

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF

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CYNTHIA JOAN JOHNSON, P.A.

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**ORDER AND ENTRY**

On December 12, 2007, the State Medical Board of Ohio issued a Final Order suspending Ms. Johnson's certificate to practice as a physician assistant. Counsel for Ms. Johnson appealed the Board's Order. Subsequently, the Franklin County Court of Common Pleas issued an Opinion in Case Number 08 CVF-01-986 reversing the Medical Board's Final Order of December 12, 2007. A Final Judgment and Journal Entry was issued by the Franklin County Court of Common Pleas with an order to remand the case to the Board with instructions to vacate the Entry of Order issued on December 12, 2007, and the Notice of Opportunity for Hearing issued on April 12, 2007.

Accordingly, it is hereby ORDERED that the December 2007 Final Order suspending Ms. Johnson's certificate to practice as a physician assistant be and is hereby VACATED. Further, the Notice of Opportunity for Hearing issued to Ms. Johnson on April 12, 2007, be and is hereby DISMISSED.

This Order is entered by the State Medical Board of Ohio and on its behalf.

So ORDERED this 9th day of July, 2008.



Lance A. Talmage, M.D.

Secretary

(SEAL)

July 9, 2008

Date

CERTIFIED MAIL NO. 91 7108 2133 3934 3685 6154  
RETURN RECEIPT REQUESTED

Elizabeth Y. Collis, Esq.  
CERTIFIED MAIL NO. 91 7108 2133 3934 3685 6161  
RETURN RECEIPT REQUESTED

**CONSENT AGREEMENT  
BETWEEN  
CYNTHIA JOAN JOHNSON, P.A.  
AND  
THE STATE MEDICAL BOARD OF OHIO**

This Consent Agreement is entered into by and between Cynthia Joan Johnson, P.A., (Ms. Johnson) and the State Medical Board of Ohio (Board), a state agency charged with enforcing R.C. Chapter 4730.

Ms. Johnson enters into this Consent Agreement being fully informed of her rights including the right to representation by counsel and the right to pursue her release from the terms of the Step II Consent Agreement of January 8, 2003 (2003 Consent Agreement) as provided herein.

**BASIS FOR ACTION**

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

- A. The Board is empowered by R.C. 4730.25(B) to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for any of the enumerated violations.
- B. Cynthia Joan Johnson is licensed to practice as a physician assistant in the State of Ohio, Certificate # 50-001350.
- C. The Board issued Ms. Johnson a Notice of Opportunity for Hearing on April 12, 2007. Following a hearing held as requested by Ms. Johnson, the Board issued a Final Order on or about December 12, 2007 (2007 Order). Pursuant to R.C. 119.12, Ms. Johnson appealed the 2007 Order to the Franklin County Court of Common Pleas, Case No. 08CVF01-00986. On June 13, 2008, an Opinion was issued by the Court reversing the Board's 2007 Order. By Final Judgment and Journal Entry, attached hereto and incorporated herein as Exhibit A, the Court ordered the case remanded to the Board with instructions to vacate the 2007 Order and the Notice of Opportunity for Hearing of April 12, 2007.
- D. Ms. Johnson acknowledges that, when the Board enters the Order vacating the 2007 Order, she becomes subject to the terms, conditions and limitations of the 2003 Consent Agreement, attached hereto and incorporated herein as Exhibit B. Ms. Johnson states, and the Board acknowledges, that she would have been eligible to seek release from the terms of the 2003 Consent Agreement in January 2008.

- E. Ms. Johnson hereby requests to be released from the terms of the 2003 Consent Agreement based upon her completion of all requirements of that Agreement.
- F. Ms. Johnson and the Board desire to completely and finally settle all claims and differences with respect to the above proceedings by entering into this Consent Agreement. The Board expressly reserves the right to institute formal proceedings based upon any other violations of R.C. Chapter 4730., whether occurring before or after the effective date of this Consent Agreement.

### **AGREED CONDITIONS**

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, Cynthia Joan Johnson, P.A., knowingly and voluntarily agrees with the Board to the following terms:

1. Ms. Johnson will be released from the terms of the 2003 Consent Agreement at the regularly scheduled Board Meeting of July 9, 2008, with no requirement to make a final appearance before the Secretary and Supervising Member or before the full Board.
2. Ms. Johnson hereby releases and forever discharges the Board, its members, employees, agents, officers and representatives, jointly and severally, from any and all liabilities, rights, causes of action, costs, expenses, attorneys fees and any other possible claims arising from the within manner.
3. The terms of this Consent Agreement bind the Parties hereto and their assigns and successors in interest. This Consent Agreement is not to be construed as precedent for actions taken or to be taken by the State Medical Board against any other individual(s).

Ms. Johnson acknowledges that she has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

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

This Consent Agreement shall be considered a public record as that term is used in R.C. 149.43.

**EFFECTIVE DATE**

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

  
CYNTHIA JOAN JOHNSON, P.A.

7/1/08

DATE

  
LANCE A. TALMA, M.D.

Secretary

7-9-08

DATE

  
ELIZABETH COLLIS  
Attorney for Cynthia Johnson

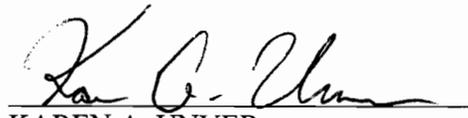
7-7-08

DATE

  
RAYMOND J. ALBERT  
Supervising Member

7/9/08

DATE

  
KAREN A. UNVER  
Assistant Attorney General

7/8/08

DATE

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

CYNTHIA J. JOHNSON, P.A.,

Appellant,

vs.

STATE MEDICAL BOARD OF OHIO,

Appellee.

CASE NO. 08 CVF-01-986  
(Judge Frye)

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
2008 JUN 13 PM 6:07  
CLERK OF COURTS

JOURNAL ENTRY

In an Opinion released this date the Medical Board's Order entered December 12, 2007 was reversed. Having said that, it is unclear whether that decision in and of itself ends the probationary period that Ms. Johnson was serving (which the court understands would have expired early in 2008 without the Board's order of December 12, 2007).

Before entering a Judgment, the court requests counsel for the parties to address such practical issues and, if possible, craft a suitable final Judgment that either concludes Ms. Johnson's probationary period satisfactorily and ends the Step-2 Consent Agreement, or that remands her case for further appropriate determinations by the Board. Should the parties be unable to reach agreement on these procedural matters and on a suitable form of a final Judgment, the court will hold a conference with counsel on **JUNE 26, 2008, at 4 p.m. in Courtroom 8A.**

**IT IS SO ORDERED.**

  
RICHARD A. FRYE, JUDGE

HEALTH & HUMAN  
JUN 17 2008 IN  
SERVICES SECTION  
SERVICES SECTION

Copies to:

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IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

CYNTHIA J. JOHNSON, P.A.,  
Appellant,  
vs.  
STATE MEDICAL BOARD OF OHIO,  
Appellee.

CASE NO. 08 CVF-01-986

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
2008 JUN 13 PM 6:06  
CLERK OF COURTS

Collis, Smiles & Collis, L.L.C., and Elizabeth Y. Collis, for appellant,

Nancy H. Rogers, Attorney General, and Karen A. Unver, Assistant Attorney General, for appellee.

**OPINION**

Frye, Judge.

**I. Introduction**

{¶ 1} Cynthia J. Johnson is a Physician's Assistant, subject to licensure and regulation by the State Medical Board of Ohio. Roughly six years ago Ms. Johnson was diagnosed with alcohol dependence/abuse. Thereafter, the Medical Board supervised her through inpatient treatment, aftercare, and a multi-year probationary period. Ms. Johnson brings this appeal to contest the decision of the Board in December 2007 that, notwithstanding four years of sobriety demonstrated through negative alcohol screens and direct monitoring by multiple physicians and the Ohio Physicians Health Program, Inc., she relapsed in her recovery. A suspension from practice was ordered, along with extension of supervised probation that would, otherwise, have now expired.

{¶ 2} In deciding this case the Board relied heavily upon a single, positive ethyl glucuronide ("EtG") test result, plus several ambiguous oral statements by

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JUN 17 2008  
SERVICES SECTION**

Ms. Johnson made prior to her administrative hearing, in which she suggested possible explanations for her unexpected EtG test result.

{¶ 3} The EtG test is one of several recently available direct biomarker tests intended to detect drinking through the presence of minor alcohol metabolites formed when a person's body breaks-down alcohol. While recognized as admissible scientific evidence under the *Daubert* line of cases by the Medical Board and mentioned in a handful of court decisions from around the country (several of which concern medical board proceedings in other states) EtG testing remains at the cutting edge of forensic toxicology. Clinical study and analysis in peer-reviewed literature continues due to recognized concern that the EtG test may give false-positive results, and is not fully understood. Indeed, in September 2006, such concerns prompted the Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services to issue a formal "Advisory" bulletin cautioning against using EtG testing in connection with "[l]egal or disciplinary action[s]" as "primary or sole evidence" because it is currently only a "potentially valuable clinical tool" whose "use in forensic settings is premature."

{¶ 4} Doctors specializing in the treatment of alcohol abuse and other addictive behavior personally monitored Ms. Johnson, but none observed Ms. Johnson drink, smell of alcohol, or fail to perform well at work. No random test for alcohol was positive prior to December 2006, or since then. Accordingly, the court must evaluate the entire administrative record to determine whether the findings by the Medical Board were based upon reliable, probative and substantial evidence, and whether that decision is otherwise in accordance with law.

## **II. Procedural Background**

{¶ 5} The administrative hearing was held in September 2007. The Hearing Examiner prepared a 28-page Report and Recommendation (the "Report".) On December 12, 2007 the Board met, heard short arguments from counsel and a brief statement by Ms. Johnson, discussed the issues, voted to adopt the findings of fact and conclusions of law of the Hearing Examiner, and issued an Order

(actually mailed January 4, 2008) finding appellant had relapsed, and violated her probation. The final Order approved by the Board reduced somewhat the Hearing Examiner's recommended sanctions, but nevertheless suspended Ms. Johnson's certificate to practice for an indefinite period of not less than 30 days, and extended her probation for at least one year.

{¶ 6} This appeal was timely filed on January 18, 2008. Following a hearing, this court stayed the suspension of appellant's certificate to practice until briefing was completed and a final decision could be issued. Nine enumerated conditions were imposed in the stay Order. Among them were requirements for continued participation in alcohol avoidance programs no less than three times per week, plus random urine screens at Ms. Johnson's expense, including periodic testing using EtG methodology. So far as the record reflects, Ms. Johnson has remained fully compliant with all conditions of the stay, and no test result reflecting alcohol use has been brought to the court's attention.

### **III. *The Factual Record***

#### **A. *Essentially uncontested background***

{¶ 7} After working for some years as a medical technologist, Ms. Johnson graduated from a physician assistant training program in 1999 and became licensed by the Board. However, between 1999 and 2001 Ms. Johnson was convicted of misdemeanor-level crimes of disorderly conduct, and criminal trespass. She acknowledged those crimes were attributable to excessive alcohol consumption, secondary to the upset in her life from her divorce. Report p. 4. In the course of renewal of her physician assistant certificate, those criminal matters were voluntarily disclosed to the Board.

{¶ 8} Ms. Johnson was formally diagnosed in 2002 with alcohol dependency/abuse and major depression. She completed a 28-day, residential treatment program. Report p. 5, ¶ 6. Thereafter, she became involved in aftercare, and in November 2002 entered into an advocacy contract with the Ohio Physicians Health Program, Inc. ("OPHP"). Report p. 6, ¶ 9. OPHP serves as her "supervising physician" for the purpose of formal Consent Agreements between appellant and the Board made in 2001 and 2003. Report p. 5, ¶ 9.

{¶ 9} In 2002, three physicians reported to the Board that Ms. Johnson remained capable of practicing as a physician's assistant according to acceptable and prevailing standards of care, so long as treatment and monitoring continued. Report p. 5, ¶ 7. Accordingly, a Step II Consent Agreement was made between Ms. Johnson and the Medical Board effective in January 2003, and Ms. Johnson's certificate was reinstated for a five-year probationary period. Report p. 5, ¶ 8. Among the terms of that Consent Agreement and appellant's separate contract with OPHP were requirements that Ms. Johnson abstain completely from use or possession of alcohol.

{¶ 10} The Hearing Examiner found that between January 2003 and December 2006 Ms. Johnson was "largely compliant" with her probationary terms. Report p. 6, ¶ 10. In fact, as discussed hereafter in more detail, Ms. Johnson was not observed drinking or impaired, and provided no clinical test prior to December 2006 that was determined to be positive for alcohol.

{¶ 11} Beyond her supervision by OPHP, Ms. Johnson was also monitored by Christina M. Delos Reyes, M.D. Dr. Delos Reyes is board-certified in both adult psychiatry and addiction psychiatry. In addition to her strong training and experience in addiction medicine for which she "received numerous honors and awards," Dr. Delos Reyes has presented and published professional work. Report p. 7, footnote 4; Respondent's Ex. G. Given her professional stature, Dr. Delos Reyes' observation that since 2002 Ms. Johnson "had never missed an appointment with her, never had a positive urine screen previously, and had been compliant with all Board requirements, including in-person meetings \*\*\*" (Report p. 16, ¶ 39) was entitled to substantial weight. In addition to that, from time to time Ms. Johnson was under the care of other mental health professionals, and attended many Alcoholics Anonymous recovery meetings.

{¶ 12} To monitor her abstinence and deter a relapse, Ms. Johnson was subject to random, unannounced screens with a limited time between notification and testing. On December 27, 2006 Ms. Johnson was contacted by Dr. Delos Reyes and directed to provide a urine specimen within six hours. Her specimen was collected by Dr. Delos Reyes, and sent off for testing to the Bendiner & Schlesinger Inc. laboratory in Brooklyn, New York. Ordinarily such samples

arrived within four or five days, but for some unknown reason this particular sample took 22 days to be received (that is, on January 18, 2007.) Report pp. 7-8; State's Exs. 4, 5.

{¶ 13} The standard urine alcohol test of the December 27 specimen was negative. State Ex. 4. The Hearing Examiner understood that tests of the specific gravity and the creatinine level in that sample were low, suggesting the specimen had been diluted. Report p. 8, ¶ 14. The Examiner was mistaken as to the first test. The laboratory report shows on its face that the specific gravity level was *not* below the cut-off level at which this particular laboratory concludes a sample "may indicate dilution." State Ex. 4. Further, at the administrative hearing Dr. Sateren of OPHP testified the "specific gravity is fine." Tr. 109. Nevertheless, at least one member of the Medical Board also misunderstood that Ms. Johnson's urine was "diluted to such a point" that "he doesn't buy" her explanation that she did not relapse. Board Minutes Dec. 12, 2007, at p. 17186. The creatinine level of 9.6 was below the "normal" range of 95% of the population (which falls between 20 – 350 mg/dl) but Dr. Closson who heads the Brooklyn laboratory testified at the hearing (by telephone) that some normal people predictably test outside that so-called normal range. Further, "there's no way you can say they have got a creatinine level [sic] that a person has done something intentionally to their body to affect the results of a drug test. Its just an indicator to the status of the dilutional nature of the sample itself." Tr. 189-190. In fact, as the Hearing Examiner found, of the 15 additional urine specimens collected from Ms. Johnson following mid-January 2007, her creatinine level bounced from a low of 13.9 to a high of 170.2. No evidence in the record suggested those values reflected anything more than her own body's normal variance.

{¶ 14} Stanley G. Sateren, M.D. is currently the President and Medical Director of OPHP. OPHP works at arms length with the Medical Board to supervise some licensees. Bickers' testimony, Tr. 118. Dr. Sateren is a fellow in the American Society of Addiction Medicine, in addition to being board-certified in internal medicine. Dr. Sateren reviewed the initial test results for appellant's December 27 sample on January 24. Report p. 6, footnote 3. Dr. Sateren concluded that because the creatinine level was reported at only 9.6, it was

advisable to request another test on the same specimen, using ethyl glucuronide (“EtG”) methodology<sup>1</sup>. Report p. 8, ¶ 15; Tr. 109.

{¶ 15} The laboratory in Brooklyn did not conduct the EtG test. Instead, it forwarded the urine specimen to National Medical Services in Willow Grove, Pa. That laboratory concluded that Ms. Johnson had consumed alcohol, because her EtG test result was 1,800 nanograms/milliliter, well above the laboratory’s cutoff level of 250 ng/ml. Report p. 9, ¶¶ 16-17. (The State Medical Board of Ohio has adopted no formal administrative rule establishing a specific cutoff standard for judging EtG test results. In this case, it applied a standard of 250 ng/ml based upon the laboratory’s cutoff point which, in turn, was said to be based on a standard used by the United States Department of Transportation. Bickers’ testimony, Tr. 151-153.) The various cutoff levels used around the United States, and evidence pertinent to the reliability of EtG testing are reviewed below.

B. *The Hearing Examiner’s conclusions*

{¶ 16} The Hearing Examiner concluded that Ms. Johnson had used or consumed alcohol, and thereby demonstrated she was impaired in her practice. Appellant’s consumption of alcohol was found to have violated conditions previously placed by the Board on her certificate to practice, justifying further sanctions.

{¶ 17} The Board’s Hearing Examiner placed great emphasis upon two pieces of evidence, namely the EtG test result and statements by Ms. Johnson speculating about possible causes of that positive EtG test. The Examiner specifically found that “[t]he EtG test showed the presence of the EtG metabolite of Alcohol” and that it “will only be present from use/consumption of ethyl alcohol.” Report p. 20, factual finding 4(c). She also concluded “the EtG test is highly reliable.” Report p. 19, factual finding 4(b).

{¶ 18} The Examiner explicitly relied upon purported admissions made by Ms. Johnson months before her hearing, to the effect “that she had consumed communion wine during a church service a few days prior to submitting the

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<sup>1</sup> Another recently developed direct biomarker test for the presence of alcohol, also usually measured in urine, is the Ethyl Sulfate (EtS) test. EtS was not used in this case.

December 27, 2006 urine specimen” even though during the administrative hearing Ms. Johnson “denied drinking communal wine at that time.” Report p. 20, factual finding 4(e). The witness to whom Johnson alleged made the admission was Danielle Bickers, the Medical Board’s “compliance supervisor.” Report p. 7, ¶ 11; p. 20, finding 4(e); p.21. The Hearing Officer also attached significance to the fact that “[e]arlier in 2006, Board staff had questioned Ms. Johnson’s commitment to the recovery process.” Report p. 20, finding 4(g). However, the sole member of “Board staff” to raise any such question – on only one instance that was promptly corrected by Ms. Johnson – was compliance supervisor Bickers. Report p. 7, ¶ 11; Tr. 123-24.

{¶ 19} Finally, under the subtitle “Conclusions of Law” the Hearing Examiner again emphasized that Ms. Johnson “admitted, in a February 2007 conversation with Ms. Bickers, that she had consumed communal wine shortly prior to December 27, 2006” and that “[t]aken together, the EtG test result and Ms. Johnson’s admission to Ms. Bickers are reliable, probative, and substantial evidence which demonstrates that Ms. Johnson used/consumed alcohol” in violation of her obligations to the Medical Board. Emphasizing the importance of the purported factual admission, the Hearing Examiner stated a few sentences later that “Ms. Johnson’s own testimony suggests that she did not abstain completely from the use of alcohol” and beyond that “provided a number of varying statements \*\*\* regarding her activities at church in late December 2006.” Report p. 21.

{¶ 20} The Examiner’s concluding remarks also referred critically to Ms. Johnson’s topical use of everyday products containing alcohol. “Despite the fact that Ms. Johnson is in recovery, she admitted to regularly using a number of different products that contain alcohol (*e.g.*, Lysol, hand sanitizers, and colognes), which can result in a positive urine test.” Report p. 22, at bullet point.

#### **IV. *The Standard of Review***

{¶ 21} Under Ohio law, decisions of administrative agencies are subject to a “hybrid form of review” in which a common pleas court must give deference to the findings of an agency, but those findings are not conclusive. *Univ. of*

*Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 111, 407 N.E.2d 1265. Earlier this year in *Strausbaugh v. Dept. of Commerce, Div. of Real Estate & Professional Licensing* (10th District), Case No. 07AP-870, 2008-Ohio-2456, ¶ 6, the Court of Appeals for Franklin County set forth more fully the standard of review under Ohio's administrative procedure act as follows: "In an administrative appeal pursuant to R.C. 119.12, the trial court reviews an order to determine whether it is supported by reliable, probative and substantial evidence and is in accordance with the law. *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St.3d 83, 87, [487 N.E.2d 1248]; *Belcher v. Ohio State Racing Comm.*, Franklin App. No. 02AP-998, 2003-Ohio-2187, at ¶10. Reliable, probative and substantial evidence has been defined as follows:

\* \* \* (1) 'Reliable' evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) 'Probative' evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) 'Substantial' evidence is evidence with some weight; it must have importance and value.

*Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571."

{¶ 22} In evaluating the weight of evidence and the credibility of witnesses in an administrative appeal, a common pleas court "has some limited discretion to exercise." *Belcher, supra*, at ¶7. "In an administrative appeal, the court of common pleas weighs the evidence in the record and uses the results of its weighing of the evidence to determine whether the administrative order is 'unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence.' *Henley v. Youngstown Bd. of Zoning Appeals* (2000), 90 Ohio St.3d 142, 147, 735 N.E.2d 433." *Summit Cty. Bd. of Health v. Pearson* (9th District), 157 Ohio App.3d 105, 809 N.E.2d 80, 2004-Ohio-2251, at ¶9. The Franklin County Court of Appeals has similarly recognized that this court's "review of the administrative record is neither a trial de novo nor an appeal on questions of law only, but a hybrid review in which the court must appraise all the evidence as to the credibility of the

witnesses, the probative character of the evidence, and the weight thereof. \*\*\* Even though the common pleas court must give due deference to the administrative agency's resolution of evidentiary conflicts, the findings of the agency are not conclusive." [citations and internal quotations omitted]. *Graor v. State Med. Board* (10th District), Case No. 04AP-72, 2004-Ohio-6529, at ¶20.

{¶ 23} Ohio administrative agencies may not rely upon evidence that is not genuinely probative and reliable, even though generally speaking "[a]dministrative agencies are not bound by the rules of evidence applied in courts. [citations omitted]" *Althof v. Ohio St. Bd. of Psychology* (10th District), Case No. 05AP-1169, 2007-Ohio-1010, at ¶73; *Pearson, supra*, at ¶19; *Haley v. Ohio St. Dental Bd.* (2nd District 1982), 7 Ohio App.3d 1, 6. In determining when scientific evidence used to make an administrative decision is "reliable," the same considerations recognized for "good science" in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993), 509 U.S. 579, 125 L.Ed.2d 469, 113 S.Ct. 2786 are appropriately applied under Ohio law. *Belcher, supra*, at ¶11.

#### **V. Admissions or contradictory statements purportedly made by Ms. Johnson**

{¶ 24} The Board attached substantial weight to statements attributed to Ms. Johnson even though they were made months before her hearing. It gave relatively little weight to her testimony under oath at the hearing. The Hearing Examiner's view was that Ms. Johnson had admitted to the Board's compliance supervisor Ms. Bickers that she consumed wine at communion just prior to her December 27, 2006 test, and from this corroboration was found for the EtG test result as reported in February 2007. Ms. Johnson's explanation for purportedly contradictory statements made around the time in February that she learned of the EtG result were seen as purely self-serving. Because the statements long prior to the hearing were given such substantial weight, it is important to examine them with some care in the context in which these so-called admissions or contradictory statements were made.

