State Medical Board of Ohio

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July 13, 2011

Allan William Clark, M.D. 232 Rutledge Drive McMurray, PA 15317

> RE: Case No. 10-CRF-043 11-CRF-001

Dear Doctor Clark:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 13, 2011, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

Such an appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board and the Franklin County Court of Common Pleas. The Notice of Appeal must set forth the Order appealed from and state that the State Medical Board's Order is not supported by reliable, probative, and substantive evidence and is not in accordance with law. The Notice of Appeal may, but is not required to, set forth the specific grounds of the appeal. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.

Secretary

LAT:jam Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3938 3019 7747 RETURN RECEIPT REQUESTED

CC: Douglas E. Graff and Levi J. Tkach, Esqs. CERTIFIED MAIL NO. 91 7108 2133 3938 3019 7754 RETURN RECEIPT REQUESTED

Certificate of Mailing 8-9-11
Mailed 7-15-11

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 13, 2011, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Allan William Clark, M.D., Case Nos. 10-CRF-043 and 11-CRF-001, as it appears in the Journal of the State Medical Board of Ohio.

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

Lance A. Talmage, M.D.

Secretary

(SEAL)

July 13, 2011

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

CASE NO. 10-CRF-043 11-CRF-001

ALLAN WILLIAM CLARK, M.D.

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on July 13, 2011.

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

It is hereby ORDERED that:

- A. The motion to dismiss of Allan William Clark, M.D. is DENIED.
- B. Dr. Clark's certificate to practice medicine and surgery in the State of Ohio shall be REVOKED.

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

Lance A. Talmage, M.D.

Secretary

(SEAL)

July 13, 2011

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Consolidated Matters of * Case Nos. 10-CRF-043 11-CRF-001

Allan William Clark, M.D., *

Hearing Examiner Porter

Respondent. *

REPORT AND RECOMMENDATION

Basis for Hearing: Case No. 10-CRF-043

By letter dated April 14, 2010, the State Medical Board of Ohio [Board] notified Allan William Clark, M.D., in Case No. 10-CRF-043, that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board based its proposed action upon his alleged violation of his October 2005 Consent Agreement by falsifying twelve-step meeting attendance logs and filing an inaccurate Declaration of Compliance. The Board further alleged that Dr. Clark's conduct constitutes:

- "Violation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code;
- "Making a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code; and/or
- "Commission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 2921.13, Ohio Revised Code, Falsification.

Accordingly, the Board advised Dr. Clark of his right to request a hearing in this matter, and received his written request on April 22, 2010. (State's Exhibits [St. Exs.] 1A, 1B)

Basis for Hearing: Case No. 11-CRF-001

In a letter dated January 12, 2011, the Board notified Dr. Clark that, in Case No. 11-CRF-001, it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio based on an alleged action taken by the Commonwealth of Pennsylvania, Department of State, State Board of Medicine [Pennsylvania Board] against Dr. Clark's certificate to practice in

that state. The Board further alleged that the Pennsylvania Board action constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code. (St. Ex. 1D)

Accordingly, the Board advised Dr. Clark of his right to request a hearing in this second matter, and received his written request on January 14, 2011. (St. Exs. 1D, 1E)

Consolidation of Cases

By Entry filed February 25, 2011, and with the agreement of the parties, Case Nos. 10-CRF-043 and 11-CRF-001 were consolidated for hearing.

Appearances

Michael DeWine, Attorney General, and Kyle C. Wilcox, Assistant Attorney General, for the State of Ohio. Douglas E. Graff and Levi J. Tkach, Esqs., for Dr. Clark.

Hearing Date: April 6, 2011

PROCEDURAL MATTERS

- 1. The Hearing Examiner paginated State's Exhibit 6 post-hearing.
- 2. An excerpt from the minutes of the Board's January 20, 2008, meeting, during which the Board voted to grant Dr. Clark's request to modify the probationary requirements of his October 2005 Step II Consent Agreement, was marked as Board Exhibit A and admitted to the hearing record without objection.
- 3. The hearing record was held open until April 22, 2010, to receive additional information. No additional information was received, and the hearing record closed on that date.
- 4. Respondent's Exhibits A and F were sealed from public disclosure post-hearing pursuant to 42 C.F.R., part 2.

SUMMARY OF THE EVIDENCE

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

Background Information

- 1. Allan William Clark, M.D., testified that he obtained his medical degree in 1987 from the University of Cincinnati, College of Medicine. From 1987 through 1991, Dr. Clark completed a residency in psychiatry at the same institution. Subsequently, from 1991 through 1993, Dr. Clark completed a two-year fellowship in child and adolescent psychiatry at Yale University Child Study Center. Dr. Clark testified that he has practiced child and adolescent psychiatry since 1993. His patients range in age from six to eighteen. (Hearing Transcript [Tr.] at 55-57, 60)
- 2. Dr. Clark testified that he originally obtained his Ohio medical license in 1988, but that he allowed his Ohio license to lapse due to non-renewal in April 2007. Dr. Clark holds an active license to practice medicine in Pennsylvania, which he has held since 1997. Dr. Clark is employed full-time at Southwood Psychiatric Hospital [Southwood] in Pittsburgh, Pennsylvania, which he testified is "a private, free-standing psychiatric hospital." He carries a caseload of six juvenile inpatients at Southwood, and 40 additional patients split between two residential treatment facilities. (Tr. at 55-60)
- 3. Dr. Clark testified that, other than during his residency from 1987 to 1990, he has never practiced in Ohio except for several months in 2002. Dr. Clark further testified that, other than that, he has practiced in Pennsylvania since he finished his service with the U.S. Air Force in 1997. (Tr. at 103-104)
- 4. The Ohio eLicense Center indicates that on August 11, 2008, the Board issued a notice to Dr. Clark. The notice states that, due to a Child Support Enforcement Agency [CSEA] default notice received by the Board from Trumbull County, Ohio, Dr. Clark's Ohio medical license cannot be renewed or reinstated until such time as the Board receives notice from the Trumbull County Child Support Enforcement Agency that Dr. Clark is no longer determined to be in default. (Ohio eLicense Center, http://med.ohio.gov/formala/35057420.pdf, accessed April 21, 2011; Tr. at 60)
- 5. With respect to the 2008 CSEA suspension of his Ohio license, Dr. Clark testified that it had resulted from a mix-up due to a change in the way he paid his child support. Dr. Clark further testified that he had corrected it quickly after receiving notice of the problem. Finally, Dr. Clark testified that, to the best of his knowledge, he has since been in complete compliance with the Trumbull County child-support order. (Tr. at 106-107)

Dr. Clark's History of Impairment, and 2002 and 2005 Consent Agreements with the Board

6. In 1999, while Dr. Clark was practicing in Pennsylvania, he had voluntarily sought treatment for stimulant dependence at the Menninger Clinic, and spent 28 days as an

¹ Dr. Clark testified that a residential treatment facility is "an in-house, long-term treatment facility for kids that is less intensive than inpatient psychiatry." (Tr. at 59-60)

inpatient at that facility. Following his release, Dr. Clark received outpatient treatment through the Pennsylvania Physicians Health Program, which is affiliated with the Pennsylvania Board. He remained sober until around May 2002 when he relapsed and used Vicodin in May 2002, and subsequently used Percocet and oxycodone. When this relapse occurred, he had just started working at St. Elizabeth's Hospital in Youngstown, Ohio. On October 1, 2002, Dr. Clark entered inpatient treatment at Marworth Treatment Center, a Board-approved treatment provider in Waverly, Pennsylvania, and completed treatment on November 21, 2002. Finally, in December 2002, Dr. Clark entered into a Step I Consent Agreement with the Ohio Board that suspended his certificate to practice in this State and imposed monitoring conditions and requirements for reinstatement. (St. Ex. 6 at 33; Tr. at 61-63)

- 7. On October 3, 2003, while Dr. Clark was subject to his Step I Consent Agreement, a routine urine screen yielded a positive result for morphine. On December 1, 2003, he entered MARR, a Board-approved treatment facility in Atlanta, Georgia, for intensive day treatment on an outpatient basis, and was discharged on May 26, 2004. (St. Ex. 6 at 2-3)
- 8. In October 2005, Dr. Clark entered into a Step II Consent Agreement [October 2005 Consent Agreement] with the Board that reinstated his Ohio certificate subject to probationary terms and conditions, including the following:
 - 2. Dr. Clark shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement.

* * *

14. Within thirty days of the effective date of this Consent Agreement, Dr. Clark shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than five times per week, to include participation in at least one Caduceus meeting every two weeks. Additionally, within thirty days of the effective date of this Consent Agreement, Dr. Clark shall undertake and maintain participation in one S.L.A.A.² meeting each week. Substitution of any other specific program must receive prior Board approval.³

² Ms. Bickers testified that S.L.A.A. stands for Sex and Love Addicts Anonymous. (Tr. at 25)

³ Ms. Bickers testified that, in January 2008, the Board modified the terms of Dr. Clark's October 2005 Consent Agreement and "reduced the frequency of Dr. Clark's attendance at the NA, AA, CA meetings to three per week, with no specific requirement for Caduceus meetings. And the SLAA attendances remain the same." (Tr. at 25; Bd. Ex. A)

Dr. Clark shall submit acceptable documentary evidence of continuing compliance with these programs which must be received in the Board's offices no later than the due date for Dr. Clark's quarterly declarations.

(St. Ex. 6 at 5, 8)

9. Dr. Clark acknowledged that he had understood the terms of the October 2005 Consent Agreement when he signed it, and that he is responsible for knowing the terms of the agreement and complying with them. (Tr. at 65-66)

Dr. Clark's Monitoring by the Pennsylvania Board and by the Pennsylvania Medical Society's Physicians Health Program

- 10. Dr. Clark testified that he has been monitored by the Pennsylvania Board since 1999 with regard to his chemical dependency/abuse. Dr. Clark further testified that the Pennsylvania Board requires that he submit to two random urine screens per month, and that he must call in five days per week to see if he has been selected that day. In addition, Dr. Clark testified that he also submits to four additional random urine screens per month with the Pennsylvania Medical Society's Physicians Health Program [PHP]. Dr. Clark testified that he has been submitting random urine screens at the level of six per month for approximately six years, and has never tested positive for any prohibited substance. (Tr. at 111-113)
- 11. Dr. Clark testified that the random weekly PHP urine screen reports are forwarded to the Board to comply with his October 2005 Consent Agreement. Dr. Clark further testified that the two screens per month that he submits for the Pennsylvania Board are not forwarded to Ohio because the Pennsylvania Board will not release them to a third party. (Tr. at 113)

Dr. Clark's February 2010 Declaration of Compliance and Attached Meeting Logs

12. Danielle Bickers testified that she is the Board's Compliance Supervisor. In that capacity, Ms. Bickers supervises the monitoring of the Board's licensees who are subject to Board orders or consent agreements. Among other things, Ms. Bickers receives and reviews licensees' declarations of compliance and 12-step meeting attendance logs (also referred to herein as "meeting attendance logs"). (Tr. at 20-21)

Ms. Bickers testified that the Declaration of Compliance is a standard form that is supplied by the Board. Ms. Bickers further testified that, by signing a Declaration of Compliance, the licensee states that he or she is in compliance with the terms imposed by the Board, and that he or she understands that a false statement on that form may subject the licensee to Board disciplinary action. Ms. Bickers further testified that the Declaration of Compliance form also includes blank lines for the licensee to explain any variances from the Board's requirements. Further, the Declaration of Compliance states that the licensee understands and acknowledges that the declaration, if false, may subject the licensee to additional disciplinary action by the Board and may additionally subject him or her to criminal prosecution under Section 2921.13, Ohio Revised Code. (Tr. at 27; St. Ex. 3)

Further, the Board's 12-step meeting attendance logs include a table divided into three columns, labeled Date, Meeting Name and Location, and Secretary/Chairman Signature or Initials. Ms. Bickers testified that licensees are instructed that "they are not to sign anything in the column that says 'Secretary/Chairman Signature or Initials,' [and] that they are to get either the meeting secretary or the meeting chair to actually sign and attest to their attendance at those particular meetings." (Tr. at 29-30)

- 13. Ms. Bickers testified that on February 24, 2010, the Board received a fax directed to Ms. Bickers' attention from Dr. Clark. The fax consisted of Dr. Clark's 12-step meeting attendance logs for December 2009 through February 2010, including some dates in March 2010. Subsequently, on February 26, 2010, the Board received Dr. Clark's original Declaration of Compliance by mail, signed by Dr. Clark on February 10, 2010, with the original 12-step meeting attendance logs attached. Dr. Clark's declaration indicates that he was in full compliance with the terms of his October 2005 Consent Agreement. (Tr. at 25-29; St. Exs. 3, 4)
- 14. When asked if she had noticed anything unusual about the 12-step meeting attendance logs she received from Dr. Clark, Ms. Bickers replied that the logs indicated meeting attendance on dates that had not yet occurred. Specifically, the logs identify meetings which "occurred" on February 24, 27, 28, and March 1, 3, and 6, 2010. The entry for each of these meetings bears a signature or initials documenting Dr. Clark's attendance at that meeting. Ms. Bickers testified that, when she discovered this anomaly, she filed a complaint. (Tr. at 30-31; St. Exs. 3, 4)

