



State Medical Board of Ohio

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

September 8, 2004

Brian D. Southern, M.D.
3854 W. 16th Street
Cleveland, OH 44109

Dear Doctor Southern:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 8, 2004, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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

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

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 7000 0600 0024 5150 1689
RETURN RECEIPT REQUESTED

Cc: Eric J. Plinke, Esq.
CERTIFIED MAIL NO. 7000 0600 0024 5149 9658
RETURN RECEIPT REQUESTED

Mailed 9/24/04

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 September 8, 2004, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and Brian D. Southern, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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



Lance A. Talmage, M.D.
Secretary

(SEAL)

September 8, 2004
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

BRIAN D. SOUTHERN, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on September 8, 2004.

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 modification, approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION OF CERTIFICATE:** The training certificate of Brian D. Southern, M.D., shall be PERMANENTLY REVOKED. The permanent revocation is STAYED, and the training certificate is SUSPENDED for an indefinite period of time.
- B. **INTERIM MONITORING:** Dr. Southern shall comply with the following terms, conditions, and limitations:
1. **Obey the Law:** Dr. Southern shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 2. **Personal Appearances:** Dr. Southern shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Order. 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:** Dr. Southern 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:** Dr. Southern 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 Dr. Southern's history of chemical dependency.
5. **Abstention from Alcohol:** Dr. Southern shall abstain completely from the use of alcohol.
6. **Comply with the Terms of Treatment and Aftercare Contract:** Dr. Southern shall maintain continued compliance with the terms of the treatment and aftercare contracts entered into with his treatment provider, provided that, where terms of the treatment and aftercare contract conflict with terms of this Order, the terms of this Order shall control.
7. **Drug & Alcohol Screens; Supervising Physician:** Dr. Southern shall submit to random urine screenings for drugs and/or alcohol on a weekly basis or as otherwise directed by the Board. Dr. Southern 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, Dr. Southern shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Southern 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 Dr. Southern. Dr. Southern and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

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

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

8. **Submission of Blood or Urine Specimens upon Request:** Dr. Southern shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Southern's expense.
9. **Rehabilitation Program:** Dr. Southern shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Dr. Southern shall submit acceptable documentary evidence of continuing compliance with this program, which must be received in the Board's offices no later than the due date for Dr. Southern's quarterly declarations.
10. **Continued Compliance with a Contract with an Impaired Physicians Committee:** Dr. Southern shall enter into a recovery contract with the an impaired physicians committee such as the Ohio Physicians Effectiveness Program, or with another impaired physicians committee, approved by the Board. Dr. Southern shall maintain continued compliance with the terms of the contract to assure continuous assistance in recovery and/or aftercare.

C. **CONDITIONS FOR RENEWAL OR ISSUANCE OF CERTIFICATE:** The Board shall not consider renewal of Dr. Southern's training certificate or issuance of any other certificate until all of the following conditions have been met:

1. **Application for Renewal or Issuance of Certificate:** Dr. Southern shall submit an application for renewal of his training certificate or issuance of any other certificate. Such application shall be accompanied by any appropriate fees. Dr. Southern shall not submit such application for at least one year from the effective date of this Order.

2. **Compliance with Interim Conditions:** Dr. Southern shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order.
3. **Completion of Inpatient Treatment:** Dr. Southern 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, Dr. Southern 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 Dr. Southern's treatment records.

4. **Demonstration of Ability to Resume Practice:** Dr. Southern 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 Dr. Southern 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 Dr. Southern'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 Dr. Southern's application for reinstatement or restoration. The reports of evaluation shall describe with particularity the bases for the determination that Dr. Southern 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 Dr. Southern has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for renewal of his training certificate or issuance of any other certificate, 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:** The training certificate or any other certificate issued to Dr. Southern shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Southern shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
 2. **Tolling of Probationary Period While Out of State:** In the event that Dr. Southern should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Southern 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.
- E. **VIOLATION OF TERMS:** If Dr. Southern violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- F. **DURATION/MODIFICATION OF TERMS:** All subsequent training certificates or other certificates that may be granted by the Board to Dr. Southern shall be subject to the same terms, conditions and limitations, unless otherwise determined by the Board, until Dr. Southern has completed at least a five year probationary period with the Board. Moreover, the term of probation shall be tolled during any period in which Dr. Southern's certificate has lapsed and no other certificate has been issued by the Board.
- G. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Southern's certificate will be fully restored.
- H. **RELEASES:** Dr. Southern 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

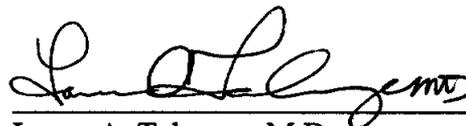
evaluation for Dr. Southern's chemical dependency and/or related conditions, or for purposes of complying with this Order, whether such treatment or evaluations occurred before or after the effective date of this Order. The above-mentioned evaluative reports, summaries, and records are considered medical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

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

- I. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Southern shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Southern 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.
- J. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Southern 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/she currently holds any professional license. Dr. Southern shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration or restoration of any professional license. Further, Dr. Southern shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board.

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

(SEAL)



Lance A. Talmage, M.D.
Secretary

September 8, 2004
Date

2004 AUG 16 A 11: 10

**REPORT OF REMAND
IN THE CONSOLIDATED MATTERS OF BRIAN D. SOUTHERN, M.D.**

The Matter of Brian D. Southern, M.D., was remanded to R. Gregory Porter, Esq., Hearing Examiner for the State Medical Board of Ohio, by Order of the Board issued on April 14, 2004. An additional day of hearing took place on June 23, 2004.

INTRODUCTION

I. Basis for Hearing

- A. In a Notice of Summary Suspension and Opportunity for Hearing, dated February 11, 2004, the State Medical Board of Ohio [Board] notified Brian D. Southern, M.D., that, pursuant to Section 4731.22(G), Ohio Revised Code, the Board had adopted an Order of Summary Suspension of the authority granted by an "Acknowledgment of Application for Training Certificate" previously issued to Dr. Southern. The Board further advised that continued practice would be considered practicing without a certificate, in violation of Section 4731.41, Ohio Revised Code.

Moreover, the Board notified Dr. Southern that the Board had proposed to take disciplinary action against him because of his history of treatment for substance abuse, his self-reporting of a relapse, and his entry into treatment at the Cleveland Clinic Foundation.

The Board alleged that Dr. Southern's conduct constitutes "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code." (See Board Exhibit A)

- B. On March 1, 2004, Dr. Southern timely requested a hearing on the February 2004 notice. On March 12, 2004, a hearing was held concerning the Board's allegations. A Report and Recommendation was subsequently filed on March 19, 2004. The Respondent timely filed a request to address the Board.

