Smith submitted a quarterly declaration to the Board stating that he was in compliance with his Consent Agreement. However, as set forth in Finding of Fact #4, above, the physician for whom Mr. Smith had named and obtained Board approval to monitor his drug screens was never aware of his duties.
6. The State presented no evidence concerning Mr. Smith's submission of statements of employment under Section 4730.03 of the Revised Code as required under

95 FEB 13 AM 9: 17

Section 4730.05(A), Ohio Revised Code. Therefore, no violation of this provision can be found.

CONCLUSIONS

1. As set forth in Findings of Fact #1 through #5, above, Mr. Smith's acts, conduct, and/or omissions, individually, and/or collectively, constitute "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4730.05(J), Ohio Revised Code.
2. As set forth in Findings of Fact #1, #2, #4, and #5, above, Mr. Smith's acts, conduct, and/or omissions, individually, and/or collectively, constitute a misdemeanor "committed in the course of practice," as that clause is used in Section 4730.05(P), Ohio Revised Code, to wit: Section 2921.13, Ohio Revised Code, Falsification.

The quarterly declaration Mr. Smith submitted to the Board falsely stated that Mr. Smith was in compliance with the terms of his Consent Agreement, when in fact he was not. Additionally, the written request provided to the Board by Mr. Smith, in which he referred to Dr. Tatoyan as his new supervising physician, was also false. Dr. Tatoyan was never aware that he was to serve in that capacity, and never gave permission to Mr. Smith to submit his curriculum vitae for that purpose.

3. As set forth in Findings of Fact #1 through #3, above, Mr. Smith's acts, conduct, and/or omissions, individually, and/or collectively, constitute "(c)ommission of an act that constitutes a felony," as that clause is used in Section 4730.05(N), Ohio Revised Code, to wit: Section 2913.31(A)(2), Forgery.

Section 2913.31, Ohio Revised Code, entitled "Forgery," states, in part:

"(A) No person, with purpose to defraud ... shall do any of the following:

...

- (2) Forge any writing so that it purports to be genuine when it is actually spurious, or to be the act of another who did not authorize that act, or to have been executed at a time or place or with terms different from what was in fact the case, or to be a copy of an original when no such original existed.

...

95 FEB 13 AM 9:17

- (C)(1) Whoever violates division (A) of this section is guilty of forgery, a felony of the fourth degree."

Mr. Smith's submission of the document purporting to be a report by Dr. Tatoyan was a blatant attempt to convince the Board that Mr. Smith was in compliance with the terms of his Consent Agreement, when in fact he was not. The document was clearly purported "to be genuine when it [was] actually spurious, or to be the act of another who did not authorize that act." Mr. Smith's conduct therefore constituted an act constituting the felony offense of Forgery

4. The evidence presented was insufficient to support a conclusion that Mr. Smith's acts, conduct, and/or omissions, individually, and/or collectively, constitute "(f)ailure to maintain employment under the physician, physicians, or group practice submitting the statement of employment under Section 4730.03 of the Revised Code, and under the conditions under which his certificate of registration was issued, as required under Section 4730.05(A), Ohio Revised Code.

☆ ☆ ☆ ☆ ☆

By Consent Agreement dated May 14, 1992, Mr. Smith was given a second chance by this Board to prove himself worthy of the privilege to practice as a physician's assistant in the State of Ohio. Since that time, Mr. Smith has engaged in conduct that was deceptive, criminal in nature, and which hindered this Board's ability to protect the health-consuming public. Why he did this is something of a mystery, since there was no evidence presented that suggested that Mr. Smith ever fell off the road to recovery. Such conduct cannot be tolerated, and merits the severest sanction.

PROPOSED ORDER

It is hereby ORDERED that the certificate of Kevin C. Smith, P.A.-C., to practice as a physician's assistant in the State of Ohio shall be permanently REVOKED. This Order shall become effective immediately upon the mailing of notification of approval by the State Medical Board of Ohio.



