

# State Medical Board of Ohio

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Richard A. Whitehouse, Esq.  
Executive Director

(614) 466-3934  
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December 12, 2007

Russell L. Gaudett  
881 W. North Bend Road  
Cincinnati, OH 45224

Dear Mr. Gaudett:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Patricia A. Davidson, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on December 12, 2007, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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

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

THE STATE MEDICAL BOARD OF OHIO

*Lance A. Talmage MD*  
Lance A. Talmage, M.D. *RTJ*  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3931 8317 8837  
RETURN RECEIPT REQUESTED

*Mailed 1-04-08*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Patricia A. Davidson, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on December 12, 2007, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Russell L. Gaudett, as it appears in the Journal of the State Medical Board of Ohio.

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

(SEAL)

Lance A. Talmage MD  
Lance A. Talmage, M.D. RW  
Secretary

December 12, 2007  
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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RUSSELL L. GAUDETT

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ENTRY OF ORDER

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

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

It is hereby ORDERED that:

- A. **APPLICATION DENIED:** The application of Russell L. Gaudett for a certificate to practice massage therapy in Ohio is DENIED.
- B. **CONDITIONS PLACED UPON ANY FUTURE APPLICATION:** Mr. Gaudett shall not apply in the future for a certificate to practice massage therapy in the State of Ohio, or for any other certificate issued by the Board, until all of the following conditions are met.
  1. **Application:** Mr. Gaudett shall submit an application, accompanied by appropriate fees.
  2. **Demonstration of Ability to Practice:** Mr. Gaudett shall demonstrate to the satisfaction of the Board that he can practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:

- a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Mr. Gaudett has successfully completed any required inpatient treatment, including at least twenty-eight days of inpatient or residential treatment for chemical dependence, as set forth in Rules 4731-16-02(B)(4) and 4731-16-08(A)(13) of the Administrative Code, completed consecutively.
- b. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with Rule 4731-16-10 of the Administrative Code.
- c. Two written reports indicating that Mr. Gaudett'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 Mr. Gaudett. Prior to the assessments, Mr. Gaudett shall provide the evaluators with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this Order. The reports from the evaluators shall include any recommendations for treatment, monitoring, or supervision of Mr. Gaudett, and any conditions, restrictions, or limitations that should be imposed on Mr. Gaudett'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.

**C. PROBATIONARY CONDITIONS TO BE PLACED UPON ANY FUTURE CERTIFICATE GRANTED BY THE BOARD:** In the event that the Board should grant a future application by Mr. Gaudett for a certificate to practice massage therapy in the State of Ohio, or for any other certificate issued by the Board, that certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:

1. **Obey the Law**: Mr. Gaudett shall obey all federal, state, and local laws, and all rules governing the practice of massage therapy or other licensed practice in Ohio.
2. **Personal Appearances**: Mr. Gaudett shall appear in person for an interview before the full Board or its designated representative during the

third month following the month during which the Board approved Mr. Gaudett's application for a massage therapy certificate or other certificate. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

3. **Quarterly Declarations:** Mr. Gaudett shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month during which the Board approved Mr. Gaudett's application for a massage therapy certificate or other certificate. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
4. **Abstention from Drugs:** Mr. Gaudett shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Mr. Gaudett's history of impairment.
5. **Abstention from Alcohol:** Mr. Gaudett shall abstain completely from the use of alcohol.
6. **Comply with the Terms of Treatment and Aftercare Contract:** Mr. Gaudett shall maintain continued compliance with the terms of the treatment and aftercare contracts entered into with his treatment provider, provided that, where terms of the treatment and aftercare contract conflict with terms of this Order, the terms of this Order shall control.
7. **Drug & Alcohol Screens; Supervising Physician:** Mr. Gaudett shall submit to random urine screenings for drugs and/or alcohol on a weekly basis or as otherwise directed by the Board. Mr. Gaudett shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

Within thirty days of the date upon which a future application of Mr. Gaudett for a massage therapy certificate or other certificate is approved by the Board, or as otherwise determined by the Board, Mr. Gaudett shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Mr. Gaudett shall submit the required specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as

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

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

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

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

8. **Provision of Blood or Urine for Screening without Prior Notice:** Mr. Gaudett shall submit blood and/or urine specimens for analysis without prior notice at such times as the Board may request, at Mr. Gaudett's expense.
9. **Rehabilitation Program:** Mr. Gaudett shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A. or C.A., no less than three times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Mr. Gaudett shall submit acceptable documentary evidence of continuing compliance with this program, which must be received in the Board's offices no later than the due date for Mr. Gaudett's quarterly declarations.
10. **Releases:** Mr. Gaudett shall provide continuing authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that

provide treatment or evaluation for Mr. Gaudett's impairment and/or related conditions, or for purposes of complying with this Order, whether such treatment or evaluations occurred before or after Board approval of Mr. Gaudett's application for a massage therapy certificate or other certificate. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.

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

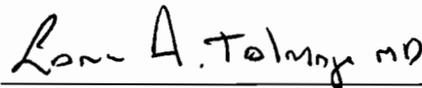
11. **Absence from Ohio:** Mr. Gaudett shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising 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.
12. **Tolling of Probationary Period while Out of Compliance:** In the event Mr. Gaudett is found by the Secretary of the Board to have failed to comply with any provision of this Order, 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 Order.
13. **Required Reporting to Employers and Hospitals:** Within thirty days of the date upon which a future application of Mr. Gaudett for a massage therapy certificate or other certificate is approved by the Board, or as otherwise determined by the Board, Mr. Gaudett shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Mr. Gaudett shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. This requirement shall continue until Mr. Gaudett receives from the Board written notification of his successful completion of probation.
14. **Required Reporting To Other State Licensing Authorities:** Within thirty days of the date upon which a future application of Mr. Gaudett for a massage therapy certificate or other certificate is approved by the Board, or

as otherwise determined by the Board, Mr. Gaudett shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Mr. Gaudett shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Mr. Gaudett shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board. This requirement shall continue until Mr. Gaudett receives from the Board written notification of his successful completion of probation.

15. **Termination Of Probation:** Upon successful completion of probation, as evidenced by a written release from the Board, Mr. Gaudett's certificate will be fully restored.

**EFFECTIVE DATE OF ORDER:** This Order shall become effective immediately upon the mailing of the notification of approval by the Board.

(SEAL)



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Lance A. Talmage, M.D. RW  
Secretary

December 12, 2007  
\_\_\_\_\_  
Date

**REPORT AND RECOMMENDATION  
IN THE MATTER OF RUSSELL L. GAUDETT**

The Matter of Russell L. Gaudett was heard by Patricia A. Davidson, Hearing Examiner for the State Medical Board of Ohio, on November 1, 2007.

**INTRODUCTION**Basis for Hearing

In a letter dated September 12, 2007, the State Medical Board of Ohio [Board] notified Russell L. Gaudett, an applicant for massage-therapy licensure, that, due to his failure to submit to a Board-ordered examination and his failure to notify the Board of circumstances beyond his control preventing him from submitting to the examination, a legal presumption had arisen pursuant to R.C. 4731.22(B)(26), which established the impairment of his "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."

The Board notified Mr. Gaudett that it intended to determine whether his failure to submit to the Board-ordered examination was (a) due to circumstances beyond his control, which would rebut the legal presumption of impairment and merit rescheduling the examination, or (b) due to circumstances within his control, which would "render the legal presumption of impairment conclusive and result in the Board further determining whether to limit, revoke, permanently revoke, suspend, refuse to register or reinstate [his] certificate to practice massage therapy, or to reprimand [him] or place [him] on probation based upon [his] legally admitted impairment."

In addition, the Board alleged that Mr. Gaudett had failed to cooperate in a Board investigation, in violation of R.C. 4731.22(B)(34).

The Board advised Mr. Gaudett of his right to "a hearing concerning whether [his] failure to submit to the examination as directed was due to circumstances beyond [his] control." The Board received his written request for hearing on October 4, 2007.

Appearances

Marc Dann, Attorney General, and Barbara Pfeiffer, Assistant Attorney General, for the State.

Russell L. Gaudett, the Respondent, represented himself.

**EVIDENCE EXAMINED**Witnesses

Lynn Zondorak  
Russell L. Gaudett

### Exhibits

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

State's Exhibit 2: Documents maintained by the Board including Mr. Gaudett's 2006 application to practice massage therapy in Ohio.

State's Exhibit 3: Affidavit of Penny Grubb, the Board's Chief of Licensure

State's Exhibit 4: Affidavit of Lynn Zondorak, a Board Enforcement Attorney, with attached documents: the Board's letter dated November 16, 2006, and certified mail receipt; a file memorandum written by Ms. Zondorak; and letter from Glenbeigh Hospital.

B. Respondent's Exhibit A: A copy of an email from the U.S. Bankruptcy Court, Southern District of Ohio, notifying the parties of the filing of a bankruptcy petition by Mr. Gaudett in 2006; and a Form 1099-G regarding unemployment compensation paid to Mr. Gaudett.

### **SUMMARY OF THE EVIDENCE**

All exhibits and transcripts of testimony were reviewed and considered by the Hearing Examiner, although all the evidence may not be referenced below.

#### **The Licensure Application**

1. On February 14, 2006, Russell L. Gaudett submitted to the Board an application for a certificate to practice massage therapy. By signing the application, Mr. Gaudett certified that all the statements he had made or would make in the application were true, and that he understood that issuance of a certificate to practice massage therapy would be considered on the truth of the statements and documents that he furnished, which, if false, could result in the denial of the requested certificate. (St. Ex. 2 at 1, 17; Tr. at 69-71)
2. In his application, Mr. Gaudett stated that he had begun his training in October 2004 at the Cincinnati School of Medical Massage and expected to graduate in April 2006. (St. Ex. 2 at 3) When asked to list all his activities for the past five years, Mr. Gaudett set forth the following:
  - From October 1999 to October 2005: employment as the office manager at Family Chiropractic Center in Cincinnati.
  - From November 2005 to February 2006: collecting unemployment while looking for work.
  - From October 2002 to February 2006: employment by the Ohio High School Athletic Association as a wrestling official.(St. Ex. 2 at 4-5)
3. Under the heading "Additional Information Questions," the instructions in the application state:

If you answer "YES" to any of the following questions, you are required to furnish complete details, including date, place, reason and disposition of the

matter. All affirmative answers must be thoroughly explained on a separate sheet of paper. Please note that some questions require very specific and detailed information. Make sure that all responses are complete.