On April 14, 2004, the Board met to consider that matter. During its discussion, the Board learned from the Respondent that he had suffered a relapse following the March 12, 2004, hearing, and that a new Notice of Opportunity for Hearing concerning that relapse would likely be presented to the Board later in the meeting. Moreover, the Respondent requested that the Board defer a final decision on the matter, and that the matter be remanded to the Hearing Examiner to be consolidated and considered with the new allegations. Furthermore, the Respondent agreed to

EVIDENCE EXAMINED

I. Testimony Heard

Brian D. Southern, M.D.

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A through 1I: Procedural exhibits.
2. State's Exhibit 2: Certified copies of Dr. Southern's application for a training certificate, and related documents. (Note: The Hearing Examiner numbered pages of this exhibit post-hearing.)
3. State's Exhibit 3: February 3, 2004, letter to Board staff from Gregory B. Collins, M.D., concerning Dr. Southern's history of treatment for substance abuse and his admission to The Cleveland Clinic Foundation Alcohol and Drug Recovery Center [Cleveland Clinic] on January 26, 2004, for evaluation and treatment.
4. State's Exhibit 4: Treatment records concerning Dr. Southern maintained by the Cleveland Clinic. (Note: This exhibit has been sealed to protect patient confidentiality.) (Further note: The Hearing Examiner numbered pages of this exhibit post-hearing.)

B. Presented by the Respondent

1. Respondent's Exhibit A: Copy of Dr. Southern's Treatment Contract with the Cleveland Clinic, executed on March 4, 2004.
2. Respondent's Exhibit B: Documentation of Dr. Southern's attendance at Alcoholics Anonymous [AA] and Caduceus meetings. (Note: this exhibit has been sealed to protect the confidentiality of AA participants.)
3. Respondent's Exhibit C: Documentation of Dr. Southern's urine screens for drugs and alcohol and lab test results from the date of his admission to the Cleveland Clinic.
4. Respondent's Exhibit D: Copy of a March 4, 2004, letter to the Board from Dr. Collins summarizing Dr. Southern's inpatient treatment at the Cleveland Clinic, with a copy of Dr. Southern's Treatment Contract attached.

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.

1. Brian D. Southern, M.D., testified that he had obtained his medical degree in 2003 from the University of Alabama School of Medicine. He was then accepted into the internal medicine residency program at the University Hospitals of Cleveland [University Hospitals]. (Hearing Transcript [Tr.] at 10-11)

On or about November 7, 2003, Dr. Southern applied for a training certificate in Ohio. On November 20, 2003, the Board issued to Dr. Southern an “Acknowledgment of Application for Training Certificate,” which allowed him to begin participation in his residency program. On February 11, 2004, however, the Board summarily suspended Dr. Southern from continued practice. (State’s Exhibit [St. Ex.] 1A; St. Ex. 2 at 12; Tr. at 10-11)

2. With regard to the issues addressed in the Board’s February 11, 2004, Notice of Summary Suspension and Opportunity for Hearing, Dr. Southern testified to, and his treatment records show, a long history of drug and alcohol use. Dr. Southern, who is thirty years old, had his first drink at age twelve. He drank sporadically through high school, about two or three times a month. He then abstained from alcohol completely until age twenty-one. He also tried marijuana at age “12, 13.” He tried cocaine once in high school. (St. Ex. 4 at 51; Tr. at 12, 17)

Dr. Southern entered college at the University of Alabama at age sixteen. He graduated six years later with a biology degree. Dr. Southern started drinking again at age twenty-one. He engaged in heavy binge drinking, which he described as “[m]ostly on the weekends, maybe on one weekday night, 12 beers, maybe a pint of liquor.” He also began using marijuana again, at age twenty-one or twenty-two, “and it progressed to the point where [he] was using it several times a week * * * up through medical school.” He also used ecstasy and LSD—about 5 times each—during college. (Tr. at 12-13, 17-18)

After graduation from college, Dr. Southern worked for two years as a research technician for a neurologist at a V.A. Hospital. (Tr. at 13, 17)

Dr. Southern began medical school in 1999 at age twenty-six and graduated in 2003. In his first year, his primary care physician prescribed him Klonopin for anxiety. His heavy binge drinking and marijuana use continued. He also tried “crystal meth” once, at age twenty-nine. (St. Ex. 2 at 3; Tr. at 12-15, 17-18, 34)

3. In March 2003, Mr. Southern drank “quite a bit” while out with some friends. “[I]n a blackout” he took “about ten” of his prescribed Klonopin. His girlfriend discovered him in an unconscious state, and Dr. Southern was taken to an emergency room. (Tr. at 14)
4. Soon after the incident, Dr. Southern notified the dean of the medical school and discussed his drug and alcohol problems with her. Dr. Southern was referred to Dr. Sandra Frazier at the Addiction Recovery Program [ARP] in Birmingham, Alabama for an evaluation. After his evaluation, he enrolled in the thirty-day inpatient treatment program. He then participated in a forty-day outpatient program and completed a 10-week Professional’s Resource Program. (Tr. at 15-16)

Dr. Southern was therapeutically discharged from ARP on May 23, 2003, due to a lack of consistent progress. At the time of his discharge, it was recommended that he: 1) attend a halfway house; 2) attend 12-Step meetings and maintain a relationship with a sponsor; 3) attend Caduceus once a week; and 4) continue therapy for management of anxiety. On November 24, 2003, Dr. Frazier wrote a letter approving Dr. Southern to enroll in a residency program because he had complied with all of the recommendations. (St. Ex. 2 at 17)

5. Dr. Southern was accepted into the residency program at University Hospitals in March 2003, while he was in treatment. The starting date of June 2003 was postponed until January 2004 because Dr. Southern’s graduation from medical school had been delayed because of his hospitalization. On December 29, 2003, Dr. Southern’s pre-employment urine screen tested positive for benzodiazepines. (Tr. at 14, 16, 19, 20-21)

Dr. Southern testified that he had tested positive for benzodiazepines because, around December 22, 2003, while still residing in Alabama, he had found an old Klonopin prescription bottle with one pill remaining. He took the pill for the euphoric effect. Dr. Southern testified that this has been his only relapse since he began his first treatment program in Alabama. (Tr. at 21-22, 38-39, 42-43)

6. The Employee Health Department at University Hospitals advised Dr. Southern to be evaluated by The Cleveland Clinic Foundation Alcohol and Drug Recovery Center [Cleveland Clinic]. On or about January 26, 2004, Dr. Southern went to the Cleveland Clinic for an inpatient evaluation. During his initial three-day evaluation, he was admitted into the 28-day inpatient treatment program. Dr. Southern reported his relapse to the Board shortly after his admission to the Cleveland Clinic. (Tr. at 22-24, 26)
7. Dr. Southern testified that his first two weeks of treatment at the Cleveland Clinic, like his previous treatment efforts in ARP, were hampered by his bad attitude, his resistance to basic precepts of the 12-Step program, and his refusal to admit that he was an alcoholic or drug addict. Dr. Southern could not accept the spiritual aspects of the 12-Step program because he was an agnostic. He also could not accept the idea that he was powerless over alcohol or drugs. (Tr. at 24, 26, 32, 36-37, 43-44)

