STEP II
CONSENT AGREEMENT
BETWEEN
BRUCE J. MERKIN, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO

This Consent Agreement is entered into by and between Bruce J. Merkin, M.D., [Dr. Merkin], and the State Medical Board of Ohio [Board], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

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

BASIS FOR ACTION

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

A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for a violation of Section 4731.22(B)(19), Ohio Revised Code, for "inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills," and/or Section 4731.22(B)(26), Ohio Revised Code, for "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice."

B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Sections 4731.22(B)(19) and (B)(26), Ohio Revised Code, as set forth in Paragraphs E through H below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Consent Agreement.

C. Dr. Merkin is seeking reinstatement of his certificate to practice medicine and surgery, license number 35-086596, which was indefinitely suspended, but not less than one year, pursuant to the Step I Consent Agreement Between Bruce J. Merkin, M.D., and the State Medical Board of Ohio [January 2011 Step I Consent

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Agreement], effective January 12, 2011, a copy of which is attached hereto and incorporated herein.

D. Dr. Merkin states that he holds inactive licenses to practice medicine and surgery in the State of West Virginia and in the Commonwealth of Pennsylvania.

E. Dr. Merkin further admits that he entered treatment at Betty Ford because he relapsed by using dextromethorphan from over-the-counter cough medicine, and K2 ™ and Spice ™, which are synthetic cannabinoids. As a result of being under the influence of Spice, he had an auto accident, which was how his relapse was ultimately detected. Dr. Merkin further admits that he used these substances, because he knew they were not detectable without special tests on his urine drug screens. Dr. Merkin further admits that he has a long history of depressive disorder, which likely was a factor in his relapse to substance use.

Dr. Merkin admits that on or about December 29, 2010, he entered inpatient treatment at the Betty Ford Center [Betty Ford], a Board-approved treatment provider, in Rancho Mirage, California, and was discharged on or about April 27, 2011, with the diagnoses of substance dependency and recurrent depression. Dr. Merkin further admits that after treatment he moved to a sober living facility, in Palm Springs, California, where he participated in aftercare, and he continues to reside there to date.

F. Dr. Merkin states and the Board acknowledges receipt of information to support that since being discharged from Betty Ford, he has remained compliant with his Aftercare Contract with the Cleveland Clinic Foundation [Cleveland Clinic], a Board-approved treatment provider, in Cleveland, Ohio, effective December 29, 2011, and that such Aftercare Contract remains in effect to date.

G. Dr. Merkin states and the Board acknowledges that Gregory Collins, M.D., with the Cleveland Clinic, and Gregory Skipper, M.D., Professional Health Director at Promises Treatment Center, a Board-approved treatment facitily, both have provided written reports indicating that Dr. Merkin's ability to practice has been assessed and that he has been found capable of practicing medicine and surgery according to acceptable and prevailing standards of care, so long as certain treatment and monitoring requirements are in place, including that Dr. Merkin limit his work hours and submit to periodic polygraph testing to help ascertain whether he has abused any substances that would not be able to be detected by routine drug testing panels.

H. Dr. Merkin states and the Board acknowledges that Dr. Merkin has fulfilled the conditions for reinstatement of his certificate to practice medicine and surgery in the State of Ohio, as established in the above-referenced January 12, 2011 Step I Consent Agreement between Dr. Merkin and the Board.

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AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, the certificate of Dr. Merkin to practice medicine and surgery in the State of Ohio shall be REINSTATED, and Dr. Merkin knowingly and voluntarily agrees with the Board to the following PROBATIONARY terms, conditions and limitations:

1. Dr. Merkin shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.

2. Dr. Merkin shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the date his quarterly declaration would have been due pursuant to his January 2011 Step I Consent Agreement with the Board, or as otherwise requested by the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. Dr. Merkin shall appear in person for an interview before the full Board or its designated representative. The first such appearance shall take place on the date his appearance would have been scheduled pursuant to his January 2011 Step I Consent Agreement with the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

4. Dr. Merkin shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed. Further, the Secretary and Supervising Member of the Board shall have the discretion to grant a waiver of part or all of the probationary terms set forth in this Consent Agreement for occasional periods of absence of fourteen days or less. In the event that Dr. Merkin resides and/or is employed at a location that is within fifty miles of the geographic border of Ohio and any of its contiguous states, Dr. Merkin may travel between Ohio and that contiguous state without seeking prior approval of the Secretary or Supervising Member provided that Dr. Merkin is able to otherwise maintain full compliance with all other terms, conditions and limitations set forth in this Consent Agreement.

5. In the event Dr. Merkin is found by the Secretary of the Board to have failed to comply with any provision of this Consent Agreement, and is so notified of that

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deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Consent Agreement.

MONITORING OF REHABILITATION AND TREATMENT

Drug Associated Restrictions

6. Dr. Merkin shall keep a log of all controlled substances prescribed. Such log shall be submitted, in the format approved by the Board, on the date upon which Dr. Merkin's quarterly declaration is due, or as otherwise directed by the Board. Further, Dr. Merkin shall make his patient records with regard to such prescribing available for review by an agent of the Board immediately upon request.

7. Dr. Merkin shall not, without prior Board approval, administer, personally furnish, or possess (except as allowed under Paragraph 8 below) any controlled substances as defined by state or federal law. In the event that the Board agrees at a future date to modify this Consent Agreement to allow Dr. Merkin to administer or personally furnish controlled substances, Dr. Merkin shall keep a log of all controlled substances prescribed, administered or personally furnished. Such log shall be submitted in the format approved by the Board and shall be submitted to the Board no later than the date upon which Dr. Merkin's quarterly declaration is due, or as otherwise directed by the Board. Further, Dr. Merkin shall make his patient records with regard to such prescribing, administering, or personally furnishing available for review by an agent of the Board immediately upon request.

Sobriety

8. Dr. Merkin shall abstain completely from the personal use or personal possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. Merkin's history of chemical dependency. Further, in the event that Dr. Merkin is so prescribed, dispensed or administered any controlled substance, carisoprodol, or tramadol, Dr. Merkin shall notify the Board in writing within seven days, providing the Board with the identity of the prescriber; the name of the drug Dr. Merkin received; the medical purpose for which he received said drug; the date such drug was initially received; and the dosage, amount, number of refills, and directions for use. Further, within thirty days of the date said drug is so prescribed, dispensed, or administered to him, Dr. Merkin shall provide the Board with either a copy of the written prescription or other written verification from the prescriber, including the dosage, amount, number of refills, and directions for use.

   Further , Dr. Merkin shall abstain completely from the personal use or personal possession of K2, Spice, or any other similar substances of abuse.

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9. Dr. Merkin shall abstain completely from the use of alcohol.

Drug and Alcohol Screens/Drug Testing Facility and Collection Site

10. Dr. Merkin shall submit to random urine screenings for drugs and alcohol at least two times per month, or as otherwise directed by the Board. Dr. Merkin shall submit hair or nail specimens for screening for drugs and alcohol at least once every twelve weeks or as otherwise directed by the Board. Dr. Merkin 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, and shall include Dr. Merkin's drugs of choice, including Dextromethorphan and synthetic cannabis.

    Dr. Merkin shall abstain from the use of any substance and the consumption of poppy seeds or any other food or liquid that may produce a low level positive result in a toxicology screen. Dr. Merkin acknowledges that he understands that the consumption or use of such substances, including but not limited to substances such as mouthwash or hand cleaning gel, may cause a positive drug screen that may not be able to be differentiated from intentional ingestion, and therefore such consumption or use is prohibited under this Consent Agreement.

    All such urine/hair/nail screenings for drugs and alcohol shall be conducted through a Board-approved drug testing facility and collection site pursuant to the global contract between said facility and the Board, that provides for the Board to maintain ultimate control over the urine/hair/nail screening process and to preserve the confidentiality of all positive screening results in accordance with Section 4731.22(F)(5), Ohio Revised Code, and the screening process shall require a daily call-in procedure. Further, in the event that the Board exercises its discretion, as provided in Paragraph 11 below, to approve urine/hair/nail screenings to be conducted at an alternative drug testing facility and/or collection site or a supervising physician, such approval shall be expressly contingent upon the Board retaining ultimate control over the urine/hair/nail screening process in a manner that preserves the aforementioned confidentiality of all positive screening results.

    Dr. Merkin shall submit, at his expense and on the day selected, urine/hair/nail specimens for drug and/or alcohol analysis. All specimens submitted by Dr. Merkin shall be negative, except for those substances prescribed, administered, or dispensed to him in conformance with the terms, conditions and limitations set forth in this Consent Agreement. Refusal to submit such specimen, or failure to submit such specimen on the day he is selected or in such manner as the Board may request, shall constitute a violation of this Consent Agreement.

    Further, within thirty days of the effective date of this Consent Agreement, Dr. Merkin shall enter into the necessary financial and/or contractual arrangements with the Board-approved drug testing facility and/or collection site in order to facilitate the

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urine/hair/nail screening process in the manner required by this Consent Agreement. Further, Dr. Merkin shall promptly provide to the Board written documentation of completion of such arrangements, including a copy of any contract entered into between Dr. Merkin and the Board-approved drug testing facility and/or collection site. Dr. Merkin's failure to timely complete such arrangements, or failure to timely provide written documentation to the Board of completion of such arrangements, shall constitute a violation of this Consent Agreement. However, Dr. Merkin and the Board further agree that in the event Dr. Merkin previously entered into the aforementioned financial and contractual agreements pursuant to the requirements of a prior consent agreement with the Board under which Dr. Merkin is currently participating in an ongoing urine/hair/nail screening process, then this requirement shall be waived under the instant consent agreement.

Dr. Merkin shall ensure that the urine/hair/nail screening process performed through the Board-approved drug testing facility and/or collection site requires a daily call-in procedure; that the urine/hair/nail specimens are obtained on a random basis; and that the giving of the specimen is witnessed by a reliable person. In addition, Dr. Merkin and the Board-approved drug testing facility and collection site shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Dr. Merkin shall ensure that the Board-approved drug testing facility and/or collection site provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine/hair/nail screens have been conducted in compliance with this Consent Agreement, and whether all urine/hair/nail screens have been negative.

In the event that the Board-approved drug testing facility and/or collection site becomes unable or unwilling to serve as required by this Consent Agreement, Dr. Merkin must immediately notify the Board in writing, and make arrangements acceptable to the Board pursuant to Paragraph 11 below, as soon as practicable. Dr. Merkin shall further ensure that the Board-approved drug testing facility and/or collection site also notifies the Board directly of its inability to continue to serve and the reasons therefore.

