



# State Medical Board of Ohio

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

August 11, 2004

Gregory David Duncan, M.T.  
4567 St. Rt. 276  
Batavia, OH 45103

Dear Mr. Duncan:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Siobhan R. Clovis, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on August 11, 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

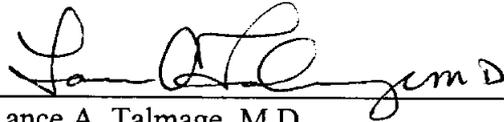
CERTIFIED MAIL NO. 7000 0600 0024 5150 2907  
RETURN RECEIPT REQUESTED

*Mailed 8-31-04*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Siobhan R. Clovis, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on August 11, 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 Gregory David Duncan, M.T., 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)

August 11, 2004  
Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF

\*

\*

GREGORY DAVID DUNCAN, M.T.

\*

ENTRY OF ORDER

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

Upon the Report and Recommendation of Siobhan R. Clovis, 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:

The application of Gregory David Duncan, M.T, for a certificate to practice massage therapy in Ohio is hereby DENIED.

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

(SEAL)

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

August 11, 2004  
\_\_\_\_\_  
Date

**REPORT AND RECOMMENDATION  
IN THE MATTER OF GREGORY DAVID DUNCAN, M.T.**

The Matter of Gregory David Duncan, M.T., was heard by Siobhan R. Clovis, Esq., Hearing Examiner for the State Medical Board of Ohio, on June 17, 2004.

**INTRODUCTION**

**I. Basis for Hearing**

- A. By letter dated April 14, 2004, the State Medical Board of Ohio [Board] notified Gregory David Duncan, M.T., that it had proposed to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate his certificate to practice massage therapy, or to reprimand him or place him on probation. The Board based its proposed action on the allegation that a Board-approved treatment provider had found Mr. Duncan to be impaired and alcohol dependent, and had recommended that Mr. Duncan undergo treatment.

The Board alleged that Mr. Duncan's acts, conduct, and/or omissions, 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."

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

- B. The Board received a written hearing request from Mr. Duncan on April 23, 2004. (State's Exhibit 1B).

**II. Appearances**

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Kyle C. Wilcox, Assistant Attorney General.
- B. On behalf of the Respondent: Although Mr. Duncan had been advised of his right to appear at hearing on his own behalf, to be represented at hearing by counsel, or to present his arguments in writing, Mr. Duncan neither appeared at the hearing personally or by representative, nor offered any substantive evidence at hearing.

## EVIDENCE EXAMINED

### I. Testimony Heard

Sallie Debolt, Esq.

### II. Exhibits Examined

- A. State's Exhibits 1A through 1F: Procedural exhibits.
- B. State's Exhibit 2: Copies of documents maintained by the Board concerning the application of Gregory David Duncan, M.T., to practice massage therapy in Ohio. (Note: The Hearing Examiner numbered the pages post-hearing.)
- \* C. State's Exhibit 3: Correspondence and reports concerning Mr. Duncan issued by Comprehensive Addiction Service Systems. (Note: The Hearing Examiner numbered the pages post-hearing.)
- \* D. State's Exhibit 4: Copy of a December 22, 2003, letter regarding Mr. Duncan from Mark Heintzleman, Ph.D., to the Board.
- \* E. State's Exhibit 5: Copy of a January 29, 2004, letter regarding Mr. Duncan from the Board to Marilyn Smith, Ph.D.
- \* F. State's Exhibit 6: Copy of a November 20, 2003, letter to Mr. Duncan from the Board.
- G. State's Exhibit 7: Certified copies of documents maintained by the Municipal Court of Hamilton County, Ohio, and the Municipal Court of Clermont County, Ohio, concerning Mr. Duncan. (Note: The Hearing Examiner redacted social security numbers post-hearing. Further note: The Hearing Examiner numbered the pages post-hearing.)
- \* H. State's Exhibit 8: Copy of a February 26, 2004, letter regarding Mr. Duncan to Dr. Smith from the Board.
- \* I. State's Exhibit 9: Copy of a February 5, 2004, letter regarding Mr. Duncan to the Board from Dr. Smith.

Note: All exhibits marked with an asterisk [\*] have been sealed to protect patient confidentiality.