(St. Ex. 2 at 6) (Emphasis in original)

4. Under “Additional Information Questions,” Mr. Gaudett answered “YES” to Question 11, which asked as follows:

Have you ever been convicted or found guilty of a violation of any law, regardless of the legal jurisdiction in which the act was committed, other than a minor traffic violation? If yes, submit copies of all relevant documentation, such as police reports, *certified* court records and any institutional correspondence and orders.

(St. Ex. 2 at 7) (Emphasis in original)

5. Subsequently, when asked by the Board to provide an explanation regarding his affirmative answer to this question, Mr. Gaudett wrote the following letter, which the Board received on March 23, 2006:

This letter is to serve as my explanation of the DUI [driving under the influence of alcohol and/or a drug of abuse] charge I received on 12-1-01 in Cincinnati, OH.

The irresponsible decisions and errors in judgement I made that evening to drink alcohol in excess, and without a plan for transportation had devastating results for me and my family.

I am thankful now that I can take a learning experience from this event, (and from the alcohol treatment, fines, and restrictions sentenced to me), and that it hasn't, and won't happen again.

I hope this occur[er]nce has not disqualified my opportunity to become an LMT, and help people to a healthier self.

(St. Ex. 2 at 10; Tr. at 66-71)

### **The Board's Investigation and Order to Examination**

6. The Board commenced an investigation, during which a Board investigator learned that Mr. Gaudett also had a 1999 conviction for DUI, a 2003 conviction for marijuana possession, and a domestic-violence conviction. All or most of this information was obtained from an interview with Mr. Gaudett himself. However, Mr. Gaudett had not mentioned these other convictions on his application. (Tr. at 14-18, 25-27, 68-69)

7. When asked during the hearing why he had failed to mention on his application the 1999 DUI conviction, the 2003 marijuana conviction, and the domestic-violence conviction, Mr. Gaudett testified that he had no answer to give other than that he had not done it “purposely.” In addition, he subsequently explained that he was not trying to hide anything because he knew that the Board would learn everything during a background check:

I mean, it says in there that there’s going to be an investigation done or like a background police check kind of thing done, so I knew that, you know, everything, you know, was going to come out or whatever; but, like I said, I really wasn’t intentionally trying to hide things, and I explained that when I met with the [investigator], and, you know, I told him everything and was just completely honest.

(Tr. at 71, 78)

8. A copy of the sentencing order from the Hamilton County Municipal Court in December 2001 shows that, for the 2001 DUI conviction, the court sentenced Mr. Gaudett to 180 days of incarceration with 170 days suspended, 10 days at Talbert House to complete a 10-day treatment program, two years of probation, and two years of driving suspension. Under the hearing “Conditions,” the court stated: “Alcohol tx [treatment] as req’d by P.D.” (St. Ex. 2 at 14)
9. Mr. Gaudett testified that, during the 10-day treatment at the Talbert House, it was recommended that he attend meetings of Alcoholics Anonymous and stop drinking alcohol. (Tr. at 83)
10. When asked why he had not submitted documentation regarding any of his convictions, as required in the licensure application, Mr. Gaudett stated that the information “was very hard to get.” He stated that “[o]ne of the facilities that I went to get—that I was ordered to get treatment at was actually closed,” which he said had prevented him from obtaining records. Mr. Gaudett further stated that, regarding records relating to his convictions, “It was hard for me to get down to the court and get that information.” (Tr. at 66-67)
11. Further investigation was coordinated by Lynn Zondorak, an Enforcement Attorney for the Board. On May 18, 2006, Ms. Zondorak sent a set of interrogatories to Mr. Gaudett by certified mail, with a due date to respond by June 8, 2006. Although Mr. Gaudett signed the receipt for these interrogatories, he failed to answer them. (Tr. at 12, 18-20)
12. On June 22, 2006, Ms. Zondorak wrote a follow-up letter to Mr. Gaudett, reminding him that the deadline for answering the interrogatories had passed and asking him to respond to them within 15 days. (Tr. at 20)
13. Mr. Gaudett did not respond to Ms. Zondorak’s letter and did not answer the interrogatories. (Tr. at 20)

14. On July 27, 2006, Ms. Zondorak sent a duplicate set of interrogatories to Mr. Gaudett, to give him another chance to answer them. The due date for responding to this set of interrogatories was August 9, 2006. The interrogatories were sent to the same address at which Mr. Gaudett had received and signed for the previous mailing, but these interrogatories were returned unclaimed. (Tr. at 20-22)
15. In August 2006, the Board notified Mr. Gaudett that he had passed the massage-therapy examination but that a question remained regarding a violation of R.C. 4731.22 and that the Board was still processing his application. (St. Ex. 2 at 20; Tr. at 23-24)
16. Mr. Gaudett contacted Ms. Zondorak, wanting to know the status of his application. Ms. Zondorak explained to Mr. Gaudett that he had failed to respond to the interrogatories she had sent and had failed to accept receipt of the most recent set she had mailed to him. (Tr. at 22-24)
17. As a result of that telephone conversation, Ms. Zondorak prepared a third set of the same interrogatories and mailed them to Mr. Gaudett on August 22, 2006. The due date for the responses was September 4, 2006. On September 5, 2006, she received his answers. (Tr. at 24-25)
18. In his answers to the interrogatories, Mr. Gaudett stated that, in addition to the 2001 DUI conviction, he also had a 1999 conviction for DUI, a 2003 conviction for marijuana possession, and a 2000 conviction for domestic violence. Further, Mr. Gaudett admitted to having used marijuana 50 to 75 times between 1991 and 2003. He also admitted to using cocaine two to three times in 1992 and LSD one time in 1992, during his first year of college. (Tr. at 25-27)
19. Ms. Zondorak testified that she consulted the Board's Secretary and Supervising Member, who directed that Mr. Gaudett be ordered to undergo a 72-hour inpatient examination to assess impairment. (Tr. at 25-27) On November 16, 2006, the Board sent a letter by certified mail to Mr. Gaudett, as follows:

The State Medical Board of Ohio [Board] has determined that it has reason to believe that you are in violation of Section 4731.22(B)(26), Ohio Revised Code, to wit:  
"[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice."

This determination is based upon one or more of the following reasons:

- (1) In your Application for Certificate to Practice a Limited Branch – Massage Therapy, which remains pending at this time, you answered "Yes" to Question 11, which asks whether you have ever been convicted or found guilty of a violation of any law, other than a minor traffic offense. The documentation that you submitted to the Board indicated that on December 1, 2001, you were arrested in Hamilton County, Ohio, and charged with Driving Under the Influence [DUI] in violation of Section 4511.19(A)(1), Ohio Revised Code, Operating a Vehicle with a Blood Concentration of .10 Grams of Alcohol Per 100 Milliliters of Blood, in violation of Section 4511.19(A)(2), Ohio Revised

Code, and Failure to Control, in violation of Section 4511.202, Ohio Revised Code. The police report indicates that you had a blood alcohol concentration of 0.190. On or about December 13, 2001, in Hamilton County Municipal Court, you were convicted of DUI, in violation of Section 4511.19(A)(1), Ohio Revised Code, and ordered to participate in the Talbert House ten-day driver intervention program in Cincinnati, Ohio.

- (2) In your April 11, 2006, interview with a Board investigator and in your sworn responses to [the interrogatories] received by the Board on or about September 5, 2006, you disclosed the following:
- (a) On or about August 20, 1999, in Kenton County, Kentucky, you were charged with DUI in violation of Section 189A.010, Kentucky Revised Statutes; Disregarding a Stop Sign in violation of Section 189.330,<sup>1</sup>
  - (b) Kentucky Revised Statutes; and Registration/Title to Vehicle in Another State in violation of Section 186.990, Kentucky Revised Statutes. The police report indicates that, upon taking a breathalyzer test, you had a blood alcohol concentration of 0.168. On or about August 20, 1999, in Kenton District Court, you entered a plea of guilty to and were convicted of DUI. On or about December 1, 1999, you were arrested and charged with Contempt of Court for nonpayment of a fine related to the aforementioned charges. On or about November 2, 2000, you completed a court-ordered twenty-hour assessment program with Commonwealth Substance Abuse in Florence, Kentucky.
  - (c) On or about November 26, 2003, in Springfield Township, Hamilton County, Ohio, you were issued a citation for Possession of Marijuana, in violation of Section 2925.11, Ohio Revised Code, and you were required to pay a fine.
  - (d) You have used marijuana, cocaine, and LSD. You indicated that you used marijuana 50 to 75 times from in or around the fall of 1991 through in or around December 2003, and that your use of cocaine and LSD occurred while in college.

By the authority vested in the State Medical Board of Ohio by Section 4731.22(B)(26), Ohio Revised Code, you are ordered to submit to an examination. This examination will take place at **Glenbeigh Hospital, 2863 St. Rt. 45, Rock Creek, Ohio 44084, telephone number (440) 563-3400**. You are to report to the **Glenbeigh Admissions Office, on Monday, December 4, 2006, at 10:00 a.m.** for a 72-hour in-patient evaluation. For driving directions or questions regarding admission procedures, please contact Cathy Chambers, the Intake Coordinator for Glenbeigh, at the above-listed telephone number.

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<sup>1</sup> At this point, the text of the letter includes a clerical error in formatting. The sentence is clearly intended to continue from "Section 189.330" to "Kentucky Revised Statutes" without interruption, but a new paragraph begins after "Section 189.330." The Hearing Examiner has treated paragraphs (a) and (b) as constituting a single paragraph.

Pursuant to Section 4731.22(B)(26), Ohio Revised Code, you are responsible for the expense of this evaluation. The total estimated cost of this evaluation is \$1,800.00. You must present a certified check or money order in the amount of \$1,800.00 made payable to **Glenbeigh Hospital** to the examiner prior to the beginning of the examination. Failure to present a certified check or money order in the amount specified to the examiner will result in the examination being cancelled, and will be deemed by the Board to be a failure to submit to the examination as directed due to circumstances within your control.

