

State Medical Board of Ohio

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Richard A. Whitehouse, Esq.
Executive Director

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November 14, 2007

Joseph William Fischkelta, P.A.
4840 Shannon Avenue
Springfield, OH 45504

Dear Mr. Fischkelta:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 14, 2007, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of 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

A handwritten signature in black ink, appearing to read "Lance A. Talmage, M.D.", is written over the printed name.

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

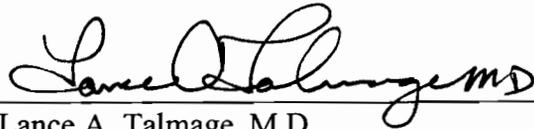
CERTIFIED MAIL NO. 91 7108 2133 3933 8960 9289
RETURN RECEIPT REQUESTED

Mailed 11-16-07

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 14, 2007, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Joseph William Fischkelta, 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.



Lance A. Talmage, M.D.
Secretary

(SEAL)

November 14, 2007

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

JOSEPH WILLIAM
FISCHKELTA, P.A.

*

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on November 14, 2007.

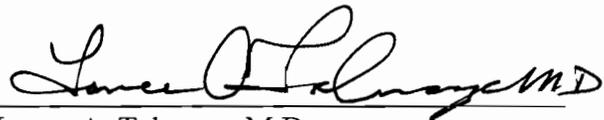
Upon the Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the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

It is hereby ORDERED that:

The certificate of Joseph William Fischkelta, P.A., to practice as a physician assistant in the State of Ohio shall be PERMANENTLY REVOKED.

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

(SEAL)



Lance A. Talmage, M.D.
Secretary

November 14, 2007

Date

2007 SEP 12 P 2:11

**REPORT AND RECOMMENDATION
IN THE CONSOLIDATED MATTERS OF JOSEPH WILLIAM FISCHKELTA, P.A.**

The Consolidated Matters of Joseph William Fischkelta, P.A., were heard by R. Gregory Porter, Hearing Examiner for the State Medical Board of Ohio, on July 1, 2005, and January 17 and February 28, 2007.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated February 9, 2005, the State Medical Board of Ohio [Board] notified Joseph William Fischkelta, P.A., that it had proposed to take disciplinary action against or to refuse to register or reinstate his certificate of registration as a physician assistant, based upon his violation of the terms and conditions of a February 11, 2004, Board Order [February 2004 Order]. The Board alleged that the February 2004 Order required, among other things, that Mr. Fischkelta abstain completely from the use of alcohol. The Board further alleged that, on or about January 5, 2005, Mr. Fischkelta had submitted a urine sample that tested positive for alcohol and for the presence of ethyl glucuronide [EtG], a metabolite of alcohol.

The Board alleged that Mr. Fischkelta's acts, conduct, and/or omissions, individually and/or collectively, constituted: "[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"; and/or "[v]iolation of the conditions placed by the board on a certificate of registration, physician assistant utilization plan, or supervision agreement,' as that clause is used in Section 4730.25(B)(20), Ohio Revised Code."

Accordingly, the Board advised Mr. Fischkelta of his right to request a hearing concerning the Board's allegations. (State's Exhibit 1A)

- B. By document received by the Board on March 11, 2005, Mr. Fischkelta requested a hearing. (State's Exhibit 1B)
- C. On July 1, 2005, a hearing took place concerning the issues raised in the February 9, 2005, notice.
- D. By letter dated April 12, 2006, the Board issued a second notice of opportunity for hearing, notifying Mr. Fischkelta that it had proposed to determine whether to impose

additional discipline upon his certificate. The Board based its proposed action on allegations that, on or about February 28, 2006, Mr. Fischkelta had submitted a urine specimen that tested positive for EtG in violation of the February 2004 Order.

The Board alleged that Mr. Fischkelta's acts, conduct, and/or omissions, individually and/or collectively, constituted: "[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"; and/or "[v]iolation of the conditions placed by the board on a certificate of registration, physician assistant utilization plan, or supervision agreement,' as that clause is used in Section 4730.25(B)(20), Ohio Revised Code."

Accordingly, the Board notified Mr. Fischkelta of his right to request a hearing concerning the Board's allegations in the second notice. (State's Exhibit 11A)

- E. By document received by the Board on April 14, 2006, James M. McGovern, Esq., requested a hearing on behalf of Mr. Fischkelta. (State's Exhibit 11F)
- F. By letter dated August 9, 2006, the Board issued a third notice of opportunity for hearing, notifying Mr. Fischkelta that it had proposed to determine whether to impose further discipline upon his certificate. The Board based its proposed action on allegations that, on or about March 31, 2006, Mr. Fischkelta had submitted a urine specimen that tested positive for EtG in violation of the February 2004 Order.

The Board alleged that Mr. Fischkelta's acts, conduct, and/or omissions, individually and/or collectively, constituted: "[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"; and/or "[v]iolation of the conditions placed by the board on a certificate of registration, physician assistant utilization plan, or supervision agreement,' as that clause is used in Section 4730.25(B)(20), Ohio Revised Code."

Finally, the Board notified Mr. Fischkelta of his right to request a hearing concerning the Board's allegations in the third notice. (State's Exhibit 11H)

- G. By document received by the Board on August 21, 2006, Mr. McGovern requested a hearing on behalf of Mr. Fischkelta. (State's Exhibit 11I)
- H. By Entry dated August 29, 2006, the matters addressed in the February 9, 2005, April 12, 2006, and August 9, 2006, notices of opportunity for hearing were consolidated. (State's Exhibit 11M)

II. Appearances

- A. On behalf of the State of Ohio: Marc Dann, Attorney General, by Tara L. Berrien (July 1, 2005) and Steven McGann (January 17 and February 28, 2007), Assistant Attorneys General.
- B. On behalf of the Respondent: James M. McGovern, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State

- 1. Joseph William Fischkelta, P.A., as upon cross-examination (July 1, 2005)
- 2. Danielle Bickers (July 1, 2005)
- 3. Patricia Pade, M.D.¹ (July 1, 2005)
- 4. William J. Closson, Ph.D. (January 17, 2007)

B. Presented by the Respondent

- 1. Joseph William Fischkelta, P.A. (July 1, 2005, and February 28, 2007)
- 2. R. Jason Jones (July 1, 2005)
- 3. James Dumas (July 1, 2005)
- 4. David Kirkwood, M.D. (July 1, 2005)
- 5. Bridget Fischkelta (July 1, 2005)

II. Exhibits Examined

A. Presented by the State

State's Exhibits 1A through 1CC, 11A, and 11F through 11T: Procedural exhibits.

State's Exhibit 2: Certified copies of documents maintained by the Board concerning Mr. Fischkelta. [Note: The Hearing Examiner numbered the pages of this exhibit post-hearing.]

State's Exhibit 3A: Copy of urine toxicology report concerning a sample submitted by Mr. Fischkelta on January 5, 2005, and attached February 3, 2005, telefacsimile cover sheet to Board staff from Candice Roquemore, Case Management Assistant, Virginia Health Practitioners' Intervention Program [HPIP].

¹ Dr. Pade's testimony was stricken from the record. See paragraph 1 of Procedural Matters, below.

State's Exhibit 3B: A more legible copy of the urine toxicology report in State's Exhibit 3A.

State's Exhibit 4: Copy of a National Conference of Professional Services Test Result Certificate for a urine sample submitted on January 5, 2005, by Mr. Fischkelta. [Note: A Social Security number was redacted from this document post-hearing.]

State's Exhibit 5: Copy of January 13, 2005, HPIP Report of Noncompliance.

State's Exhibit 7: State's February 17, 2005, written closing argument.

State's Exhibit 12: Copy of urine toxicology report concerning a sample submitted by Mr. Fischkelta on March 31, 2006.

State's Exhibit 13: Copy of urine toxicology report concerning a sample submitted by Mr. Fischkelta on February 28, 2006.

State's Exhibit 14: Curriculum vitae of William J. Closson, Ph.D.

B. Presented by the Respondent

Respondent's Exhibit A: Collection of documents consisting of Ohio Physicians Health Program [OPHP] Self-Reporting Forms, HPIP Group Attendance Logs, and March 18 and 30, 2005, Ohio Physicians Effectiveness Authorization Forms. [This exhibit has been sealed to protect the confidentiality of recovery program participants.]

Respondent's Exhibit B: April 7, 2005, written statement of Lela Daniels Dumas.

Respondent's Exhibit C: Copy of a Clark County Sheriff's Office Incident Report.

Respondent's Exhibit D: Copy of notebook entries listing telephone calls and incidents of vandalism.

Respondent's Exhibit E: Three photographs of a vehicle; two showing markings with magic marker, one showing flat tires.

Respondent's Exhibit F: Copy of a March 7, 2005, Confidential Agreement between OPHP and Mr. Fischkelta with attached copies of urine toxicology reports. [Note: This exhibit has been sealed to maintain the confidentiality of substance-abuse treatment records.]

Respondent's Exhibit F-2: Copy of hospital records from Miami Valley Hospital concerning Mr. Fischkelta's admission on December 15, 2006. [Note: This exhibit has been sealed to protect patient confidentiality. In addition, the Hearing Examiner renumbered this exhibit post-hearing from Respondent's Exhibit F to Respondent's

Exhibit F-2 to avoid duplicate exhibit numbers. Finally, the Hearing Examiner numbered the pages of this exhibit post-hearing.]

Respondent's Exhibit H: Respondent's March 3, 2005, written closing argument.

C. Admitted by the Hearing Examiner Post-Hearing

Board Exhibits A through C: Additional procedural exhibits, consisting of entries dated July 18, 2005; September 13, 2005; and January 30, 2006, respectively.

PROFFERED MATERIAL

The following documents were neither admitted to the record nor considered as evidence. However, they have been sealed from public disclosure and will be held as proffered material:

State's Exhibit 6: Redacted pages of transcript consisting of the testimony of Patricia Pade, M.D., which was stricken from the hearing record by entry dated September 13, 2005. (See paragraph 1 of the Procedural Matters, below.)

Respondent's Exhibit G: Affidavit of Lela Daniels Dumas, with attachments.

PROCEDURAL MATTERS

1. During the July 1, 2005, hearing, the State presented as rebuttal the testimony of Patricia Pade, M.D., the Medical Director of the Virginia Health Practitioners' Intervention Program. The Respondent objected on the basis that Dr. Pade had not provided an expert report. The Hearing Examiner ruled that the State was not required to provide an expert report for a rebuttal witness, but granted the Respondent an opportunity to schedule cross-examination on a later date and/or to obtain his own expert for surrebuttal. Accordingly, at the conclusion of the hearing on July 1, 2005, the record was held open for that purpose. (Hearing Transcript Volume I [Tr. Vol. I] at 199-206, 253-255)

Subsequently, by entry dated July 18, 2005, an additional day of hearing was scheduled for September 19, 2005. (Board Exhibit A) However, during a September 7, 2005, telephone conference with the parties' counsel, the Hearing Examiner was advised that Dr. Pade had refused to participate any further in the hearing, thus depriving the Respondent of an opportunity to complete his cross-examination. Therefore, by entry dated September 13, 2005, over the objection of the State, the Hearing Examiner struck the testimony of Dr. Pade from the record.² Further, the record was held open pending resolution of an evidentiary issue and to permit the parties to file written closing arguments. (Board Exhibit B)

² The transcript of Dr. Pade's testimony was marked for identification purposes as State's Exhibit 6 and held as proffered material for the State. (See Proffered Material, above)

By entry dated January 30, 2006, the evidentiary issue was resolved and a schedule established for the parties to file written closing arguments. (Board Exhibit C) Subsequently, the final written closing argument was received on March 3, 2006, and the hearing record initially closed on that date. (Respondent's Exhibit H)

2. On April 12 and August 9, 2006, the Board issued additional notices of opportunity for hearing to Mr. Fischkelta. By entry dated August 29, 2006, those matters were consolidated with the February 9, 2005, notice. Additional days of hearing were held on January 17 and February 28, 2007. (State's Exhibits 11A, 11H, and 11M; Tr. Vol. II; Tr. Vol. III)

SUMMARY OF THE EVIDENCE

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

Evidence Presented During the July 1, 2005, Hearing

Background Information

1. Mr. Fischkelta testified that he has an Associate's Degree in cardiovascular technology and, in 1996, obtained a Bachelor's Degree in physician assisting. He further testified that he had been working on obtaining a Master's Degree online from Arizona State University. (Transcript of July 1, 2005, Hearing [Tr. Vol. I] at 14, 86-87)

Mr. Fischkelta testified that, since 1996, he had worked as a cardiology physician assistant, both invasive and non-invasive, and as a physician assistant in emergency rooms until approximately mid-2004. (Tr. Vol. I at 86-87)

2. Mr. Fischkelta testified that he was at that time employed at Kirkwood Family Practice and that he had been employed there since May 29, 2005. (Tr. Vol. I at 13-14)

Mr. Fischkelta further testified that he had had tremendous difficulty finding work following the Board's February 2004 Order. Mr. Fischkelta testified that it taught him about the importance of maintaining sobriety in that he "never wanted to step foot in [the Board's office] building again." (Tr. Vol. I at 90-91)

3. Mr. Fischkelta testified that he and his wife, Bridget, had been married in 1999. Mr. Fischkelta further testified that he has one four-year-old daughter and a baby on the way, who was to be delivered in September 2005. (Tr. Vol. I at 93)

The Board's Previous Action

4. On February 11, 2004, the Board issued an Order [February 2004 Order], effective February 12, 2004, suspending the certificate of Mr. Fischkelta to practice as a physician assistant in Ohio for an indefinite period of time, but not less than ninety days. Further, the February 2004 Order set forth certain interim monitoring and probationary terms, conditions, and limitations. (State's Exhibit [St. Ex.] 2 at 6-11)

The action was based on the Board's finding that, on June 11, 2001, Mr. Fischkelta had pled guilty to and been convicted of "seven misdemeanor counts of common law forgery in violation of North Carolina Law. The charges were based on Mr. Fischkelta having forged a physician's signature to prescriptions issued to a false name." In addition, the Board found that Mr. Fischkelta had falsely answered "No" to a question on his December 2001 application for renewal of his Ohio physician assistant certificate. That question asked, "At any time since signing your last application for renewal of your registration, have you * * * [b]een found guilty of, or pled guilty or no contest to, or been found eligible for treatment in lieu of conviction for, a felony or misdemeanor[?]" (St. Ex. 2 at 28-29)

Thereafter, on July 15, 2004, the Board reinstated Mr. Fischkelta's certificate to practice as a physician assistant, subject to the probationary terms and conditions set forth in the February 2004 Order. Among these, paragraphs B.5 and D.1 require that, during probation, "Mr. Fischkelta shall abstain completely from the use of alcohol." Moreover, paragraphs B.9 and D.1 require that he "shall maintain continued compliance with the terms of the contract entered into with the Virginia Health Practitioner Intervention Program, or with another impaired physicians committee, approved by the Board * * * ." (St. Ex. 2)

Evidence Concerning the Allegations Raised in the Board's February 9, 2005, Notice

5. In a January 8, 2005, urine toxicology report, the Virginia Health Practitioners' Intervention Program [HPIP] was notified that a urine specimen submitted by Mr. Fischkelta on January 5, 2005, had tested positive for alcohol. (St. Exs. 4-5)
6. In a Report of Noncompliance dated January 13, 2005, Dayna Smith, Mr. Fischkelta's HPIP case manager, reported, among other things, the following:

Summary of Noncompliance: On 01/10/05 HPIP Case Manager was notified * * * that participant submitted a positive screen for Alcohol on 01/05/05. Participant was called at home. He denied drinking. He reports that alcohol was never his drug of choice. He was advised to give it some thought and to call back. Participant called back within a few minutes to state that prior to testing that day he ate some of his grandmother's "HillBilly Chili" which he just found out contains beer. He reports that he went to test and then he went to a 12-step meeting.

Intervention: Participant's case was reviewed extensively in staffing. It was determined that HPIP Case Manager would draft a letter of noncompliance, inform Ohio Board of Medicine Compliance Officer, Danielle Bickers, advise participant to call Ohio BOM and to contact Ohio Physician Effectiveness Program (OPEP) and contract with them as a primary monitor, since he resides in Ohio and has an Ohio license.

Response to Intervention: HPIP Case Manager called participant who was advised to call Ohio BOM, Danielle Bickers and OPEP. Participant pleasantly tolerated the staffing decision. He reported that he had already informed Ohio BOM of his positive screen and that he had no problems calling and contracting with OPEP. He stated that he just wanted to do whatever was being asked of him. He maintains that he has not drank alcohol since 2001 and requested that HPIP inform OPEP of his progress and participation in the program.

Recommendations: HPIP recommends that participant sign a primary contract with OPEP so that they can evaluate him and send him to an approved treatment provider for the level of care that they deem appropriate.