### SUMMARY OF THE EVIDENCE

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

1. Gregory David Duncan, M.T., is thirty-three years old. He attended college for two years. After college, Mr. Duncan primarily worked in construction as an electrician until he began attending the Cincinnati School of Massage in October 2001. Mr. Duncan graduated in April 2003 and passed the Ohio licensure examination in June 2003. (State's Exhibit [St. Ex.] 2 at 2, 12; St. Ex. 3 at 3; St. Ex. 4).
2. On February 24, 2003, Mr. Duncan submitted to the Board an application for a certificate to practice massage therapy, which is still pending. In his application, Mr. Duncan affirmatively answered the following question: "Have you ever been convicted or found guilty of a violation of any law, regardless of the legal jurisdiction in which the act was committed, other than a minor traffic violation?" (St. Ex. 2 at 1, 6).

Mr. Duncan has been convicted of Driving Under the Influence [DUI] twice. The first offense occurred on April 20, 1997, in Cincinnati, Ohio. On April 24, 1997, in Hamilton County Municipal Court, Mr. Duncan was sentenced to 180 days in jail, with 177 days suspended. He was also fined \$300. His driver's license was suspended for six months, but he was granted occupational driving privileges after 15 days. (St. Ex. 7 at 1, 6, 11).

Mr. Duncan's second offense occurred on June 25, 1998, in Batavia, Ohio. On August 11, 1998, in Clermont County Municipal Court, Mr. Duncan was placed on three years of reporting probation. His driver's license was suspended for three years, with driving privileges for work, AA, counseling, and probation purposes. Mr. Duncan also served 15 days in jail and paid a \$500 fine. (St. Ex. 7 at 11, 13). Greg Hall, Assistant Chief Probation Officer of Clermont County, reported the following to the Board:

While on reporting probation, in addition to paying his court costs and fines, Mr. Duncan attended Alcoholics Anonymous meetings no less than twice per week. He also successfully completed alcohol treatment at the Clermont Recovery Center, having made 'good' progress in his treatment. Finally, Mr. Duncan maintained full-time gainful employment, reported regularly to his probation officer and passed all drug screens while on reporting probation.

Mr. Duncan did well on his probation and as a result of his compliance, the balance of his probation was modified to court monitored status in March 1999. His probation expired completely on August 11, 2001.

(St. Ex. 7 at 2).

3. Mr. Duncan's application for licensure was completed on August 7, 2003, when, in response to the Board's request for further information, Mr. Duncan provided a written description of the underlying circumstances of his convictions:

On the first DUI I received on April 20, [1997], I was working overtime on a Sunday for Denier Electric. We quit early that day around noon. Myself and two other co-workers decided to go to a sports bar close by. We had lunch and drank some beers. I left the bar around 5:00 P.M. heading home. On the way home I was pulled over for crossing the midline. Failed sobriety test and received a DUI. Received six month suspension w/ driving privileges to work.

On the second DUI, I was at O'Charley's [restaurant] with my brother[,] his fiancé[e,] and a friend of hers. We were celebrating their engagement with dinner and drinks. I chose to drive home, even though I was offered a ride, and again was pulled over for crossing mid-line. Failed sobriety test and received a DUI. Received one year suspension w/ interlock driving system.

(St. Ex. 2 at 23).

4. By letter dated November 20, 2003, the Board notified Mr. Duncan that his DUI convictions gave the Board reason to believe that he was in violation of Section 4731.22(B)(26), Ohio Revised Code, to wit: "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice." Accordingly, the Board ordered Mr. Duncan to submit to a three-day evaluation, beginning on December 8, 2003, at Comprehensive Addiction Service Systems [COMPASS] in Toledo, Ohio. COMPASS is a Board-approved treatment provider. (Hearing Transcript [Tr.] at 10; St. Ex. 6).

On December 8, 2003, Mr. Duncan reported to COMPASS for the evaluation ordered by the Board. Mr. Duncan was assessed for chemical dependency by Christine Ellis, M.D., Medical Director of COMPASS, and Marilyn Smith, Ph.D., Clinical Director of COMPASS. (Tr. at 10-11; St. Ex. 3 at 2-7). In correspondence to the Board, Drs. Ellis and Smith advised the following about Mr. Duncan's chemical abuse history, as reported by Mr. Duncan:

- Mr. Duncan first tasted alcohol at the age of 18, and later that year had been intoxicated for the first time. He experienced “some blackouts” during high school.
- Mr. Duncan rarely used alcohol at age 21.
- Mr. Duncan’s drinking increased from around age 24 until age 27, because of his becoming a construction worker and his social circle. During this period, Mr. Duncan had been intoxicated approximately three times a month on an intermittent but recurrent basis.
- Mr. Duncan had been working seven days a week in construction and caring for two relatives with cancer at the time of his first DUI in 1997.
- After the first DUI, Mr. Duncan ceased drinking during the six months that his license was suspended. After his license was restored, he resumed drinking, but attempted to drink less than he had before his DUI. He drank casually with his girlfriend on holidays and weekends, about once a month.
- After his second DUI in 1998, Mr. Duncan was abstinent from alcohol for sixteen months. His social circle triggered his drinking again.
- Presently, Mr. Duncan drinks much less often than he did before his DUIs, but he still drinks to excess “about once a month.” His most recent use had been “[two] beers during [a] football game.”
- Mr. Duncan had been taking Klonopin as prescribed.<sup>1</sup> When Dr. Ellis informed him of the drug’s addictive nature, Mr. Duncan indicated that he would cease using the drug immediately.

(St. Ex. 3 at 2-7).

In her report, Dr. Ellis advised that Mr. Duncan had not told her that he had experienced blackouts when he was younger, or that, currently, he continued to drink to excess about once a month. Mr. Duncan had disclosed these facts during further evaluations with Dr. Smith. (St. Ex. 3 at 6).

Both Drs. Ellis and Smith diagnosed Mr. Duncan with alcohol dependence because he had continued to use alcohol despite negative legal implications, because he had experienced blackouts when he was younger, and because he continued to drink to intoxication. Both Drs. Ellis and Smith recommended that Mr. Duncan attend six months of outpatient chemical abuse treatment at a Board-approved treatment facility, and that he cease using

---

<sup>1</sup> Further information about Mr. Duncan’s treatment with Klonopin can be found in State’s Exhibit 4.

any mind-altering medications with a potential for addiction. Both also concluded that Mr. Duncan had an above-average prognosis for recovery. (St. Ex. 3 at 3, 6-7).

5. Sallie Debolt, Esq., an Enforcement Attorney for the Board, testified that she had worked on Mr. Duncan's case. She advised that, shortly after Mr. Duncan's evaluation, she had received a phone call from Mr. Duncan's psychologist, Mark Heintzelman, Ph.D.<sup>2</sup> Dr. Heintzelman followed up his phone call with a letter to Ms. Debolt, in which he expressed disagreement with COMPASS's diagnosis of Mr. Duncan. (Tr. at 8-9, 11-12).

In his letter, Dr. Heintzelman stated that Mr. Duncan "had a history of social drinking punctuated by several instances of inappropriate use as a way of dealing with the death of two pillars of the family and the responsibility of emotionally taking care of his mother" and that "Mr. Duncan is not drug/alcohol dependent." Dr. Heintzelman advised that he believed that the evaluation performed by COMPASS was inadequate. (St. Ex. 4). He wrote:

It is my opinion that the evaluation process in Toledo was at best incomplete. Feeble attempts were made on their part to return my calls despite my having left a message on the personal cell phone of one of the main evaluators (Ms. Angie S.). If indeed treatment is recommended for alcohol/drug addiction, I am completely in disagreement with this conclusion. Local evaluations following Mr. Duncan's DUI convictions indicated that further drug/alcohol treatment was not necessary. Furthermore, I do not believe that any standardized testing was used in Toledo to provide an accurate assessment nor was my input eve[r] received. This, in my professional opinion, is an example of a woefully inadequate assessment protocol.

(St. Ex. 4).

6. By letter addressed to Dr. Smith, dated January 29, 2004, Ms. Debolt requested clarification of the chemical abuse evaluation of Mr. Duncan. Ms. Debolt questioned why there was no reference in COMPASS's reports to "the administration of any testing related to psychological or mental status or to reports from or consultation with Mr. Duncan's treating psychologist." Ms. Debolt also questioned why COMPASS's reports had not referenced Mr. Duncan's prior chemical abuse assessments, performed in 1997 and 1998 as part of the criminal proceedings against Mr. Duncan. (St. Ex. 5).

Ms. Debolt further requested documentation of any urine or blood-alcohol screening conducted as part of the evaluation. Lastly, Ms. Debolt advised that COMPASS's evaluation had failed to address the question of whether Mr. Duncan was "impaired in his

---

<sup>2</sup> Further information about Dr. Heintzelman's treatment of Mr. Duncan can be found in State's Exhibit 4.

ability to practice massage therapy due to habitual or excessive use of drugs, alcohol, or other substances that impair ability to practice.” (St. Ex. 5).