Please be advised that failure to submit to this examination as directed constitutes an admission of the allegations against you unless the failure is due to circumstances beyond your control, and that a default and final order may thereupon be entered without the taking of testimony or presentation of evidence.

Copies of the applicable statute sections are enclosed for your information.

(St. Ex. 4) (Emphasis in original)

20. Mr. Gaudett received the letter and signed for it on November 17, 2006. (St. Ex. 4; Tr. at 29)
21. On November 30, 2006, Mr. Gaudett contacted Ms. Zondorak, who memorialized the telephone conversation in the following written memorandum:

November 30, 2006

On this date, around 10:30 a.m., I had a telephone conversation with Russell Louis Gaudett, who called in regard to the letter that he received ordering him to a 72 hour evaluation. Mr. Gaudett indicated that he cannot afford the evaluation, and will not have \$1,800.00 for a long time, he doesn't know where Rock Creek, Ohio, is, and he cannot take 3 days off work. He asked if there is something else that he can do, such as have the evaluation at a VA hospital, as he is a veteran. I told him that he is required to attend the evaluation at the location specified in the letter. He remarked that the evaluation was short notice, and I told him that I tried to call him to tell him about the evaluation ahead of time, but that both telephone numbers, one [of] which he had recently given me, were out of service. He stated that he got a new telephone number. He asked whether he could write the S/SM [Secretary and Supervising Member of the Board] a letter, and I told him that he is free to write a letter to the S/SM, and that it will go in his file. I explained the process that will occur if he does not attend the three-day evaluation (hearing to explain good cause, and default action deeming him impaired if good cause is not found. [ ]) I further explained that my understanding is that inability to pay for the evaluation is not good cause. Mr. Gaudett stated that the process has been very long, and I told him that I had tried to send him documents multiple times before he finally accepted receipt of them. I again told him that his two options are to (1) go to the examination as scheduled, or (2) wait

for the hearing and go before the hearing examiner. He said that [he] is telling me right now and wants to send a letter to the S/SM telling them, that he will not be able to attend because he cannot take three days off work and cannot afford \$1,800.00.

(St. Ex. 4; Tr. at 27-29)

22. At the subsequent hearing, Ms. Zondorak testified regarding the conversation, essentially reiterating the content of her written notes. In addition, she testified that she was not aware of any veterans' hospitals that are Board-approved treatment facilities for impairment. (Tr. at 29-32)
  23. Mr. Gaudett did not appear at Glenbeigh for his examination as scheduled. (Tr. at 31; St. Ex. 4)
  24. Kathryn Chambers, the Intake Coordinator at Glenbeigh, notified Ms. Zondorak by telephone, and later by letter, that Mr. Gaudett had not kept his scheduled appointment. In her letter, Ms. Chambers mentioned that Mr. Gaudett had not contacted Glenbeigh to reschedule his appointment. (St. Ex. 4) Ms. Zondorak explained at the hearing that Mr. Gaudett could not have rescheduled his appointment by contacting Glenbeigh directly but that he could have asked the Board to reschedule his examination. (Tr. at 35, 38)
  25. Mr. Gaudett then asserted as follows:

\* \* \* I wasn't told that. I called you [Ms. Zondorak] multiple times before December 4th telling you that I couldn't come up with \$1,800, and with 10 to 12 days' notice that I was given for this, take three days off work, have provisions for my children and transportation for this, and I asked you, "What can I do? Can I reschedule this exam?" \* \* \*
- (Tr. at 38)
26. Ms. Zondorak disputed Mr. Gaudett's statements, testifying that Mr. Gaudett had not asked her to reschedule his evaluation. She testified that Mr. Gaudett had told her that, regardless of when the examination was scheduled, he could not afford it and could not take time off work. (Tr. at 39)
  27. Mr. Gaudett responded that, as of December 4, he may not have been able to afford the examination, but he would have found a way to come up with the money. "Had I known I could have rescheduled, I would have absolutely done that, and I can't believe that you didn't understand that from me." He asserted that he had asked Ms. Zondorak "the first time if I could have rescheduled, [and] she just flat out said no." He also stated: "I can't believe that I wouldn't have asked her if I could reschedule it. I mean I'm sure that I did." In addition, Mr. Gaudett asserted that he had tried to telephone Ms. Zondorak, "you know, just every single day, a couple times a day, before I actually spoke with her." (Tr. at 39, 52-53, 78-79)

28. Ms. Zondorak pointed out that her written notation of her conversation with Mr. Gaudett does not include any indication that he had requested an additional period of time to gather the necessary funds, and she testified that, if he had asked her to reschedule his examination, she would have made a note of that. (Tr. at 41)

Ms. Zondorak further testified that she has at times rescheduled examinations when asked to do so. She explained that the procedure is for her to bring the request to the attention of the Secretary and Supervising Member, who have the discretion to grant the request. Ms. Zondorak testified that she was very clear in her recollection that at no time did Mr. Gaudett ask her to reschedule his examination for a later date. (Tr. at 41-42)

### **Additional Testimony by Mr. Gaudett**

29. Mr. Gaudett testified that he is married, has one biological son and two stepsons, and that he and his wife are both employed full-time. (Tr. at 63-64, 74)
30. Mr. Gaudett stated that he is currently employed as the office manager at Priority Health Chiropractic in Cincinnati, Ohio, doing tasks including billing, collections, insurance verification, scheduling, and “administer physical therapy modalities.” With regard to physical therapy modalities, he explained: “We have like ultrasound, electrical muscle stimulation, traction beds, stuff like that. I hook the patients up to that stuff.” When asked if he had “hands on” contact with patients, he answered: “Not doing massage work, no. I mean, when you’re placing the thing and doing ultrasound, I mean, I’m using my hands, yes.” (Tr. at 56-57)

Mr. Gaudett stated that he had previously worked at Priority Health Chiropractic from October 1999 through November 2005, including when the center was called Family Chiropractic Center. He explained that, in 2005, a chiropractor at the center had moved to California to open a practice, and he had gone to California to help her open the office and was paid \$650 per week. However, he said that there were not enough patients to cover his salary, and he was not willing to work for less, and, accordingly, his employment in California ended, after which he returned to Ohio and was unemployed. (Tr. at 58-59)

31. Mr. Gaudett testified that, after he became unemployed in November 2005, he collected unemployment through about April 2006. He presented a 1099-G form used by the Internal Revenue Service, which showed he received payments from the Ohio Department of Jobs & Family Services in the amount of \$7,220 in 2006. (Resp. Ex. A at 1; Tr. at 49-50, 60)
32. Mr. Gaudett testified that, beginning in May 2006, he had three or four jobs in a few months through a temporary agency in Ohio. He stated that he also worked for four to five months as a customer-service specialist at Avon. In addition, during this time, he continued to work as a wrestling official. (Tr. at 59-60)
33. Mr. Gaudett testified that he attended massage-therapy school from April 2004 through June 2006. He stated that the cost was six to seven thousand dollars, not including books and the

cost of the Board examination. He stated that more than \$4,000 of his tuition was paid by the G.I. Bill. (Tr. at 57-58)

34. Mr. Gaudett stated that, in September 2006, he filed a Chapter 7 Voluntary Bankruptcy Petition, and he provided an uncertified copy of an email confirmation of that filing from the Bankruptcy Court. (Resp. Ex. A at 2; Tr. at 49-50)
35. When asked why he had presented the 1099-G form but had not presented a W-2 form showing his total income for 2006, Mr. Gaudett said that he had chosen to bring the 1099-G and the bankruptcy form to show the “financial difficulty that I was going through at the time, at the time leading up to this evaluation which cost \$1,800, and I just didn’t have that extra money hanging around with 10 days notice to come up with it.” With respect to the bankruptcy filing, Mr. Gaudett explained that he had run up substantial debt on credit cards. He stated that he had bought a set of dining-room furniture, a set of family-room furniture, and a set of bedroom furniture, as well as paying for entertainment expenses. He stated that the bankruptcy was discharged and “taken care of,” in that he does not have to pay any of his credit cards. (Tr. at 61-62, 71-73)
36. Mr. Gaudett testified that, on November 17, 2006, he received the Board’s letter ordering him to the examination on December 4, 2006, which had given him “less than two weeks notice to come up with \$1,800, transportation up there, to make provisions for my children, and to notify work that I needed to take three days off to attend this evaluation,” which he felt was not fair. (Tr. at 52)
37. With respect to his alleged difficulties in getting off work for three days to attend the examination, Mr. Gaudett conceded that he had not actually asked his employer for time off because he knew he would not be going to the examination: “I knew I didn’t have the \$1,800 at that time, so I don’t believe I requested the time off work because I don’t believe I was going to attend it.” (Tr. at 73)
38. Regarding the difficulties of making provisions for his children for three days, Mr. Gaudett testified that, at that time, he drove his son to school every morning and would have had to make arrangements for getting his son to school. (Tr. at 75-76)
39. As for the alleged difficulty with transportation to Glenbeigh, Mr. Gaudett testified that the problem was “just the distance of getting up to Rock Creek, Ohio, wherever that is.” (Tr. at 78)
40. Mr. Gaudett stated that he had asked his parents to help him pay for the examination at Glenbeigh, but they declined. He testified: “I mean, I had borrowed money from them in the past and they had helped me out, so they were pretty much at their limit with giving me money at that time.” He also testified that he had tried to get a loan, and that he and his wife were in the process of renegotiating or reapplying for a new mortgage loan, and he was trying to do something with “putting equity in or getting money out that way as well.” However, Mr. Gaudett acknowledged that he had no documentation of these alleged efforts. (Tr. at 79-81)

41. When asked whether he consumes alcohol, Mr. Gaudett responded: “No, I don’t. Once a month, basically.” He stated that he has not used marijuana since December 2003. (Tr. at 76)
42. Mr. Gaudett urged the Board to understand that, when he had spoken with the Board’s investigator and completed his interrogatories, he had been completely honest, even admitting that he had tried LSD once and had tried cocaine. He emphasized that he had been fully honest and hidden nothing. He stated that he had spent “his last dime” graduating from massage-therapy school and that obtaining his license is “extremely important” to him. He stated, “It is my future.” Mr. Gaudett acknowledged that he did not dispute the evidence set forth by the Board in its letter of November 16, 2006, but that it was very short notice to get to Rock Creek and pay \$1,800. He asked for the chance to show that he does not use drugs and can “be a licensed massage therapist without any restrictions or impairments.” Mr. Gaudett stated that he is now capable of paying for the examination. (Tr. at 53-54, 78)

### **FINDINGS OF FACT**

1. On February 14, 2006, Russell L. Gaudett caused to be submitted to the Board an Application for Certificate to Practice a Limited Branch – Massage Therapy, which remains pending.
2. On November 16, 2006, the Board sent a letter by certified mail to Mr. Gaudett, stating as follows, in pertinent part:

The State Medical Board of Ohio [Board] has determined that it has reason to believe that you are in violation of Section 4731.22(B)(26), Ohio Revised Code, to wit: “[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice.”