Dr. Southern explained that, in August 2003, he had contacted the founder of Rational Recovery, an organization that had appealed to him because of his disagreement with aspects of the 12-Step program. (Tr. at 22, 31-32) Dr. Southern testified that Rational Recovery is an “alcohol and drug recovery program that was started in 1986 that emphasizes using rational thought and self-will to overcome addictions, and they stress that it is not necessary to have a spiritual foundation or admit powerlessness, a lot of the tenets of the 12-step program.” (Tr. at 31) Dr. Southern’s contact at Rational Recovery reinforced his resistance to treatment and even advised him to file a lawsuit. (St. Ex. 4 at 52-53)

Dr. Southern testified that his attitude and beliefs changed during his inpatient treatment at the Cleveland Clinic:

When I initially went in, I still had these issues where I thought I didn’t have a problem and that I was not an alcoholic or a drug addict, and I didn’t need this, and, you know, I just made one mistake, and I had a really bad attitude.

And Dr. Collins has been a godsend. Through our interactions and the interactions with the counselors there, I have seen the light, so to speak. I understand what my problem is now. I’ve learned some very interesting things about myself that I had never known before such as why I do these things that I do and why I have the past history of alcohol and drug abuse.

(Tr. at 24-25)

Dr. Southern testified that his attitude and beliefs changed when he realized that he had jeopardized his medical career by fighting his treatment. Because of this realization, he became willing to listen to the counselors and to change his attitude. (Tr. at 25)

Dr. Southern testified that he now believes in the 12-Step program and that his attitude is completely different than it was in August 2003 when he contacted Rational Recovery.

I’ve had a complete transformation through the 12-Step program. I have found a spiritual connection. I have some spirituality now. My attitude has completely changed. I totally agree that I have a problem now. I am an alcoholic and an addict, and I am powerless over these substances, and I need this program to maintain my sobriety, maintain the quality of life that I want.

(Tr. at 33)

8. Dr. Southern completed the inpatient program on February 23, 2004. He has continued his treatment in the outpatient program, which consists of “three hours, five days a week, essentially group therapy with a couple of counselors.” He attends Caduceus meetings every week, which he finds the most beneficial part of his treatment. He attends AA meetings once or twice a day. He submits weekly, random urine samples for toxicology screening. He talks with his physician sponsor on a daily basis. He also volunteers at the AA Cleveland District Office and the Salvation Army to keep himself busy. He is now prescribed Atenolol and Paxil, non-controlled substances, for his anxiety. (Resp. Ex. D; Tr. at 27-29, 35-36, 46-47)

On March 4, 2004, Dr. Southern entered into a Treatment Contract with the Cleveland Clinic. He also testified that he has been in contact with Ed Poczekaj at the Ohio Physicians Effectiveness Program [OPEP], and that he plans to enter into a recovery contract with OPEP. (Resp. Ex. A; Tr. at 41, 46)

9. In a March 4, 2004, letter, Gregory B. Collins, M.D., Section Head of the Alcohol and Drug Recovery Center at the Cleveland Clinic, advised Board staff of Dr. Southern’s diagnoses and treatment history. Dr. Collins confirmed that Dr. Southern’s treatment course had been “stormy” at times, and stated that it had been complicated by Dr. Southern’s “significant Axis II personality disorder pathology, namely narcissism, passive aggressive, and immature traits.” (Respondent’s Exhibit [Resp. Ex.] D)

Dr. Collins confirmed Dr. Southern’s testimony about his transformation and his dedication to recovery:

At the present time he is doing well and he reports that he is “totally committed” to working a strong AA based recovery program. He has willingly signed our treatment aftercare contract * * *. At this point I would state that Dr. Southern has satisfactorily completed the required 28 days of inpatient care, that he has voluntarily gone on for additional intensive care for his residual psychiatric/personality disorder difficulties, and that he has demonstrated significant progress in overcoming these problems. His present condition is excellent, and he appears stable and committed for long-term recovery and compliance with the terms and conditions set forth for him.

(Resp. Ex. D)

Dr. Collins did note some attitudinal regression and re-emergence of resistance near the end of Dr. Southern’s 28-day residential stay. “Dr. Southern was strongly confronted on this, and with the help of significant and aggressive therapeutic intervention, he was able to regain his improved attitude and motivation quickly.” (Resp. Ex. D)

10. Dr. Southern testified that the director of his residency program wished to keep Dr. Southern in the program. However, he would like Dr. Southern to be able to enter the residency program that begins in July 2004. (Tr. at 29, 40-41)
11. Dr. Southern testified that he is strongly committed to his recovery:

Sobriety is my number one priority right now. * * * And, you know, my attitude's completely different today than it was on my prior treatment.

* * *

In my opinion, this is the best thing that has ever happened to me, and I am very glad that it happened.

Without this treatment and the circumstances, I think I would have continued with a bad attitude in life. And I'm making some significant changes today as a direct result of this relapse in my treatment. So I'm very appreciative, and I know the Board will deal with this in a manner that they see fit, and I will abide by whatever the Board decides.

(Tr. at 46-48)

12. Dr. Southern is unmarried and his family resides in Alabama, where he was born and raised. However, he testified that he has a large support group of people in Cleveland who are also in recovery. (Tr. at 11-12, 47)
13. At hearing, Dr. Southern stipulated to the factual allegations against him, as set forth in the Board's February 11, 2004, notice of opportunity for hearing. (Tr. at 43; State's Exhibit 1A)

FINDINGS OF FACT

1. On or about November 7, 2003, Brian D. Southern, M.D., filed an application for a training certificate [application]. Dr. Southern's application remains pending. On or about November 20, 2003, pursuant to Rule 4731-6-30(G), Ohio Administrative Code, the Board issued to Dr. Southern an "Acknowledgment of Application for Training Certificate," that authorized him to begin participation in the residency program at University Hospitals of Cleveland while his application was being processed.
2. In conjunction with Dr. Southern's application, he reported a history of treatment for substance abuse as follows: Dr. Southern was admitted into the University of Alabama at Birmingham Addiction Recovery Program [ARP] for an inpatient evaluation and participated in the inpatient program from March 14, 2003, through April 12, 2003, and the Partial Hospitalization Program from April 14, 2003, through May 16, 2003,

completing the ten week Professional's Resource Program for health care professionals. Dr. Southern further reported that, after discharge from the ARP, he resided at Any Lengths Resources, a recovery residence in Bessemer, Alabama, for approximately six months. He also participated in the Alabama Physicians Health Program, during which time he participated in at least three 12-Step meetings per week, submitted random urine specimens on a weekly basis, attended weekly Caduceus meetings, and attended quarterly meetings with a physician monitor.

In addition, in a letter submitted to the Board, the Medical Director of ARP stated that Dr. Southern was therapeutically discharged from ARP on May 23, 2003, due to a lack of consistent progress, and that the discharge recommendations included that he attend Any Length Resources.