(St. Ex. 5)

7. Subsequently, in a report dated January 28, 2005, HPIP received notice that Mr. Fischkelta's January 5, 2005, urine sample had tested positive for EtG at a concentration of 100,000 nanograms per milliliter [ng/ml]. (St. Ex. 3B)

Testimony of Danielle Bickers

8. Danielle Bickers testified on behalf of the State. Ms. Bickers testified that she is the Compliance Officer for the Board. She stated that her job duties include monitoring the Board's licensees who are subject to Board Orders or Consent Agreements. Ms. Bickers testified that, in that capacity, she is familiar with Mr. Fischkelta. (Tr. Vol. I at 52-53)

Ms. Bickers testified that, on January 14, 2005, she had been contacted by Ms. Smith of HPIP. Ms. Bickers testified that Ms. Smith had apprised her of Mr. Fischkelta's positive urine screen and informed her that HPIP had sent the sample out for EtG confirmation. Ms. Bickers further learned of Mr. Fischkelta's initial denial of alcohol use and subsequent contact with HPIP wherein he stated his belief that the positive screen resulted from eating "hillbilly chili." (Tr. Vol. I at 54-55)

9. Ms. Bickers testified that HPIP forwarded copies of the EtG report to her on February 3 and 7, 2005. (St. Exs. 3A and 3B; Tr. Vol. I at 55-56)
10. Ms. Bickers testified that Mr. Fischkelta had not independently informed her of his January 5, 2005, positive urine screen. Ms. Bickers further testified that, if Mr. Fischkelta

had notified anybody else on the Board's staff, she would have been made aware of it. (Tr. Vol. I at 56)

11. Ms. Bickers testified that, during her course of monitoring Mr. Fischkelta, she has had a number of telephone conversations with him and met with him during office conferences. Ms. Bickers further testified that Mr. Fischkelta has always been polite and has said "several times that he wants to do what we ask of him." (Tr. Vol. I at 74)

Testimony of Mr. Fischkelta

12. Mr. Fischkelta testified that he had first learned of the positive result from Ms. Smith, who contacted him via telephone. Mr. Fischkelta testified that, during his conversation with Ms. Smith, he had initially said nothing because he "didn't understand it." Mr. Fischkelta further testified that he then asked her what drug it was, and whether it had been Vicodin, his drug of choice. Ms. Smith told him it was alcohol. Mr. Fischkelta testified, "I said, I don't know how that can be. I didn't know what to say. * * * She was very abrupt about it and said, '[Y]ou think about it and call me back.'" (Tr. Vol. I at 23-25)

Mr. Fischkelta testified that, after his conversation with Ms. Smith, he had thought for a moment "trying to figure out what was going on." He called his wife, who was at work at that time, to discuss the issue, and another person in the room overheard their conversation. (Tr. Vol. I at 26-27)

Mr. Fischkelta testified that his sister-in-law Lela Dumas, who is married to his wife's brother, James Dumas, had been in the room when he received the call from Ms. Smith and when he had called his wife. Mr. Fischkelta testified that, after he finished talking to his wife, Lela had suggested to him that his positive urine screen probably resulted from chili that Mr. Fischkelta's mother-in-law had made for a family potluck dinner on New Year's Day. Moreover, according to Mr. Fischkelta, "[Lela] said it was probably the chili, because my mother-in-law probably put alcohol—everybody puts alcohol in their chili." Furthermore, Mr. Fischkelta testified: "I said, it could possibly be the chili. But, I know my mother-in-law wouldn't do that to me. She knows I'm a recovering addict." Nevertheless, Mr. Fischkelta testified that he had called Ms. Smith back and told her that his positive urine screen had probably resulted from eating his mother-in-law's chili. (Tr. Vol. I at 26-27, 30, 32-33)

13. When asked if, prior to calling Ms. Smith, he had first contacted his mother-in-law to find out if she actually had put alcohol in her chili, Mr. Fischkelta testified that he had not because his mother-in-law had been out of town. When asked whether he had contacted his wife to ask if there had been alcohol in her mother's chili, Mr. Fischkelta replied that he had not. Mr. Fischkelta testified that he had called Ms. Smith back and told her about the chili because he had believed that Ms. Smith had wanted him to call her back right away. Moreover, Mr. Fischkelta testified that he had been "confused at that point" and did not know what was going on. (Tr. Vol. I at 26 -29)

Mr. Fischkelta testified that he later learned that his mother-in-law does not put alcohol in her chili. (Tr. Vol. I at 26-29)

14. Mr. Fischkelta testified that, after having told HPIP that his mother-in-law's chili had caused his positive urine screen result, he later came to believe that the cause had actually been because Lela Dumas had put alcohol in his family's beverages and food. When asked how he had discovered this, Mr. Fischkelta testified that, in the latter part of January 2005—he could not recall the exact date—he had been scheduled to fly out of state. At that time, he and Lela were alone in the house. Mr. Fischkelta testified:

[A]s I was getting ready to leave, I was in my daughter's room, which is directly across from [Lela's room]. I see her across the room, and she apparently thinks I'm in my bedroom, and she's sticking a screwdriver in my bag, in the outer compartment. This was done, I'm assuming, so when I went through the [airport] security I would get in trouble.

(Tr. Vol. I at 33-34)

Mr. Fischkelta testified that he had confronted Lela about what he had seen her do, whereupon she became "very upset." Mr. Fischkelta testified, "She just snapped and started throwing stuff. I mean, she snapped. She started throwing, *breaking*."³ (Tr. Vol. I at 35) (Emphasis added) When asked how he had responded to this outburst, Mr. Fischkelta replied, "I kicked her out of the house. And she said, you ruined my life, now your life is ruined. She just started going on about 'you ruined my life' and 'now I don't have James.' And she said, 'now you're going to lose everything you have.' That's how she put it." (Tr. Vol. I at 35-36)

When asked how he came to believe that Lela had placed alcohol in his food and drink, Mr. Fischkelta testified that, after Lela had accused him of breaking up her marriage, she told him that he would pay for what he had done to her. (Tr. Vol. I at 102-103)

Mr. Fischkelta testified that he had asked her what she meant. He further testified:

[S]he finally said, you know why—do you know why you lost your license—or you're going to lose your license, or something like that. * * * I still didn't know where she was coming from, so we bickered back and forth. And finally she says, well, she said, go taste your drink. And I still did not know. And it was shortly after that that I realized what she was talking about. And I snapped and I threw her out the front door.

(Tr. Vol. I at 103)

³ Shortly thereafter, Mr. Fischkelta testified that Lela "started throwing things. She didn't break anything." (Tr. Vol. I at 36)

15. Mr. Fischkelta testified, “After I threw Lela out on the porch I called my sponsor up and he came over, because we’re good friends.” Furthermore, Mr. Fischkelta testified:

And I proceeded to throw her things out the door. She was standing there in shorts, and it was snowing at that time, I’m not sure, and I just handed her stuff out the door. At that point we found wine coolers and other stuff in her room, and vodka. I’m not sure—I’m sure of the vodka.

(Tr. Vol. I at 40-41) Mr. Fischkelta testified that the vodka bottle had been open, although he could not recall how full the bottle had been. Mr. Fischkelta could not recall if the wine coolers have been opened. (Tr. Vol. I at 41)

In addition, Mr. Fischkelta testified that, during his confrontation with Lela, and evidently prior to throwing her out of the house, he “immediately” called Candice Roquemore at HPIP. Mr. Fischkelta further testified:

As I was talking to Candice I said, “I realize what’s going on, I know what she was doing.” All of the sudden chairs start flying across the room from me [sic]. [Ms. Roquemore is] witnessing the screaming and she knows she’s throwing things at me. I had to get off the phone and throw her out of the house.

(Tr. Vol. I at 98-100) Mr. Fischkelta testified that, after having thrown Lela out of the house, he called Ms. Roquemore back. When asked what he had told Ms. Roquemore, Mr. Fischkelta testified, among other things, that he had told Ms. Roquemore that his sister-in-law had admitted that she had put alcohol in his orange juice and fruit punch. However, Mr. Fischkelta further testified, “[O]ur conversation was very short because she kept—Lela kept yelling.” (Tr. Vol. I at 101-102)

16. When asked if he knew which items Lela had tampered with, Mr. Fischkelta stated, “I assumed it was everything in the refrigerator. Since I could not taste it in anything, I didn’t know what it was in. And I couldn’t afford for this to happen again, I couldn’t afford for my pregnant wife to be drinking alcohol.” (Tr. Vol. I at 43-44)

Mr. Fischkelta testified that the drinks that Lela tampered with were not just his drinks, but his whole family’s drinks. When asked if his three-year-old daughter could have drunk them, Mr. Fischkelta answered that she could have. When asked if she had gotten sick at any time, Mr. Fischkelta replied that she had not. (Tr. Vol. I at 151)

Mr. Fischkelta testified that he does not “recall feeling any different than usual” on January 5, 2005, nor at any time between December 2004 and the end of January 2005. (Tr. Vol. I at 152-153)

17. With regard to the reasons why Lela was staying with the Fischkeltas in late January 2005, Mr. Fischkelta testified that, shortly before Christmas in December 2004, James and Lela

Dumas, both of whom live in Florida, had come to visit the Fischkelta family over the holidays. Mr. Fischkelta further testified that he gets along very well with James. Moreover, Mr. Fischkelta testified that James had lived with the Fischkeltas for some time in Virginia until the Fischkeltas moved to Ohio in 2001. Mr. Fischkelta testified that James and Lela Dumas were married in 2001. (Tr. Vol. I at 36, 44, 94)

Mr. Fischkelta testified that he and James are close enough to discuss personal matters. Some time after arriving at the Fischkeltas, James had spoken to Mr. Fischkelta and told him that he believed that Lela was “stepping out on him” (having an extramarital affair) “[o]n multiple occasions.” Mr. Fischkelta testified that, upon hearing that information, he had told James “if they’re going to do this now, they’re going to do it again. And once the trust is lost, the trust is lost.” (Tr. Vol. I at 95)

Mr. Fischkelta testified that some time after their discussion, on December 28, 2004, James left and returned to Florida while Lela stayed behind with the Fischkeltas. When asked to explain why James left and Lela stayed, Mr. Fischkelta replied that James “couldn’t think with her around, because she was manipulative * * * she wanted to stay with him, essentially, and he was confused. He didn’t know what to do. He was lovestruck, I mean.” (Tr. Vol. I at 36, 96) Mr. Fischkelta further testified, “It was more of an anger thing for him and he just needed to get away. He couldn’t think with all the family there, her there in the space all the time.” (Tr. Vol. I at 97)

With regard to Lela’s demeanor, Mr. Fischkelta testified that “she felt that when she came here that we were all going to do like an intervention and talk to them all together and confront her and make her—I guess she thought she was going to be made to feel like she was the bad person, like she felt she was the one that did everything wrong.” (Tr. Vol. I at 97-98)

Mr. Fischkelta testified that Lela “had felt that my advice [was] the reason [James had] left. And essentially he left because he wanted to go put [his] thoughts together and figure out what he was going to do. Well, she thought it was over and decided that she was going to destroy my life * * *.” (Tr. Vol. I at 95-96)

18. Mr. Fischkelta testified that Lela had been aware of his urine screen monitoring because he calls every morning on his speakerphone to see if he has been selected to drop off a sample. (Tr. Vol. I at 27)
19. Mr. Fischkelta testified that he has not spoken to Lela since he removed her from his house in late January 2005. (Tr. Vol. I at 118)
20. Mr. Fischkelta testified that, the day after throwing Lela out of his house, he had become the target of harassing phone calls and vandalism that lasted through March 2005. Mr. Fischkelta further testified that he had kept a log of the harassing phone calls and vandalism. (Tr. Vol. I at 104-108)

The first entry in Mr. Fischkelta's log of telephone calls is dated January 28, 2005, and the last entry is dated March 29, 2005. Among other things, the log states that, on January 28, 2005, he had received four harassing phone calls at the following times: 9:03 a.m., 12:42 p.m., 10:03 p.m., and 11:45 p.m. Many other times noted in the log are equally specific. In addition, Mr. Fischkelta's log states that air had been let out of his tires on four occasions in February and March 2005. It further states that his car had been egged on March 16, 2005, and that his house had been egged on March 24, 2005. (Resp. Ex. D; Tr. Vol. I at 106, 113)

With regard to the March 16, 2005, incident, Mr. Fischkelta produced a copy of an incident report from the Clark County Sheriff's Office dated the same day. That document indicates that Mr. Fischkelta had reported the incident and identified Lela Dumas as the offender, but stated that he did not actually witness the offense. (Resp. Ex. C)

Mr. Fischkelta further testified that, on one occasion, someone had scribbled and written obscenities on his car with a magic marker. Mr. Fischkelta produced two photographs showing a vehicle with various things written on it in blue magic marker, and one photograph showing the same vehicle with two flat tires. In addition, Mr. Fischkelta testified that his tires were flattened on multiple occasions. He further testified, "I'd go to the mall and all my tires were flat." (Resp. Ex. E; Tr. Vol. I at 104-105)

21. Mr. Fischkelta testified that he did not obtain phone records from the telephone company, nor does his telephone record incoming calls. (Tr. Vol. I at 155)
22. When first asked to identify the log that he had kept, Mr. Fischkelta testified, "It's what the prosecutor's office in Springfield asked me to do, is just write down dates and times of crank calls." (Tr. Vol. I at 113) Later in the hearing, Mr. Fischkelta offered some rather confusing testimony:

Q. [by Ms. Berrien] [Y]ou mentioned that you made the phone logs because the police told you to make them, these phone logs that are Exhibit D.

A. [by Mr. Fischkelta] Correct.

Q. Okay. When did you contact the police?

A. The day I hit the guy in the parking lot. I think it was January 16th.

Q. The day—

A. I hit the guy in the parking lot, and I think it was January 16th. He said, write down everything that you can, date it and time it, and write down everything you can, told me where the prosecutor's office was and told me to collect it all and bring it.

Q. When you hit the guy in the parking lot, did you contact the police about something that Lela did?

A. I was actually at the police department—Springfield Sheriff's Office.

Q. Okay.

A. And I went up to them and I told them I wanted to file a police report for one of the events. I think it was July [sic] 16. Was it the 16th? Well, I went there and I asked for the Sheriff—I asked the Springfield Police Department what do I need to do? They asked me what had happened; I had some flat tires. And she said that I need to—the cop was there, said, since there was no damage, she didn't puncture the tires, I couldn't actually press charges. It wasn't a criminal action, I guess. I don't know; I didn't understand. I understood it, they just said you need to continue to collect all this stuff so they can build up a case against her.

(Tr. Vol. I at 153-155)

23. Mr. Fischkelta testified that he “could never press charges because nothing was ever completely ruined.” He further testified that Lela flattened his tires, but did not “slash” them. (Tr. Vol. I at 105)
24. Mr. Fischkelta testified that he had never witnessed Lela perform any of the acts of vandalism. Mr. Fischkelta testified that he nevertheless believes that Lela had been responsible for the harassing phone calls and vandalism because “it started the day after she left [his house] and continued on for some period until she left Ohio.” Mr. Fischkelta further testified that he does not know many people or have any enemies in the Springfield area. Moreover, he testified that he lives in a low-crime area. (Tr. Vol. I at 107-108)
25. Mr. Fischkelta testified that he has “no idea” where Lela had stayed during the period of time she remained in Ohio. (Tr. Vol. I at 147)
26. Mr. Fischkelta testified that, after Lela had returned to Florida, she had stayed with family and tried to “mend things with James.” Mr. Fischkelta testified that “James encouraged her to write a letter indicating what she had done, and she did so.” Mr. Fischkelta further testified that James had also encouraged Lela to come to Ohio to testify, “but she felt if she came up here she would be arrested, so she wouldn't come.” (Tr. Vol. I at 115-116)
27. At hearing, Mr. Fischkelta submitted a document that he identified as Lela Dumas' “witness statement that was notarized on 4-7-05.” (Tr. Vol. I at 116) That document states as follows:

My name is Lela Daniels Dumas and I am writing to you about the incident in question. I am writing with hopes this will save my marriage with James

Dumas. I regret the disturbing, not to mention corrupt actions that I took upon myself to do, putting such an effect on my sister and brotherinlaw. I have deliberately caused problems between some of my closest family members out of anger, depression and stupidity. I wanted to let whom ever needs to know, that I had intentionally placed alcohol in Joe's family's daily drinks and foods so that he would get in trouble with his drug tests.

I had done this because I thought that he took part in the separation with my husband, even though I still believe that he did so, I realize that getting even is not the answer, and what I have done I can't take back. But one thing is for sure, I bet he's learns to mind his business So with that, I hope that this comes to you in time to prevent any further problems.

(Resp. Ex. B) (Spelling, grammar, and punctuation as in original)

28. Mr. Fischkelta testified that he had received the original letter through the mail. However, he further testified that he had been unable to find the original to bring to the hearing. Accordingly, Mr. Fischkelta testified that the copy that he submitted at hearing was a copy of a fax that he had sent to his attorney. (Tr. Vol. I at 148-149)

Additional Information

29. When asked if he had notified the Ohio Board of his positive urine screen, Mr. Fischkelta testified that he had not. Mr. Fischkelta was then referred to a statement in the HPIP Report of Noncompliance that Mr. Fischkelta had "reported that he had already informed Ohio BOM of his positive screen* * *." Mr. Fischkelta testified:

I never actually dealt with Dayna Smith in Virginia; she was like the case manager. I had Candice Roquemore, who was pretty much the only person I ever talked to. And I talked to Candice, and Candice said that Dayna has reported to the Board. I said, okay. I mean, I asked her, I said, do [I] need to report? And she said, she's already done it. And that was it. It was done within a matter of minutes, I think. I don't know. But I was informed that they already notified them.

(Tr. Vol. I at 30-31)

30. Mr. Fischkelta testified that his sobriety date is January 29, 2001. Mr. Fischkelta further testified that, in June 2001, he had entered into a consent agreement with HPIP. Moreover, he testified, "We use that date as my sobriety date, January 29th, 2001, but there was an incident after that." Mr. Fischkelta testified that on June 2, 2001, he had "taken Darvocet and tested positive." (Tr. Vol. I at 44-48)

At that time, Mr. Fischkelta's attention was directed to the Report and Recommendation concerning his previous hearing with the Board on October 20, 2003. The Summary of the

Evidence in that report includes the following statement, “Mr. Fischkelta testified that he has never had a positive urine screen and he has not relapsed since his last use in January 2001.” (St. Ex. 2 at 28; Tr. Vol. I at 45-46) Whereupon the following exchange took place during the hearing in this proceeding:

Q. [by Ms. Berrien] Okay. You recall testifying at the hearing; is that correct?

A. [by Mr. Fischkelta] I recall giving them statements, that’s correct.

Q. But you don’t recall being under oath?

A. I don’t recall.

Q. So when it reads in the R&R that you testified that “he has never had a positive urine screen and he has not relapsed since his last use in January 2001,” so your testimony today is you did drop a positive screen in June of 2001?