Dr. Merkin acknowledges that the Board expressly reserves the right to withdraw its approval of any drug testing facility and/or collection site in the event that the Secretary and Supervising Member of the Board determine that the drug testing facility and/or collection site has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

11. Dr. Merkin and the Board agree that it is the intent of this Consent Agreement that Dr. Merkin shall submit his urine/hair/nail specimens to the Board-approved drug testing facility and collection site chosen by the Board. However, in the event that utilizing said Board-approved drug testing facility and/or collection site creates an

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extraordinary hardship upon Dr. Merkin, as determined in the sole discretion of the Board, then subject to the following requirements, the Board may approve an alternate drug testing facility and/or collection site, or a supervising physician, to facilitate the urine/hair/nail screening process for Dr. Merkin:

a. Within thirty days of the date upon which Dr. Merkin is notified of the Board's determination that utilizing the Board-approved drug testing facility and/or collection site constitutes an extraordinary hardship upon Dr. Merkin, he shall submit to the Board in writing for its prior approval the identity of either an alternate drug testing facility and collection site, or the name of a proposed supervising physician, to whom Dr. Merkin shall submit the required urine/hair/nail specimens. In approving a facility, entity, or an individual to serve in this capacity, the Board will give preference to a facility located near Dr. Merkin's residence or employment location, or to a physician who practices in the same locale as Dr. Merkin. Dr. Merkin shall ensure that the urine/hair/nail screening process performed through the alternate drug testing facility and/or collection site, or through the supervising physician, requires a daily call-in procedure; that the urine/hair/nail specimens are obtained on a random basis; and that the giving of the specimen is witnessed by a reliable person. In addition, Dr. Merkin acknowledges that the alternate drug testing facility and collection site, or the supervising physician, shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

b. Dr. Merkin shall ensure that the alternate drug testing facility and/or collection site, or the supervising physician, provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine/hair/nail screens have been conducted in compliance with this Consent Agreement, and whether all urine/hair/nail screens have been negative.

c. In the event that the designated alternate drug testing facility and/or collection site, or the supervising physician, becomes unable or unwilling to so serve, Dr. Merkin must immediately notify the Board in writing. Dr. Merkin shall further ensure that the previously designated alternate drug testing facility and collection site, or the supervising physician, also notifies the Board directly of the inability to continue to serve and the reasons therefore. Further, in order to ensure that there will be no interruption in his urine/hair/nail screening process, upon the previously approved alternate drug testing facility, collection site, or supervising physician becoming unable to serve, Dr. Merkin shall immediately commence urine/hair/nail screening at the Board-approved drug testing facility and collection site chosen by the Board, until such time, if any, that the Board approves a subsequent alternate drug testing facility, collection site, or supervising physician, if requested by Dr. Merkin.

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d. The Board expressly reserves the right to disapprove any entity or facility proposed to serve as Dr. Merkin's designated alternate drug testing facility and/or collection site, or any person proposed to serve as his supervising physician, or to withdraw approval of any entity, facility or person previously approved to so serve in the event that the Secretary and Supervising Member of the Board determine that any such entity, facility or person has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

e. In the event that the Board approved an alternate drug testing facility and/or collection site, or a supervising physician, pursuant to the January 2011 Step I Consent Agreement between Dr. Merkin and the Board, Dr. Merkin and the Board agree that the entity, facility or person previously approved by the Board to so serve pursuant to the January 2011 Step I Consent Agreement is hereby approved to continue as Dr. Merkin's designated alternate drug testing facility and collection site or as his supervising physician under this Consent Agreement.

12. All screening reports required under this Consent Agreement from the Board-approved drug testing facility and/or collection site, or from the alternate drug testing facility and/or collection site or supervising physician, must be received in the Board's offices no later than the due date for Dr. Merkin's quarterly declaration. It is Dr. Merkin's responsibility to ensure that reports are timely submitted.

13. The Board retains the right to require, and Dr. Merkin agrees to submit, blood, urine, breath, saliva, nail and/or hair specimens for screening for drugs and alcohol, for analysis of therapeutic levels of medications that may be prescribed for Dr. Merkin, or for any other purpose, at Dr. Merkin's expense upon the Board's request and without prior notice. Dr. Merkin's refusal to submit a specimen upon request of the Board shall result in a minimum of one year of actual license suspension. Further, the collection of such specimens shall be witnessed by a representative of the Board, or another person acceptable to the Secretary or Supervising Member of the Board.

Monitoring Physician and Practice Plan

14. Before engaging in any medical practice, Dr. Merkin shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Merkin's activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Merkin shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Consent Agreement.

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At the time Dr. Merkin submits his practice plan, he also shall submit to the Board in writing the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary and Supervising Member will give preference to a physician who practices in the same locale as Dr. Merkin and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Merkin and his medical practice, and shall review Dr. Merkin's patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Merkin and his medical practice, and on the review of Dr. Merkin's patient charts. Dr. Merkin shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Merkin's quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Merkin must immediately so notify the Board in writing. In addition, Dr. Merkin shall make arrangements acceptable to the Board for another monitoring physician within thirty days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Merkin shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

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

Psychiatric Treatment

15. Within thirty days of the effective date of this Consent Agreement, Dr. Merkin shall submit to the Board for its prior approval the name and qualifications of a psychiatrist of his choice. Upon approval by the Board, Dr. Merkin shall undergo and continue psychiatric treatment monthly or as otherwise directed by the Board. Dr. Merkin shall comply with his psychiatric treatment plan, including taking medications as prescribed and/or ordered for his psychiatric disorder. Dr. Merkin shall ensure that psychiatric reports are forwarded by his treating psychiatrist to the Board on a

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

In the event that the designated treating psychiatrist becomes unable or unwilling to serve in this capacity, Dr. Merkin must immediately so notify the Board in writing. In addition, Dr. Merkin shall make arrangements acceptable to the Board for another treating psychiatrist within thirty days after the previously designated treating psychiatrist becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Merkin shall ensure that the previously designated treating psychiatrist also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

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

Rehabilitation Program

16. Dr. Merkin 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. Substitution of any other specific program must receive prior Board approval.

    Dr. Merkin shall submit acceptable documentary evidence of continuing compliance with this program, including submission to the Board of meeting attendance logs, which must be received in the Board's offices no later than the due date for Dr. Merkin's quarterly declarations.

Aftercare

17. Dr. Merkin shall contact an appropriate impaired physicians committee, approved by the Board, to arrange for assistance in recovery or aftercare.

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18. Dr. Merkin shall maintain continued compliance with the terms of the aftercare contract entered into with a Board-approved treatment provider, provided that, where terms of the aftercare contract conflict with terms of this Consent Agreement, the terms of this Consent Agreement shall control.

Work Hour Limitation

19. Dr. Merkin shall limit his work hours to no more than forty hours of work per week, until otherwise approved by the Board. Dr. Merkin shall keep a log reflecting the dates, times, and facilities and/or locations at which he works. Dr. Merkin shall submit his work log for receipt in the Board's offices no later than the due date for Dr. Merkin's quarterly declaration.

    Any request by Dr. Merkin for modification of the limitation on work hours set forth in this paragraph shall be accompanied by documentation from a physician affiliated with a Board approved treatment provider, or other physician approved by the Board for this purpose, who has evaluated Dr. Merkin, indicating that such physician supports Dr. Merkin's request for modification.

Maintenance Polygraph Testing

20. Within thirty days of the effective date of this Consent Agreement, Dr. Merkin shall submit to the Board in writing the name and curriculum vitae of a polygraph technician for prior written approval by the Secretary or Supervising Member of the Board.

    Dr. Merkin shall submit, at his expense, to polygraph testing at least once every twelve weeks, or as otherwise directed by the Board. Such polygraph testing shall include inquiry that encompasses the nature of general conduct giving rise to this Consent Agreement, as described in Paragraphs E through H herein, including specific questions as provided directly to the approved polygraph technician by the Board.

    Dr. Merkin shall ensure that all polygraph testing reports are forwarded directly to the Board on a quarterly basis. Further, Dr. Merkin shall ensure that all polygraph testing reports are also forwarded directly to Dr. Merkin's Board-approved treating psychiatrist, as described in Paragraph 15 herein, on a quarterly basis.

    Refusal to submit to such polygraph testing, or failure to submit for such polygraph testing as scheduled or in such manner as the Board may request, shall constitute a violation of this Consent Agreement. Further, said refusal or failure to submit shall result in a minimum of one year of actual license suspension.

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In addition, Dr. Merkin shall immediately inform the Board of any polygraph testing results that indicate Dr. Merkin has been untruthful in a polygraph examination and/or if any polygraph examination indicates that Dr. Merkin has relapsed at any time since his immediately preceding polygraph examination. Further, Dr. Merkin shall ensure that the designated polygraph technician also provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all polygraph testing has been conducted in compliance with this Consent Agreement, whether all such polygraph testing results have demonstrated that Dr. Merkin has been truthful, and whether Dr. Merkin has relapsed since his most recent preceding polygraph examination.

In the event that the designated polygraph technician becomes unable or unwilling to serve in this capacity, Dr. Merkin must immediately so notify the Board in writing. In addition, Dr. Merkin shall make arrangements acceptable to the Board for another polygraph technician within thirty days after the previously designated polygraph technician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Merkin shall ensure that the previously designated polygraph technician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

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

Releases

21. Dr. Merkin shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Merkin's chemical dependency, psychiatric condition, or related conditions, or for purposes of complying with this Consent Agreement, whether such treatment or evaluation occurred before or after the effective date of this Consent Agreement. To the extent permitted by law, 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. Merkin further agrees to provide the Board written consent permitting any treatment provider from whom he 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 Consent Agreement.

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Required Reporting by Licensee

22. Within thirty days of the effective date of this Consent Agreement, Dr. Merkin shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services (including but not limited to third party payors) or is receiving training, and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Merkin shall promptly provide a copy of this Consent Agreement 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. In the event that Dr. Merkin provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within thirty days of the effective date of this Consent Agreement Dr. Merkin shall provide a copy of this Consent Agreement to the Ohio Department of Public Safety, Division of Emergency Medical Services. Further, Dr. Merkin shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.

23. Within thirty days of the effective date of this Consent Agreement, Dr. Merkin shall provide a copy of this Consent Agreement to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Dr. Merkin further agrees to provide a copy of this Consent Agreement at time of application to the proper licensing authority of any state in which he applies for any professional license or for reinstatement of any professional license. Further, Dr. Merkin shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent

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Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.