3. On or about January 26, 2004, Dr. Southern reported to the Board that he was undergoing a seventy-two hour chemical dependency assessment at the Cleveland Clinic Foundation [Cleveland Clinic], which is a Board approved treatment facility, because the pre-employment urine specimen he provided to University Hospitals of Cleveland had tested positive for benzodiazepines. Subsequently, in a letter dated February 3, 2004, Gregory B. Collins M.D., Section Head of the Cleveland Clinic Alcohol and Drug Recovery Center, reported that Dr. Southern had ingested Klonopin, which he had retained from an old prescription. Dr. Collins further reported that Dr. Southern's ingestion of Klonopin "should be considered a relapse as it was premeditated and surreptitiously done, was not in accordance with any recent prescription for the use of this medication, in addition to being contrary to his treatment course." In addition, Dr. Collins reported that, based on the assessment, Dr. Southern was determined to be in a relapse condition, continued treatment for chemical dependency was recommended, and he had entered treatment at Cleveland Clinic.

CONCLUSIONS OF LAW

The conduct of Brian D. Southern, M.D., as set forth in Findings of Fact 2 and 3, constitutes "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,' as that clause is used in Section 4731.22(B)(26), Ohio Revised Code."

* * * * *

The evidence is undisputed that Dr. Southern has a history of drug and alcohol abuse and that he relapsed after several months of treatment.

There are, however, a number of mitigating circumstances. Dr. Southern's relapse consisted of only one Klonopin pill, which he had retained from an old prescription. Dr. Southern did not

commit any crimes and the relapse occurred before he began his residency program. He self-reported the relapse and has abided by all treatment and aftercare conditions.

Dr. Southern's change in attitude, while recent, is remarkable. His newfound sense of spirituality and his acceptance of his powerlessness over drugs and alcohol appeared sincere. His former bad attitude explains why he was likely to relapse in December 2003. Hopefully, Dr. Southern's new commitment to recovery bodes well for his continued sobriety.

PROPOSED ORDER

It is hereby ORDERED that:

- A. **GRANT AND SUSPENSION OF CERTIFICATE:** The application for a training certificate for Brian D. Southern, M.D., to practice medicine and surgery in the State of Ohio for the period of January 1, 2004, through December 31, 2004, is GRANTED, provided that he otherwise meets all statutory and regulatory requirements. Further, Dr. Southern's training certificate shall be SUSPENDED for an indefinite period of time, but not less than ninety days from February 11, 2004, the date of the summary suspension of the authority granted by an "Acknowledgment of Application for Training Certificate" previously issued to Dr. Southern by the Board.
- B. **INTERIM MONITORING:** During the period that Dr. Southern's training certificate is suspended, Dr. Southern shall comply with the following terms, conditions, and limitations:
1. **Obey the Law:** Dr. Southern shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 2. **Personal Appearances:** Dr. Southern shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Order. 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:** Dr. Southern 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. **Abstinence from Drugs**: Dr. Southern 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 Dr. Southern's history of chemical dependency.
5. **Abstinence from Alcohol**: Dr. Southern shall abstain completely from the use of alcohol.
6. **Comply with the Terms of Treatment and Aftercare Contract**: Dr. Southern shall maintain continued compliance with the terms of the treatment and aftercare contracts entered into with his treatment provider, provided that, where terms of the treatment and aftercare contract conflict with terms of this Order, the terms of this Order shall control.
7. **Drug & Alcohol Screens; Supervising Physician**: Dr. Southern shall submit to random urine screenings for drugs and/or alcohol on a weekly basis or as otherwise directed by the Board. Dr. Southern 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, Dr. Southern shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Southern 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 Dr. Southern. Dr. Southern and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

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

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

8. **Submission of Blood or Urine Specimens upon Request**: Dr. Southern shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Southern's expense.
 9. **Rehabilitation Program**: Dr. Southern shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Dr. Southern shall submit acceptable documentary evidence of continuing compliance with this program, which must be received in the Board's offices no later than the due date for Dr. Southern's quarterly declarations.
 10. **Continued Compliance with a Contract with an Impaired Physicians Committee**: Dr. Southern shall enter into a recovery contract with the an impaired physicians committee such as the Ohio Physicians Effectiveness Program, or with another impaired physicians committee, approved by the Board. Dr. Southern shall maintain continued compliance with the terms of the contract to assure continuous assistance in recovery and/or aftercare.
- C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION**: The Board shall not consider reinstatement or restoration of Dr. Southern's training certificate until all of the following conditions have been met:
1. **Application for Reinstatement or Restoration**: Dr. Southern shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
 2. **Compliance with Interim Conditions**: Dr. Southern shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order.
 3. **Demonstration of Ability to Resume Practice**: Dr. Southern 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 training

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 Dr. Southern 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 Dr. Southern'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 Dr. Southern's application for reinstatement or restoration. The reports of evaluation shall describe with particularity the bases for the determination that Dr. Southern has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon his practice
4. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Southern 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:** The training certificate of Dr. Southern, shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Southern shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
 2. **Tolling of Probationary Period While Out of State:** In the event that Dr. Southern should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Southern 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.

3. **Violation of Terms of Probation**: If Dr. Southern 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. **DURATION/MODIFICATION OF TERMS**: All subsequent training certificates or other certificates that may be granted by the Board to Dr. Southern shall be subject to the same terms, conditions and limitations, unless otherwise determined by the Board, until Dr. Southern has completed at least a five year probationary period with the Board. Moreover, the term of probation shall be tolled during any period in which Dr. Southern's training certificate has lapsed and no other certificate has been issued by the Board.

- F. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Southern's training certificate will be fully restored.

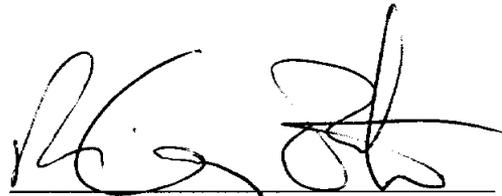
- G. **RELEASES**: Dr. Southern shall provide continuing authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Southern's chemical dependency and/or 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.

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

- H. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS**: Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Southern shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Southern 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.

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

This Order shall become effective immediately upon 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, Esq.
Hearing Examiner



State Medical Board of Ohio

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

EXCERPT FROM THE DRAFT MINUTES OF SEPTEMBER 8, 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 records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Akron Radiology, Inc.; Alex Victor Smirnoff, M.D.; and Brian D. Southern, 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

The motion carried.

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. 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.

.....

BRIAN D. SOUTHERN, M.D.

Ms. Sloan directed the Board's attention to the matter of Brian D. Southern, M.D. She advised that objections were filed to Hearing Examiner Porter's Report of Remand and were previously distributed to Board members. Ms. Sloan advised that Dr. Garg may participate in the discussion and vote in this matter.