A. That is correct.

Q. Okay. So the truth today is that it was in June 2001 [that] was your last use?

A. That would be correct. But Virginia monitoring continues to use January as my sobriety date.

Q. Okay. But the Virginia program didn’t testify at the hearing, did it?

A. No, they didn’t.

(Tr. Vol. I at 46-47)

Testimony of James Dumas

31. James Anthony William Dumas testified on behalf of Mr. Fischkelta. Mr. Dumas testified that he resides in Fort Lauderdale, Florida, and that he has resided there approximately 15 years. He testified that he is self-employed, and owns a landscaping business and a tree service. (Tr. Vol. I at 157)

Mr. Dumas testified that he has known Mr. Fischkelta for about six years, and that they had lived under the same roof for a while. Mr. Dumas further testified that he is married to Lela Dumas, that he has known her for about four years, and that they had been married for approximately 8 months. (Tr. Vol. I at 158-159)

32. Mr. Dumas testified that, in December 2004, he and Lela had gone to Ohio to visit the Fischkeltas for “just a little vacation.” Mr. Dumas further testified, “[B]efore we left I had suspicions that [Lela] was cheating on me, and I was upset about it.” Mr. Dumas testified that he considers Mr. Fischkelta to be a mentor, and that he asks him for information “all the time.” Mr. Dumas testified that, accordingly, he had planned to discuss his suspicions with Mr. Fischkelta and seek his advice. (Tr. Vol. I at 159-160)

Mr. Dumas testified that, at some point while he was staying with the Fischkeltas, he and Mr. Fischkelta had left the house to do some shopping and run some errands. Mr. Dumas further testified that, during that time, he had discussed his suspicions with Mr. Fischkelta. Mr. Dumas testified, “[H]e guided me toward the way that she was right—I mean, I was right, that she was cheating on me.” Furthermore, Mr. Dumas testified that Lela had known that he had talked to Mr. Fischkelta about his suspicions. Moreover, he testified that Lela had known “[b]ecause right when I got back, I was kind of upset about it and I wasn’t talking to her. And then I explained to her that I talked to him and, you know, he told me this and that. So, she knew it was because of him.” (Tr. Vol. I at 160-162)

33. Mr. Dumas testified that, after his discussion with Mr. Fischkelta, he had asked his sister, Ms. Fischkelta, if Lela could continue to stay with them while he returned to Florida to collect his thoughts and take “a little time off.” He stated that Ms. Fischkelta had agreed. He further testified that “[t]hey got along when they were up here. She’s a sweet girl, but then again, like that, she turns.” (Tr. Vol. I at 161-162)

When asked if he had told Lela why he was returning to Florida, Mr. Dumas replied, “It’s kind of personal, but we did have our little discussion. I just told her I wanted to have some time off.” (Tr. Vol. I at 162)

34. Mr. Dumas testified that, when he returned to Florida, he had discovered that his suspicions had been correct and that Lela had, in fact, been cheating on him. He testified, “I looked up on the Internet e-mails that she wrote and stuff like that that I couldn’t do when she was around before we left.” (Tr. Vol. I at 160)
35. Mr. Dumas testified that he later learned from Lela that she had tampered with the Fischkeltas’ drinks. Mr. Dumas testified that he had tried to convince Lela to return to Ohio and testify about what she had done, but that she had been afraid that she would get into trouble. (Tr. Vol. I at 163-165)
36. With regard to Ms. Dumas’ April 7, 2005, letter, Mr. Dumas testified that he had had some difficulty convincing Lela to write and sign the letter. When asked to describe the circumstances under which she signed the letter, Mr. Dumas replied, “I told her I was going to stay with her, I would be with her if she went ahead—I would forgive her, give her another chance. And pretty much, that was it.” (Tr. Vol. I at 167)

Mr. Dumas testified that Lela had typed the April 7, 2005, letter herself. He further testified that he had accompanied her to a local bank to get her signature notarized. Mr. Dumas testified that he then mailed the letter to Mr. Fischkelta. (Tr. Vol. I at 165-169)

37. Mr. Dumas testified that he last saw Lela approximately 3 months prior to the hearing. He further testified that he had not spoken to her since they separated. (Tr. Vol. I at 171)
38. Mr. Dumas testified that he would not lie for Mr. Fischkelta, nor would he have to. (Tr. Vol. I at 178)

Testimony of Bridget Fischkelta

39. Bridget Fischkelta testified that she is married to Mr. Fischkelta and that they have been married since 1999. (Tr. Vol. I at 188-189)
40. Ms. Fischkelta testified that the period during which Mr. Fischkelta had experienced problems with prescription pain medication had been very difficult. Ms. Fischkelta further testified, however, that the birth of their daughter had a tremendous impact on Mr. Fischkelta with regard to his desire to stay in recovery and remain sober. (Tr. Vol. I at 189)
41. Ms. Fischkelta confirmed that it is her understanding that Lela Dumas had tampered with drinks kept in their refrigerator as revenge against Mr. Fischkelta, whom she blamed for breaking up her marriage with James. (Tr. Vol. I at 190-193)
42. Ms. Fischkelta testified that Mr. Fischkelta had not exhibited any change in his behavior during December 2004 through January 2005. (Tr. Vol. I at 193)
43. Ms. Fischkelta testified that she and Mr. Fischkelta have an understanding concerning what the consequences would be if Mr. Fischkelta relapses. Ms. Fischkelta testified, "He knows that I'd probably leave if I had to go through something like that again." Moreover, she testified that she has not left "[b]ecause he didn't do anything wrong." (Tr. Vol. I at 193-194)

Testimony of Mr. Jones

44. R. Jason Jones testified on behalf of Mr. Fischkelta. Mr. Jones stated that he is employed by OPHP as a case manager for the southern region of Ohio. Mr. Jones testified that, in that capacity, he is familiar with Mr. Fischkelta's case, although Mr. Jones had not met him face-to-face prior to the hearing. (Tr. Vol. I at 133-134)
45. Mr. Jones testified that Mr. Fischkelta had entered into an agreement with OPHP on March 7, 2005. The agreement places various restrictions on Mr. Fischkelta, including abstention from all mind-altering substances, attendance at four recovery meetings per week, obtaining a monitoring physician, and participation in OPHP's urine monitoring

program. Mr. Jones noted that Mr. Fischkelta had been compliant with his agreement. (Resp. Ex. F; Tr. Vol. I at 135-139)

46. Mr. Jones testified that he is familiar with Mr. Fischkelta's explanation for his positive urine screen in January 2005. Mr. Jones further testified that he has heard from the people he has counseled "very many reasons, many quite unbelievable" for positive urine screens. When asked to place Mr. Fischkelta's explanation somewhere on the scale of believability among the various reasons he has heard, Mr. Jones testified: "This actually seems like something, to me—it sounds like something that could possibly happen. Whether it did or not I can't say, but it does sound plausible. * * * Certainly accidental ingestion, and particularly of alcohol, is pretty common." (Tr. Vol. I at 139)
47. On cross-examination, Mr. Jones testified that he is familiar with EtG testing. Mr. Jones further testified that the EtG test result for Mr. Fischkelta's January 5, 2005, urine sample had been 100,000 ng/ml. Mr. Jones further testified that, based upon his experience, it would be consistent with beverage intake. When asked whether 100,000 ng/ml was a high reading, Mr. Jones testified that he could not answer because he is not familiar with the maximum level or where in the range it would fall. However, Mr. Jones testified that he has "seen a test result that was positive for levels of 8600 nanograms per milliliter" that was obtained "three days after admitted use." Mr. Jones could not recall how much that person had had to drink. (Tr. Vol. I at 140-143)

Testimony of Dr. Kirkwood

48. David C. Kirkwood, M.D., testified on behalf of Mr. Fischkelta. Dr. Kirkwood testified that he is a family physician and that he practices in Dayton, Ohio. Dr. Kirkwood testified that he has been a solo practitioner for 19 years. He further testified that he has employed three physician assistants over the past 10 years, including Mr. Fischkelta. (Tr. Vol. I at 179-180)

Dr. Kirkwood testified that Mr. Fischkelta had worked for him for approximately 3 months, and that, at the time of the July 2005 hearing, Mr. Fischkelta had been the only physician assistant working for him. (Tr. Vol. I at 180-181)

49. Dr. Kirkwood testified that Mr. Fischkelta has performed very well as his physician assistant. Dr. Kirkwood further testified that Mr. Fischkelta is very competent, has a good personality, and gets along very well with his patients and staff. Dr. Kirkwood testified that "they love him." Moreover, Dr. Kirkwood testified that he has received a lot of compliments from patients about Mr. Fischkelta. In addition, Dr. Kirkwood testified that Mr. Fischkelta is a very hard worker. (Tr. Vol. I at 182)
50. Dr. Kirkwood testified that he has never observed Mr. Fischkelta exhibit any signs of impairment. (Tr. Vol. I at 183-184)

Evidence Presented During the January 17 and February 28, Hearings

January 17, 2007, Testimony of Dr. Closson

51. On January 17, 2007, William J. Closson, Ph.D., testified via telephone on behalf of the State. Dr. Closson testified that he is the Director of the Toxicology Department at Bendiner & Schlesinger Medical Laboratory [Bendiner & Schlesinger] in Brooklyn, New York. Dr. Closson testified that his duties include managing the overall operation of the department, and certifying the results of the testing that takes place in that department. Dr. Closson holds a Master's Degree in Biochemistry, and a doctorate degree in Biochemistry and Toxicology. Moreover, Dr. Closson testified that he is licensed by the New York State Department of Health as a biochemist and toxicologist. (St. Ex. 14; Transcript of January 17, 2007, Hearing [Tr. Vol. II] at 9-13)

Dr. Closson testified that Bendiner & Schlesinger is a full service laboratory. In the toxicology department, they perform drug testing for a number of clients including monitoring programs. Dr. Closson further testified that the "vast majority" of the tests performed are urine drug tests. (Tr. Vol. II at 12)

52. Dr. Closson testified extensively concerning the chain of custody and testing procedures utilized at Bendiner & Schlesinger. Among other things, Dr. Closson testified that a urine sample is first tested using immunoassay technology, which utilizes antibodies that identify specific drugs. Ethanol, which is the variety of alcohol that appears in beverages, is one of those drugs. If ethanol is discovered, the sample is sent to a second laboratory, National Medical Services, to be tested for the presence of EtG. Dr. Closson testified that EtG is a metabolite of alcohol, a substance that would be present in urine only if alcohol had been consumed and metabolized in a person's body within two or three days prior to submitting the sample. (Tr. Vol. II at 16-31)
53. Dr. Closson testified that the toxicology report for a urine sample submitted by Mr. Fischkelta on February 28, 2006, tested positive for the presence of EtG in the amount of 1,400 ng/ml. Further, a urine sample submitted by Mr. Fischkelta on March 31, 2006, tested positive for the presence of EtG in the amount of 720 ng/ml. Dr. Closson testified that these tests mean that Mr. Fischkelta had consumed alcohol within two or three days of submitting each of those urine samples. (St. Exs. 12 and 13; Tr. Vol. II at 21-29)
54. Dr. Closson testified that it is difficult to determine from the amount of EtG present in urine the quantity of alcohol consumed because there are other variables that are not known, such as the time period between exposure to alcohol and sample submission. However, Dr. Closson testified that "[a] rule of thumb would be that a level of about 1,000 nanograms per milliliter would result from at least two to three alcoholic beverages or standard drinks⁴ at some point in the prior two to three days." (Tr. Vol. II at 28-29)

⁴ Dr. Closson defined a standard drink as "one 12-ounce glass of beer, one 6- to 8-ounce glass of wine, one mixed drink that has one shot of ethanol in it, or one straight shot of ethanol." (Tr. Vol. II at 29)

Dr. Closson testified that 720 and 1,400 ng/ml are relatively low levels of EtG. He further testified, “You can see levels up into the—approaching 100,000 nanograms per milliliter.” Dr. Closson testified that such a level might result if a person drank a case of beer the day before sample collection. (Tr. Vol. II at 34)

February 28, 2007, Testimony of Mr. Fischkelta

55. In the subsequent hearing in February 2007, Mr. Fischkelta acknowledged that the positive urine screens for samples he had submitted in February and March 2006 had resulted from intentional alcohol consumption. Mr. Fischkelta testified:

I did drink knowingly especially because the Board ordered me not to. Gone through some real trying times with what occurred here last time. I lost my job in January of last year and as well as my wife and kids. So a lot has occurred.

For days I couldn't sleep, and essentially either go and fight with [Ms. Fischkelta's] new boyfriend or calm down. I drank a couple glasses of wine. I don't feel that I have an addiction problem. I mean, that was—at that time I needed it. There was nothing else I could do. And, I mean, I haven't used opiates for my drug of choice in over six years and one month.

I mean, if I was weak enough, I would have [fallen] back on that, and I wasn't. I mean, I got to the point where I hadn't slept for days, and essentially I was starting hallucinating, so I know I needed to sleep. And I couldn't get sleeping pills from my doctor because he knew I wasn't allowed to use any mood-altering drugs.

(Transcript of the February 28, 2007, Hearing [Tr. Vol. III] at 7-8)

56. Mr. Fischkelta testified that his marital problems began around January 2006. Mr. Fischkelta testified:

I knew something was going on, but she didn't admit to it, but I knew. And it continued. We kind of separated in the house, so I would sleep in another room. At the point around, I guess, August or—apparently the relationship was better with this other guy, so she moved out and took the kids.

(Tr. Vol. III at 12) Mr. Fischkelta further testified that divorce proceedings began in October 2006, and were ongoing at the time of the hearing. (Tr. Vol. III at 12)

57. Mr. Fischkelta testified that he had last consumed alcohol at around the time that his wife left him. (Tr. Vol. III at 8)

58. Mr. Fischkelta testified that he has not participated in any drug and alcohol assessment or treatment since the July 2005 hearing; however, he has explored the possibility of doing so. Mr. Fischkelta further testified that, in late 2006, he had called several Board-approved treatment programs but was told that, if he has no acute or ongoing problem with drugs or alcohol, he would not be admitted unless he paid the full fee in advance. Moreover, Mr. Fischkelta testified that the fees are “around \$13- to \$15,000, which I don’t have or plan to have.” (Tr. Vol. III at 8-9)

59. Mr. Fischkelta testified that he has not worked as a physician assistant since January 22, 2006, when he was let go by Dr. Kirkwood. Mr. Fischkelta testified that Dr. Kirkwood had “felt at that time that he couldn’t afford me anymore.” (Tr. Vol. III at 10-11)

Mr. Fischkelta further testified, “I know that with this hanging over my head I can’t get a job * * *.” Moreover, Mr. Fischkelta testified that it is pointless for him to apply for physician assistant jobs because he does not know what is going to happen to his certificate. (Tr. Vol. III at 11)

60. Mr. Fischkelta testified that he is currently employed as a teacher at National College in Kettering. Mr. Fischkelta stated that he teaches science classes such as microbiology, pharmacology, anatomy and physiology, pathophysiology, as well as law and ethics, to medical assistants and surgical technologists. Mr. Fischkelta testified that he has been working at National College for about seven or eight months. His teaching position does not require him to have an active physician assistant’s certificate. (Tr. Vol. III at 9-10)

61. Mr. Fischkelta testified that, on December 15, 2006, he had a serious rollover accident and was taken to Miami Valley Hospital. Mr. Fischkelta testified that he sustained significant injuries in that accident. He further testified:

I had a closed head injury on the right side, blown pupil on the left side, multiple lacerations and stayed in the hospital like three or four days in the OR unit, and also my drug screen at the time of presenting to the hospital was negative, and I was discharged without pain medication, because I told them my history.⁵ And since then I’ve lost 20 percent of my far vision in my left eye, and I’ve herniated every disk in my neck, every single one of them.

* * *

So chronic pain which is tolerable because I have to manage that myself, and I medicate it, but I take Tylenol and Motrin. But other than that, aside from the disks in my neck, that’s about it.

⁵ The medical records from Miami Valley Hospital state, in an unsigned “Pertinent Packet,” that Mr. Fischkelta was discharged with Robaxin, Ciloxan eye drops, and Vicodin 5/500. (Resp. Ex. B at 13)

(Tr. Vol. III at 13-14) Finally, Mr. Fischkelta presented hospital records from Miami Valley Hospital concerning his treatment following the accident. (Resp. Ex. F-2)

Additional Information Presented on February 28, 2007

62. Mr. Fischkelta testified that he would like to practice as a physician assistant at some time in the future. Mr. Fischkelta also testified that he is willing to enter treatment if required to do so. However, he added, "I'd like to, but, you know, right now, with regards to paying for it, I don't know how to." (Tr. Vol. III at 11)

Finally, with regard to his desire to return to practicing as a physician assistant, Mr. Fischkelta testified:

[There were] only probably four days in my life that are memorable, becoming a P.A., getting married, and having my kids.

* * *

* * * I lost that all in one month, and I don't think I'm weak, and I don't think I have an alcohol problem. I just needed something to sleep and forget.

(Tr. Vol. III at 12, 16)

FINDINGS OF FACT

1. On or about February 11, 2004, the Board entered an Order [February 2004 Order] suspending the certificate of Joseph William Fischkelta, P.A., to practice as a physician assistant for an indefinite period of time, but not less than ninety days. Further, the February 2004 Order set forth certain interim monitoring and probationary terms, conditions, and limitations. Among these, paragraphs B.5 and D.1 require that, during probation, "Mr. Fischkelta shall abstain completely from the use of alcohol."

Thereafter, on or about July 15, 2004, the Board reinstated Mr. Fischkelta's certificate to practice as a physician assistant, subject to the probationary terms and conditions as set forth in the February 2004 Order.

2. Despite the provisions of the February 2004 Order, a urine specimen that Mr. Fischkelta submitted on January 5, 2005, tested positive for alcohol and for the presence of ethyl glucuronide [EtG], a metabolite of alcohol.
3. Mr. Fischkelta presented evidence at the July 1, 2005, hearing that his positive urine screen had resulted from accidental ingestion. He further presented evidence that the accidental ingestion had resulted from his sister-in-law having added alcohol to his family's food and/or beverages. Moreover, he presented evidence that his sister-in-law had tainted the

family's food and/or beverages with alcohol—including food and/or beverages that would have been consumed by Mr. Fischkelta's pregnant wife and three-year-old daughter—in order to cause Mr. Fischkelta's urine sample to test positive for alcohol. According to Mr. Fischkelta's defense, his sister-in-law did this in order to exact revenge against Mr. Fischkelta, whom she believed had been responsible for the breakup of her marriage.

It would be very difficult to believe Mr. Fischkelta's defense even if Mr. Fischkelta were otherwise found to be a credible individual; however, such a finding cannot be made. Evidence produced at the July 1, 2005, hearing proves the following:

- The Board's prior action against Mr. Fischkelta that resulted in the February 2004 Order involved dishonest acts committed by Mr. Fischkelta; namely, a criminal conviction for forging a physician's name on prescriptions written to a fictitious patient, and failing to disclose the criminal conviction to the Board on a renewal application.
- The evidence indicates that Mr. Fischkelta had advised the Virginia Health Practitioners' Intervention Program [HPIP] that he had notified the Ohio Board of his January 5, 2005, positive urine screen. However, Mr. Fischkelta admitted at the July 1, 2005, hearing that that was not true.
- Mr. Fischkelta testified at the July 1, 2005, hearing that he had relapsed on Darvocet on June 2, 2001, and submitted a positive urine screen. However, during Mr. Fischkelta's prior hearing with the Board on October 20, 2003, Mr. Fischkelta had testified that "he has never had a positive urine screen and he has not relapsed since his last use in January 2001." Accordingly, Mr. Fischkelta did not tell the truth at the October 20, 2003, hearing.
- Mr. Fischkelta testified with regard to a confrontation with his sister-in-law, "She just snapped and started throwing stuff. I mean, she snapped. She started throwing, breaking." Almost immediately thereafter, Mr. Fischkelta testified: "She started throwing things. She didn't break anything."
- When Mr. Fischkelta was asked when he had contacted police concerning harassing telephone calls and vandalism, which related to when he had begun keeping a log of such occurrences, his response was nonsensical and evasive.

Accordingly, Mr. Fischkelta's defense concerning the allegations raised in the Board's February 9, 2005, notice of opportunity for hearing is rejected.

4. Despite the provisions of the February 2004 Order, Mr. Fischkelta submitted a urine specimen on February 28, 2006, that has been confirmed positive for EtG, a metabolite of alcohol.

5. Despite the provisions of the February 2004 Order, Mr. Fischkelta submitted a urine specimen on March 31, 2006, that has been confirmed positive for EtG, a metabolite of alcohol.

CONCLUSIONS OF LAW

1. The conduct of Joseph William Fischkelta, P.A., as set forth in Findings of Fact 1 and 2 constitutes “[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,” as that clause is used in Section 4730.25(B)(5), Ohio Revised Code.
2. The conduct of Mr. Fischkelta as set forth in Findings of Fact 1 and 2 constitutes “[v]iolation of the conditions placed by the board on a certificate of registration, physician assistant utilization plan, or supervision agreement,” as that clause is used in Section 4730.25(B)(20), Ohio Revised Code.
3. The conduct of Mr. Fischkelta as set forth in Findings of Fact 1 and 4 constitutes “[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,” as that clause is used in Section 4730.25(B)(5), Ohio Revised Code.
4. The conduct of Mr. Fischkelta as set forth in Findings of Fact 1 and 4 constitutes “[v]iolation of the conditions placed by the board on a certificate of registration, physician assistant utilization plan, or supervision agreement,” as that clause is used in Section 4730.25(B)(20), Ohio Revised Code.
5. The conduct of Mr. Fischkelta as set forth in Findings of Fact 1 and 5 constitutes “[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,” as that clause is used in Section 4730.25(B)(5), Ohio Revised Code.
6. The conduct of Mr. Fischkelta as set forth in Findings of Fact 1 and 5 constitutes “[v]iolation of the conditions placed by the board on a certificate of registration, physician assistant utilization plan, or supervision agreement,” as that clause is used in Section 4730.25(B)(20), Ohio Revised Code.