24. Dr. Merkin shall promptly provide a copy of this Consent Agreement to all persons and entities that provide Dr. Merkin chemical dependency and/or psychiatric treatment or monitoring, and all persons and entities that provide Dr. Merkin polygraph testing. Further, Dr. Merkin shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.

25. Dr. Merkin shall notify the Board in writing of any change of principal practice address or residence address within thirty days of such change.

Temporary Practice Limitation

26. Dr. Merkin expressly agrees that while he is subject to probation with the Board throughout the duration of this Consent Agreement, he shall not provide any expert opinion to the Board in regard to either a determination of whether an applicant or licensee is impaired in his or her ability to practice, or a determination of whether an applicant or licensee has been assessed as being capable to return to practice.

FAILURE TO COMPLY

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

If the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that Dr. Merkin has violated any term, condition or limitation of this Consent Agreement, Dr. Merkin agrees that the violation, as alleged, also constitutes clear and convincing evidence that his continued practice presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension pursuant to Section 4731.22(G), Ohio Revised Code.

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DURATION/MODIFICATION OF TERMS

The Temporary Licensure Limitation contained in Paragraph 26 above shall not be modified and shall not be terminated during the duration of Dr. Merkin's probationary period pursuant to this Consent Agreement. Dr. Merkin shall not request termination of this Consent Agreement for a minimum of five years. In addition, Dr. Merkin shall not request modification to the probationary terms, limitations, and conditions contained herein for at least one year, except that Dr. Merkin may make such request with the mutual approval and joint recommendation of the Secretary and Supervising Member. Otherwise, with the exception of the aforementioned Temporary License Limitation, the above-described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties.

In the event that the Board initiates future formal proceedings against Dr. Merkin, including but not limited to issuance of a Notice of Opportunity for Hearing, this Consent Agreement shall continue in full force and effect until such time that it is superseded by ratification by the Board of a subsequent Consent Agreement or issuance by the Board of a final Board Order.

In the event that any term, limitation, or condition contained in this Consent Agreement is determined to be invalid by a court of competent jurisdiction, Dr. Merkin and the Board agree that all other terms, limitations, and conditions contained in this Consent Agreement shall be unaffected.

ACKNOWLEDGMENTS/LIABILITY RELEASE

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

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

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

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. Dr. Merkin acknowledges that his social security number will be used if this information is so reported and agrees to provide his social security number to the Board for such purposes.

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EFFECTIVE DATE

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

Bruce J. Merkin, MD
BRUCE J. MERKIN, M.D.

June 7, 2012
DATE

J. Craig Strafford MD MPH
J. CRAIG STRAFFORD, M.D., M.P.H.
Secretary

13 June, 2012
DATE

LANCE A. TALMAGE, M.D.
Acting Supervising Member

6-13-12
DATE

Marcie Pastrick
MARCIE PASTRICK
Enforcement Attorney

June 8, 2012
DATE

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STEP I
CONSENT AGREEMENT
BETWEEN
BRUCE J. MERKIN, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO

This Consent Agreement is entered into by and between Bruce J. Merkin, M.D., [Dr. Merkin], and the State Medical Board of Ohio [Board], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

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

BASIS FOR ACTION

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

A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4731.22(B)(26), Ohio Revised Code, for "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice."

B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Section 4731.22(B)(26), Ohio Revised Code, as set forth in Paragraph F below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement.

C. Dr. Merkin is licensed to practice medicine and surgery in the State of Ohio, License number 35-086596.

D. Dr. Merkin states that he holds an inactive license to practice medicine and surgery in the Commonwealth of Pennsylvania.

E. Dr. Merkin admits that he entered into a Consent Agreement between Bruce Jeffrey Merkin, M.D., and the State Medical Board of Ohio, effective July 13, 2005, based on his history of chemical dependency. Dr. Merkin further admits that he requested release

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from the terms of the July 13, 2005 Consent Agreement; and by vote, the Board granted him release, effective July 14, 2010.

F. Dr. Merkin admits that on or about December 18, 2010, he was involved in a car accident and consequently charged with Driving Under the Influence by law enforcement officials in Trumbull County. Dr. Merkin further admits that he contacted the Board's Compliance Supervisor on or about December 22, 2010, and reported that he relapsed and that there were criminal charges pending regarding the above-mentioned car accident. Dr. Merkin further admits that he has not treated patients since on or about December 18, 2010, which is the date he resigned his position as Medical Director at a Board-approved treatment facility, and currently is receiving inpatient treatment related to his relapse at a Board-approved treatment provider.

AGREED CONDITIONS

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

SUSPENSION OF CERTIFICATE

1. The certificate of Dr. Merkin to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than one year.

Obey all Laws

2. Dr. Merkin shall obey all federal, state, and local laws.

Sobriety

3. Dr. Merkin shall abstain completely from the personal use or personal possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. Merkin's history of chemical dependency. Further, in the event that Dr. Merkin is so prescribed, dispensed or administered any controlled substance, carisoprodol, or tramadol, Dr. Merkin shall notify the Board in writing within seven days, providing the Board with the identity of the prescriber; the name of the drug Dr. Merkin received; the medical purpose for which he received said drug; the date such drug was initially received; and the dosage, amount, number of refills, and directions for use. Further, within thirty days of the date said drug is so prescribed, dispensed, or administered to him, Dr. Merkin shall provide the Board with either a copy of the written prescription or other written verification from the prescriber, including the dosage, amount, number of refills, and directions for use.

4. Dr. Merkin shall abstain completely from the use of alcohol.

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Absences from Ohio

5. Dr. Merkin shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed. Further, the Secretary and Supervising Member of the Board shall have the discretion to grant a waiver of part or all of the monitoring terms set forth in this Consent Agreement for occasional periods of absence of fourteen days or less. In the event that Dr. Merkin resides and/or is employed at a location that is within fifty miles of the geographic border of Ohio and any of its contiguous states, Dr. Merkin may travel between Ohio and that contiguous state without seeking prior approval of the Secretary or Supervising Member provided that Dr. Merkin is able to otherwise maintain full compliance with all other terms, conditions and limitations set forth in this Consent Agreement.

Releases; Quarterly Declarations and Appearances

6. Dr. Merkin shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Merkin's chemical dependency or related conditions, or for purposes of complying with this Consent Agreement, whether such treatment or evaluation occurred before or after the effective date of this Consent Agreement. To the extent permitted by law, 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. Merkin further agrees to provide the Board written consent permitting any treatment provider from whom he 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 Consent Agreement.

7. Dr. Merkin shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective, or as otherwise requested by the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

8. Dr. Merkin shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled

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

Drug & Alcohol Screens; Drug Testing Facility and Collection Site

9. Dr. Merkin shall submit to random urine screenings for drugs and alcohol at least four times per month, or as otherwise directed by the Board. Dr. Merkin 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, and shall include Dr. Merkin's drug(s) of choice.

Dr. Merkin shall abstain from the use of any substance and the consumption of poppy seeds or any other food or liquid that may produce a low level positive result in a toxicology screen. Dr. Merkin acknowledges that he understands that the consumption or use of such substances, including but not limited to substances such as mouthwash or hand cleaning gel, may cause a positive drug screen that may not be able to be differentiated from intentional ingestion, and therefore such consumption or use is prohibited under this Consent Agreement.

All such urine screenings for drugs and alcohol shall be conducted through a Board-approved drug testing facility and collection site pursuant to the global contract between said facility and the Board, that provides for the Board to maintain ultimate control over the urine screening process and to preserve the confidentiality of all positive screening results in accordance with Section 4731.22(F)(5), Ohio Revised Code, and the screening process shall require a daily call-in procedure. Further, in the event that the Board exercises its discretion, as provided in Paragraph 10 below, to approve urine screenings to be conducted at an alternative drug testing facility and/or collection site or a supervising physician, such approval shall be expressly contingent upon the Board retaining ultimate control over the urine screening process in a manner that preserves the aforementioned confidentiality of all positive screening results.

Dr. Merkin shall submit, at his expense and on the day selected, urine specimens for drug and/or alcohol analysis. All specimens submitted by Dr. Merkin shall be negative, except for those substances prescribed, administered, or dispensed to him in conformance with the terms, conditions and limitations set forth in this Consent Agreement. Refusal to submit such specimen, or failure to submit such specimen on the day he is selected or in such manner as the Board may request, shall constitute a violation of this Consent Agreement.

Further, within thirty days of the effective date of this Consent Agreement, Dr. Merkin shall enter into the necessary financial and/or contractual arrangements with the Board-approved drug testing facility and/or collection site in order to facilitate the urine screening process in the manner required by this Consent Agreement. Further, Dr. Merkin shall promptly provide to the Board written documentation of completion of

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such arrangements, including a copy of any contract entered into between Dr. Merkin and the Board-approved drug testing facility and/or collection site. Dr. Merkin's failure to timely complete such arrangements, or failure to timely provide written documentation to the Board of completion of such arrangements, shall constitute a violation of this Consent Agreement.

Dr. Merkin shall ensure that the urine screening process performed through the Board-approved drug testing facility and/or collection site requires a daily call-in procedure; 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, Dr. Merkin and the Board-approved drug testing facility and collection site shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Dr. Merkin shall ensure that the Board-approved drug testing facility and/or collection site provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, and whether all urine screens have been negative.

In the event that the Board-approved drug testing facility and/or collection site becomes unable or unwilling to serve as required by this Consent Agreement, Dr. Merkin must immediately notify the Board in writing, and make arrangements acceptable to the Board, pursuant to Paragraph 10 below, as soon as practicable. Dr. Merkin shall further ensure that the Board-approved drug testing facility and/or collection site also notifies the Board directly of its inability to continue to serve and the reasons therefore.