Ms. Debolt testified that, in response to her letter, COMPASS requested a telephone conference to discuss the needs of the Board in an evaluation. On February 2, 2004, Ms. Debolt participated in a telephone conference with another Enforcement Attorney, Dr. Smith, and another staff member of COMPASS. Ms. Debolt advised that the COMPASS staff was “a little unclear on what the Board required them to do.” (Tr. at 14-15).

After the telephone conference, Dr. Smith responded to Ms. Debolt in writing by letter dated February 5, 2004. In the letter, Dr. Smith advised that, while no empirical testing had been done, Mr. Duncan had been “given a standardized chemical abuse evaluation format.” (St. Ex. 9). She stated that the diagnosis was based on the following criteria for Alcohol Dependence (DSM IV-TR):

- a. Tolerance – need markedly increased amounts of the substance (i.e. alcohol to achieve intoxication[.]
- b. There were unsuccessful attempts to cut down or control his use — according to Mr. Duncan several unsuccessful attempts were made by him to quit using.
- c. The substance is taken in larger amounts over a long[er] period of time than was intended. Mr. Duncan reported that once he began to drink, he could not stop.

(St. Ex. 9).

Dr. Smith further advised that Dr. Heintzelman had been contacted by COMPASS Registered Nurse Angy Schaferly, “who returned the telephone call the last week of January<sup>3</sup> when she was on vacation. Consequently, I did not have access to any of his information when the report was due.” Moreover, Dr. Smith stated that Mr. Duncan’s prior chemical abuse assessments had been requested by Nurse Schaferly via fax, but that the request had never been fulfilled. Dr. Smith also attached a report demonstrating negative drug-testing results for a specimen of Mr. Duncan’s urine collected on December 8, 2003. (St. Ex. 9).

In response to Ms. Debolt’s inquiry about whether Mr. Duncan was impaired pursuant to Board rules, Dr. Smith wrote: “Yes—until Mr. Duncan completes the recommendations

---

<sup>3</sup> It should be noted that Mr. Duncan’s evaluation took place on December 8 – 10, 2003. (Tr. at 11).

for treatment as enumerated in my assessment, he should not be practicing massage therapy.” (St. Ex. 9).

7. Ms. Debolt testified that the February 5, 2004, letter did not end the inquiry, because there remained a conflict between COMPASS’s recommendations and Board rules. Specifically, if an individual is deemed impaired, then the Board requires 28 days of inpatient treatment<sup>4</sup>; however, COMPASS had recommended six months of outpatient treatment for Mr. Duncan. Further, Ms. Debolt testified that the February 5, 2004, letter did not sufficiently explain why COMPASS’s diagnosis of alcohol dependence should be accepted, rather than the contrary determination of Mr. Duncan’s treating psychologist. Accordingly, Ms. Debolt requested further clarification of these issues, by letter dated February 26, 2004, addressed to Dr. Smith. (Tr. at 15-16; St. Ex. 8).

By letter dated March 3, 2004, Drs. Ellis and Smith responded to Ms. Debolt.<sup>5</sup> The letter failed to specifically respond to the query about the 28-day inpatient treatment requirement. (St. Ex. 3 at 3). The question was addressed as follows:

We also wish to confirm that since Mr. Duncan is an applicant for licensure as a Massage Therapist, pursuant to Rule 4731-16-08(A)(9), Ohio Administrative Code and has been diagnosed impaired related to alcohol dependence by myself Dr. Marilyn Smith, PhD working in the field of addiction for 20 plus years and that of Dr. Christine Ellis MD certified in Addiction Medicine for 20 years that he should be held pursuant to the rules of the State Medical Board of Ohio.

(St. Ex. 3 at 3).

The letter also advises that Drs. Ellis and Smith had reviewed Dr. Heintzelman’s letter to Ms. Debolt, and that “[h]is report has no bearing on our evaluation and diagnosis. We both stand firm in our diagnosis of alcohol dependence and support it by our 72 hour observation of this patient in our facility, extensive interviews between these two addiction doctors, and added input from our specialized staff members in addiction.” (St. Ex. 3 at 8).

8. Kyle C. Wilcox, the Assistant Attorney General representing the Board at hearing, advised that he had spoken to Mr. Duncan on the phone, and that Mr. Duncan had indicated that he cannot afford to attend a 28-day treatment program. (Tr. at 19).

---

<sup>4</sup> Section 4731.22(B)(26)(a), Ohio Revised Code; Rules 4731-16-02(B)(4)(A) and 4731-16-08(A)(13), Ohio Administrative Code.

<sup>5</sup> This letter was not received by Board until May 3, 2004, because, due to injuries from a car accident, Dr. Ellis was not able to sign the report in March. (Tr. at 16).