March 9, 2010, Office Conference

15. Ms. Bickers testified that on March 9, 2010, Dr. Clark had appeared at a probationary conference at the Board's offices. In addition to Dr. Clark, the conference was attended by William Schmidt, Senior Counsel for Investigations, Compliance and Enforcement; Karen Mortland, Enforcement Attorney; and Ms. Bickers. Ms. Bickers further testified that there were actually two conferences: the first "was a regular probationer appearance as required by the Consent Agreement. And then we asked the doctor if we could go off the record to discuss his AA meetings, and he agreed." Ms. Bickers explained that by "off the record" she meant that it became an investigatory office conference, and that the discussion would not necessarily be reported to the Board at that time. However, Ms. Bickers testified that the discussion was recorded. (Tr. at 31-32)

Stipulations of the Parties

- 16. At hearing, Dr. Clark and the State entered into the following written Stipulations:
 - 1. Dr. Clark admits that he attended an office conference at the offices of the State Medical Board of Ohio on March 9, 2010. * * * This meeting was

- recorded and that recording has been marked as State's Exhibit #2 for purposes of this matter.
- During this meeting, Dr. Clark and Board staff discussed his compliance with his October 12, 2005, Step II Consent Agreement (October 2005 Consent Agreement). In particular the meeting focused on Dr. Clark's submission of a declaration of compliance with 3 attached pages of his AA/SLAA attendance log for the months of December 2009, January 2010, and February – March 2010.
- 3. Dr. Clark admits that he personally submitted this AA/SLAA attendance log via fax on February 23, 2010 (stamped received by the Board on February 24, 2010) to document his attendance at meetings required by his October 2005 Consent Agreement. He also mailed his declaration of compliance dated February 10, 2010, with the original logs attached, which were received by the Board on February 26, 2010. On these AA/SLAA attendance logs Dr. Clark had attested that he had attended meetings and signed the signatures of the meeting chair/secretary even though the dates for at least six of the meetings had not even occurred yet.
- 4. In spite of stating that he was in full compliance with his October 2005 Consent Agreement, Dr. Clark admitted at the office conference meeting that he had not been in full compliance with the terms of his October 2005 Consent Agreement for the past two years. Dr. Clark admitted that although he remained in full recovery, he had not attended and appropriately documented all the required AA/SLAA meetings (4 per week) required under his October 2005 Consent Agreement.
- 5. Dr. Clark further admitted at the March 9, 2010, office conference meeting that he had signed different signatures/initials on his AA/SLAA attendance log in order to document his attendance at several meetings. Dr. Clark stated that he goes to most of the meetings he is required to attend, but not all. Dr. Clark further stated that although he was required to attend at least three AA 12 step meetings per week and one SLAA meeting per week, he admitted that during the past two years he had not been attending about one-fourth (1/4) of the meetings required by his October 2005 Consent Agreement.
- 6. Dr. Clark and the Medical Board agree that these stipulations do not preclude the parties from exploring the mitigating and aggravating factors, or any other evidence related to the facts subject to this stipulation, as long as such inquiry is not deemed inappropriate by the Hearing Examiner.

(Joint Exhibit A)

Testimony of Dr. Clark Concerning the Declaration of Compliance, Meeting Attendance Logs, and Office Conference

- 17. Dr. Clark acknowledged that he had signed some of the secretary/chairperson's names or initials on his attendance logs. With respect to the meetings dated February 24, 27, 28, and March 1, 3, and 6, 2010, Dr. Clark further testified that he had signed the initials "BM" and that the others were signed by people with whom Dr. Clark goes to meetings but who are not the secretaries or chairpersons of the meetings. (Tr. at 79-82)
- 18. Dr. Clark acknowledged that he had intentionally misled the Board by signing his February 10, 2010, Declaration of Compliance. (Tr. at 85)
- 19. Dr. Clark testified that, during his March 9, 2010, meeting with Board staff he had cooperated and answered questions to the best of his ability. (Tr. at 84-85)
- 20. When asked why he had submitted false information on his attendance logs and submitted an inaccurate Declaration of Compliance, Dr. Clark replied:

In retrospect, having started some individual therapy, I think at the time these three months I was starting to get overwhelmed. I had some family problems at home with my significant other. She was struggling. She was hospitalized for depression.

I was getting too busy at work. The workload was kind of creeping up on me. The SLAA meetings were the meetings that I let slip.

On this particular log I was—I'm usually in a semi panic the month before getting those things in, because it's a little complicated going from—for me, going from PA to Ohio and getting all that paperwork in there.

The stuff that I'm responsible for, it's a little easier. The stuff that I have to ask other people to submit, such as urine screens from the PHP, can be frustrating.

And on top of that workload creeping, and then my significant other having some issues, I'm in a semi panic. The [Board] meeting's coming up. I feel pressure to get that in in a timely manner.

Danielle has emphasized this little bottom thing here where you can add you're not in compliance. I've used that for when I haven't got, maybe a letter in on time from the psychiatrist, but I was afraid to write that down that I couldn't attend all the meetings.

I felt that was just going to be unacceptable, and I felt that basically I was going to be found out of compliance and I was afraid of consequences.

(Tr. at 86-87)

- 21. Moreover, Dr. Clark acknowledged that he had advised Board staff at his March 9, 2010, meeting that he had been non-compliant with his meeting requirements for the previous two years, and that he had failed to attend about one-fourth of the meetings. Dr. Clark testified that he had been undergoing the stressors noted above during that two year period, "[o]n and off." (Tr. at 87)
- 22. Dr. Clark testified that the Pennsylvania Board also requires him to attend 12-step meetings, but that the Pennsylvania Board only requires that Dr. Clark record the meetings he attended. They do not require the signature of the secretaries or chairpersons of the meetings. Dr. Clark further testified that the Pennsylvania Board does not require him to attend S.L.A.A. meetings. (Tr. at 87-89, 116)

Further Evidence Concerning Dr. Clark's Compliance with his October 2005 Consent Agreement

- 23. Dr. Clark testified that he continues to comply with the terms of his 2005 Consent Agreement, including submitting to urine screens and submitting declarations of compliance. (Tr. at 68-69)
- 24. Ms. Bickers testified that, aside from the issue concerning Dr. Clark's 12-step meeting attendance logs and personal appearances, he is complying with the terms of the October 2005 Consent Agreement. (Tr. at 33-34)

August 2010 Pennsylvania Board Consent Agreement and Order

- 25. On August 24, 2010, Dr. Clark entered into a Consent Agreement and Order with the Commonwealth of Pennsylvania, Department of State, State Board of Medicine [Pennsylvania Board], wherein the Pennsylvania Board indefinitely suspended Dr. Clark's license to practice medicine in that state, stayed the indefinite suspension, then suspended his license for thirty days commencing July 27, 2010, and imposed a subsequent three-year probationary term. The acts underlying the Pennsylvania Order include that on three occasions Dr. Clark failed to submit to random, unannounced body fluid toxicology screens for the detection of certain substances as required pursuant to an order of the Pennsylvania Board dated June 23, 2005. (St. Ex. 5)
- 26. With respect to the facts underlying his 2010 Consent Agreement and Order with the Pennsylvania Board, Dr. Clark testified that he met with the Pennsylvania Board in August 2010. Dr. Clark testified, "They were concerned because over the course of a year-and-a-half I had missed three—I did not call in three times in the course of a year-and-a-half, and in those—on the times I didn't call in, I was selected." (Tr. at 113-114)

⁴ Ms. Bickers noted that Dr. Clark has not attended office conferences since the March 9, 2010, conference. Ms. Bickers further testified that Dr. Clark's attorney had notified the Board in advance that Dr. Clark would not be attending those conferences. (Tr. at 52-53)

Dr. Clark further testified:

I [told the Pennsylvania Board] two things. I said number one is I am a space cadet, and I am disorganized, and, you know, if I leave my—I mean, I got certain procedures that I've learned over the years, like to put my keys in the same place. But I am forgetful. I'm the absent minded professor.

So I did explain that. It wasn't an excuse, but it was part of it. And I did take those urine screens very seriously.

In fact, I told them that I had put on my cellphone reminders every day I had to call in. And I said, "What's going on?" I said, if—and the days I usually missed were Fridays, and that's a busier day.

And I'll call in the morning, you're selected, and then I'll get a call from the hospital, "Hey, you got to come in, we've got a meeting right away," and I'll get busy there and then I'll forget. And those are the situations.

And I explained that personally to the [Pennsylvania] Board and they said, "You got to be more careful." And they—they—one guy in particular said—he said—I've only missed three in like five years with them, you know.

So they weren't happy about it. They suspended me for 30 days, and they said, "You got to get more organized," which I did.⁵

(Tr. at 114-116)

27. Dr. Clark testified that, with regard to the screens he does with the PHP, he has not missed any of them. (Tr. at 114)

Additional Evidence

28. Dr. Clark testified that he was certified in adult psychiatry and in child and adolescent psychiatry by the American Board of Psychiatry and Neurology. Dr. Clark further testified that his certification in child and adolescent psychiatry must be renewed every ten years, has expired, and that he must wait until he completes probation before he can apply for

⁵ However, Dr. Clark's explanation concerning this 2010 violation in Pennsylvania is not internally consistent. He first testified that he had failed to "call in" on three occasions, and had been selected to submit a urine sample on each of those three occasions. Next, as he is explaining how he had failed to call in, he testified that he *had* called in and was selected to submit urine samples, but then forgot to submit the samples because he was distracted by work activity. Although this is a very minor issue as far as the Ohio Board is concerned (inasmuch as Dr. Clark did not miss any PHP screens that are sent to the Ohio Board), Dr. Clark's inconsistent explanation casts doubt on his reliability as a witness.

recertification. Dr. Clark noted that his certification in adult psychiatry does not expire. (Tr. at 140-141)

- 29. Dr. Clark testified with respect to his substance abuse diagnosis that it was not just a single diagnosis, but dual diagnoses, as he also suffers from depression. Moreover, prior to entering into his October 2005 Consent Agreement, Dr. Clark sought an independent evaluation from the Cleveland Clinic. Gregory B Collins, M.D., of the Cleveland Clinic suggested among other things that Dr. Clark attend S.L.A.A. meetings because of a relationship issue that Dr. Clark was having at that time. However, Dr. Clark testified that he is no longer in that relationship. (Tr. at 107-109; St. Ex. 6 at 4)
- 30. Dr. Clark testified that he continues to see a psychiatrist every three months. Dr. Clark submitted a September 10, 2010, letter from his psychiatrist that corroborates Dr. Clark's testimony. (Tr. at 133-134; Respondent's Exhibit [Resp. Ex.] I)
- 31. In a February 7, 2011, letter, John Martyniuk, M.D., Medical Director of PHP, advised that Dr. Clark had first contacted PHP in 1999. Dr. Martyniuk further stated that, from September 2002 to September 2003, "Dr. Clark had limited success in establishing and maintaining a stable ongoing recovery." Moreover, Dr. Martyniuk stated:

Dr. Clark entered the MARR program and halfway house in Georgia at the end of September 2003. Following his successful treatment and stay at MARR, Dr. Clark returned to Pennsylvania in the spring of 2004. He signed a PHP monitoring agreement running from May 27, 2004, to May 27, 2009. * * * The agreement terms have been extended given his stayed probationary status in Ohio and Pennsylvania.

Dr. Clark's compliance was inconsistent early in his monitoring. However, over the course of the agreement, Dr. Clark has shown significant improvements in his recovery documentation. Over the most recent quarter, Dr. Clark has been compliant documenting therapy attendance, peer monitoring, workplace monitoring, check-in calls and toxicology screening. The only deficiency was with meeting attendance cards. Individual therapy, group therapy, peer monitor, and workplace monitor have all been positive and indicate a solid recovery program. Toxicology screening has been negative for prohibited substances during the course of his monitoring.

The PHP believes Dr. Clark to be in stable recovery and has no cause to doubt that this has been the case during the entire period of monitoring. Given the above, the PHP believes that Dr. Clark is able to safely practice medicine from our perspective.

(Resp. Ex. A)

32. Dr. Clark presented a copy of an August 5, 2010, letter of support addressed to the Pennsylvania Board from the parents of one of his patients. The letter indicates that their

teenage child had been treated by Dr. Clark for severe depression. It is clear from the letter that the parents were impressed by Dr. Clark's medical expertise and compassion and that they hold him in very high esteem. They also state that Dr. Clark had not been aware that they were writing the letter on his behalf. (Resp. Ex. C)

Dr. Clark testified that the authors of the letter had sent him a copy. Dr. Clark further testified that he presented it at the hearing for the following reason:

I thought that it captures the nature of my practice, which I'm very proud of. Child psychiatry is a shortage specialty, and unfortunately the old doctor skills where you see the patient immediately and you talk to the family and you explain what's going on, and you calm them down, that seems to be going by the wayside.