* * * * *

The evidence presented in these consolidated matters indicates that Mr. Fischkelta has violated the Board’s February 2004 Order. Moreover, the evidence indicates that Mr. Fischkelta is not a

trustworthy individual, and would thus have difficulty maintaining a meaningful monitoring relationship with the Board.

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Joseph William Fischkelta, P.A., to practice as a physician assistant in the State of Ohio shall be PERMANENTLY REVOKED.

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

A handwritten signature in black ink, appearing to read "R. Gregory Porter", written over a horizontal line.

R. Gregory Porter
Hearing Examiner

State Medical Board of Ohio

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



Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

EXCERPT FROM THE DRAFT MINUTES OF NOVEMBER 14, 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: Savitri Bhama, M.D.; Joseph Thayer Caligaris, M.D.; Gregory Lee Ebner, D.O.; and Joseph William Fischkelta, P.A. A roll call was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Varyani | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Dr. Robbins | - 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. Varyani | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Dr. Robbins | - 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.

.....

JOSEPH WILLIAM FISCHKELTA, P.A.

.....

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF JOSEPH WILLIAM FISCHKELTA, P.A. MR. BROWNING SECONDED THE MOTION.

.....

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

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Varyani | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Dr. Robbins | - 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

August 9, 2006

Joseph William Fischkelta, P.A.
4840 Shannon Avenue
Springfield, OH 45504

Dear Mr. Fischkelta:

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 of registration 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 February 11, 2004, the Board entered an Entry of Order [February 2004 Board Order], a copy of which is attached hereto and fully incorporated herein, suspending your certificate to practice as a physician assistant for an indefinite period of time, but not less than ninety days, and setting forth certain interim monitoring and probationary terms, conditions, and limitations.

Thereafter, on or about July 15, 2004, the Board reinstated your certificate to practice as a physician assistant subject to certain probationary terms and conditions for a period of at least three years, as set forth in the February 2004 Board Order.

On or about February 9, 2005, the Board issued to you a Notice of Opportunity for Hearing which alleged that you violated Sections 4730.25(B)(5) and (B)(20), Ohio Revised Code. This matter is pending.

On or about April 12, 2006, the Board issued to you a Notice of Opportunity for Hearing which alleged that you violated Sections 4730.25(B)(5) and (B)(20), Ohio Revised Code. This matter is pending.

- (2) Paragraph B.5. of the February 2004 Board Order requires that you abstain completely from the use of alcohol. Despite this provision of the February 2004 Board Order, the urine specimen you submitted on or about March 31, 2006, has been EtG confirmed positive for alcohol metabolite.

Mailed 8-10-06

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 of registration, physician assistant utilization 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 of registration 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 a certificate of registration as a physician assistant to an applicant, revokes an individual’s certificate of registration, refuses to issue a certificate of registration, or refuses to reinstate an individual’s certificate of registration, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate of registration as a physician assistant and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate.”

JOSEPH W. FISCHKELTA, P.A.

Page 3

Copies of the applicable sections are enclosed for your information.

Very truly yours,

A handwritten signature in black ink that reads "Lance A. Talmage MD". The signature is fluid and cursive, with the "MD" at the end being more distinct.

Lance A. Talmage, M.D.
Secretary

LAT/blt
Enclosures

CERTIFIED MAIL # 7003 0500 0002 4331 9229
RETURN RECEIPT REQUESTED

cc: James M. McGovern, Esq.
Hammond Sowards & Williams
556 East Town Street
Columbus, Ohio 43215

CERTIFIED MAIL # 7003 0500 0002 4331 9212
RETURN RECEIPT REQUESTED



State Medical Board of Ohio

771 High Street, Columbus, Ohio 43260-4027 • (614) 467-8515 • Fax: (614) 467-8516 • Website: www.mba.org

April 12, 2006

Joseph William Fischkelta, P.A.
4840 Shannon Avenue
Springfield, OH 45504

Dear Mr. Fischkelta:

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 of registration 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 February 11, 2004, the Board entered an Entry of Order [February 2004 Board Order], a copy of which is attached hereto and fully incorporated herein, suspending your certificate to practice as a physician assistant for an indefinite period of time, but not less than ninety days, and setting forth certain interim monitoring and probationary terms, conditions, and limitations.

Thereafter, on or about July 15, 2004, the Board reinstated your certificate to practice as a physician assistant, subject to the probationary terms and conditions as set forth in the February 2004 Board Order.

- (2) On or about February 9, 2005, the Board issued to you a Notice of Opportunity for Hearing, a copy of which is attached hereto and fully incorporated herein, which alleged that you violated Sections 4730.25(B)(5) and (B)(20), Ohio Revised Code. This matter is pending.
- (3) Paragraph B.5. of the February 2004 Board Order requires that you abstain completely from the use of alcohol. Despite this provision of the February 2004 Board Order, the urine specimen you submitted on or about February 28, 2006, has been EtG confirmed positive for alcohol metabolite.

Your acts, conduct, and/or omissions, as alleged in paragraphs (1), (2) and (3) above, individually and/or collectively, constitute "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4730.25(B)(5), Ohio Revised Code.

Mailed 4-13-06

Further, your acts, conduct, and/or omissions, as alleged in paragraph (3) above, individually and/or collectively, constitute “[v]iolation of the conditions placed by the board on a certificate of registration, physician assistant utilization plan, or supervision agreement,” as that clause is used in Section 4730.25(B)(20), Ohio Revised Code.

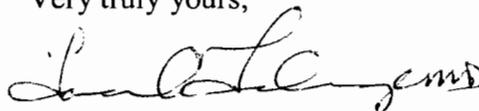
Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of mailing of this 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 of registration 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 a certificate of registration as a physician assistant to an applicant, revokes an individual’s certificate of registration, refuses to issue a certificate of registration, or refuses to reinstate an individual’s certificate of registration, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate of registration as a physician assistant 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/jjv
Enclosures

CERTIFIED MAIL # 7003 0500 0002 4330 8223
RETURN RECEIPT REQUESTED

JOSEPH W. FISCHKELTA, P.A.

Page 3

cc: James M. McGovern, Esq.
Hammond Sowards & Williams
556 East Town Street
Columbus, Ohio 43215
CERTIFIED MAIL # 7003 0500 0002 4330 8834
RETURN RECEIPT REQUESTED



State Medical Board of Ohio

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

February 9, 2005

Joseph William Fischkelta, P.A.
4840 Shannon Avenue
Springfield, OH 45504

Dear Mr. Fischkelta:

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 of registration 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 February 11, 2004, the Board entered an Entry of Order [February 2004 Board Order] suspending your certificate to practice as a physician assistant for an indefinite period of time, but not less than ninety days, and set forth certain interim monitoring and probationary terms, conditions, and limitations, including the requirement that you abstain completely from the use of alcohol. A copy of the February 2004 Board Order is attached hereto and incorporated herein.

Thereafter, on or about July 15, 2004, the Board reinstated your certificate to practice as a physician assistant, subject to the probationary terms and conditions as outlined in the February 2004 Board Order.

- (2) Despite the provisions of the February 2004 Board Order, the urine specimen you submitted on or about January 5, 2005, tested positive for, and has been ETG confirmed for, 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 paragraphs (1) and (2) above, individually and/or collectively, constitute “[v]iolation of the conditions placed by the

MAILED 2-10-05

board on a certificate of registration, physician assistant utilization 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 of registration 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 a certificate of registration as a physician assistant to an applicant, revokes an individual’s certificate of registration, refuses to issue a certificate of registration, or refuses to reinstate an individual’s certificate of registration, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate of registration as a physician assistant 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/blt
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5142 9846
RETURN RECEIPT REQUESTED



State Medical Board of Ohio

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

February 11, 2004

Joseph W. Fischkelta, P.A.
4840 Shannon Avenue
Springfield, OH 45504

Dear Mr. Fischkelta:

Please find enclosed certified copies of the Entry of Order; the Report of Remand of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on February 11, 2004, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 7000 0600 0024 5150 1412
RETURN RECEIPT REQUESTED

Cc: Emery J. Leuchtag, M.D., J.D.
CERTIFIED MAIL NO. 7000 0600 0024 5150 1405
RETURN RECEIPT REQUESTED

Mailed 2-12-04

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report of Remand of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on February 11, 2004, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Joseph W. Fischkelta, 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.



Lance A. Talmage, M.D.
Secretary

(SEAL)

February 11, 2004
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

JOSEPH W. FISCHKELTA, P.A.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on November 7, 2001.

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

It is hereby ORDERED that:

- A. **SUSPENSION:** The certificate of Joseph W. Fischkelta, P.A., to practice as a physician assistant in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than ninety days.
- B. **INTERIM MONITORING:** During the period that Mr. Fischkelta's certificate to practice as a physician assistant in Ohio is suspended, Mr. Fischkelta shall comply with the following terms, conditions, and limitations:
 - 1. **Obey the Law:** Mr. Fischkelta shall obey all federal, state, and local laws, and all rules governing the practice of physician assistants in Ohio.
 - 2. **Personal Appearances:** Mr. Fischkelta shall appear in person for quarterly interviews before the Board or its designated representative during the third month following the effective date of this Order. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any

reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

3. **Quarterly Declarations:** Mr. Fischkelta shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been full compliance with all of the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. 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:** Mr. Fischkelta shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Mr. Fischkelta's history of chemical dependency.
5. **Abstention from Alcohol:** Mr. Fischkelta shall abstain completely from the use of alcohol.
6. **Drug & Alcohol Screens; Supervising Physician:** Mr. Fischkelta shall submit to random urine screenings for drugs and/or alcohol on a bi-weekly basis or as otherwise directed by the Board. Mr. Fischkelta shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Mr. Fischkelta shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Mr. Fischkelta shall submit the required 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 Mr. Fischkelta. Mr. Fischkelta 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.

Mr. Fischkelta 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, Mr. Fischkelta must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Mr. Fischkelta 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 Mr. Fischkelta's quarterly declaration. It is Mr. Fischkelta's responsibility to ensure that reports are timely submitted.

7. **Submission of Blood or Urine Specimens upon Request:** Mr. Fischkelta shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Mr. Fischkelta's expense.
8. **Rehabilitation Program:** Mr. Fischkelta shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than four times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Mr. Fischkelta 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 Mr. Fischkelta's quarterly declarations.
9. **Continued Compliance with a Contract with an Impaired Physicians Committee:** Mr. Fischkelta shall maintain continued compliance with the terms of the contract entered into with the Virginia Health Practitioner Intervention Program, or with another impaired physicians committee, approved by the Board, to assure continuous assistance in recovery and/or aftercare.

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

1. **Application for Reinstatement or Restoration:** Mr. Fischkelta shall submit an application for restoration, accompanied by appropriate fees, if any.
2. **Compliance with Interim Conditions:** Mr. Fischkelta shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order, unless otherwise determined by the Board.

3. **Compliance with Aftercare Contract:** Mr. Fischkelta shall enter into, and thereafter maintain compliance with, an aftercare contract which complies with Rule 4731-16-10, Ohio Administrative Code, with a treatment provider approved under Section 4731.25, Ohio Revised Code, who has access to Mr. Fischkelta's treatment records.
4. **Demonstration of Ability to Resume Practice:** Mr. Fischkelta shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Mr. Fischkelta has successfully completed any required inpatient treatment.
 - b. Evidence of continuing full compliance with an aftercare contract with a treatment provider approved under Section 4731.25 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.
 - c. Evidence of continuing full compliance with this Order.
 - d. Two written reports indicating that Mr. Fischkelta's ability to practice has been evaluated for chemical dependency and/or impairment and that he 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 Mr. Fischkelta's application for reinstatement or restoration. The reports of evaluation shall describe with particularity the bases for the determination that Mr. Fischkelta has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon his practice.
5. **Additional Evidence of Fitness To Resume Practice:** In the event that Mr. Fischkelta's certificate remains suspended for more than two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4730.28 of the Revised Code to require additional evidence of his fitness to resume practice.

- D. **PROBATION:** Upon reinstatement or restoration, Mr. Fischkelta's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years:
1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Mr. Fischkelta shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
 2. **Personal Ethics Course:** Before the end of the first year of probation, or as otherwise approved by the Board, Mr. Fischkelta shall provide acceptable documentation of successful completion of a course or courses dealing with 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 acquisition period(s) in which they are completed.
 3. **Tolling of Probationary Period While Out of State:** In the event that Mr. Fischkelta should leave Ohio for three consecutive months, or reside or practice outside the State, Mr. Fischkelta 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 probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.
 4. **Violation of Terms of Probation:** If Mr. Fischkelta violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Mr. Fischkelta's certificate will be fully restored.
- F. **RELEASES:** Mr. Fischkelta 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 Mr. Fischkelta's 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 of the Ohio Revised Code and are confidential pursuant to statute.

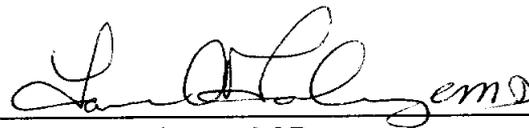
Mr. Fischkelta shall also provide the Board written consent permitting any treatment provider from whom Mr. Fischkelta obtains treatment to notify the Board in the event he fails to agree to or comply with any recommended treatment or with any treatment or aftercare contract. Failure to provide such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

G. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Mr. Fischkelta shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Mr. Fischkelta shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

H. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, Mr. Fischkelta shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Mr. Fischkelta shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Mr. Fischkelta shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

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

(SEAL)



Lance A. Talmage, M.D.
Secretary

February 11, 2004

Date

2004 JAN 30 P 12: 14

**REPORT OF REMAND
IN THE MATTER OF JOSEPH W. FISCHKELTA, P.A.**

The Matter of Joseph W. Fischkelta, P.A., was remanded to Sharon W. Murphy, Esq., Hearing Examiner for the State Medical Board of Ohio, by Order of the Board issued on January 14, 2004.

INTRODUCTION

I. Basis for Remand

A Report and Recommendation in this matter was considered by the State Medical Board of Ohio [Board] on January 14, 2004. (See attached Remand Exhibits A and B) At that time, the Board discussed the Report and Recommendation's Proposed Order, which included a requirement that Mr. Fischkelta complete,

a minimum of twenty-eight days of inpatient or residential treatment, or a combination thereof, for his chemical dependency. Such inpatient or residential treatment shall be completed without interruption. Further, such inpatient or residential treatment shall be provided in accordance with Rule 4731-16-08(A)(13), Ohio Administrative Code, by a treatment provider approved under Section 4731.25, Ohio Revised Code.

(Remand Exhibit A at 13)

In the Board's discussion, it was noted that Mr. Fischkelta had already completed a sixty-day inpatient treatment program for chemical dependency. Board members queried whether Ohio law requires that he complete an additional twenty-eight days. It was further noted that the record contains documentation from the Virginia Health Practitioner Intervention Program advising that Mr. Fischkelta has maintained his sobriety since, at least, August 2001. Therefore, Board members suggested that another twenty-eight day inpatient treatment program would not be necessary in this case. Accordingly, the Board members remanded the matter to the Hearing Examiner to consult with the parties and to determine whether Ohio's laws require that the Board impose a requirement that Mr. Fischkelta complete an additional twenty-eight day inpatient treatment program.

II. Proceedings Upon Remand

The Hearing Examiner held telephone conferences with Counsel for the parties on January 15 and January 28, 2004. As a result of those conferences, it was determined that, because the Board had not made an allegation or a finding that Mr. Fischkelta is currently impaired, Ohio law does not require that that the Board impose a requirement that

Mr. Fischkelta complete an additional twenty-eight day inpatient treatment program. Nevertheless, because (1) Mr. Fischkelta has admitted to an impairment problem in the past; (2) the Board has an obligation to protect the public from impaired physicians; and (3) Mr. Fischkelta has waived any objection to the imposition of monitoring conditions for substance abuse, the Board is justified in imposing monitoring conditions if it allows Mr. Fischkelta to continue to practice in Ohio.

In addition, during the discussions, Counsel for Mr. Fischkelta noted that the original Proposed Order includes a requirement that Mr. Fischkelta be subject to probationary terms and conditions for a period of not less than five years. He further noted that Mr. Fischkelta has been compliant with similar terms and conditions for more than two years, as reflected in a letter from the Virginia Impaired Physicians Program. Therefore, Counsel for Mr. Fischkelta requested that the Board consider decreasing the term of Mr. Fischkelta's probation to a period of not less than three years.

Accordingly, the original Proposed Order has been amended to exclude the requirement for an additional twenty-eight day inpatient treatment program. Nevertheless, all other monitoring requirements remain intact, but for the length of Mr. Fischkelta's probation. His request to reduce the proposed length of probation seems reasonable under the circumstances in this matter.

PROPOSED ORDER ON REMAND

It is hereby ORDERED that:

- A. **SUSPENSION:** The certificate of Joseph W. Fischkelta, P.A., to practice as a physician assistant in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than ninety days.
- B. **INTERIM MONITORING:** During the period that Mr. Fischkelta's certificate to practice as a physician assistant in Ohio is suspended, Mr. Fischkelta shall comply with the following terms, conditions, and limitations:
 1. **Obey the Law:** Mr. Fischkelta shall obey all federal, state, and local laws, and all rules governing the practice of physician assistants in Ohio.
 2. **Personal Appearances:** Mr. Fischkelta shall appear in person for quarterly interviews before the Board or its designated representative during the third month following the effective date of this Order. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

3. **Quarterly Declarations**: Mr. Fischkelta shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been full compliance with all of the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. 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**: Mr. Fischkelta shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Mr. Fischkelta's history of chemical dependency.
5. **Abstention from Alcohol**: Mr. Fischkelta shall abstain completely from the use of alcohol.
6. **Drug & Alcohol Screens; Supervising Physician**: Mr. Fischkelta shall submit to random urine screenings for drugs and/or alcohol on a bi-weekly basis or as otherwise directed by the Board. Mr. Fischkelta shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Mr. Fischkelta shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Mr. Fischkelta shall submit the required 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 Mr. Fischkelta. Mr. Fischkelta 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.

Mr. Fischkelta 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, Mr. Fischkelta must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Mr. Fischkelta 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 Mr. Fischkelta's quarterly declaration. It is Mr. Fischkelta's responsibility to ensure that reports are timely submitted.