This determination is based upon one or more of the following reasons:

- (1) In your Application for Certificate to Practice a Limited Branch – Massage Therapy, which remains pending at this time, you answered “Yes” to Question 11, which asks whether you have ever been convicted or found guilty of a violation of any law, other than a minor traffic offense. The documentation that you submitted to the Board indicated that on December 1, 2001, you were arrested in Hamilton County, Ohio, and charged with Driving Under the Influence [DUI] in violation of Section 4511.19(A)(1), Ohio Revised Code, Operating a Vehicle with a Blood Concentration of .10 Grams of Alcohol Per 100 Milliliters of Blood, in violation of Section 4511.19(A)(2), Ohio Revised Code, and Failure to Control, in violation of Section 4511.202, Ohio Revised Code. The police report indicates that you had a blood alcohol concentration of 0.190. On or about December 13, 2001, in Hamilton County Municipal Court, you were convicted of DUI, in violation of Section 4511.19(A)(1), Ohio Revised Code, and ordered to participate in the Talbert House ten-day driver intervention program in Cincinnati, Ohio.

- (2) In your April 11, 2006, interview with a Board investigator and in your sworn responses to [the Board's] First Set of Interrogatories Directed to Russell Louis Gaudett, received by the Board on or about September 5, 2006, you disclosed the following:
- (a) On or about August 20, 1999, in Kenton County, Kentucky, you were charged with DUI in violation of Section 189A.010, Kentucky Revised Statutes; Disregarding a Stop Sign in violation of Section 189.330,
  - (b) Kentucky Revised Statutes; and Registration/Title to Vehicle in Another State in violation of Section 186.990, Kentucky Revised Statutes. The police report indicates that, upon taking a breathalyzer test, you had a blood alcohol concentration of 0.168. On or about August 20, 1999, in Kenton District Court, you entered a plea of guilty to and were convicted of DUI. On or about December 1, 1999, you were arrested and charged with Contempt of Court for nonpayment of a fine related to the aforementioned charges. On or about November 2, 2000, you completed a court-ordered twenty-hour assessment program with Commonwealth Substance Abuse in Florence, Kentucky.
  - (c) On or about November 26, 2003, in Springfield Township, Hamilton County, Ohio, you were issued a citation for Possession of Marijuana, in violation of Section 2925.11, Ohio Revised Code, and you were required to pay a fine.
  - (d) You have used marijuana, cocaine, and LSD. You indicated that you used marijuana 50 to 75 times from in or around the fall of 1991 through in or around December 2003, and that your use of cocaine and LSD occurred while in college.

By the authority vested in the State Medical Board of Ohio by Section 4731.22(B)(26), Ohio Revised Code, you are ordered to submit to an examination. This examination will take place at **Glenbeigh Hospital, 2863 St. Rt. 45, Rock Creek, Ohio 44084, telephone number (440) 563-3400**. You are to report to the **Glenbeigh Admissions Office, on Monday, December 4, 2006, at 10:00 a.m.** for a 72-hour in-patient evaluation. For driving directions or questions regarding admission procedures, please contact Cathy Chambers, the Intake Coordinator for Glenbeigh, at the above-listed telephone number. (Emphasis in original)

Pursuant to Section 4731.22(B)(26), Ohio Revised Code, you are responsible for the expense of this evaluation. The total estimated cost of this evaluation is \$1,800.00. You must present a certified check or money order in the amount of \$1,800.00 made payable to **Glenbeigh Hospital** to the examiner prior to the beginning of the examination. Failure to present a certified check or money order in the amount specified to the examiner will result in the examination being cancelled, and will be

deemed by the Board to be a failure to submit to the examination as directed due to circumstances within your control. (Emphasis in original)

Please be advised that failure to submit to this examination as directed constitutes an admission of the allegations against you unless the failure is due to circumstances beyond your control, and that a default and final order may thereupon be entered without the taking of testimony or presentation of evidence.

3. Mr. Gaudett received the letter on November 17, 2006.
4. Mr. Gaudett did not make a good-faith effort to comply with the Board's examination order.
5. Mr. Gaudett contacted the Board about the examination order, but he did not request a rescheduling of his appointment at Glenbeigh Hospital in order to make arrangements to attend the examination, such as obtaining the necessary funds.<sup>2</sup>
6. Mr. Gaudett did not appear for the Board-ordered examination at Glenbeigh Hospital as scheduled.

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<sup>2</sup> In making these findings of fact, the Hearing Examiner finds the testimony of Ms. Zondorak to be credible and the testimony of Mr. Gaudett not credible. The Hearing Examiner believes that, during the telephone conversation on November 30, 2006, and in his other contacts with Ms. Zondorak, Mr. Gaudett did not indicate a willingness to comply with the Board's order and submit to an impairment examination by a Board-approved provider. He did not indicate that he would take steps to pay the examination expense if he could have an additional period of time to do so. On the contrary, the Hearing Examiner believes that Mr. Gaudett was uncooperative and attempted to throw roadblocks into the way of his attendance at a Board-ordered examination at Glenbeigh Hospital.

The Hearing Examiner is convinced that, if Mr. Gaudett had expressed a willingness to comply with the Board's order and had expressed a good-faith desire for an additional period of time to make the necessary arrangements, Ms. Zondorak would have recorded that request and taken the steps within her power to obtain a rescheduling of his appointment.

The Hearing Examiner was particularly struck by Mr. Gaudett's assertion of certain barriers to his attendance, such as not knowing where Rock Creek is, when it is clear that he could easily have determined its location and obtained directions. Also, Mr. Gaudett was adamant that he could not get time off from work, but he later admitted that he had not asked his employer about time off.

With respect to Mr. Gaudett's assertions regarding his inability to pay for the examination, the Hearing Examiner recognizes that Mr. Gaudett presented evidence that he did not have \$1,800 at the time he received the Board's November 2006 letter. However, the Hearing Examiner believes that the crucial point is that Mr. Gaudett could have indicated his willingness to submit to the examination and could have requested a period of time to make arrangements, but he did not do so. Given that Mr. Gaudett was an applicant seeking a certificate, there would have been no risk to the public resulting from a delay in his examination, and there is no reason to believe that a postponement would have been denied.

## CONCLUSIONS OF LAW

1. R.C. 4731.22(B) provides, in pertinent part:

The board \* \* \* shall \* \* \* limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:

\* \* \*

(26) 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.

**\* \* \* By filing an application for or holding a certificate to practice under this chapter, an individual shall be deemed to have given consent to submit to a mental or physical examination when ordered to do so by the board in writing, and to have waived all objections to the admissibility of testimony or examination reports that constitute privileged communications.**

If it has reason to believe that any individual authorized to practice by this chapter or any applicant for certification to practice suffers such impairment, **the board may compel the individual to submit to a mental or physical examination, or both. The expense of the examination is the responsibility of the individual compelled to be examined.** Any mental or physical examination required under this division shall be undertaken by a treatment provider or physician who is qualified to conduct the examination and who is chosen by the board.

**Failure to submit to a mental or physical examination ordered by the board constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence.** If the board determines that the individual's ability to practice is impaired, the board shall suspend the individual's certificate or deny the individual's application and shall require the individual, as a condition for initial, continued, reinstated, or renewed certification to practice, to submit to treatment.

(Emphasis added)

2. Rule 4731-16-01(A) of the Ohio Administrative Code defines the term "impairment" as used in Revised Code 4731:

(A) "Impairment" means 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. Impairment includes inability to practice in accordance with such

standards, and inability to practice in accordance with such standards without appropriate treatment, monitoring or supervision.

Further, Rule 4731-16-02 provides in part:

(A) Should the board have reason to believe that any licensee or applicant suffers from impairment, as that term is used in \* \* \* division (B)(26) of section 4731.22 of the Revised Code, \* \* \* it may compel the individual to submit to a mental or physical examination, or both. Such examinations shall be undertaken by an approved treatment provider designated by the board. The notice issued ordering the individual to submit to examination shall delineate acts, conduct or behavior committed or displayed which establish reason to believe that the individual is impaired. Failure to submit to examination ordered by the board constitutes an admission of impairment unless the failure is due to circumstances beyond the individual's control.

(B) \* \* \* [T]he following general pattern of action shall be followed:

(1) Upon identification by the board of reason to believe that a licensee or applicant is impaired it may compel an examination or examinations as set forth in paragraph (A) of this rule. The examination must include monitoring in an inpatient setting for at least seventy-two hours, and must meet all other requirements of rule 4731-16-05 of the Administrative Code.

(2) If the examination or examinations fail to disclose impairment, no action shall be initiated pursuant to \* \* \* division (B)(26) of section 4731.22 of the Revised Code \* \* \* unless other investigation produces reliable, substantial, and probative evidence demonstrating impairment.

(3) If the examination or examinations disclose impairment, or if the board has other reliable, substantial and probative evidence demonstrating impairment, the board shall initiate proceedings to suspend the license or deny the applicant. \* \* \*

The presence of one or more of the following circumstances shall constitute independent proof of impairment and shall support license suspension or denial without the need for an examination:

- (a) The individual has relapsed during or following treatment;
- (b) The individual has applied for or requested treatment in lieu of conviction of a criminal charge or intervention in lieu of conviction of a criminal charge, or has applied for or requested entry into a similar diversion or drug intervention program;
- (c) The individual has pled guilty to or has had a judicial finding of guilt of a criminal offense that involved the individual's personal use or abuse of any controlled substance.