### **FINDINGS OF FACT**

1. On February 24, 2003, Gregory David Duncan, M.T., submitted an application for licensure as a massage therapist, which was completed upon receipt of documentation on August 7, 2003. Mr. Duncan's application is currently pending.
2. By letter dated November 20, 2003, the Board ordered Mr. Duncan to submit to a three-day evaluation, beginning on December 8, 2003, at Comprehensive Addiction Service Systems [COMPASS], a Board approved treatment provider, in Toledo, Ohio, in order to determine whether he was in violation of Section 4731.22(B)(26), Ohio Revised Code. The Board's action was based upon Mr. Duncan's two convictions for Driving Under the Influence.

Mr. Duncan reported to COMPASS, on December 8, 2003, for the evaluation ordered by the Board. The COMPASS treatment team diagnosed Mr. Duncan as alcohol dependent. The COMPASS treatment team further concluded that Mr. Duncan has an impairment of ability to practice according to acceptable and prevailing standards of care because of habitual and excessive abuse of alcohol. The COMPASS treatment team recommended that Mr. Duncan undergo treatment for his impairment.

### **CONCLUSIONS OF LAW**

The acts, conduct, and/or omissions of Gregory David Duncan, M.T., as set forth in Findings of Fact 2, 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.

\* \* \* \* \*

COMPASS had to be prompted numerous times, and in several respects, in order to produce a suitable report about Mr. Duncan's chemical abuse assessment. Further, COMPASS failed to obtain prior chemical-abuse assessments which apparently may have found that Mr. Duncan was not chemically dependent, and completely disregarded the determination of Mr. Duncan's treating psychologist that Mr. Duncan is not alcohol dependant. However, given that COMPASS remained steadfast in its diagnosis of alcohol dependence, and in the recommendation that Mr. Duncan complete some form of treatment prior to beginning practice as a massage therapist, the evidence is sufficient to find that Mr. Duncan is impaired.

The Proposed Order denies Mr. Duncan a license, and advises him that he should not reapply until after he has completed the requisite treatment. This course was chosen, rather than a granting of the license with a period of suspension, because Mr. Duncan is apparently unable to afford the treatment program. The intent of the Proposed Order is to refrain from ordering

Mr. Duncan to comply with conditions that he cannot satisfy, which could place him in jeopardy of further disciplinary proceedings.

### **PROPOSED ORDER**

It is hereby ORDERED that:

- A. The application of Gregory David Duncan, M.T, for a certificate to practice massage therapy in Ohio is hereby DENIED.
- B. Mr. Duncan is hereby notified that reapplication is not encouraged until all of the following requirements have been met:

- 1. **Completion of Inpatient Treatment:** Mr. Duncan shall complete a minimum of 28 days of inpatient or residential treatment, or a combination thereof, for his chemical dependency. Such inpatient or residential treatment shall be completed without interruption. Further, such inpatient or residential treatment shall be provided in accordance with Rule 4731-16-08(A)(13), Ohio Administrative Code, by a treatment provider approved under Section 4731.25, Ohio Revised Code.

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

- 2. **Demonstration of Ability to Resume Practice:** Mr. Duncan shall demonstrate to the satisfaction of the Board that he can practice in compliance with acceptable and prevailing standards of care under the provisions of a massage therapy certificate. Such demonstration shall include but shall not be limited to the following:
  - a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Mr. Duncan 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. Two written reports indicating that Mr. Duncan'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 60 days prior to Mr. Duncan's application for licensure. The reports of evaluation shall describe with particularity the bases for the determination that Mr. Duncan has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon his practice.
3. **Releases:** Upon submission of his application, Mr. Duncan shall provide continuing authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Mr. Duncan's chemical dependency and/or related conditions, or for purposes of complying with this Order, whether such treatment or evaluations occurred before or after the effective date of this Order. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.

Mr. Duncan shall also provide the Board written consent permitting any treatment provider from whom Mr. Duncan 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.

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

  
Siobhan R. Clovis, 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](http://www.med.ohio.gov)

## EXCERPT FROM THE DRAFT MINUTES OF AUGUST 11, 2004

### REPORTS AND RECOMMENDATIONS

Ms. Sloan announced that the Board would now consider the findings and orders appearing on the Board's agenda. She asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Gregory David Duncan, M.T.; Jitander N. Kalia, M.D.; Robert Noble, M.D.; Douglas Holland Rank, M.D.; Richard Arthur Thompson, M.T.; and Joseph C. Webster, M.D. A roll call was taken:

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

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

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

Ms. Sloan noted that, in accordance with the provision in Section 4731.22(F)(2), Ohio 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.