7. **Submission of Blood or Urine Specimens upon Request**: Mr. Fischkelta shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Mr. Fischkelta's expense.
 8. **Rehabilitation Program**: Mr. Fischkelta shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than four times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Mr. Fischkelta 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 Mr. Fischkelta's quarterly declarations.
 9. **Continued Compliance with a Contract with an Impaired Physicians Committee**: Mr. Fischkelta shall maintain continued compliance with the terms of the contract entered into with the Virginia Health Practitioner Intervention Program, or with another impaired physicians committee, approved by the Board, to assure continuous assistance in recovery and/or aftercare.
- C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION**: The Board shall not consider reinstatement or restoration of Mr. Fischkelta's certificate to practice as a physician assistant until all of the following conditions have been met:
1. **Application for Reinstatement or Restoration**: Mr. Fischkelta shall submit an application for restoration, accompanied by appropriate fees, if any.
 2. **Compliance with Interim Conditions**: Mr. Fischkelta shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order, unless otherwise determined by the Board.
 3. **Compliance with Aftercare Contract**: Mr. Fischkelta shall enter into, and thereafter maintain compliance with, an aftercare contract which complies with Rule 4731-16-10, Ohio Administrative Code, with a treatment provider approved under Section 4731.25, Ohio Revised Code, who has access to Mr. Fischkelta's treatment records.

4. **Demonstration of Ability to Resume Practice:** Mr. Fischkelta shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Mr. Fischkelta has successfully completed any required inpatient treatment.
 - b. Evidence of continuing full compliance with an aftercare contract with a treatment provider approved under Section 4731.25 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.
 - c. Evidence of continuing full compliance with this Order.
 - d. Two written reports indicating that Mr. Fischkelta's ability to practice has been evaluated for chemical dependency and/or impairment and that he 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 Mr. Fischkelta's application for reinstatement or restoration. The reports of evaluation shall describe with particularity the bases for the determination that Mr. Fischkelta has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon his practice.
 5. **Additional Evidence of Fitness To Resume Practice:** In the event that Mr. Fischkelta's certificate remains suspended for more than two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4730.28 of the Revised Code to require additional evidence of his fitness to resume practice.
- D. **PROBATION:** Upon reinstatement or restoration, Mr. Fischkelta's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years:
1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Mr. Fischkelta shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.

2. **Personal Ethics Course**: Before the end of the first year of probation, or as otherwise approved by the Board, Mr. Fischkelta shall provide acceptable documentation of successful completion of a course or courses dealing with 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 acquisition period(s) in which they are completed.
 3. **Tolling of Probationary Period While Out of State**: In the event that Mr. Fischkelta should leave Ohio for three consecutive months, or reside or practice outside the State, Mr. Fischkelta 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 probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.
 4. **Violation of Terms of Probation**: If Mr. Fischkelta violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- E. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Mr. Fischkelta's certificate will be fully restored.
- F. **RELEASES**: Mr. Fischkelta 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 Mr. Fischkelta's 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 of the Ohio Revised Code and are confidential pursuant to statute.
- Mr. Fischkelta shall also provide the Board written consent permitting any treatment provider from whom Mr. Fischkelta obtains treatment to notify the Board in the event he fails to agree to or comply with any recommended treatment or with any treatment or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Order.
- G. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS**: Within thirty days of the effective date of this Order, Mr. Fischkelta shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is

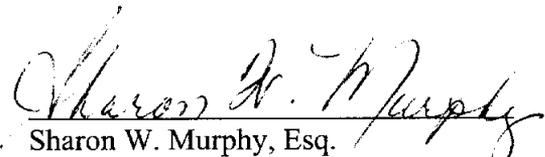
receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Mr. Fischkelta shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

H. REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:

Within thirty days of the effective date of this Order, Mr. Fischkelta shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license.

Mr. Fischkelta shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Mr. Fischkelta shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

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


Sharon W. Murphy, Esq.
Hearing Examiner



State Medical Board of Ohio

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

EXCERPT FROM THE DRAFT MINUTES OF FEBRUARY 11, 2004

REPORTS AND RECOMMENDATIONS

Ms. Sloan announced that the Board would now consider the findings and orders appearing on the Board's agenda. She asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and order, and any objections filed in the matters of: Miles J. Jones, M.D.; Willie L. Josey, M.D.; Benton Matthew Maslyk, M.T.; Robert S. Reeves, Jr., M.D.; Joel H. Rubin, D.O.; and Vladimir Vasic, M.D.; and the Report of Remand in the Matter of Joseph W. Fischkelta, P.A. A roll call was taken:

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

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

| | | |
|------------|--------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Bhati | - aye |
| | Dr. Buchan | - aye |
| | Dr. Kumar | - aye |
| | Mr. Browning | - aye |
| | Dr. Davidson | - aye |

| | |
|-------------|-------|
| Dr. Robbins | - aye |
| Dr. Garg | - aye |
| Ms. Sloan | - aye |

Ms. Sloan 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.

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

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

.....

REPORT OF REMAND IN THE MATTER OF JOSEPH W. FISCHKELTA, P.A.

.....

DR. BHATI MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER ON REMAND IN THE MATTER OF JOSEPH W. FISCHKELTA, P.A. DR. BUCHAN SECONDED THE MOTION.

.....

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

| | | |
|-------|--------------|-----------|
| Vote: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Bhati | - aye |
| | Dr. Buchan | - aye |
| | Dr. Kumar | - aye |
| | Mr. Browning | - aye |
| | Dr. Davidson | - aye |
| | Dr. Robbins | - aye |
| | Dr. Garg | - abstain |

The motion carried.

3 Jan
2004 DEC 15 A 10: 10

**REPORT AND RECOMMENDATION
IN THE MATTER OF JOSEPH W. FISCHKELTA, P.A.**

The Matter of Joseph W. Fischkelta, P.A., was heard by Sharon W. Murphy, Hearing Examiner for the State Medical Board of Ohio, on October 20, 2003.

INTRODUCTION

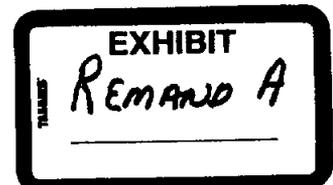
I. Basis for Hearing

A. By letter dated June 11, 2003, the State Medical Board of Ohio [Board] notified Joseph W. Fischkelta, P.A., that it had proposed to take disciplinary action against his certificate to practice as a physician assistant in Ohio. The Board based its proposed action on allegations pertaining to Mr. Fischkelta's criminal conviction of seven misdemeanor counts of common law forgery in violation of North Carolina law. In addition, the Board based its proposed action on allegations pertaining to Mr. Fischkelta's false or fraudulent answers on his application for renewal of his certificate to practice as a physician assistant. The Board alleged that Mr. Fischkelta's conduct and/or the criminal conviction constitute:

- “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a misdemeanor committed in the course of practice,’ as that clause is used in R.C. 4730.25(B)(13)”;
- “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a misdemeanor involving moral turpitude,’ as that clause is used in R.C. 4730.25(B)(14)”;
- “‘fraud, misrepresentation, or deception in applying for or securing the certificate [of registration],’ as that clause is used in R.C. 4730.25(A)”;
- “[m]aking a false, fraudulent, deceptive, or misleading statement in soliciting or advertising for patients, in relation to the practice of medicine as it pertains to physician assistants, or in securing or attempting to secure a certificate of registration to practice as a physician assistant or approval of a supervision agreement,’ as that clause is used in R.C. 4730.25(B)(8).”

Accordingly, the Board advised Mr. Fischkelta of his right to request a hearing in this matter. (State's Exhibit 1A)

B. On January 16, 2003, Emery Leuchtag, M.D., Esq., submitted a written hearing request on behalf of Mr. Fischkelta. (State's Exhibit 1B)



II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Kyle C. Wilcox, Assistant Attorney General.
- B. On behalf of the Respondent: Emery Leuchtag, M.D., Esq.

EVIDENCE EXAMINED

I. Testimony Heard

Joseph W. Fischkelta, P.A.

II. Exhibits Examined

A. Presented by the State

- 1. State's Exhibits 1A-1K: Procedural exhibits.
- 2. State's Exhibit 2: Certified copy of Mr. Fischkelta's application for renewal of his certificate to practice as a physician assistant in Ohio.
- 3. State's Exhibits 3-4: Certified copies of documents pertaining to Mr. Fischkelta maintained by the Superior Court of Person County, North Carolina.
- 4. State's Exhibit 5: Certified copies of documents pertaining to Mr. Fischkelta maintained by the City of Roxboro, North Carolina, Police Department.
- 5. State's Exhibit 6: Certified copies of Mr. Fischkelta's application for a certificate to practice as a physician assistant in Ohio.

B. Presented by the Respondent

- 1. Respondent's Exhibit A-1: Copy of a January 31, 2002, letter to Mr. Fischkelta from William L. Harp, M.D., Executive Director of the Virginia Board of Medicine.
- 2. Respondent's Exhibit A-2: Copy of a June 19, 2003, letter to Mr. Fischkelta from Marc K. Leighton, Director of Human Services, MHM Services, Inc., Vienna, Virginia.
- 3. Respondent's Exhibit A-3: Copies of letters written in support of Mr. Fischkelta.

4. Respondent's Exhibit A-4: Copy of a July 21, 2003, letter from Dayna L. Smith, BA, CSAC, Case Manager for the Virginia Health Practitioner Intervention Program.
5. Respondent's Exhibit B: Documents regarding Mr. Fischkelta maintained by the Virginia Health Practitioner Intervention Program. (Note: Exhibit sealed to protect patient confidentiality.)

SUMMARY OF THE EVIDENCE

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

General Background

1. Joseph W. Fischkelta, P.A., testified that, in 1996, he had received an Associate's degree in physician assisting from the Kettering College of Medical Arts in Kettering, Ohio. Mr. Fischkelta testified that he had graduated with honors despite the fact that he had been working full-time while he attended the program. In 2002, he received a Bachelor's degree in physician assisting from the same school. (Hearing Transcript at [Tr.] 11-12, 48-51)

Mr. Fischkelta further testified that, after he graduated in 1996, he had relocated to Halifax, Virginia, near the border of North Carolina. Mr. Fischkelta stated that he had worked as a physician assistant at South Boston Cardiology—formerly Medical and Surgical of Halifax—and at Emergency Consultants, Inc., in Halifax, Virginia. Mr. Fischkelta stated that he left his job[s] in Virginia on December 13, 1999. (Tr. 12-14, 29-32, 51-52)

Mr. Fischkelta further testified that, while he was living in Virginia, he occasionally flew to Ohio to work in the emergency room at Marion General Hospital in Marion, Ohio. In August 2001, he relocated to Ohio. Mr. Fischkelta testified that, in June 2002, he accepted a position with University Emergency Consultants, a corporation that provides emergency room services at University Hospitals in Cleveland. He further stated, however, that the director of the emergency room will not allow him to return to work until this action before the Board has been resolved. (Tr. 12-14, 53, 62-64)

Mr. Fischkelta further testified that he had been honorably discharged from the army reserves earlier this year. He stated that he had achieved the rank of second lieutenant. (Tr. 47-48)

2. On December 31, 1999, Mr. Fischkelta signed an application for a certificate to practice as a physician assistant in Ohio. In the application, Mr. Fischkelta stated that, at the time of completing his application, he was employed by Halifax Gastroenterology; Medical &

Surgical Associates; and the Halifax Hospital Emergency Room in South Boston, Virginia. (State's Exhibit [St. Ex.] 6 at 4, 13)

3. In December 2000 and January 2001, Mr. Fischkelta wrote prescriptions for a fictitious patient by the name of Barbara Powell. The prescriptions contained the alleged signature of a physician named Neil Schacht, M.D. The false prescriptions were written for controlled and non-controlled substances including Vicodin, Oxycodone, Lorcet, Xanax, and Digoxin. After Mr. Fischkelta passed the prescriptions to various pharmacies in Virginia, one pharmacist suspected that the prescriptions were fraudulent. The pharmacist contacted Dr. Schacht, who advised that he did not have a patient by the name of Barbara Powell. The pharmacist then contacted the Roxboro Police Department, and Mr. Fischkelta was arrested. (St. Ex. 5)

After his arrest, Mr. Fischkelta provided the Roxboro Police Department with a written statement, as follows:

My name is Joseph W. Fischkelta. I started using narcotics (pain meds) approx 1 yr ago. At first, I obtained them from my primary doctor for chronic back pain but since then I was unable to stop. I obtained blank prescriptions pads approx 1-2 months ago and had used false names to obtain medications. I was unable to stop using these meds on my own. After multiple attempts to stop I was unable to. I knew it would possibly come down to this. Today, I tried to refill a medication and was caught by Roxboro detectives.

(St. Ex. 5 at 10)

4. On June 11, 2001, in the Superior Court, Person County, North Carolina, in Case Nos. 01 CRS 560-566, Mr. Fischkelta pleaded guilty to, and was adjudged guilty of, seven misdemeanor counts of common law forgery in violation of North Carolina Common Law. The charges were based on Mr. Fischkelta having forged a physician's signature to prescriptions issued to a false name. (St. Exs. 3, 4)

The court sentenced Mr. Fischkelta to forty-five days in the custody of the Sheriff of Person County. The court stayed the incarceration, and placed Mr. Fischkelta on unsupervised probation for sixty months. The Special Conditions of Probation include that Mr. Fischkelta shall:

Not use, possess or control any illegal drug or controlled substance unless it has been prescribed for [him] by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any illegal drugs or controlled substances; and not knowingly be present at or

frequent any place where illegal drugs or controlled substances are sold, kept or used.

Further, Mr. Fischkelta was sentenced to complete seventy hours of community or reparation service during the first 270 days of the period of probation, and to successfully complete a program with the Virginia Health Practitioner Intervention Program [HPIP], reporting to the Court with proof of completion. (St. Exs. 3, 4)

5. From June 30 through August 30, 2001, Mr. Fischkelta was admitted for inpatient treatment for chemical dependency at Pine Grove in Hattiesburg, Mississippi. Pine Grove is a Virginia Board approved treatment facility. (Tr. 37-38, Respondent's Exhibit [Resp. Ex.] A-4)
6. In December 2001, Mr. Fischkelta submitted to the Board an application for renewal of his registration as a physician assistant. (Tr. 15; St. Ex. 2) In completing the application, Mr. Fischkelta signed a statement, which read,

I certify, under penalty of loss of my right to practice in the state of Ohio, that I am currently certified by the NCCPA [National Commission on Certification of Physician Assistants] and that the information provided on this application for renewal of my P.A. registration is true and correct in every respect.

Nevertheless, Mr. Fischkelta answered "No" to question 1, which asks:

At any time since signing your last application for renewal of your registration, have you * * * [b]een found guilty of, or pled guilty or no contest to, or been found eligible for treatment in lieu of conviction for, a felony or misdemeanor[?]

Moreover, Mr. Fischkelta answered "No" to question 3, which asks:

At any time since signing your last application for renewal of your registration, have you * * * [b]een addicted to or dependent upon alcohol or any chemical substance; or been treated for, or been diagnosed as suffering from, drug or alcohol dependency of abuse? **You may answer 'no' to this question if you have successfully completed treatment at a program approved by this board** and have subsequently adhered to all statutory requirements as contained in sections 4731.25 and 4731.25 O.R.C., and related provisions, or you are currently enrolled in a board approved program. Any questions concerning approval can be directed to the board offices.

(St. Ex. 2) (emphasis added)

7. Regarding his answer denying criminal convictions, Mr. Fischkelta testified that, at the time of his criminal conviction, his criminal attorney had advised him that it would be a “deferred prosecution” and that his conviction would eventually be expunged. Mr. Fischkelta further testified that he had believed that there would be no record of the conviction. Mr. Fischkelta added that, after receiving the Board’s notice of opportunity for hearing, he had contacted his criminal attorney again. At that time, the criminal attorney advised him that it had not been a deferred conviction after all, and that it would not be expunged. Mr. Fischkelta stated that he does not understand why the conviction was not a deferred prosecution. (Tr. 22-23)
8. At hearing, Mr. Fischkelta was questioned regarding the discrepancies in his testimony at hearing and the information he included in his December 1999 application for registration in Ohio. These discrepancies included the following:
 - At hearing, Mr. Fischkelta testified that he had terminated his employment in Virginia on December 13, 1999. Nevertheless, in his application for registration in Ohio, which he signed on December 31, 1999, he stated that he was presently employed. When asked if he could explain why he had told the Board that he was still employed when he was not employed, Mr. Fischkelta answered he may have completed the application before December 13, and then failed to review it again when his signature was notarized on December 31. (Tr. 35-36; St. Ex. 6 at 4, 13)
 - In his December 1999 application for registration, Mr. Fischkelta stated that he had worked at Halifax Gastroenterology from July 1999 to the present. At hearing, however, Mr. Fischkelta stated that he had started at Halifax Gastroenterology in October 1999. (Tr. 33; St. Ex. 6 at 4)

Mr. Fischkelta was also questioned regarding the discrepancies in his testimony at hearing and the information he included in his December 2001 application for renewal of his registration in Ohio. These discrepancies included the following:

- Mr. Fischkelta answered ‘no’ to question 3 on the renewal application. Question 3 specifically states that the applicant can answer ‘no’ only if the applicant had received treatment from a Board approved treatment provider. Nevertheless, at hearing, Mr. Fischkelta testified that he did not know if Pine Grove is a treatment facility approved by the Board. (St. Ex. 2; Tr. 37-38)

When asked why he had answered ‘no’ without knowing if Pine Grove was approved by the Board, Mr. Fischkelta provided a somewhat unresponsive answer. He stated that he had answered ‘no’ because he had contacted the Ohio Physicians Effectiveness Program [OPEP] and that it had been decided that he should continue with the HPIP. Mr. Fischkelta testified that he could not recall if those dealings had included a discussion of whether Pine Grove was approved by the Ohio Board. Mr. Fischkelta further testified that he had been through treatment almost eighteen months before

- completing his application for renewal; therefore, he did not want to return to treatment. Finally, Mr. Fischkelta admitted that he had not actually read the full paragraph before answering the question. (Tr. 39-41, 43-44)
9. Pine Grove is not a treatment provider approved by the Board. [Note: at hearing, the parties agreed to allow the Hearing Examiner to consult with Board staff to determine the status of Pine Grove. Board staff confirmed that Pine Grove is not an approved treatment provider. See Tr. 38-39.]
 10. Mr. Fischkelta acknowledged that he is aware that the Board did not make allegations pertaining to impairment in its notice of opportunity for hearing. He further stated that he is aware that the Franklin County Court of Appeals has held that the Board may not require evaluation or treatment for impairment as a condition of reinstatement or probation when it had not charged a licensee with impairment. Nevertheless, Mr. Fischkelta admitted his impairment and waived any objections should the Board decide to impose sanctions that include requirements for evaluation and/or treatment.¹ (Tr. 67)
 11. Mr. Fischkelta testified that he had started using narcotics in the early 1990s for low back pain resulting from herniated discs. He explained that he had been accidentally defibrillated during the resuscitation of a patient which had resulted in the back injury. Mr. Fischkelta testified that the injury had resulted in chronic pain, for which his family physician prescribed Vicodin. Mr. Fischkelta stated that, after a while, he had become addicted to it. He further stated that, after realizing that he was addicted, he did not want to return to his family physician because he was embarrassed in the small town. Therefore, he had resorted to writing and passing false prescriptions. (Tr. 45-46, 68)
- Mr. Fischkelta testified he had been employed by a large practice group. He added that Dr. Schacht was a physician employed by the group. Mr. Fischkelta also stated that the group had used prescription pads that included the pre-printed names of all of the physicians working in the group. Mr. Fischkelta testified that, prior to his arrest, he had left the employ of that group and, when he did, he took one of the prescriptions pads. Mr. Fischkelta used the prescriptions pad to write prescriptions in the fictitious name of Barbara Powell. (Tr. 23-28)
12. Mr. Fischkelta testified that, in March 2001, he had entered into a contract with HPIP. Moreover, from June 30 through August 30, 2001, Mr. Fischkelta participated in inpatient treatment for chemical dependency. Nevertheless, upon discharge, Mr. Fischkelta did not enter into an aftercare contract with his treatment provider. He did, however, see a