And I've always prided myself on treating every kid like I want my kid treated. And I don't go blasting it and toot my own horn, but that's just the way I think it should be done. And this family appreciated it and spoke on my behalf without me asking them even. So I was pretty proud of that.

 $(Tr. at 124-125)^6$

- 33. Dr. Clark testified that Geith H. Shahoud, M.D., a child and adult psychiatrist, is his Ohio Board-approved monitor with respect to his record-keeping. On May 27, 2010, Dr. Shahoud sent a letter to the Board concerning his chart review, in which he stated:
 - * * * I did review ten charts and the history/examination were appropriate, the impressions were cohesive and the selected treatment that Dr. Clark used was reasonable. For the last year and a half, I have been working with Dr. Clark in the same hospital, which is Southwood Psychiatric Hospital. Dr. Clark has shown an interest in his job and compassion for his patients. I did not see any signs of drug or alcohol use. Dr. Clark comes to work regularly and sees all of his patients daily.

(Resp. Ex. D)

34. On August 23, 2010, Stephen J. Quigley, CEO of Southwood, sent a letter of support to Dr. Clark's Pennsylvania counsel seeking the reinstatement of Dr. Clark's Pennsylvania license, which was suspended at that time. Mr. Quigley wrote, in part:

This time, during which Dr. Clark's medical license has been suspended, has put a substantial hardship on Southwood Psychiatric Hospital. There is not only an enormous shortage of qualified, seasoned psychiatrists, but it is very

⁶ Dr. Clark testified that the handwritten notations on the letter are his; he had inadvertently used the letter as scrap paper to do some calculations. (Tr. at 125-126)

difficult to find a child and adolescent psychiatrist who also has a sub-specialty of being able to treat an MR and Autistic population, such as the one he oversees here at Southwood Hospital.

Dr. Clark is an excellent psychiatrist. I can attest to his professional competence and compatibility with our Medical Staff.

(Resp. Ex. G)

- 35. Dr. Clark submitted two letters of support from former employers written in 2004. Both letters describe Dr. Clark as an excellent, dedicated physician. (Resp. Exs. J, K)
- 36. When asked if his goal is to regain full, unrestricted licensure in Ohio, Dr. Clark replied that, when he had entered into his first consent agreement with the Board in 2002, his children had been nine and ten years old and living in Hudson, Ohio. Dr. Clark testified, "[M]y thought was I would like to maintain an Ohio license to move back to Ohio to be closer to them." However, Dr. Clark testified that, over time, "I established, you know, my recovery [in Pittsburgh]. I learned that, you know, moving is disruptive to your recovery. I had a relationship. Work was going well. I had roots in that area. And I was having good contact with [the children] every other weekend." Eventually, Dr. Clark decided that he would not return to practice in Ohio. He did not renew his Ohio medical license in 2007, partly due to financial considerations. (Tr. at 91-92)
- 37. When asked why he had entered into the October 2005 Consent Agreement with the Board, Dr. Clark testified that, first, he had still wanted to keep the option open to return to Ohio for his children. Second, Dr. Clark testified, "I felt an obligation to satisfy the requirements of Ohio to repair any distrust or damage that I caused as an amends, so to speak." (Tr. at 103)

FINDINGS OF FACT

Case No. 10-CRF-043

- 1. The certificate of Allan William Clark, M.D., to practice medicine and surgery in the State of Ohio has been inactive for failure to renew since April 1, 2007, and was suspended due to a Child Support Enforcement Agency default notice from Trumbull County, Ohio, on August 11, 2008. Further, Dr. Clark's certificate is subject to a Step II Consent Agreement entered into with the Board effective October 12, 2005 [October 2005 Consent Agreement]. Among other things, the October 2005 Consent Agreement requires the following:
 - 2. Dr. Clark shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement.

* * *

14. Within thirty days of the effective date of this Consent Agreement, Dr. Clark shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than five times per week, to include participation in at least one Caduceus meeting every two weeks. Additionally, within thirty days of the effective date of this Consent Agreement, Dr. Clark shall undertake and maintain participation in one S.L.A.A. meeting each week. Substitution of any other specific program must receive prior Board approval.

Dr. Clark shall submit acceptable documentary evidence of continuing compliance with these programs which must be received in the Board's offices no later than the due date for Dr. Clark's quarterly declarations.

On January 10, 2008, the Board modified Dr. Clark's October 2005 Consent Agreement and reduced his alcohol and drug rehabilitation meeting requirements to three meetings per week. The requirement that he attend weekly S.L.A.A. meetings was not changed.

2. On February 24, 2010, the Board received a fax from Dr. Clark that consisted of Dr. Clark's 12-step meeting attendance logs for December 2009 through February 2010, and included some dates in March 2010. The meeting attendance logs indicated that Dr. Clark had attended meetings on February 27, 28, March 1, 3, and 6, 2010, although such dates had not yet occurred at the time the Board received the fax. Subsequently, on February 26, 2010, the Board received Dr. Clark's original Declaration of Compliance by mail, signed by Dr. Clark on February 10, 2010, with the original 12-step meeting attendance logs attached. Dr. Clark's declaration states that he was in full compliance with the terms of his October 2005 Consent Agreement. The Declaration of Compliance states further that Dr. Clark understood and acknowledged that the declaration, if false, may subject him to additional disciplinary action by the Board and may additionally subject him to criminal prosecution under Section 2921.13, Ohio Revised Code.

In an office conference on or about March 9, 2010, Dr. Clark admitted that he had signed the signatures or initials of the meeting secretary/chairperson in order to demonstrate his attendance at meetings, even though the secretary or chairperson of the meeting is supposed to provide the signature or initials. Dr. Clark further stated that, during the previous two years, he had gone to most of the meetings but not all of them, and estimated that he probably missed about one meeting per week. Although he is required to go to three 12-step meetings per week plus one S.L.A.A. meeting, Dr. Clark estimated that during the past two years he had not been attending about one-fourth of the meetings required. He testified that the meetings he missed were the S.L.A.A. meetings.

Case No. 11-CRF-001

3. On August 24, 2010, the Dr. Clark entered into a Consent Agreement and Order with the Commonwealth of Pennsylvania, Department of State, State Board of Medicine [Pennsylvania Board], wherein the Pennsylvania Board indefinitely suspended Dr. Clark's license to practice medicine in that state, stayed the indefinite suspension, then suspended his license for thirty days commencing July 27, 2010, and imposed a subsequent three-year probationary term. The acts underlying the Pennsylvania Order include that on three occasions Dr. Clark failed to submit to random, unannounced body fluid toxicology screens for the detection of certain substances as required pursuant to an order of the Pennsylvania Board dated June 23, 2005.

CONCLUSIONS OF LAW

Case No. 10-CRF-043

- 1. The acts, conduct, and/or omissions of Allan William Clark, M.D., as described in Findings of Fact 1 and 2, individually and/or collectively, constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.
- 2. Dr. Clark's acts, conduct, and/or omissions as described in Findings of Fact 1 and 2, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.
- 3. Dr. Clark's acts, conduct, and/or omissions as described in Findings of Fact 1 and 2, individually and/or collectively, constitute "[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 2921.13, Ohio Revised Code, Falsification.

Case No. 11-CRF-001

4. The Consent Agreement and Order of the Pennsylvania Board, as described in Finding of Fact 3, individually and/or collectively, constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license;

imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

RESPONDENT'S MOTION TO DISMISS

Prior to the hearing, on November 5, 2010, Dr. Clark filed a motion to dismiss these proceedings. As the primary basis for his motion, Dr. Clark argued that he had allowed his Ohio license to lapse in April 2007 and that more than two years have elapsed since that time. Therefore, he argued that, because his license had "expired," there is no longer any license for the Board to discipline. The State filed a memorandum contra, which was followed by Dr. Clark's reply. On January 31, 2011, the previous Hearing Examiner filed an Entry (hereinafter referred to as the "Entry") that denied Dr. Clark's motion to the extent that it was an objection to the hearing taking place at all, and further stated that the Hearing Examiner may give further consideration to Dr. Clark's motion in making a recommendation to the Board in the Report and Recommendation.

At hearing, Dr. Clark reiterated his motion to dismiss, and the present Hearing Examiner reiterated the ruling in the Entry. (Tr. at 10-11)

Dr. Clark's primary argument is directly addressed by Section 4731.22(M)(3), Ohio Revised Code, which states:

- (M) Notwithstanding any other provision of the Revised Code, all of the following apply:
 - (3) Failure by an individual to renew a certificate of registration in accordance with this chapter shall not remove or limit the board's jurisdiction to take any disciplinary action under this section against the individual.

As stated in the Entry, "The language in R.C. 4731.22(M)(3) is extremely broad. The provision makes clear that, following the lapse or expiration of a certificate to practice, a practitioner cannot avoid disciplinary action by not renewing his certificate." (Entry at 3) Moreover, as further stated in the Entry:

[T]he Hearing Examiner is not aware of any statute, rule, or judicial opinion that expressly overrides the operation of R.C. 4731.22(M)(3) or limits its effects to a particular number of months or years following non-renewal of a license to practice medicine in Ohio. The Hearing Examiner rejects the assertion that the Board cannot address any existing violations by Dr. Clark until and unless he chooses to file an application for restoration in the future.

(Entry at 4)

⁷ Ms. Davidson was the Hearing Examiner assigned to this matter at that time.

Based on the foregoing, and upon his own research, the Hearing Examiner finds that there is no legal authority to support Dr. Clark's argument that the Board must dismiss this matter. Nevertheless, the Board may *choose* to dismiss this matter, as it may choose to dismiss any case that comes before it.

RATIONALE FOR THE PROPOSED ORDER

The Proposed Order would revoke Dr. Clark's Ohio license while permitting him to reapply at some future date. His conduct in submitting falsified meeting attendance logs to the Board was egregious, and the Hearing Examiner finds insufficient mitigating evidence to justify leniency.

PROPOSED ORDER

It is hereby ORDERED that:

- A. The motion to dismiss of Allan William Clark, M.D. is DENIED.
- B. Dr. Clark's certificate to practice medicine and surgery in the State of Ohio shall be REVOKED.

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

R. Gregory Porter_ Hearing Examiner



Richard A. Whitehouse, Esq. Executive Director

(614) 466-3934 med.ohio.gov

Memorandum

TO:

BOARD MEMBERS

FROM:

R. Gregory Porter, Hearing Examiner

RE:

Allan William Clark, M.D.

Case No. 10-CRF-043

DATE:

May 18, 2011

Please find enclosed copies of the transcript, exhibits, and Report and Recommendation concerning the adjudication hearing of Allan William Clark, M.D., which occurred on April 6, 2011.

This matter is scheduled for consideration at the July 13, 2011, Board meeting.

The allegations contained in the Board's notice of opportunity for hearing concern the following issues: Violation of CA, false statements, misdemeanor acts (license currently suspended; license expired > 2 years ago).

The following sections of the Disciplinary Guidelines were considered in drafting the Proposed Order in this matter. Please note, however, that the Disciplinary Guidelines do not limit any sanction that the Board may impose, and that the range of sanctions available in this matter extends from dismissal to permanent revocation.

III.D: PUBLISHING A FALSE, FRAUDULENT, DECEPTIVE, OR MISLEADING STATEMENT.

- The minimum penalty for section III.D is: Suspension for 30 days; subsequent probation, min. 1 year.
- The maximum penalty for section III.D is: Permanent revocation of certificate or permanent denial of application.

VII.B: VIOLATION OF CONDITIONS OF LIMITATION, OTHER THAN PRACTICE PROHIBITIONS, PLACED BY THE BOARD.

- The minimum penalty for section VII.B is: Stayed revocation; indefinite suspension, min. as appropriate, with conditions for reinstatement; subsequent probation, min. 5 years.
- The maximum penalty for section VII.B is: Permanent revocation of certificate or permanent denial of application.

VIII.F: COMMISSION OF AN ACT CONSTITUTING A MISDEMEANOR COMMITTED IN

Matter of Allan William Clark, M.D. Case No. 10-CRF-043 May 18, 2011

COURSE OF PRACTICE OR INVOLVING MORAL TURPITUDE.

- The minimum penalty for section VIII.F is: Suspension for 30 days; subsequent 2 yr. probation.
- The maximum penalty for section VIII.F is: Permanent revocation of certificate or permanent denial of application.

The Proposed Order is within the penalties delineated for each of the Disciplinary Guidelines noted above.

enclosures

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq. Executive Director

(614) 466-3934 med.ohio.gov

EXCERPT FROM THE DRAFT MINUTES OF JULY 13, 2011

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Suppan announced that the Board would now consider the Reports and Recommendations, and the Proposed Findings and Proposed Order appearing on its agenda.