{¶ 25} Under her Step II Consent Agreement Ms. Johnson was closely monitored. During that time, she was obligated to submit specimens for analysis

promptly upon request and without prior notice. A refusal to do so would result in a "minimum of one year of actual license suspension." State's Ex. 2, at p. 5, ¶ 9. Those test specimens were collected by Dr. Delos Reyes, whose Cleveland office was a short distance from Ms. Johnson's place of employment. On December 27, Ms. Johnson walked to the office of Dr. Delos Reyes, and gave the specimen well within the 6-hour time-window permitted. Johnson Tr. 278-81. Dr. Delos Reyes testified that at that time in late 2006 Ms. Johnson was believed to be "stable in her recovery and carrying out all of the responsibilities of the Step II agreement; there were no signs that she was not doing well." Report p. 16, ¶ 39; see also, Respondent's Ex. "F." Harris V. Taylor, M.D, shared these views. In early spring 2007 he wrote a letter to the Medical Board relating that in his three and a half years of supervision of Ms. Johnson's work he never smelled any alcohol on her breath, or had other reason to suspect she consumed alcohol. Report p. 17, ¶ 40; Respondent's Ex. "C," letter dated April 18, 2007. Similarly, a psychologist from North Coast Mental Health Associates, Inc. reported regularly to OPHP from January 2004 through June 2007. As of December 2006, North Coast found Ms. Johnson "compliant and faithful regarding her A.A. involvement" and "is steadfast with her appointments with myself as well as any other requirements suggested by myself." Respondent Ex. M, p. 19 (under seal.)

{¶ 26} Once the EtG test result was reported, "Dr. Delos Reyes testified that she was very surprised and 'about fell out of her chair' when she learned that the December 27 specimen tested positive." Report p. 16, ¶ 39. Likewise, North Coast Mental Health Associates' written report in March 2007 found she "remains compliant with program requirements and regimen as dictated by the Board" but on her most recent visit "she was quite distraught regarding the results of the EtG test. This has me greatly perplexed. It is not my intention to discuss the myriad of debates regarding this [EtG] test, however, it is my intention to reinforce that there have been no signs of relapse." Respondent Ex. M., p. 20 (under seal.) For her part, as observed by others, Ms. Johnson was "very shocked, and she didn't know how it could have been positive, and she was very upset." Dr. Delos Reyes, Tr. 209-210; Report p. 9, ¶ 19. In passing, it should be noted that nothing in the

record suggests Ms. Johnson had ever been tested using the EtG method prior to this incident using the December 27 specimen.

{¶ 27} The conversations that unfolded on February 7 and 8 when the EtG result was learned are not genuinely supportive of the conclusion that Ms. Johnson was dissembling about a relapse, much less concealing that she was impaired in her ability to practice according to acceptable and prevailing standards of care. Her conduct and statements do not support an inference of awareness of being “caught” or engaging in a cover-up. Instead, they are completely consistent with the conduct one would expect from a person who had been serious about recovery and truly was perplexed, and distraught.<sup>2</sup> Initially, on February 7 an OPHP employee notified Ms. Johnson of her EtG test result. Ms. Johnson then personally informed Dr. Delos Reyes, and Dr. Sateren at OPHP. She did so the same day she learned of the test. In the administrative hearing the witnesses related that it was observed that Ms. Johnson “was very surprised, and denied that she had drank any alcohol” which Dr. Sateren took to mean “that she had not relapsed, and that she had not been drinking, you know, beer, mixed drinks, knowingly relapsed.” Tr. 79-80. Dr. Sateren simply “instructed her to review the events around the time the specimen was collected and to ‘investigate hand sanitizer used at work’.” Report p. 9, ¶ 20; Tr. 80-81.

{¶ 28} The following day Ms. Johnson spoke with Danielle Bickers, the “Compliance Supervisor” of the Medical Board. Ms. Bickers oversees monitoring of licensees by the Board. Tr. 115. This may have been the first conversation that Ms. Bickers and Ms. Johnson ever had, according to Bickers. Tr. 128. Her initial description of their conversation was that Ms. Johnson called “to report that she had been notified she had a positive alcohol or EtG – excuse me, EtG result, and she denied use, denied alcohol use. And, we talked about possible reasons. Ms. Johnson offered some explanations as to where the result may have come from.” Tr. 126; *see also*, Report p. 9, ¶ 21. Ms. Bickers proceeded to file a complaint

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<sup>2</sup> The September 2006 SAMSHA Advisory discussed *infra* recognized that an EtG “biomarker that is positive because of exposure or unintentional consumption, which results in an allegation of use or misuse [of alcohol], casts a cloud on the recovery process. False Allegations provide incentive to disregard the intent of abstinence monitoring and may even provide the incentives to use because the individual has ‘nothing to lose’.” Respondent Ex. E, p. 7.

against Ms. Johnson “based on the [one] positive [EtG] screen.” Tr. 129, 149. She did not do any further investigation into the positive screening. Tr. 148.<sup>3</sup> Ms. Johnson was the first person the Medical Board ever sought to discipline for having a positive EtG test with no other positive test results, so far as Ms. Bickers recalled. Tr. 147.<sup>4</sup>

{¶ 30} The Hearing Examiner reviewed Ms. Johnson’s recollection of what she told Ms. Bickers, and found that she had admitted she “may have had communion wine” at Christmas Mass, and furthermore that during their February 8 conversation appellant “stated she had had [sic] punch at a family gathering and that, possibly, it had alcohol in it. She also recalled that she had speculated with Ms. Bickers about other possible sources of alcohol” including a hand sanitizer that she used repeatedly. Tr. 126-27; Report pp. 9 – 10, ¶ 21. The Hearing Examiner also noted that Ms. Johnson might have said to Ms. Bickers “that she may have gotten complacent in her recovery.” Report p. 10, ¶ 21. Ms. Bickers’ recall of the telephone conversation with appellant on February 8 was understood to be “very clearly, that she had actually consumed communal wine at Mass on December 25, 2006.” Report p. 10, ¶ 21. The Hearing Examiner quoted verbatim the following testimony: “And I had even questioned her as to how much wine. Being Catholic myself, I know how much wine you consume while you’re standing there. And we had a conversation about how it’s a sip of wine, and two days later still testing positive. So we had quite the discussion based on the communal wine.” Tr. 154.

{¶ 31} Ms. Bickers’ role as an enforcement agent for the Board may have made her somewhat less than disinterested in the outcome of this case that she had initiated. Keeping in mind the surprise if not shock that everyone (other

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<sup>3</sup> Ms. Johnson was also subjected to additional screening, performed at the Mayo Medical Laboratory in Rochester, MN, using a sample collected in Cleveland on February 12. This was specifically tested for “investigation or follow-up of alcoholism.” Mayo Laboratory reported on February 20, 2007 that they had a “normal” test for glycosylated transferring isoforms resembling those found in congenital disorders of glycosylation (CDG).” This test report was admitted at the administrative hearing as Respondent’s Ex. 1 (under seal).

<sup>4</sup> The only evidence in the record of any other legal proceeding in Ohio in which EtG evidence has been used was a case before the Medical Board in late 2004. State Ex. 8. In that matter, a Hearing Examiner relied upon one EtG test result of 460 ng/ml, and testimony of Dr. Gregory E. Skipper, M.D., who also testified in this case. That 2004 case was substantially different from this one, in that the physician had a documented history of drug abuse dating back some 20 years, and a number of documented relapses.

than perhaps Ms. Bickers) expressed when Ms. Johnson was thought to have had a positive EtG test, the February telephone conversation (related seven months later during the administrative hearing) was not entitled to significant weight. Largely it reflected speculation by appellant about what might have triggered a positive test result. Indeed, the testimony of several witnesses including even Ms. Bickers reflects some ambiguity about what constitutes a “relapse” and whether ingestion of a small amount of wine at a public religious service genuinely violated the Consent Agreement or other expectations reasonably placed upon Ms. Johnson. To be sure, Paragraph 7 of the Step II Consent Agreement stated that “Ms. Johnson shall abstain completely from the use of alcohol,” and Dr. Sateren of OPHP noted that the Board’s expectation for someone in recovery is “to be totally abstinent.” But he also recognized that from a “clinical perspective, its more complex \*\*\* [and entails] looking at the whole picture of the individual of return of [bad] behaviors, not going to meetings, taking back control, not meeting with a sponsor, not working the steps, reemergence of the kinds of behavior that were present when the diagnosis was made, and what recovery and treatment should be causing the change.” Tr. 84-85.

{¶ 32} Ms. Bickers’ undertook this enforcement action notwithstanding the miniscule amount of alcohol she recognized might reasonably be ingested at communion. She did so even though she never recalled telling Ms. Johnson “don’t drink any more communal wine” or otherwise expressing immediate concern that communion might violate Ms. Johnson’s recovery obligations. Tr. 156. In fact, Ms. Bickers was unclear if she ever discussed the abstinence requirement of Ms. Johnson’s probation with her at all. Tr. 124-25. Given that this is the first case in which the Ohio Board undertook enforcement on the basis of a single positive EtG test, other than the words “abstain completely” nothing in the record suggests that such language was actually intended to preclude someone from taking communion, using mouthwash containing alcohol, or otherwise ingesting molecules of alcohol through topical products, cooking or daily activities. For her part, Ms. Johnson testified that in all her years of treatment and monitoring no one ever advised that she should not take communion. Tr. 283.

{¶ 33} Ms. Johnson's lack of clarity in recalling her conduct around Christmas 2006 was resolved by the time of her hearing. She explained, cogently in this court's view, that she had not taken wine at Mass. Tr. 284, 299-300. She further explained that there was always an option of taking wine during the ceremony in her Catholic church, and that her understanding was whether parishioners took wine had "really been sort of a controversial issue in the church as to \*\*\* whether a person will take the wine or not." That, she testified, was why she couldn't remember for certain at an earlier time when the subject first came up "in the chaos" of February 7 - 8. Tr. 300. She explained in her testimony at the hearing that her recollection was aided "after recalling better and talking to my [adult] kids" about their attendance at the Mass. Tr. 298.

{¶ 34} A key state witness concerning the EtG test was William Closson, Ph.D. He is a forensic toxicologist and the director of the Brooklyn laboratory where appellant's specimen was sent initially. Tr. 159-60. Asked about the "amount of alcohol [that] must be consumed for EtG to be detected" he replied "normally you would expect the minimum amount to be the amount in one drink." Tr. 182. Similarly, the SAMHSA Advisory, discussed *infra*, reported that EtG and EtS biomarker testing is intended to characterize "perhaps as little as a single drink" (as opposed to other available tests that may only pick-up multiple drinks over a longer period of time.) Respondent Ex. E., p. 2. Four other relevant facts must also be kept in mind in gauging the weight fairly given to Ms. Johnson's purported admissions or contradictory statements upon learning of her EtG test result. First, her statements were made in the context of "close to five years of well-documented recovery with some good objective data to support that" as monitored by multiple doctors. (The quotation is from Dr. Sateren's testimony. Report p. 16, ¶ 38.) Second, the "standard" test for alcohol using Johnson's December 27 sample was negative. Report p. 8, ¶ 14. Third, apart from that one EtG test result "Dr. Sateren testified that OPHP had no other indications that Ms. Johnson had relapsed." *Id.* Finally, in the long interval between the December 27 urine test and her conversation on February 8 with Ms. Bickers, Ms. Johnson had submitted at least one additional test (administered on January 17, 2007)

and there is no suggestion it too was positive. Report p. 11, ¶ 23; Report p. 16, ¶¶ 37-38.<sup>5</sup>

{¶ 35} Viewed in context Ms. Johnson cannot be faulted for lacking a clear recollection six weeks after Christmas about what alcohol-containing products, or communion wine, might have produced the EtG result from the December 27 specimen. Understandably, she was upset at learning she failed her first alcohol detection test. See, Report at p. 18, ¶¶ 44 – 47. Responding as one perplexed rather than as one admitting they had been caught, Ms. Johnson talked openly to many people in the immediate aftermath of the EtG result becoming known. She explored various possibilities that might explain the test result. Her candor in doing so was not significant, probative evidence of drinking, or dissembling to obscure her relapse. The Hearing Examiner and the Medical Board were in error in concluding that Ms. Johnson’s comments or lack of clarity with Ms. Bickers about possible *de minimus* consumption of wine at communion or other possible reasons for her test result were entitled to significant weight. *But see*, Report p. 20, findings 4(e) and 5; p. 21 conclusions of law at first bullet point.

{¶ 36} A related point referenced in the Hearing Examiner’s report was likewise given undue emphasis. Viewed against the entire record, Ms. Bicker’s mere “questioning [of] Ms. Johnson’s commitment to the recovery process” in mid-2006 was entitled to no weight. Report p. 20, finding 4(g). No relapse was observed by any of the physicians reporting to the Medical Board. No test result was positive in mid-2006. No violation of Ms. Johnson’s probationary conditions was asserted to exist in mid-2006 by personnel at the Board, and no additional monitoring of Ms. Johnson was requested. The incident was trivial and the Hearing Examiner was mistaken to suggest otherwise.

{¶ 37} Finally, the Hearing Examiner took a critical view of Ms. Johnson’s apparently routine use of hospital hand-sanitizing products or household products containing alcohol. Report p. 22. That too has no weight. Nothing in the evidence suggests that anyone ever warned Ms. Johnson that she would be subjected to highly sensitive EtG testing, much less that if she were tested

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<sup>5</sup> Dr. Sateren testified in September 2007 that after February 7, 2007 all urine specimens provided by Ms. Johnson were tested for both alcohol and EtG, and that all were negative. Report p. 16, ¶ 37.

ordinary household products could produce a false-positive EtG result. OPHP does not warn participants not to use hand sanitizers. Tr. 99. Dr. Delos Reyes testified that it was not until December 2006 or January 2007 that she even mentioned to Ms. Johnson the potential that innocent exposures to products containing alcohol could be problematic. The doctor was vague about when this occurred, and it is reasonable to infer that the conversation may well have occurred following the time everyone learned about Ms. Johnson's result on the December 27 test. Report p. 19, ¶ 50; Tr. 208-09. Dr. Delos Reyes knew that Ms. Johnson used alcohol-based hand sanitizers "all the time, because in her research position, basically she was seeing patient after patient. And, particularly during the winter months, everybody is kind of carrying germs around \*\*\* so that would have been a time when she would more likely have been using that type of thing. And, actually \*\*\* most hospitals, they have them basically attached to the walls and you, basically, continuously wash your hands." Tr. 209.

#### ***VI. Evidence from the EtG Test***

{¶ 38} Based upon the Hearing Examiner's Report and the discussion of the case reflected in the Minutes of the Medical Board's December meeting, the other evidence heavily relied-upon was the single positive EtG test. Despite the fact the record contains very strong direct and circumstantial evidence casting doubt upon the Board's reliance upon that single test and that current scientific knowledge teaches away from using EtG testing as primary evidence in legal proceedings, the Board adopted the Hearing Examiner's view this was strong if evidence when coupled with the so-called admissions by Ms. Johnson.

{¶ 39} Placing primary reliance on an EtG test is inappropriate and scientifically unsupportable at this time. Recently the Center for Substance Abuse Treatment, within the Substance Abuse and Mental Health Services Administration ("SAMHSA") of the U.S. Department of Health and Human Services, published a bulletin addressing EtG, EtS, and other biomarker tests. Advisory Vol. 5, Issue 4, (September 2006). The Advisory was entitled "The Role of Biomarkers in the Treatment of Alcohol Use Disorders" and it was admitted into evidence as Respondent Ex. "E." According to that Advisory, there remains

an issue “whether exposure to alcohol or to the vapors of alcohol in many commercial products, such as personal care items, over-the-counter medications, cleaning products, desserts, wine vinegar, and the like, or combinations of these products may cause elevation in EtG or EtS that could appear to be a return to drinking.” Advisory p. 6. Nevertheless, this is promising science. Alcohol biomarkers are physiological indicators of alcohol exposure or ingestion, “and may reflect the presence of an alcohol use disorder.” Among the direct and indirect biomarkers of drinking are tests for ethyl glucuronide (EtG) and ethyl sulfate (EtS), both of which “may become positive shortly after even low-level exposure to alcohol and may remain detectable in urine for several days.” Advisory p. 1.

{¶ 40} One witness at Ms. Johnson’s administrative hearing was Gregory E. Skipper, M.D. He began performing EtG tests in 2002 to monitor physicians for the medical board in Alabama, Tr. 229, 231-33, 241, and was one of the key people involved in publishing the federal Advisory in 2006.<sup>6</sup> Tr. 243-45.

{¶ 41} A recognized concern in using the EtG test is its high sensitivity to even inadvertent, low-level alcohol exposure, which can provide an unreliable result. The Advisory reports, for instance, that “[b]ecause of the purported high sensitivity of these tests, exposure to alcohol that is present in many daily use products might also result in a positive laboratory test for these biomarkers.” Exhibit “E” at p. 3. Similarly, much testimony in the record addressed everyday products that may produce a false-positive result, suggesting a relapse, when only benign exposure to everyday products at home or work is the actual cause. *E.g.* Tr. 95.

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<sup>6</sup> Counsel for the Board pointed out to Dr. Skipper, one of the 12 members of the Committee responsible for the Advisory, that the “fine print” at the end of it states that “[t]he content of this publication does not necessarily reflect the views or policies of SAMSHA or HHS.” Dr. Skipper was surprised and unaware what that disclaimer meant. Tr. 251-52. This court takes the Advisory as significant evidence, comparable to a learned treatise that may be considered under Evid. R. 803(18). The Advisory was presented formally by a federal agency acting within its defined field, has been widely distributed, and includes nearly a page of references to supporting scientific publications. The Advisory has been cited at least once in medical literature addressing EtG, namely in a recent Swedish publication more fully referenced in footnote 7 below. Significant expert testimony in the record documents the importance of the Advisory within the relevant scientific community. Accordingly, the disclaimer can mean only that this Advisory is not been published in the Federal Register, or otherwise given legal or regulatory status by the Government, not that the science reported in it is flawed.

{¶ 42} Dr. Skipper first became aware of the EtG test in 2001 at a World Health Organization conference in Italy. Tr. 231. Dr. Skipper testified that since then scientific studies of EtG remain ongoing, including work not yet published. Tr. 253. The court's own modest research identified two very recent professional papers addressed to the reliability of EtG testing, one of which was not yet available at the time of the administrative hearing in this case.<sup>7</sup> While not considered because they are not formally part of the record, they illustrate what no one disputes: serious, peer-reviewed research remains underway because the science of EtG is not fully understood.

{¶ 43} Dr. Sateren also testified that EtG test has value but must be used with care. This test only became commercially available in 2003 or 2004, and Ohio started using it a year or so later. Tr. 110. The state of Michigan does not use the test at all, and the Federation of State Physician Health Programs recognized concerns prompting its Toxicology Committee to issue a position statement similar to the Advisory. Tr. 102 -04. While the Hearing Examiner concluded that Dr. Sateren believes ethyl alcohol is the only source for production of EtG, Report p. 8, ¶ 15, a review of his testimony shows his views of EtG were nuanced due to the "ubiquitous nature of alcohol in our environment and society." Tr. 94.

{¶ 44} EtG testing has been referenced in six recent court cases, two of which involved medical board proceedings like this one. *Bergin v. McCall* (D. Or. 2007), Case No. 06-6311-HO, 2007 U.S. Dist. LEXIS 60353 was a civil rights challenge to Oregon Medical Board proceeding; *Perez-Rocha, M.D. v. Pa.*

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<sup>7</sup> In January 2008 researchers from the Norwegian Institute of Public Health, Division of Forensic Toxicology and Drug Abuse, published a paper by Hoiseith, et al., entitled "Comparison between the urinary alcohol markers EtG, EtS, and GTOL/5-HIAA in a controlled drinking experiment." It was originally published online by Oxford University Press on behalf of the Medical Council on Alcohol. <http://alcalc.oxfordjournals.org/cgi/content/abstract/43/2/187> (last visited 6/2/2008). The sample size was ten men. Members of the Department of Clinical Neuroscience, Karolinska Institute and Karolinska University Hospital, in Stockholm, Sweden published a "technical brief" by Helander, et al., entitled "Postcollection Synthesis of Ethyl Glucuronide by Bacteria in Urine May Cause False Identification of Alcohol Consumption" in *Clinical Chemistry* 53:1855-1857, (August 23, 2007) found at <http://www.clinchem.org/cgi/content/full/53/10/1855> (last visited 6/2/2008). In part it concluded "[t]he presence of EtG in urine is not a unique indicator of recent drinking, but might originate from post collection synthesis if specimens are infected with *E. coli* and contain ethanol." Testimony of Dr. Sateren alluded to this research. Tr. 111. The existence of these studies illustrates that concerns expressed by witnesses and within the Advisory remain worthy of scientific study because EtG testing remains "experimental." Advisory p. 3.

(Commonwealth Court 2007), 933 A.2d 1102, was a direct appeal of a license suspension imposed by the Pennsylvania Medical Board. *New York v. Oehler* (County Court, Warren Co. 2006), 12 N.Y. Misc. 3d 1101, 821 N.Y.S.2d 380 addressed a probation violation proven by both an EtG test and observation of numerous empty and partially empty beer cans during an unannounced home visit. *Tauck v. Tauck* (Superior Ct. Middlesex), 2007 Conn. Super. LEXIS 2618 involved a divorce case in which one spouse was ordered to regularly provide EtG tests as a condition for sharing custody of her children. Two lawsuits filed recently against laboratories alleged they were breaching a tort duty to use reasonable care to avoid erroneous EtG test results, or established an arbitrary cutoff limit for EtG tests that resulted in scientifically unreliable results. *Garlick v. Quest Diagnostics, Inc.* (D. N. J.), 2007 U.S. Dist. LEXIS 95160 (not for publication) (Rule 12(b)(6) motion granted in purported class action) (now on appeal to the Third Circuit); *Wilson v. Compass Vision, Inc.* (N.D. Cal.), 2007 U.S. Dist. LEXIS 95500 (Rule 12(b)(6) motion to dismiss denied.)

{¶ 45} The Ohio Medical Board's decision to consider Ms. Johnson's EtG test as admissible evidence is not challenged by appellant under the *Daubert* line of cases. In view of the Advisory and testimony in the record this court has no basis to disturb the Board's decision to admit it as evidence.

{¶ 46} Nevertheless, while reliable enough to be admissible the EtG test must be used with caution. The specific warnings published in the Advisory and the other credible concerns reviewed in the medical testimony in this case document serious scientific concern about over-reliance upon this test as a primary indicator of relapse given the current state of knowledge. Over-reliance is improper from both a legal and a scientific perspective. The scientific method in general and the *Daubert* line of cases in particular caution us to be aware of "whether the method has a known or potential error rate." *Terry v. Caputo*, 115 Ohio St.3d 351, 2007-Ohio-5023, at ¶ 25 citing *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993), 509 U.S. 579, at 593-94, 125 L.Ed.2d 469, 113 S.Ct. 2786. Dr. David Goodstein's article in the Federal Judicial Center's *Reference Manual on Scientific Evidence* (2d. ed. 2000) (West ed. at p. 82), entitled "How Science Works" points out that *Daubert* contemplates "[t]here should be a known

rate of error *that can be used in evaluating the results*" of scientific evidence. (Emphasis added.) That is merely another way of saying that one must consider any limitations on scientific reliability of evidence even *after* that evidence is admitted in legal proceedings. Accordingly, despite the fact that the EtG test is increasingly used to monitor populations suspected of covert drinking, including probationers and recovering medical professionals, it is contrary to the rules of science and contrary to law to afford it much weight standing alone.