Ms. Sloan advised that a motion to admit additional evidence to the record has been filed by the State. Counsel for Dr. Southern has indicated that he does not oppose this motion. She referred the Board to a copy of that motion in their agenda binder pockets. The Board was allowed a few moments to review that motion.

DR. STEINBERGH MOVED TO GRANT THE STATE'S MOTION TO ADMIT ADDITIONAL EVIDENCE IN THE MATTER OF BRIAN D. SOUTHERN, M.D. DR. ROBBINS 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	- aye
Dr. Steinbergh	- aye
Ms. Sloan	- aye

The motion carried.

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

Dr. Southern was accompanied by his attorney, John Carney.

Mr. Carney stated that it his understanding that the Board members are in possession of their objections. He added that Dr. Southern would appreciate the opportunity to make a statement.

Dr. Southern thanked the Board for the opportunity to address it. He would also like to express his sincere gratitude with the Board's patience and its continued consideration of his case. He stated that this has been a very difficult period in his life, but he is convinced today that everything that has happened has worked to make him a better person today. It will ultimately make him a better physician. He's happy today and at peace with himself.

Dr. Southern stated that, since his relapse on March 14, he's maintained his sobriety, and has taken great measures to ensure that this doesn't happen again. He continues to reside in a sober home with eight other men in recovery, and this has turned out to be one of the best decisions he's ever made. He's also had the opportunity since July to serve with the Americorps Vista for the Northeast Ohio Coalition for the Homeless. He advised that this has also been very rewarding as he's been able to give back to the community.

Dr. Southern stated that he read the recommendations of the Hearing Examiner, and he agrees with everything. He added that he understands the rationale for the additional 28-day inpatient treatment, but he wanted to point out that if it is required, his job may be in jeopardy. He commented that he has a good job now. He stated that he has no way of paying for the treatment. He asked that the Board consider this, and if the Board still decides that the treatment is necessary, he will happily do it.

Dr. Southern advised that he fully understands that he's in this situation because he made a choice to drink on March 14. He accepted complete responsibility for it, and whatever the Board decides today, he will happily fulfill all the requirements the Board asks.

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

Mr. Wilcox stated that, obviously, from reading this Report and Recommendation and this record, Dr. Southern has a very serious issue with alcohol abuse. The impression he got is that two days after a

Board hearing, at which Dr. Southern told the Board that sobriety was of utmost importance to him, he relapsed. Mr. Wilcox advised that he agrees with the Hearing Examiner's comments regarding Dr. Collins' observations of Dr. Southern. He added that, in his experience, Dr. Collins has always tried to portray substance abusers in the most favorable light. Mr. Wilcox commented that he hasn't previously seen the type of blunt comments that Dr. Collins made in his letters to the Board regarding Dr. Southern.

Mr. Wilcox stated that all of the facts in this case indicate that Dr. Southern is rapidly running out of options. Dr. Collins indicated that he believes that it would be therapeutic if Dr. Southern would take an extended absence from the practice of medicine. If this Board grants Dr. Southern another chance, as recommended by the Hearing Examiner in his Report and Recommendation, he would suggest that it be made very clear to Dr. Southern that any non-compliance with any of the conditions for the terms of probation will be met with very harsh and rapid consequences.

DR. GARG MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF BRIAN D. SOUTHERN, M.D. DR. STEINBERGH SECONDED THE MOTION.

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

Dr. Steinbergh stated that Dr. Southern is severely chemically dependent, and she has great concerns as to whether or not he will make it through this system. She concurred that Dr. Collins' concerns about Dr. Southern are very sincere and very forward-thinking.

Dr. Steinbergh stated that she also agrees with the Proposed Order, which calls for suspension of his license for an indefinite period of time but not less than one year. She noted that in Dr. Southern's objections, he asks the Board to make the effective date of the suspension retroactive to the date of the Board's summary suspension of April 14, 2004. Dr. Steinbergh stated that, although the request makes sense in terms of Dr. Southern's wanting to restart his residency program and not be put back another year, she honestly feels that she would have concerns about being kind to him at this time. She stated that that gives Dr. Southern a wrong message. The Board has to be very stern at this time for Dr. Southern. Dr. Steinbergh stated that she thinks that Dr. Southern needs to be inconvenienced. He needs to be out a year and really understand what this medical license is about. Dr. Steinbergh stated that when she sees multiple relapses by physicians, she doesn't think that the Board ought to necessarily be kind and reduce a suspension time that the Board would impose upon him on this date.

Due to information the Board received in terms of his licensure, Dr. Steinbergh offered the following amendment. Dr. Steinbergh stated that she concurs with the Proposed Order, with the simple language change in her motion. He needs the 28-day inpatient treatment. She noted that Dr. Southern does already have a training certificate, so the language in the Proposed Order granting him a training certificate is unnecessary.

DR. STEINBERGH MOVED TO AMEND PARAGRAPH A. OF THE PROPOSED ORDER TO

STATE AS FOLLOWS:

SUSPENSION OF CERTIFICATE: Dr. Southern's training certificate shall be SUSPENDED for an indefinite period of time, but not less than one year.

DR. GARG SECONDED THE MOTION.

Dr. Davidson spoke in support of the motion, stating that the Proposed Order, as written, is within the penalties delineated in the Board's guidelines. This was, technically, Dr. Southern's second relapse, in which the minimum penalty under the guidelines is a one-year suspension. She agrees with Dr. Steinbergh that Dr. Southern needs to sit out and work on his sobriety, rather than carry on in his residency today.

Dr. Buchan stated that Dr. Southern suggested that he would do whatever the Board asked. He added that his feeling is that there may not be anymore asking for him or response from the Board. In other words, the Board could revoke his license today. Dr. Southern's history and record reflects poorly on his choices, and there may not be any requests from the Board. Dr. Buchan stated that he doesn't know whether he can believe Dr. Southern or not. Dr. Buchan stated that he throws the word, "revoke," into the equation because he thinks, at a minimum, his training certificate should be revoked. The Board could stay that revocation and suspend his license for a year.

Dr. Steinbergh stated that she would approve the stayed permanent revocation as a friendly amendment to her motion.

Dr. Buchan stated that he just feels like it's time to not suggest that he do what the Board ask, because, quite honestly, the rope is at its thinnest point right now and he feels that Dr. Southern is just hanging on. Although the Board has a desire to work with Dr. Southern, he personally feels that this is it, and the Order should reflect that.

Mr. Dilling stated that a training certificate is issued for one year, but is renewable for five years. The proposed amendment would suspend that certificate for one year. He advised that Dr. Southern has gone through approximately nine months of that year. The intent seems to be that Dr. Southern not reapply for a training certificate for a year's period of time. The Board isn't really suspending the certificate for a year. He asked for clarification of the Board's intent in this matter, and suggested that the Board table the issue to allow time for a Board member and staff to work on the language for an alternate order.