Dr. Suppan asked whether each member of the Board had received, read and considered the hearing records; the Findings of Fact, Conclusions of Law, Proposed Orders, and any objections filed in the matters of: Douglas B. Karel, M.D.; Rula Nadim Al-Aouar, M.D.; Steven Francis Brezny, M.D.; Allan William Clark, M.D.; Janice Electa Green Douglas, M.D.; Martin Escobar, M.D.; Philip M. Hutchison, D.O.; Melissa J. Marker, D.O.; and Larry Lee Smith, D.O. A roll call was taken:

ROLL CALL:

Dr. Strafford - ave Mr. Hairston - aye Dr. Stephens - aye Dr. Mahajan - aye Dr. Steinbergh - aye Dr. Suppan - aye Dr. Madia - aye Dr. Talmage - aye Ms. Elsass - aye Dr. Ramprasad - aye

Dr. Suppan 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:

Dr. Strafford - ave Mr. Hairston - aye Dr. Stephens - aye Dr. Mahajan - aye Dr. Steinbergh - aye Dr. Suppan - aye Dr. Madia - ave Dr. Talmage - aye Ms. Elsass - aye Dr. Ramprasad - aye

Dr. Suppan noted that, in accordance with the provision in section 4731.22(F)(2), Ohio Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further

participation in the adjudication of these matters. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert and Dr. Amato served as Supervising Member. In addition, Dr. Steinbergh served as Acting Secretary in the case of Steven Francis Brezny, M.D., and therefore she cannot vote in that matter.

Dr. Suppan reminded all parties that no oral motions may be made during these proceedings.

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

.....

ALLAN WILLIAM CLARK, M.D., Case No. 10-CRF-043 and No. 11-CRF-001

.....

Dr. Talmage exited the meeting prior to this discussion.

.....

Dr. Madia moved to approve and confirm Mr. Porter's Findings of Fact, Conclusions of Law, and Proposed Order in the consolidated matters Allan William Clark, M.D. Dr. Stephens seconded the motion.

.....

A vote was taken on Dr. Madia's motion to approve:

ROLL CALL:

Dr. Strafford - aye Mr. Hairston - aye Dr. Stephens - aye Dr. Mahajan - aye Dr. Steinbergh - aye Dr. Suppan - aye Dr. Madia - aye Ms. Elsass - aye Dr. Ramprasad - aye

The motion carried.

Richard A. Whitehouse, Esq. **Executive Director**

(614) 466-3934 med.ohio.gov

January 12, 2011

Case number: 11-CRF- 001

Allan William Clark, M.D. 232 Rutledge McMurray, PA 15317

Dear Doctor Clark:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio [Board] intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand you or place you on probation for one or more of the following reasons:

(1) On or about August 24, 2010, the Commonwealth of Pennsylvania, Department of State, State Board of Medicine [Pennsylvania Board] issued a Consent Agreement and Order [Pennsylvania Order], wherein the Pennsylvania Board indefinitely suspended your license to practice medicine, stayed the indefinite suspension, then suspended such license for thirty days commencing July 27, 2010, and imposed a subsequent three-year probationary term. The acts underlying the Pennsylvania Order include that on three occasions you failed to submit to random unannounced body fluid toxicology screens for the detection of certain substances as required pursuant to an order of the Pennsylvania Board dated on or about June 23, 2005.

A copy of the Pennsylvania Order is attached hereto and incorporated herein.

The Pennsylvania Order as alleged in paragraph (1) above, individually and/or collectively, constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must

Allan William Clark, M.D. Page 2

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 medicine and surgery or to reprimand you or place you on probation.

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Lance A. Talmage, M.D.

Secretary

LAT/KHM/flb Enclosures

CERTIFIED MAIL #91 7108 2133 3938 3023 6354 RETURN RECEIPT REQUESTED

cc: Douglas E. Graff, Esq.
Graff & Associates, L.P.A.
604 East Rich Street
Columbus, Ohio 43215-8811

CERTIFIED MAIL #91 7108 2133 3938 3023 6347 RETURN RECEIPT REQUESTED

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

Commonwealth of Pennsylvania, Bureau of Professional and

Occupational Affairs,

Docket No.: /

07-49-02416

File No .:

VS.

Allan William Clark, M.D., Respondent.

CONSENT AGREEMENT AND ORDER

The Commonwealth and Respondent stipulate as follows in settlement of the abovecaptioned case.

- 1. This matter is before the State Board of Medicine pursuant to the Medical Practice Act, Act of December 20, 1985, P.L. 457, No. 112, as amended ("Act"), 63 P.S. §422.1 et seq.
- 2. The Respondent is Allan William Clark, M.D., who at all times relevant was licensed to practice medicine in the Commonwealth of Pennsylvania, License No. MD062193L.
- 3. The Respondent's last known address on file with the Board is: 232 Rutledge Dr, McMurray, PA 15658.
- 4. At all times pertinent to the allegations in this Agreement, Respondent was licensed to practice medicine and surgery in the Commonwealth of Pennsylvania.
- 5. Respondent's license is current and will expire on 12/31/10, and may be continually renewed thereafter upon the filing of the appropriate documentation and the payment of the necessary fees.

- 6. Respondent admits that the following facts are true:
 - a. Respondent last practiced in Pittsburgh, PA.
- b. Respondent was the subject of a Petition for Automatic Relief Order that was granted by the Probable Cause Screening Committee of the Board on July 27, 2010. A copy of the Board's Order and Application is attached hereto and incorporated by reference herein as **EXHIBIT 1.**
- c. Respondent failed to submit to random unannounced and observed body fluid toxicology screen on July 30, 2009, May 27, 2010 and on July 12, 2010. Respondent admitted to this conduct in a letter attached in **EXHIBIT 1**.
- 7. Based upon the factual allegations in paragraph 6 above, the Board is authorized to suspend, revoke or otherwise restrict Respondent's license under the Act.
- 8. The parties, intending to be legally bound, consent to the issuance of the following Order in settlement of the referenced in **EXHIBIT 1**:
 - a. The Board is authorized to suspend, revoke or otherwise restrict Respondent's license under 63 P.S. §422.41 (5) as being unable to practice the profession with reasonable skill and safety to patients by reason of addiction to alcohol or drugs.
- b. Respondent's license, No. MD062193-L, is indefinitely

 SUSPENDED, such suspension to be immediately STAYED in favor of

THIRTY DAYS (30) SUSPENSION commencing as of July 27, 2010 followed by THREE YEARS OF PROBATION, said probation to be subject to the

following terms and conditions:

GENERAL

- (1) Respondent shall fully and completely comply and cooperate with the Bureau of Professional and Occupational Affairs, Professional Health Monitoring Program ("PHMP"), Disciplinary Monitoring Unit ("DMU") and its agents and employees in their monitoring of Respondent's impairment under this Consent Agreement and Order ("Agreement").
- (2) Respondent shall abide by and obey all laws of the United States, the Commonwealth of Pennsylvania and its political subdivisions and all rules and regulations and laws pertaining to the practice of the profession in this Commonwealth or any other state or jurisdiction in which Respondent holds a license to practice the profession. Summary traffic violations shall not constitute a violation of this Agreement.
- (3) Respondent shall at all times cooperate with the PHMP and its agents and employees in the monitoring, supervision and investigation of Respondent's compliance with the terms and conditions of this Agreement, including requests for, and causing to be submitted at Respondent's expense, written reports, records and verifications of actions that may be required by the PHMP.
- (4) Respondent's failure to fully cooperate with the PHMP shall be deemed a violation of this Agreement.

- (5) Respondent shall not falsify, misrepresent or make material omission of any information submitted pursuant to this Agreement.
- (6) Respondent may not be absent from the Commonwealth of Pennsylvania for any period exceeding twenty (20) days unless Respondent seeks and receives prior written permission from the PHMP subject to any additional terms and conditions required by the PHMP.
- (7) In the event Respondent relocates to another jurisdiction, within five days (5) days of relocating Respondent shall either enroll in the other jurisdiction's impaired professional program and have the reports required under this Agreement sent to the Pennsylvania PHMP, or if the other jurisdiction has no impaired professional program, Respondent shall notify the licensing board of the other jurisdiction that Respondent is impaired and enrolled in this Program. In the event Respondent fails to do so, in addition to being in violation of this Agreement, the periods of suspension and probation shall be tolled.
- (8) Respondent shall notify the PHMP in writing within five (5) days of the filing of any criminal charges against Respondent, the initiation of any legal action pertaining to Respondent's practice of the profession, the initiation of charges,

action, restriction or limitation related to Respondent's practice of the profession by a professional licensing authority of any state or jurisdiction or the Drug Enforcement Agency of the United States Department of Justice, or any investigation, action, restriction or limitation related to Respondent's privileges to practice the profession at any health care facility.

- (9) Respondent shall notify the PHMP by telephone within 48 hours and in writing within five (5) days of any change of Respondent's home address, phone number, employment status, employer and/or change in practice at a health care facility. Failure to timely advise the PHMP under this subsection due to the PHMP office being closed is not an excuse for not leaving a voice mail message with this information.
- (10) Respondent shall cease or limit his/her practice if the PHMP case manager directs that Respondent do so.

EVALUATION - TREATMENT

done by a PHMP-approved provider within sixty, (60) days prior to the effective date of this Agreement, or within sixty, (60) days subsequent to the effective date of this Agreement, Respondent shall have forwarded to the PHMP-DMU, P.O. Box 10749, Harrisburg, PA 17105-0749, (717) 783-4857, a written evaluation

by a PHMP-approved provider assessing Respondent's fitness to actively practice the profession. If the provider determines that Respondent is not fit to practice, Respondent shall immediately cease practicing the profession and not practice until a PHMP-approved provider and the PHMP case manager determine that Respondent is fit to resume practice with reasonable skill and safety to patients.

- (12) Respondent shall provide the PHMP-approved provider with a copy of any prior evaluations and counseling records and a copy of this Agreement.
- (13) Respondent shall authorize, in writing, the PHMP to have a copy of the PHMP-approved provider's written evaluation reports.
- (14) If the PHMP provider's evaluation includes recommendations that Respondent obtain treatment, Respondent must fully comply with those recommendations as part of these probationary requirements.
- (15) Respondent shall arrange and ensure that written treatment reports from all PHMP-approved providers are submitted to the PHMP upon request or at least every sixty (60) days after the effective date of this Agreement. The reports shall contain at least the following information:

- (a) Verification that the provider has received a copy of this Agreement and understands the conditions of this probation;
 - (b) A treatment plan, if developed;
- (c) Progress reports, including information regarding compliance with the treatment plan;
 - (d) Physical evaluations, if applicable;
 - (e) The results of any testing;
- (f) Modifications in treatment plan, if applicable;
- (g) Administration or prescription of any drugs to Respondent; and
- (h) Discharge summary and continuing care plan at discharge.
- (16) Respondent shall identify a primary care physician who shall send written notification to the Respondent's PHMP case manager certifying Respondent's health status as requested.

SUPPORT GROUP ATTENDANCE

(17) Respondent shall attend and actively participate in any support group programs recommended by the provider or the PHMP case manager at the frequency recommended by the provider, but no less than twice a week.

(18) Respondent shall provide written verification of any and all support group attendance to the PHMP on at least a monthly basis or as otherwise directed by the PHMP.

ABSTENTION

- (19) Respondent shall completely abstain from the use of controlled substances, caution legend (prescription) drugs, mood altering drugs or drugs of abuse including alcohol in any form, except under the following conditions:
 - (a) Respondent is a bona fide patient of a licensed health care practitioner who is aware of Respondent's impairment and participation in the PHMP;
 - (b) Such medications are lawfully prescribed by Respondent's treating practitioner and approved by the PHMP case manager; and
 - (c) Respondent provides the PHMP, by telephone within 48 hours and in writing within five (5) days of receiving the medication, the name of the practitioner prescribing the drug, the illness or medical condition diagnosed, the type, strength, amount and dosage of the medication, and a signed statement consenting to the release of the medical information from the prescribing practitioner to the PHMP or its designated representative

for the purpose of verification.

MONITORED PRACTICE

- (20) "Practice" includes employment in any position requiring the maintenance of a current professional license.
- (21) Licensee shall not work in any practice setting without workplace monitoring as required by PHMP.
- (22) If Respondent is practicing, Respondent shall give any employer and supervisor a copy of this Agreement within five (5) days of the effective date of this Agreement.
- (23) Licensee shall give any prospective employer and supervisor a copy of this Agreement when applying for employment in the practice of the profession.
- (24) Respondent shall provide the PHMP by telephone within 48 hours, and in writing within five (5) days of the effective date of this agreement or obtaining employment, notification of the following:
 - (a) Name and address of workplace monitor if a workplace monitor is required by PHMP;
 - (b) The name(s) and address(es) of the place(s) at which Respondent will practice the profession and a description of Respondent's duties and responsibilities at such places of practice; and

- (c) Any restrictions on Respondent's practice.
- (25) Respondent shall ensure that Respondent's supervisor submits to the PHMP the following information in writing:
 - (a) Verification that the employer and supervisor have received a copy of this Agreement and understand the conditions of this probation;
 - (b) An evaluation of Respondent's work performance on a 60-day or more frequent basis as requested by the PHMP; and
 - (c) Immediate notification of any suspected violation of this probation by Respondent.