{¶ 47} The Medical Board gave too little consideration to the cautionary evidence in this record, most notably the paragraph placed prominently on page one of the Advisory. It reads: "Currently, the use of an EtG test in determining abstinence lacks sufficient proven specificity for use as primary or sole evidence that an individual prohibited from drinking, in a criminal justice or a regulatory compliance context, has truly been drinking. Legal or disciplinary action based solely on a positive EtG, or other test discussed in this Advisory, is inappropriate and scientifically unsupportable at this time. These tests should currently be considered as potential valuable clinical tools, but their use in forensic settings is premature."

{¶ 48} The body of the Advisory published less than two years ago elaborated upon matters summarized in the warning. Referring to developmental testing of EtG as having occurred primarily in only one European laboratory, SAMSHA recommended that "it is prudent to await replication of results from another independent investigator." Advisory p. 3. Further, the Advisory cautioned, "[u]ntil considerable more research has occurred, use of these markers should be considered experimental." *Id.* "[A]s yet there has been little research on the new direct biomarkers, particularly on the very sensitive biomarkers, EtG and EtS. At issue is whether exposure to alcohol or to the vapors of alcohol in many commercial products, such as personal care items, over-the-counter medications, cleaning products, desserts, wine vinegar, and the like or combinations of these products may cause elevation in EtG or EtS that could appear to be a return to drinking. Exposure to these products combined with possible influences of individual variables such as gender, age, and health status on alcohol biomarker responses has not been adequately studied to date." Advisory p. 6.

{¶ 49} The Advisory and witnesses with genuine familiarity with the science involved in EtG testing who testified agree about the sensitivity of the test and the need for further research to refine it. Seeking to more accurately identify those who truly consumed alcohol, and to minimize false-positive test results from unintended or innocent exposure, much consideration has been given to selection of a cutoff value or concentration level at which an EtG test should sensibly be considered “positive.” The Advisory did not recommend any specific cutoff point for a positive EtG test result. Tr. 250-52. Instead, it recommended factors to take into account in setting a cutoff value, among which should be “the base rate of problem drinking in the population being evaluated, [and] the individual’s likely exposure to products containing nonbeverage alcohol.” Advisory p. 6.

{¶ 50} Apparently more for convenience than out of some conclusion of scientific reliability, the Ohio Medical Board accepted a test result greater than 250 ng/ml as “positive” for alcohol consumption by Ms. Johnson simply because that is the standard otherwise employed by its testing laboratory. Dr. Sateren candidly acknowledged “we could choose 100, we could choose 250, we could choose 500” but “250 seems to be the majority of what state physician health programs are using.” Tr. 93. In the discussion at the Medical Board hearing, the doctor who moved to approve the Hearing Examiner’s findings of fact “stated that she does not want the EtG test to be on trial here. The Board is not going to make a conclusion today, nor should it, about what the cutoff should be, that it is the absolute reliable test, or that it’s not.” Board Minutes p. 17184. Another physician likewise observed “the Board doesn’t know the absolute cutoff number that should be used, [although Ms. Johnson’s test at] 1800 does seem unlikely to be an incidental finding. When most states and experts are using levels significantly less than that, its hard to ignore. \*\*\* [P]erhaps, the Board should only look at a negative as confirming abstinence, but not a positive as confirming a relapse.” Minutes p. 17185.

{¶ 51} The Alabama Physician Health Program and its Medical Board (in which Dr. Skipper is personally involved) use 100 ng/ml as the cut-off.<sup>8</sup> Tr. 258. However, that level is used not as a conclusive value, but only as a place to start further investigation with the subject, their family or co-workers who might observe a relapse, or through additional chemical testing. Tr. 258-59.

{¶ 52} While the 1800 ng/ml result reported for Ms. Johnson was unlikely to have resulted from incidental exposure, that explanation cannot be ruled out according to Dr. Skipper. Tr. 262. He testified that with a relatively low cut-off point of 250 “you’ve got to be prepared to consider that you may be picking up incidental exposure.” Tr. 236. Further, while conceding that Ms. Johnson’s test result at 1800 fell well outside the range of 300-800 “typically” seen from incidental exposure, Dr. Skipper testified that “we cannot definitively conclude with reasonable medical certainty from this value alone that alcohol beverages were intentionally consumed.” Tr. 241, Respondent Ex. “H” at p. 2. Given his training and experience with EtG, this court accords Dr. Skipper’s views substantial weight.

{¶ 53} Dr. Closson, director of the Brooklyn laboratory, testified that in his understanding “[t]he level of 250, the cut-off, has been determined by most toxicologists and most researchers as the most reliable level to indicate somebody who has consumed alcohol.” Tr. 174, 180, 184. However, in evaluating his views it must be kept in mind that at the time Ms. Johnson’s EtG test was run in early 2007 the Brooklyn laboratory where Dr. Closson worked did not yet perform EtG testing. Tr. 191. Moreover, like Dr. Skipper, the testimony by Dr. Closson recognized that, although unlikely, an incidental exposure to alcohol-containing products (other than consuming alcohol) could explain appellant’s test level of 1800 ng/ml, and “this explanation cannot be ruled out.” Tr. 194-95.

{¶ 54} Dr. Sateren testified that Arizona uses a cut-off level of 2000 ng/ml, and he concluded that “[t]here’s a lot of variability across the country in terms of what cut-off to use, because of the extreme sensitivity of the test.” Tr. 77.

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<sup>8</sup> As a point of reference, heavy drinkers entering detox and undergoing withdrawal will test 50-100,000 ng/ml for EtG. Tr. 260-61.

{¶ 55} In deciding whether new scientific evidence such as DNA should be admissible, Ohio courts have rejected a methodology of mere “scientific nose-counting” in which the value of evidence turns upon how many other jurisdictions have come to accept similar evidence. That approach, known within the legal community as the *Frye* standard based upon *Frye v. United States* (C.A.D.C. 1923), 293 F. 1013, was discarded in *State v. Williams* (1983), 4 Ohio St.3d 53, 446 N.E.2d 444, and *State v. Pierce* (1992), 64 Ohio St.3d 490, 597 N.E.2d 107. Yet, essentially informal nose-counting was used here by the Medical Board when it came to setting a cutoff point for Ms. Johnson’s EtG test result. That was contrary to law and sound science. Having acknowledged the absence of a well-accepted cutoff point grounded in good scientific research, the Board was not free to act on an *ad hoc* basis or to embrace a particular test cutoff point merely because as a generality researchers in this experimental field currently think that a particular level has utility. Where a test is used in forensic settings without some recognized standard identified as reliable and supportable in published, peer-reviewed literature, and where no test standard is formally adopted by statute or administrative Rule, the *ad hoc* approach taken here cannot be dispositive, or nearly so. It leaves those like Ms. Johnson at the whim of the decision-maker.

## VII. CONCLUSIONS

{¶ 56} The Medical Board was required to address a challenging case, premised largely upon science that a federal agency recently described as still “experimental.” Very limited reliance upon Ms. Johnson’s one EtG test result would have been permissible, but the Board went far a field. Effectively the Board disregarded the strong cautionary language in the Advisory as well as the most probative testimony received at Ms. Johnson’s hearing. In addition, the Board disregarded the evidentiary value of Ms. Johnson’s years of negative tests for alcohol and the strong testimony from trained professionals who supervised Ms. Johnson’s probationary period. In short, the Board acted contrary to the greater weight of the probative evidence in this record.

{¶ 57} Much energy in this case was devoted to debating whether 250 ng/ml is an appropriate cutoff point for a positive EtG test, or whether some other number is more appropriate. That is the wrong focus. As the Advisory and Dr. Skipper plainly recognized, EtG testing remains at such an early stage that good science demands no test result be given conclusive effect in legal proceedings. EtG testing must only be used with more traditional evidence – such as observations by those living and working with the person being monitored for alcoholism – whether it refutes or corroborates any single EtG test result. In the end, the Medical Board afforded dispositive weight to one positive EtG test coupled only with ambiguous statements by Ms. Johnson having little evidentiary value. The Board's decision was not supported by reliable, probative, and substantial evidence.

{¶ 58} Something should be said in closing about the musings of members of the Board as they decided Ms. Johnson's case. Recognizing that just as Ms. Johnson's own informal statements to Ms. Bickers speculating about how she might have given one positive EtG test cannot sensibly be given significant weight, so too there is a danger in attaching too much emphasis to statements by Board members as they discussed this case and voted sanctions. Nevertheless, one should not ignore the fact that immediately before the Board voted the physician-member who discussed this case at more length than most, and who formally proposed the final sanctions that were then imposed upon Ms. Johnson stated: "if it's the Board's conclusion that this is a relapse, she would be in favor of a suspension of less than 90 days [as recommended by the Hearing Examiner.] She stated that she would probably go for 30 days, the reason being that, if she [appellant] did relapse, this would be a minor one as the Board evaluates relapses. What the Board should do is watch Ms. Johnson a little longer." Minutes p. 17186. Respectfully, the Board should have done exactly that *before* voting sanctions. Watching Ms. Johnson a little longer, and gathering and considering other up-to-date probative evidence (like the report from the Mayo Laboratory referenced at footnote 3, *supra*) would have been very prudent given the number of years of Ms. Johnson's apparent sobriety, and the experimental nature of the EtG test. Further investigation would have reflected both "good

science” and the fairness due Ms. Johnson under the law. The Medical Board’s Order entered December 12, 2007 is **REVERSED**.

**IT IS SO ORDERED.**

  
RICHARD A. FRYE, JUDGE

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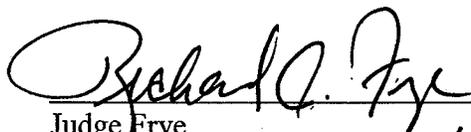
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4. Appellant shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to her by another so authorized by law who has full knowledge of Appellant's history of chemical abuse and/or dependency;
5. Appellant shall abstain completely from the use of alcohol;
6. Appellant shall maintain continued compliance with the terms of any treatment contract entered into with treatment providers, including the Ohio Physicians Health Program;
7. The person or entity previously approved by the Medical Board to serve as Appellant's supervising physician pursuant to the January 8, 2003 Step II agreement shall continue as Appellant's designated supervising physician under this Order, unless Appellant submits to the Medical Board for its prior approval the name and curriculum vitae of an alternative supervising physician to whom Appellant shall submit the required urine specimens. Appellant and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Medical Board of any positive screening results. In the event that the designated supervising physician becomes unable or unwilling to so serve, Appellant must immediately notify the Medical Board in writing and make arrangements acceptable to the Medical Board for another supervising physician as soon as practicable. All screening reports and supervising physician reports required under this paragraph must be received in the Medical Board's offices no later than the due date for Appellant's quarterly declaration;
8. Appellant shall submit blood and urine specimens for analysis for drugs and alcohol, without prior notice at such times as the Medical Board may request and at Appellant's expense;
9. Appellant shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three (3) times per week, unless otherwise determined by the Medical Board. Appellant shall submit acceptable documentary evidence of continuing compliance with this program, which must be received in the Medical Board's offices no later than the due date for Appellant's quarterly declarations.

The Stay will be lifted if evidence is provided to this Court showing that Appellant has violated any of the above conditions during the pendency of this appeal.

It is so ordered.

  
\_\_\_\_\_  
Judge Frye  
1/24/08

Copies to: Elizabeth Y. Collis, Esq., Counsel for Appellant  
Karen Unver, Esq., Counsel for Appellee

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IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

CYNTHIA J. JOHNSON, P.A.,

Appellant,

v.

STATE MEDICAL BOARD OF OHIO,

Appellee.

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Case No. 08CVF01-00986

Judge Frye

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ORDER

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Pursuant to Franklin Cty. Loc. R. 39.04, this Court hereby modifies the Case  
Schedule sua sponte for good cause as follows:

<u>Date</u>	<u>Description</u>
01/18/08	Filing Notice of Appeal
02/15/08	Filing of Record
02/22/08	Dispositive Motions
03/07/08	Filing of Appellant's Brief
03/21/08	Filing of Appellee's Brief
03/28/08	Filing of Appellant's Reply Brief

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
2008 JAN 25 AM 10:34  
CLERK OF COURTS

It is so ordered.

  
\_\_\_\_\_  
Judge Frye

1/24/08

Copies to: Elizabeth Y. Collis, Esq., Counsel for Appellant  
Karen A. Unver, Esq., Counsel for Appellee

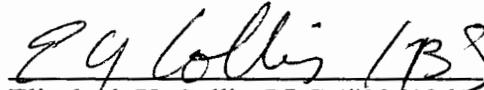


failed to show by reliable, probative or substantial evidence that Ms. Johnson violated conditions placed on her certificate to practice as a physician's assistant in violation of R.C. 4730.25(B)(20).

Contrary to the assertion of Appellee, no reliable, probative or substantial evidence was introduced by the State to show that Ms. Johnson has relapsed or that her practice has fallen below acceptable standards of care.

Therefore, the decision of Appellee to suspend Ms. Johnson's license for thirty (30) days and to require that she enter into a two-year aftercare contract should be reversed by this Court.

Respectfully submitted,



Elizabeth Y. Collis, LLC (#0061961)  
**Collis, Smiles & Collis, LLC**  
1650 Lake Shore Drive, Suite 225  
Columbus, Ohio 43204  
Tele: (614) 486-3909  
Fax: (614) 486-2129  
Email: [beth@collislaw.com](mailto:beth@collislaw.com)

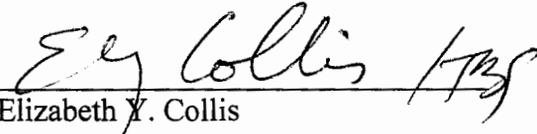
Counsel for Appellant  
Cynthia J. Johnson, P.A.

2008 JAN 17 P 4:47  
STATE MEDICAL BOARD

STATE MEDICAL BOARD  
2008 FEB -1 P 1:12

**CERTIFICATE OF SERVICE**

I certify that this *Notice of Appeal* was served via hand delivery this 17<sup>th</sup> day of January, 2008, upon Appellee, Ohio State Medical Board, 30 E. Broad Street, 3<sup>rd</sup> Floor, Columbus, Ohio 43215, and upon counsel for Appellee, Karen Unver, Esq., Assistant Attorney General, Office of the Ohio Attorney General, Health and Human Services Section, 30 East Broad Street, 26<sup>th</sup> Floor, Columbus, Ohio 43215.

  
Elizabeth Y. Collis

STATE MEDICAL BOARD  
OF OHIO  
2008 FEB -1 P 1:44

STATE MEDICAL BOARD  
OF OHIO  
2008 JAN 17 P 4:48

# 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

December 12, 2007

Cynthia Joan Johnson, P.A.  
2925 Coleridge Road  
Cleveland Heights, OH 44118

Dear Ms. Johnson:

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 December 12, 2007, 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 MD*  
Lance A. Talmage, M.D. *RW*  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3931 8317 8585  
RETURN RECEIPT REQUESTED

Cc: Elizabeth Y. Collis, Esq.  
CERTIFIED MAIL NO. 91 7108 2133 3931 8317 8592  
RETURN RECEIPT REQUESTED

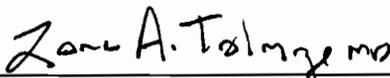
*Mailed 1.04.08*

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 December 12, 2007, 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 Cynthia Joan Johnson, P.A., as it appears in the Journal of the State Medical Board of Ohio.

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

(SEAL)

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

December 12, 2007  
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF \*  
\*  
CYNTHIA JOAN JOHNSON, P.A. \*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on December 12, 2007.

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. **REVOCATION, STAYED; SUSPENSION:** The certificate of Cynthia Joan Johnson, P.A., to practice as a physician assistant in the State of Ohio, shall be REVOKED. Such revocation is STAYED and Ms. Johnson's certificate shall be SUSPENDED for an indefinite period of time, but not less than 30 days.
- B. **INTERIM MONITORING:** During the period that Ms. Johnson's certificate to practice as a physician assistant in Ohio is suspended, Ms. Johnson shall comply with the following terms, conditions, and limitations:
1. **Obey the Law:** Ms. Johnson shall obey all federal, state, and local laws, and all rules governing the practice of allopathic medicine and surgery in Ohio.
  2. **Personal Appearances:** Ms. Johnson shall appear in person for quarterly interviews before the full Board or its designated representative. The first such appearance shall take place on the date her appearance would have been scheduled pursuant to her January 8, 2003, Step II Consent Agreement with the Board. Subsequent personal appearances must occur every three months

thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

3. **Quarterly Declarations:** Ms. Johnson 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 the date her quarterly declaration would have been due pursuant to her January 8, 2003, Step II Consent Agreement with the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
4. **Abstention from Drugs:** Ms. Johnson shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to her by another so authorized by law who has full knowledge of Ms. Johnson's history of chemical abuse and/or dependency.
5. **Abstention from Alcohol:** Ms. Johnson shall abstain completely from the use of alcohol.
6. **Comply with the Terms of Treatment and Aftercare Contract:** Ms. Johnson shall maintain continued compliance with the terms of the treatment and aftercare contracts entered into with her treatment provider, provided that, where terms of the treatment and aftercare contracts conflict with terms of this Order, the terms of this Order shall control.
7. **Drug & Alcohol Screens; Supervising Physician:** Ms. Johnson shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Ms. Johnson 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.

Ms. Johnson shall abstain from use or consumption of poppy seeds or any other food or liquid that may produce false results in a toxicology screen.

The person or entity previously approved by the Board to serve as Ms. Johnson's supervising physician pursuant to the January 8, 2003, Step II agreement is hereby approved to continue as Ms. Johnson's designated supervising physician under this Order, unless within thirty days of the effective date of this Order, Ms. Johnson submits to the Board for its prior approval the name and curriculum vitae of an alternative supervising physician to whom Ms. Johnson shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Ms. Johnson.

Ms. Johnson and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

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

Ms. Johnson shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Order, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

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

Ms. Johnson shall further ensure that the previously designated supervising physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

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

8. **Submission of Blood or Urine Specimens upon Request:** Ms. Johnson shall submit blood and urine specimens for analysis for drugs and alcohol, without prior notice at such times as the Board may request and at Ms. Johnson's expense.
9. **Rehabilitation Program:** Ms. Johnson shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Ms. Johnson shall submit acceptable documentary evidence of continuing compliance with this program, which must be received in the

Board's offices no later than the due date for Ms. Johnson's quarterly declarations.

10. **Continued Compliance with a Contract with an Impaired Professionals Committee**: Ms. Johnson shall maintain continued compliance with the terms of the 2002 contract entered into with OPHP, or with another impaired professionals committee approved by the Board, to assure continuous assistance in recovery and/or aftercare, provided that where terms of the aftercare contract or advocacy contract conflict with the 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 Ms. Johnson'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**: Ms. Johnson shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  2. **Compliance with Interim Conditions**: Ms. Johnson 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 she submits her application for reinstatement or restoration, Ms. Johnson shall provide written documentation acceptable to the Board verifying that Ms. Johnson otherwise holds a full and unrestricted license to practice as a physician assistant in all other states in which she is licensed at the time of application or has been in the past licensed, or that she would be entitled to such license but for the nonpayment of renewal fees.
  4. **Demonstration of Ability to Resume Practice**: Ms. Johnson shall demonstrate to the satisfaction of the Board that she can resume practice as a physician assistant in compliance with acceptable and prevailing standards of care under the provisions of her 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 Ms. Johnson has successfully completed any required inpatient treatment.
    - b. Evidence of continuing full compliance with a post-discharge 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.<sup>1</sup>

- c. Evidence of continuing full compliance with this Order.
- d. Two written reports indicating that Ms. Johnson's ability to practice has been evaluated for chemical dependency and/or impairment and that she has been found capable of practicing according to acceptable and prevailing standards of care. The evaluations shall have been performed by individuals or providers approved by the Board for making such evaluations. Moreover, the evaluations shall have been performed within sixty days prior to Ms. Johnson's application for reinstatement or restoration. The reports of evaluation shall describe with particularity the bases for the determination that Ms. Johnson has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon her practice.

5. **Additional Evidence of Fitness To Resume Practice:** In the event that Ms. Johnson has not been engaged in the 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 her fitness to resume practice.

D. **PROBATION:** Upon reinstatement or restoration, Ms. Johnson's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least one year:

1. **Obey the Law:** Ms. Johnson shall obey all federal, state, and local laws, and all rules governing the practice as a physician assistant in Ohio and in the state in which she is practicing.
2. **Terms, Conditions, and Limitations Continued from Suspension Period:** Ms. Johnson shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
3. **Absence from Ohio:** Ms. Johnson 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

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<sup>1</sup>This rule and the other impairment-related rules in Chapter 4731-16, Ohio Administrative Code, will soon be applicable to holders of Ohio physician assistant certificates, per Rule 4730-1-07(B), Ohio Administrative Code, which becomes effective on October 31, 2007.

where the Board can be assured that probationary monitoring is otherwise being performed.

- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Ms. Johnson's certificate will be fully restored.
- F. **RELEASES:** Ms. Johnson shall provide continuing authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records of whatever nature, by any and all parties that provide treatment or evaluation for Ms. Johnson's psychiatric treatment, chemical dependency and/or related conditions, or for purposes of complying with this Order, whether such treatment or evaluations occurred before or after the effective date of this Order. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43, Ohio Revised Code, and are confidential pursuant to statute.

Ms. Johnson shall also provide the Board written consent permitting any treatment provider from whom Ms. Johnson obtains treatment to notify the Board in the event she 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.

- G. **VIOLATION OF THE TERMS OF THIS ORDER:** If Ms. Johnson violates the terms of this Order in any respect, the Board, after giving her notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of her certificate.
- H. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Ms. Johnson shall provide a copy of this Order to all employers or entities with which she is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where she has privileges or appointments. Further, Ms. Johnson shall provide a copy of this Order to all employers or entities with which she contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where she applies for or obtains privileges or appointments. This requirement shall continue until Ms. Johnson receives from the Board written notification of the reinstatement or restoration of her certificate to practice as a physician assistant in Ohio.
- I. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Ms. Johnson shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which she

currently holds any professional license. Ms. Johnson shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which she applies for any professional license or reinstatement or restoration or restoration of any professional license. Further, Ms. Johnson shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board. This requirement shall continue until Ms. Johnson receives from the Board written notification of the reinstatement or restoration of her certificate to practice allopathic medicine and surgery in Ohio.

- J. **SUPERSEDE PREVIOUS STEP II CONSENT AGREEMENT:** This Order shall supersede the terms and conditions set forth in the January 8, 2003, Step II Consent Agreement between Ms. Johnson and the Board.

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

(SEAL)

*Lance A. Talmage MD*

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

December 12, 2007

Date

**REPORT AND RECOMMENDATION  
IN THE MATTER OF CYNTHIA JOAN JOHNSON, P.A.**

The Matter of Cynthia Joan Johnson, P.A., was heard by Gretchen L. Petrucci, Hearing Examiner for the State Medical Board of Ohio, on September 18, 2006.

**INTRODUCTION**

**I. Basis for Hearing**

- A. By letter dated April 12, 2007, the State Medical Board of Ohio [Board] notified Cynthia Joan Johnson, P.A., that it had proposed to take disciplinary action against her certificate to practice as a physician assistant. The Board based its proposed action on an allegation that Ms. Johnson had violated a consent agreement with the Board by providing a urine specimen on or about December 27, 2006, that was confirmed for the presence of ethyl glucuronide, a metabolite of alcohol.