3. The Board lawfully ordered Russell L. Gaudett to a 72-hour inpatient examination to assess impairment as defined in R.C. 4731.22(B)(26). Based on the facts set forth in the Board's letter dated November 16, 2006, the Board had reason to believe that Mr. Gaudett suffers from an impairment as defined in R.C. 4731.22(B)(26), thus authorizing the Board to order Mr. Gaudett to a 72-hour inpatient examination.
4. Mr. Gaudett did not attend the examination due to circumstances within his control.
5. Mr. Gaudett's failure to submit to the Board-ordered examination constitutes an admission of the allegations made against him in the Board's letter of November 16, 2006. Accordingly, a final order may be entered on the issue of impairment under R.C. 4731.22(B)(26).
6. Based on Findings of Fact 1 through 6 and the foregoing Conclusions of Law, Mr. Gaudett's acts, conduct, and/or omissions, individually and/or collectively, demonstrate the "[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 language is used in R.C. 4731.22(B)(26)
7. The Board's September 12, 2007, notice of opportunity for hearing did not give adequate notice regarding the alleged violation of R.C. 4731.22(B)(34) because it did not set forth the proposed penalties for this alleged violation and it did not make clear that a hearing could be requested regarding this alleged violation. Accordingly, the record is not sufficient to conclude that Mr. Gaudett's conduct constitutes "[f]ailure to cooperate in an investigation conducted by the board under division (F) of this section," as that language is used in R.C. 4731.22(B)(34).

### **PROPOSED ORDER**

It is hereby ORDERED that:

- A. **APPLICATION DENIED:** The application of **Russell L. Gaudett** for a certificate to practice massage therapy in Ohio is DENIED.
- B. **CONDITIONS PLACED UPON ANY FUTURE CERTIFICATE GRANTED BY THE BOARD:** In the event that the Board should grant a future application by Mr. Gaudett for a massage-therapy certificate or other certificate, that certificate shall, for the violations found in this matter, be subject to the following conditions:
  1. **Suspension Of Certificate:** The certificate of Mr. Gaudett to practice massage therapy<sup>3</sup> in the State of Ohio shall be SUSPENDED for an indefinite period of time.

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<sup>3</sup> For the sake of clarity, "massage therapy" is used throughout the remainder of this order, although the conditions of this order would apply equally to any type of future certificate that the Board might grant to Mr. Gaudett.

2. **Interim Monitoring**: During the period that Mr. Gaudett's certificate to practice massage therapy in Ohio is suspended, Mr. Gaudett shall comply with the following terms, conditions, and limitations:
  - a. ***Obey the Law***: Mr. Gaudett shall obey all federal, state, and local laws, and all rules governing the practice of massage therapy in Ohio.
  - b. ***Personal Appearances***: Mr. Gaudett shall appear in person for an interview before the full Board or its designated representative during the third month following the month during which the Board approved Mr. Gaudett's application for a massage-therapy certificate or other certificate. 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.
  - c. ***Quarterly Declarations***: Mr. Gaudett shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month during which the Board approved Mr. Gaudett's application for a massage- therapy certificate or other certificate. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
  - d. ***Abstention from Drugs***: Mr. Gaudett shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Mr. Gaudett's history of impairment.
  - e. ***Abstention from Alcohol***: Mr. Gaudett shall abstain completely from the use of alcohol.
  - f. ***Initiate Drug/Alcohol Treatment***: Within thirty days of the date upon which a future application of Mr. Gaudett for a massage-therapy certificate or other certificate is approved by the Board, or as otherwise determined by the Board, Mr. Gaudett shall submit to appropriate drug/alcohol treatment, as determined by an informed assessment of his current needs. Such assessment and treatment shall be provided by a treatment provider approved under Section 4731.25 of the Revised Code for treatment of drug and alcohol dependency.

Prior to the initial assessment, Mr. Gaudett shall furnish the approved treatment provider copies of the Board's Summary of the Evidence, Findings of Fact, and Conclusions of Law, and any other documentation from the hearing record

which the Board may deem appropriate or helpful to the treatment provider. Within ten days after the completion of the initial assessment, or as otherwise determined by the Board, Mr. Gaudett shall cause a written report to be submitted to the Board from the treatment provider, which report shall include:

- i. A detailed plan of recommended treatment based upon the treatment provider's informed assessment of Mr. Gaudett's current needs;
  - ii. A statement indicating that Mr. Gaudett entered into or commenced the recommended treatment program within forty-eight hours of its determination;
  - iii. A copy of a treatment contract signed by Mr. Gaudett establishing the terms of treatment and aftercare, including any required supervision or restrictions on practice during treatment or aftercare; and
  - iv. A statement indicating that the treatment provider will immediately report to the Board any failure by Mr. Gaudett to comply with the terms of the treatment contract during inpatient or outpatient treatment or aftercare.
- g. ***Comply with the Terms of Treatment and Aftercare Contract:*** Mr. Gaudett shall maintain continued compliance with the terms of the treatment and aftercare contracts entered into with his treatment provider, provided that, where terms of the treatment and aftercare contract conflict with terms of this Order, the terms of this Order shall control.
- h. ***Drug & Alcohol Screens; Supervising Physician:*** Mr. Gaudett shall submit to random urine screenings for drugs and/or alcohol on a weekly basis or as otherwise directed by the Board. Mr. Gaudett shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

Within thirty days of the date upon which a future application of Mr. Gaudett for a massage therapy certificate or other certificate is approved by the Board, or as otherwise determined by the Board, Mr. Gaudett shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Mr. Gaudett shall submit the required specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Mr. Gaudett. Mr. Gaudett and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

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

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

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

- i. ***Submission of Blood or Urine Specimens upon Request:*** Mr. Gaudett shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Mr. Gaudett's expense.
- j. ***Rehabilitation Program:*** Mr. Gaudett shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Mr. Gaudett shall submit acceptable documentary evidence of continuing compliance with this program, which must be received in the Board's offices no later than the due date for Mr. Gaudett's quarterly declarations.
- k. ***Contact Impaired Professionals Committee:*** Within thirty days of the date upon which a future application of Mr. Gaudett for a massage therapy certificate or other certificate is approved by the Board, or as otherwise determined by the Board, Mr. Gaudett shall contact the Ohio Physicians Health Program, or another impaired-professionals committee approved by the Board, to arrange for assistance in recovery and/or aftercare.
- l. ***Releases:*** Mr. Gaudett shall provide continuing authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Mr. Gaudett's impairment and/or related conditions, or for purposes of complying with this Order, whether such treatment or evaluations occurred before or after Board approval of Mr. Gaudett's

application for a massage-therapy certificate or other certificate. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.

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

3. **Conditions For Reinstatement Or Restoration:** The Board shall not consider reinstatement or restoration of Mr. Gaudett's certificate to practice massage therapy until all of the following conditions have been met:
  - a. ***Application for Reinstatement or Restoration:*** Mr. Gaudett shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  - b. ***Compliance with Interim Conditions:*** Mr. Gaudett shall have maintained compliance with all the terms and conditions set forth in Subsection B2 of this Order.
  - c. ***Demonstration of Ability to Resume Practice:*** Mr. Gaudett shall demonstrate to the satisfaction of the Board that he can resume the practice of massage therapy 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:
    - i. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Mr. Gaudett has successfully completed any required inpatient treatment.
    - ii. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
    - iii. Evidence of continuing full compliance with this Order.
    - iv. Two written reports indicating that Mr. Gaudett's ability to practice has been evaluated for chemical dependency and/or impairment and that he has been found capable of practicing according to acceptable and prevailing standards of care. The evaluations shall have been performed

by individuals or providers approved by the Board for making such evaluations. Moreover, the evaluations shall have been performed within sixty days prior to Mr. Gaudett's application for reinstatement or restoration. The reports of evaluation shall describe with particularity the bases for the determination that Mr. Gaudett has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon his practice.

- d. ***Additional Evidence of Fitness To Resume Practice:*** In the event that Mr. Gaudett has not been engaged in the active practice of massage therapy for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.
4. **Probation:** Upon reinstatement or restoration, Mr. Gaudett's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
    - a. ***Terms, Conditions, and Limitations Continued from Suspension Period:*** Mr. Gaudett shall continue to be subject to the terms, conditions, and limitations specified in Subsection B2 of this Order.
    - b. ***Absence from Ohio:*** Mr. Gaudett 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.
    - c. ***Noncompliance Will Not Reduce Probationary Period:*** In the event Mr. Gaudett is found by the Secretary of the Board to have failed to comply with any provision of this Order, 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 Order.
  5. **Termination Of Probation:** Upon successful completion of probation, as evidenced by a written release from the Board, Mr. Gaudett's certificate will be fully restored.
  6. **Required Reporting To Employers And Hospitals:** Within thirty days of the date upon which a future application of Mr. Gaudett for a massage therapy certificate or other certificate is approved by the Board, or as otherwise determined by the Board, Mr. Gaudett shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further,

Mr. Gaudett shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. This requirement shall continue until Mr. Gaudett receives from the Board written notification of his successful completion of probation.

7. **Required Reporting To Other State Licensing Authorities:** Within thirty days of the date upon which a future application of Mr. Gaudett for a massage-therapy certificate or other certificate is approved by the Board, or as otherwise determined by the Board, Mr. Gaudett shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Mr. Gaudett shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Mr. Gaudett shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board. This requirement shall continue until Mr. Gaudett receives from the Board written notification of his successful completion of probation.

**EFFECTIVE DATE OF ORDER:** This Order shall become effective immediately upon the mailing of notification of approval by the Board.

  
\_\_\_\_\_  
Patricia A. Davidson  
Hearing Examiner

# State Medical Board of Ohio

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



Richard A. Whitehouse, Esq.  
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## EXCERPT FROM THE DRAFT MINUTES OF DECEMBER 12, 2007

### REPORTS AND RECOMMENDATIONS

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

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

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

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

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

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

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

.....  
RUSSELL L. GAUDETT

Dr. Kumar directed the Board's attention to the matter of Russell L. Gaudett. He advised that objections were filed to Hearing Examiner Davidson's Report and Recommendation by the State and were previously distributed to Board members.

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

It was noted at this time that Mr. Gaudett had not yet arrived.

Dr. Varyani commented that Mr. Gaudett hadn't shown up for the 72 hour, Board-ordered examination, either.