.....

GREGORY DAVID DUNCAN, M.T.

Ms. Sloan directed the Board's attention to the matter of Gregory David Duncan, M.T. She advised that objections were filed to Hearing Examiner Clovis' Report and Recommendation and were previously distributed to Board members; however, these objections were not received in a timely manner. Ms. Sloan noted that the Assistant Attorney General did not have any objection to the Board's considering these late objections.

Ms. Sloan advised that Dr. Garg did not serve as Secretary in this matter, and may participate in the discussion and vote.

**DR. STEINBERGH MOVED TO ENTER THE OBJECTIONS INTO THE HEARING RECORD. MR. BROWNING SECONDED THE MOTION. A vote was taken:**

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

The motion carried.

**DR. GARG MOVED TO APPROVE AND CONFIRM MS. CLOVIS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF GREGORY DAVID DUNCAN, M.T. DR. STEINBERGH SECONDED THE MOTION.**

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

Dr. Steinbergh stated that this is a case of a chemically dependent massage therapist who, although having been assessed as being chemically dependent, disagrees with the assessment. The Proposed Order calls for Mr. Duncan to enter a 28-day treatment program, but Mr. Duncan claims that he can't afford such a program. Mr. Duncan disagrees with the assessment made by COMPASS, a Board-approved treatment provider. Dr. Steinbergh advised that, having read the record, she agrees with the Proposed Order, denying certification and listing conditions Mr. Duncan must meet prior to the Board's considering his reapplication for licensure. She added that she read and appreciates Mr. Duncan's objections, but this Board has the responsibility of being certain that its licensees are appropriate for practice in this state. Without this assessment and without Mr. Duncan's going into treatment, the Board would be further obligated to deny licensure in the State of Ohio until he's met these criteria. Dr. Steinbergh added that, if Mr. Duncan wants to get a second assessment, it will still cost money.

Dr. Kumar stated that he supports what Dr. Steinbergh said, but he does have some concern and question about the fact that a Board-approved provider doesn't exactly realize what the Board requires it to do. After being questioned, the provider finally did come around, but it does raise the question of how the facility functions, operates, etc. Dr. Kumar noted that Dr. Steinbergh remarked on a second assessment opportunity being given to Mr. Duncan, and suggested that the Board might include that in the Board's Order. It could give Mr. Duncan the option to either undergo a second assessment, at his expense and by a Board-approved provider, or to enter a 28-day treatment program. In that way the Board would be serving the public and at the same time it would be fair and show that it is not relying on a questionable assessment.

Dr. Steinbergh stated that she wouldn't oppose a second assessment at all in the list of things that the Board would require of Mr. Duncan before it would consider any future application for a license. She asked Dr. Kumar whether he would want to accept the second assessment in lieu of completion of inpatient treatment.

Dr. Kumar stated that he would. He then added that it would depend upon what the second assessment shows.

Mr. Browning and Dr. Garg both stated that it can't be both.

Mr. Dilling stated that it seems to him that some time ago the Board had a case that advised the Board that, if it sets conditions, the Board will have to go all the way and set probationary terms, etc. He stated that he understands that paragraph B of the Proposed Order is worded in such a way as to be advisory, but now, in its discussion, the Board is getting pretty specific about what it wants down the line. He commented that current Board members might no longer be on the Board if and when this matter comes up again. Mr. Dilling suggested that the Board not put this language into the Proposed Order, but into the body of the conclusionary paragraphs, after the "Conclusions of Law." If the Board wants Mr. Duncan to complete inpatient treatment and demonstrate an ability to resume practice, should he ever return for licensure, that seems a reasonable thing for the protection of the public. The Board would also be communicating that at

some point in time Mr. Duncan may wish to reapply. That's why the Proposed Order isn't for permanent denial. However, if the Board continues on the road of getting into the specifics of what it wants to see and encourage him, he would strongly encourage that the Board go the whole route and put in some probationary terms.

Mr. Browning agreed with Mr. Dilling, but added that he thinks, though, that the Board has to decide whether or not it had a flawed process here from COMPASS. If the Board did, and it had a psychologist, licensed in the state, saying that that's his opinion, it seems to him that if there is a significant doubt about whether or not COMPASS met the right standards, then it might ask for a new assessment from a new group. Mr. Browning stated that there is some doubt in his mind about this, particularly when Mr. Duncan's psychologist is saying that he doesn't agree that the assessment was adequate. Mr. Browning stated that he doesn't know whether the assessment was or not, so his judgment is to have a new assessment.