Dr. Merkin acknowledges that the Board expressly reserves the right to withdraw its approval of any drug testing facility and/or collection site in the event that the Secretary and Supervising Member of the Board determine that the drug testing facility and/or collection site has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

10. Dr. Merkin and the Board agree that it is the intent of this Consent Agreement that Dr. Merkin shall submit his urine specimens to the Board-approved drug testing facility and collection site chosen by the Board. However, in the event that utilizing said Board-approved drug testing facility and/or collection site creates an extraordinary hardship upon Dr. Merkin, as determined in the sole discretion of the Board, then subject to the following requirements, the Board may approve an alternate drug testing facility and/or collection site, or a supervising physician, to facilitate the urine screening process for Dr. Merkin:

    a. Within thirty days of the date upon which Dr. Merkin is notified of the Board's determination that utilizing the Board-approved drug testing facility and/or collection site constitutes an extraordinary hardship upon Dr. Merkin, he shall

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submit to the Board in writing for its prior approval the identity of either an alternate drug testing facility and collection site, or the name of a proposed supervising physician, to whom Dr. Merkin shall submit the required urine specimens. In approving a facility, entity, or an individual to serve in this capacity, the Board will give preference to a facility located near Dr. Merkin's residence or employment location, or to a physician who practices in the same locale as Dr. Merkin. Dr. Merkin shall ensure that the urine screening process performed through the alternate drug testing facility and/or collection site, or through the supervising physician, requires a daily call-in procedure; 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, Dr. Merkin acknowledges that the alternate drug testing facility and collection site, or the supervising physician, shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

b. Dr. Merkin shall ensure that the alternate drug testing facility and/or collection site, or the supervising physician, provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, and whether all urine screens have been negative.

c. In the event that the designated alternate drug testing facility and/or collection site, or the supervising physician, becomes unable or unwilling to so serve, Dr. Merkin must immediately notify the Board in writing. Dr. Merkin shall further ensure that the previously designated alternate drug testing facility and collection site, or the supervising physician, also notifies the Board directly of the inability to continue to serve and the reasons therefore. Further, in order to ensure that there will be no interruption in his urine screening process, upon the previously approved alternate drug testing facility, collection site, or supervising physician becoming unable to serve, Dr. Merkin shall immediately commence urine screening at the Board-approved drug testing facility and collection site chosen by the Board, until such time, if any, that the Board approves a subsequent alternate drug testing facility, collection site, or supervising physician, if requested by Dr. Merkin.

d. The Board expressly reserves the right to disapprove any entity or facility proposed to serve as Dr. Merkin's designated alternate drug testing facility and/or collection site, or any person proposed to serve as his supervising physician, or to withdraw approval of any entity, facility or person previously approved to so serve in the event that the Secretary and Supervising Member of the Board determine that any such entity, facility or person has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

11. All screening reports required under this Consent Agreement from the Board-approved drug testing facility and/or collection site, or from the alternate drug testing facility

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and/or collection site or supervising physician, must be received in the Board's offices no later than the due date for Dr. Merkin's quarterly declaration. It is Dr. Merkin's responsibility to ensure that reports are timely submitted.

12. The Board retains the right to require, and Dr. Merkin agrees to submit, blood, urine, breath, saliva and/or hair specimens for screening for drugs and alcohol, for analysis of therapeutic levels of medications that may be prescribed for Dr. Merkin, or for any other purpose, at Dr. Merkin's expense upon the Board's request and without prior notice. Dr. Merkin's refusal to submit a specimen upon request of the Board shall result in a minimum of one year of actual license suspension. Further, the collection of such specimens shall be witnessed by a representative of the Board, or another person acceptable to the Secretary or Supervising Member of the Board.

Rehabilitation Program

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

    Dr. Merkin shall submit acceptable documentary evidence of continuing compliance with this program, including submission to the Board of meeting attendance logs, which must be received in the Board's offices no later than the due date for Dr. Merkin's quarterly declarations.

14. Immediately upon completion of any required treatment for chemical dependency, Dr. Merkin shall enter into an aftercare contract with a Board-approved treatment provider and shall maintain continued compliance with the terms of said aftercare contract, provided that, where the terms of the aftercare contract conflict with the terms of this Consent Agreement, the terms of this Consent Agreement shall control.

CONDITIONS FOR REINSTATEMENT

15. The Board shall not consider reinstatement or restoration of Dr. Merkin's certificate to practice medicine and surgery until all of the following conditions are met:

    a. Dr. Merkin shall submit an application for reinstatement or restoration, as appropriate, accompanied by appropriate fees, if any.

    b. Dr. Merkin 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:

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i. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Merkin has successfully completed any required inpatient treatment, including at least twenty-eight days of inpatient or residential treatment for chemical abuse/dependence, as set forth in Rules 4731-16-02 and 4731-16-08, Ohio Administrative Code, completed consecutively.

ii. Evidence of continuing full compliance with, or successful completion of, a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.

iii. Evidence of continuing full compliance with this Consent Agreement.

iv. Two written reports indicating that Dr. Merkin's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by physicians knowledgeable in the area of addictionology and who are either affiliated with a current Board-approved treatment provider or otherwise have been approved in advance by the Board to provide an assessment of Dr. Merkin. However, no reports shall be made by any physician affiliated with the Board-approved treatment facility from which Dr. Merkin resigned in or about December 2010. Further, the two aforementioned physicians shall not be affiliated with the same treatment provider or medical group practice. Prior to the assessments, Dr. Merkin shall provide the evaluators with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The reports from the evaluators shall include any recommendations for treatment, monitoring, or supervision of Dr. Merkin, and any conditions, restrictions, or limitations that should be imposed on Dr. Merkin's practice. The reports shall also describe the basis for the evaluator's determinations.

All reports required pursuant to this paragraph shall be based upon examinations occurring within the three months immediately preceding any application for reinstatement. Further, at the discretion of the Secretary and Supervising Member of the Board, the Board may request an updated assessment and report if the Secretary and Supervising Member determine that such updated assessment and report is warranted for any reason.

v. In the event that the Board initiates future formal proceedings against Dr. Merkin, including but not limited to issuance of a Notice of Opportunity for Hearing, Dr. Merkin shall be ineligible for reinstatement until such

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proceedings are fully resolved by ratification by the Board of a subsequent Consent Agreement or issuance by the Board of a final Board Order.

c. Dr. Merkin shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the Board within 180 days of the date upon which all the above-specified conditions for reinstatement or restoration have been completed or, if the Board and Dr. Merkin are unable to agree on the terms of a written Consent Agreement, then Dr. Merkin further agrees to abide by any terms, conditions and limitations imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code. The Board shall provide notice to Dr. Merkin that said hearing has been scheduled, advising Dr. Merkin of his hearing rights, and stating the date, time, and location of the hearing at which the Board will present its evidence, after which the Board will make a determination of the matter by Board Order.

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

16. In the event that Dr. Merkin 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, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Merkin's fitness to resume practice.

REQUIRED REPORTING BY LICENSEE

17. Within thirty days of the effective date of this Consent Agreement, Dr. Merkin shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services (including but not limited to third party payors) or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Merkin shall promptly provide a copy of this Consent Agreement 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. In the event that Dr. Merkin provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within thirty days of the effective date of this Consent Agreement Dr. Merkin shall provide a copy of this Consent Agreement to the Ohio Department of Public Safety, Division of

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Emergency Medical Services. Further, Dr. Merkin shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.

18. Within thirty days of the effective date of this Consent Agreement, Dr. Merkin shall provide a copy of this Consent Agreement to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Dr. Merkin further agrees to provide a copy of this Consent Agreement at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Merkin shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.

19. Dr. Merkin shall promptly provide a copy of this Consent Agreement to all persons and entities that provide Dr. Merkin chemical dependency treatment or monitoring. Further, Dr. Merkin shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.

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20. Dr. Merkin shall notify the Board in writing of any change of principal practice address or residence address within thirty days of such change.

DURATION/MODIFICATION OF TERMS

The above-described terms, conditions and limitations may be amended or terminated in writing at any time upon the agreement of both parties. In the event that the Board initiates future formal proceedings against Dr. Merkin, including but not limited to issuance of a Notice of Opportunity for Hearing, this Consent Agreement shall continue in full force and effect until such time that it is superseded by ratification by the Board of a subsequent Consent Agreement or issuance by the Board of a final Board Order.

In the event that any term, limitation, or condition contained in this Consent Agreement is determined to be invalid by a court of competent jurisdiction, Dr. Merkin and the Board agree that all other terms, limitations, and conditions contained in this Consent Agreement shall be unaffected.

FAILURE TO COMPLY

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

ACKNOWLEDGMENTS/LIABILITY RELEASE

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

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

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

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. Dr. Merkin acknowledges that his social security number will be used if this information is so reported and agrees to provide his social security number to the Board for such purposes.

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EFFECTIVE DATE

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

Bruce J. Merkin, MD
BRUCE J. MERKIN, M.D.

1/7/2011
DATE

MICHAEL MCGEE
Attorney for Dr. Merkin

1/9/11
DATE

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

1-12-11
DATE

Raymond J. Albert
RAYMOND J. ALBERT
Supervising Member

1/12/11
DATE

Marcie Pastrick
MARCIE PASTRICK
Enforcement Attorney

Jan. 10, 2011
DATE

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JAN 10 2011

OHIO STATE MEDICAL BOARD
JUN 2 9 2005

CONSENT AGREEMENT BETWEEN BRUCE JEFFREY MERKIN, M.D. AND THE STATE MEDICAL BOARD OF OHIO

This Consent Agreement is entered into by and between Bruce Jeffery Merkin, M.D., and the State Medical Board of Ohio [Board], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

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

BASIS FOR ACTION

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

A. The Board is empowered by Section 4731.22, Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4731.22(B)(22), Ohio Revised Code, "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," and/or violation of "[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.

B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Sections 4731.22(B)(22) and (B)(26), Ohio Revised Code, as set forth in Paragraphs E through I below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Consent Agreement.

C. Dr. Merkin is applying for a license to practice medicine and surgery in the State of Ohio. Dr. Merkin currently holds a training certificate to practice medicine and surgery in the State of Ohio, Certificate # 57-009554.

D. Dr. Merkin states that he holds an active license to practice medicine and surgery in the State of West Virginia and an inactive license to practice medicine and surgery in the Commonwealth of Pennsylvania; however, the West Virginia license is subject to terms of probation, and the Pennsylvania license is suspended, as detailed in paragraphs F and G, below.

E. Dr. Merkin admits that in college he used marijuana, amphetamines, benzodiazepines, opioids and LSD. Dr. Merkin further admits that during his residency, he diverted liquid cocaine for IV use and also injected Nubain, Stadol and morphine. Dr. Merkin further admits that consequently in or about January 1984 he attended 28 days of inpatient treatment for chemical dependence, at Horsham Clinic in Ambler, Pennsylvania.

Dr. Merkin admits that approximately four years later he relapsed on hydrocodone, Percodan and Dilaudid, which had been prescribed for a terminally ill family member. Dr. Merkin further admits that on or about March 11, 1994, after many unsuccessful attempts at maintaining sobriety, he entered the Ridgeview Institute in Smyrna, Georgia, for inpatient treatment of chemical dependence and that he was discharged on or about June 29, 1994.