¹ In *In re Eastway* (1994), 95 Ohio App.3d 516, 642 N.E.2d 1135, cert. denied, the Franklin County Court of Appeals held that the Board could not require treatment as a condition of probation when it had not charged a physician with being impaired. Therefore, the court concluded that a Board order that includes such sanctions is not supported by reliable, probative, and substantial evidence and is not in accordance with the law. See also *Lawrence S. Krain, M.D. v. State Medical Board of Ohio* (Oct. 29, 1998), Franklin App. No. 97APE08-981, unreported.

psychiatrist for several weeks after discharge. In addition, Mr. Fischkelta continued to abide by his contract with HPIP. (Tr. 18, 20-21, 42, 68-72, 77; Resp. Exs. A-4, B)

Mr. Fischkelta stated that HPIP requires that he abstain from alcohol and from drugs not prescribed by a physician. Moreover, HPIP originally required that he submit urine samples on a weekly basis. Currently, however, he is required to submit only twelve samples per year. He further stated that HPIP requires that he contact them every morning to see if he is required to submit a urine sample that day. Mr. Fischkelta added that he attends a 12-Step, Caduceus, or Men's Group meeting five times per week. He also sends HPIP monthly reports documenting his activities. Mr. Fischkelta submitted logs documenting his meeting attendance. Finally, Mr. Fischkelta testified that he has never had a positive urine screen and he has not relapsed since his last use in January 2001. (Tr. 18, 20-21, 42, 68-72, 77; Resp. Exs. A-4, B)

13. By letter dated January 31, 2002, William L. Harp, M.D., Executive Director of the Virginia Board of Medicine [Virginia Board], advised Mr. Fischkelta that the Virginia Board had investigated him. Mr. Harp further advised that the Virginia Board had decided to end the investigation without pursuing administrative proceedings because Mr. Fischkelta was enrolled in, and complying with, HPIP. (Resp. Ex. A-1)
14. By letter dated July 21, 2003, Dayna L. Smith, BA, CSAC, Case Manager for HPIP, advised that Mr. Fischkelta had contracted with HPIP in March 2001. She further advised that Mr. Fischkelta had been admitted to Pine Grove, a Virginia Board approved treatment facility, from June 20 through August 30 2001. In addition, Ms. Smith advised that Mr. Fischkelta is required to submit random urine toxicology screens twelve times per year and that these had all been negative. She added that Mr. Fischkelta had been fully compliant with his HPIP contract. Finally, Ms. Smith advised that Mr. Fischkelta's contract with HPIP is in effect until April 13, 2006. (Resp. Ex. A-4)

Documents from HPIP indicate that Mr. Fischkelta's urine screens continued to be negative through October 2003. (Resp. Ex. B)

15. Mr. Fischkelta submitted letters from colleagues and friends written in support of Mr. Fischkelta. (Resp. Ex. A-3)

FINDINGS OF FACT

1. On June 11, 2001, in the Superior Court, Person County, North Carolina, in Case Nos. 01 CRS 560-566, Joseph W. Fischkelta, P.A., pleaded guilty to, and was adjudged guilty of, seven misdemeanor counts of common law forgery in violation of North Carolina Common Law. The charges were based on Mr. Fischkelta having forged a physician's signature to prescriptions issued to a false name.

The court sentenced Mr. Fischkelta to forty-five days in the custody of the Sheriff of Person County. The court stayed the incarceration, and placed Mr. Fischkelta on probation for sixty months. The Special Conditions of Probation include that Mr. Fischkelta shall:

Not use, possess or control any illegal drug or controlled substance unless it has been prescribed for the defendant by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any illegal drugs or controlled substances; and not knowingly be present at or frequent any place where illegal drugs or controlled substances are sold, kept or used.

Further, Mr. Fischkelta was sentenced to complete seventy hours of community or reparation service during the first 270 days of the period of probation, and to successfully complete the Virginia Health Practitioner Intervention Program, reporting to the Court with proof of completion.

2. In December 2001, Mr. Fischkelta submitted to the Board an application for renewal of his registration as a physician assistant. In completing the application, Mr. Fischkelta signed a statement, which read,

I certify, under penalty of loss of my right to practice in the state of Ohio, that I am currently certified by the NCCPA [National Commission on Certification of Physician Assistants] and that the information provided on this application for renewal of my P.A. registration is true and correct in every respect.

Nevertheless, Mr. Fischkelta answered “No” to question 1, which asks:

At any time since signing your last application for renewal of your registration, have you * * * [b]een found guilty of, or pled guilty or no contest to, or been found eligible for treatment in lieu of conviction for, a felony or misdemeanor[?]

CONCLUSIONS OF LAW

1. The plea of guilty by Joseph W. Fischkelta, P.A., and/or the judicial finding of guilt pertaining to Mr. Fischkelta, as set forth in Findings of Fact 1, constitutes “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a misdemeanor committed in the course of practice,” as that clause is used in Section 4730.25(B)(13), Ohio Revised Code.
2. Mr. Fischkelta’s plea of guilty and/or the judicial finding of guilt, as set forth in Findings of Fact 1, constitutes, “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding

of eligibility for treatment in lieu of conviction for, a misdemeanor involving moral turpitude,” as that clause is used in Section 4730.25(B)(14), Ohio Revised Code.

3. The conduct of Mr. Fischkelta, as set forth in Findings of Fact 2, constitutes “fraud, misrepresentation, or deception in applying for or securing the certificate [of registration],” as that clause is used in Section 4730.25(A), Ohio Revised Code.

Section 4730.25(A), Ohio Revised Code, provides that,

(A) The state medical board, by an affirmative vote of not fewer than six members, may revoke or may refuse to grant a certificate of registration as a physician assistant to a person found by the board to have committed fraud, misrepresentation, or deception in applying for or securing the certificate.

In a recent decision² by the Franklin County Court of Common Pleas interpreting a similar provision pertaining to physicians, the Court held that, when the Board finds a violation of this provision, the Board may only “revoke or * * * refuse to grant a certificate of registration.” The range of penalties available to the Board does not include probation, suspension, or stayed revocation. Accordingly, unless the Board decides to revoke Mr. Fischkelta’s certificate, the Board shall take no further action based on the violation of 4730.25(A), Ohio Revised Code.

4. The conduct of Mr. Fischkelta, as set forth in Findings of Fact 2, constitutes “[m]aking a false, fraudulent, deceptive, or misleading statement in soliciting or advertising for patients, in relation to the practice of medicine as it pertains to physician assistants, or in securing or attempting to secure a certificate of registration to practice as a physician assistant or approval of a supervision agreement,” as that clause is used in Section 4730.25(B)(8), Ohio Revised Code.

* * * * *

Mr. Fischkelta has committed criminal convictions in the course of practice. In doing so, he used the name of a licensed physician and wrote false prescriptions in order to obtain drugs for his own use. In addition, Mr. Fischkelta lied to the Board regarding the convictions on his renewal application. In fact, Mr. Fischkelta provided false or inaccurate answers to a number of questions on his original application and on his renewal application for registration as a physician assistant. It is impossible to know at this time if the Board would have granted him a certificate in the first place if the Board had been given truthful information on his original application. In light of Mr. Fischkelta’s history of dishonest dealings with the Board, the Board is fully justified in permanently revoking Mr. Fischkelta’s certificate to practice in this state.

² *Faye F. Istanbooly, M.D., v. State Medical Board of Ohio* (Dec. 4, 2003), Franklin C.P. No. 03CVF-02-2334, unreported.

Nevertheless, there are some mitigating circumstances in this matter. The criminal conduct occurred during Mr. Fischkelta's active impairment and addiction to Vicodin. Moreover, Mr. Fischkelta became addicted to Vicodin due to a back injury rather than from recreational use. Finally, Mr. Fischkelta has been through treatment for substance abuse, and he has maintained compliance with his recovery program for more than two years. Under these circumstances, the Board may wish to allow Mr. Fischkelta to continue to practice in this state, under strict monitoring conditions.

However, if the Board chooses to allow Mr. Fischkelta to continue to practice in this state, because of his admitted history of impairment, Ohio law requires that the Board suspend Mr. Fischkelta's certificate and order him to obtain twenty-eight days of inpatient or residential substance abuse treatment by a Board approved treatment provider.³ Consequently, the Board has no option but to, first, suspend Mr. Fischkelta's certificate and, second, require Mr. Fischkelta to complete twenty-eight days of inpatient or residential treatment with a Board approved treatment provider prior to reinstatement. This is true despite the fact that Mr. Fischkelta has already completed sixty days of inpatient treatment as his previous treatment provider was not approved by this Board.

PROPOSED ORDER

It is hereby ORDERED that:

- A. **SUSPENSION:** The certificate of Joseph W. Fischkelta, P.A., to practice as a physician assistant in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than ninety days.
- B. **INTERIM MONITORING:** During the period that Mr. Fischkelta's certificate to practice as a physician assistant in Ohio is suspended, Mr. Fischkelta shall comply with the following terms, conditions, and limitations:
 1. **Obey the Law:** Mr. Fischkelta shall obey all federal, state, and local laws, and all rules governing the practice of physician assistants in Ohio.
 2. **Personal Appearances:** Mr. Fischkelta shall appear in person for quarterly interviews before the Board or its designated representative during the third month following the effective date of this Order. 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 See Section 4731.22(B)(26), Ohio Revised Code; and Rules 4731-16-02(B)(3), 4731-16-02(B)(4), and 4731-16-08(A)(13), Ohio Administrative Code.

3. **Quarterly Declarations**: Mr. Fischkelta shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. 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**: Mr. Fischkelta shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Mr. Fischkelta's history of chemical dependency.
5. **Abstention from Alcohol**: Mr. Fischkelta shall abstain completely from the use of alcohol.
6. **Drug & Alcohol Screens; Supervising Physician**: Mr. Fischkelta shall submit to random urine screenings for drugs and/or alcohol on a bi-weekly basis or as otherwise directed by the Board. Mr. Fischkelta shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Mr. Fischkelta shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Mr. Fischkelta shall submit the required 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 Mr. Fischkelta. Mr. Fischkelta 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.

Mr. Fischkelta 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, Mr. Fischkelta must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Mr. Fischkelta 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 Mr. Fischkelta's quarterly declaration. It is Mr. Fischkelta's responsibility to ensure that reports are timely submitted.

7. **Submission of Blood or Urine Specimens upon Request**: Mr. Fischkelta shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Mr. Fischkelta's expense.
 8. **Rehabilitation Program**: Mr. Fischkelta shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than four times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Mr. Fischkelta 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 Mr. Fischkelta's quarterly declarations.
 9. **Continued Compliance with a Contract with an Impaired Physicians Committee**: Mr. Fischkelta shall maintain continued compliance with the terms of the contract entered into with HPIP, or with another impaired physicians committee, approved by the Board, to assure continuous assistance in recovery and/or aftercare.
- C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION**: The Board shall not consider reinstatement or restoration of Mr. Fischkelta's certificate to practice as a physician assistant until all of the following conditions have been met:
1. **Application for Reinstatement or Restoration**: Mr. Fischkelta shall submit an application for restoration, accompanied by appropriate fees, if any.
 2. **Compliance with Interim Conditions**: Mr. Fischkelta shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order, unless otherwise determined by the Board.
 3. **Completion of Inpatient Treatment**: Mr. Fischkelta shall complete a minimum of twenty-eight days of inpatient or residential treatment, or a combination thereof, for his chemical dependency. Such inpatient or residential treatment shall be completed without interruption. Further, such inpatient or residential treatment shall be provided in accordance with Rule 4731-16-08(A)(13), Ohio Administrative Code, by a treatment provider approved under Section 4731.25, Ohio Revised Code.

In addition, upon discharge from treatment, Mr. Fischkelta shall enter into, and thereafter maintain compliance with, a post-discharge aftercare contract which complies with Rule 4731-16-10, Ohio Administrative Code, with a treatment provider approved under Section 4731.25, Ohio Revised Code, who has access to Mr. Fischkelta's treatment records.

4. **Demonstration of Ability to Resume Practice**: Mr. Fischkelta shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Mr. Fischkelta 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 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.
 - c. Evidence of continuing full compliance with this Order.
 - d. Two written reports indicating that Mr. Fischkelta's ability to practice has been evaluated for chemical dependency and/or impairment and that he 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 Mr. Fischkelta's application for reinstatement or restoration. The reports of evaluation shall describe with particularity the bases for the determination that Mr. Fischkelta has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon his practice.
 5. **Additional Evidence of Fitness To Resume Practice**: In the event that Mr. Fischkelta has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.
- D. **PROBATION**: Upon reinstatement or restoration, Mr. Fischkelta's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:

1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Mr. Fischkelta shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
 2. **Personal Ethics Course:** Before the end of the first year of probation, or as otherwise approved by the Board, (Name) shall provide acceptable documentation of successful completion of a course or courses dealing with 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 acquisition period(s) in which they are completed.
 3. **Personal Ethics Course:** Before the end of the first year of probation, or as otherwise approved by the Board, Mr. Fischkelta shall provide acceptable documentation of successful completion of a course or courses dealing with 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 acquisition period(s) in which they are completed.
 4. **Tolling of Probationary Period While Out of State:** In the event that Mr. Fischkelta should leave Ohio for three consecutive months, or reside or practice outside the State, Mr. Fischkelta 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 probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.
 5. **Violation of Terms of Probation:** If Mr. Fischkelta violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Mr. Fischkelta's certificate will be fully restored.
- F. **RELEASES:** Mr. Fischkelta 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 Mr. Fischkelta's chemical dependency and/or related conditions, or for purposes of complying with this Order, whether such treatment or evaluations occurred before or after

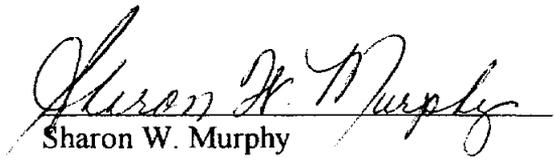
the effective date of this Order. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.

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

G. REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS: Within thirty days of the effective date of this Order, Mr. Fischkelta shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Mr. Fischkelta shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

H. REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES: Within thirty days of the effective date of this Order, Mr. Fischkelta shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Mr. Fischkelta shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Mr. Fischkelta shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

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


Sharon W. Murphy
Hearing Examiner



State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF JANUARY 14, 2004

REPORTS AND RECOMMENDATIONS

Ms. Sloan announced that the Board would now consider the findings and orders appearing on the Board's agenda. She asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and order, and any objections filed in the matters of: Mark L. Allen, M.D.; Glenda M. Dahlquist, M.D.; Joseph W. Fischkelta, P.A.; Timothy A. Gooden, M.D.; Richard W. Liss, M.D.; Larry John Little, M.D.; and Geoffrey D. Snyder, M.D. A roll call was taken:

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

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

| | | |
|------------|--------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Bhati | - aye |
| | Dr. Buchan | - aye |
| | Dr. Kumar | - aye |
| | Mr. Browning | - aye |
| | Dr. Davidson | - aye |



| | |
|----------------|-------|
| Dr. Robbins | - aye |
| Dr. Garg | - aye |
| Dr. Steinbergh | - aye |
| Ms. Sloan | - aye |

Ms. Sloan 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.

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

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

.....
JOSEPH W. FISCHKELTA, P.A.

Ms. Sloan directed the Board's attention to the matter of Joseph W. Fischkelta, P.A. She advised that no objections were filed to Hearing Examiner Murphy's Report and Recommendation.

Ms. Sloan continued that a request to address the Board has been timely filed on behalf of Mr. Fischkelta. Five minutes would be allowed for that address.

Mr. Fischkelta was accompanied by his counsel, Emery J. Leuchtag.

Mr. Fischkelta stated that he was wrong for indicating on his renewal application that he had not been convicted of a misdemeanor. He feels that when something goes wrong, everything goes downhill from there. In the beginning he was misinformed by his North Carolina attorney that his charges had been expunged when he had been arrested for common law forgery and for forging prescriptions. He thought that the charges would have been expunged in a timely fashion, and at just about that time, a short month afterward, his renewal application came through and he filled it out indicating that he had not been convicted. In turn, this led him to where he is today. He by no means is saying that he was innocent in checking the box. It was his responsibility, and he should have checked a little further before he did it, but, in any event, that's why he's here before the Board today.

Mr. Fischkelta stated that prior to renewing his application he contacted the Virginia Board of Medicine, as well as his advocates, the Virginia Health Practitioner Intervention Program. He asked them, specifically, what he needed to do. With the information provided to them by his attorney, they advised him that he did not have to indicate that he had been convicted of a misdemeanor. With that information, he did check the

renewal card as, "no," for not being convicted. They also, at that time, spoke with OPEP, because he was living in Virginia when this occurred, and he was planning to move to Ohio within the next year. There was a group decision made that he would stay with Virginia monitoring instead of coming over to OPEP for monitoring. What he did for the Virginia Board of Medicine and its monitoring agency and the opportunities they provided to him was an initial 30-day inpatient program. He then switched to a 60-day Virginia Board required inpatient rehabilitation facility, Pine Grove, in Hattiesburg, Mississippi. He's done random drug screens, initially at twice a week for one year and then biweekly for a year. Now he's doing twelve random screens per year. He's required to call in every day, 358 days a year, to determine whether or not he's been selected for a random drug screen.

Mr. Fischkelta continued that he attends meetings five times a week and provides a five-page monthly report to Virginia monitoring. He also had private, face-to-face meetings with his psychiatrist when this initially occurred. Those have been discontinued. Mr. Fischkelta stated that he has also become a counselor for other individuals with substance abuse problems.

Mr. Fischkelta stated that he has fully complied with the Virginia Board of Medicine. He's never missed or failed a drug screen. He's completed everything Virginia has required, and there has been no formal action to date on his Virginia license, which was one of the most important things to him at that time. What he has lost so far is his honor, and his integrity. The big thing for him is trust, and that was lost. He lost the trust of his wife who once believed in him. He lost friends and he lost a considerable amount of money. Since the June 12, 2003 letter from the Ohio Board, his hours have been dropped significantly because they were afraid he would be yanked from his position. Since then he's lost at least 100 hours a month. He asked that the Board consider this when deciding whether or not to suspend his license. Mr. Fischkelta continued that he left the Army Reserves and has currently resigned his position at University Hospital in Cleveland. He's looking at more attorney fees.