R. Gregory Potter
Attorney Hearing Examiner



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

March 8, 1995

Kevin C. Smith, P.A.
165 South Clay Street
Brookville, OH 45309

Dear Mr. Smith:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, suspend, refuse to register your certificate to practice as a physician's assistant for one or more of the following reasons:

- (1) On or about May 14, 1992, you entered into a Consent Agreement with the State Medical Board of Ohio in lieu of formal disciplinary action regarding theft of controlled substances from your employer and subsequent personal use for which you pleaded guilty to a fourth degree felony and received treatment in lieu of conviction. (A copy of the Consent Agreement is attached hereto and fully incorporated herein).
- (2) Clause 5 of the Consent Agreement, as amended, required that you abstain completely from the personal use or possession of drugs except those prescribed, administered or dispensed to you by another so authorized by law who has full knowledge of your history of chemical dependency.

On or about December 9, 1994, you were prescribed fourteen (14) tablets of Adipex-P which is a Schedule IV controlled substance contraindicated for patients with a history of drug abuse. You obtained the controlled substance from a pharmacy on or about December 9, 1994, using this prescription.

In fact, you did not inform the treating physician of your history of chemical dependency. The treating physician prescribed the above controlled substance without knowledge of your history of chemical dependency.

Your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute a "(f)ailure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board;" as that clause is used in Section 4730.05(B), to wit: 4731.22(B)(15), Ohio Revised Code.

Mailed 3/9/95

March 8, 1995

- (3) Clause 7 of the Consent Agreement, as amended, required you to submit random urine screens on a bi-weekly basis and to ensure that your supervising physician monitor the results and inform the Board of any positive results.

On or about January 4, 1995, you were telephonically notified by Mr. Edward J. Poczekaj, Ohio Physicians Effectiveness Program (OPEP), Westerville, Ohio, that you were required to appear at the OPEP office at 635 Park Meadow Road, STE 203, Westerville, Ohio, for a random toxicology test in accordance with Clause 7 of the above Consent Agreement.

You stated that you were too busy at work in Columbus, OH, to provide the specimen at the OPEP office in Westerville, OH, on January 4, 1995. You were reminded that you had to respond within 24 hours and then agreed to report at 8:30 a.m., January 5, 1995.

On January 5, 1995, at 10:30 a.m., you called Mr. Poczekaj stating that you could not come in. Further, you stated that you had called earlier that morning and no one had answered at OPEP. You were told that Mr. Poczekaj was in from 8:15 a.m. on, and, additionally, the answering machine was working.

You then stated that you wanted to terminate your contract with OPEP.

Your acts, conduct and or omissions as alleged in paragraph (3) above, individually and collectively, constitute "(f)ailure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board;" as that clause is used in Section 4730.05(B), to wit: 4731.22(B)(15), Ohio Revised Code.

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

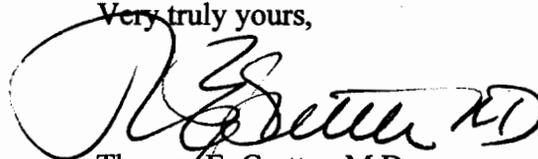
You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evident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

March 8, 1995

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

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

Thomas E. Gretter, M.D.
Secretary

TEG/bjm

Enclosures

CERTIFIED MAIL # P 348 888 202

RETURN RECEIPT REQUESTED

cc: Douglas E. Graff, Esq.

CERTIFIED MAIL # P 348 888 206

RETURN RECEIPT REQUESTED



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

March 9, 1994

Kevin C. Smith, P.A.-C
6550 Beamsville-Webster Road
Versailles, OH 45380

Dear Mr. Smith:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to revoke, suspend or refuse to register your certificate to practice as a physician's assistant for one or more of the following reasons:

- (1) On or about May 14, 1992, you entered into a Consent Agreement with the State Medical Board of Ohio in lieu of formal disciplinary action regarding theft of controlled substances from your employer and subsequent personal use for which you pleaded guilty to a fourth degree felony and received treatment in lieu of conviction. (A copy of the Consent Agreement is attached hereto and fully incorporated herein)
- (2) Clause 7 of the Consent Agreement, as amended, required you to submit random urine screens on a weekly basis and to ensure that your supervising physician monitor the results and inform the Board of any positive results.

In March, 1993, the Board approved your request for a reduction in urine screens to a bi-weekly basis. Further, in August, 1993, the Board approved your request for a change in supervising physicians.

However, since March, 1993, you have failed to have your urine screens conducted either randomly or bi-weekly. Further, the physician you proposed to the Board as your supervising physician in August, 1993, had no knowledge that he was required to direct or monitor your urine screens. He did not consent to become your "Supervising Physician" for purposes of the May 4, 1992, Consent Agreement. Rather, he understood that he was your supervisor in accordance with Section 4730.02(A), Ohio Revised Code.