Dr. Merkin admits that in or about October 1999 he began using Ultram for relief of emotional stress and thereafter increased his consumption, ultimately taking up to 32 Ultram per day, obtaining the drug through office samples and prescriptions written for family members but which were intended for himself. Dr. Merkin further admits that in or about August 2001 he began using hydrocodone, codeine, Darvocet, and/or Percodan, which he obtained from the medicine cabinets of others, and Ritalin and Dexedrine, which he took from others, simultaneously with Ultram. Dr. Merkin further admits that after trazodone, Adipex, and Zydone that he had ordered over the Internet were delivered to and opened at his place of employment, he was confronted by his employers and admitted to having relapsed.

Dr. Merkin admits that in or about September 18, 2001, he again entered the Ridgeview Institute for inpatient treatment of chemical dependence and that he was discharged on or about November 7, 2001, with discharge diagnoses including Ultram dependence; opioid dependence; alcohol, marijuana and stimulant abuse; history of cocaine dependence; dysthymic disorder; and history of obsessive-compulsive disorder. Dr. Merkin further admits that upon discharge from the Ridgeview Institute, he entered into a Continuing Care Contract with the Ridgeview Institute.

Dr. Merkin states that he has been sober since September 19, 2001, that he attends at least three AA meetings a week, that he attends aftercare with his advocate physician once a week and that he submits to random drug screens once a week.

F. Dr. Merkin admits that he surrendered his license to practice medicine and surgery to the West Virginia Board of Medicine [West Virginia Board] in 1994 before he entered treatment for chemical dependency at the Ridgeview Institute. Dr. Merkin further admits that in or about July 1994, he entered into a Consent Order with the West Virginia Board. The Consent Order reinstated his medical license subject to certain conditions and limitations including a five-year period of probation. Dr. Merkin further admits that he completed the Consent Order's requirements.

Dr. Merkin further admits that in or about November 2001, he again surrendered his license to practice medicine and surgery to the West Virginia Board. Dr. Merkin further admits that on or about February 1, 2004, the West Virginia Board issued a Consent Order reinstating his license to practice medicine and surgery in West Virginia subject to certain accommodations, conditions, restrictions and limitations, including that he shall confine his practice of medicine to Addiction Medicine in Cleveland, Ohio, or in Florida in a credentialed program; that he shall attend AA meetings at least three times each week; that he shall refrain completely from the use of any mood altering and/or controlled substances; and that he shall submit to random drug screens. A copy of the West Virginia Board's Consent Order is attached hereto and fully incorporated herein.

G. Dr. Merkin admits that on May 15, 1985, upon consideration of his application for a license to practice medicine and surgery in Pennsylvania, the Pennsylvania State Board of Medicine [Pennsylvania Board] issued an Order granting him a license to practice medicine and surgery subject to terms and conditions, including a three-year period of probation. Dr. Merkin further admits that this Order was based upon his report to the Pennsylvania Board that in January 1984 he had rehabilitation treatment from addiction to and abuse of controlled substances at Horsham Clinic and was in recovery. A copy of the Pennsylvania Board's 1985 Order is attached hereto and fully incorporated herein.

Dr. Merkin further admits that on or about August 16, 2004, the Pennsylvania Board adopted and implemented an Order indefinitely suspending his license until such a time as Dr. Merkin can demonstrate that his license to practice in West Virginia has been restored to an unrestricted status and that he is in good standing, at which time his license in Pennsylvania may be reinstated. A copy of the Pennsylvania Board's 2004 Order is attached hereto and fully incorporated herein.

H. Dr. Merkin further admits that he was evaluated by Gregory Collins, M.D., his treating psychiatrist, at the Ohio Medical Board's request, and that Dr. Collins submitted a report to the Board on or about March 2, 2005, indicating that Dr. Merkin has been Dr. Collin's patient since August 2004; that his diagnoses are opioid dependence, in sustained full remission, and major depressive disorder, recurrent, mild, without psychotic features, in full remission; that his treatment plan includes office visits with an addiction specialist physician/psychiatrist on a regular basis and

medication maintenance; that he has been compliant with his treatment plan; that he his prognosis is excellent; and that Dr. Merkin's ability to practice medicine and surgery has been assessed and he has been found capable of practicing according to acceptable and prevailing standards of care. Further, Dr. Merkin states that he has remained compliant with his treatment plan, which currently includes psychiatric treatment and daily dosages of Zoloft, Wellbutrin XL and trazodone.

I. Dr. Merkin states and the Board acknowledges receipt of information to support that he has remained compliant with the terms of his Continuing Care Contract with Rigdeview Institute, which is effective from on or about December 31, 2001, to December 31, 2006; with the terms of his February 1, 2004 West Virginia Board Consent Order; and with the terms of his Advocacy Contract with the Ohio Physician Health Program [OPHP], which is effective from on or about August 20, 2004 to August 20, 2009.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Dr. Merkin shall be granted a certificate to practice medicine and surgery in the State of Ohio, upon receipt and appropriateness of necessary documentation, and Dr. Merkin knowingly and voluntarily agrees with the Board to the following PROBATIONARY terms, conditions and limitations:

1. Dr. Merkin shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.

2. Dr. Merkin shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. Dr. Merkin shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

4. Dr. Merkin shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer,

or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.

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

MONITORING OF REHABILITATION AND TREATMENT

Drug Associated Restrictions

6. Dr. Merkin shall keep a log of all controlled substances prescribed. Such log shall be submitted, in the format approved by the Board, thirty days prior to Dr. Merkin's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Merkin shall make his patient records with regard to such prescribing available for review by an agent of the Board upon request.

7. Dr. Merkin shall not, without prior Board approval, administer, personally furnish, or possess (except as allowed under Paragraph 8 below) any controlled substances as defined by state or federal law. In the event that the Board agrees at a future date to modify this Consent Agreement to allow Dr. Merkin to administer or personally furnish controlled substances, Dr. Merkin shall keep a log of all controlled substances prescribed, administered or personally furnished. Such log shall be submitted in the format approved by the Board thirty days prior to Dr. Merkin's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Merkin shall make his patient records with regard to such prescribing, administering, or personally furnishing available for review by an agent of the Board upon request.

Sobriety

8. Dr. Merkin shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. Merkin's history of chemical dependency.

9. Dr. Merkin shall abstain completely from the use of alcohol.

Drug and Alcohol Screens/Supervising Physician

10. Dr. Merkin shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Merkin 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.

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

Within thirty days of the effective date of this Consent Agreement, Dr. Merkin shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Merkin shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Merkin. Dr. Merkin 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. Merkin shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Merkin must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Merkin 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. Merkin's quarterly declaration. It is Dr. Merkin's responsibility to ensure that reports are timely submitted.

11. The Board retains the right to require, and Dr. Merkin agrees to submit, blood or urine specimens for analysis at Dr. Merkin's expense upon the Board's request and without prior notice. Dr. Merkin's refusal to submit a blood or urine specimen upon request of the Board shall result in a minimum of one year of actual license suspension.

Monitoring Physician

12. Before engaging in any medical practice, Dr. Merkin shall submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary and Supervising Member will give preference to a physician who practices in the same locale as Dr. Merkin and who is engaged in the same or similar practice specialty.

    The monitoring physician shall monitor Dr. Merkin and his medical practice, and shall review Dr. Merkin's patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

    Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Merkin and his medical practice, and on the review of Dr. Merkin's patient charts. Dr. Merkin shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Merkin's quarterly declaration.

    In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Merkin must immediately so notify the Board in writing. In addition, Dr. Merkin shall make arrangements acceptable to the Board for another monitoring physician within thirty days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Merkin shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

    While Dr. Merkin participates in the Addiction Medicine Fellowship at University Hospitals of Cleveland, in Cleveland, Ohio, the Board shall accept a quarterly statement from the director of the fellowship program, or alternatively, from the attending physician specifically designated by the fellowship program director as the person having responsibility to directly oversee Dr. Merkin's clinical rotations, addressing Dr. Merkin's performance (clinical and otherwise) in the fellowship program, as well as his progress and status, if timely submitted, as satisfaction of the requirements of this paragraph. Should Dr. Merkin desire to utilize this option in lieu of having a monitoring physician while he participates in this fellowship program, Dr. Merkin shall so notify the Board by providing a writing, signed by both himself and his fellowship program director, and, if applicable, by the attending physician specifically designated by the fellowship program director as the person having responsibility to directly oversee Dr. Merkin's clinical rotations, to the Board before participating in the fellowship program. Further, should Dr. Merkin cease participation in this fellowship program or should he desire to practice outside this fellowship program, or should his fellowship program director or the designated attending physician become unable or unwilling to serve, Dr. Merkin must

immediately so notify the Board in writing and within thirty days make arrangements for a monitoring physician, as discussed above.

All fellowship program director reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Merkin's quarterly declaration. It is Dr. Merkin's responsibility to ensure that reports are timely submitted.

Rehabilitation Program

13. Dr. Merkin 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. Substitution of any other specific program must receive prior Board approval.

    Dr. Merkin 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. Merkin's quarterly declarations.

Aftercare

14. Dr. Merkin shall maintain continued compliance with the terms of any aftercare contract entered into with his treatment provider, provided that, where terms of the aftercare contract conflict with terms of this Consent Agreement, the terms of this Consent Agreement shall control.

Physician Health Program

15. Dr. Merkin shall maintain continued compliance with the terms of the advocacy contract entered into with the OPHP, or, if approved in advance by the Board, another physician health program, provided that, where terms of the advocacy contract conflict with terms of this Consent Agreement, the terms of this Consent Agreement shall control.

Releases

16. Dr. Merkin shall provide continuing authorization, through appropriate written consent forms, for disclosure by his treatment providers to the Board, to treating and monitoring physicians, and to others involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations.

Required Reporting by Licensee

17. Within thirty days of the effective date of this Consent Agreement, Dr. Merkin shall provide a copy of this Consent Agreement 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. Merkin shall provide a copy of this Consent Agreement 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.

18. Within thirty days of the effective date of this Consent Agreement, Dr. Merkin shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Merkin further agrees to provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or for reinstatement of any professional license. Further, Dr. Merkin shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

19. Dr. Merkin shall provide a copy of this Consent Agreement to all persons and entities that provide Dr. Merkin chemical dependency treatment or monitoring, or mental health treatment or monitoring.

FAILURE TO COMPLY

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

If the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that Dr. Merkin has violated any term, condition or limitation of this Consent Agreement, Dr. Merkin agrees that the violation, as alleged, also constitutes clear and convincing evidence that his continued practice presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension pursuant to Section 4731.22(G), Ohio Revised Code.