Dr. Steinbergh stated that the Board could revoke Dr. Southern's training certificate and prohibit him from reapplying for a minimum period of one year. She added that she believes the rest of the language would stay the same.

Mr. Dilling stated that that's not what the Board's intent is. He referred to paragraph E of the Proposed Order, which states:

All subsequent training certificates or other certificates that may be granted by the Board to Dr. Southern shall be subject to the same terms, conditions and limitations, unless otherwise determined by the Board, until Dr. Southern has completed at least a five year probationary period with the Board. Moreover, the term of probation shall be tolled during any period in which Dr. Southern's training certificate has lapsed and no other certificate has been issued by the Board.

Mr. Dilling stated that what he is suggesting is almost as if the person sits out a year and reapplies. The language of it says it's suspended for a year. It's suspended for that much more time. That's not what the Board is looking for. He stated that he believes that it was the Board's intent to stay the permanent revocation of his certificate, make sure he doesn't reapply for a period of one year, and then allow him to complete his training program. If he wants to reapply for a training certificate, he can do so.

Dr. Buchan stated that it is his intention that if Dr. Southern fails any part of the interim monitoring, he will fail to obtain licensure ever in the State of Ohio.

Mr. Dilling suggested tabling the matter for development of language.

**DR. STEINBERGH MOVED TO TABLE THE MATTER OF BRIAN D. SOUTHERN, M.D.
DR. GARG 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	- aye
	Dr. Steinbergh	- aye

The motion carried.

.....
Mr. Albert left the meeting at this time.

.....
DR. STEINBERGH MOVED TO REMOVE THE MATTER OF BRIAN D. SOUTHERN, M.D.,

FROM THE TABLE. DR. BUCHAN SECONDED THE MOTION. All members voted aye. The motion carried.

Ms. Lubow explained that what they attempted to do with the alternate language is to address the fact that Dr. Southern holds a training certificate that is effective through the end of this calendar year. The language is crafted to indefinitely suspend the certificate, require Dr. Southern to comply with interim monitoring conditions, and establish conditions for renewal of the training certificate or issuance of any other certificate, which might include a full medical license. The first requirement is that he wait at least one year from the effective date of the Order to apply. The language throughout was changed in order to address either the renewal of a training certificate or the issuance of any other certificate. She noted that paragraph E allows the Board to take any action it deems appropriate should Dr. Southern violate the terms of the Board's Order.

DR. STEINBERGH MOVED THAT THE PROPOSED ORDER IN THE MATTER OF BRIAN D. SOUTHERN, M.D., BE AMENDED BY SUBSTITUTING THE FOLLOWING:

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION OF CERTIFICATE:** The training certificate of Brian D. Southern, M.D., shall be PERMANENTLY REVOKED. The permanent revocation is STAYED, and the training certificate is SUSPENDED for an indefinite period of time.
- B. **INTERIM MONITORING:** Dr. Southern shall comply with the following terms, conditions, and limitations:
 1. **Obey the Law:** Dr. Southern shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 2. **Personal Appearances:** Dr. Southern shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Order. 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:** Dr. Southern 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:** Dr. Southern 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 Dr. Southern's history of chemical dependency.
5. **Abstention from Alcohol:** Dr. Southern shall abstain completely from the use of alcohol.
6. **Comply with the Terms of Treatment and Aftercare Contract:** Dr. Southern shall maintain continued compliance with the terms of the treatment and aftercare contracts entered into with his treatment provider, provided that, where terms of the treatment and aftercare contract conflict with terms of this Order, the terms of this Order shall control.
7. **Drug & Alcohol Screens; Supervising Physician:** Dr. Southern shall submit to random urine screenings for drugs and/or alcohol on a weekly basis or as otherwise directed by the Board. Dr. Southern 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, Dr. Southern shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Southern 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 Dr. Southern. Dr. Southern and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

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

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

8. **Submission of Blood or Urine Specimens upon Request**: Dr. Southern shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Southern's expense.
9. **Rehabilitation Program**: Dr. Southern shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Dr. Southern shall submit acceptable documentary evidence of continuing compliance with this program, which must be received in the Board's offices no later than the due date for Dr. Southern's quarterly declarations.
10. **Continued Compliance with a Contract with an Impaired Physicians Committee**: Dr. Southern shall enter into a recovery contract with the an impaired physicians committee such as the Ohio Physicians Effectiveness Program, or with another impaired physicians committee, approved by the Board. Dr. Southern shall maintain continued compliance with the terms of the contract to assure continuous assistance in recovery and/or aftercare.

C. **CONDITIONS FOR RENEWAL OR ISSUANCE OF CERTIFICATE**: The Board shall not consider renewal of Dr. Southern's training certificate or issuance of any other certificate until all of the following conditions have been met:

1. **Application for Renewal or Issuance of Certificate**: Dr. Southern shall submit an application for renewal of his training certificate or issuance of any other certificate. Such application shall be accompanied by any appropriate fees. Dr. Southern shall not submit such application for at least one year from the effective date of this Order.

2. **Compliance with Interim Conditions**: Dr. Southern shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order.
3. **Completion of Inpatient Treatment**: Dr. Southern 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, Dr. Southern 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 Dr. Southern's treatment records.

4. **Demonstration of Ability to Resume Practice**: Dr. Southern 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 Dr. Southern 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 Dr. Southern'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 Dr. Southern's application for reinstatement or restoration. The reports of evaluation shall describe with particularity the bases for the determination that Dr. Southern 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 Dr. Southern has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for renewal of his training certificate or issuance of any other certificate, 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:** The training certificate or any other certificate issued to Dr. Southern shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Southern shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
 2. **Tolling of Probationary Period While Out of State:** In the event that Dr. Southern should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Southern 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.
- E. **VIOLATION OF TERMS:** If Dr. Southern violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- F. **DURATION/MODIFICATION OF TERMS:** All subsequent training certificates or other certificates that may be granted by the Board to Dr. Southern shall be subject to the same terms, conditions and limitations, unless otherwise determined by the Board, until Dr. Southern has completed at least a five year probationary period with the Board. Moreover, the term of probation shall be tolled during any period in which Dr. Southern's certificate has lapsed and no other certificate has been issued by the Board.

- G. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Southern's certificate will be fully restored.
- H. **RELEASES:** Dr. Southern 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 Dr. Southern'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.

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

- I. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Southern shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Southern 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.
- J. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Southern 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/she currently holds any professional license. Dr. Southern shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration or restoration of any professional license. Further, Dr. Southern shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board.

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

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

Vote:	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	- aye
	Dr. Steinbergh	- aye

The motion carried.