**DR. BUCHAN MOVED TO TABLE THE MATTER OF RUSSELL L. GAUDETT.**

**DR. STEINBERGH SECONDED THE MOTION.** All members voted aye. The motion carried.

Later in the meeting, noting that Mr. Gaudett is still not present, Dr. Kumar removed this matter from the table for Board consideration.

Dr. Amato had left the meeting prior to this discussion.

Dr. Kumar noted that Dr. Gaudett had requested to address the Board, but is not present.

**DR. VARYANI MOVED TO APPROVE AND CONFIRM MS. DAVIDSON'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF RUSSELL L. GAUDETT. DR. MADIA SECONDED THE MOTION.**

Dr. Varyani stated that Mr. Gaudett has applied for a massage therapy license. Mr. Gaudett had been working at a chiropractor's office. He was charged with a DUI and admitted to being impaired. The Board had ordered Mr. Gaudett to submit to a 72-hour examination, to which he agreed to at first, but he did not appear for the examination. Dr. Varyani stated that Mr. Gaudett tried to communicate with somebody after the fact, advising that he did not attend the exam. There were a lot of excuses given. Dr. Varyani stated that the gist of this is that Mr. Gaudett, has applied for a license, has passed the licensing exam, but did not go to the 72-hour Board-ordered examination.

Dr. Varyani stated that the Board Order requires him to report to Glenbeigh. It gives him another chance to appear for examination at a future date.

Dr. Steinbergh stated that, were it up to her, she would permanently deny Mr. Gaudett a license. She stated that she does not believe that he meets professional standards that are necessary to become a licensed massage therapist. Dr. Steinbergh stated that Mr. Gaudett, besides his previous convictions, ignored the Board three times. The Board sent interrogatories to Mr. Gaudett on three occasions, and he ignored the Board twice. Now the Board is rewarding this inappropriate behavior, even by denying him a license and giving him terms to reapply. Dr. Steinbergh stated that Mr. Gaudett has been non-compliant, and asked what makes the Board believe that he would ever be compliant. Dr. Steinbergh stated that she really feels that this fellow ought to be permanently denied. She could find no redeeming factors in him.

Dr. Egner stated that she is against the Report and Recommendation herself, but she has a little different take on it. She noted that Mr. Gaudett is not licensed, so when he failed to appear for his evaluation, he's deemed impaired. Dr. Egner stated that he would need to follow all of the provisions as if he's impaired; however, he will get this without going through a 28-day treatment program. Dr. Egner stated that if the Board feels that a 28-day treatment program is very, very necessary in order to be successful in your impairment, it is completely inconsistent that the Board would allow someone to follow a Board Order for impairment that doesn't include a 28-day treatment program.

Dr. Egner stated that she agrees with the State's objections in this matter. She added that she has worked with Ms. Thompson to craft an alternative order that would deny his application, and then place conditions on future applications. Part of his conditions require him to go through a 28-day treatment program prior to applying.

**DR. EGNER MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF RUSSELL L. GAUDET BY SUBSTITUTING THE FOLLOWING:**

It is hereby ORDERED that:

- A. **APPLICATION DENIED:** The application of Russell L. Gaudett for a certificate to practice massage therapy in Ohio is DENIED.
- B. **CONDITIONS PLACED UPON ANY FUTURE APPLICATION:** Mr. Gaudett

shall not apply in the future for a certificate to practice massage therapy in the State of Ohio, or for any other certificate issued by the Board, until all of the following conditions are met.

1. **Application**: Mr. Gaudett shall submit an application, accompanied by appropriate fees.
2. **Demonstration of Ability to Practice**: Mr. Gaudett shall demonstrate to the satisfaction of the Board that he can practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
  - a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Mr. Gaudett has successfully completed any required inpatient treatment, including at least twenty-eight days of inpatient or residential treatment for chemical dependence, as set forth in Rules 4731-16-02(B)(4) and 4731-16-08(A)(13) of the Administrative Code, completed consecutively.
  - b. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with Rule 4731-16-10 of the Administrative Code.
  - c. Two written reports indicating that Mr. Gaudett'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 Mr. Gaudett. Prior to the assessments, Mr. Gaudett shall provide the evaluators with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this Order. The reports from the evaluators shall include any recommendations for treatment, monitoring, or supervision of Mr. Gaudett, and any conditions, restrictions, or limitations that should be imposed on Mr. Gaudett'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.

C. **PROBATIONARY CONDITIONS TO BE PLACED UPON ANY FUTURE CERTIFICATE GRANTED BY THE BOARD:** In the event that the Board should grant a future application by Mr. Gaudett for a certificate to practice massage therapy in the State of Ohio, or for any other certificate issued by the Board, that certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:

1. **Obey the Law:** Mr. Gaudett shall obey all federal, state, and local laws, and all rules governing the practice of massage therapy or other licensed practice in Ohio.
2. **Personal Appearances:** Mr. Gaudett shall appear in person for an interview before the full Board or its designated representative during the third month following the month during which the Board approved Mr. Gaudett's application for a massage therapy certificate or other certificate. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
3. **Quarterly Declarations:** Mr. Gaudett shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month during which the Board approved Mr. Gaudett's application for a massage therapy certificate or other certificate. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
4. **Abstention from Drugs:** Mr. Gaudett shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Mr. Gaudett's history of impairment.
5. **Abstention from Alcohol:** Mr. Gaudett shall abstain completely from the use of alcohol.
6. **Comply with the Terms of Treatment and Aftercare Contract:** Mr. Gaudett shall maintain continued compliance with the terms of the treatment and aftercare contracts entered into with his treatment provider, provided that, where terms of the treatment and aftercare contract conflict

with terms of this Order, the terms of this Order shall control.

7. **Drug & Alcohol Screens; Supervising Physician:** Mr. Gaudett shall submit to random urine screenings for drugs and/or alcohol on a weekly basis or as otherwise directed by the Board. Mr. Gaudett shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

Within thirty days of the date upon which a future application of Mr. Gaudett for a massage therapy certificate or other certificate is approved by the Board, or as otherwise determined by the Board, Mr. Gaudett shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Mr. Gaudett shall submit the required specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Mr. Gaudett. Mr. Gaudett and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

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

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

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

8. **Provision of Blood or Urine for Screening without Prior Notice:** Mr. Gaudett shall submit blood and/or urine specimens for analysis without

prior notice at such times as the Board may request, at Mr. Gaudett's expense.

9. **Rehabilitation Program**: Mr. Gaudett shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A. or C.A., no less than three times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Mr. Gaudett shall submit acceptable documentary evidence of continuing compliance with this program, which must be received in the Board's offices no later than the due date for Mr. Gaudett's quarterly declarations.
  10. **Releases**: Mr. Gaudett shall provide continuing authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Mr. Gaudett's impairment and/or related conditions, or for purposes of complying with this Order, whether such treatment or evaluations occurred before or after Board approval of Mr. Gaudett's application for a massage therapy certificate or other certificate. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.
- Mr. Gaudett shall also provide the Board written consent permitting any treatment provider from whom Mr. Gaudett obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Order.
11. **Absence from Ohio**: Mr. Gaudett 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.
  12. **Tolling of Probationary Period while Out of Compliance**: In the event Mr. Gaudett is found by the Secretary of the Board to have failed to comply with any provision of this Order, 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 Order.

13. **Required Reporting to Employers and Hospitals:** Within thirty days of the date upon which a future application of Mr. Gaudett for a massage therapy certificate or other certificate is approved by the Board, or as otherwise determined by the Board, Mr. Gaudett shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Mr. Gaudett shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. This requirement shall continue until Mr. Gaudett receives from the Board written notification of his successful completion of probation.
14. **Required Reporting To Other State Licensing Authorities:** Within thirty days of the date upon which a future application of Mr. Gaudett for a massage therapy certificate or other certificate is approved by the Board, or as otherwise determined by the Board, Mr. Gaudett shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Mr. Gaudett shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Mr. Gaudett shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board. This requirement shall continue until Mr. Gaudett receives from the Board written notification of his successful completion of probation.
15. **Termination Of Probation:** Upon successful completion of probation, as evidenced by a written release from the Board, Mr. Gaudett's certificate will be fully restored.

**EFFECTIVE DATE OF ORDER:** This Order shall become effective immediately upon the mailing of the notification of approval by the Board.

**MR. BROWNING SECONDED THE MOTION.**

Dr. Steinbergh stated that she doesn't disagree with the proposed amendment, but added that she doesn't think that she would ever vote to license this individual. She stated that it angered her that Mr. Gaudett kept ignoring the Board's interrogatories.

Dr. Egner stated that the Board could permanently deny Mr. Gaudett.

Dr. Kumar stated that one thing the Board should keep in mind is that he asked to appear before the Board and he didn't show up.

Dr. Varyani stated that he believed that Mr. Gaudett wouldn't show up.

Dr. Steinbergh asked why the Board would go into some kind of a program with a person who didn't even have the decency to answer the questions that were sent to him.

Dr. Varyani stated that he totally agrees.

Mr. Whitehouse stated that if the Board permanently denies this license, there is a potential for litigation. If the Board is on the losing end of that litigation, it could be forced to license this person and then not have a handle on what the Board believes might possibly be a problem with him. If the Board just denies this application, it has a handle. He stated that the proposed amendment isn't a gift at all. It's recognition of the fact that the Board thinks that this is a problem.

Mr. Browning stated that the amendment is not for a permanent denial.

Dr. Steinbergh stated that Mr. Gaudett failed to cooperate in the Board's investigation.

Mr. Whitehouse stated that he agrees completely.

Dr. Egner stated that Mr. Gaudett is deemed impaired just by virtue of the fact that he didn't go to his evaluation. She stated that her problem is that he can circumvent the 28-day treatment plan by the way the Proposed Order is written.

Dr. Buchan stated that he came today anticipating that the Board would simply deny the application with no conditions. He stated that he's not sure where that puts the Board in jeopardy.

Mr. Whitehouse stated that the Board could certainly do that, but it's doing it with someone who, by operation of law, is deemed to be impaired.

Dr. Varyani stated that if the Board adopts Dr. Egner's amendment, it basically tells him that the Board knows that he is impaired, and that if he comes back for a license, he'll have to do a lot of things. If Mr. Gaudett is worried about the financial situation, a 28-day inpatient treatment is going to cost a lot more than the 72-hour examination. Dr. Varyani spoke in support of Dr. Egner's motion.