DURATION/MODIFICATION OF TERMS

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

ACKNOWLEDGMENTS/LIABILITY RELEASE

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

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

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

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. Dr. Merkin acknowledges that his social security number will be used if this information is so reported and agrees to provide his social security number to the Board for such purposes.

EFFECTIVE DATE

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

B J Merkin, MD

BRUCE JEFFREY MERKIN, M.D.

June 28, 2005

DATE

Lance A Talmage MD

LANCE A. TALMAGE, M.D.
Secretary

7-13-05

DATE

RAYMOND J. ALBERT
Supervising Member

7/13/05

DATE

Marcie Pastrick

MARCIE PASTRICK
Enforcement Attorney

July 7, 2005

DATE

R. Curtis Arnold, DPM
South Charleston

Rev. Richard Bowyer
Fairmont

Ms. Doris M. Griffin
Martinsburg

M. Khalid Hasan, MD
Beckley

J. David Lynch, Jr., MD
Morgantown

State of West Virginia
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311
Telephone (304) 558-2921
Fax (304) 558-2084

Vettivelu Maheswaran, MD
Charles Town

Leonard Simmons, DPM
Fairmont

Lee Elliott Smith, MD
Princeton

John A. Wade, Jr., MD
Point Pleasant

Badshah J. Wazir, MD
South Charleston

OHIO STATE MEDICAL BOARD
MAY 3 1 2005

CERTIFICATION

I DO HEREBY CERTIFY that the following attached documents **IN RE: BRUCE JEFFREY MERKIN, M.D.**, are true and accurate copies of the original documents as maintained by the West Virginia Board of Medicine: (1) **CONSENT ORDER** dated July 21, 1994; (2) **CONSENT ORDER** dated February 3, 2004.

Ronald D. Walton, Executive Director
West Virginia Board of Medicine

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA

The foregoing instrument was acknowledged before me this 24th day of May, 2005, by Ronald D. Walton, Executive Director, West Virginia Board of Medicine.

My Commission expires June 18, 2006.

Janie S. Pote
Notary Public

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
JANIE S. POTE
RR 5, Box 304 D
Charleston, WV 25312
My Commission Expires June 18, 2006

PRESIDENT
Angelo N. Georges, MD
Wheeling

VICE PRESIDENT
Carmen R. Rexrode, MD
Moorefield

SECRETARY
Catherine Slemp, MD, MPH
Charleston

COUNSEL
Deborah Lewis Rodecker
Charleston

EXECUTIVE DIRECTOR
Ronald D. Walton
Charleston

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

IN RE:

BRUCE JEFFREY MERKIN, M.D.

CONSENT ORDER

The West Virginia Board of Medicine ("Board") and Bruce Jeffrey Merkin, M.D., ("Dr. Merkin") freely and voluntarily enter into the following order pursuant to West Virginia Code §30-314(o):

FINDINGS OF FACT

1. Dr. Merkin held an active license to practice medicine and surgery in the State of West Virginia, License No. 14492, until Dr. Merkin surrendered his license to the Board in 1994, in Georgia, and entered treatment for chemical dependency at the Ridgeview Institute in Georgia.

2. Dr. Merkin completed treatment for chemical dependency and entered into a Consent Order with the Board in July, 1994, by which Consent Order his medical license was reinstated subject to certain conditions and limitations, including a five (5) year period of probation.

3. Dr. Merkin successfully completed the Consent Order's requirements but in November, 2001, Dr. Merkin again surrendered his license to the Board and entered treatment for chemical dependency at the Ridgeview Institute, in Georgia.

4. After his discharge from Ridgeview Institute Dr. Merkin passed the SPEX (Special Purpose Examination), has supplied verification of fifty (50) hours of continuing medical education, including two (2) hours of education in end of life care, during the last two (2) year period, and Dr. Merkin has remained free of chemical dependency problems.

5. Subsequently, Dr. Merkin requested reinstatement of his medical license in order to obtain employment as an Addiction Medicine Fellow at the University Hospitals of Cleveland Department of Psychiatry beginning July, 2004.

6. In January, 2004, Dr. Merkin appeared before the Licensure Committee of the Board and satisfied the Licensure Committee through his appearance and supporting documentation that he was in good health in all respects.

7. Dr. Merkin meets the requirements for reinstatement of his medical license and it was found by the Board to be in the public interest to reinstate his medical license as of February 1, 2004, with restrictions, limitations and accommodations, so that the health and welfare of patients will not be affected.

CONSENT

Bruce Jeffrey Merkin, M.D., by affixing his signature hereon, agrees solely and exclusively for purposes of this agreement and the entry of the Order provided for and stated herein, and proceedings conducted in accordance with this Order to the following:

BJM

1. Dr. Merkin acknowledges that he is fully aware that, without his consent, no permanent legal action may be taken against him except after a hearing held in accordance with West Virginia Code §30-314(h) and §29A-5-a, *et seq.*;

2. Dr. Merkin acknowledges that he has the following rights, among others: the right to a formal hearing before the West Virginia Board of Medicine, the right to reasonable notice of said hearing, the right to be represented by counsel at his own expense, and the right to cross-examine witnesses against him;

3. Dr. Merkin waives all rights to such a hearing;

4. Dr. Merkin consents to the entry of this Order relative to his practice of medicine in the State of West Virginia; and,

5. Dr. Merkin understands that this Order is considered public information, and that matters contained herein may be reported, as required by law, to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

ORDER

WHEREFORE, on the basis of the foregoing Findings of Fact and Conclusions of Law of the Board and the foregoing consent of Dr. Merkin, the West Virginia Board of Medicine hereby **ORDERS** as follows:

1. The license to practice medicine and surgery in the State of West Virginia of Bruce Jeffrey Merkin, M.D., License No. 14492, is reinstated, effective February 1, 2004.

2. Said license is issued with the following express accommodations, conditions, restrictions and limitations:

a. Dr. Merkin shall confine his practice of medicine to Addiction Medicine, in Cleveland, Ohio or in Florida, in a credentialed program, and Dr. Merkin shall comply with all conditions, restrictions, limitations and accommodations imposed by and through such program.

b. Dr. Merkin shall attend Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) or Caduceus Meetings on a regular and consistent basis and at least three (3) times each week, and keep a log of his attendance, which log may be reviewed at the pleasure of the Board at any time.

c. Dr. Merkin shall refrain completely from the use of any mood altering and or controlled substances (alcohol, sedatives, stimulants, narcotics, etc.) except as may be prescribed to him by another duly licensed treating physician, and Dr. Merkin may not ingest poppy seeds.

d. Dr. Merkin shall submit to random and unannounced testing of his bodily fluids at any time upon demand of the Board, which testing shall be carried out in a manner directed and approved by the Board, and which testing shall be at his own expense.

e. Dr. Merkin shall meet with the Licensure Committee of the Board at its regularly scheduled meeting in November, 2004, for a full discussion of his progress, health and well being, and shall

bring his log of AA, NA and/or Caduceus meetings kept pursuant to b., above.

f. Dr. Merkin shall present a copy of this Consent Order to any prospective employer prior to his employment.

3. At the option of either Dr. Merkin or the Board, this Consent Order or a modified version thereof may be entered into again by the parties after November, 2004.

The failure of Dr. Merkin to comply with any of the terms of this Consent Order shall constitute grounds for the revocation of his license to practice medicine and surgery in West Virginia.

Entered this 3rd day of ~~January~~ February, 2004.

West Virginia Board of Medicine

Angelo N. Georges, M.D.
President

Catherine Slemp, M.D., M.P.H.
Secretary

Bruce Jeffrey Merkin, M.D.

Date: 1/24/2004

STATE OF West Virginia

COUNTY OF Cabell, to wit:

I, Lesa G Logan, a Notary Public for said county and state do hereby certify that Bruce Jeffrey Merkin, M.D., whose name is signed on the previous page, has this day acknowledged the same before me.

Given under my hand this 24th day of January, 2004.

My commission expires 2-10-2009.

Lesa G Logan
Notary Public

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
LESA G. LOGAN
VOCA OF HUNTINGTON
614 - 6TH AVENUE
HUNTINGTON, WV 25701
My Commission Expires February 10, 2009

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

IN RE:

BRUCE JEFFREY MERKIN, M.D.

CONSENT ORDER

The West Virginia Board of Medicine ("Board") and Bruce Jeffrey Merkin, M.D., ("Dr. Merkin") freely and voluntarily enter into the following Order pursuant to West Virginia Code §30-3-14(n):

FINDINGS OF FACT

1. Effective March 9, 1994, Bruce Jeffrey Merkin, M.D., surrendered his license to practice medicine and surgery in the State of West Virginia to the West Virginia Board of Medicine, License No. 14492, and was admitted to the Ridgeview Institute of Atlanta Professional Recovery Center.

2. In July, 1994, Dr. Merkin appeared before the Licensure Committee of the Board with a full report from the Ridgeview Institute of his treatment there for chemical dependency, during March and April, 1994, which report acknowledged that he had successfully completed all recommendations of the Ridgeview Institute treatment program.

3. Dr. Merkin meets the requirements for licensure under the West Virginia Medical Practice Act, though permitting him reinstatement of his license to practice medicine without certain appropriate accommodations restrictions and limitations upon his medical licensure could adversely affect the health and welfare of a patient.

CONCLUSIONS OF LAW

1. As a matter of public policy, the provisions of the West Virginia Medical Practice Act have been enacted to protect the public interest (West Virginia Code §30-3-1).

2. Probable cause exists to deny Dr. Merkin reinstatement of his license to practice medicine and surgery in this State due to the provisions of West Virginia Code §30-3-14(c)(21), "the inability to practice medicine and surgery with reasonable skill and safety due to...abuse of drugs".

3. The Board has determined that there is insufficient reason to deny Dr. Merkin reinstatement of a license to practice medicine and surgery in the State of West Virginia and that it is appropriate to reinstate Dr. Merkin's license to practice medicine and surgery in the State of West Virginia, provided certain accommodations, restrictions and limitations are placed upon Dr. Merkin's license to practice medicine and surgery in the State of West Virginia.

CONSENT

Bruce Jeffrey Merkin, M.D., by affixing his signature hereon, agrees solely and exclusively for purposes of this agreement and the entry of the Order provided for and stated herein, and proceedings conducted in accordance with this Order to the following:

1. Dr. Merkin understands that should the Board determine that he has violated any of the terms of this Consent Order, notwithstanding any provision of law to the contrary, his license to practice medicine and surgery in the State of West Virginia shall be suspended, without any hearing held in accordance with West Virginia Code §30-3-14 and 29A-5-1, et seq; and that by signing this Consent Order he specifically consents to the same; and,

2. Dr. Merkin consents to the entry of this Order relative to his practice of medicine in the State of West Virginia; and,

3. Dr. Merkin understands that this Order is considered public information, and that matters contained herein may be reported, as required by law, to the National Practitioner Data Bank.