Your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute "(f)ailure to maintain employment under the physician, physicians, or group practice submitting the statement of employment under Section 4730.03 of the Revised Code, and under the conditions under which his certificate of registration was issued," as required under Section 4730.05(A), Ohio Revised Code.

March 10, 1994

Further, your acts, conduct, and/or omissions as alleged in Paragraph (2) above, individually and/or collectively, constitute "publishing a false, fraudulent, deceptive, or misleading statement", as that clause is used in Section 4730.05(J), Ohio Revised Code.

Further your acts, conduct and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute a misdemeanor "committed in the course of practice", as that clause is used in Section 4730.05(P), Ohio Revised Code, to wit: Section 2921.13, Falsification.

- (3) On or about December 9, 1993, you attended an office conference with the Board's Secretary and staff and submitted an undated document stamped with the name of the supervising physician who was approved by the Board in August, 1993. This document, submitted on the physician's letterhead, stated that random urine screens had been conducted on a weekly basis with negative results. You submitted this document in an attempt to convince Board representatives that you were in compliance with Clause 7 of the Agreement.

Your acts, conduct, and/or omissions as alleged in paragraph (3) above, individually and/or collectively, constitute "publishing a false, fraudulent, deceptive, or misleading statement", as that clause is used in Section 4730.05(J), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (3) above, individually and/or collectively, constitute "(c)ommission of an act that constitutes a felony", as that clause is used in Section 4730.05(N), Ohio Revised Code, to wit: Section 2913.31(A)(2), Forgery.

- (4) Clause 2 of the Consent Agreement required you to "submit quarterly declarations under penalty of perjury whether there has been compliance with all the conditions of (the) Consent Agreement."

At the office conference of December 9, 1993, you submitted a quarterly declaration to Board representatives stating that you were in compliance with the Consent Agreement. However, you presented a written declaration signed by you indicating that you were in compliance with the Agreement when in fact the physician for whom you obtained Board approval to monitor your screens was never aware of his duties.

Your acts, conduct, and/or omissions as alleged in Paragraph (4) above, individually and/or collectively, constitute "publishing a false, fraudulent, deceptive, or misleading statement", as that clause is used in Section 4730.05(J), Ohio Revised Code.

Further, your acts, conduct, and or omissions as alleged in paragraph (4) above, individually and/or collectively, constitute a misdemeanor "committed in the course of practice", as that clause is used in Section 4730.05(P), Ohio Revised Code, to wit: Section 2921.13, Falsification.

March 9, 1994

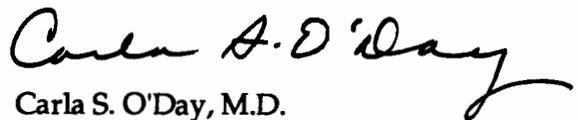
Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing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

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

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to revoke, suspend or refuse to register your certificate to practice as a physician's assistant.

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Carla S. O'Day, M.D.
Secretary

CSO:jmb

Enclosures:

CERTIFIED MAIL #P 348 885 040
RETURN RECEIPT REQUESTED

RECEIVED
OCT 19 1991

**CONSENT AGREEMENT
BETWEEN
KEVIN C. SMITH, P.A.-C.
AND
THE STATE MEDICAL BOARD OF OHIO**

THIS CONSENT AGREEMENT is entered into by and between KEVIN C. SMITH, P.A.-C. and THE STATE MEDICAL BOARD OF OHIO, a state agency charged with enforcing Chapter 4730., Ohio Revised Code.