BODY FLUID TOXICOLOGY SCREENING

- and observed body fluid toxicology screens for the detection of substances prohibited under this Agreement as directed by the PHMP. A positive result on a body fluid toxicology screen shall constitute an irrefutable violation of this Agreement unless Respondent has complied with the provisions of this Agreement pertaining to the use of drugs. Failure to provide a specimen when requested will be considered a violation of this Agreement.
 - (27) Respondent shall avoid all foods that contain poppy

seeds. Ingestion of poppy seeds will not be accepted as a valid explanation for a positive screen.

REPORTING/RELEASES

(28) Respondent, Respondent's providers, supervisor(s), employer(s) or other persons required to submit reports under this Agreement shall cause such reports, data or other information to be filed with the PHMP, unless otherwise directed, at:

PHMP-DMU Box 10749 Harrisburg, PA 17105-0749

- (29) Respondent consents to the release by the PHMP of any information or data produced as a result of this probation, including written provider evaluations, to any treatment provider, supervisor, Commonwealth's attorney, hearing examiner, and Board members in the administration and enforcement of this Agreement.
- (30) Respondent shall sign any required waivers or release forms requested by the PHMP for any and all records, including medical or other health-related and psychological records, pertaining to treatment and monitoring rendered to Respondent during this probation and any corresponding criminal probation, as well as any employment, personnel, peer review or review records pertaining to Respondent's practice of the

profession during this probation, to be released to the PHMP, the Commonwealth's attorney, hearing examiner and Board members in the administration and enforcement of this Agreement.

COSTS

incurred in complying with the terms of this Agreement, including but not limited to psychiatric or psychotherapy treatments, PHMP-required toxicology screens prior to each screen's being conducted, and reproduction of treatment or other records. Any toxicology screens and any subsequent reanalysis of specimens required by PHMP shall be paid for by Licensee. Failure of Licensee to pay any of these costs in a timely manner shall constitute a violation of this Agreement.

BUREAU/PHMP EVALUATIONS

. (32) Upon request of the PHMP, the Respondent shall submit to mental or physical evaluations, examinations or interviews by a PHMP-approved treatment provider or the PHMP.

Respondent's failure to submit to such an evaluation, examination or interview shall constitute a violation of this Agreement.

VIOLATION OF THIS ORDER

- (33) Notification of a violation of the terms or conditions of this Agreement shall result in the IMMEDIATE VACATING of the stay order, TERMINATION of the period of probation, and ACTIVATION of the suspension, imposed in paragraph 8(c) above, of Respondent's license(s) to practice the profession in the Commonwealth of Pennsylvania, as follows:
 - (a) The prosecuting attorney for the Commonwealth shall present to the Board's Probable Cause Screening Committee ("Committee") a Petition which indicates that Respondent has violated any terms or conditions of this Agreement.
 - (b) Upon a probable cause determination by the Committee that Respondent has violated any of the terms or conditions of this Agreement, the Committee shall, without holding a formal hearing, issue a preliminary order vacating the stay of the within suspension, terminating this probation and activating the suspension of Respondent's

license.

- (c) Respondent shall be notified of the Committee's preliminary order within three (3) business days of its issuance by certified mail and first class mail, postage prepaid, sent to Respondent's last registered address on file with the Board, or by personal service if necessary.
- (d) Within twenty (20) days of mailing of the preliminary order, Respondent may submit a written answer to the Commonwealth's petition and request that a formal hearing be held concerning Respondent's violation of probation, in which Respondent may seek relief from the preliminary order activating the suspension. Respondent shall mail the original answer and request for hearing, as well as all subsequent writings in the matter, to the Department of State, Bureau of Professional and Occupational Affairs' Prothonotary, 2601 North Third Street, Harrisburg, PA 17110 and a copy to the prosecuting attorney for the Commonwealth.

- (e) If Respondent submits a timely answer and request for a formal hearing, the Board or a designated hearing examiner shall convene a formal hearing within forty-five (45) days from the date of the Prothonotary's receipt of Respondent's request for a formal hearing.
- (f) Respondent's submission of a timely answer and request for a hearing shall not stay the suspension of Respondent's license under the preliminary order. The suspension shall remain in effect unless the Board or the hearing examiner issues an order after the formal hearing staying the suspension again and reactivating the probation.
- (g) The facts and averments in this Agreement shall be deemed admitted and uncontested at this hearing.
- (h) If the Board or hearing examiner after the formal hearing makes a determination against Respondent, a final order will be issued sustaining the suspension of Respondent's license and imposing any additional disciplinary measures deemed appropriate.
- (i) If Respondent fails to timely file an answer and request a hearing, the Board shall issue a final order affirming the suspension of Respondent's license.
 - (j) If Respondent does not make a timely

answer and request for a formal hearing and a final order affirming the suspension is issued, or the Board or hearing examiner makes a determination against Respondent sustaining the suspension of Respondent's license, after at least five (5) years of active suspension and any additional imposed discipline, Respondent may petition the Board for reinstatement based upon an affirmative showing that Respondent has at least sixty (60) months of sustained documented recovery, a PHMP-approved provider's evaluation that Respondent is fit to safely practice, and verification that Respondent has abided by and obeyed all laws of the United States, the Commonwealth of Pennsylvania and its political subdivisions, and all rules and regulations pertaining to the practice of the profession in this Commonwealth.

- (k) If the stay is terminated, Respondent shall still

 comply with all terms and conditions of probation during

 the active suspension, other than those terms and conditions

 pertaining to practicing the profession.
 - (l) Continued failure by the Respondent to comply with the unaffected terms and conditions of probation shall result in further disciplinary action against Respondent.

- 9. Respondent's failure to fully comply with any terms of this Agreement may also constitute grounds for additional disciplinary action.
- 10. Nothing in this Agreement shall preclude the prosecuting attorney for the Commonwealth from filing charges or the Board from imposing disciplinary action or corrective measures for violations not contained in this Agreement.
- 11. This Agreement shall take effect immediately upon its approval and adoption by the Board.
- 12. Respondent acknowledges receipt of an Order to Show Cause in this matter.

 Respondent knowingly and voluntarily waives the right to an administrative hearing in this matter, and to the following rights related to that hearing: to be represented by counsel at the hearing; to present witnesses and testimony in defense or in mitigation of any sanction that may be imposed for a violation; to cross-examine witnesses and to challenge evidence presented by the Commonwealth; to present legal arguments by means of a brief; and to take an appeal from any final adverse decision.
- 13. Respondent agrees, as a condition of entering into this Agreement, not to seek modification of it at a later date without first obtaining the express written concurrence of the Prosecution Division of the Department of State.
- 14. This Agreement is between the prosecuting attorney and Respondent only. Except as otherwise noted, this Agreement is to have no legal effect unless and until the Office of General Counsel approves the contents as to form and legality and the Board approves and adopts the Agreement.
 - 15. Should the Board not approve this Agreement, presentation to and consideration of it

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PAGE 01/01

by the Board shall not prejudice the Board or any of its members from further participation to the adjudication of this matter. This paragraph is binding on the participants even if the Board does not approve this Agreement.

- 16. This Agreement contains the whole agreem and between the participants. There are no other terms, obligations, covenants, representations, streements or conditions, or otherwise, of any kind whatsoever concerning this Agreement.
- 17. Respondent verifies that the facts and states tents set forth in this Agreement are true and correct to the best of Respondent's knowledge, information and belief. Respondent understands that statements in this Agreement are made subject to the criminal penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Andrew E. Demarest Prosecuting Attorney

Department of State

DATED: 8/

Allan Wil jato Clark, M.D.,

Respondent

DATED: 3/2 4/10

day of august, 2010, the State Board Of Medicine approves and adopts the foregoing Consent Agreement and incorporates the terms of paragraph 8, which shall constitute the Board's Order and is now issued in resolution of this matter.

This Order shall take effect immediately.

BY ORDER:

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

STATE BOARD OF MEDICINE

Commissioner

Carol E Rose

Chairperson

File No. 07-49-02416

Date of Mailing:

For the Commonwealth:

Andrew E. Demarest, Prosecuting Attorney

P. O. Box 2649

Harrisburg, PA 17105-2649

For Respondent:

William I. Arbuckle, III

3081 Enterprise Drive

Suite 2

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Richard A. Whitehouse, Esq. Executive Director

(614) 466-3934 med.ohio.gov

April 14, 2010

Case number: 10-CRF- 043

Allan William Clark, M.D. 232 Rutledge McMurray, PA 15317

Dear Doctor Clark:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio [Board] intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand you or place you on probation for one or more of the following reasons:

(1) Your certificate to practice medicine and surgery in the State of Ohio has been inactive for failure to renew since on or about April 1, 2007, and was suspended due to a Child Support Enforcement Agency default notice from Trumbull County, Ohio, on or about August 11, 2008. Further, your certificate to practice is subject to the Step II Consent Agreement Between Allan William Clark, M.D., and The State Medical Board of Ohio, effective October 12, 2005 [October 2005 Consent Agreement], that requires the following:

[At Paragraph 2] Dr. Clark shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement.

[At Paragraph 14] Within thirty days of the effective date of this Consent Agreement, Dr. Clark shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than five times per week, to include participation in at least one Caduceus meeting every two weeks. Additionally, within thirty days of the effective date of this Consent Agreement, Dr. Clark shall undertake and maintain participation in one S.L.A.A. meeting each week. Substitution of any other specific program must receive prior Board approval.

Dr. Clark shall submit acceptable documentary evidence of continuing compliance with these programs which must be received in the Board's offices no later than the due date for Dr. Clark's quarterly declarations.

On or about January 10, 2008, the Board modified the October 2005 Consent Agreement reducing your alcohol and drug rehabilitation meeting requirements to

Mailed 4-15-12

Allan William Clark, M.D. Page 2

three meetings per week. The requirement that you attend weekly S.L.A.A. meetings was not changed.

(2) On or about February 24, 2010, the Board received by fax your Alcohol and Drug Rehabilitation Logs [meeting logs], a form provided by the Board, for dates representing your twelve-step meeting attendance commencing December 2, 2009, and ending March 6, 2010. Such meeting logs showed that you attended meetings on February 27, 28, March 1, 3, and 6, although such dates had not yet occurred at the time the Board received the fax. In an office conference on or about March 9, 2010, you admitted that for the meeting log dating from February 3, 2010, through March 6, 2010, you signed a variety of initials in order to demonstrate your attendance at fourteen meetings, even though the Secretary or Chairman of the meeting is supposed to provide the signature or initials. You stated that although you wrote the initials on that meeting log, you had attended most of the meetings, estimating that you probably missed about one meeting a week. You further stated that during the past two years, you go to most of the meetings but not all of them. Although you are required to go to three twelve-step meetings per week, you estimated that during the past two years you have not been attending about one-fourth of the meetings required.

On or about February 26, 2010, the Board received your Declaration of Compliance, signed by you on February 10, 2010, which states that you are in full compliance with the terms, conditions and limitations imposed upon you by the Board. The Declaration of Compliance states further that you understood and acknowledges that the declaration, if false, may subject you to additional disciplinary action by the Board and may additionally subject you to criminal prosecution under Section 2921.13, Ohio Revised Code.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) and (2) above, individually and/or collectively, constitute "[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 2921.13, Ohio Revised Code, Falsification.

Allan William Clark, M.D. Page 3

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

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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Lance A. Talmage, M.D.

Secretary

LAT/KHM/flb Enclosures

CERTIFIED MAIL #91 7108 2133 3936 3067 6602 RETURN RECEIPT REQUESTED

CC: Douglas E. Graff, Esq.
Graff & Associates, L.P.A.
604 East Rich Street
Columbus, Ohio 43215-8811

CERTIFIED MAIL #91 7108 2133 3936 3067 6596 RETURN RECEIPT REQUESTED

Richard A. Whitehouse, Esq. Executive Director

아 August 11, 2008

(614) 466-3934 med.ohio.gov

Allan William Clark, M.D. 232 Rutledge McMurray, PA 15317

NOTICE OF SUSPENSION/NON-RENEWAL PURSUANT TO R.C. 3123.47 & 4731.76

The State Medical Board of Ohio has received notice pursuant to Section 3123.43 of the Ohio Revised Code from the Trumbull County Child Support Enforcement Agency that you have been determined in default under a child support order. Pursuant to Ohio Revised Code Sections 3123.47 and 4731.76, this Board is prohibited from issuing a license, permit, certificate or other authorization as a result of this determination. The Board is also required to suspend any license that has been issued. This decision to suspend, or refuse to reinstate or restore a license, will remain in effect until the Board receives notice from the Trumbull County Child Support Enforcement Agency that you are no longer determined to be in default.