The Board alleged that Ms. Johnson's acts, conduct and/or omissions constitute: (1) "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice" as set forth in Section 4730.25(B)(5), Ohio Revised Code; and/or (2) "[v]iolation of the conditions placed by the board on a certificate to practice as a physician assistant, a certificate to prescribe, a physician supervisory plan, or supervision agreement" as set forth in Section 4730.25(B)(20), Ohio Revised Code. Accordingly, the Board advised Ms. Johnson of her right to request a hearing in this matter. (State's Exhibit 1A)

- B. By letter received by the Board on April 25, 2007, Elizabeth Y. Collis, Esq., requested a hearing on behalf of Ms. Johnson. (State's Exhibit 1B)

**II. Appearances at the Hearing**

- A. On behalf of the State of Ohio: Marc Dann, Attorney General, by Karen A. Unver, Assistant Attorney General.
- B. On behalf of Ms. Johnson: Elizabeth Y. Collis, Esq.

## EVIDENCE EXAMINED

### I. Testimony Heard

#### A. Presented by the State

Cynthia Joan Johnson, P.A., upon cross-examination  
Stanley Gene Sateren, M.D.  
Danielle Bickers  
William J. Closson, Ph.D.

#### B. Presented by the Respondent

Ms. Johnson, upon direct examination  
Christina M. Delos Reyes, M.D.  
Gregory E. Skipper, M.D.

### II. Exhibits Examined

#### A. Presented by the State

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

State's Exhibit 2: January 2003 Step II Consent Agreement between the Board and Cynthia Joan Johnson, P.A.

State's Exhibit 3: October 2002 Step I Consent Agreement between the Board and Ms. Johnson.

State's Exhibit 4: Toxicology results for Ms. Johnson's urine specimen of December 27, 2006.

State's Exhibit 5: November 2002 Advocacy Agreement between the Ohio Physicians Health Program<sup>1</sup> and Ms. Johnson. [Note: Post-hearing, this exhibit was placed under seal.]

State's Exhibit 6: September 12, 2007, letter from William J. Closson, Ph.D.

State's Exhibit 7: Certificate of authenticity for State's Exhibits 2 and 3, and for the remaining pages of State's Exhibit 7, which relate to Ms. Johnson's information in the Ohio eLicense Center database, as of May 31, 2007.

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<sup>1</sup>The Ohio Physicians Health Program was formerly known as the Ohio Physicians Effectiveness Program, Inc. (Hearing Transcript at 57) This Report and Recommendation shall refer to the entity using its current name, Ohio Physicians Health Program.

State's Exhibit 8: Report of Remand in the *Matter of Willie L. Josey, M.D.*, and the testimony of Gregory E. Skipper, M.D., from the October 26, 2004, hearing in that proceeding.

B. Presented by the Respondent

Respondent's Exhibit C: April 18, 2007, letter from Harris C. Taylor, M.D.

Respondent's Exhibit E: Center for Substance Abuse Treatment. "The Role of Biomarkers in the Treatment of Alcohol Use Disorders." *Substance Abuse Treatment Advisory*. Volume 5, Issue 4, September 2006.

Respondent's Exhibit F: May 14, 2007, letter from Christina M. Delos Reyes, M.D.

Respondent's Exhibit G: Dr. Delos Reyes' curriculum vitae.

Respondent's Exhibit H: May 10, 2007, letter from Gregory E. Skipper, M.D.

Respondent's Exhibit I: Dr. Skipper's curriculum vitae.

Respondent's Exhibit J: A list of possible sources of incidental exposure to ethanol and a list of over-the-counter medications that contain alcohol.

Respondent's Exhibit L: March 6, 2007, letter from Thomas J. King, M.D., and results of laboratory tests conducted between November 16, 2006, and February 13, 2007, redacted in part. [Note: Post-hearing, this exhibit was placed under seal.]

Respondent's Exhibit M: Twenty-one progress reports from January 2004 through June 2007 from James Priester, Ph.D., LISW, regarding Ms. Johnson. [Note: Post-hearing, this exhibit was placed under seal.]

Respondent's Exhibit N: Three progress reports from Toni Louise Carman, M.D. [Note: Post-hearing, this exhibit was placed under seal.]

Respondent's Exhibit O: Ms. Johnson's Alcohol Anonymous attendance logs from October 6, 2002, through September 4, 2007. [Admitted under seal]

Respondent's Exhibit P: Certificate of completion of Out-Patient Treatment Program at Glenbeigh Health Sources and January 9, 2004, continuing care progress report. [Note: Post-hearing, this exhibit was placed under seal.]

\*Respondent's Exhibits A, B, D, and K were not admitted into the record.

## PROCEDURAL MATTER

After completion of the hearing, the Hearing Examiner determined that several of the admitted exhibits should have been admitted under seal because they are patient records and/or documents related to alcohol and drug abuse treatment. See Section 4731.22(F)(5), Ohio Revised code, and 42 U.S.C. 290ee-3. *Sua sponte* on October 30, 2007, the Hearing Examiner reopened the hearing record and readmitted State's Exhibit 5 and Respondent's Exhibits L, M, N, and P under seal.

## 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.

### Ms. Johnson's Background and Her Ohio Certificate

1. Cynthia Joan Johnson, P.A., graduated from Miami University in Oxford, Ohio, with a bachelor's degree in microbiology. Afterward, she worked as a medical technologist at University Hospitals in Cleveland, Ohio, for 20 years. In that capacity, Ms. Johnson analyzed body fluid samples to determine the various chemicals contained therein. In 1999, Ms. Johnson graduated from the physician assistant program at Cuyahoga Community College in Cleveland. In August 1999, the Board issued a physician assistant certificate to Ms. Johnson. (Hearing Transcript [Tr.] at 22-26)

Currently, Ms. Johnson works as a physician assistant employed by Case Western Reserve University. Since May 2003, she has worked at the Veterans Administration Medical Center in Cleveland, Ohio. At the present time, her work centers on a clinical research study involving diabetes. (Tr. at 307)

2. Between 1999 and 2001, Ms. Johnson was criminally charged with, and then pleaded guilty to, disorderly conduct and criminal trespass, both misdemeanors. Ms. Johnson acknowledged that alcohol consumption played a role in her actions underlying both of her convictions. (State's Exhibit [St. Ex.] 3 at 2)
3. In the course of renewing her physician assistant certificate, Ms. Johnson informed the Board about her misdemeanor convictions. Thereafter, a Board investigator contacted Ms. Johnson and the Board ordered her to be evaluated. (Tr. at 272)

### Ms. Johnson's 2002 Evaluation, Diagnosis, Treatment and Subsequent Agreements

4. On September 9, 2002, Ms. Johnson entered Glenbeigh Health Sources [Glenbeigh]. Glenbeigh is a Board-approved treatment provider in Rock Creek, Ohio. Ms. Johnson underwent a three-day inpatient evaluation to determine if she was in violation of Sections 4730.25(B)(4)

and/or (B)(5), Ohio Revised Code. Glenbeigh initially diagnosed Ms. Johnson with alcohol dependence/abuse and major depression, recurrent.<sup>2</sup> (St. Ex. 2 at 2; St. Ex. 3 at 2; Tr. at 272-273)

Ms. Johnson testified that her sobriety date is February 15, 2002, and previous to that date, she had consumed alcohol in October 2001. She described herself as a “binge drinker,” not a daily drinker. (Tr. at 272, 274-276)

5. In light of Glenbeigh’s initial diagnosis and in lieu of formal proceedings, Ms. Johnson entered into a Step I Consent Agreement [Step I agreement] with the Board, effective October 10, 2002. The Step I agreement reflects that the Board entered into the Step I agreement based upon Ms. Johnson’s violation of Section 4730.25(B)(5), Ohio Revised Code. Pursuant to the Step I agreement, Ms. Johnson’s certificate was suspended for an indefinite period of time, and Ms. Johnson was required, among other things, to maintain sobriety, submit to random urine tests, and participate in a rehabilitation program. The agreement also included a list of terms, conditions, and limitations that had to be fulfilled in order for the Board to consider reinstatement of Ms. Johnson’s certificate. (St. Ex. 3)
6. After Glenbeigh’s initial evaluation, Ms. Johnson entered and completed its 28-day, residential treatment program. She was discharged in October 2002. Glenbeigh ultimately concluded that Ms. Johnson was alcohol dependent, but capable of practicing as a physician assistant provided that she continues outpatient psychiatric treatment and counseling. (St. Ex. 2 at 2; Tr. at 275)
7. After her discharge from Glenbeigh, Ms. Johnson participated in its aftercare contract and entered into an advocacy contract with the Ohio Physicians Health Program, Inc. [OPHP]. Later, three physicians reported that Ms. Johnson was capable of practicing as a physician assistant according to acceptable and prevailing standards of care, so long as certain treatment and monitoring requirements are in place. (St. Ex. 2 at 2-3; Tr. at 29; Respondent’s Exhibit [Resp. Ex.] P)
8. Ms. Johnson entered into a Step II Consent Agreement [Step II agreement] with the Board, effective January 8, 2003. The Board reinstated Ms. Johnson’s certificate, subject to various probationary terms, conditions and limitations for a five-year period. The Step II agreement includes the following terms, conditions and limitations:

Paragraph 6: Ms. Johnson shall abstain completely from the use or possession of drugs, except those prescribed, dispensed or administered to her by another so authorized by law who has full knowledge of Ms. Johnson’s history of chemical dependency.

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<sup>2</sup>Ms. Johnson noted that she had been diagnosed and treated for depression prior to the Glenbeigh diagnosis. She was initially diagnosed with depression in 1990 and took medications to assist with that condition. She described herself as “functional” in 2002, but she was not without depression. She was seeing a therapist and a psychiatrist prior to entering Glenbeigh in 2002. (Tr. at 273-274)

Paragraph 7: Ms. Johnson shall abstain completely from the use of alcohol.

Paragraph 8: Ms. Johnson shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Ms. Johnson 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.

\* \* \*

Paragraph 11: Ms. Johnson shall maintain continued compliance with the terms of the aftercare contract entered into with her treatment provider, and with her Advocacy Contract with [OPHP], or another impaired professionals committee approved in advance by the Board, provided that, where terms of the aftercare contract or advocacy contract conflict with terms of this [Step II] Agreement, the terms of this [Step II] Agreement shall control.

(St. Ex. 2 at 4-5)

9. The advocacy agreement with OPHP was executed in November 2002. Stanley Gene Sateren, M.D.,<sup>3</sup> explained that, via the advocacy agreement, Ms. Johnson engaged the monitoring services and advocacy services of OPHP, and OPHP set forth what was expected of Ms. Johnson. The first provision of the advocacy agreement requires Ms. Johnson to abstain from all mood-altering drugs including alcohol, prescription drugs, over-the-counter preparations, and foods having substances that could yield a positive toxicology test result (e.g. poppy seeds, rumcakes, cough syrups, cold medications, etc.). (St. Ex. 5; Tr. at 33-34, 55-56)

OPHP serves as Ms. Johnson's "supervising physician" for purposes of the Step II agreement. (Tr. at 135)

#### **Ms. Johnson's Actions under the Agreements: 2003 - 2006**

10. Between January 2003 and December 27, 2006, Ms. Johnson was largely compliant with the probationary terms, conditions and limitations of the Step II agreement. In particular, she

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<sup>3</sup>Dr. Sateren obtained his medical degree in 1969 from Northwestern University in Chicago, Illinois. He completed a one-year internship at Mercy Hospital in Springfield, Ohio, and three years of residency at Mount Carmel Medical Center in Columbus, Ohio. He is certified by the American Society of Addiction Medicine, is a fellow of the American Society of Addiction Medicine, and is board-certified in internal medicine by the American Board of Medical Specialties. He worked for the Mount Carmel Health System for many years in a variety of positions. He currently is the President and Medical Director of OPHP. (Tr. at 53-54, 64-66)

regularly visited with her monitoring physician, Christina M. Delos Reyes, M.D.,<sup>4</sup> and provided timely urine specimens. Also, Ms Johnson regularly visited with her psychiatrist, Toni Louise Carman, M.D., and she regularly visited with her therapist, James Preister, Ph.D. Moreover, she attended many recovery group meetings. (Resp. Exs. F, M, N, O; Tr. at 31, 59, 141-142, 144-145, 203-204, 293-294)

11. Danielle Bickers, the Board's Compliance Supervisor, testified that she had reviewed all of the documents that were submitted pursuant to Ms. Johnson's consent agreements and periodically met with Ms. Johnson. Ms. Bickers noted that documentation of attendance at recovery group meetings had not been provided in all instances and there have been a few times when Ms. Johnson's dedication to the recovery program was "concerning" to Board staff. (Tr. at 120-123) Ms. Bickers recalled one instance that occurred prior to July 2006 in which she personally had concerns about Ms. Johnson:

I had asked Ms. Johnson – I remember an occasion where I had asked Ms. Johnson what steps she was working on, and she said she was working on step 9.

But when I asked her what step that was, she didn't know what step that was. And when I questioned her further, she admitted that she hadn't really worked the steps officially with her sponsor.

And the next time Ms. Johnson came in, she actually had gotten a new sponsor, because her relationship with her previous sponsor wasn't a good fit.

(Tr. at 123)

### **Collection of the December 27, 2006 Urine Specimen and Testing Thereof**

12. Dr. Delos Reyes contacted Ms. Johnson on December 27, 2006, and required her to provide a urine specimen within six hours of the telephone call. Ms. Johnson recalled that she may have drunk extra water that day, but it was not more than eight ounces; rather, it was "just enough to be able to urinate on demand." (Tr. at 279, 297-298)

Dr. Delos Reyes observed the collection of Ms. Johnson's urine specimen on December 27, 2006. She sent the specimen for testing to Bendiner & Schlesinger Inc. [B&S], in Brooklyn,

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<sup>4</sup>Dr. Delos Reyes earned her medical degree from Northeastern Ohio Universities College of Medicine in 1996. She completed four years of residency in adult psychiatry at University Hospitals of Cleveland and completed one year of fellowship in addiction psychiatry at University Hospitals of Cleveland. She is board-certified in both adult psychiatry and addiction psychiatry. She is also certified in addiction medicine from the American Society of Addiction Medicine. She is currently: (a) the Director of the Addiction Psychiatry Fellowship Program at Case Western Reserve University, (b) an Assistant Professor of Psychiatry at Case Western Reserve University School of Medicine and University Hospitals of Cleveland Department of Psychiatry, (c) a Medical Consultant for the Ohio Department of Mental Health, Substance Abuse & Mental Illness, and (d) an Addiction Psychiatrist at Recovery Resources in Cleveland, Ohio. She has received numerous honors and awards, given many medical-related presentations, and published several medical-related articles. (Resp. Ex. C; Tr. at 201)

New York. The urine samples typically arrive within four to five days. Ms. Johnson's December 27, 2006, specimen was received by B&S 22 days later, on January 18, 2007. (St. Ex. 4; Tr. at 69, 88, 203)

13. William J. Closson, Ph.D., is the Director of Laboratories at B&S.<sup>5</sup> Dr. Closson explained how specimens arrive at B&S, are handled, identified, evaluated for acceptability, stored, tested, and certified. Although Ms. Johnson's urine specimen did not quickly arrive at B&S, Dr. Closson noted that the extended period of time would not change a test result from a negative to a positive result. At most, the amount of a drug in a sample that was a month or older can be reduced. Ms. Johnson's urine specimen was accepted on January 18, 2007, and tested by the next day. (Tr. at 166-169, 188; St. Ex. 4)
14. Ms. Johnson's December 27, 2006, urine specimen was first tested by B&S for the presence of 10 different drugs and for the urine's creatinine level. Dr. Closson explained that a positive test result is found when the result is at or above the particular "cutoff level." According to Dr. Closson, the cutoff level is the "most accurate [point] at which the test can differentiate between a positive and a negative result." When a positive result is found in the initial screening test, Dr. Closson noted that B&S will conduct a more sophisticated confirmatory test and the results of both tests are provided to the client. (Tr. at 168-169, 171, 173) The urine alcohol test of Ms. Johnson's urine sample was negative. (St. Ex. 4)

Dr. Closson also explained that creatinine is a substance that can be found in body fluids, including urine. It comes from the breakdown of muscle tissue and the metabolism of proteins and, therefore, can be indicative of dilution. The creatinine level in Ms. Johnson's urine sample was low. Because of the low creatinine level, the specimen's specific gravity was also measured to also help determine whether a specimen has been diluted. The specific gravity of Ms. Johnson's urine sample was also low. (Tr. at 175-176; St. Ex. 4; see also Tr. at 62)

15. Dr. Sateren reviewed the initial test results and, on January 24, 2007, he requested that the laboratory conduct an ethyl glucuronide [EtG] test on the December 27, 2006, urine specimen. (St. Ex. 4; Tr. at 72-75, 191)

Dr. Sateren explained that the EtG test detects the presence of EtG, a minor alcohol metabolite. (Tr. at 76) Dr. Closson similarly explained that EtG is formed when a person's body breaks down the alcohol has been consumed; the EtG metabolite lasts in the urine for a longer period of time than the alcohol itself (up to three to five days after consumption of alcohol). Also, he testified that it is generally accepted in the scientific community that ethyl alcohol is the only source for the production of EtG. (Tr. at 177-178, 184, 194)

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<sup>5</sup>Dr. Closson has a bachelor's degree in biology from State University of New York at Stony Brook, a master's degree in biochemistry from Long Island University, and a doctorate in biochemistry and toxicology from St. John's University. He is licensed as a forensic toxicologist by the State of New York and certified by the American Board of Forensic Examiners. (Tr. at 160)

16. B&S did not conduct EtG tests “in-house” at that time and, therefore, the EtG test for the December 27, 2006, specimen was conducted by National Medical Services in Willow Grove, Pennsylvania. (Tr. at 180, 191)

**Summary of Certain Test Results on the December 27, 2006 Urine Specimen**

17. Below is summary of the test results related to alcohol and dilution for Ms. Johnson’s urine specimen of December 26, 2006:

<b>Test Conducted</b>	<b>Result</b>	<b>Cutoff</b>	<b>Conclusion</b>
Alcohol	Not specified	50 mg/dl	Negative
Creatinine	9.6 mg/dl	20 mg/dl	Low
Specific Gravity	1.005	1.010 (but less than 1.003 may indicate dilution)	Low
EtG	1,800 ng/ml	250 ng/ml	Alcohol Present

(St. Ex. 4; Tr. at 77, 81, 92-93, 109)

**Ms. Johnson’s February 2007 Conversations with Others**

18. On February 7, 2007, an OPHP employee notified Ms. Johnson of the toxicology results. Ms. Johnson testified that she was “devastated” and “shocked” when she learned of the positive EtG, and it took time for her to recall the exact events that had occurred around the time that urine specimen was given. (Tr. at 40, 49, 296)
19. That same day, Ms. Johnson informed Dr. Delos Reyes of the toxicology results. Ms. Johnson recalled that she told Dr. Delos Reyes that she had not consumed any alcohol. (Tr. at 37-38, 47)

Dr. Delos Reyes recalled that Ms. Johnson had said she was “very shocked, and she didn’t know how it could have been positive,” and that she was very upset. (Tr. at 209-210)

20. Ms. Johnson also spoke with Dr. Sateren the same day that she had learned the EtG result. She testified that, during that conversation, she denied drinking any alcohol. Additionally, Ms. Johnson recalled that she had stated she may have had communion wine at church. (Tr. at 38, 40)

Dr. Sateren recalled that Ms. Johnson had denied drinking alcohol. He instructed her to review the events around the time the specimen was collected and to “investigate hand sanitizer used at work.” (St. Ex. 4; Tr. at 79-81, 97)

21. Ms. Johnson spoke with Ms. Bickers on February 8, 2007, to notify the Board of the positive result. Ms. Johnson recalled that she had stated she had had punch at a family gathering and that, possibly, it had alcohol in it. She also recalled that she had speculated with Ms. Bickers

about other possible sources of alcohol. She had suggested that it could have been a hand sanitizer that she had used repeatedly at that time. She further testified that she had told Ms. Bickers that she may have had communion wine. She also testified that she may have said to Ms. Bickers that she may have gotten complacent in her recovery. (Tr. at 39, 41-43, 49-50, 126, 304-306)

Ms. Bickers recalled the February 8 conversation as well. She testified that Ms. Johnson had initially denied alcohol use and offered some explanations as to what caused the EtG result. Ms. Bickers stated that: (a) Ms. Johnson later had mentioned, very clearly, that she had actually consumed communal wine at Mass on December 25, 2006; (b) Ms. Johnson had offered that alcohol may have been put into something served during holiday family gatherings as her entire family is not aware of her history of alcohol dependency; and (c) Ms. Johnson had stated that she was going to investigate the hand sanitizers that she had used. (Tr. at 126-127, 155) Additionally, Ms. Bickers explained further about that telephone conversation:

Q. \* \* \* If I understood your testimony, you indicated that Ms. Johnson said at that time that she did not use or consume alcohol, but then in the same conversation said to you that she had consumed wine at mass.

A. [Ms. Bickers] Correct. And I had even questioned her as to how much wine. Being a [C]atholic myself, I know how much wine you consume while you're standing there.

And we had a conversation about how it's a sip of wine, and two days later still testing positive. So we had quite the discussion based on the communal wine.

(Tr. at 153-154)

#### **Additional Information about Creatinine and Ms. Johnson's Other Creatinine Levels**

22. With respect to creatinine, Dr. Closson explained:

People do have different creatinine levels. Ninety-five percent of the population has a creatinine that falls within the normal range that we outlined on our report of 20 to 350. But there are outliers.

There are people that consume more fluid normally, and those individuals can have creatinine levels that are below 20. It's not unusual to find creatinine levels in the 10 to 20 range, just from the normal consumption of the fluids that a person can consume.

As you start getting levels below 10 -- and the lower they get below 10 the more likely it is that the person has forced fluids into their body, consumed more fluids than they normally would or necessarily would have consumed.

But there's no way you can say \* \* \* that a person has done something intentionally to their body to affect the results of a drug test. It's just an indicator as to the status of the dilutional nature of the sample, itself.

\* \* \*

Generally a person of smaller stature with lower muscle mass would have creatinine levels on the lower end of normal, versus somebody with a large muscle mass who may have creatinine levels in the upper range of normal.