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

ROLL CALL:

Mr. Albert

- abstain

Dr. Egner	- aye
Dr. Talmage	- abstain
Dr. Varyani	- aye
Dr. Buchan	- aye
Dr. Madia	- aye
Mr. Browning	- aye
Mr. Hairston	- abstain
Dr. Steinbergh	- aye
Dr. Kumar	- aye

The motion carried.

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. DAVIDSON'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF RUSSELL L. GAUDETT. MR. BROWNING SECONDED THE MOTION. A vote was taken:**

ROLL CALL:

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

The motion carried.

# State Medical Board of Ohio

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



Richard A. Whitehouse, Esq.  
Executive Director

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September 12, 2007

Mr. Russell L. Gaudett  
Priority Health Chiropractic  
881 W. North Bend Rd.  
Cincinnati, Ohio 45224

Dear Mr. Gaudett:

Due to your failure to submit to an examination on December 4, 2006, as ordered by the State Medical Board of Ohio [Board] and your failure to notify the Board of any circumstances beyond your control preventing you from submitting to said examination, pursuant to Section 4731.22(B)(26), Ohio Revised Code, a legal presumption has been established that you have admitted the factual and legal allegations demonstrating an impairment of your 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 alleged against you in the Board's letter dated November 16, 2006, and sent to you by certified mail [November 16, 2006 certified letter], so ordering you to submit to such examination.

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the Board intends, for one or more of the following reasons, to determine whether your failure to submit to the aforementioned examination was due to circumstances beyond your control, which would rebut the legal presumption of impairment and merit rescheduling the examination as directed by the Board, or conversely, whether your failure to submit to the aforementioned examination was due to circumstances within your control, which would render the legal presumption of impairment conclusive and result in the Board further determining whether to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice massage therapy, or to reprimand you or place you on probation based upon your legally admitted impairment:

- (1) On or about February 14, 2006, you caused to be submitted to the Board an Application for Certificate to Practice a Limited Branch – Massage Therapy, which remains pending. By letter dated November 16, 2006, the Board notified you of its determination that it had reason to believe that you are in violation of Section 4731.22(B)(26), Ohio Revised Code, and ordered you to undergo a 72-hour inpatient examination to determine if you are in violation of Section 4731.22(B)(26), Ohio Revised Code. The Board's determination was based upon one or more of the reasons outlined in such letter, which included the following:

*Mailed 9-13-07*

- (a) In your Application for Certificate to Practice a Limited Branch – Massage Therapy, which remains pending at this time, you answered “Yes” to Question 11, which asks whether you have ever been convicted or found guilty of a violation of any law, other than a minor traffic offense. The documentation that you submitted to the Board indicated that on December 1, 2001, you were arrested in Hamilton County, Ohio, and charged with Driving Under the Influence [DUI] in violation of Section 4511.19(A)(1), Ohio Revised Code, Operating a Vehicle with a Blood Concentration of .10 Grams of Alcohol Per 100 Milliliters of Blood, in violation of Section 4511.19(A)(2), Ohio Revised Code, and Failure to Control, in violation of Section 4511.202, Ohio Revised Code. The police report indicates that you had a blood alcohol concentration of 0.190. On or about December 13, 2001, in Hamilton County Municipal Court, you were convicted of DUI, in violation of Section 4511.19(A)(1), Ohio Revised Code, and ordered to participate in the Talbert House ten-day driver intervention program in Cincinnati, Ohio.
  
- (b) In your April 11, 2006 interview with a Board investigator and in your sworn responses to The State Medical Board of Ohio’s First Set of Interrogatories Directed to Russell Louis Gaudett, received by the Board on or about September 5, 2006, you disclosed the following:
  - (i) On or about August 20, 1999, in Kenton County, Kentucky, you were charged with DUI in violation of Section 189A.010, Kentucky Revised Statutes; Disregarding a Stop Sign in violation of Section 189.330, Kentucky Revised Statutes; and Registration/Title to Vehicle in Another State in violation of Section 186.990, Kentucky Revised Statutes. The police report indicates that, upon taking a breathalyzer test, you had a blood alcohol concentration of 0.168. On or about August 20, 1999, in Kenton District Court, you entered a plea of guilty to and were convicted of DUI. On or about December 1, 1999, you were arrested and charged with Contempt of Court for nonpayment of a fine related to the aforementioned charges. On or about November 2, 2000, you completed a court-ordered twenty-hour assessment program with Commonwealth Substance Abuse in Florence, Kentucky.
  
  - (ii) On or about November 26, 2003, in Springfield Township, Hamilton County, Ohio, you were issued a citation for Possession of Marijuana, in violation of Section 2925.11, Ohio Revised Code, and you were required to pay a fine.

(iii) You have used marijuana, cocaine, and LSD. You indicated that you used marijuana 50 to 75 times from in or around the fall of 1991 through in or around December 2003, and that your use of cocaine and LSD occurred while in college.

- (2) The November 16, 2006, certified letter from the Board further notified you that, pursuant to Section 4731.22(B)(26), Ohio Revised Code, you were ordered to submit to a 72-hour inpatient examination. The examination was scheduled to take place at Glenbeigh Hospital, a Board-approved treatment provider, on Monday, December 4, 2006, at 10:00 a.m.

The November 16, 2006, certified letter from the Board further notified you that failure of an individual to submit to an examination as directed constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control. Finally, the letter notified you that if you failed to submit to the examination, and such failure was not due to circumstances beyond your control, the Board would be authorized to enter a default and final order without the taking of testimony or presentation of evidence.

- (3) You were duly notified of the examination order and its scheduled date. The certified letter return receipt was signed and dated by you on November 17, 2006.
- (4) By a telephone call on December 4, 2006, from Kathy Chambers, Intake Coordinator for Glenbeigh Hospital, and subsequently by a letter from Ms. Chambers dated August 2, 2007, the Board was notified that you failed to appear for the examination that the Board scheduled for you. Although you asserted that you were unable to appear for the examination that the Board scheduled for you due to your personal financial concerns, at no time did you establish that your failure to appear was due to any circumstances beyond your control. Accordingly, pursuant to Section 4731.22(B)(26), Ohio Revised Code, and in consideration of the affidavits of Lynn A. Zondorak, Enforcement Attorney, and Penny Grubb, Chief, Licensure, copies of which are attached hereto and fully incorporated herein, the Board hereby FINDS that you have admitted the truth of the allegations demonstrating impairment as set forth in the November 16, 2006, letter from the Board. The Board FINDS that pursuant to Section 4731.22(B)(26), Ohio Revised Code, your failure to appear for the examination ordered by the Board as directed constitutes "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

Section 4731.22(B)(26), Ohio Revised Code, provides that any individual authorized to practice accepts the privilege of practicing in this state subject to supervision by the Board;

that by filing an application for or holding a certificate to practice, an individual shall be deemed to have given consent to submit to a mental or physical examination when ordered to do so by the Board in writing; and that the expense of the examination is the responsibility of the individual compelled to be examined. Failure to submit to a mental or physical examination ordered by the Board constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) through (4) above, individually and/or collectively, constitute "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (4) above, individually and/or collectively, constitute "[f]ailure to cooperate in an investigation conducted by the board under division (F) of this section, including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board at a deposition or in written interrogatories, except that failure to cooperate with an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold the testimony or evidence in issue," as that clause is used in Section 4731.22(B)(34), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, and Chapter 4731., Ohio Revised Code, you are hereby advised that you are entitled to a hearing concerning whether your failure to submit to the examination as directed was due to circumstances beyond your control. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice.

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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lance A. Talmage M.D.", written in a cursive style.

Lance A. Talmage, M.D.  
Secretary

LAT/LAZ/FLB

Enclosures

CERTIFIED MAIL #91 7108 2133 3931 8317 1081  
RETURN RECEIPT REQUESTED

AFFIDAVIT

The State of Ohio  
Franklin County, SS

I, Penny Grubb, being duly cautioned and sworn, do hereby depose and say that:

- 1) I am employed by the State Medical Board of Ohio [Board].
- 2) I serve the Board in the position of Chief, Licensure.
- 3) In such position, I am the responsible custodian of all public licensee records maintained by the Board pertaining to individuals who have applied for certificates issued pursuant to Chapter 4731., Ohio Revised Code.
- 4) On November 16, 2006, the date on which the Board sent its letter ordering Russell Louis Gaudett to a 72-hour inpatient examination, the last known address of record of Russell Louis Gaudett was 1253 First Avenue, Cincinnati, Ohio 45205.
- 5) I have this day carefully examined the records of the Board pertaining to Russell Louis Gaudett, and based on such examination, I have found the last known address of record of Russell Louis Gaudett to be: Priority Health Chiropractic, 881 W. North Bend Rd., Cincinnati, Ohio 45224.
- 6) Further, Affiant Sayeth Naught.

  
\_\_\_\_\_  
Penny Grubb  
Chief, Licensure

Sworn to and signed before me, Barbara Jacobs, Notary Public, this 7<sup>th</sup>  
day of September, 2007.

  
\_\_\_\_\_  
Notary Public

**BARBARA ANN JACOBS, ATTORNEY AT LAW**  
**NOTARY PUBLIC, STATE OF OHIO**  
My commission has no expiration date.  
Section 147.03 R.C.