KEVIN C. SMITH, P.A.-C. enters into this Agreement being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

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

- A. THE STATE MEDICAL BOARD OF OHIO is empowered by Section 4730.05 (C), Ohio Revised Code, to refuse to register an applicant or may suspend or revoke the registration of a physician's assistant for inability to function as a physician's assistant, by reason of illness, drunkenness, excessive use of controlled substances, chemicals, or any other type of material.
- B. THE STATE MEDICAL BOARD OF OHIO enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Section 4730.05(C) and (N), Ohio Revised Code, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4730. of the Revised Code, whether occurring before or after the effective date of this Agreement.
- C. KEVIN C. SMITH, P.A.-C. is registered as a physician's assistant in the State of Ohio.
- D. KEVIN C. SMITH, P.A.-C. ADMITS that on or about October 15, 1991 he took several doses of Demerol from a drug cabinet at his employment for his personal use. On October 22, 1991 MR. SMITH entered into the intensive outpatient rehabilitation program of Dettmer Hall, Upper Valley Medical Center in Troy, Ohio where he was diagnosed as chemically dependent. On December 2, 1991, MR. SMITH pleaded guilty to one count of Theft of Drugs in violation of Ohio Revised Code Section 2913.02 (A)(2) and received treatment in lieu of conviction with three years probation.

WHEREFORE, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, KEVIN C. SMITH, P.A.-C. knowingly and voluntarily agrees with THE STATE MEDICAL BOARD OF OHIO, (hereinafter BOARD), to the following probationary terms, conditions and limitations:

1. MR. SMITH shall obey all federal, state and local laws, and all rules governing physician's assistants in Ohio;

**KEVIN C. SMITH, P.A.-C.
CONSENT AGREEMENT
PAGE TWO**

2. -- **MR. SMITH shall submit quarterly declarations under penalty of perjury stating whether there has been compliance with all the conditions of this Consent Agreement;**
3. **MR. SMITH shall appear in person for interviews before the full BOARD or its designated representatives at three month intervals, or as otherwise directed by the BOARD;**
4. **In the event that MR. SMITH should leave Ohio for three continuous months, or reside or practice outside the State, MR. SMITH, must notify the BOARD in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this period under the Consent Agreement;**
5. **MR. SMITH shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of MR. SMITH'S history of chemical dependency;**
6. **MR. SMITH shall abstain completely from the use of alcohol;**
7. **MR. SMITH shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the BOARD. MR. SMITH is to ensure that all screening reports are forwarded directly to the BOARD on a quarterly basis;**

MR. SMITH shall submit the required urine specimens to a supervising physician to be approved by the BOARD. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the BOARD of any positive screening results.

The supervising physician shall monitor MR. SMITH and provide the BOARD with reports on the doctor's progress and status.

In the event that the designated supervising physician becomes unable or unwilling to so serve, MR. SMITH must immediately notify the BOARD in writing, and make arrangements acceptable to the BOARD for another supervising physician as soon as practicable;

8. **The BOARD retains the right to require, and MR. SMITH agrees to submit, blood or urine specimens for analysis upon request and without prior notice;**

**KEVIN C. SMITH, P.A.-C.
CONSENT AGREEMENT
PAGE THREE**

9. Within 30 days of the effective date of this Consent Agreement, MR. SMITH shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., or Caduceus, acceptable to the BOARD no less than three (3) times per week. At his appearances before the BOARD or its designated representative, MR. SMITH shall submit documentary evidence of continuing compliance with this program;
10. MR. SMITH shall provide all employers a copy of this Consent Agreement; and
11. If KEVIN C. SMITH, P.A.-C. violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of KEVIN C. SMITH'S registration as a physician's assistant.

The above described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties. However, this Agreement shall remain in force for a minimum of two (2) years prior to any request for termination of said Agreement.

If, in the discretion of the Secretary of THE STATE MEDICAL BOARD OF OHIO, MR. SMITH appears to have violated or breached any terms or conditions of this Agreement, THE STATE MEDICAL BOARD OF OHIO reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Agreement.

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

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

MR. SMITH hereby releases THE STATE MEDICAL BOARD OF OHIO, its Members, Employees, Agents, Officers and Representatives jointly and severally from any and all liability arising from the within matter.

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

KEVIN C. SMITH, P.A.-C.
CONSENT AGREEMENT
PAGE FOUR

This information may be reported to appropriate organizations, data banks and governmental bodies. This Consent Agreement shall become effective, upon the last date of signature below.

Kevin C. Smith P.A.-C.
KEVIN C. SMITH, P.A.-C.

5-11-92
DATE

Carla S. O'Day
CARLA S. O'DAY, M.D.
Secretary

5/14/92
DATE

Tim
TIMOTHY S. JOST, ESQ.
Supervising Member

5/13/92
DATE

Odella T. Ampkin
ODELLA T. AMPKIN, ESQ.
Assistant Attorney General

5/14/92
DATE