Please note that our records indicate that your license to practice medicine and surgery in Ohio lapsed on April 1, 2007, for non-payment of fees, but that you remain subject to the probationary terms of your Consent Agreement.

When will the Board reinstate/restore my license?

Before a license can be reinstated or restored, the Board must receive notice from the Trumbull County Child Support Enforcement Agency that you are no longer in default. The Trumbull County Child Support Enforcement Agency will issue such a notice when payment of the determined arrearage has been paid in full, or when a new, or appropriate, order has been issued for the collection of current support and arrearage.

Once I am determined not to be in default, how long will it take to get my license? Once the Board receives notice from the Trumbull County Child Support Enforcement Agency that you are no longer in default, you will be eligible to apply to reinstate or restore your license. Please note that you will be required to submit an application and appropriate fee, should you decide that you wish to reactivate your Ohio medical license.



Can I appeal this decision to the Board?

This suspension or refusal to reinstate or restore a license is not subject to any hearing or review process of the Board. You must be determined not in default by the Trumbull County Child Support Enforcement Agency. Once they make this determination, they will notify the Board and you will be eligible to reinstate or restore your license should you wish to do so.

What do I do now?

You need to contact the Trumbull County Child Support Enforcement Agency. They will be able to tell you what you need to do in order to bring your child support payments up to date.

Pursuant to Sections 3123.47 and 4731.76, Ohio Revised Code, you are hereby notified that the Board will not reinstate or restore your license to practice medicine and surgery in the state of Ohio. Practicing medicine and surgery in Ohio without a valid license shall be considered a violation of Section 4731.41, Ohio Revised Code.

Sincerely,

Lance A. Talmage, M.D. W

Secretary

LAT/baj

CERTIFIED MAIL NO. 91 7108 2133 3934 3685 6239 RETURN RECEIPT REQUESTED

STEP II CONSENT AGREEMENT BETWEEN ALLAN WILLIAM CLARK, M.D. AND THE STATE MEDICAL BOARD OF OHIO

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

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

BASIS FOR ACTION

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

- The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, A. revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4731.22(B)(26), Ohio Revised Code, "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;" Section 4731.22(B)(19), Ohio Revised Code, "[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills;" Section 4731.22(B)(10), Ohio Revised Code, "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed;" and/or Section 4731.22(B)(20), Ohio Revised Code, "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board."
- B. The Board enters into this Step II Consent Agreement in lieu of formal proceedings based upon the violations of Section 4731.22(B)(26), Ohio Revised Code; Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents and Section 2925.11, Ohio Revised Code, Possession of Drugs; and Section 4731.22 (B)(20), Ohio Revised Code, to wit: Rule 4731-11-08, Ohio Administrative Code, Utilizing Controlled Substances for Self and

Family Members, and Rule 4731-15-01, Ohio Administrative Code, Licensee Reporting Requirements, as set forth in Paragraph E of the Step I Consent Agreement Between Allan William Clark, M.D., and The State Medical Board of Ohio, effective December 12, 2002 [December 2002 Step I Consent Agreement], a copy of which is attached hereto and fully incorporated herein; and as set forth in Paragraphs E through I, below. The Board expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Consent Agreement.

- C. Dr. Clark is applying for reinstatement of his license to practice medicine and surgery in the State of Ohio, License #35-057420, which was suspended pursuant to the terms of the aforementioned December 2002 Step I Consent Agreement.
- D. Dr. Clark states that he is also licensed to practice medicine and surgery in the State of Pennsylvania.
- E. Dr. Clark admits that from October 1, 2002 through November 21, 2002, he participated in residential treatment for chemical dependence at Marworth Treatment Center [Marworth], a Board-approved treatment provider in Waverly, Pennsylvania. Dr. Clark further admits that, upon his discharge from Marworth, he was diagnosed with Opiate Dependence, Stimulant Dependence, Major Depression, and Personality Disorder with Antisocial and Narcissistic Traits, and that his treatment providers reported that his response to treatment and his prognosis in recovery were poor. Dr. Clark further admits that his Marworth treatment providers and the staff of his advocacy program, the Physicians' Health Programs, a program of The Foundation of the Pennsylvania Medical Society [PHP], recommended that he continue to undergo treatment at a halfway house in Atlanta, Georgia, but that he elected not to cooperate with this recommendation.

Dr. Clark states that following his discharge from Marworth, he underwent intensive outpatient treatment at The Neil Kennedy Treatment Center, a Board-approved treatment provider in Youngstown, Ohio, from December 2002 until his release from such treatment in May 2003.

Dr. Clark states further that following his discharge from Marworth, he entered into an advocacy contract with PHP in Pennsylvania, whereby he agreed to refrain from working in medicine initially. On October 3, 2003, a routine urine screen taken on behalf of PHP yielded a positive result for morphine.

Dr. Clark states that on December 1, 2003, he was admitted to Metro Atlanta Recovery Residences [MARR], Atlanta, Georgia, for assessment for chemical dependence, and on December 2, 2003, was admitted into MARR's Men's Recovery Intensive Day Treatment for Chemical Dependence on an outpatient basis. Dr. Clark

admits that he was discharged from MARR on May 26, 2004, treatment complete, with a discharge characterized as "Appropriate - with Advocacy," and with diagnoses including: Axis I: Polysubstance Dependence, Opioid Dependence, Alcohol Dependence, in remission, Amphetamine Dependence, in remission, Benzodiazepine Abuse, in remission, Depressive Disorder, NOS; and Axis II: Personality Disorder NOS with mixed Narcissistic and Anti-Social Features. Dr. Clark admits that on the date of his discharge, he entered into an aftercare contract with MARR, whereby he agreed to terms including weekly individual therapy with his psychiatrist, attendance at the annual International Doctors in Alcoholics Anonymous [IDAA] meeting in August 2004, and workplace supervision; and that Thomas Hobbs, M.D., Ph.D., of PHP was named as his professional advocate.

Dr. Clark states that following his discharge from MARR, he entered into a second advocacy agreement with PHP, effective May 27, 2004 [May 2004 Advocacy Agreement], wherein Dr. Clark agreed to terms including attendance at five 12-step meetings per week, a strong recommendation for attendance at one national meeting of the IDAA within five years of the date of the contract, random urine screens, other testing deemed appropriate by the PHP medical director, and a restriction of his work hours to 25 hours per week, which has recently been increased to 35 hours per week.

- F. Dr. Clark admits that, on November 13, 2003, the State Board of Medicine of Pennsylvania issued an Order Compelling Mental and Physical Examination, ordering that he submit to mental and physical examinations on December 8, 2003. Dr. Clark admits that he did not attend such examinations. Dr. Clark further admits that on or about December 15, 2003, the Commonwealth of Pennsylvania, Department of State, State Board of Medicine issued an Amended Order to Show Cause to Dr. Clark, asserting that, as he was the subject of a suspension in the state of Ohio and as he failed to appear for the scheduled mental and physical examinations, the Pennsylvania Board of Medicine may impose penalties including license revocation and fines. Dr. Clark admits that the hearing on the Amended Order to Show Cause was held on December 9, 2004. Dr. Clark further admits that, on June 23, 2005, the State Board of Medicine of Pennsylvania issued an order that levied a civil penalty upon Dr. Clark, issued a stayed indefinite suspension of his Pennsylvania medical license, and imposed a probationary period of five years with terms and conditions including: execution of an advocacy agreement with PHP; participation in support groups; abstention from the use of controlled substances, mood-altering drugs and alcohol; submission to random, unannounced urine screens; and reporting requirements. A certified copy of the Adjudication and Order from the Commonwealth of Pennsylvania, Department of State, Board of Medicine is attached hereto and fully incorporated herein.
- G. Dr. Clark states, and the Board acknowledges, that Neil Capretto, D.O., Medical Director of Gateway Greentree, Pittsburgh, Pennsylvania, approved by the Board to

assess Dr. Clark, has reported that Dr. Clark's ability to practice has been assessed and that he has been found capable of practicing medicine and surgery so long as certain treatment and monitoring conditions are in place.

- H. Dr. Clark states, and the Board acknowledges, that Gregory Collins, M.D., of the Cleveland Clinic, a Board-approved treatment provider, has reported that Dr. Clark's ability to practice has been assessed and that he has been found capable of practicing medicine and surgery according to acceptable and prevailing standards of care, so long as certain treatment and monitoring conditions are in place, including the following:
 - A minimum of five self-help meetings per week coupled with AA sponsorship; one meeting must be a Sex and Love Addicts Anonymous [SLAA] meeting;
 - One group therapy session per week;
 - One individual therapy session per week;
 - Two random urine toxicology screens per week;
 - One Caduceus meeting every other week;
 - Monthly phone consultation to his PHP staff member; and
 - Monthly face-to-face contact with his PHP monitor.

Dr. Clark states that attendance at SLAA meetings is for the purpose of assisting him in his recovery from chemical addiction, and that while he has had sexual impulsivity issues not related to the practice of medicine, he has no diagnosis of sexual disorder.

- I. Dr. Clark states, and the Board has information to support, that he has been fully compliant with his May 2004 Advocacy Agreement with PHP.
- J. Dr. Clark admits that he did not attend two of the office conferences required pursuant to his December 2002 Step I Consent Agreement, causing him to be out of compliance with its terms. Dr. Clark states that he missed the office conferences because he did not receive notice of the dates scheduled for his appearance, for the reason that he did not properly notify the Board of his change of address after relocating. Dr. Clark states that he has since attended an office conference, and has notified the Board of his current address of record.

AGREED CONDITIONS

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

- 1. Dr. Clark shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
- 2. Dr. Clark shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the date his quarterly declaration would have been due pursuant to his December 2002 Step I Consent Agreement with the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
- 3. Dr. Clark shall appear in person for an interview before the full Board or its designated representative. The first such appearance shall take place on the date his appearance would have been scheduled pursuant to his December 2002 Step I Consent Agreement with the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
- 4. Dr. Clark shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.
- 5. In the event Dr. Clark is found by the Secretary of the Board to have failed to comply with any provision of this Consent Agreement, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Consent Agreement.

MONITORING OF REHABILITATION AND TREATMENT

Drug Associated Restrictions

- 6. Dr. Clark shall keep a log of all controlled substances prescribed. Such log shall be submitted, in the format approved by the Board, thirty days prior to Dr. Clark's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Clark shall make his patient records with regard to such prescribing available for review by an agent of the Board upon request.
- 7. Dr. Clark shall not, without prior Board approval, administer, personally furnish, or possess (except as allowed under Paragraph 8 below) any controlled substances as

defined by state or federal law. In the event that the Board agrees at a future date to modify this Consent Agreement to allow Dr. Clark to administer or personally furnish controlled substances, Dr. Clark shall keep a log of all controlled substances prescribed, administered or personally furnished. Such log shall be submitted in the format approved by the Board thirty days prior to Dr. Clark's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Clark shall make his patient records with regard to such prescribing, administering, or personally furnishing available for review by an agent of the Board upon request.

Sobriety

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

Drug and Alcohol Screens/Supervising Physician

10. Unless otherwise directed by the Board, Dr. Clark shall submit to two random urine screenings for drugs and alcohol per week. Dr. Clark shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug-testing panel utilized must be acceptable to the Secretary of the Board.

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

Dr. Clark and the Board agree that the person or entity previously approved by the Board to serve as Dr. Clark's supervising physician pursuant to the December 2002 Step I Consent Agreement is hereby approved to continue as Dr. Clark's designated supervising physician under this Consent Agreement, unless within thirty days of the effective date of this Consent Agreement, Dr. Clark submits to the Board for its prior approval the name and curriculum vitae of an alternative supervising physician to whom Dr. Clark shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Clark. Dr. Clark 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.

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

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

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

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

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

Monitoring Physician

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

The monitoring physician shall monitor Dr. Clark and his medical practice, and shall review Dr. Clark's patient charts. The chart review may be done on a random basis,

with the frequency and number of charts reviewed to be determined by the Board.

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

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

Approval of Employment

13. Dr. Clark shall obtain the approval of the Board for any medical practice or employment related to the health care fields. The Board shall consider, among other factors, the adequacy and continuity of supervision and the feasibility of restricted access to controlled substances, which will ensure the protection of the public, prior to approval or disapproval of the proposed employment.

Rehabilitation Program

14. Within thirty days of the effective date of this Consent Agreement, Dr. Clark shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than five times per week, to include participation in at least one Caduceus meeting every two weeks. Additionally, within thirty days of the effective date of this Consent Agreement, Dr. Clark shall undertake and maintain participation in one S.L.A.A. meeting each week. Substitution of any other specific program must receive prior Board approval.

Dr. Clark shall submit acceptable documentary evidence of continuing compliance with these programs which must be received in the Board's offices no later than the due date for Dr. Clark's quarterly declarations.