Mr. Fischkelta stated that he has complied with his attorneys and Virginia monitoring recommendations to the letter. He still sits before the Ohio Board today, but he does accept responsibility. This happened over three years ago, and he knows what he's done. It was an experience from which he learned and which made him stronger. He would like to move on and do whatever it takes to do that.

Ms. Sloan advised Mr. Fischkelta that he had another minute to complete his statement.

Mr. Fischkelta stated that he is a recovering addict who has been sober since January 29, 2000. He's a father, husband, and a U.S. Army veteran. The most important things to him are his family, his life and his career. He gives 110 percent to them as well as to his patients. He wishes to continue.

Mr. Fischkelta stated that there was a discrepancy on page 6, paragraph 8 of the Hearing Examiner's Report and Recommendation. Mr. Fischkelta stated that there had been some confusion at the hearing regarding dates. Mr. Fischkelta explained that, during the hearing, he told the Hearing Examiner that he had terminated his employment in Virginia on December 13, 1999. Nevertheless, in his application for registration in Ohio, which he signed on December 31, 1999, he reported that he was presently employed.

When the Hearing Examiner asked why he had reported in his application that he was still employed when he had terminated his employment a few weeks earlier, he had been unable to think of a reason. He stated that, after the hearing, he had realized that he had terminated his position in December 2000, not December 1999, and he had still been employed at the time he completed his application. Therefore, he had not lied on the application, although his confusion at hearing regarding dates may have given that impression.

Ms. Sloan asked whether the Assistant Attorney General wished to respond.

Mr. Wilcox stated that he believes that the Hearing Examiner did a good job in summarizing the factual issues of this case, but he would not agree with the penalty recommendation. This is a case where a physician assistant stole a prescription pad and wrote fraudulent prescriptions for controlled substances. Mr. Fischkelta claims that he was addicted to Vicodin at the time, which influenced his judgment. This may be a mitigating factor, but it does not explain away the fact that Mr. Fischkelta later lied to this Board about his actions. As the facts in this case show, the convictions in North Carolina took place in June 2001. Afterwards Mr. Fischkelta attended a treatment program for chemical dependency from June 2001 through August 2001. As the Board has heard today, Mr. Fischkelta claims to have been sober prior to that time, in the year 2000. Despite being convicted of seven misdemeanors and completing a drug treatment program, Mr. Fischkelta lied to this Board on his December 2001 renewal application. He told this Board that he had not been convicted of any misdemeanors, and he also told this Board that he had not been addicted to drugs. Both of these statements are clearly not true. Additionally, blaming these misstatements on a prior attorney or advice from other boards is not an excuse as he simply could have made a telephone call to the Ohio Board to clear up any discrepancies in that matter.

Mr. Wilcox stated that if this Board allows Mr. Fischkelta to continue to practice in Ohio, and he believes there is ample evidence to revoke at this point, he would suggest at least a six-month suspension in this matter.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JOSEPH W. FISCHKELTA, P.A. MR. BROWNING SECONDED THE MOTION.

Ms. Sloan stated that she would now entertain discussion in the above matter.

Dr. Steinbergh stated that she agrees with the Proposed Order, noting that it is a light order. Mr. Fischkelta is an impaired physician assistant, who is chemically dependent, and in the State of Ohio there are certain rules the Board must follow. Under the Order, Mr. Fischkelta's license would be suspended for at least 90 days, and then he would go into the usual probationary terms for five years. She agrees with the proposed terms of probation, including the requirement that he take a personal ethics course. Dr. Steinbergh noted that paragraphs D.2 and D.3 require the personal ethics course. She noted that the first paragraph appears to be taken from the model agreement language, and the second paragraph is the same language with the licensee's name used. She suggested deleting paragraph D.2. and renumbering the remaining paragraphs.

Dr. Steinbergh stated that she does feel sensitive to Mr. Fischkelta's emotional response to the Board today, and she appreciates his pain. He's chemically dependent, and she believes that the Proposed Order is a minimal way of dealing with that dependence. Her only word for Mr. Fischkelta is that in time he will come to understand the need for the Board to take the action it is taking. The Board sees sometimes when it goes with light orders, they don't recognize the seriousness of their dependency. Mr. Fischkelta has lied to this Board, and this is an appropriate Order.

Dr. Kumar stated that, while he agrees with the Report and Recommendation, as written, it is quite clear that not only is Mr. Fischkelta addicted or impaired, he also appears to be somewhat loose with his dates, times and places. He continues to put blame on one person or another. He has just been somewhat loose with his facts. He is definitely addicted and the report and Recommendation is appropriate. Dr. Kumar stated that he supports the Proposed Order.

Dr. Robbins stated that he will also speak for the Proposed Order in this case. There is no question that Mr. Fischkelta lied to this Board in his application. He added that it would not be unreasonable in any sense to think that, with this kind of a history, Mr. Fischkelta should have made a call to the Board, if there was any question about how to fill out the application. Dr. Robbins noted that this was a fairly minimalist order. He added that he also was moved by Mr. Fischkelta's presentation today. Dr. Robbins stated that he hopes that Mr. Fischkelta could move forward. He stated that he would be against any revocation of Mr. Fischkelta's license.

Dr. Egner states that the Board can act on this case, imposing any order from reprimand to revocation. Yet, Mr. Fischkelta has to go through another 28-day treatment program because of the Ohio rules. She asked whether there is any way to get around that. She stated that she doesn't know that another 28-day inpatient treatment program is needed. She believes that Mr. Fischkelta does need suspension time for the fraudulent statement on his renewal application and he needs supervision, as he would have gotten in a consent agreement. Had he not lied on his renewal application, this would be a consent agreement with the Board.

Dr. Steinbergh stated that, even with a consent agreement, Mr. Fischkelta would still have probably had to go through another 28 days of inpatient treatment.

Dr. Egner stated that he's already been through 90 days of inpatient treatment.

Dr. Steinbergh stated that they were not Board-approved programs, and that's the problem.

Dr. Egner stated that it's a waste of time and money.

Dr. Robbins agreed with Dr. Egner, stating that he doesn't see the value of requiring another 28-day program.

Mr. Dilling referred to Rule 4731-16-12 for out-of-state impairment cases that says,

If the board orders a certificate holder who neither resides nor practices in Ohio to submit to an evaluation under division (B)(26) of section 4731.22 of the Revised Code, division (F)(2) of section 4730.25 of the Revised Code, division (F)(2) of section 4760.13 of the Revised Code or division (F)(2) of section 4762.13 of the Revised Code, or commences disciplinary proceedings against such a certificate holder based on an alleged violation of either of those divisions, the board may waive any or all applicable provisions of this chapter of the Administrative Code, if it finds that alternative means exist to protect the public.

Mr. Dilling stated that he hears the Board arguing that the 90 days that Mr. Fischkelta has already done is appropriate. He believes that, under those circumstances, the Board could delete the inpatient treatment requirement of the Proposed Order.

Dr. Buchan stated that he agrees with the Findings of Fact, and on their face he would suggest revocation for this gentleman. He commends the Hearing Examiner on her report because she recognizes what the Board feels today – that Mr. Fischkelta can be rehabilitated and is in the process of being rehabilitated. His question of Dr. Egner is how she feels about the 90-day suspension if she removes the inpatient treatment requirement.

Dr. Egner stated that, as far as she's concerned, the suspension is a reflection of his publishing a fraudulent statement and publishing a false, deceptive and misleading statement on his application. Any time a licensee has any dealings with the Medical Board or any medical board in any state, the licensee becomes acutely aware of the importance of a license, what a license means, what the function of the medical board is, and that there are staff at boards to answer questions. They are more aware than anyone else. Mr. Fischkelta had already been through that process in Virginia and knew what a medical board was and what it meant to have a license. He knew that he could have called this Board to find out how he should have answered that question on the application. Dr. Egner stated that she can't buy Mr. Fischkelta's argument that he thought that the record was expunged and that he never had to tell.

Dr. Kumar stated that in a way he sees that putting Mr. Fischkelta through another 28-day inpatient treatment program will not be a significant help, but at the same time he would at least like to see Mr. Fischkelta continue through some kind of aftercare or outpatient treatment contract with someone. If the Board eliminates the paragraph requiring the treatment, it also will eliminate the aftercare contract requirement as well. He would want to see some kind of required outpatient care being done.

Dr. Steinbergh referred to paragraph 4.b. of the Proposed Order and indicated that that should address Dr. Kumar's concerns. It requires Mr. Fischkelta to show evidence of compliance with a post-discharge aftercare contract.

Dr. Kumar stated that that care is continued right after the discharge from treatment.

Dr. Steinbergh stated that the Board might just need to reword the language.

Mr. Dilling asked whether Mr. Fischkelta showed documented sobriety of more than one year at the time he relocated to Ohio.

Mr. Wilcox stated that there was no such evidence presented at the hearing.

Mr. Dilling suggested remanding the matter to the Hearing Examiner. He referred to Rule 4731-16-12 (E), which may allow some leeway for physicians who have more than one year of documented sobriety at the time of relocation to Ohio.

Ms. Murphy asked to direct the Board to evidence contained in the hearing record. She stated that there was a letter dated July 21, 2003 from the case manager for the Virginia Impaired Physicians Program, which indicates the following: Mr. Fischkelta was in Pine Grove through August 2001. Since that time he's been monitored by the Virginia program. He's been required to submit random urine toxicology screens, which all have been negative. And he's been compliant with his contract with Virginia since that time. Ms. Murphy remarked that that documents over two years of sobriety. She stated that this is found in paragraph 14 in the Summary of the Evidence on page 8 of the Report and Recommendation.

Dr. Steinbergh asked for a motion to table to draft an alternative order and review some of the testimony.

MR. BROWNING MOVED TO TABLE THE MATTER OF JOSEPH W. FISCHKELTA, P.A. DR. BHATI SECONDED THE MOTION. A vote was taken:

| | | |
|-------|----------------|-----------|
| Vote: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Bhati | - aye |
| | Dr. Buchan | - nay |
| | Dr. Kumar | - nay |
| | Mr. Browning | - aye |
| | Dr. Davidson | - aye |
| | Dr. Robbins | - nay |
| | Dr. Garg | - abstain |
| | Dr. Steinbergh | - aye |

The motion carried.

.....

DR. BUCHAN MOVED TO REMOVE THE MATTER OF JOSEPH W. FISCHKELTA, P.A.,

FROM THE TABLE. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

| | | |
|-------|----------------|-----------|
| Vote: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Bhati | - aye |
| | Dr. Buchan | - aye |
| | Dr. Kumar | - aye |
| | Mr. Browning | - aye |
| | Dr. Davidson | - aye |
| | Dr. Robbins | - aye |
| | Dr. Garg | - abstain |
| | Dr. Steinbergh | - aye |

The motion carried.

Mr. Dilling stated that he had interjected himself into the Board's discussion of this case only for the legal point. The Board was questioning whether it had some discretion in this case. The Hearing Examiner pointed out that there might be a violation of the Board's rules if the Board tries to use discretion to waive the 28-day inpatient requirement. He stated that he recognizes that there were other issues the Board discussed relative to the actual charges on the criminal acts and falsifying or misleading statements.

Mr. Dilling stated that, with respect to 4731-16-12, that rule was adopted by the Board in November 2002. This case is strange because the Board didn't charge the doctor with impairment. His impairment was brought up at hearing because of the nature of his acts. The parties waived the notice requirement. The Board had a discussion and was concerned because of the mission of the Board, and certainly rightly so. Mr. Dilling stated that he has a problem from a legal perspective as to what laws do apply. Certainly with that, what do the different parties argue with respect to which law applies? Mr. Dilling stated that he doesn't want to be unfair to the parties nor to the Board on behalf of the public. Mr. Dilling recommended that the Board remand this matter to the Hearing Examiner for that issue, to allow the Hearing Examiner and the parties to address the issue, and then bring the matter back to the Board.

DR. STEINBERGH MOVED TO REMAND FOR THE REASONS MR. DILLING GAVE. DR. DAVIDSON SECONDED THE MOTION.

Dr. Buchan asked what time-table the Board might expect in terms of response.

Mr. Dilling stated that he knows that the Hearing Examiners are doing yeoman work right now being one person short in their department, but he's sure that since this is a limited issue, they will try to work it into their schedules and the A.G.s will also find a way to work it into their schedules. Mr. Dilling stated that it behooves the P.A. and his attorney to get back to the Board.

A vote was taken:

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

The motion carried.



State Medical Board of Ohio

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

June 11, 2003

Joseph W. Fischkelta, P.A.
4840 Shannon Avenue
Springfield, Ohio 45504

Dear Mr. Fischkelta:

In accordance with R.C. Chapter 119., you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, permanently revoke, or suspend your certificate of registration 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 December 21, 2001, the State Medical Board of Ohio processed your signed, undated, application for renewal of your registration as a physician assistant.

You signed the statement in that application which read "I certify, under penalty of loss of my right to practice in the state of Ohio, that I am currently certified by the NCCPA [National Commission on Certification of Physician Assistants] and that the information provided on this application for renewal of my P.A. registration is true and correct in every respect." You answered "No" to question 1.), which asks:

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

- 1.) [b]een found guilty of, or pled guilty or no contest to, or been found eligible for treatment in lieu of conviction for, a felony or misdemeanor.[?]"

In fact, on or about June 11, 2001, in the Superior Court, Person County, North Carolina, you pleaded guilty to, and were adjudged guilty of, seven (7) misdemeanor counts of common law forgery, as provided in additional detail in paragraph two (2) below.

- (2) On or about June 11, 2001, in the Superior Court, Person County, North Carolina, you pleaded guilty to, and were adjudged guilty of, seven (7) misdemeanor counts of common law forgery in violation of North Carolina Common Law in Case No. 01 CRS 560-566. You entered the above plea to charges that you had forged a physician's signature to prescriptions issued to a false name.

You were sentenced to 45 days in the custody of the Sheriff of Person County, North Carolina; the execution of the above sentence was suspended, and you were placed on probation for 60 months.

Mailed 6-18-03

The Special Conditions of Probation include that you “Not use, possess or control any illegal drug or controlled substance unless it has been prescribed for the defendant by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any illegal drugs or controlled substances; and not knowingly be present at or frequent any place where illegal drugs or controlled substances are sold, kept or used.”

Further, you were sentenced to complete 70 hours of community or reparation service during the first 270 days of the period of probation, and to successfully complete the Virginia Health Practitioner Intervention Program, reporting to the Court with proof of completion.

Copies of the Transcript of Plea for Case No. 01 CRS 560-566 [seven (7) counts], Judgment Suspending Sentence-Misdemeanor in Case No. 01 CR 560 [four (4) counts consolidated] and Judgment Suspending Sentence-Misdemeanor in Case No. 01 CRS 564 [three (3) counts consolidated], are attached hereto and incorporated herein.

Your acts, conduct, and/or omissions, as alleged in paragraph one (1) above, individually and/or collectively, constitute “fraud, misrepresentation, or deception in applying for or securing the certificate [of registration],” as that clause is used in R.C. 4730.25(A)

Further, your acts, conduct, and/or omissions, as alleged in paragraph one (1) above, individually and/or collectively, constitute “[m]aking a false, fraudulent, deceptive, or misleading statement in soliciting or advertising for patients, in relation to the practice of medicine as it pertains to physician assistants, or in securing or attempting to secure a certificate of registration to practice as a physician assistant or approval of a supervision agreement,” as that clause is used in R.C. 4730.25(B)(8).

Further, your plea of guilty and/or the judicial finding of guilt, as alleged in paragraph two (2) above, individually and/or collectively, constitute “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a misdemeanor committed in the course of practice;” as that clause is used in R.C. 4730.25(B)(13).

Further, your plea of guilty and/or the judicial finding of guilt, as alleged in paragraph two (2) above, individually and/or collectively, constitute “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a misdemeanor involving moral turpitude;” as that clause is used in R.C. 4730.25(B)(14).

Pursuant to R.C. Chapter 119., 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 of registration as a physician assistant, refuse to issue or reinstate your certificate or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, R.C. 4730.25(L), provides that "[w]hen the board refuses to grant a certificate of registration as a physician assistant to an applicant, revokes an individual's certificate of registration, refuses to issue a certificate of registration, or refuses to reinstate an individual's certificate of registration, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate of registration as a physician assistant and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Anand G. Garg, M.D.
Secretary

AGG/jag
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5151 3422
RETURN RECEIPT REQUESTED

University Emergency Specialists, Inc.
95 Executive Parkway #400
Hudson, Ohio 44236-1699

CERTIFIED MAIL # 7000 0600 0024 5151 3392
RETURN RECEIPT REQUESTED

STATE OF NORTH CAROLINA

File No.

01 CRS 560-566

Person

County

In The General Court Of Justice
District Superior Court Divisic

STATE VERSUS

Name Of Defendant

Joseph William Fischketter

TRANSCRIPT OF PLEA

DOB

4-15-67

Age

33 3/4

Highest Level Of Education

Completed College +

G.S. 15A-10:

The defendant, having offered a plea of guilty and being first duly sworn, makes the following answers to the questions set out below:

Answers

- 1. Are you able to hear and understand me? (1) Yes
2. Do you understand that you have the right to remain silent... (2) Yes
3. At what grade level can you read and write? (3) College
4. (a) Are you now under the influence of alcohol... (4a) No
(b) When was the last time you used or consumed any such substance? (4b) 1-29-01
5. Have the charges been explained to you by your lawyer... (5) Yes
6. (a) Have you and your lawyer discussed the possible defenses... (6a) Yes
(b) Are you satisfied with your lawyer's legal services? (6b) Yes
7. (a) Do you understand that you have the right to plead not guilty... (7a) Yes
(b) Do you understand that at such trial you have the right to confront... (7b) Yes
(c) Do you understand that by your plea(s) you give up these... (7c) Yes
8. Do you understand that, if you are not a citizen of the United States... (8) Yes
9. (if applicable) Do you understand that upon conviction of a felony... (9a) N/A
9A. (Victims Rights Act cases only) Do you understand that upon your conviction of C/L Forgery... (9A) Yes
10. Do you understand that you are pleading (guilty) (no contest) to the charges... (10) Yes
11. Do you now personally plead (guilty) (no contest)? (11) Yes
12. (a) (if applicable) Are you in fact guilty? (12a) Yes
(b) (if applicable) Do you understand that upon your plea of no contest... (12b) N/A
(1) Do you now consider it to be in your best interest to plead guilty? (12c1) N/A
(2) Do you understand that upon your "Alford Plea" you will be treated... (12c2) N/A
13. Have you agreed to plead as part of a plea arrangement? Before you answer, I advise you that the Courts have approved plea negotiating, and if there is such, you may advise me truthfully without fear of incurring my disapproval? (13) Yes

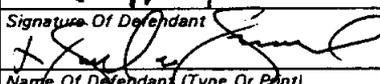
North Carolina - Person County
I, Delora Jones, Clerk of Court, do hereby certify that the foregoing is a true and correct copy of the original as filed in my office.
7-3
Delora Jones

14 (if applicable) The prosecutor and your lawyer have informed the Court that these are all the terms and conditions of your plea: (See attachment for additional plea arrangements, including Answers

Defendant shall be placed on unsupervised probation with the special condition that he successfully complete "Virginia's Health Practitioner's Intervention Program" through Virginia Monitoring, Inc.