(Tr. at 189-190)

23. Dr. Sateren recalled that, for the year *prior* to December 27, 2006, Ms. Johnson's urine tests had showed one or two other creatinine level results that were less than 10 milligrams per deciliter [mg/dl], and one that was 15 or 16 mg/dl, but he was not entirely sure of the specific levels. As for her test results *after* the middle of January 2007, Dr. Sateren testified that Ms. Johnson's creatinine levels were:

2007 Specimen Date	Creatinine Level
January 17	106.5
February 7	31.3
February 20	24.8
March 14	13.9
March 28	54
April 4	32.6
April 27	170.2
May 9	24.4
May 25	75
June 13	31.7
June 27	79.7
July 10	32.2
July 25	26.8
August 8	16.3
August 22	92.3

(Tr. at 82-83, 89-90, 106)

### **The EtG Test**

24. Gregory E. Skipper, M.D.,<sup>6</sup> described how the EtG test came to be used in the United States. Dr. Skipper explained that, during a medical seminar a number of years ago, he learned of EtG and, afterward, began working with a psychiatrist from Switzerland to study the efficacy of EtG for documenting abstinence from alcohol. Dr. Skipper noted that he was responsible for having the first laboratory in the United States begin conducting EtG tests. More specifically, in 2002, Dr. Skipper asked National Medical Services laboratory to begin conducting EtG tests in this country. He stated that, later, other laboratories began using the test and it has since “caught on.” (Tr. at 231-233)
25. Dr. Closson testified that, for purposes of ascertaining the presence of EtG in Ms. Johnson’s urine specimen, National Medical Services conducted liquid chromatography/mass spectrometry tests. He estimated that the reliability of the EtG result is 99.5 percent reliable, which he described as “as close to a hundred percent as you can scientifically actually produce.” (Tr. at 181-182)

### **Dr. Skipper’s and Dr. Closson’s Opinions about the EtG Test**

26. Dr. Skipper explained that the EtG test is a good test for documenting abstinence from alcohol, if the results are negative. However, when the results are positive, there can be concern about what the EtG test indicates. Dr. Skipper noted that the EtG test shows exposure to alcohol, but the scientific community is still “working out” where to establish the cutoff level in order to distinguish between actual consumption of alcohol versus incidental exposure to alcohol.<sup>7</sup> Dr. Skipper defined incidental exposure to be consumption or exposure to ethanol other than from an alcoholic beverage.” (Tr. at 234-236, 254)
27. Dr. Skipper further testified that, because many products contain alcohol and the EtG test is sensitive, a positive EtG test result can occur from incidental exposure to alcohol. More

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<sup>6</sup>Dr. Skipper earned his undergraduate degree in 1971 and his medical degree in 1974 from the University of Alabama. He had one year of an interim residency at the Spain Rehabilitation Center in Birmingham, Alabama. He completed another internship and then a residency in internal medicine at the University of California, San Diego in 1978. He is board-certified in internal medicine, certified by the American Society of Addiction Medicine, and a fellow of the American Society of Addiction Medicine. He is currently: (a) Medical Director of the Alabama Physician Health Program; (b) Medical Director of the Alabama Veterinary Professionals Wellness Program; (c) a Clinical Assistant Professor at the University of Alabama School of Medicine; (d) a special employee for the U.S. Food and Drug Administration, Center for Drug Evaluation and Research; and (e) a special employee for the U.S. Substance Abuse and Mental Health Services Administration, National Advisory Counsel, Center for Substance Abuse Treatment. Dr. Skipper has participated on many committees, councils and task forces. He has given numerous lectures/presentations, and been published on numerous occasions, including many publications regarding EtG. (Tr. at 227-228; Resp. Exs. H at 3-4, I)

<sup>7</sup>Dr. Sateren concurred that the cutoff level that distinguishes between actual consumption of alcohol versus incidental exposure to alcohol is still clinically evolving. (Tr. at 78, 94, 102-105) Dr. Skipper mentioned that the same situation occurred with other drugs. For example, it took many studies over “about 20 years” to establish a cutoff level that distinguishes between actual use of morphine and incidental exposure to opiates, such as through a poppy seed muffin. (Tr. at 237)

simply, Dr. Skipper stated:

So when the cut-off is lower, [the EtG test is] more sensitive for picking up remote drinking, small amounts of drinking. But it's less clear that that's what it was.

When you move the cut-off higher, then you're going to screen out some of the incidental exposure, but you're not going to have as sensitive of a test for picking up small drinking episodes.

(Tr. at 233-234; Resp. Ex. H; see also Tr. at 235-236)

28. In particular, Dr. Skipper noted that mouthwash, over-the-counter medications, hand gels, wine vinegar, and soy sauce are items that contain alcohol that can cause positive EtG tests. However, Dr. Skipper also stated that consumption of communion wine is questionable as a source of *incidental* exposure to alcohol. (Tr. at 237-238, 254) Dr. Skipper also provided lists of possible sources of incidental exposure to ethanol. (Resp. J)

Likewise, Dr. Closson acknowledged that incidental exposure to alcohol can occur through mouthwash or cold medications, for instance, and can result in positive EtG tests. (Tr. at 182-183, 194; St. Ex. 6)

29. Dr. Skipper opined that EtG levels in the range of 300 to 800 nannograms per milliliter [ng/ml] are typical for incidental exposure. Moreover, Dr. Skipper testified that the highest EtG from incidental exposure that he has seen was 880 ng/ml. Dr. Skipper also noted that his opinion regarding the cutoff level has evolved. He further stated that, when he had testified previously before that Board in 2004, he may have said that, with an EtG of over 500 ng/ml, "it is almost certain" to show that a person consumed an alcoholic beverage rather than having incidental exposure to alcohol. (Tr. at 236, 238, 247-250, 253, 257, 261-262; St. Ex. 8 at 3, 15)

Dr. Closson stated that B&S, along with other research facilities, have conducted tests to determine what levels of EtG would be produced with incidental exposure to products containing alcohol. Dr. Closson testified that, in the vast majority of cases, incidental exposure to alcohol did not result in EtG levels above 500 ng/ml, but there were rare instances when such EtG levels approached 2,000 ng/ml. (Tr. at 183-184)

30. Drs. Skipper and Closson both pointed out that studies have been done and are underway currently to further look into incidental exposure to alcohol and the resulting EtG levels. Dr. Skipper also testified that he was not aware of any studies that evaluated EtG levels caused by exposure to multiple products containing alcohol. In addition, he stated that "we are pretty confident" that some people make more EtG for a given exposure than other people, but it is not known the effect of that, combined with incidental exposure. (Tr. at 184, 239-240, 253)

### **Various EtG Cutoff Levels**

31. Dr. Sateren explained that the majority of state physician health programs, including OPHP, are using 250 ng/ml as the cutoff for EtG tests. He noted that some state entities have selected 100 ng/ml as their cutoff, Arizona has selected 2,000 ng/ml as its cutoff and Michigan has stopped using the test. (Tr. at 77-78, 93, 102, 107-108)

Dr. Skipper noted that the Alabama Physician Health Program currently has selected 100 ng/ml as its cutoff for the EtG test, but the organization is not using the EtG test as absolute proof of drinking. (Tr. at 258-259)

32. Dr. Closson testified that B&S' EtG cutoff level is 250 ng/ml because it is the level accepted by "most toxicologists and most researchers as the most reliable level to indicate somebody who has consumed ethanol." (Tr. at 179-180, 184)

Ms. Bickers testified that the Board is satisfied with the cutoff level for EtG at 250 ng/ml, but the Board did not establish that level. (Tr. at 151-153)<sup>8</sup>

### **Dr. Skipper's and Dr. Closson's Interpretation of the EtG Level in the December 27, 2006, Urine Specimen**

33. In both Dr. Skipper's and Dr. Closson's opinions, the amount of EtG detected in Ms. Johnson's urine specimen is unlikely to have resulted from incidental exposure to alcohol; yet they further stated that such an explanation cannot be ruled out. (Tr. at 185, 194-195; St. Ex. 6; Resp. Ex. H) Dr. Skipper found that her EtG level of 1,800 ng/ml "could conceivably be secondary to incidental exposure to alcohol. In other words, we cannot definitively conclude with reasonable medical certainty from this value that alcoholic beverages were intentionally consumed." (Resp. Ex. H; Tr. at 236, 241) In addition, Dr. Closson characterized an EtG level of 1,800 ng/ml as indicating that Ms. Johnson had consumed alcohol. However, he also stated that it is very difficult to assess how much alcohol was consumed, or how it was consumed or got into the body. Additionally, he opined that it is not probable that the EtG level was produced by hand sanitizer alone. (Tr. at 178-179, 185, 194; St. Ex. 6)
34. In addition, Dr. Skipper stated that Ms. Johnson's EtG test results should not be used as the sole basis for determining alcohol consumption; rather, other criteria are needed. Dr. Closson concurred. (Tr. at 195-196, 262; St. Ex. 6; Resp. Ex. H)

Specifically, Dr. Skipper stated that, while the EtG test is very useful for documenting abstinence, extreme caution should be taken before assuming relapse to beverage alcohol use when: (a) a positive EtG result is found, (b) the person denies drinking, (c) all other monitored parameters appear to be satisfactory, and (d) there are no other indices of relapse.

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<sup>8</sup>The record includes conflicting evidence of the source/basis for the 250 ng/ml EtG cutoff used in this instance, but the source/basis for that particular cutoff level is irrelevant to the issues in this case.

(Resp. Ex. H at 2) Additionally, Dr. Skipper indicated his opinion that it is important for monitoring agencies to obtain a:

more in-depth assessment before determining the meaning of the positive [EtG] test. In other words, it is my opinion that any positive EtG test should be presented to the patient as evidence of alcohol use and if alcohol use is denied, further tests (such as blood CDT, carbohydrate deficient transferring or blood PEth, phosphotidyl ethanol) which are less sensitive but more specific and are not as affected by incidental exposure should be obtained. In certain cases[,] sources of possible incidental exposure should be sought via more intensive addiction medicine evaluation if warranted. Ultimately, a contested positive must be interpreted in light of clinical judgment taking into account addiction history, recovery activities, physical examination, other ethanol markers and lab findings, collateral sources of information from therapists, family, work associates, etc.

(Resp. Ex. H at 2; see also Tr. at 241-243, 257-259)

#### **Substance Abuse and Mental Health Services Administration [SAMHSA] Advisory**

35. In the fall of 2006, the SAMHSA issued an advisory about the appropriate use of biomarker testing, including EtG tests, in the treatment of alcohol use disorders.<sup>9</sup> Dr. Skipper was one of the authors of the advisory. Dr. Skipper explained that he pursued the advisory because he was concerned that, generally, laboratories had been marketing the EtG test as “absolute proof” of drinking alcohol and that some state boards had not understood the test well. (Tr. at 103-105, 243, 251; Resp. Ex. E) In short, the advisory stated:

Currently, the use of an EtG test in determining abstinence lacks sufficient proven specificity for use as primary or sole evidence that an individual prohibited from drinking, in a criminal justice or a regulatory compliance context, has truly been drinking. Legal or disciplinary action based solely on a positive EtG, or other test discussed in this Advisory, is inappropriate and scientifically unsupportable at this time. These tests should currently be considered as potential valuable clinical tools, but their use in forensic settings is premature.

(Resp. Ex. E at 1) Also, the advisory states: “[u]ntil considerable more research has occurred, use of [EtG] should be considered experimental.” (Resp. Ex. E at 3)

36. Moreover, Dr. Sateren and Dr. Closson pointed out that the B&S toxicology reports now reference the SAMHSA advisory. (Tr. at 197)

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<sup>9</sup>Dr. Sateren noted that the Federation of State Medical Boards has discussed the topic as well and has issued a similar guideline. (Tr. at 104)

**Other Observations Regarding Ms. Johnson's Alcohol Use and/or Relapse**

37. Dr. Sateren noted that, since February 7, 2007, all urine specimens provided by Ms. Johnson have been tested for both alcohol and EtG, and they were all negative. (Tr. at 100-101, 107)
38. Dr. Sateren testified that, to his knowledge, there had not been a time when Ms. Johnson was not following all steps of "her program." Specifically, he stated:

They were not lacking materials. Urine drug tests were all okay. And she had, I think it was close to five years of well-documented recovery with some good objective data to support that.

(Tr. at 86) In other words, aside from the EtG result from the December 27, 2006 urine specimen, Dr. Sateren testified that OPHP has no other indications that Ms. Johnson had relapsed. (Tr. at 105)

39. Dr. Delos Reyes has been Ms. Johnson's monitoring physician since 2002. She noted that Ms. Johnson had gotten a new research position with the Veterans' Administration Hospital during the several months prior to their meeting on December 27, 2006, but nothing else was remarkable in Ms. Johnson's life at that time. Dr. Delos Reyes stated that she felt that Ms. Johnson was stable in her recovery and carrying out all of the responsibilities of the Step II agreement; there were no signs that she was not doing well. Dr. Delos Reyes testified that she was very surprised and "about fell out of [her] chair" when she learned that the December 27 specimen tested positive. (Tr. at 206-207, 222; Resp. Ex. F)

Dr. Delos Reyes specifically noted that Ms. Johnson had never missed an appointment with her, never had had a positive urine screen previously, and had been compliant with all Board requirements, including in-person meetings, regular contact with her therapist and physician, and attendance at 12-Step meetings. Dr. Delos Reyes described Ms. Johnson's mood and affect as stable, noting that she has held a demanding research job for the last few years. Dr. Delos Reyes opined that the positive EtG test was "a false positive, which was most likely due to environmental exposure to cleaning products that contain high amounts of alcohol, such as Purell." Moreover, she wrote, in support of Ms. Johnson, the following:

I do not believe that this single positive urine screen should be the sole grounds for action on her license. This [EtG] test must not be considered in a vacuum, but rather as part of an overall clinical picture. In Ms. Johnson's case, the overall clinical picture points to ongoing sobriety and a strong program of recovery.

(Resp. Ex. F) Additionally, the following exchange took place during the hearing:

- Q. Did [Ms. Johnson] ever say to you that she felt that she had been lax with her recovery or that she wasn't following the steps of recovery?

A. [Dr. Delos Reyes] No. In fact, what I do recall is that she would say that the meetings were actually very helpful to her on a lot of different levels. So I never got the impression that she didn't want to go, but that she actually enjoyed going, and it was something she got something out of.

Q. Okay. Do you feel that you had a close enough relationship with Ms. Johnson, especially at that time, that if she were struggling with her recovery, that she would have even told you?

A. Yes, I think I do. I mean, it had been four years at that point.

(Tr. at 210)

40. Harris C. Taylor, M.D., wrote a letter in support of Ms. Johnson. He is her supervisor at work. Dr. Taylor stated that he has never smelled any alcohol on her breath, nor had reasons to suspect that she was consuming alcohol in the past three and one-half years. Additionally, Dr. Taylor pointed out that Ms. Johnson has had over 100 negative urine tests during the past four years and the SAMHSA Advisory warns about the inappropriate use of alcohol biomarker tests. Dr. Taylor requests that the Board not suspend Ms. Johnson's certificate. (Resp. Ex. C; Tr. at 289)

41. Ms. Johnson's therapist, James Priester, PhD., stated in a March 2007 report to the Board that the EtG result perplexed him, as he had noted no signs of relapse. Furthermore, he wrote:

[H]er job performance remains steady, her attendance and goals remains [sic] solid and her overall demeanor is genuine and sincere. This is a difficult situation; however, I am asking the Board to ponder all variables, both scientific and emotional, when evaluating her upcoming review.

(Resp. Ex. M at 21)

42. Additionally, Ms. Johnson had several other tests taken between October 2006 and February 2007. She presented those results to demonstrate that, before and after the December 27 specimen, there was no evidence of ethanol or alcohol use. (Resp. Ex. L; Tr. at 291-292, 304)

One test conducted was the Gamma Glutamyl Transferase test, which tests for the presence of an alcohol biomarker. That test was conducted on a November 16, 2006, specimen. The result fell within the reference range. A different test was the Carbohydrate-Deficient Transferrin test, which tests for the presence of another alcohol biomarker. That test was conducted on a specimen provided on February 12, 2007. The result reflected in the report was "normal."<sup>10</sup> (Resp. Exs. E at 2, L at 1, 6)

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<sup>10</sup>According to the SAMHSA advisory, both of these alcohol biomarker tests are not especially sensitive and, thus, may result in "false negatives." (Resp. Ex. E at 3)

**Ms. Johnson's Testimony about Her Activities in December 2006**

43. Ms. Johnson stated that things were not stressful for her in December 2006 and she did not have any big issues at that time. However, Ms. Johnson noted that, due to a worsening health condition (hemorrhoids), she tended to drink a lot of water. (Tr. at 45, 302, 303)
44. Ms. Johnson noted that, on December 24, she had attended church, but she did not take communion at that service. However, she also testified that she makes it a practice to take communion when she goes to church and she believes her church uses alcohol in its communion ceremony. She further explained that she takes only the bread, but not the wine, at communion. (Tr. at 282-284, 298-300)

Additionally, she explained that, on December 24, she did "a lot" of cleaning because she hosted a holiday dinner. She noted that she had used Febreze, Lysol, and Windex to clean before the dinner. She testified that she did not use any alcohol in any of the food that she had prepared for that dinner. (Tr. at 284-286)

45. Ms. Johnson stated that, on December 25 and 26, she had attended several family gatherings. Ms. Johnson testified that, in an attempt to determine the source of EtG in her urine, she had checked to determine if someone had added alcohol to the items served at those family gatherings. She testified that no one had added alcohol. Ms. Johnson stated that she did not drink anything that may have contained alcohol on either of these days. (Tr. at 42, 50, 286-288)
46. As a result of the EtG result, Ms. Johnson examined her prior habits and found that, during that time period, she had used a variety of products that contain ethanol. She stated that she had used and/or consumed colognes, body splashes, moisturizers, cosmetics, vanilla extract, balsamic vinegar, soy sauce, wassel with cider that could have fermented, and fruit salad that could have fermented. Additionally, Ms. Johnson testified that she had used Lysol at work to clean following patient visits. Furthermore, she stated that she regularly had used hand sanitizers, at work and elsewhere. She estimated that she might use hand sanitizer about 20 times during a work day. (Tr. at 44-45, 285, 288-289)
47. Ms. Johnson denies relapsing, or using or consuming alcohol in violation of the Step II agreement. She testified that she has not struggled with her sobriety during the past year, and she felt strong in her recovery at the time of the hearing. She puts forth one explanation for the positive EtG test: products that she had used may have incidentally exposed her to alcohol and caused a "false positive" result for the December 27 urine specimen. (Tr. at 295-296, 308)

**Additional Testimony of Dr. Delos Reyes**

48. Dr. Delos Reyes testified that Ms. Johnson had told her that the EtG test may have been positive because of consumption of holiday party food, her use of hand sanitizers, or her use of cleaning

supplies at her place of employment and at home. Dr. Delos Reyes stated that Ms. Johnson had reported to Dr. Delos Reyes that she had looked into the food, but that did not seem to be the cause. (Tr. at 221)

49. Dr. Delos Reyes also confirmed that Ms. Johnson had used hand sanitizers “all the time” because she sees many patients in her employment position. Dr. Delos Reyes personally observed Ms. Johnson using hand sanitizers on various occasions. (Tr. at 209, 215)
50. Dr. Delos Reyes further indicated that, in December 2006 or January 2007, she had counseled Ms. Johnson about incidental exposure to products containing alcohol, after having read the SAMHSA advisory and possibly another article. (Tr. at 208-209, 216)

### **FINDINGS OF FACT**

1. Effective October 10, 2002, Cynthia Joan Johnson, P.A., entered into a Step I Consent Agreement with the Board in lieu of formal proceedings. The Step I Consent Agreement was based upon Ms. Johnson’s violation of Section 4730.25(B)(5), Ohio Revised Code. In the Step I Consent Agreement, Ms. Johnson admitted that: (a) following a three-day evaluation ordered by the Board, she had been diagnosed with alcohol dependence, among other things; and (b) Ms. Johnson entered residential treatment at a Board-approved treatment provider. Pursuant to the terms of the Step I Consent Agreement, Ms. Johnson’s physician assistant certificate was suspended indefinitely.
2. Effective January 8, 2003, Ms. Johnson entered into a Step II Consent Agreement with the Board in lieu of formal proceedings. The Step II Consent Agreement was based upon Ms. Johnson’s violation of Sections 4730.25(B)(4) and (B)(5), Ohio Revised Code. This agreement reinstated Ms. Johnson’s physician assistant certificate, subject to specified probationary terms, conditions and limitations for a period of at least five years. In paragraph 7 of that agreement, Ms. Johnson agreed to abstain completely from the use of alcohol.
3. Despite the requirements of paragraph 7 of the Step II Consent Agreement, Ms. Johnson provided a urine specimen on December 27, 2006, which was confirmed positive for the presence of ethyl glucuronide, a metabolite of alcohol.
4. There is substantial, reliable and probative evidence which supports a finding that Ms. Johnson used or consumed alcohol prior to submitting the December 27, 2006, urine specimen. The following evidence was considered in making this finding:
  - a. No evidence was presented to demonstrate that an actual error occurred in handling or testing the December 27 urine specimen provided by Ms. Johnson.
  - b. William J. Closson, Ph.D., testified that the EtG test is highly reliable.

- c. The EtG test showed the presence of the EtG metabolite of alcohol, which will only be present from use/consumption of ethyl alcohol.
  - d. Both the State's expert, William J. Closson, Ph.D., and the Respondent's expert, Gregory E. Skipper, M.D., testified that it is unlikely or not probable that the EtG result was from incidental exposure to alcohol because of the high level of EtG.
  - e. Ms. Johnson admitted to Ms. Bickers that she had consumed communion wine during a church service a few days prior to submitting the December 27, 2006, urine specimen. Although, during the hearing, Ms. Johnson denied drinking communal wine at that time, Ms. Bickers' testimony is deemed credible on this point.
  - f. The creatinine and specific gravity measurements of the December 27, 2006, urine specimen were low.
  - g. Earlier in 2006, Board staff had questioned Ms. Johnson's commitment to the recovery process.
5. The evidence presented at hearing supports a finding that Ms. Johnson used or consumed alcohol. However, Ms. Johnson denies intentionally using or consuming alcohol. Additionally, she has continued to submit to random, weekly urine specimens; she has continued to attend support group meetings; and there is no evidence that any subsequent urine specimen contained alcohol or EtG. Also, several professionals who know Ms. Johnson do not believe that she had used or consumed alcohol in December 2006, including her monitoring physician who is an addiction psychiatrist.

To explain the presence of EtG in the December 27 urine specimen, Ms. Johnson testified that she had used several different products that contain alcohol prior to and including December 27, 2006, and that alcohol in those products may have been absorbed into her body and caused a "false positive" EtG result. Both Drs. Skipper and Closson stated that incidental exposure to alcohol via commonly available products can cause positive EtG results. However, this evidence is not convincing to rule out intentional use/consumption because of the following uncontested evidence:

- a. The EtG level in Ms. Johnson's December 27 urine specimen was more than seven times the minimum, cutoff level for a positive EtG result.
- b. Both Drs. Skipper and Closson testified that it is unlikely or not probable that the positive EtG resulted from incidental exposure to alcohol because of the high level of EtG.
- c. It is doubtful that the cleansers that Ms. Johnson had regularly used (e.g., Lysol and hand sanitizers) would cause such a high EtG level.

- d. It is doubtful that the cleansers that Ms. Johnson had regularly used would cause a high, positive EtG level only on December 27, 2006, and also cause a negative EtG result on February 7, 2007, when she was admittedly still using those cleaners.

### CONCLUSIONS OF LAW

1. Cynthia Joan Johnson, P.A.'s acts, conduct and/or omissions as set forth in Findings 1 through 4 constitute "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice" as set forth in Section 4731.25(B)(5), Ohio Revised Code.
2. Ms. Johnson's acts, conduct and/or omissions as set forth in Findings 2 through 4 constitute a violation of the "conditions placed by the board on a certificate to practice as a physician assistant, a certificate to prescribe, a physician supervisory plan, or supervision agreement" as set forth in Section 4731.25(B)(20), Ohio Revised Code.