Aftercare

15. Unless Dr. Clark has entered into a current, final agreement with PHP, within 30 days of the effective date of this Consent Agreement, Dr. Clark shall contact an appropriate

impaired physicians committee, approved by the Board, to arrange for assistance in recovery or aftercare. Dr. Clark shall, at a minimum, consult with the assigned staff member of his impaired physicians committee once per month by telephone and his impaired physicians committee monitor once per month in person. Dr. Clark shall maintain continued compliance with the terms of the contract entered into with PHP or other approved physicians impairment committee, provided that, where terms of the PHP or other approved physicians impairment committee contract conflict with terms of this Consent Agreement, the terms of this Consent Agreement shall control.

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

Work Hour Limitation

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

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

Psychiatric Treatment

18. Within thirty days of the effective date of this Consent Agreement, Dr. Clark shall submit to the Board for its prior approval the name and qualifications of a psychiatrist of his choice. Upon approval by the Board, Dr. Clark shall undergo and continue psychiatric treatment weekly or as otherwise directed by the Board. Dr. Clark shall comply with his psychiatric treatment plan, including taking medications as prescribed and/or ordered for his psychiatric disorder. Dr. Clark shall ensure that psychiatric reports are forwarded by his treating psychiatrist to the Board on a quarterly basis, or as otherwise directed by the Board. The psychiatric reports shall contain information describing Dr. Clark's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Clark's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. Clark shall ensure that his treating psychiatrist immediately notifies the Board of any failure by Dr. Clark to comply with his psychiatric treatment plan

and/or any determination that Dr. Clark is unable to practice due to his psychiatric disorder. It is Dr. Clark's responsibility to ensure that quarterly reports are received in the Board offices no later than the due date for Dr. Clark's quarterly declaration.

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

Further, in addition to weekly psychiatric treatment with a Board-approved psychiatrist, Dr. Clark shall attend group therapy sessions on a weekly basis. These group therapy sessions may be facilitated by a mental health professional other than his Board approved psychiatrist. Dr. Clark shall ensure that reports of his attendance in group therapy sessions are forwarded by the therapy facilitator to the Board on a quarterly basis, or as otherwise directed by the Board.

Releases

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

Required Reporting by Licensee

- 20. Within thirty days of the effective date of this Consent Agreement, Dr. Clark shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Clark shall provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
- 21. Within thirty days of the effective date of this Consent Agreement, Dr. Clark shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Clark further agrees to provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional

license or for reinstatement of any professional license. Further, Dr. Clark shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

22. Dr. Clark shall provide a copy of this Consent Agreement to all persons and entities that provide Dr. Clark chemical dependency treatment or monitoring or psychiatric or mental health treatment or monitoring.

FAILURE TO COMPLY

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

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

DURATION/MODIFICATION OF TERMS

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

ACKNOWLEDGMENTS/LIABILITY RELEASE

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

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

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

STEP II CONSENT AGREEMENT ALLAN WILLIAM CLARK, M.D. PAGE 12

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

EFFECTIVE DATE

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

ALLAN WILLIAM CLARK, M.D.	LANCE A. TALMAGE, M.D. Secretary
9/27/05 DATE	10-12-05 DATE
WILLIAM I. ARBUCKLE, III., ESQ. Attorney for Dr. Clark - O day Hed	RAYMOND J. ALBERT Supervising Member
9-29-00 DATE	10/12/05 DATE
	KAREN MORTLAND CHIOSTATE WILLIAM DUAND Enforcement Attorney OCT 0 4 2005
	10/4/05 DATE

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

Commonwealth of Pennsylvania Bureau of Professional and Occupational Affairs	:	
	:	Docket no. 1315-49-03 DOS File no. 03-49-03107
v.	•	DOS FIIE IIO. 03-49-03107
Allan William Clark, M.D.,	•	•
Respondent	:	
ADJUDICATION AND	ORDI	

OHIO STATE MEDICAL BOARD

JUL 2 3 2005

Frank C. Kahoe, Jr. Hearing Examiner

2601 North Third Street Harrisburg, PA 17110 (717) 772-2686

	DATE DISTRIBUTED 10.24.2005
CERTIFIED FROM THE RECORD THIS B DAY OF LULY A.D. O.S.	PROSECUTION
THIS TO DAY OF YOUL AD. U.S.	COUNSEL
Meanne S. Lealton	BAS LECT
PROTHONOTARY	

HISTORY

This case was commenced with an order to show cause (OSC) filed September 25, 2003, alleging that Allan William Clark, M.D. (Respondent) is subject to disciplinary action under section 41(4) of the Medical Practice Act of 1985, 63 P.S. § 422.41(4), by reason of disciplinary action taken against his license in Ohio. Respondent filed an answer to the OSC October 10, 2004, and the matter was scheduled for a hearing to be held January 8, 2004. On November 18, 2003, the State Board of Medicine (Board) issued an order compelling Respondent to submit to a mental and physical examination in accordance with section 41(5) of the Medical Practice Act, to be performed December 8, 2003. On December15, 2003, the Commonwealth filed an amended OSC alleging that Respondent was subject to sanctions for failing to appear for the ordered mental and physical examination on December 8. The scheduled January 8, 2004 hearing was consequently continued and Respondent ultimately filed an answer to the amended OSC June 18, 2004. After additional continuances requested by both parties, a formal administrative hearing was held in Harrisburg December 9, 2004. Elena R. Morgan, Esquire represented the Commonwealth as prosecuting attorney. Respondent attended the hearing with counsel, William I. Arbuckle, III, Esquire.

At the hearing, the Commonwealth's case consisted of copies of the amended OSC and Respondent's answer thereto in which Respondent admitted the pertinent factual allegations. Respondent testified on his own behalf and offered testimony of Mary White, M.Ed., director of

Family Counseling and Children's Services in Sharon, Pennsylvania, where Respondent has been employed as a psychiatrist since June 2004, and Thomas R. Hobbs, M.D., the Medical Director of the Pennsylvania Medical Society Physicians' Health Programs. Respondent also presented numerous documents relating to Respondent's treatment for chemical dependency.

Following the hearing, the parties agreed to submit in lieu of briefs stipulated proposed findings of fact, conclusions of law and suggested sanctions, which was filed April 29, 2005. A copy of the stipulated proposed findings of fact, conclusions of law and suggested sanctions is appended hereto and incorporated herein.

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Act of December 20, 1985, P.L. 457, No. 112, as amended, 63 P.S. § 422.1 et seq.

FINDINGS OF FACT

1. The proposed findings of fact submitted by the parties April 29, 2005, are adopted as the findings of fact in this matter.

CONCLUSIONS OF LAW

- 1. The Board has jurisdiction in this matter. (Joint Proposed Finding of Fact no. 1)
- 2. Respondent has been afforded reasonable notice of the charges against him and an opportunity to be heard in this proceeding. (Joint Proposed Findings of Fact nos. 7, 8, 12)
- 3. Respondent is subject to disciplinary action under section 41(4) of the Medical Practice Act, 63 P.S. § 422.41(4), by reason of license disciplinary action taken by the proper licensing authority of another state. (Joint Proposed Finding of Fact no. 4)
- 4. Respondent is subject to disciplinary action under section 41(6) of the Medical Practice Act, 63 P.S. § 422.41(6), by reason of his failure to submit to a mental and physical examination ordered by the Board November 18, 2003. (Joint Proposed Findings of Fact nos. 5, 6, 15)

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DISCUSSION

This action is brought under section 41(4) and (6) of the Medical Practice Act, 63 P.S. § 422.41(4) and (6), which provides as follows:

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

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

* * *

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

* * *

(6) Violating a lawful regulation promulgated by the board or violating a lawful order of the board previously entered by the board in a disciplinary proceeding.

OHIO STATE MEDICAL BOARD

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Following the December 9, 2004 hearing, the parties submitted a joint stipulation which fully and adequately outlines the facts presented on the record in this matter. Respondent does not dispute that the Medical Board of Ohio adopted a consent agreement with Respondent suspending his license to practice in that state and providing that he may return to monitored practice after 180 days following chemical dependency treatment. With respect to the Board's November 18, 2003 order

compelling a mental and physical examination, Respondent admits that he did not appear for that examination as scheduled on December 8, 2003, and he did not inform the Commonwealth or its designated evaluating physician that he would not appear for the examination. However, Respondent explained at the hearing and presented supporting documentation that his reason for missing the scheduled evaluation was because he was undergoing inpatient chemical dependency treatment at the Metro Atlanta Recovery Residences (MARR) in Georgia, which he completed in May 2004.

Under the Medical Practice Act, the Board is charged with the responsibility and authority to oversee the medical profession and to regulate and license professionals to protect the public health. Barran v. State Board of Medicine 670 A.2d 765, 767 (Pa.Cmwlth. 1996), appeal denied 679 A.2d 230 (Pa. 1996). The 2002 Ohio disciplinary action and the November 8, 2003 order of the Pennsylvania Board which form the factual basis of the instant action relate to Respondent's history of chemical dependency and concern over Respondent's ability to practice medicine with reasonable skill and safety to patients. The record presented in this case as stipulated by the parties demonstrates that Respondent has successfully completed high quality chemical dependency treatment at MARR, has subsequently participated in the Pennsylvania Medical Society Physicians' Health Programs monitoring program, is actively pursuing a program of recovery from chemical dependency, and is presently able to practice medicine with reasonable skill and safety to patients. The parties have jointly recommended that Respondent pay a civil penalty in the amount of

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\$2,400.00,² and that his license be indefinitely suspended with the suspension stayed in favor of probation subject to terms and conditions related to monitoring Respondent's progress in recovery. The parties' suggested sanctions are fully supported by the record and are appropriate to adequately protect the public health. Accordingly, the following order shall issue.

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The parties in their stipulation agree that Respondent should be required to repay the Department of State for the cost of Respondent's missed appointment with the evaluating physician which had been scheduled for December 8, 2003.

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

Commonwealth of Pennsylvania

Bureau of Professional and Occupational Affairs

Docket no. 1315-49-03

v. : DOS File no. 03-49-03107

:

Allan William Clark, M.D.,

Respondent

CHIO STATE MEDICAL BOARD

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ORDER

AND NOW, this 23rd day of June, 2005, in accordance with the foregoing findings of fact, conclusions of law and discussion, the hearing examiner for the Department of State hereby finds that Respondent Allan William Clark, M.D. is subject to disciplinary action under section 41(4) and (6) of the Medical Practice Act of 1985, 63 P.S. § 422.41(4) and (6), and it is hereby ORDERED as follows:

- A. A **civil penalty** in the amount of **\$2,400.00** is levied upon Respondent, payable by certified check, attorney's draft or money order to the Commonwealth of Pennsylvania, to be sent to Board Counsel, State Board of Medicine, P.O. Box 2649, Harrisburg, PA 17105-2649; and
- B. Respondent's license, no. MD-062193-L, shall be indefinitely suspended, such suspension to be stayed in favor of probation subject to the following terms and conditions:

GENERAL

1. Respondent shall abide by and obey all laws of the United States, the Commonwealth of Pennsylvania and its political subdivisions and all rules and regulations and laws pertaining to the practice of the profession in this Commonwealth or any other state

or jurisdiction in which Respondent holds a license to practice a health care profession. Summary traffic violations shall not constitute a violation of this Order.

- 2. Respondent shall at all times cooperate with the Bureau of Professional and Occupational Affairs, its Professional Health Monitoring Program (PHMP) and its agents and employees in the monitoring, supervision and investigation of Respondent's compliance with the terms and conditions of this Order, including requests for, and causing to be submitted at Respondent's expense, written reports, records and verifications of actions that may be required by the PHMP. Respondent's failure to fully cooperate with the PHMP shall be deemed a violation of this Order.
- 3. Respondent shall not falsify, misrepresent or make material omission of any information submitted pursuant to this Order.
- 4. Respondent may not be absent from the Commonwealth of Pennsylvania for any period exceeding twenty (20) days unless Respondent seeks and receives prior written permission from the PHMP subject to any additional terms and conditions required by the PHMP.
- 5. In the event Respondent relocates to another jurisdiction, within five (5) days of relocating, Respondent shall either enroll in the other jurisdiction's impaired professional program and have the reports required under this Order sent to the Pennsylvania PHMP, or if the other jurisdiction has no impaired professional program notify the licensing board of the other jurisdiction that Respondent is impaired and enrolled in this Program. In the event Respondent fails to do so, in addition to being in violation of this Order, the periods of suspension and probation herein shall be tolled.

- 6. Respondent shall notify the PHMP, in writing, within five (5) days of the filing of any criminal charges against Respondent, the initiation of any legal action pertaining to Respondent's practice of the profession, the initiation, action, restriction or limitation relating to Respondent by a professional licensing authority of any state or jurisdiction or the Drug Enforcement Agency of the United States Department of Justice, or any investigation, action, restriction or limitation relating to Respondent's privileges to practice the profession at any health care facility.
- 7. Respondent shall notify the PHMP by telephone within 48 hours and in writing within five (5) days of any change of Respondent's home address, phone number, employment status, employer and/or change in practice at a health care facility. Failure to timely advise the PHMP under this subsection due to the PHMP office being closed is not an excuse for not leaving a voice mail message with this information.