Dr. Kumar stated that he would second that motion.

Mr. Dilling asked whether Mr. Browning wants to do this as part of a remand.

Mr. Browning stated that, if this is a flawed assessment, which the Board is raising questions about by going down this path, then he agrees with Mr. Dilling – let's just start over. He stated that there is a legitimate question in his mind as to whether or not COMPASS did a good assessment. It's kind of hard to order an applicant to do 28 days of inpatient treatment on a questionable assessment; particularly someone the Board may be permanently marching out the door because he doesn't have the money to put it together. If the Board does believe that it was an adequate assessment, then the Board should go ahead and vote for this Proposed Order. If, however, the Board has a substantive question about whether or not it was an adequate assessment, it should ask for a new assessment from a different group.

Dr. Steinbergh stated that she understands Mr. Browning's comments, and she's not in disagreement with a second assessment, but her read of this is that there are a lot of red flags out there that this is an impaired individual. This is a chemically dependent individual.

Mr. Browning stated that he understands.

Dr. Steinbergh stated that many times people who go for assessments disagree that they have a problem, but the bottom line is that, after assessment, at some point you have to accept the responsibility that it is what it is. Mr. Duncan is arguing that this was not an appropriate assessment. Dr. Steinbergh stated that COMPASS is a Board-approved assessor. Christine Ellis, M.D., is the Medical Director, and Marilyn Smith, Ph.D., is the Clinical Director.

Mr. Browning referred to Dr. Heintzelman's quote on page six of the Report and Recommendation. The Board would have to decide that Dr. Heintzelman is just flat wrong.

Dr. Steinbergh stated that there are differences of opinion. Dr. Heintzelman is Mr. Duncan's treating psychologist.

Mr. Browning stated that he's a licensed psychologist.

Dr. Steinbergh stated that she does recognize Dr. Heintzelman's opinion.

Dr. Kumar stated that his problem continues to be the way that COMPASS initially evaluated it. They did not do, according to the Report and Recommendation, the basic assessments required of them until they were prodded to do so. Dr. Kumar stated that he's not certain he can accept that. The treatment provider has to do the thorough evaluation from day one. Many times, they did not even check for chemical dependency initially, until they were prodded again to do so. Dr. Kumar again stated that he has a real problem with the quality of COMPASS' assessment, at least the way it appears here. Dr. Kumar stated that the Board must give Mr. Duncan the opportunity to obtain a second assessment.

Mr. Browning agreed, again referring to Dr. Heintzelman's letter, as quoted in the Report and Recommendation, indicating that "(l)ocal evaluations following Mr. Duncan's DUI convictions indicated that further drug/alcohol treatment was not necessary." Mr. Browning stated that this was according to the psychologist, but added that he might be wrong.

Dr. Steinbergh stated that on page 7 of the Report and Recommendation, COMPASS substantiates its reason for its diagnosis.

Dr. Garg stated that he agrees with Dr. Kumar and Mr. Browning, and asked whether there is a motion on the floor.

**MR. BROWNING MOVED TO CALL FOR A NEW ASSESSMENT BY AN APPROVED TREATMENT PROVIDER OTHER THAN COMPASS.**

Mr. Dilling stated that he doesn't think that the Board has the legal authority to do that without remanding the matter. He stated that the Board is debating the evidence that is summarized in this Report and Recommendation that was presented on the record. The Findings of Fact on page 9 of the Report suggests that the Hearing Examiner felt that there was reliable, probative and substantial evidence to find an impairment of ability to practice. That led to Conclusions of Law, which led to an Order that proposed to deny the license; however, that denial is not permanent. The applicant can come back at another time and demonstrate his ability to practice. Mr. Dilling stated that he assumes from the language in the Conclusions of Law, that part of that demonstration of ability to practice would be another examination that clarified the evidence that was presented that clouded the COMPASS opinion. That is what the Order says. Mr. Dilling stated that his initial statement was, when you start getting into how many exams and so forth, he didn't think that that was the place to get into that.

Mr. Browning stated that Mr. Dilling is suggesting that, if the Board passes it, as written, Mr. Duncan

wouldn't have to do the 28 days, he could just go get a new assessment and come back.