AFFIDAVIT

The State of Ohio  
Franklin County, SS

I, Lynn A. Zondorak, being duly cautioned and sworn, do hereby depose and state that the following is true based upon my first-hand knowledge:

- 1) I am employed by the State Medical Board of Ohio [Board].
- 2) I serve the Board in the position of Enforcement Attorney.
- 3) In the course of my regular duties, I am responsible for coordinating the investigation of complaints against applicants and licensees under the jurisdiction of the Board and assembling the evidence necessary to prove potential violations of the Medical Practices Act of Ohio, Chapters 4730., 4731., 4760., and 4762., Ohio Revised Code.
- 4) I coordinated the investigation of the complaints filed against Russell Louis Gaudett, which resulted in the issuance of a letter from the Board dated November 16, 2006, ordering him to submit to a 72-hour inpatient examination, pursuant to Section (B)(26), Ohio Revised Code, “[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.”
- 5) The November 16, 2006, letter to Mr. Gaudett ordered him to submit to a 72-hour inpatient evaluation at Glenbeigh Hospital [Glenbeigh], 2863 St. Rt. 45, Rock Creek, Ohio 44084, on Monday, December 4, 2006, at 10:00 a.m. A copy of the letter is attached to and incorporated herein.
- 6) The letter was sent to Mr. Gaudett via certified mail on November 16, 2006, to his address of record, which was listed as 1253 First Avenue, Cincinnati, OH 45205. Mr. Gaudett signed for the certified letter on November 17, 2006. A copy of the return receipt is attached hereto and incorporated herein.
- 8) On November 30, 2006, I had a telephone conversation with Mr. Gaudett wherein he informed me that he would not be able to attend the evaluation because he could not take time off work and could not afford the evaluation. A copy of my telephone message documenting this conversation is attached hereto and incorporated herein.
- 9) On December 4, 2006, Kathy Chambers, Intake Coordinator for Glenbeigh, notified me by telephone of Mr. Gaudett’s failure to appear at Glenbeigh for his scheduled examination. On August 14, 2007, I received a letter from Ms. Chambers confirming Mr. Gaudett’s failure to appear for his Board-ordered examination. A copy of the letter from Ms. Chambers is attached hereto and incorporated herein.

Further, Affiant Sayeth Naught.

Lynn Zondrak  
Lynn Zondrak, Enforcement Attorney

Sworn to and signed before me, Barbara Jacobs, Notary Public, this 7<sup>th</sup>  
day of September, 2007.

Barbara Jacobs  
Notary Public

**BARBARA ANN JACOBS, ATTORNEY AT LAW**  
**NOTARY PUBLIC, STATE OF OHIO**  
My commission has no expiration date.  
Section 147.03 R.C.



# State Medical Board of Ohio

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

November 16, 2006

## **Personal and Confidential**

Mr. Russell Louis Gaudett  
1253 First Avenue  
Cincinnati, Ohio 45205

Dear Mr. Gaudett:

The State Medical Board of Ohio [Board] has determined that it has reason to believe that you are in violation of Section 4731.22(B)(26), Ohio Revised Code, to wit:

“[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice.”

This determination is based upon one or more of the following reasons:

- (1) In your Application for Certificate to Practice a Limited Branch – Massage Therapy, which remains pending at this time, you answered “Yes” to Question 11, which asks whether you have ever been convicted or found guilty of a violation of any law, other than a minor traffic offense. The documentation that you submitted to the Board indicated that on December 1, 2001, you were arrested in Hamilton County, Ohio, and charged with Driving Under the Influence [DUI] in violation of Section 4511.19(A)(1), Ohio Revised Code, Operating a Vehicle with a Blood Concentration of .10 Grams of Alcohol Per 100 Milliliters of Blood, in violation of Section 4511.19(A)(2), Ohio Revised Code, and Failure to Control, in violation of Section 4511.202, Ohio Revised Code. The police report indicates that you had a blood alcohol concentration of 0.190. On or about December 13, 2001, in Hamilton County Municipal Court, you were convicted of DUI, in violation of Section 4511.19(A)(1), Ohio Revised Code, and ordered to participate in the Talbert House ten-day driver intervention program in Cincinnati, Ohio.
- (2) In your April 11, 2006 interview with a Board investigator and in your sworn responses to The State Medical Board of Ohio’s First Set of Interrogatories Directed to Russell Louis Gaudett, received by the Board on or about September 5, 2006, you disclosed the following:
  - (a) On or about August 20, 1999, in Kenton County, Kentucky, you were charged with DUI in violation of Section 189A.010, Kentucky Revised Statutes; Disregarding a Stop Sign in violation of Section 189.330,

- (b) Kentucky Revised Statutes; and Registration/Title to Vehicle in Another State in violation of Section 186.990, Kentucky Revised Statutes. The police report indicates that, upon taking a breathalyzer test, you had a blood alcohol concentration of 0.168. On or about August 20, 1999, in Kenton District Court, you entered a plea of guilty to and were convicted of DUI. On or about December 1, 1999, you were arrested and charged with Contempt of Court for nonpayment of a fine related to the aforementioned charges. On or about November 2, 2000, you completed a court-ordered twenty-hour assessment program with Commonwealth Substance Abuse in Florence, Kentucky.
- (c) On or about November 26, 2003, in Springfield Township, Hamilton County, Ohio, you were issued a citation for Possession of Marijuana, in violation of Section 2925.11, Ohio Revised Code, and you were required to pay a fine.
- (d) You have used marijuana, cocaine, and LSD. You indicated that you used marijuana 50 to 75 times from in or around the fall of 1991 through in or around December 2003, and that your use of cocaine and LSD occurred while in college.

By the authority vested in the State Medical Board of Ohio by Section 4731.22(B)(26), Ohio Revised Code, you are ordered to submit to an examination. This examination will take place at **Glenbeigh Hospital, 2863 St. Rt. 45, Rock Creek, Ohio 44084, telephone number (440) 563-3400**. You are to report to the **Glenbeigh Admissions Office**, on **Monday, December 4, 2006, at 10:00 a.m.** for a 72-hour in-patient evaluation. For driving directions or questions regarding admission procedures, please contact Cathy Chambers, the Intake Coordinator for Glenbeigh, at the above-listed telephone number.

Pursuant to Section 4731.22(B)(26), Ohio Revised Code, you are responsible for the expense of this evaluation. The total estimated cost of this evaluation is \$1,800.00. You must present a certified check or money order in the amount of \$1,800.00 made payable to Glenbeigh Hospital to the examiner prior to the beginning of the examination. Failure to present a certified check or money order in the amount specified to the examiner will result in the examination being cancelled, and will be deemed by the Board to be a failure to submit to the examination as directed due to circumstances within your control.

Please be advised that failure to submit to this examination as directed constitutes an admission of the allegations against you unless the failure is due to circumstances beyond your control, and that a default and final order may thereupon be entered without the taking of testimony or presentation of evidence.

B26 EXAM LETTER  
RUSSELL LOUIS GAUDET  
Page 3

Copies of the applicable statute sections are enclosed for your information.

Very truly yours,

A handwritten signature in black ink that reads "Lance A. Talmage, M.D." The signature is written in a cursive style with a large initial 'L'.

Lance A. Talmage, M.D.  
Secretary

LAT/laz/flb  
Enclosures

CERTIFIED MAIL # 7004 2510 0006 9802 9582  
RETURN RECEIPT REQUESTED

SENDER: COMPLETE

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Russell Louis Gaudett  
1253 First Avenue  
Cincinnati, Ohio 45205

2. Article Number  
(Transfer from service label)

7004 2510 0006 9802 9582

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Russell Gaudett*  Agent  Addressee

B. Received by (Printed Name)

*Russell Gaudett*

C. Date of Delivery

*17-NOV*

D. Is delivery address different from item 1?  Yes

If YES, enter delivery address below:  No

*FUB  
(L2)*

3. Service Type

- Certified Mail  Express Mail
- Registered  Return Receipt for Merchandise
- Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

Telephone conversation with Russell Gaudett (MT Applicant)  
November 30, 2006

On this date, around 10:30 a.m., I had a telephone conversation with Russell Louis Gaudett, who called in regards to the letter that he received ordering him to a 72 hour evaluation. Mr. Gaudett indicated that he cannot afford the evaluation, and will not have \$1,800.00 for a long time, he doesn't know where Rock Creek, Ohio, is, and he cannot take 3 days off work. He asked if there is something else that he can do, such as have the evaluation at a VA hospital, as he is a veteran. I told him that he is required to attend the evaluation at the location specified in the letter. He remarked that the evaluation was short notice, and I told him that I tried to call him to tell him about the evaluation ahead of time, but that both telephone numbers, one which he had recently given me, were out of service. He stated that he got a new telephone number. He asked whether he could write the S/SM a letter, and I told him that he is free to write a letter to the S/SM, and that it will go in his file. I explained the process that will occur if he does not attend the three-day evaluation (hearing to explain good cause, and default action deeming him impaired if good cause is not found. I further explained that my understanding is that inability to pay for the evaluation is not good cause. Mr. Gaudett stated that the process has been very long, and I told him that I had tried to send him documents multiple times before he finally accepted receipt of them. I again told him that his two options are to (1) go to the evaluation as scheduled, or (2) wait for the hearing and go before the hearing examiner. He said that is telling me right now and wants to send a letter to the S/SM telling them, that he will not be able to attend because he cannot take three days off work and cannot afford \$1,800.00.

John A. Zornick  
11/30/06

# Glenbeigh

 Cleveland Clinic affiliate



Accredited By  
**Joint Commission**  
On Accreditation of  
Healthcare Organizations

P.O. BOX 298 • ROCK CREEK, OHIO 44084-0298 • 440-563-3400 • FAX 440-563-9619

**OHIO STATE MEDICAL BOARD**

AUG 14 2007

**RECEIVED**

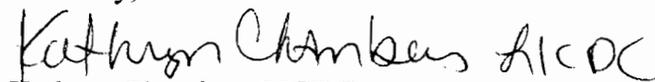
August 2, 2007

Lynn Vandorak  
Enforcement Attorney  
Ohio State Medical Board  
30 South High St.  
3<sup>rd</sup> Floor  
Columbus, Ohio 42215-6127

Dear Lynn Vandorak,

I am writing you this letter to inform you that Russell Gudett did not keep his three day inpatient evaluation appointment for 12-04-06. He was supposed to complete this evaluation at Glenbeigh 2863 State Route 45 Rock Creek, Ohio 44084. Russell did not rescheduled his appointment. If you have any further questions or comments please do not hesitate to contact me at 440-563-3400 ext. 1014.

Sincerely,

  
Kathryn Chambers LICDC  
Intake Coordinator

CONFIDENTIAL. THIS INFORMATION  
HAS BEEN DISCLOSED TO YOU FROM  
CONFIDENTIAL RECORDS. ANY  
FURTHER DISCLOSURE OF IT WITHOUT  
THE SPECIFIC WRITTEN CONSENT OF  
THE PERSON TO WHOM IT PERTAINS,  
OR AS OTHERWISE PERMITTED BY  
LAW IS PROHIBITED.