\* \* \* \* \*

Both experts (Drs. Closson and Skipper) testified that it is unlikely that Ms. Johnson's EtG test resulted from incidental exposure to alcohol. Rather, it is more likely that the EtG level was the result of intentional drinking. The Hearing Examiner accepts this position, particularly since the EtG result was so much higher than the levels known to occur from incidental exposure to alcohol. Drs. Closson and Skipper advocate, however, that the Board not simply rely upon the EtG result to determine that a relapse<sup>11</sup> has occurred and/or impose discipline. There is other evidence of a use/consumption of alcohol by Ms. Johnson. She admitted, in a February 2007 conversation with Ms. Bickers, that she had consumed communal wine shortly prior to December 27, 2006. Taken together, the EtG test result and Ms. Johnson's admission to Ms. Bickers are reliable, probative, and substantial evidence which demonstrates that Ms. Johnson used/consumed alcohol and did not adhere to the requirement in her Step II Consent Agreement to abstain completely from the use of alcohol. In addition, Ms. Johnson's own testimony suggests that she did not abstain completely from the use of alcohol:

- Ms. Johnson provided a number of varying statements, during the hearing, regarding her activities at church in late December 2006. She first testified that, in February 2007, she had told at least one other person that she *may have* consumed communion wine. She also testified that her general practice was to "take communion" when she went to church. However, she later testified that

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<sup>11</sup>Here, the Hearing Examiner uses the term "relapse" consistent with how it has been previously defined by the Board, which states in part that relapse means: "any use of, or obtaining for the purpose of using, alcohol or a drug or substance that may impair ability to practice, except pursuant to the directions of a treating physician who has knowledge of the patient's history and the disease of addiction, or pursuant to the direction of a physician in a medical emergency." See Rule 4731-16-01(B), Ohio Administrative Code.

she did not take communion at the service prior to December 27, but provided no explanation as to why she did not follow her general practice at that time. Then, at the end of her testimony, Ms. Johnson testified that, when she takes communion, she does not drink the communal wine. Ms. Johnson's varying statements do not "add up." If her general practice were to take communion, but not drink the communal wine, why did Ms. Johnson even suggest to others that she *may have* consumed communion wine? The Hearing Examiner's impression from these varying statements at hearing was that Ms. Johnson's later statement that she did not partake in the communal wine was not truthful.

- Despite the fact that Ms. Johnson is in recovery, she admitted to regularly using a number of different products that contain alcohol (e.g., Lysol, hand sanitizers, and colognes), which can result in a positive urine test.

Although Ms. Johnson has used/consumed alcohol and violated her Step II agreement, the Board should consider another opportunity for Ms. Johnson to retain her physician assistant certificate, with under strict monitoring conditions. Another opportunity is reasonable because Ms. Johnson had had a lengthy period of documented sobriety, this appears to be her first relapse, and she has had numerous urine screens since December 2006 which have all been negative for alcohol.

### **PROPOSED ORDER**

It is hereby ORDERED, that:

- A. **REVOCATION, STAYED; SUSPENSION:** The certificate of Cynthia Joan Johnson, P.A., to practice as a physician assistant in the State of Ohio, shall be REVOKED. Such revocation is STAYED and Ms. Johnson's certificate shall be SUSPENDED for an indefinite period of time, but not less than 90 days.
- B. **INTERIM MONITORING:** During the period that Ms. Johnson's certificate to practice as a physician assistant in Ohio is suspended, Ms. Johnson shall comply with the following terms, conditions, and limitations:
  1. **Obey the Law:** Ms. Johnson shall obey all federal, state, and local laws, and all rules governing the practice of allopathic medicine and surgery in Ohio.
  2. **Personal Appearances:** Ms. Johnson shall appear in person for quarterly interviews before the full Board or its designated representative. The first such appearance shall take place on the date her appearance would have been scheduled pursuant to her January 8, 2003, Step II Consent Agreement with the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

3. **Quarterly Declarations:** Ms. Johnson 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 the date her quarterly declaration would have been due pursuant to her January 8, 2003, Step II Consent Agreement with the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
4. **Abstention from Drugs:** Ms. Johnson shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to her by another so authorized by law who has full knowledge of Ms. Johnson's history of chemical abuse and/or dependency.
5. **Abstention from Alcohol:** Ms. Johnson shall abstain completely from the use of alcohol.
6. **Comply with the Terms of Treatment and Aftercare Contract:** Ms. Johnson shall maintain continued compliance with the terms of the treatment and aftercare contracts entered into with her treatment provider, provided that, where terms of the treatment and aftercare contracts conflict with terms of this Order, the terms of this Order shall control.
7. **Drug & Alcohol Screens; Supervising Physician:** Ms. Johnson shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Ms. Johnson 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.

Ms. Johnson shall abstain from use or consumption of poppy seeds or any other food or liquid that may produce false results in a toxicology screen.

The person or entity previously approved by the Board to serve as Ms. Johnson's supervising physician pursuant to the January 8, 2003, Step II agreement is hereby approved to continue as Ms. Johnson's designated supervising physician under this Order, unless within thirty days of the effective date of this Order, Ms. Johnson submits to the Board for its prior approval the name and curriculum vitae of an alternative supervising physician to whom Ms. Johnson shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Ms. Johnson. Ms. Johnson and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

The Board expressly reserves the right to disapprove any person or entity proposed to serve as Ms. Johnson's designated supervising physician, or to withdraw approval of any

person or entity previously approved to serve as Ms. Johnson's designated supervising physician, in the event that the Secretary and Supervising Member of the Board determine that any such supervising physician has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

Ms. Johnson shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Order, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

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

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

8. **Submission of Blood or Urine Specimens upon Request:** Ms. Johnson shall submit blood and urine specimens for analysis for drugs and alcohol, without prior notice at such times as the Board may request and at Ms. Johnson's expense.
9. **Rehabilitation Program:** Ms. Johnson shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Ms. Johnson shall submit acceptable documentary evidence of continuing compliance with this program, which must be received in the Board's offices no later than the due date for Ms. Johnson's quarterly declarations.
10. **Continued Compliance with a Contract with an Impaired Professionals Committee:** Ms. Johnson shall maintain continued compliance with the terms of the 2002 contract entered into with OPHP, or with another impaired professionals committee approved by the Board, to assure continuous assistance in recovery and/or aftercare, provided that where terms of the aftercare contract or advocacy contract conflict with the 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 Ms. Johnson'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:** Ms. Johnson shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  2. **Compliance with Interim Conditions:** Ms. Johnson 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 she submits her application for reinstatement or restoration, Ms. Johnson shall provide written documentation acceptable to the Board verifying that Ms. Johnson otherwise holds a full and unrestricted license to practice as a physician assistant in all other states in which she is licensed at the time of application or has been in the past licensed, or that she would be entitled to such license but for the nonpayment of renewal fees.
  4. **Professional and/or Personal Ethics Course(s):** At the time she submits her application for reinstatement or restoration, Ms. Johnson shall provide acceptable documentation of successful completion of a course or courses dealing with professional and/or personal ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Ms. Johnson submits the documentation of successful completion of the course or courses dealing with ethics, she shall also submit to the Board a written report describing the course or courses, setting forth what she learned from the course or courses, and identifying with specificity how she will apply what she has learned to her practice as a physician assistant in the future.

5. **Demonstration of Ability to Resume Practice:** Ms. Johnson shall demonstrate to the satisfaction of the Board that she can resume practice as a physician assistant in compliance with acceptable and prevailing standards of care under the provisions of her 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 Ms. Johnson has successfully completed any required inpatient treatment.
  - b. Evidence of continuing full compliance with a post-discharge 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.<sup>12</sup>

- c. Evidence of continuing full compliance with this Order.
  - d. Two written reports indicating that Ms. Johnson's ability to practice has been evaluated for chemical dependency and/or impairment and that she has been found capable of practicing according to acceptable and prevailing standards of care. The evaluations shall have been performed by individuals or providers approved by the Board for making such evaluations. Moreover, the evaluations shall have been performed within sixty days prior to Ms. Johnson's application for reinstatement or restoration. The reports of evaluation shall describe with particularity the bases for the determination that Ms. Johnson has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon her practice.
6. **Additional Evidence of Fitness To Resume Practice:** In the event that Ms. Johnson has not been engaged in the 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 her fitness to resume practice.
- D. **PROBATION:** Upon reinstatement or restoration, Ms. Johnson'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:** Ms. Johnson shall obey all federal, state, and local laws, and all rules governing the practice as a physician assistant in Ohio and in the state in which she is practicing.
  2. **Terms, Conditions, and Limitations Continued from Suspension Period:** Ms. Johnson shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
  3. **Absence from Ohio:** Ms. Johnson 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.

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<sup>12</sup>This rule and the other impairment-related rules in Chapter 4731-16, Ohio Administrative Code, will soon be applicable to holders of Ohio physician assistant certificates, per Rule 4730-1-07(B), Ohio Administrative Code, which becomes effective on October 31, 2007.

- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Ms. Johnson's certificate will be fully restored.
- F. **RELEASES:** Ms. Johnson shall provide continuing authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records of whatever nature, by any and all parties that provide treatment or evaluation for Ms. Johnson's psychiatric treatment, chemical dependency and/or related conditions, or for purposes of complying with this Order, whether such treatment or evaluations occurred before or after the effective date of this Order. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43, Ohio Revised Code, and are confidential pursuant to statute.

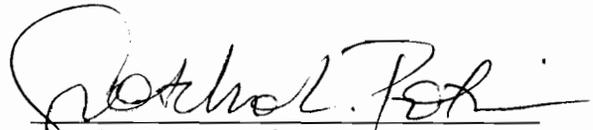
Ms. Johnson shall also provide the Board written consent permitting any treatment provider from whom Ms. Johnson obtains treatment to notify the Board in the event she fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such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

- G. **VIOLATION OF THE TERMS OF THIS ORDER:** If Ms. Johnson violates the terms of this Order in any respect, the Board, after giving her notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of her certificate.
- H. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Ms. Johnson shall provide a copy of this Order to all employers or entities with which she is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where she has privileges or appointments. Further, Ms. Johnson shall provide a copy of this Order to all employers or entities with which she contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where she applies for or obtains privileges or appointments. This requirement shall continue until Ms. Johnson receives from the Board written notification of the reinstatement or restoration of her certificate to practice as a physician assistant in Ohio.
- I. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Ms. Johnson shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which she currently holds any professional license. Ms. Johnson shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which she applies for any professional license or reinstatement or restoration of any professional license. Further, Ms. Johnson shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board. This requirement shall continue until Ms. Johnson receives

from the Board written notification of the reinstatement or restoration of her certificate to practice allopathic medicine and surgery in Ohio.

- J. **SUPERSEDE PREVIOUS STEP II CONSENT AGREEMENT:** This Order shall supersede the terms and conditions set forth in the January 8, 2003, Step II Consent Agreement between Ms. Johnson and the Board.

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



Gretchen L. Petrucci  
Hearing Examiner

# State Medical Board of Ohio

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## EXCERPT FROM THE DRAFT MINUTES OF DECEMBER 12, 2007

### REPORTS AND RECOMMENDATIONS

Dr. Kumar announced that the Board would now consider the Reports and Recommendations appearing on its agenda. He asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings of fact, conclusions of law, and orders, and any objections filed in the matters of: Kimberli Jo Burbach; Michael Shane Gainey, M.D.; Russell L. Gaudett; Cynthia Joan Johnson, P.A.; Kandhasamy Kannapiran, MD.; Ali Khan, M.D.; Robert M. Moore, M.T.; Kolli Mohan Prasad, M.D.; Willie Calvin Rabb, Jr., D.P.M.; Mary Ellen Ratcliff; and Robert Rowan Summers, D.O. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Madia	- aye
	Mr. Browning	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Steinbergh	- aye
	Dr. Kumar	- aye

Dr. Kumar 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. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Madia	- aye

Mr. Browning - aye  
Mr. Hairston - aye  
Dr. Amato - aye  
Dr. Steinbergh - aye  
Dr. Kumar - aye

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

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

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CYNTHIA JOAN JOHNSON, P.A.

Dr. Kumar directed the Board's attention to the matter of Cynthia Joan Johnson, P.A. He advised that objections were filed to Hearing Examiner Petrucci's Report and Recommendation and were previously distributed to Board members.

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

Ms. Johnson was accompanied by her attorney, Elizabeth Y. Collis.

Ms. Collis stated that the Board has charged Ms. Johnson with violating the terms of her 2003 Step 2 Consent Agreement; however, the only evidence that was presented in this case was one positive ETG test. Ms. Collis stated that it is important to note that Ms. Johnson has never tested positive for alcohol in any of her screens.

Ms. Collis stated that, in her opinion, this case is actually very unusual for the Board. Usually the cases that go before this Board on behalf of the state are pretty much a slam-dunk. The State has the evidence, they line it up, it's very clear. As defense counsel, she usually just comes in and gives mitigation. Ms. Collis stated that that's just not the case in this situation. Ms. Johnson has been charged with one positive ETG test. Ms. Collis stated that she believes that the evidence showed that reliance on one positive ETG test alone is not reliable, as it is not clinically supportable, and it should not be the basis for discipline.

Ms. Collis stated that, at hearing, there was testimony from Gregory E. Skipper, M.D., who was one of the creators of the ETG test. Dr. Skipper testified that a positive ETG test is not reliable to show evidence of a

relapse as the test is so sensitive that common household products and the environment can cause a false positive. Ms. Collis stated that, according to Dr. Skipper, the use of the ETG test is too new, and has not been tested to determine when and why the test may register positive when a person has not consumed alcohol.

Ms. Collis advised that Dr. Skipper and many other witnesses also referenced the SAMHSA Report. In the SAMHSA Report, it specifically states, "Legal or disciplinary action based solely on a positive EtG ... is inappropriate and scientifically unsupported at this time. These tests should currently be considered as potential valuable clinical tools, but their use in forensic settings is premature."

Ms. Collis stated that there was also testimony from Dr. Sateren, on behalf of Ms. Johnson. Dr. Sateren testified about the cutoff levels. He specifically stated that the cutoff level of 250, which is used by Ohio, is not the level that is used by all the states across the country. In some states the cutoff level is as high as 2,000 ng/ml. If Ohio had used a 2,000 cutoff, Ms. Johnson's test would have been considered a negative test. Ms. Collis continued that, according to Dr. Sateren's testimony, many state licensing boards do not even use this test at all because they consider the test to be so unreliable.

Ms. Collis stated that State's witness William J. Closson, Ph.D., Director of Laboratories at Bendiner & Schlesinger Inc. [B&S], the testing facility that tested the urine sample that was sent out by Ms. Johnson, specifically testified that, even at the bottom of the B&S reports that are sent out with a positive ETG there is a proviso that says, "a positive ETG test alone should not be used as a basis for discipline."

Ms. Collis stated that, in this case, the Hearing Examiner relied upon two things, which she believes is an inappropriate review of the evidence. In one instance, Ms. Petrucci stated that "Both experts (Drs. Closson and Skipper) testified that it is unlikely that Ms. Johnson's EtG test resulted from incidental exposure to alcohol." Ms. Collis stated that this statement does not accurately describe the testimony given by the witnesses. Dr. Skipper and Dr. Closson testified that, while the amount of ETG detected is unlikely to have resulted from incidental exposure, this explanation cannot be ruled out.

Ms. Collis stated that the Hearing Examiner also, briefly, hangs her hat on the fact that there was some testimony, or she relied upon a statement that Ms. Johnson had consumed communion wine. Ms. Collis stated that Ms. Johnson was not charged with consuming communion wine, and at the hearing she testified that she did not consume communion wine. Ms. Collis stated that she believes that this was inappropriate reliance on evidence in the case.

Ms. Collis stated that she believes that the evidence did show that all urine screens provided to the Medical Board from Ms. Johnson since 2002 have been negative for alcohol. She added that, according to Stanley Gene Sateren, M.D., of OPHP, there has not been a time, to his knowledge, that Ms. Johnson has not been compliant with the terms of her Consent Agreement. Ms. Collis advised that Ms. Johnson has consistently worked with her monitor, Christina M. Delos Reyes, M.D, who is also an addictionologist. Dr. Delos Reyes believes that Ms. Johnson is stable in her recovery and sees no evidence of relapse. Harris C. Taylor, M.D., Ms. Johnson's supervisor at work, also stated that he had no reason to suspect that she has

relapsed. Dr. Taylor has indicated that he believes that the Medical Board should not take action against Ms. Johnson's license. Ms. Collis stated that James Priester, PhD., Ms. Johnson's therapist, stated in a letter to the Medical Board that he is perplexed by the positive ETG and sees no signs of relapse.

Ms. Collis stated that the evidence does not support discipline in this case. Reliance alone on the ETG test is not scientifically appropriate, and she specifically asked this Board to dismiss this case at this time.

Ms. Johnson stated that eight years ago she was in crisis, which has led her to this meeting today. She'd had a history of depression, arising from a very unhappy marriage. At that time, she found help in therapy and was feeling better, but her marriage didn't improve. They separated and spent four years trying to work things out because they had two children they wanted to protect from the pain of a broken family. They were unable to reconcile, and spent two more stressful years in a difficult divorce proceeding.

Ms. Johnson continued that her depression returned as all of this dragged out and the tension didn't ease up. She needed medication and Prozac seemed to work. There were some problems finding the right dose, but they were able to settle on 30 mg. She had some side effects, anxiety the most notable, but she managed that pretty well by stopping caffeine and swimming regularly.

Ms. Johnson stated that she believes that she was in crisis eight years ago because she had taken on too much. It was too soon to start a new career after the divorce. She was in her second year of a P.A. program, doing her clinical rotations. Her husband and she had not had an amicable divorce, and it was still playing out in ongoing conflicts. They kept their children out of their problems, but she knew that they were sad. She took her children to family counseling and she joined a parents' support group. She was trying, but she was exhausted.

Ms. Johnson stated that she thinks that the Prozac stopped working. Her doctor increased the dose, and that was the turning point. There were more side effects and no relief. There was anxiety she couldn't manage and didn't understand. Ms. Johnson stated that she knows that she wasn't herself because, if she had been herself and thinking clearly, she would have suspected the Prozac but she never considered it. She thought it was circumstances, difficult times that she could get through and that the end was in sight.

Dr. Kumar asked Ms. Johnson to conclude her statement.

Ms. Johnson stated that she did her work well in the P.A. program. She stated that she loved her children and took good care of them. She could feel good when she knew that she was doing the right thing, but she fell apart on some Friday evenings, when her children had to leave and they were sad. She was alone with deepening depression and exhaustion. In her better moments, and most times, she was smart enough to read a book or go to bed, but other times, she would drink wine to calm herself down and stop the pain in her stomach. In the worst of times, that led to binge drinking and, when combined with the Prozac, led to bizarre and desperate behavior to do almost anything not to be alone. She got in trouble. She stopped drinking, she stopped Prozac, she was recovering and feeling good when the Board stepped in and sent her to Glenbeigh. She had a hard time believing that she is an alcoholic at first because of her history, but she

was determined to open her mind, listen and change.

Ms. Johnson stated that she has changed a lot. She stated that she's very active in the A.A. program. She stated that she loves the A.A. program, adding that it has allowed her to make major changes. She's a sponsor, she's a secretary, and she's been chairman at her meetings. She goes to more meetings than required because she wants to. She would never do anything to threaten her sobriety or mental health. She lost a job because of the Board's prior action. It was a breach of her employment contract because of the Board's disciplinary action, even though all the doctors wanted her to stay and valued her work. Ms. Johnson stated that she's afraid that she will lose her current job. She's been at it for four and a half years; her evaluations are good and she's doing a good job. Ms. Johnson stated that the Board's attorney has seen her employment file, and could have seen her file from her previous job. Her job has not suffered, but she has suffered and she's much better. Ms. Johnson stated that she believes that, if the Board takes action, her career will end. Ms. Johnson asked that the Board consider this and the strong recovery, for which she is really grateful.

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

Ms. Unver stated that Ms. Johnson does not dispute that the ETG test is reliable. Neither the State's expert, nor Respondent's expert, would disagree with the fact that the ETG test is widely accepted in the scientific community as a reliable and accurate means of detecting the presence of ethyl alcohol in the body. Ms. Unver stated that Ms. Johnson comes here today and refutes the use of the test as the sole evidence to support the violations, but the ETG test is all that is needed to prove a violation under Section 4730.25(B)(5) and Section 4730.25(B)(20), Ohio Revised Code. The lab cutoff rate is 250 ng/ml. Ms. Johnson's urine sample tested positive for ETG at 1,800 ng/ml. Ms. Unver stated that both the State's expert and Respondent's expert testified that Ms. Johnson's sample was unlikely to have resulted from incidental exposure to alcohol. In fact, Dr. Closson testified that it is probable that the ETG level could have only been produced by actual consumption, not incidental exposure. Ms. Unver stated that the 1,800 level was over twice as high as the 800 level that Dr. Skipper, Respondent's expert, testified to as possible incidental exposure. Dr. Skipper opined that the ETG test should not be used as the sole basis for determining alcohol consumption. In fact, Dr. Skipper helped draft the SAMHSA advisory. Ms. Unver stated that the fact of the matter is that determination of what is needed to determine alcohol consumption and what level of the ETG is appropriate is up to this Board to decide.

Ms. Unver stated that there was more evidence than just the test to prove this violation. Ms. Johnson told Ms. Bickers, shortly after finding out about the test results, that Ms. Johnson had consumed communal wine at Mass. Ms. Johnson gave inconsistent and evasive testimony throughout the hearing on this issue. In addition, Ms. Johnson, who has experience as a lab technician, and who has even been involved with testing ethyl alcohol in her career, gave a sample that showed a low creatinine level, which usually indicates some form of dilution. Ms. Unver stated that Ms. Johnson admitted to being a binge drinker, and it only takes one time for a relapse. She added that this was not the result of incidental exposure, as Ms. Johnson would like to cloud the issue. Ms. Unver noted that Ms. Johnson did not change her habits of hand sanitizer use and other use of potential alcohol incidental exposure products between the time she gave the

test and the time of the result.

Ms. Unver stated that Ms. Johnson has violated her Step 2 Consent Agreement and the evidence is, in fact, reliable, substantial and probative to this fact.

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF CYNTHIA JOAN JOHNSON, P.A. DR. VARYANI SECONDED THE MOTION.**

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

Dr. Egner stated that she has a couple of things to say about this matter. She stated that she does not want the ETG test to be on trial here. The Board is not going to make a conclusion today, nor should it, about what the cutoff should be, that it is the absolute reliable test, or that it's not. She looks at this and it is a piece of the puzzle. So when she looked at this case, there are some things that say that this is a relapse, and there are other things that say that it may not be.

Dr. Egner stated that things that lead her to believe that this could be a relapse include the following:

1. The urine specimen being dilute, with the decreased creatinine and specific gravity. Dr. Egner commented that it was remarkably dilute.
2. It took 22 days for that specimen to arrive and be tested at the lab. The expert said that, if anything, it would have decreased those values, and there was an ETG value of 1,800.

Dr. Egner stated that she did find Ms. Johnson's testimony to be inconsistent with the possible etiology of a positive test. Although the Board doesn't know the absolute cutoff number that should be used, 1,800 does seem unlikely to be an incidental finding. When most states and experts are using levels significantly less than that, it's hard to ignore.

Dr. Egner asked whether, on the other hand, this was a relapse. She noted that Ms. Johnson's supervising physician, her monitoring physician, and her boss at work found that this was probably a false positive, that they saw no signs in her behavior, her demeanor or work ethic that she had had a relapse. Dr. Egner stated that there was a lot of testimony given regarding the reliability of a positive ETG, and that, perhaps, the Board should only look at a negative as confirming abstinence, but not a positive as confirming a relapse. She advised that further tests were done on other specimens, and they were negative, but there was no further testing done on the specimen of 12/27/06.