ORDER

WHEREFORE, on the basis of the foregoing Findings of Fact and Conclusions of Law of the Board, and the foregoing consent of Dr. Merkin, the West Virginia Board of Medicine hereby ORDERS as follows:

1. Dr. Merkin, having met the requirements for a license to practice medicine and surgery in the State of West Virginia, is hereby licensed to practice medicine and surgery in the State of West Virginia, and License No. 14492 is reinstated effective July 25, 1994, at 12:01 a.m. Said License No. 14492 is reinstated subject to all of the following accommodations, limitations and restrictions:

A. License No. 14492 is SUSPENDED effective July 25, 1994, at 12:02 a.m., and such suspension shall be immediately STAYED and License No. 14492 shall for a five (5) year period be placed in a probationary status, terminating July 25, 1999.

B. During said five (5) year period, the practice of medicine and surgery in the State of West Virginia of Dr. Merkin may occur only with the supervision and monitoring of another duly licensed physician approved by the Board, and such physician shall meet regularly with Dr. Merkin and shall submit a written report every

sixty (60) days to the Board, beginning September 25, 1994, concerning the performance of Dr. Merkin as a physician, except that should the performance of Dr. Merkin at any time fall below the level of reasonable skill and safety, the approved supervising physician shall immediately notify the Board.

C. During said five (5) year period, Dr. Merkin shall submit to random and unannounced testing of bodily fluids in a manner approved by the Board, at his own expense, the results of which tests shall be promptly forwarded to the Board at the direction of Dr. Merkin's approved supervising physician.

D. During said five (5) year period, Dr. Merkin shall also submit to random and unannounced testing of his bodily fluids at any time upon demand of the Board, which testing shall be carried out in a manner directed and approved by the Board and which testing shall be at his own expense.

E. During said five (5) year period, Dr. Merkin shall refrain completely from the use of any mood altering and/or controlled substances (alcohol, sedatives, stimulants, narcotics, etc.), except as may

be prescribed to him by another duly licensed physician.

F. During said five (5) year period, Dr. Merkin shall attend meetings of Alcoholics Anonymous or Narcotics Anonymous on a regular basis, and shall attend a minimum of six (6) such meetings each week and Dr. Merkin shall keep a log of his attendance at such meetings for the five (5) years that this Consent Order is in effect, which log shall be reviewed periodically by his supervising physician and may be reviewed at the pleasure of the Board at any time.

G. During said five (5) year period, Dr. Merkin shall seek and maintain a sponsor in Alcoholics Anonymous or Narcotics Anonymous who will be permitted to review his log referenced in the preceding paragraph, and who will discuss his progress with Dr. Merkin, at least two (2) times each week, and who will consent and agree to be available to review Dr. Merkin's progress with his supervising physician, should the supervising physician request such a contact.

H. During said five (5) year period, Dr. Merkin shall obtain weekly therapy with a Board approved

psychotherapist, which Board approved psychotherapist shall submit reports to the Board every sixty (60) days, beginning September 25, 1994, each of which reports shall confirm the regular care and treatment of Dr. Merkin by such psychotherapist and shall address the ability of Dr. Merkin to practice medicine and surgery with a reasonable level of skill and safety.

I. During said five (5) year period, Dr. Merkin may not prescribe, dispense, give or administer any scheduled controlled substances and Dr. Merkin may not handle any such scheduled controlled substances in any way, shape or form.

J. During said five (5) year period, Dr. Merkin shall disclose fully his substance abuse and treatment history to any and all physicians and other medical providers who may render care and treatment to him, and Dr. Merkin shall disclose fully his substance abuse and treatment history to all physicians and other medical providers with whom he practices medicine and surgery.

K. Within five (5) days of entry of this Consent Order by the Board, a copy of this Consent Order shall be presented by Dr. Merkin to any employer or health care or medical facility in West Virginia where Dr.

Merkin is practicing medicine or intends to practice medicine. Dr. Merkin shall also provide a copy of this Consent Order to his supervising physician, his Board approved psychotherapist, and his Alcoholics Anonymous or Narcotics Anonymous sponsor, as appropriate.

Notwithstanding any provision of law to the contrary, any written report submitted to the Board by either Dr. Merkin's psychotherapist or supervising physician that he is unable to practice medicine safely, or any violation of this Consent Order, as determined by the Board, shall result in the automatic termination and dissolution of the stay of suspension imposed herein of the license to practice medicine and surgery, License No. 14492, granted to Dr. Merkin, as of the date of violation, without hearing.

Entered this 21st day of July, 1994.

WEST VIRGINIA BOARD OF MEDICINE

Jesus T. Ho, M. D.
President

William T. Wallace, Jr., M.D., M.P.H.
Secretary

Bruce Jeffrey Merkin, M.D.
Date: 20 July 1994

STATE OF WEST VIRGINIA

COUNTY OF KANAWHA, to-wit:

I, Melissa R. Buckner, a Notary Public for said county and state do hereby certify that Bruce Jeffrey Merkin, M.D., whose name is signed on the previous page has this day acknowledged the same before me.

Given under my hand this 20th day of July, 1994.

My Commission expires 11/21/2000.

Melissa R Buckner
NOTARY PUBLIC

R. Curtis Arnold, D.P.M.
South Charleston

Rev. Richard Bowyer
Fairmont

A. Paul Brooks, Jr., M.D.
Parkersburg

Ahmed D. Faheem, M.D.
Beckley

Mr. Roger Foster
Morgantown

Angelo N. Georges, M.D.
Wheeling

State of West Virginia
West Virginia Board of Medicine
101 Dee Drive
Charleston, WV 25311
Telephone (304) 558-2921
Fax (304) 558-2084

July 27, 1999

Phillip B. Mathias, M.D.
Glen Dale

Mr. Jewel F. McClanahan
Nitro

Carmen R. Rexrode, M.D.
Moorefield

Lee Elliott Smith, M.D.
Princeton

S. Kenneth Wolfe, M.D.
Huntington

Kenneth Dean Wright, P.A.-C.
Huntington

Bruce Jeffrey Merkin, M.D.
924 West 2nd Street
Huntington, West Virginia 25701

Dear Dr. Merkin:

This is to officially notify you that the probationary status placed on your West Virginia medical license for a period of five (5) years has, as of July 25, 1999, ended.

However, in accordance with the statute, the Consent Order remains a permanent part of your historical record maintained by the Board. A copy of this letter will be attached to the Consent Order and will remain a part of the Consent Order.

Thank you for your cooperation and patience throughout this process and continued best wishes for success.

Sincerely,

Ronald D. Walton

eb

PRESIDENT
Sarjit Singh, M.D.
Weirton

VICE PRESIDENT
Leonard Simmons, D.P.M.
Fairmont

SECRETARY
Henry G. Taylor, M.D., M.P.H.
Charleston

COUNSEL
Deborah Lewis Rodecker
Charleston

EXECUTIVE DIRECTO
Ronald D. Walton
Charleston

COPY

PROTHONOTARY
2004 AUG 16 PM 2:09
Department of State

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

Commonwealth of Pennsylvania,	:	
Bureau of Professional and Occupational Affairs	:	
	:	**Docket no. 0874-49-04**
v.	:	**DOS File no. 04-49-04336**
Bruce Jeffery Merkin, M.D.	:	
Respondent	:	

ADJUDICATION AND ORDER

C. Michael Weaver
Hearing Examiner

TRUE AND CORRECT COPY
CERTIFIED FROM THE RECORD
THIS 13 DAY OF June A.D. 05
Deanna S. Walton
PROTHONOTARY

Commonwealth of Pennsylvania
Governor's Office of General Counsel
Department of State
P.O. Box 2649
Harrisburg, PA 17101
(717) 772-2686

HISTORY

This matter comes before the hearing examiner for the Department of State on a motion to enter default and deem facts admitted (MDFA) filed by the Commonwealth June 24, 2004. On May 11, 2004, the Commonwealth filed an order to show cause (OSC) alleging Bruce Jeffery Merkin, M.D. (Respondent) is subject to disciplinary action for violations of the Medical Practice Act (Act)[1] and the Medical Care Availability And Reduction Act (MCARE)[2]. The OSC was served upon Respondent via certified mail, return receipt requested, and first class mail at the Respondent's address of record on file with the Board. Although the Respondent was ordered to respond to the OSC within 30 days, no response was ever received. On June 24, 2004, the Commonwealth filed a MDFA in accordance with the General Rules of Administrative Practice and Procedure at 1 Pa. Code § 35.37. Respondent did not submit an answer or otherwise respond to the MDFA.

[1] Act of December 20, 1985, P.L. 457, as amended, 63 P.S. § 422.41 (4).
[2] Act of March 20, 2002, P.L. 154, No. 13, 40 P.S. § 1303. 903 (2).

FINDINGS OF FACT

1. Respondent is the holder of license No. MD-033459-E, issued by the State Board of Medicine (Board) authorizing him to practice medicine and surgery in the Commonwealth. (Board records)

2. Respondent's license was active through December 31,1986, and may be renewed upon the filing of appropriate documentation and the payment of necessary fees. (Board Records)

3. Respondent's address of record on file with the Board is 1600 Highland Park, Barboursville, WV 25504. (Board Records)

4. The Commonwealth served the OSC filed in this matter upon Respondent at his Barboursville, WV address. (Docket no. 0874-49-04)

5. The Commonwealth filed a MDFA in this matter on June 24, 2004. (Docket no. 0874-49-04.)

6. Respondent did not file an answer to the OSC or a response to the MDFA. (MDFA/Docket no.0874-49-04.)

7. In November 2001, Respondent surrendered his license to practice medicine and surgery to the West Virginia Board of Medicine. (OSC, ¶ 6)

8. On February 3, 2004, the West Virginia Board of Medicine and the Respondent entered into a Consent Order reinstating the Respondent's license to practice

medicine and surgery in the state of West Virginia subject to certain conditions and limitations. (OSC, ¶ 7)

9. The Respondent failed to report to the Pennsylvania Board of Medicine within (60) days that an Order placing restrictions on his license was issued by the West Virginia Board. (OSC, ¶ 12)

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. (Finding of Fact no. 1)

2. Respondent has been afforded reasonable notice of the charges against him and an opportunity to be heard in this proceeding. (Findings of Fact nos. 4, 5, 6,)

3. Respondent is subject to disciplinary action under section 41(4) of the Medical Practice Act, 63 P.S. § 422.41(4), based upon disciplinary action taken against Respondent by the proper licensing authorities in West Virginia. (Finding of Fact no. 8)

4. Respondent is subject to disciplinary action under section 903 (2) of the Medical Care Availability And Reduction Act (MCARE), 40 P.S. § 1303.903 (2), for failing to report information regarding disciplinary action taken against him by the proper licensing authority in West Virginia. (Finding of Fact no. 9)

DISCUSSION

Motion to enter default.