DR. BUCHAN MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF BRIAN D. SOUTHERN, M.D. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

Vote:	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	- aye
	Dr. Steinbergh	- 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

April 14, 2004

Brian D. Southern, M.D.
C/O University Hospitals of Cleveland
Residency Office
11100 Euclid Avenue, Room 3018
Cleveland, OH 44106

Dear Doctor Southern:

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, suspend, refuse to register or reinstate your training certificate to practice medicine and surgery, or to reprimand you or place you on probation for one or more of the following reasons:

- (1) On February 11, 2004, the Board summarily suspended your authority to practice in a residency program and issued to you a Notice of Summary Suspension and Opportunity for Hearing alleging that you were impaired in the ability to practice medicine. This Notice was based upon your history of substance abuse; your January 26, 2004, self-report that you were undergoing a seventy-two hour chemical dependency assessment at the Cleveland Clinic Alcohol and Drug Recovery Center [Cleveland Clinic], a Board-approved treatment provider in Cleveland, Ohio, after the pre-employment urine specimen you provided to the residency program tested positive for benzodiazepines; and the Cleveland Clinic report that you had relapsed on Klonopin and had entered inpatient treatment at the Cleveland Clinic. On March 12, 2004, you appeared for a hearing before an Attorney Hearing Examiner for the Board concerning the Notice of Summary Suspension and Opportunity for Hearing. A copy of the Notice of Summary Suspension and Opportunity for Hearing is attached hereto and incorporated herein.
- (2) On or about March 23, 2004, you self-reported to the Board that on or about March 14, 2004, you consumed cognac and beer at an after-hours club and were then placed into one week of day treatment at the Cleveland Clinic. The Cleveland Clinic subsequently reported that you had relapsed and that you "demonstrate persistent, and thus far intractable character traits, including immaturity, impulsivity, poor judgment, authority conflicts, narcissism, and dishonesty, as well as problems sustaining sobriety." Further, according to the Cleveland Clinic, "[t]hese traits and behaviors have not responded well to

Mailed 4-15-04

intensive treatment, which, ... demonstrates that at the present time, [you are] not fit for the practice of medicine.” Further, according to the Cleveland Clinic, “... it would be most therapeutic for [you] to take an extended absence from practicing medicine, hopefully while pursuing intensive therapy aimed at attitude change, compliance, honesty, and development of mature coping skills.”

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 4731.22(B)(26), Ohio Revised Code.

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

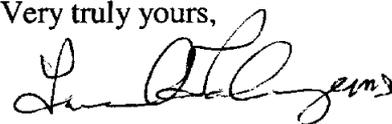
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at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

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

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that “[w]hen the board refuses to grant a certificate to an applicant, revokes an individual’s certificate to practice, refuses to register an applicant, or refuses to reinstate an individual’s certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate.”

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.
Secretary

Brian D. Southern, M.D.
Page 3

LAT/blt
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5140 1729
RETURN RECEIPT REQUESTED

Duplicate Mailing: Brian D. Southern, M.D.
3715 Warrensville Center, Apt. 423
Shaker Heights, OH 44122

CERTIFIED MAIL # 7000 0600 0024 5140 1743
RETURN RECEIPT REQUESTED

Eric J. Plinke
Porter Wright Morris & Arthur
41 South High Street
Columbus, OH 43215-6194

CERTIFIED MAIL # 7000 0600 0024 5140 1736
RETURN RECEIPT REQUESTED



State Medical Board of Ohio

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

NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING

February 11, 2004

Brian D. Southern, M.D.
c/o University Hospitals of Cleveland
Residency Office
11100 Euclid Avenue, Room 3018
Cleveland, OH 44106

Dear Doctor Southern:

Enclosed please find certified copies of the Entry of Order, the Notice of Opportunity for Hearing, and an excerpt of the Minutes of the State Medical Board, meeting in regular session on February 11, 2004, including a Motion adopting the Order of Summary Suspension and issuing the Notice of Opportunity for Hearing pursuant to Section 4731.22(G), Ohio Revised Code.

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

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

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

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D., Secretary

LAT:blt
Enclosures

Mailed 2-12-04

CERTIFICATION

I hereby certify that the attached copies of the Entry of Order of the State Medical Board of Ohio and the Motion by the State Medical Board, meeting in regular session on February 11, 2004, to Adopt the Order of Summary Suspension and to Issue the Notice of Opportunity for Hearing, constitute true and complete copies of the Motion and Order as they appear in the Journal of the State Medical Board of Ohio.

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


Lance A. Talmage, M.D., Secretary

(SEAL)

February 11, 2004
DATE

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :

BRIAN D. SOUTHERN, M.D. :

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 11th day of February, 2004.

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

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

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

The following Order is hereby entered on the Journal of the State Medical Board of Ohio for the 11th day of February, 2004;

It is hereby ORDERED that the authority granted by the "Acknowledgment of Application for Training Certificate" issued by the Board to Brian D. Southern, M.D., on November 20, 2003, be summarily suspended.

It is hereby ORDERED that Brian D. Southern, M.D., shall immediately cease participation in the residency program at University Hospitals of Cleveland, Cleveland, Ohio.

This Order shall become effective immediately.

(SEAL)


Lance A. Talmage, M.D., Secretary

February 11, 2004

DATE



State Medical Board of Ohio

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

EXCERPT FROM THE DRAFT MINUTES OF FEBRUARY 11, 2004

BRIAN DERRIS SOUTHERN, M.D. ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

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

DR. BHATI MOVED TO APPROVE THE ORDER OF SUMMARY SUSPENSION AND TO SEND THE NOTICE OF OPPORTUNITY FOR HEARING TO DR. SOUTHERN. DR. ROBBINS SECONDED THE MOTION. A vote was taken:

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

The motion carried.

- (3) On or about January 26, 2004, you reported to the Board that you were at the Cleveland Clinic Foundation [Cleveland Clinic], which is a Board approved treatment facility, undergoing a seventy-two hour chemical dependency assessment because the pre-employment urine specimen you provided to University Hospitals of Cleveland tested positive for benzodiazepines. Subsequently, in a letter dated February 3, 2004, Gregory B. Collins, M.D., Section Head of the Cleveland Clinic Alcohol and Drug Recovery Center, reported that your ingestion of Klonopin, which you had retained from an old prescription, "should be considered a relapse as it was premeditated and surreptitiously done, was not in accordance with any recent prescription for the use of this medication, in addition to being contrary to his treatment course." In addition, Dr. Collins reported that based on the assessment you were determined to be in a relapse condition, continued treatment for chemical dependency was recommended, and you had entered treatment at Cleveland Clinic.

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

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

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

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

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."