Dr. Egner stated that this is not an easy case to decide, but the Board has been here before. With every relapse that the licensee denies, the testing comes into question. The Board does have to look at all of the other factors. Dr. Egner stated that she would like to hear what other Board members have to say. She added that the only thing she will say is that, based on Ms. Johnson's consent agreement, her probation

would have been up in 2008. With the amount of question that arises from this hearing, suspending her license for 90 days, imposing a stayed permanent revocation, and five years of probation seems to be too much. There is also a requirement for an ethics course. Dr. Egner stated that she doesn't understand at all where that comes into play.

Dr. Steinbergh stated that she does agree with Dr. Egner in regard to the ETG testing. She stated that she thinks that the evidence in this record demonstrates that the ETG level in her urine was significant. Dr. Steinbergh stated that she would agree that she would not bother requiring the professional and personal ethics course. Otherwise she agrees with the Proposed Order, in terms of consistency with what the Board has done with relapses.

Dr. Steinbergh stated that the biggest concern she had was the difference in Ms. Johnson's testimony. She noted that Ms. Johnson had a conversation with Ms. Bickers, and immediately tried to explain why she may have had a positive test. It's the communion wine or at Christmas time, some people put alcohol into their foods. Dr. Steinbergh stated that Ms. Johnson accepted the positive screen for what it was, but then tried to explain it off. Dr. Steinbergh stated that Ms. Johnson also had conflicts in her testimony as to whether or not she consumes communal wine when she takes communion. Then, she says that she doesn't drink the wine, but, yet, she said that she drank the wine. Dr. Steinbergh stated that none of that makes sense.

Concerning Ms. Johnson's use of other products that might contain alcohol, Dr. Steinbergh stated that when a person is truly dedicated to the healing process with the level of intelligence Ms. Johnson has, she would not expose herself to products that have alcohol in them. Dr. Steinbergh stated that she has to believe that. She added that the Board has seen other practitioners who walk on that edge, and they get caught every time.

Dr. Steinbergh stated that she does have concerns as to whether or not Ms. Johnson has relapsed. She appreciates the fact that they haven't seen it at work. She added that one of the things with which she thinks all Board members can agree is that work is the last place where you see that happening. There are relationship issues and a variety of other issues that come up prior to anyone noticing at work that the person has a problem. That's not quite as impressive to her. Dr. Steinbergh stated that she's in agreement with this Board Order in that it's consistent with those physicians who have relapsed. She added that she does agree that the ethics course is not necessary.

Dr. Buchan stated that he is supportive of Ms. Johnson and her recovery. He thinks that she's done well, but he does believe that there's been a bump in the road. He hears the conversations about products and communal wine, and then her denials, but the story has changed. The Board has heard this so many times. He stated that he would agree with the Proposed Order, but he would be willing to hear Dr. Egner's proposal for suspension time. He does believe that relapse has taken place, and he does believe that the Board needs to respond to it.

Dr. Varyani agreed with Dr. Buchan. He added that, in ETG tests, the cutoff point is 250. With a level of

1,800 and with urine diluted to such a point (he noted that, in Ms. Johnson's case, the specific gravity was 1.005, and it should be 1.010), he can't accept the argument that Ms. Johnson has made. He stated that he doesn't buy it.

Dr. Egner stated that, if it's the Board's conclusion that this is a relapse, she would be in favor of a suspension of less than 90 days. She stated that she would probably go for 30 days, the reason being that, if she did relapse, this would be a minor one as the Board evaluates relapses. What the Board should do is watch Ms. Johnson a little longer. Dr. Egner stated that to put Ms. Johnson on probation for another five years would take her to 2013. She stated that that's a long time. Her probation would have ended in 2008. Dr. Egner stated that she would add an additional year to probation, taking her to 2009. That would be sufficient for her.

**DR. EGNER MOVED TO AMEND THE PROPOSED ORDER BY LESSENING THE SUSPENSION TIME TO 30 DAYS, REDUCING THE PROBATIONARY PERIOD TO ONE YEAR BEYOND HER CURRENT PROBATIONARY PERIOD, AND TO ELIMINATE THE ETHICS COURSE REQUIREMENT.**

Dr. Steinbergh stated that, to be consistent with the Board's guidelines for a first relapse, the sanction is a suspension period as long as 90 days and probation of five years. Every time the Board goes into a new order or a new consent agreement because of a relapse, this is what the Board does. She stated that, although she doesn't disagree with Dr. Egner in regard to her attempting to quantify the degree of relapse, she doesn't know that the Board can do that. She stated that a relapse is a relapse. If the Board is committed to the concept that Ms. Johnson has relapsed, the Board should be committed consistently with the minimum guidelines, which call for an indefinite suspension for a minimum of 90 days and a five-year probation.

**DR. BUCHAN SECONDED DR. EGNER'S MOTION.**

Dr. Buchan stated that, since Ms. Johnson is present, she has won at least a couple votes for softening the Order, as written. He indicated that the Board may not be as lenient a second time.

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

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

Dr. Steinbergh - nay

The motion carried.

**DR. EGNER MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF CYNTHIA JOAN JOHNSON, P.A. DR. VARYANI SECONDED THE MOTION. A vote was taken:**

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

The motion carried.



# State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: [www.med.ohio.gov](http://www.med.ohio.gov)

April 12, 2007

Cynthia Joan Johnson, P.A.  
2925 Coleridge Road  
Cleveland Heights, Ohio 44118

Dear Ms. Johnson:

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 October 10, 2002, you entered into a Step I Consent Agreement [October 2002 Step I Consent Agreement] with the Board in lieu of formal proceedings based upon your violation of Section 4730.25(B)(5), Ohio Revised Code. In the October 2002 Step I Consent Agreement, you made certain admissions, including that you had been diagnosed with alcohol dependence following a three-day inpatient evaluation ordered by the Board, and that you had entered residential treatment at a Board-approved treatment provider. Pursuant to the terms of the October 2002 Step I Consent Agreement, your certificate of registration as a physician assistant was suspended for an indefinite period of time. A copy of the October 2002 Step I Consent Agreement is attached hereto and fully incorporated herein.
- (2) On or about January 8, 2003, you entered into a Step II Consent Agreement [January 2003 Step II Consent Agreement] in lieu of formal proceedings based upon your violation of Sections 4730.25(B)(4) and (B)(5), Ohio Revised Code, whereby your certificate of registration as a physician assistant was reinstated subject to specified probationary terms, conditions, and limitations for a period of at least five years. A copy of the January 2003 Step II Consent Agreement is attached hereto and fully incorporated herein.

*Mailed 4-12-07*

Pursuant to Paragraph 7 of the January 2003 Step II Consent Agreement, you agreed that you shall abstain completely from the use of alcohol. Despite the requirements of Paragraph 7, a urine specimen that you provided on or about December 27, 2006, was confirmed positive for the presence of ethyl glucuronide, a metabolite of alcohol.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute, “[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,” as that clause is used in Section 4730.25(B)(5), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute “[v]iolation of the conditions placed by the board on a certificate to practice as a physician assistant, a certificate to prescribe, a physician supervisory plan, or supervision agreement,” as that clause is used in Section 4730.25(B)(20), 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.

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 3933 8841 3993  
RETURN RECEIPT REQUESTED

CC: Elizabeth Y. Collis, Esq.  
Collis, Smiles and Collis, LLC  
1650 Lake Shore Drive, Suite 225  
Columbus, Ohio 43204

CERTIFIED MAIL #91 7108 2133 3931 8318 3343  
RETURN RECEIPT REQUESTED

**STEP II  
CONSENT AGREEMENT  
BETWEEN  
CYNTHIA JOAN JOHNSON, P.A.  
AND  
THE STATE MEDICAL BOARD OF OHIO**

This Consent Agreement is entered into by and between Cynthia Joan Johnson, P.A. [Ms. Johnson], and the State Medical Board of Ohio [Board], a state agency charged with enforcing Chapters 4730. and 4731., Ohio Revised Code.

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

**BASIS FOR ACTION**

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

- A. The Board is empowered by Section 4730.25(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4730.25(B)(4), Ohio Revised Code, "inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including physical deterioration that adversely affects cognitive, motor, or perceptive skills;" and Section 4730.25(B)(5), Ohio Revised Code, "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice."
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Section 4730.25 (B)(5), as set forth in Paragraphs E and F of the October 10, 2002 Step I Consent Agreement Between Cynthia Joan Johnson, P.A., and The State Medical Board of Ohio [October 2002 Step I Consent Agreement], a copy of which is attached hereto and fully incorporated herein and the violation of Section 4730.25(B)(4) as set forth in Paragraphs E and F of the October 2002 Step I Consent Agreement and Paragraphs E and H of this Consent Agreement. The Board expressly reserves the right to institute formal proceedings based upon any other violations of Chapters 4730. or 4731. of the Ohio Revised Code, whether occurring before or after the effective date of this Consent Agreement.

- C. Ms. Johnson is applying for reinstatement of her certificate of registration as a physician assistant in the State of Ohio, Certificate #50-001350, which was suspended pursuant to the terms of the aforementioned October 2002 Step I Consent Agreement.
- D. Ms. Johnson states that she is not registered or licensed as a physician assistant in any other state or jurisdiction.
- E. Ms. Johnson admits that after entering Glenbeigh Health Sources [Glenbeigh], a Board-approved treatment provider in Rock Creek, Ohio, on September 9, 2002, for evaluation, she was transitioned to residential treatment for her diagnosed alcohol dependence and major depression, recurrent, and subsequently discharged on or about October 7, 2002, treatment complete. Ms. Johnson states that at the time she executed the October 2002 Step I Consent Agreement, Glenbeigh had not reached a final conclusion with respect to violation of 4730.25(B)(4), but admits that Glenbeigh ultimately concluded that she is capable of practicing as a physicians assistant provided that she continues outpatient psychiatric treatment and counseling.
- F. Ms. Johnson states, and the Board acknowledges receipt of information to support, that since her discharge from Glenbeigh, she has remained fully compliant with her aftercare contract with Glenbeigh, including attending at least three AA meetings per week, obtaining an AA home group and sponsor, participating in ongoing psychiatric monitoring and outpatient counseling for depression, and participation in Glenbeigh aftercare groups. Ms. Johnson states, and the Board has information to support, that she has entered into an advocacy contract with the Ohio Physician's Effectiveness Program, and that she has remained fully compliant with its terms, including participation in support group programs three times per week and random weekly drug screens. Ms. Johnson states that such aftercare and advocacy contracts remain in effect.
- G. Ms. Johnson states, and the Board acknowledges, that Chet Prusinski, D.O., of Glenbeigh, and Chris Adelman, M.D., of Rosary Hall at St. Vincent Charity Hospital, a Board-approved treatment provider in Cleveland, Ohio, have submitted written reports stating that they have assessed Ms. Johnson's ability to practice, and opined that she is capable of practicing as a physician assistant according to acceptable and prevailing standards of care, provided certain treatment and monitoring requirements are in place.
- H. Ms. Johnson states, and the Board acknowledges, that Gregory Collins, M.D., a psychiatrist approved by the Board for purposes of evaluating Ms. Johnson, has submitted a written report stating that he has assessed Ms. Johnson's ability to practice, finding that she has diagnoses of major depression, mild to moderate in remission with anxious features, and mixed personality disorder with passive

dependent and obsessive compulsive traits, and indicating that she is capable of practicing as a physician assistant according to acceptable and prevailing standards of care, provided certain treatment and monitoring requirements are in place.

- I. Ms. Johnson states, and the Board has information to support, that Ms. Johnson has substantially fulfilled the conditions for reinstatement of her certificate of registration as a physician assistant in the State of Ohio, as established in the October 2002 Step I Consent Agreement.

#### **AGREED CONDITIONS**

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, the certificate of registration of Ms. Johnson as a physician assistant in the State of Ohio shall be reinstated, and Ms. Johnson knowingly and voluntarily agrees with the Board to the following PROBATIONARY terms, conditions and limitations:

1. Ms. Johnson shall obey all federal, state, and local laws, and all rules governing the practice of physician assistants in Ohio, and all terms of probation imposed by the Chardon Municipal Court, Geauga County, Ohio, in criminal case number Case # 01 CRB 1243.
2. Ms. Johnson shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the date her quarterly declaration would have been due pursuant to her October 2002 Step I Consent Agreement with the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
3. Ms. Johnson shall appear in person for an interview before the full Board or its designated representative. The first such appearance shall take place on the date her appearance would have been scheduled pursuant to her October 2002 Step I Consent Agreement with the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
4. In the event that Ms. Johnson should leave Ohio for three continuous months, or reside or practice outside the State, Ms. Johnson 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 this Consent Agreement, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.

5. In the event Ms. Johnson is found by the Secretary of the Board to have failed to comply with any provision of this Consent Agreement, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Consent Agreement.

## **MONITORING OF REHABILITATION AND TREATMENT**

### **Sobriety**

6. Ms. Johnson shall abstain completely from the use or possession of drugs, except those prescribed, dispensed or administered to her by another so authorized by law who has full knowledge of Ms. Johnson's history of chemical dependency.
7. Ms. Johnson shall abstain completely from the use of alcohol.

### **Drug and Alcohol Screens/Supervising Physician**

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

Within thirty days of the effective date of this Consent Agreement, Ms. Johnson shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Ms. Johnson shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Ms. Johnson. Ms. Johnson and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Ms. Johnson shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to

so serve, Ms. Johnson must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Ms. Johnson shall further ensure that the previously designated supervising physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

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

9. The Board retains the right to require, and Ms. Johnson agrees to submit, blood or urine specimens for analysis for drugs and alcohol and for analysis of therapeutic levels of medication that may be prescribed for Ms. Johnson's psychiatric disorder, at Ms. Johnson's expense upon the Board's request and without prior notice. Ms. Johnson's refusal to submit a blood or urine specimen upon request of the Board shall result in a minimum of one year of actual license suspension.

#### **Rehabilitation Program**

10. Within thirty days of the effective date of this Consent Agreement, Ms. Johnson shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval.

Ms. Johnson shall submit acceptable documentary evidence of continuing compliance with this program which must be received in the Board's offices no later than the due date for Ms. Johnson's quarterly declarations.

#### **Aftercare**

11. Ms. Johnson shall maintain continued compliance with the terms of the aftercare contract entered into with her treatment provider, and with her Advocacy Contract with the Ohio Physicians Effectiveness Program or another impaired professionals committee approved in advance by the Board, provided that, where terms of the aftercare contract or advocacy contract conflict with terms of this Consent Agreement, the terms of this Consent Agreement shall control.

#### **Psychiatric Treatment**

12. Within thirty days of the effective date of this Consent Agreement, Ms. Johnson shall submit to the Board for its prior approval the names and qualifications of a psychiatrist and a mental health counselor of her choice. Upon approval by the

Board, Ms. Johnson shall undergo and continue psychiatric treatment no less than monthly and counseling no less than monthly, or an alternative treatment plan as otherwise directed by the Board. Ms. Johnson shall comply with her psychiatric treatment plan, including taking medications as prescribed and/or ordered for her psychiatric disorder, and counseling. Prior to initiating treatment, Ms. Johnson shall provide her approved treating psychiatrist and counselor with a copy of this Consent Agreement.

Ms. Johnson shall ensure that reports are forwarded by her treating psychiatrist and counselor to the Board on a quarterly basis, or as otherwise directed by the Board. These reports shall contain information describing Ms. Johnson's current treatment plan and any changes that have been made to the treatment plan since the prior report; Ms. Johnson's compliance with her treatment plan; Ms. Johnson's mental status; Ms. Johnson's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Ms. Johnson shall ensure that her treating psychiatrist and counselor immediately notify the Board of her failure to comply with her psychiatric treatment plan and/or counseling and/or any determination that Ms. Johnson is unable to practice due to her psychiatric disorder. It is Ms. Johnson's responsibility to ensure that quarterly reports are received in the Board's offices no later than the due date for Ms. Johnson's quarterly declaration.

#### **Releases**

13. Ms. Johnson shall provide continuing authorization, through appropriate written consent forms, for disclosure by her treatment provider to the Board, to treating and monitoring physicians, and to others involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations.

#### **Required Reporting by Licensee**

14. Within thirty days of the effective date of this Consent Agreement, Ms. Johnson shall provide a copy of this Consent Agreement to all employers or entities with which she is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where she has privileges or appointments. Further, Ms. Johnson shall provide a copy of this Consent Agreement to all employers or entities with which she contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where she applies for or obtains privileges or appointments.
15. Within thirty days of the effective date of this Consent Agreement, Ms. Johnson shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which she currently holds any professional license. Ms. Johnson further agrees to provide a copy of this

Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which she applies for any professional license or for reinstatement of any professional license. Further, Ms. Johnson shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

#### **FAILURE TO COMPLY**

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

If the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that Ms. Johnson has violated any term, condition or limitation of this Consent Agreement, Ms. Johnson agrees that the violation, as alleged, also constitutes clear and convincing evidence that her continued practice presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension pursuant to Section 4730.25(G), Ohio Revised Code.

#### **DURATION/MODIFICATION OF TERMS**

Ms. Johnson shall not request termination of this Consent Agreement for a minimum of five years. In addition, Ms. Johnson shall not request modification to the probationary terms, limitations, and conditions contained herein for at least one year. Otherwise, the above-described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties.

#### **ACKNOWLEDGMENTS/LIABILITY RELEASE**

Ms. Johnson acknowledges that she has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

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

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

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code, and may be reported to appropriate organizations, data banks, and

governmental bodies. Ms. Johnson agrees to provide her social security number to the Board and hereby authorizes the Board to utilize that number in conjunction with that reporting.

**EFFECTIVE DATE**

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

Cynthia Joan Johnson, P.A.  
CYNTHIA JOAN JOHNSON, P.A.

Anand G. Garg  
ANAND G. GARG, M.D.  
Secretary

12-26-02  
DATE

01/08/03  
DATE

Raymond J. Albert  
RAYMOND J. ALBERT  
Supervising Member

1/08/03  
DATE

Karen H. Mortland  
KAREN H. MORTLAND  
Enforcement Coordinator

1/8/03  
DATE

**STEP I**  
**CONSENT AGREEMENT**  
**BETWEEN**  
**CYNTHIA JOAN JOHNSON, P.A.**  
**AND**  
**THE STATE MEDICAL BOARD OF OHIO**

This Consent Agreement is entered into by and between Cynthia Joan Johnson, P.A., and the State Medical Board of Ohio [the Board], a state agency charged with enforcing Chapters 4730. and 4731., Ohio Revised Code.

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

**BASIS FOR ACTION**

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

- A. The Board is empowered by Section 4730.25(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4730.25(B)(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."
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Section 4730.25(B)(5), Ohio Revised Code, as set forth in Paragraphs E and F below, 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. Ms. Johnson is registered as a physician assistant in the State of Ohio, Certificate # 50-001350.
- D. Ms. Johnson states that she is not registered as a physician assistant in any other state or jurisdiction.

- E. Ms. Johnson admits that on or about August 30, 1999, in Cleveland Heights, Ohio, criminal charges of menacing and stalking were filed against her, and that subsequently the court entered an anti-stalking order against her. Ms. Johnson admits that she pled guilty to a reduced charge of disorderly conduct, a third degree misdemeanor. Ms. Johnson admits that on or about October 22, 2001, in Geauga County, Ohio, she pled guilty to criminal trespass, a fourth degree misdemeanor. Ms. Johnson admits that her alcohol consumption played a role in her actions underlying both of these convictions.
- F. Ms. Johnson admits that on September 9, 2002, pursuant to Board order, she entered Glenbeigh Health Sources, a Board-approved treatment provider, for the purpose of undergoing a three-day inpatient evaluation for determining whether she is in violation of Sections 4730.25(B)(4) and/or (B)(5), Ohio Revised Code. Ms. Johnson admits that as a result of this evaluation, she was diagnosed with alcohol dependence/abuse and major depression, recurrent, moderate to severe, and that inpatient level of care was recommended. Ms. Johnson admits that she entered residential treatment for alcoholism and depression at Glenbeigh Health Sources, that such treatment continues to date, and that she is still being assessed for violation of Section 4730.25(B)(4).

### AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Ms. Johnson knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

#### **SUSPENSION OF CERTIFICATE**

1. Ms. Johnson's certificate of registration as a physician assistant in the State of Ohio shall be **SUSPENDED** for an indefinite period of time.

#### Sobriety

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

#### Releases: Quarterly Declarations and Appearances

4. Ms. Johnson 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 Ms. Johnson's chemical dependency or related conditions, or for purposes of complying with this Consent Agreement, whether such treatment or evaluation occurred before or after the effective date of this Consent Agreement. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. Ms. Johnson further agrees to provide the Board written consent permitting any treatment provider from whom she obtains treatment to notify the Board in the event she fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Consent Agreement.

5. Ms. Johnson shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
6. Ms. Johnson shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

Drug & Alcohol Screens; Supervising Physician

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

Within thirty days of the effective date of this Consent Agreement, Ms. Johnson shall submit to the Board for its prior approval the name of a supervising physician to whom Ms. Johnson shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Ms. Johnson. Ms. Johnson and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is

maintained and shall immediately inform the Board of any positive screening results.

Ms. Johnson shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

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

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

#### Rehabilitation Program

8. Within thirty days of the effective date of this Consent Agreement, Ms. Johnson shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval.

Ms. Johnson shall submit acceptable documentary evidence of continuing compliance with this program which must be received in the Board's offices no later than the due date for Ms. Johnson's quarterly declarations.

#### **CONDITIONS FOR REINSTATEMENT**

9. The Board shall not consider reinstatement of Ms. Johnson's of registration as a physician assistant until all of the following conditions are met:
  - a. Ms. Johnson shall submit an application for reinstatement, accompanied by appropriate fees, if any.
  - b. Ms. Johnson shall demonstrate to the satisfaction of the Board that she can resume practice in compliance with acceptable and prevailing standards of care under the provisions of her certificate. Such demonstration shall include but shall not be limited to the following:

- i. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Ms. Johnson has successfully completed any required inpatient treatment.
- ii. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
- iii. Evidence of continuing full compliance with this Consent Agreement.
- iv. Three written reports indicating that Ms. Johnson's ability to practice has been assessed and that she has been found capable of practicing according to acceptable and prevailing standards of care.

Two reports shall be made by individuals or providers approved under Section 4731.25, Ohio Revised Code, or otherwise approved in advance by the Board, for making such assessments. Prior to the assessments, Ms. Johnson shall provide the evaluators with copies of patient records from any evaluations and/or treatment that she has received, a copy of the Board's letter dated August 6, 2002, ordering her to a three-day inpatient evaluation, and a copy of this Consent Agreement. The reports from the evaluators shall include any recommendations for treatment, monitoring, or supervision of Ms. Johnson, and any conditions, restrictions or limitations that should be imposed on Ms. Johnson's practice. The reports shall also describe the basis for the evaluator's determinations.

One report shall be made by a psychiatrist, approved in advance by the Board, who shall conduct a psychiatric examination of Ms. Johnson. Prior to the examination, Ms. Johnson shall provide the psychiatrist with copies of patient records from any prior evaluations and/or treatment that she has received, a copy of the Board's letter dated August 6, 2002, ordering her to a three-day inpatient evaluation, and a copy of this Consent Agreement. The report from the evaluating psychiatrist shall include the psychiatrist's diagnoses and conclusions; any recommendations for care, counseling and treatment for the psychiatric diagnoses; any conditions, restrictions, or limitations that should be imposed on Ms. Johnson's practice; and the basis for the psychiatrist's determinations.

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

- c. Ms. Johnson shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the Board or, if the Board and Ms. Johnson are unable to agree on the terms of a written Consent Agreement, then Ms. Johnson further agrees to abide by any terms, conditions and limitations imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code.