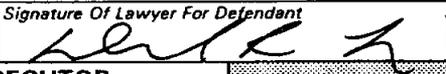
- (a) Is this correct as being your full plea arrangement? (14a) Yes
 (b) Do you now personally accept this arrangement? (14b) Yes
 15. (Other than the plea arrangement between you and the prosecutor) has anyone made any promises or threatened you in any way to cause you to enter this plea against your wishes? (15) No
 16. Do you enter this plea of your own free will, fully understanding what you are doing? (16) Yes
 17. Do you have any questions about what has just been said to you or about anything else connected to your case? (17) No

I have read or have heard all of these questions and understand them. The answers shown are the ones I gave in open court and they are true and accurate. Neither my lawyer nor anyone else has told me to give false answers in order to have the Court accept my plea in this case. The conditions of the plea as stated above, if any, are accurate.

| | | |
|---|-----------|--|
| SWORN AND SUBSCRIBED TO BEFORE ME | | Date <u>6-10-01</u> |
| Date <u>6-11-01</u> | Signature | Signature Of Defendant  |
| <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court | | Name Of Defendant (Type Or Print) <u>Joseph William Fischkelt</u> |

CERTIFICATION BY LAWYER FOR DEFENDANT

As lawyer for the defendant named above, I hereby certify that the conditions stated above, if any, upon which the defendant's plea was entered are correct and they are agreed to by the defendant and myself. I further certify that I have fully explained to the defendant the nature and elements of the charge(s) to which the defendant is pleading.

| | | |
|------------------------|--|---|
| Date <u>6-11-01</u> | Name Of Lawyer For Defendant (Type Or Print) <u>Daniel R. Long, Jr.</u> | Signature Of Lawyer For Defendant  |
|------------------------|--|---|

CERTIFICATION BY PROSECUTOR

As prosecutor for this Prosecutorial District, I hereby certify that the conditions stated above, if any, are the terms agreed to by the defendant and his/her lawyer and myself for the entry of the plea by the defendant to the charge(s) in this case.

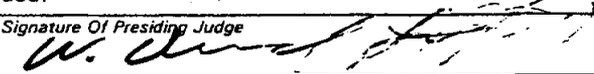
| | | |
|------------------------|---|---|
| Date <u>6-11-01</u> | Name Of Prosecutor (Type Or Print) <u>Joel H. Brewer</u> | Signature Of Prosecutor  |
|------------------------|---|---|

PLEA ADJUDICATION

Upon consideration of the record proper, evidence presented, answers of defendant, and statements of the lawyer for the defendant and the District Attorney, the undersigned finds:

1. That there is a factual basis for the entry of the plea.
2. That the defendant is satisfied with his/her lawyer.
3. That the defendant is competent to stand trial and that the plea is the informed choice of the defendant and is made freely, voluntarily and understandingly.

The defendant's plea is hereby accepted by the Court and is ordered recorded.

| | | |
|------------------------|--|--|
| Date <u>6-11-01</u> | Name Of Presiding Judge (Type Or Print) <u>W. Osmond Smith, III</u> | Signature Of Presiding Judge  |
|------------------------|--|--|

STATE OF NORTH CAROLINA

File No.

01CRS560

PERSON

County

PERSON

Seat Of Court

In The General Court Of Justice

District Superior Court Division

NOTE: This form is to be used for misdemeanor offense(s). Use AOC-CR-301 or CR-310 for DWI offense(s).

STATE VERSUS

Defendant

JOSEPH FISCHKELTA

Race

White

Sex

Male

DOB

04-15-1967

JUDGMENT SUSPENDING SENTENCE - MISDEMEANOR(S)

- IMPOSING AN INTERMEDIATE PUNISHMENT
 IMPOSING A COMMUNITY PUNISHMENT (STRUCTURED SENTENCING)

G.S. 15A-1341, -1342, -1343, -1343.2, -1346

Attorney For State

HUGH WILLAFORD

Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant

DANNY LONG

Appointed Retained

The defendant [X] pled guilty to: [] was found guilty/responsible by the court of: [] was found guilty by a jury of: [] pled no contest to:

Table with 6 columns: File No.(s), Off., Offense Description, Offense Date, G.S. No., CL. Rows include file numbers 01CRS560-563 and offense descriptions like COMMON LAW FORGERY.

The Court has determined, pursuant to G.S. 15A-1340.20, the number of prior convictions to be 0 Level: [X] I (0) [] II (1-4) [] III (5+)

- [X] 1. The Court imposes the punishment term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.
[] 2. The Court finds: [] (a) enhanced punishment from a Class 2 or Class 3 misdemeanor to a Class A1 or Class 1 misdemeanor.
[] (b) enhanced punishment from required suspended sentence to Class 2 misdemeanor.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a term of 45 days in the custody of the [X] N.C. DOC. [X] Sheriff of Person County. [] Other

[] This sentence shall run at the expiration of sentence imposed in file number

The defendant shall be given credit for days spent in confinement prior to the date of this Judgment as a result of this charge(s), to be applied toward the [] sentence imposed above. [] imprisonment required for special probation below.

SUSPENSION OF SENTENCE

[X] With [] Without* the consent of the defendant and subject to the conditions set out below, the execution of this sentence is suspended and the defendant is placed on [] supervised [X] unsupervised probation for 60 months.

- [] 1. The Court finds that a [] longer [] shorter period of probation is necessary than that which is specified in G. S. 15A-1343.2(d).
[] 2. The Court finds that it is NOT appropriate to delegate to the Division of Adult Probation and Parole in the Department of Correction the authority to impose any of the requirements in G.S. 15A-1343.2(e) if the offender is sentenced to a community punishment, or G.S. 15A-1343.2(f) if the offender is sentenced to an intermediate punishment.
[] 3. The above period of probation shall begin when the defendant is released from incarceration in the case referred to below.
[] 4. The above period of probation shall begin at the expiration of the sentence in the case referred to below.

Table with 5 columns: File Number, Offense, County, Court, Date

[] 5. The defendant shall comply with the conditions set forth in file number

MONETARY CONDITIONS

The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below, plus the probation supervision fee, pursuant to a schedule [] determined by the probation officer. [] set out by the court as follows:

Table with 6 columns: Fine, Costs, Restitution*, Attorney's Fee, Community Service Fee, Total Amount Due. Values: \$115.00, \$100.00, \$215.00

* See attached "Restitution Worksheet, Notice And Order (Initial Sentencing)," AOC-CR-611, which is incorporated by reference.

- [] All payments received by the Clerk shall be distributed pro rata among the persons entitled to restitution in this priority: first among all G.S. 7A-304(d) priorities [] and before payment of community service and probation supervision fees.
[] Upon payment of the "Total Amount Due", the probation officer may transfer the defendant to unsupervised probation.

Handwritten signature and date: 07-3, 02, [Signature]

REGULAR CONDITIONS OF PROBATION - G.S. 15A-1343(b)

The defendant shall: (1) Commit no criminal offense in any jurisdiction. (2) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269. (3) Remain gainfully and suitably employed or faithfully pursue a course of study or vocational training that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) Satisfy child support and family obligations, as required by the Court. If the defendant is on supervised probation, the defendant shall also: (5) Remain within the jurisdiction of the Court unless granted written permission to leave by the Court or the probation officer. (6) Report as directed by the Court or the probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment. (7) Notify the probation officer if the defendant fails to obtain or retain satisfactory employment. (8) At a time to be designated by the probation officer, visit with the probation officer a facility maintained by the Division of Prisons. If the defendant is to serve an active sentence as a condition of special probation, the defendant shall also: (9) Obey the rules and regulations of the Department of Correction governing the conduct of inmates while imprisoned. (10) Report to a probation officer in the State of North Carolina within seventy-two (72) hours of the defendant's discharge from the active term of imprisonment.

SPECIAL CONDITIONS OF PROBATION - G.S. 15A-1343(b1), 143B-262(c)

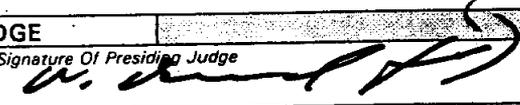
The defendant shall also comply with the following special conditions which the Court finds are reasonably related to the defendant's rehabilitation:

- 11. Surrender the defendant's drivers license to the Clerk of Superior Court for transmittal/notification to the Division of Motor Vehicles and not operate a motor vehicle for a period of _____ or until relicensed by the Division of Motor Vehicles, whichever is later.
- 12. Submit at reasonable times to warrantless searches by a probation officer of the defendant's person, and of the defendant's vehicle and premises while the defendant is present, for the following purposes which are reasonably related to the defendant's probation supervision:
 - stolen goods controlled substances contraband _____
- 13. Not use, possess or control any illegal drug or controlled substance unless it has been prescribed for the defendant by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any illegal drugs or controlled substances; and not knowingly be present at or frequent any place where illegal drugs or controlled substances are sold, kept or used.
- 14. Supply a breath, urine and/or blood specimen for analysis of the possible presence of a prohibited drug or alcohol, when instructed by the defendant's probation officer.
- 15. Successfully pass the General Education Development Test (G.E.D.) during the first _____ months of the period of probation.
- 16. Complete 70 hours of community or reparation service during the first 270 days of the period of probation, as directed by the community service coordinator and pay the fee prescribed by G.S. 143B-475.1(b) pursuant to the schedule set out under monetary conditions above. within _____ days of this Judgment and before beginning service.
- 17. Report for initial evaluation by _____ participate in all further evaluation, counseling, treatment or education programs recommended as a result of that evaluation, and comply with all other therapeutic requirements of those programs until discharged.
- 18. Not assault, communicate with, be in the presence of, or be found in or on the premises of _____
- 19. Other:
THAT HE SUCCESSFULLY COMPLETE THE VIRGINIA HEALTH PRACTITIONER INTERVENTION PROGRAM AND REPORT BACK TO SUPERIOR COURT OF PERSON COUNTY WITH PROOF OF COMPLETION.
- 20. Comply with the Special Conditions Of Probation - Intermediate Punishments - Contempt which are set forth on AOC-CR-603, Page Two.
- A hearing was held in open court in the presence of the defendant at which time a fee, including expenses, was awarded the defendant's appointed counsel or assigned public defender.

ORDER OF COMMITMENT/APEAL ENTRIES

- It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.
- The defendant gives notice of appeal from the judgment of the District Court to the Superior Court.
- The current pretrial release order is modified as follows:
- The defendant gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Appellate entries and any conditions of post conviction release are set forth on form AOC-CR-350.

SIGNATURE OF JUDGE

| | | |
|-------------|--|--|
| Date | Name Of Presiding Judge (Type Or Print) | Signature Of Presiding Judge |
| 06-11-2001 | W. OSMOND SMITH, III |  |

CERTIFICATION

I certify that this Judgment with the attachment marked below is a true and complete copy of the original which is on file in this case.

- Appeal Entries (AOC-CR-350)
- Judgment Suspending Sentencing, Page Two [Special Conditions of Probation - Intermediate Punishments - Contempt (AOC-CR-603, Page Two)]
- Restitution Worksheet, Notice And Order [Initial Sentencing] (AOC-CR-611)

| | | |
|---|---|-------------|
| Date | Signature | SEAL |
| Date Certified Copies Delivered To Sheriff | <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Superior Clerk of Court | |

STATE OF NORTH CAROLINA

File No.

01CRS564

PERSON

County

PERSON

Seat Of Court

In The General Court Of Justice

NOTE: This form is to be used for misdemeanor offense(s). Use AOC-CR-301 or CR-310 for DWI offense(s).

District Superior Court Division

STATE VERSUS

JUDGMENT SUSPENDING SENTENCE - MISDEMEANOR(S)

Defendant

JOSEPH FISCHKELTA

- IMPOSING AN INTERMEDIATE PUNISHMENT
IMPOSING A COMMUNITY PUNISHMENT (STRUCTURED SENTENCING)

Race

White

Sex

Male

DOB

04-15-1967

G.S. 15A-1341, -1342, -1343, -1343.2, -1346

Attorney For State

HUGH WILLAFORD

Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant

DANNY LONG

Appointed Retained

The defendant pled guilty to: was found guilty/responsible by the court of: was found guilty by a jury of: pled no contest to:

Table with 6 columns: File No.(s), Off., Offense Description, Offense Date, G.S. No., CL. Rows include 01CRS564, 01CRS565, 01CRS566 with offenses like COMMON LAW FORGERY.

The Court has determined, pursuant to G.S. 15A-1340.20, the number of prior convictions to be 0 Level: I (0) II (1-4) III (5+)

- 1. The Court imposes the punishment term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.
2. The Court finds: (a) enhanced punishment from a Class 2 or Class 3 misdemeanor to a Class A1 or Class 1 misdemeanor. (b) enhanced punishment from required suspended sentence to Class 2 misdemeanor.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a term of 45 days in the custody of the Sheriff of PERSON County.

This sentence shall run at the expiration of sentence imposed in file number 01CRS560 ETAL

The defendant shall be given credit for days spent in confinement prior to the date of this Judgment as a result of this charge(s), to be applied toward the sentence imposed above.

SUSPENSION OF SENTENCE

With Without* the consent of the defendant and subject to the conditions set out below, the execution of this sentence is suspended and the defendant is placed on supervised unsupervised probation for 60 months.

- 1. The Court finds that a longer shorter period of probation is necessary than that which is specified in G. S. 15A-1343.2(d).
2. The Court finds that it is NOT appropriate to delegate to the Division of Adult Probation and Parole in the Department of Correction the authority to impose any of the requirements in G.S. 15A-1343.2(e) if the offender is sentenced to a community punishment, or G.S. 15A-1343.2(f) if the offender is sentenced to an intermediate punishment.
3. The above period of probation shall begin when the defendant is released from incarceration in the case referred to below.
4. The above period of probation shall begin at the expiration of the sentence in the case referred to below.

Table with 5 columns: File Number, Offense, County, Court, Date

The defendant shall comply with the conditions set forth in file number

MONETARY CONDITIONS

The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below, plus the probation supervision fee, pursuant to a schedule determined by the probation officer. set out by the court as follows:

Table with 5 columns: Fine, Costs, Restitution*, Attorney's Fee, Community Service Fee, Total Amount Due

* See attached "Restitution Worksheet, Notice And Order (Initial Sentencing)," AOC-CR-611, which is incorporated by reference.

- All payments received by the Clerk shall be distributed pro rata among the persons entitled to restitution in this priority: first among all G.S. 7A-304(d) priorities and before payment of community service and probation supervision fees.
Upon payment of the "Total Amount Due", the probation officer may transfer the defendant to unsupervised probation.

REGULAR CONDITIONS OF PROBATION - G.S. 15A-1343(b)

The defendant shall: (1) Commit no criminal offense in any jurisdiction. (2) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269. (3) Remain gainfully and suitably employed or faithfully pursue a course of study or vocational training that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) Satisfy child support and family obligations, as required by the Court. If the defendant is on supervised probation, the defendant shall also: (5) Remain within the jurisdiction of the Court unless granted written permission to leave by the Court or the probation officer. (6) Report as directed by the Court or the probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment. (7) Notify the probation officer if the defendant fails to obtain or retain satisfactory employment. (8) At a time to be designated by the probation officer, visit with the probation officer a facility maintained by the Division of Prisons. If the defendant is to serve an active sentence as a condition of special probation, the defendant shall also: (9) Obey the rules and regulations of the Department of Correction governing the conduct of inmates while imprisoned. (10) Report to a probation officer in the State of North Carolina within seventy-two (72) hours of the defendant's discharge from the active term of imprisonment.

SPECIAL CONDITIONS OF PROBATION - G.S. 15A-1343(b1), 143B-262(c)

The defendant shall also comply with the following special conditions which the Court finds are reasonably related to the defendant's rehabilitation:

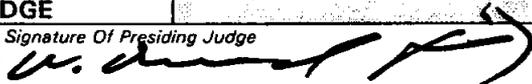
- 11. Surrender the defendant's drivers license to the Clerk of Superior Court for transmittal/notification to the Division of Motor Vehicles and not operate a motor vehicle for a period of _____ or until relicensed by the Division of Motor Vehicles, whichever is later.
- 12. Submit at reasonable times to warrantless searches by a probation officer of the defendant's person, and of the defendant's vehicle and premises while the defendant is present, for the following purposes which are reasonably related to the defendant's probation supervision:
 - stolen goods controlled substances contraband _____
- 13. Not use, possess or control any illegal drug or controlled substance unless it has been prescribed for the defendant by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any illegal drugs or controlled substances; and not knowingly be present at or frequent any place where illegal drugs or controlled substances are sold, kept or used.
- 14. Supply a breath, urine and/or blood specimen for analysis of the possible presence of a prohibited drug or alcohol, when instructed by the defendant's probation officer.
- 15. Successfully pass the General Education Development Test (G.E.D.) during the first _____ months of the period of probation.
- 16. Complete _____ hours of community or reparation service during the first _____ days of the period of probation, as directed by the community service coordinator and pay the fee prescribed by G.S. 143B-475.1(b) pursuant to the schedule set out under monetary conditions above. within _____ days of this Judgment and before beginning service.
- 17. Report for initial evaluation by _____ participate in all further evaluation, counseling, treatment or education programs recommended as a result of that evaluation, and comply with all other therapeutic requirements of those programs until discharged.
- 18. Not assault, communicate with, be in the presence of, or be found in or on the premises of _____
- 19. Other:
 SAME CONDITIONS OF PROBATION AS SET OUT IN 01CRS560

- 20. Comply with the Special Conditions Of Probation - Intermediate Punishments - Contempt which are set forth on AOC-CR-603, Page Two.
- A hearing was held in open court in the presence of the defendant at which time a fee, including expenses, was awarded the defendant's appointed counsel or assigned public defender.

ORDER OF COMMITMENT/APEAL ENTRIES

- It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.
- The defendant gives notice of appeal from the judgment of the District Court to the Superior Court.
- The current pretrial release order is modified as follows:
- The defendant gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Appellate entries and any conditions of post conviction release are set forth on form AOC-CR-650.

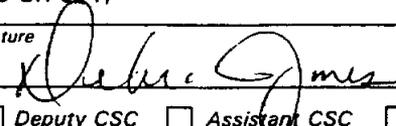
SIGNATURE OF JUDGE

| | | |
|------------|---|--|
| Date | Name Of Presiding Judge (Type Or Print) | Signature Of Presiding Judge |
| 06-11-2001 | W. OSMOND SMITH, III |  |

CERTIFICATION

I certify that this Judgment with the attachment marked below is a true and complete copy of the original which is on file in this case.

- Appeal Entries (AOC-CR-350)
- Judgment Suspending Sentencing, Page Two [Special Conditions of Probation - Intermediate Punishments - Contempt (AOC-CR-603, Page Two)]
- Restitution Worksheet, Notice And Order [Initial Sentencing] (AOC-CR-611)

| | |
|--|--|
| Date | Signature |
| 4-24-03 |  |
| Date Certified Copies Delivered To Sheriff | SEAL |
| | <input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Superior Clerk of Court |