Mr. Dilling stated that he would have to go through the hearing process again. He would have to file an application, the Board would have to look at that application, and if the Board proposes to deny the application, it would have to have some basis to deny that, (B)(26), another basis, whatever. But if he came back with an assessment saying that he's okay to practice and wants back in, then the Board will have to meet a burden of proof to say that there is some reason why he should not have a license in this state. The burden then shifts back to the Board in that regard.

Dr. Steinbergh stated that what Mr. Dilling is suggesting is that the Order should end with the denial, and that paragraph B should be deleted.

Mr. Dilling stated that the Proposed Order is to deny. The rest of it is an encouragement. Mr. Dilling suggested that the more the Board encourages, and the more specific it gets, the more the courts and others are going to interpret it as an order.

Dr. Steinbergh suggested amending the Proposed Order to delete paragraph B. She stated that Mr. Duncan would then read the record of the Board's deliberation, and he would, at some point, if he wanted, get a second assessment. If Mr. Duncan wants to reapply, he would prove to the Board by a second assessment that he is, in fact, appropriate for licensure.

Mr. Dilling stated that the way that he reads this Proposed Order is that the Hearing Examiner was saying that there is reliable, probative and substantial evidence to say that this massage therapist applicant was impaired in his ability to practice at this time, according to (B)(26). She proposed that the license application be denied, but not permanently. That means that, legally, Mr. Duncan can reapply, and when he does reapply, the Board will look at that application and makes a judgment as to whether it should propose to deny or approve the application. Mr. Dilling stated that, based upon the Board's discussion, it is saying that one of the things that is a question is the adequacy of the assessment.

Mr. Browning asked for clarification.

Mr. Dilling stated that he is suggesting that the Board delete all of paragraph B, unless the Board wants to grant a license with conditions. If the Board wants to do that, it can do it, but based on previous advice the Board has received, when the Board starts putting in all these different requirements, it ought to go the whole route, including probationary terms.

Dr. Kumar suggested amending the Order to do away with paragraph B, and to add at the end of paragraph A, "until a second assessment has been completed."

Mr. Dilling stated that once the Board does that, legally, you're saying that that will let the person get a license. Mr. Dilling stated that the Board doesn't know when Mr. Duncan is going to reapply. Circumstances may change so that the Board won't want just a second assessment. It might want more

than that. There's no need for the Board to tie its hands at this time.

**MR. BROWNING MOVED TO AMEND THE PROPOSED ORDER BY DELETING PARAGRAPH B. OF THE PROPOSED ORDER. DR. KUMAR SECONDED THE MOTION. A vote was taken:**

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

The motion carried.

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. CLOVIS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF GREGORY DAVID DUNCAN, M.T. DR. KUMAR SECONDED THE MOTION. A vote was taken:**

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

The motion carried.



# State Medical Board of Ohio

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

April 14, 2004

Gregory David Duncan, M.T.  
4567 St. Rt. 276  
Batavia, OH 45103

Dear Mr. Duncan:

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 certificate to practice massage therapy, or to reprimand you or place you on probation for one or more of the following reasons:

- (1) On or about February 24, 2003, you submitted an application for licensure as a massage therapist [Application], which Application was completed upon receipt of documentation on or about August 7, 2003. Your Application is currently pending.
- (2) By letter dated November 20, 2003, the Board notified you of its determination that it had reason to believe that you are in violation of Section 4731.22(B)(26), Ohio Revised Code, and ordered you to submit to a three-day evaluation, beginning on December 8, 2003, at Comprehensive Addiction Service Systems [COMPASS], a Board approved treatment provider, in Toledo, Ohio, in order to determine whether you are in violation of Section 4731.22(B)(26), Ohio Revised Code. The Board's determination was based upon one or more of the reasons outlined in such letter.

You reported to COMPASS, on or about December 8, 2003, for purposes of the examination ordered by the Board. Based upon the COMPASS treatment team's examination of you, you were diagnosed as having alcohol dependency. In addition, the COMPASS treatment team concluded that you have an impairment of ability to practice according to acceptable and prevailing standards of care because of habitual and excessive abuse of alcohol and recommended that you undergo treatment.

Your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute "[i]mpairment of ability to practice according to acceptable

*Mailed 4-15-04*

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 this notice.

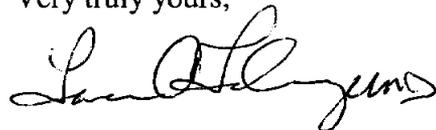
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at 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, suspend, refuse to register or reinstate your certificate to practice massage therapy 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

LAT/blt  
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5140 1750  
RETURN RECEIPT REQUESTED