Further, upon reinstatement of Ms. Johnson's certificate of registration as a physician assistant in this state, the Board shall require continued monitoring which shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Revised Code. Moreover, upon termination of the consent agreement or Board Order, Ms. Johnson shall submit to the Board for at least two years annual progress reports made under penalty of Board disciplinary action or criminal prosecution stating whether Ms. Johnson has maintained sobriety.

10. In the event that Ms. Johnson has not been engaged in active practice as a physician assistant for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4730.28, Ohio Revised Code, to require additional evidence of Ms. Johnson's fitness to resume practice.

#### **REQUIRED REPORTING BY REGISTRANT**

11. Within thirty days of the effective date of this Consent Agreement, Ms. Johnson shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which she currently holds any professional certificate of registration or license. Ms. Johnson further agrees to provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which she applies for any certificate of registration or professional license or reinstatement of any certificate of registration or professional license. Further, Ms. Johnson shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
12. Within thirty days of the effective date of this Consent Agreement, Ms. Johnson shall provide a copy of this Consent Agreement to all employers or entities with which she is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where she has privileges or appointments. Further, Ms. Johnson shall provide a copy of this Consent Agreement to all employers or entities with which she contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where she applies for or obtains privileges or appointments.

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

**FAILURE TO COMPLY**

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

**ACKNOWLEDGMENTS/LIABILITY RELEASE**

Ms. Johnson acknowledges that she has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

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

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

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code, and may be reported to appropriate organizations, data banks, and governmental bodies. Ms. Johnson agrees to provide her social security number to the Board and hereby authorizes the Board to utilize that number in conjunction with that reporting.

**EFFECTIVE DATE**

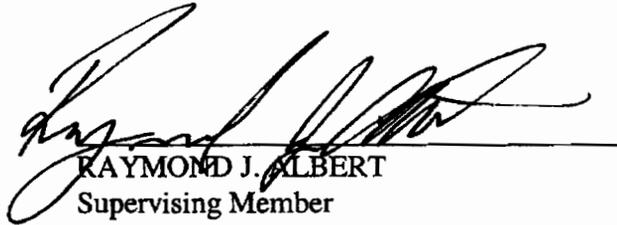
It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.

Cynthia Joan Johnson P.A.  
CYNTHIA JOAN JOHNSON, P.A.

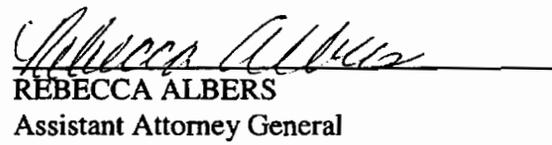
Anand G. Garg  
ANAND G. GARG, M.D.  
Secretary

10-8-02  
DATE

10/09/02  
DATE

  
RAYMOND J. ALBERT  
Supervising Member

10/9/01  
DATE

  
REBECCA ALBERS  
Assistant Attorney General

10/10/02  
DATE

**STEP II  
CONSENT AGREEMENT  
BETWEEN  
CYNTHIA JOAN JOHNSON, P.A.  
AND  
THE STATE MEDICAL BOARD OF OHIO**

This Consent Agreement is entered into by and between Cynthia Joan Johnson, P.A. [Ms. Johnson], and the State Medical Board of Ohio [Board], a state agency charged with enforcing Chapters 4730. and 4731., Ohio Revised Code.

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

**BASIS FOR ACTION**

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

- A. The Board is empowered by Section 4730.25(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4730.25(B)(4), Ohio Revised Code, "inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including physical deterioration that adversely affects cognitive, motor, or perceptive skills;" and Section 4730.25(B)(5), Ohio Revised Code, "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice."
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Section 4730.25 (B)(5), as set forth in Paragraphs E and F of the October 10, 2002 Step I Consent Agreement Between Cynthia Joan Johnson, P.A., and The State Medical Board of Ohio [October 2002 Step I Consent Agreement], a copy of which is attached hereto and fully incorporated herein and the violation of Section 4730.25(B)(4) as set forth in Paragraphs E and F of the October 2002 Step I Consent Agreement and Paragraphs E and H of this Consent Agreement. The Board expressly reserves the right to institute formal proceedings based upon any other violations of Chapters 4730. or 4731. of the Ohio Revised Code, whether occurring before or after the effective date of this Consent Agreement.

- C. Ms. Johnson is applying for reinstatement of her certificate of registration as a physician assistant in the State of Ohio, Certificate #50-001350, which was suspended pursuant to the terms of the aforementioned October 2002 Step I Consent Agreement.
- D. Ms. Johnson states that she is not registered or licensed as a physician assistant in any other state or jurisdiction.
- E. Ms. Johnson admits that after entering Glenbeigh Health Sources [Glenbeigh], a Board-approved treatment provider in Rock Creek, Ohio, on September 9, 2002, for evaluation, she was transitioned to residential treatment for her diagnosed alcohol dependence and major depression, recurrent, and subsequently discharged on or about October 7, 2002, treatment complete. Ms. Johnson states that at the time she executed the October 2002 Step I Consent Agreement, Glenbeigh had not reached a final conclusion with respect to violation of 4730.25(B)(4), but admits that Glenbeigh ultimately concluded that she is capable of practicing as a physicians assistant provided that she continues outpatient psychiatric treatment and counseling.
- F. Ms. Johnson states, and the Board acknowledges receipt of information to support, that since her discharge from Glenbeigh, she has remained fully compliant with her aftercare contract with Glenbeigh, including attending at least three AA meetings per week, obtaining an AA home group and sponsor, participating in ongoing psychiatric monitoring and outpatient counseling for depression, and participation in Glenbeigh aftercare groups. Ms. Johnson states, and the Board has information to support, that she has entered into an advocacy contract with the Ohio Physician's Effectiveness Program, and that she has remained fully compliant with its terms, including participation in support group programs three times per week and random weekly drug screens. Ms. Johnson states that such aftercare and advocacy contracts remain in effect.
- G. Ms. Johnson states, and the Board acknowledges, that Chet Prusinski, D.O., of Glenbeigh, and Chris Adelman, M.D., of Rosary Hall at St. Vincent Charity Hospital, a Board-approved treatment provider in Cleveland, Ohio, have submitted written reports stating that they have assessed Ms. Johnson's ability to practice, and opined that she is capable of practicing as a physician assistant according to acceptable and prevailing standards of care, provided certain treatment and monitoring requirements are in place.
- H. Ms. Johnson states, and the Board acknowledges, that Gregory Collins, M.D., a psychiatrist approved by the Board for purposes of evaluating Ms. Johnson, has submitted a written report stating that he has assessed Ms. Johnson's ability to practice, finding that she has diagnoses of major depression, mild to moderate in remission with anxious features, and mixed personality disorder with passive

dependent and obsessive compulsive traits, and indicating that she is capable of practicing as a physician assistant according to acceptable and prevailing standards of care, provided certain treatment and monitoring requirements are in place.

- I. Ms. Johnson states, and the Board has information to support, that Ms. Johnson has substantially fulfilled the conditions for reinstatement of her certificate of registration as a physician assistant in the State of Ohio, as established in the October 2002 Step I Consent Agreement.

#### **AGREED CONDITIONS**

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, the certificate of registration of Ms. Johnson as a physician assistant in the State of Ohio shall be reinstated, and Ms. Johnson knowingly and voluntarily agrees with the Board to the following PROBATIONARY terms, conditions and limitations:

1. Ms. Johnson shall obey all federal, state, and local laws, and all rules governing the practice of physician assistants in Ohio, and all terms of probation imposed by the Chardon Municipal Court, Geauga County, Ohio, in criminal case number Case # 01 CRB 1243.
2. Ms. Johnson shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the date her quarterly declaration would have been due pursuant to her October 2002 Step I Consent Agreement with the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
3. Ms. Johnson shall appear in person for an interview before the full Board or its designated representative. The first such appearance shall take place on the date her appearance would have been scheduled pursuant to her October 2002 Step I Consent Agreement with the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
4. In the event that Ms. Johnson should leave Ohio for three continuous months, or reside or practice outside the State, Ms. Johnson 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 this Consent Agreement, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.

5. In the event Ms. Johnson is found by the Secretary of the Board to have failed to comply with any provision of this Consent Agreement, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Consent Agreement.

## **MONITORING OF REHABILITATION AND TREATMENT**

### **Sobriety**

6. Ms. Johnson shall abstain completely from the use or possession of drugs, except those prescribed, dispensed or administered to her by another so authorized by law who has full knowledge of Ms. Johnson's history of chemical dependency.
7. Ms. Johnson shall abstain completely from the use of alcohol.

### **Drug and Alcohol Screens/Supervising Physician**

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

Within thirty days of the effective date of this Consent Agreement, Ms. Johnson shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Ms. Johnson shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Ms. Johnson. Ms. Johnson and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Ms. Johnson shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to

so serve, Ms. Johnson must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Ms. Johnson shall further ensure that the previously designated supervising physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

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

9. The Board retains the right to require, and Ms. Johnson agrees to submit, blood or urine specimens for analysis for drugs and alcohol and for analysis of therapeutic levels of medication that may be prescribed for Ms. Johnson's psychiatric disorder, at Ms. Johnson's expense upon the Board's request and without prior notice. Ms. Johnson's refusal to submit a blood or urine specimen upon request of the Board shall result in a minimum of one year of actual license suspension.

### **Rehabilitation Program**

10. Within thirty days of the effective date of this Consent Agreement, Ms. Johnson shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval.

Ms. Johnson shall submit acceptable documentary evidence of continuing compliance with this program which must be received in the Board's offices no later than the due date for Ms. Johnson's quarterly declarations.

### **Aftercare**

11. Ms. Johnson shall maintain continued compliance with the terms of the aftercare contract entered into with her treatment provider, and with her Advocacy Contract with the Ohio Physicians Effectiveness Program or another impaired professionals committee approved in advance by the Board, provided that, where terms of the aftercare contract or advocacy contract conflict with terms of this Consent Agreement, the terms of this Consent Agreement shall control.

### **Psychiatric Treatment**

12. Within thirty days of the effective date of this Consent Agreement, Ms. Johnson shall submit to the Board for its prior approval the names and qualifications of a psychiatrist and a mental health counselor of her choice. Upon approval by the

Board, Ms. Johnson shall undergo and continue psychiatric treatment no less than monthly and counseling no less than monthly, or an alternative treatment plan as otherwise directed by the Board. Ms. Johnson shall comply with her psychiatric treatment plan, including taking medications as prescribed and/or ordered for her psychiatric disorder, and counseling. Prior to initiating treatment, Ms. Johnson shall provide her approved treating psychiatrist and counselor with a copy of this Consent Agreement.

Ms. Johnson shall ensure that reports are forwarded by her treating psychiatrist and counselor to the Board on a quarterly basis, or as otherwise directed by the Board. These reports shall contain information describing Ms. Johnson's current treatment plan and any changes that have been made to the treatment plan since the prior report; Ms. Johnson's compliance with her treatment plan; Ms. Johnson's mental status; Ms. Johnson's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Ms. Johnson shall ensure that her treating psychiatrist and counselor immediately notify the Board of her failure to comply with her psychiatric treatment plan and/or counseling and/or any determination that Ms. Johnson is unable to practice due to her psychiatric disorder. It is Ms. Johnson's responsibility to ensure that quarterly reports are received in the Board's offices no later than the due date for Ms. Johnson's quarterly declaration.

### **Releases**

13. Ms. Johnson shall provide continuing authorization, through appropriate written consent forms, for disclosure by her treatment provider to the Board, to treating and monitoring physicians, and to others involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations.

### **Required Reporting by Licensee**

14. Within thirty days of the effective date of this Consent Agreement, Ms. Johnson shall provide a copy of this Consent Agreement to all employers or entities with which she is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where she has privileges or appointments. Further, Ms. Johnson shall provide a copy of this Consent Agreement to all employers or entities with which she contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where she applies for or obtains privileges or appointments.
15. Within thirty days of the effective date of this Consent Agreement, Ms. Johnson shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which she currently holds any professional license. Ms. Johnson further agrees to provide a copy of this

Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which she applies for any professional license or for reinstatement of any professional license. Further, Ms. Johnson shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

### **FAILURE TO COMPLY**

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

If the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that Ms. Johnson has violated any term, condition or limitation of this Consent Agreement, Ms. Johnson agrees that the violation, as alleged, also constitutes clear and convincing evidence that her continued practice presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension pursuant to Section 4730.25(G), Ohio Revised Code.

### **DURATION/MODIFICATION OF TERMS**

Ms. Johnson shall not request termination of this Consent Agreement for a minimum of five years. In addition, Ms. Johnson shall not request modification to the probationary terms, limitations, and conditions contained herein for at least one year. Otherwise, the above-described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties.

### **ACKNOWLEDGMENTS/LIABILITY RELEASE**

Ms. Johnson acknowledges that she has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

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

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

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code, and may be reported to appropriate organizations, data banks, and

governmental bodies. Ms. Johnson agrees to provide her social security number to the Board and hereby authorizes the Board to utilize that number in conjunction with that reporting.

**EFFECTIVE DATE**

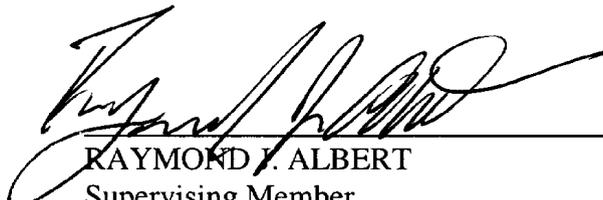
It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.

  
\_\_\_\_\_  
CYNTHIA JOAN JOHNSON, P.A.

  
\_\_\_\_\_  
ANAND G. GARG, M.D.  
Secretary

12-26-02  
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DATE

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\_\_\_\_\_  
DATE

**STEP I**  
**CONSENT AGREEMENT**  
**BETWEEN**  
**CYNTHIA JOAN JOHNSON, P.A.**  
**AND**  
**THE STATE MEDICAL BOARD OF OHIO**

This Consent Agreement is entered into by and between Cynthia Joan Johnson, P.A., and the State Medical Board of Ohio [the Board], a state agency charged with enforcing Chapters 4730. and 4731., Ohio Revised Code.

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

**BASIS FOR ACTION**

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

- A. The Board is empowered by Section 4730.25(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4730.25(B)(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."
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Section 4730.25(B)(5), Ohio Revised Code, as set forth in Paragraphs E and F below, 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. Ms. Johnson is registered as a physician assistant in the State of Ohio, Certificate # 50-001350.
- D. Ms. Johnson states that she is not registered as a physician assistant in any other state or jurisdiction.

- E. Ms. Johnson admits that on or about August 30, 1999, in Cleveland Heights, Ohio, criminal charges of menacing and stalking were filed against her, and that subsequently the court entered an anti-stalking order against her. Ms. Johnson admits that she pled guilty to a reduced charge of disorderly conduct, a third degree misdemeanor. Ms. Johnson admits that on or about October 22, 2001, in Geauga County, Ohio, she pled guilty to criminal trespass, a fourth degree misdemeanor. Ms. Johnson admits that her alcohol consumption played a role in her actions underlying both of these convictions.
- F. Ms. Johnson admits that on September 9, 2002, pursuant to Board order, she entered Glenbeigh Health Sources, a Board-approved treatment provider, for the purpose of undergoing a three-day inpatient evaluation for determining whether she is in violation of Sections 4730.25(B)(4) and/or (B)(5), Ohio Revised Code. Ms. Johnson admits that as a result of this evaluation, she was diagnosed with alcohol dependence/abuse and major depression, recurrent, moderate to severe, and that inpatient level of care was recommended. Ms. Johnson admits that she entered residential treatment for alcoholism and depression at Glenbeigh Health Sources, that such treatment continues to date, and that she is still being assessed for violation of Section 4730.25(B)(4).

### **AGREED CONDITIONS**

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Ms. Johnson knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

#### **SUSPENSION OF CERTIFICATE**

1. Ms. Johnson's certificate of registration as a physician assistant in the State of Ohio shall be **SUSPENDED** for an indefinite period of time.

#### **Sobriety**

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

#### **Releases; Quarterly Declarations and Appearances**

4. Ms. Johnson 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 Ms. Johnson's chemical dependency or related conditions, or for purposes of complying with this Consent Agreement, whether such treatment or evaluation occurred before or after the effective date of this Consent Agreement. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. Ms. Johnson further agrees to provide the Board written consent permitting any treatment provider from whom she obtains treatment to notify the Board in the event she fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Consent Agreement.

5. Ms. Johnson shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
6. Ms. Johnson shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

Drug & Alcohol Screens; Supervising Physician

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

Within thirty days of the effective date of this Consent Agreement, Ms. Johnson shall submit to the Board for its prior approval the name of a supervising physician to whom Ms. Johnson shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Ms. Johnson. Ms. Johnson and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is

maintained and shall immediately inform the Board of any positive screening results.

Ms. Johnson shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

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

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

#### Rehabilitation Program

8. Within thirty days of the effective date of this Consent Agreement, Ms. Johnson shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval.

Ms. Johnson shall submit acceptable documentary evidence of continuing compliance with this program which must be received in the Board's offices no later than the due date for Ms. Johnson's quarterly declarations.

#### **CONDITIONS FOR REINSTATEMENT**

9. The Board shall not consider reinstatement of Ms. Johnson's of registration as a physician assistant until all of the following conditions are met:
  - a. Ms. Johnson shall submit an application for reinstatement, accompanied by appropriate fees, if any.
  - b. Ms. Johnson shall demonstrate to the satisfaction of the Board that she can resume practice in compliance with acceptable and prevailing standards of care under the provisions of her certificate. Such demonstration shall include but shall not be limited to the following:

- i. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Ms. Johnson has successfully completed any required inpatient treatment.
- ii. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
- iii. Evidence of continuing full compliance with this Consent Agreement.
- iv. Three written reports indicating that Ms. Johnson's ability to practice has been assessed and that she has been found capable of practicing according to acceptable and prevailing standards of care.

Two reports shall be made by individuals or providers approved under Section 4731.25, Ohio Revised Code, or otherwise approved in advance by the Board, for making such assessments. Prior to the assessments, Ms. Johnson shall provide the evaluators with copies of patient records from any evaluations and/or treatment that she has received, a copy of the Board's letter dated August 6, 2002, ordering her to a three-day inpatient evaluation, and a copy of this Consent Agreement. The reports from the evaluators shall include any recommendations for treatment, monitoring, or supervision of Ms. Johnson, and any conditions, restrictions or limitations that should be imposed on Ms. Johnson's practice. The reports shall also describe the basis for the evaluator's determinations.

One report shall be made by a psychiatrist, approved in advance by the Board, who shall conduct a psychiatric examination of Ms. Johnson. Prior to the examination, Ms. Johnson shall provide the psychiatrist with copies of patient records from any prior evaluations and/or treatment that she has received, a copy of the Board's letter dated August 6, 2002, ordering her to a three-day inpatient evaluation, and a copy of this Consent Agreement. The report from the evaluating psychiatrist shall include the psychiatrist's diagnoses and conclusions; any recommendations for care, counseling and treatment for the psychiatric diagnoses; any conditions, restrictions, or limitations that should be imposed on Ms. Johnson's practice; and the basis for the psychiatrist's determinations.

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

- c. Ms. Johnson shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the Board or, if the Board and Ms. Johnson are unable to agree on the terms of a written Consent Agreement, then Ms. Johnson further agrees to abide by any terms, conditions and limitations imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code.

Further, upon reinstatement of Ms. Johnson's certificate of registration as a physician assistant in this state, the Board shall require continued monitoring which shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Revised Code. Moreover, upon termination of the consent agreement or Board Order, Ms. Johnson shall submit to the Board for at least two years annual progress reports made under penalty of Board disciplinary action or criminal prosecution stating whether Ms. Johnson has maintained sobriety.

10. In the event that Ms. Johnson has not been engaged in active practice as a physician assistant for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4730.28, Ohio Revised Code, to require additional evidence of Ms. Johnson's fitness to resume practice.

#### **REQUIRED REPORTING BY REGISTRANT**

11. Within thirty days of the effective date of this Consent Agreement, Ms. Johnson shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which she currently holds any professional certificate of registration or license. Ms. Johnson further agrees to provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which she applies for any certificate of registration or professional license or reinstatement of any certificate of registration or professional license. Further, Ms. Johnson shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
12. Within thirty days of the effective date of this Consent Agreement, Ms. Johnson shall provide a copy of this Consent Agreement to all employers or entities with which she is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where she has privileges or appointments. Further, Ms. Johnson shall provide a copy of this Consent Agreement to all employers or entities with which she contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where she applies for or obtains privileges or appointments.

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

**FAILURE TO COMPLY**

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

**ACKNOWLEDGMENTS/LIABILITY RELEASE**

Ms. Johnson acknowledges that she has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

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

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

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code, and may be reported to appropriate organizations, data banks, and governmental bodies. Ms. Johnson agrees to provide her social security number to the Board and hereby authorizes the Board to utilize that number in conjunction with that reporting.

**EFFECTIVE DATE**

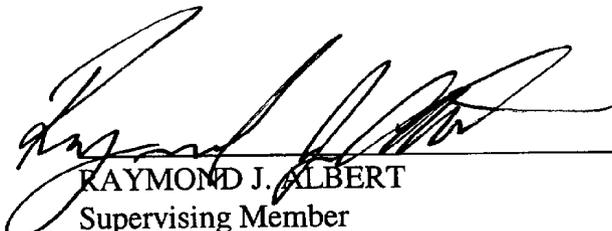
It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.

Cynthia Joan Johnson P.A.  
CYNTHIA JOAN JOHNSON, P.A.

Anand G. Garg, M.D.  
ANAND G. GARG, M.D.  
Secretary

10-8-02  
DATE

10/09/02  
DATE

  
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RAYMOND J. ALBERT  
Supervising Member

10/9/02  
\_\_\_\_\_  
DATE

  
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REBECCA ALBERS  
Assistant Attorney General

10/10/02  
\_\_\_\_\_  
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All reports required pursuant to this paragraph shall be based upon examinations occurring within the three months immediately preceding any application for reinstatement.

- c. Ms. Johnson shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the Board or, if the Board and Ms. Johnson are unable to agree on the terms of a written Consent Agreement, then Ms. Johnson further agrees to abide by any terms, conditions and limitations imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code.

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**FAILURE TO COMPLY**

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**EFFECTIVE DATE**

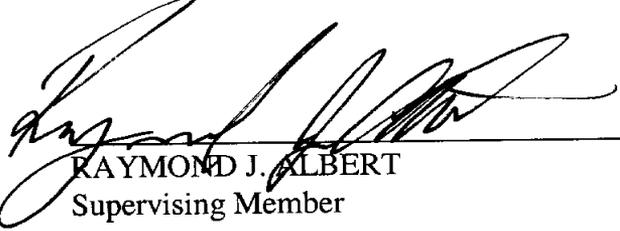
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Cynthia Joan Johnson P.A.  
CYNTHIA JOAN JOHNSON, P.A.

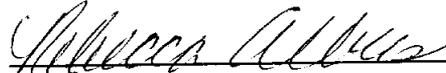
Anand G. Garg  
ANAND G. GARG, M.D.  
Secretary

10-8-02  
DATE

10/09/02  
DATE

  
\_\_\_\_\_  
RAYMOND J. ALBERT  
Supervising Member

10/9/01  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
REBECCA ALBERS  
Assistant Attorney General

10/10/02  
\_\_\_\_\_  
DATE