State Medical Board of Ohio

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

February 11, 2004

Brian D. Southern, M.D.
c/o University Hospitals of Cleveland
Residency Office
11100 Euclid Avenue, Room 3018
Cleveland, OH 44106

Dear Doctor Southern:

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, suspend, refuse to register or reinstate your training certificate, or to reprimand you or place you on probation for one or more of the following reasons:

- (1) In or about November 2003, you filed an application for a training certificate [application]. Your application remains pending. On or about November 20, 2003, pursuant to Rule 4731-6-30(G), Ohio Administrative Code, the Board issued to you an "Acknowledgment of Application for Training Certificate," that authorized you to begin participation in the residency program at University Hospitals of Cleveland while your application is being processed.
- (2) In conjunction with your application you reported a history of treatment for substance abuse as follows: You were admitted into the University of Alabama at Birmingham Addiction Recovery Program [ARP] for an inpatient evaluation and participated in the inpatient program from March 14, 2003, through April 12, 2003, and the Partial Hospitalization Program from April 14, 2003, through May 16, 2003, completing the ten week Professional's Resource Program for health care professionals. You further reported that after discharge from ARP, you resided at Any Lengths Resources, a recovery residence in Bessemer, Alabama, for approximately six months and participated in the Alabama Physicians Health Program, during which time you participated in at least three twelve-step meetings per week, submitted random urine specimens on a weekly basis, attended weekly Caduceus meetings, and attended quarterly meetings with a physician monitor.

In addition, in a letter submitted to the Board, the Medical Director of ARP stated that you were therapeutically discharged from ARP on May 23, 2003, due to a lack of consistent progress, and that the discharge recommendations included that you attend Any Length Resources.

Brian D. Southern, M.D.
Page 3

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 5146 5912
RETURN RECEIPT REQUESTED**

**Duplicate Mailing: Brian D. Southern, M.D.
3715 Warrensville Center, Apt. 423
Shaker Heights, OH 44122**

**CERTIFIED MAIL # 7000 0600 0024 5146 5929
RETURN RECEIPT REQUESTED**



State Medical Board of Ohio

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

NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING

February 11, 2004

Brian D. Southern, M.D.
c/o University Hospitals of Cleveland
Residency Office
11100 Euclid Avenue, Room 3018
Cleveland, OH 44106

Dear Doctor Southern:

Enclosed please find certified copies of the Entry of Order, the Notice of Opportunity for Hearing, and an excerpt of the Minutes of the State Medical Board, meeting in regular session on February 11, 2004, including a Motion adopting the Order of Summary Suspension and issuing the Notice of Opportunity for Hearing pursuant to Section 4731.22(G), Ohio Revised Code.

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

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

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

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D., Secretary

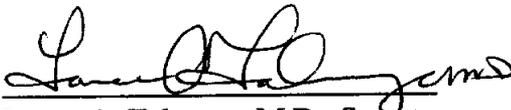
LAT:blt
Enclosures

Mailed 2-12-04

CERTIFICATION

I hereby certify that the attached copies of the Entry of Order of the State Medical Board of Ohio and the Motion by the State Medical Board, meeting in regular session on February 11, 2004, to Adopt the Order of Summary Suspension and to Issue the Notice of Opportunity for Hearing, constitute true and complete copies of the Motion and Order as they appear in the Journal of the State Medical Board of Ohio.

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


Lance A. Talmage, M.D., Secretary

(SEAL)

February 11, 2004
DATE

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :

BRIAN D. SOUTHERN, M.D. :

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 11th day of February, 2004.

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

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

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

The following Order is hereby entered on the Journal of the State Medical Board of Ohio for the 11th day of February, 2004;

It is hereby ORDERED that the authority granted by the "Acknowledgment of Application for Training Certificate" issued by the Board to Brian D. Southern, M.D., on November 20, 2003, be summarily suspended.

It is hereby ORDERED that Brian D. Southern, M.D., shall immediately cease participation in the residency program at University Hospitals of Cleveland, Cleveland, Ohio.

This Order shall become effective immediately.

(SEAL)


Lance A. Talmage, M.D., Secretary

February 11, 2004
DATE



State Medical Board of Ohio

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

EXCERPT FROM THE DRAFT MINUTES OF FEBRUARY 11, 2004

BRIAN DERRIS SOUTHERN, M.D. ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

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

DR. BHATI MOVED TO APPROVE THE ORDER OF SUMMARY SUSPENSION AND TO SEND THE NOTICE OF OPPORTUNITY FOR HEARING TO DR. SOUTHERN. DR. ROBBINS SECONDED THE MOTION. A vote was taken:

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

February 11, 2004

Brian D. Southern, M.D.
c/o University Hospitals of Cleveland
Residency Office
11100 Euclid Avenue, Room 3018
Cleveland, OH 44106

Dear Doctor Southern:

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, suspend, refuse to register or reinstate your training certificate, or to reprimand you or place you on probation for one or more of the following reasons:

- (1) In or about November 2003, you filed an application for a training certificate [application]. Your application remains pending. On or about November 20, 2003, pursuant to Rule 4731-6-30(G), Ohio Administrative Code, the Board issued to you an "Acknowledgment of Application for Training Certificate," that authorized you to begin participation in the residency program at University Hospitals of Cleveland while your application is being processed.
- (2) In conjunction with your application you reported a history of treatment for substance abuse as follows: You were admitted into the University of Alabama at Birmingham Addiction Recovery Program [ARP] for an inpatient evaluation and participated in the inpatient program from March 14, 2003, through April 12, 2003, and the Partial Hospitalization Program from April 14, 2003, through May 16, 2003, completing the ten week Professional's Resource Program for health care professionals. You further reported that after discharge from ARP, you resided at Any Lengths Resources, a recovery residence in Bessemer, Alabama, for approximately six months and participated in the Alabama Physicians Health Program, during which time you participated in at least three twelve-step meetings per week, submitted random urine specimens on a weekly basis, attended weekly Caduceus meetings, and attended quarterly meetings with a physician monitor.

In addition, in a letter submitted to the Board, the Medical Director of ARP stated that you were therapeutically discharged from ARP on May 23, 2003, due to a lack of consistent progress, and that the discharge recommendations included that you attend Any Length Resources.

- (3) On or about January 26, 2004, you reported to the Board that you were at the Cleveland Clinic Foundation [Cleveland Clinic], which is a Board approved treatment facility, undergoing a seventy-two hour chemical dependency assessment because the pre-employment urine specimen you provided to University Hospitals of Cleveland tested positive for benzodiazepines. Subsequently, in a letter dated February 3, 2004, Gregory B. Collins, M.D., Section Head of the Cleveland Clinic Alcohol and Drug Recovery Center, reported that your ingestion of Klonopin, which you had retained from an old prescription, "should be considered a relapse as it was premeditated and surreptitiously done, was not in accordance with any recent prescription for the use of this medication, in addition to being contrary to his treatment course." In addition, Dr. Collins reported that based on the assessment you were determined to be in a relapse condition, continued treatment for chemical dependency was recommended, and you had entered treatment at Cleveland Clinic.

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

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

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

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

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Brian D. Southern, M.D.
Page 3

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 5146 5912
RETURN RECEIPT REQUESTED

Duplicate Mailing: Brian D. Southern, M.D.
3715 Warrensville Center, Apt. 423
Shaker Heights, OH 44122

CERTIFIED MAIL # 7000 0600 0024 5146 5929
RETURN RECEIPT REQUESTED