The Commonwealth served the OSC upon Respondent May 11, 2004, via certified mail, return receipt requested to Respondent's address of record with the board. No further pleadings were filed in this case until June 24, 2004, when the Commonwealth filed a MDFA which it served upon Respondent at the address of service of the OSC. Respondent failed to submit an answer to the OSC or a response to the MDFA.

In the Notice attached to the OSC, Respondent was notified that formal disciplinary action had been instituted against him and that he may lose his certificate to practice medicine and surgery in the Commonwealth. Respondent was directed to file an answer to the allegations in the OSC, and advised that if he did not file an answer to those allegations, disciplinary action may be taken against him without a hearing. Under a section captioned "Procedures" in the OSC, Respondent was ordered to file a written answer to the OSC within 30 days, and advised that failure to do so would result in issuance of an order imposing a penalty against his certificate to practice as a medical doctor in the Commonwealth. No further pleadings were filed in this case until May 26, 2004, when the Commonwealth filed the MDFA. Respondent did not file an answer to the OSC or a response to the MDFA. Respondent is therefore in default and the facts alleged in the OSC are deemed admitted in accordance with 1 Pa. Code § 35.37, which provides in pertinent part as follows:

§ 35.37. Answers to orders to show cause.

A person upon whom an order to show cause has been served...shall, if directed so to do, respond to the same by filing within the time specified in the order an answer in writing.... A respondent failing to file an answer within the time allowed shall be deemed in default, and relevant facts stated in the order to show cause may be deemed admitted.

Accordingly, under 1 Pa. Code § 35.37, the Commonwealth's motion for default is granted and the factual allegations in the OSC are deemed admitted.

Basis for disciplinary action.

This action is brought under section 41 (4) of the Medical Practice Act, 63 P.S. § 422.41 (4), and section 903 (2) of the Medical Care Availability And Reduction Act (MCARE), 40 P.S. § 1303.903 (2) which provide as follows:

§ 422.41. Reasons for refusal, revocation, suspension or other corrective actions against a licensee or certificate holder

The board shall have authority to impose disciplinary or corrective measures on a board-regulated practitioner for any or all of the following reasons:

* * *

(4) Having a license or other authorization to practice the profession revoked or suspended or having other disciplinary action taken, or an application for a license or other authorization refused, revoked or suspended by a proper licensing authority of another state, territory, possession or country, or a branch of the Federal Government.

§ 1303.903. Reporting

A physician shall report to the State Board of Medicine or the State Board of Osteopathic Medicine, as appropriate, within 60 days of the occurrence of any of the following:

(2) Information regarding disciplinary action taken against the physician by a health care licensing authority of another state.

The Commonwealth charges in the OSC and it is deemed admitted that Respondent is subject to disciplinary action under section 41 (4) of the Medical Practice Act 63 P.S. § 422.41 (4), due to disciplinary action taken against Respondent by the West Virginia Board of Medicine, and section 903 (2) of the Medical Care Availability And Reduction Act (MCARE), 40 P.S. § 1303.903 (2), for failing to report information regarding disciplinary action taken against him by the proper licensing authority in West Virginia. In November 2001, Respondent surrendered his license to practice medicine and surgery to the West Virginia Board of Medicine. A relapse of drug addiction was the motivation behind Respondent surrendering his license. Thereafter, Respondent entered into a chemical dependency treatment center in Georgia.

After his discharge from the treatment center, Respondent passed the Special Purpose Examination (SPEX), and completed more than 50 hours of continuing education. In view of that, on February 1, 2004, the West Virginia Board issued an Order reinstating Respondent's license subject to certain conditions and restrictions. Although the restrictions were placed upon Respondent in an order reinstating his license, section 41 (4) of the Act allows the Commonwealth to take corrective or disciplinary action on a

license when a proper licensing authority in another state has taken "other disciplinary action".

Herein, within the terms of the West Virginia reinstatement Order, Respondent is subject to random screenings, required to attend meetings, and limited in both the scope and locality of his practice. Therefore, although the restrictions are part of license reinstatement, it strains logic to believe the conditions are anything other than disciplinary. For that reason, the Board is authorized to impose disciplinary or corrective action upon the Respondent for being disciplined by a proper licensing authority in another state.

Having determined that another state has disciplined Respondent, it follows that Respondent is guilty of not having reported the action to the Board. In particular, although Respondent is required to report such information to the Pennsylvania Board of Medicine within 60 days, he failed to do so. Specifically, the reinstatement Order was issued on February 3, 2004, but was never reported. Moreover, by neglecting to file an answer to the OSC or the MDFA, Respondent has offered nothing to refute the charges in the OSC. As a result, the record is vacant of any mitigating facts that could presumably validate the Respondent's lack of compliance in reporting. Therefore, Respondent has violated MCARE for failing to report the action taken against him to the Pennsylvania State Board of Medicine.

Under the Medical Practice Act, the Board is charged with the responsibility and authority to oversee the medical profession and to regulate and license professionals to protect the public health. *Barran v. State Board of Medicine* 670 A.2d 765, 767 (Pa.Cmwlth. 1996), *appeal denied* 679 A.2d 230 (Pa. 1996). Herein, the Respondent has

been subject to sanctions in the state of West Virginia. He recently entered into a consent order in which the West Virginia Board of Medicine ordered Respondent's license reinstated subject to terms and conditions set forth by the Board. Although he was required to report this to the Pennsylvania Board, he failed to do so. In order to protect the public health and safety in this Commonwealth, an order suspending Respondent's license is appropriate. Although a further civil penalty is authorized under MCARE, Respondent's license has been inactive for 18 years, for that reason, it would be short of justice to impose such a penalty. Accordingly, the following order will issue.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
STATE BOARD OF MEDICINE

Commonwealth of Pennsylvania,	:	
Bureau of Professional and	:	
Occupational Affairs	:	
	:	**Docket no. 0874-49-04**
v.	:	**File no. 04-49-04336**
	:	
Bruce Jeffery Merkin, M.D.,	:	
Respondent	:	

ORDER

NOW this 16th day of August 2004, upon consideration of the foregoing findings of fact, conclusions of law and discussion, the license to practice osteopathic medicine issued to Respondent **BRUCE JEFFERY MERKIN M.D.** license no. **MD-033459-E,** is **INDEFINATLEY SUSPENDED**, until such time as Respondent can demonstrate that his license to practice in West Virginia been restored to an unrestricted status and he is in good standing. Upon retaining unrestricted status in West Virginia, Respondent will be reinstated in Pennsylvania upon the filing of certified copies of the West Virginia reinstatement action of an unrestricted license. Until such time, Respondent is to cease practicing medicine and surgery and is to return all licensure documents, including wall certificates and wallet card, to the following address:

State Board of Medicine
Attn: Board Counsel
P.O. Box 2649
Harrisburg, PA 17105-2649

This order shall be effective 20 days from the date of mailing unless otherwise ordered by the State Board of Osteopathic Medicine.

BY ORDER:

C. Michael Weaver
Hearing Examiner

For the Commonwealth:
Michael C. Gerdes, Esquire
Office of Commonwealth of Pennsylvania
Department of State
2601 North Third Street
P.O. Box 2649
Harrisburg, PA 17105-2649

Respondent:
Bruce Jeffery Merkin, M.D.
1600 Highland Park,
Barboursville, WV 25504.

Date of Mailing: August 17, 04

NOTICE

(Medicine)

REHEARING AND/OR RECONSIDERATION BY HEARING EXAMINER

An application to the hearing examiner for rehearing or reconsideration may be filed by a party within 15 days after the mailing date of this adjudication and order. The application must be captioned "Application for Rehearing," "Application for Reconsideration," or "Application for Rehearing or Reconsideration." It must state specifically and concisely, in numbered paragraphs, the grounds relied upon in seeking rehearing or reconsideration, including any alleged error in the adjudication. If the adjudication is sought to be vacated, reversed or modified by reason of matters that have arisen since the hearing and decision, the matters relied upon by the petitioner must be set forth in the application.

APPEAL TO BOARD

An application to the State Board of Medicine for review of the hearing examiner's adjudication and order must be filed by a party within 20 days after the mailing date of this adjudication and order. The application should be captioned "Application for Review." It must state specifically and concisely, in numbered paragraphs, the grounds relied upon in seeking the Board's review of the hearing examiner's decision, including any alleged error in the adjudication. Within an application for review a party may request that the Board hear additional argument and take additional evidence.

An application to the Board to review the hearing examiner's decision may be filed irrespective of whether an application to the hearing examiner for rehearing or reconsideration is filed.

STAY OF HEARING EXAMINER'S ORDER

Neither the filing of an application for rehearing and/or reconsideration nor the filing of an application for review operates as a stay of the hearing examiner's order. To seek a stay of a hearing's examiner's order, the party must file an application for stay directed to the hearing examiner. If the hearing examiner denies the stay, an application for stay directed to the Board may then be filed.

FILING AND SERVICE

An original and three copies of all applications shall be filed with Deanna S. Walton, Prothonotary, P O Box 2649, Harrisburg, Pennsylvania 17105-2649. A copy of applications must also be served on all parties.

Applications must be received for filing by the Prothonotary within the time limits specified. The date of receipt at the office of Prothonotary, and not the date of deposit in the mail, is determinative. The filing of an application for rehearing and/or reconsideration does not extend, or in any other manner affect, the time period in which an application for review may be filed.

STATUES AND REGULATIONS

Statutes and regulations relevant to post-hearing procedures are the Medical Practice Act of 1985 at 63 P.S. §§422.1-422.45; Section 905 of the Health Care Services Malpractice Act, 40 P.S. §1301.905; and the General Rules of Administrative Practice and Procedure at 1 Pa. Code Part II, to the extent the rules are consistent with regulations promulgated by the Board or provisions of the Medical Practice Act of 1985 or the Health Care Services Malpractice Act.

Not having an attorney will not be accepted as an excuse for failing to comply with the requirements contained in these notice provisions or relevant statutes and regulations.