PHYSICIANS' HEALTH PROGRAMS

- 8. Respondent, if he has not already done so, shall within thirty (30) days subsequent to the effective date of this Order, execute a final agreement with the Physicians' Health Programs (PHP) of the Pennsylvania Medical Society and have a copy of the agreement forwarded to the PHMP, P.O. Box 10569, Harrisburg, PA 17105-0569, (717) 783-4857, 800-554-3428.
- 9. Respondent shall comply with all terms of Respondent's agreement with the PHP and shall authorize in writing the PHP to release to the PHMP notification of any violation by Respondent of Respondent's PHP agreement.

10. Respondent shall identify a primary care physician who shall send written notification to the Respondent's PHMP case manager certifying Respondent's health status as requested.

SUPPORT GROUP ATTENDANCE

JUL 2 3 2005

- 11. Respondent shall attend and actively participate in any support group programs recommended by the PHP or Respondent's PHMP case manager at the frequency recommended by the PHP, but no less than twice a week.
- 12. Respondent shall provide written verification of any and all support group attendance to the PHMP on at least a monthly basis or as otherwise directed by the PHMP.

ABSTENTION

- 13. Respondent shall completely abstain from the use of controlled substances, mood altering drugs or drugs of abuse including alcohol in any form, except under the following conditions:
 - a. Respondent is a bona fide patient of a licensed health care practitioner who is aware of Respondent's impairment and participation in the PHMP;
 - Such medications are lawfully prescribed by Respondent's treating practitioner and approved by the PHMP case manager; and
 - c. Respondent provides the PHMP, within 48 hours of receiving the medication, the name of the practitioner prescribing the drug, the illness or medical condition diagnosed, the type, strength, amount and dosage of the medication and a signed statement consenting to the release of medical information from the prescribing

practitioner to the PHMP or its designated representative for the purpose of verification.

BODY FLUID TOXICOLOGY SCREENING

14. Respondent shall submit to random unannounced and observed body fluid toxicology screens for the detection of substances prohibited under this Order as directed by the PHMP. A positive result on a body fluid toxicology screen shall constitute an irrefutable violation of this Order unless Respondent has complied with the provisions of this Order pertaining to the use of drugs. Failure to provide a specimen when requested will be considered a violation of this Order. Respondent shall avoid all foods that contain poppy seeds. Ingestion of poppy seeds will not be accepted as a valid explanation for a positive screen.

REPORTING/RELEASES

15. Respondent, Respondent's providers, supervisor(s), employers or other persons required to submit reports under this Order shall cause such reports, data or other information to be filed with the PHMP, unless otherwise directed, at:

PHMP Box 10569 Harrisburg, PA 17105-0569 OHIO STATE MEDICAL BOARD

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16. Respondent consents to the release by the PHMP of any information or data produced as a result of this probation, including written provider evaluations, to any treatment provider, supervisor, Commonwealth's attorney, hearing examiner and Board members in the administration and enforcement of this Order.

17. Respondent shall sign any required waivers or release forms requested by the PHMP for any and all records, inclusive of medical or other health related and psychological records, pertaining to treatment and monitoring rendered to Respondent during this probation and any corresponding criminal probation, and any employment, personnel, peer review or review records pertaining to Respondent's practice of the profession during this probation to be released to the PHMP, the Commonwealth's attorney, hearing examiner and Board members in the administration and enforcement of this Order.

COSTS

18. Respondent shall be responsible for all costs incurred in complying with the terms of this Order, including but not limited to psychiatric or psychotherapy treatments, PHMP-required toxicology screens prior to each screen being conducted, and reproduction of treatment or other records.

BUREAU/PHMP EVALUATIONS

19. Upon request of the PHMP, the Respondent shall submit to mental or physical evaluations, examinations or interviews by a PHMP-approved treatment provider or the PHMP. Respondent's failure to submit to such an examination, evaluation or interview when directed shall constitute a violation of this Order.

VIOLATION OF THIS ORDER

JUL 2 8 2005

20. Notification of a violation of the terms or conditions of this Order shall result in the IMMEDIATE TERMINATION of the Respondent's probation, and SUSPENSION of Respondent's license to practice the profession in the Commonwealth of Pennsylvania as follows:

- a. The prosecuting attorney for the Commonwealth shall present to the Board's Probable

 Cause Screening Committee ("Committee") a Petition that indicates that Respondent
 has violated any terms or conditions of this Order.
- b. Upon a probable cause determination by the Committee that Respondent has violated any of the terms or conditions of this Order, the Committee shall, without holding a formal hearing, issue a preliminary order terminating this probation and suspending Respondent's license.
- c. Respondent shall be notified of the Committee's preliminary order within three (3) business days of its issuance by certified mail and first class mail, postage prepaid, sent to the Respondent's last registered address on file with the Board, or by personal service if necessary.
- d. Within twenty (20) days of mailing of the preliminary order, Respondent may submit a written answer to the Commonwealth's Petition and request that a formal hearing be held concerning Respondent's violation of probation, in which Respondent may seek relief from the preliminary order activating the suspension. Respondent shall mail the original answer and request for hearing to the Department of State Prothonotary, 2601 North Third Street, P.O. Box 2649, Harrisburg, PA 17105-2649, and a copy to the prosecuting attorney for the Commonwealth, as well as all subsequent filings in the matter.

CHIO STATE MEDICAL BOARD

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- e. If the Respondent submits a timely answer and request for a formal hearing, the Board or a designated hearing examiner shall convene a formal hearing within forty-five (45) days from the date of the Prothonotary's receipt of Respondent's request for a formal hearing.
- f. Respondent's submission of a timely answer and request for a hearing shall not stay
 the suspension of Respondent's license under the preliminary order. The suspension
 shall remain in effect unless the Board or the hearing examiner issues an order after
 the formal hearing staying the suspension again and reactivating the probation.
- g. The facts and averments in this Adjudication and Order shall be deemed admitted and uncontested at this hearing.
- h. If the Board or hearing examiner after the formal hearing makes a determination against Respondent, a final order will be issued sustaining the suspension of Respondent's license and imposing any additional disciplinary measures deemed appropriate.
- i. If Respondent fails to timely file an answer and request for a hearing, the Board, upon motion of the prosecuting attorney, shall issue a final order affirming the suspension of Respondent's license.
- j. If Respondent does not make a timely answer and request for a formal hearing and a final order affirming the suspension is issued, or the Board or the hearing examiner makes a determination against Respondent sustaining the suspension of Respondent's license, Respondent may, after no less that three years of suspension, petition the Board for reinstatement based upon an affirmative showing that Respondent has at

least 60 months of sustained documented recovery, a PHMP-approved provider's

evaluation that Respondent is fit to safely practice, and verification that Respondent

has abided by and obeyed all laws of the United States, the Commonwealth of

Pennsylvania and its political subdivisions, and all rules and regulations pertaining to

the practice of the profession in this Commonwealth.

21. Respondent's failure to fully comply with any terms of this Order may also

constitute grounds for additional disciplinary action.

After successful completion of five years probation, Respondent may petition the Board to

reinstate Respondent's license to unrestricted, non-probationary status upon an affirmative showing

that Respondent has complied with all terms and conditions of this Order and that Respondent's

resumption of unsupervised practice does not present a threat to the public health and safety.

This order shall be effective 20 days from the date of mailing unless otherwise ordered by the

State Board of Medicine.

BY ORDER

Frank C. Kahoe, Jr.

Hearing Examiner

OHU STATE MEDICAL BOARD

JUL 2 8 2005

DATE OF MAILING:

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For the Commonwealth:
Elena R. Morgan, Esquire
OFFICE OF GENERAL COUNSEL
2601 North Third Street, P.O. Box 2649
Harrisburg, PA 17105-2649

For Respondent:
William I. Arbuckle, III, Esquire
THE MAZZA LAW GROUP, P.C.
1315 South Allen Street, Suite 302
State College, PA 16801

OHO STATE MEDICAL BOARD

JUL 2 8 2005

(Medicine)

REHEARING AND/OR RECONSIDERATION BY HEARING EXAMINER

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

APPEAL TO BOARD

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

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

STAY OF HEARING EXAMENER'S ORDER

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

FILING AND SERVICE

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

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

· STATUES AND REGULATIONS

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

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

STEP I CONSENT AGREEMENT BETWEEN ALLAN WILLIAM CLARK, M.D. AND THE STATE MEDICAL BOARD OF OHIO

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

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

BASIS FOR ACTION

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

- A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4731.22(B)(26), Ohio Revised Code, "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;" Section 4731.22(B)(10), Ohio Revised Code, "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed;" and/or Section 4731.22(B)(20), Ohio Revised Code, "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board."
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violations of Section 4731.22(B)(26), Ohio Revised Code; Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents and Section 2925.11, Ohio Revised Code, Possession of Drugs; Section 4731.22 (B)(20), Ohio Revised Code, to wit: Rule 4731-11-08, Ohio Administrative Code, Utilizing Controlled Substances for Self and Family Members, and Rule 4731-15-01, Ohio Administrative Code, Licensee Reporting Requirements, as set forth in Paragraph E below. The Board expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective

date of this Agreement. Such express reservation includes, but is not limited to, the right to institute formal proceedings based upon any violations related to patient care or involving criminal acts, regardless of whether the acts underlying such additional violations are related to the violations of Sections 4731.22(B)(10), (B)(20), and (B)(26), Ohio Revised Code, as set forth below.

- C. Dr. Clark is licensed to practice medicine and surgery in the State of Ohio, License # 35-057420.
- D. Dr. Clark states that he is also licensed to practice medicine and surgery in the State of Pennsylvania.
- Dr. Clark admits that in August 1999, he was treated for chemical dependence at the Menninger Clinic in Topeka, Kansas, after finding himself unable to cease his use of Adderall, which he had obtained from the prescription of a family member. Dr. Clark admits that upon release from the Menninger Clinic, he received outpatient treatment for chemical dependence through the Pennsylvania Physicians Health Program, maintaining sobriety until in or about May 2002, when he relapsed on Vicodin, which had been prescribed for another by another physician, and alcohol. Dr. Clark further admits that since using Vicodin in May 2002, he used controlled substances on approximately three occasions, including one other occasion when he took Vicodin which had been prescribed for another by another physician, and two occasions when he obtained drugs for his own use by prescribing Percocet and oxycodone in the name of a family member. Dr. Clark states that taking drugs from the prescription written for another by another physician and writing two prescriptions in the name of a family member were his only means of obtaining controlled substances for self-use. Dr. Clark further admits that he did not report his relapse to the Board. Dr. Clark further admits that on or about October 1, 2002, he entered residential treatment for chemical dependence at Marworth Treatment Center, a Board-approved treatment provider in Waverly, Pennsylvania, and that he was released on November 21, 2002, treatment complete.

AGREED CONDITIONS

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

SUSPENSION OF CERTIFICATE

1. The certificate of Dr. Clark to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than 180 days.

INTERIM MONITORING

Sobriety

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

Releases; Quarterly Declarations and Appearances

- 4. Dr. Clark shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Clark's chemical dependency or related conditions, or for purposes of complying with this Consent Agreement, whether such treatment or evaluation occurred before or after the effective date of this Consent Agreement. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. Dr. Clark further agrees to provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Consent Agreement.
- 5. Dr. Clark shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
- 6. Dr. Clark shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

Drug & Alcohol Screens; Supervising Physician

7. Dr. Clark shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Clark shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

Within thirty days of the effective date of this Consent Agreement, Dr. Clark shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Clark shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Clark. Dr. Clark and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

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

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

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

Rehabilitation Program

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

Dr. Clark shall submit acceptable documentary evidence of continuing compliance with this program which must be received in the Board's offices no later than the due date for Dr. Clark's quarterly declarations.

CONDITIONS FOR REINSTATEMENT

- 9. The Board shall not consider reinstatement of Dr. Clark's certificate to practice medicine and surgery until all of the following conditions are met:
 - a. Dr. Clark shall submit an application for reinstatement, accompanied by appropriate fees, if any.
 - b. Dr. Clark shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - i. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Clark 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 Consent Agreement.
 - iv. Two written reports indicating that Dr. Clark's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. These reports shall be made by individuals or providers approved by the Board under Section 4731.25, Ohio Revised Code, or otherwise approved in advance by the Board for making such assessments. Prior to the assessments, Dr. Clark shall provide the evaluators with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The reports from the evaluators shall include any recommendations for treatment, monitoring, or supervision of Dr. Clark, and any conditions, restrictions, or limitations that should be imposed on Dr. Clark'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 evaluations occurring within the three months immediately preceding any application for reinstatement.

c. Dr. Clark shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the Board or, if the Board and Dr. Clark are unable to agree on the terms of a written Consent Agreement, then Dr. Clark further agrees to abide by any terms, conditions and limitations imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code.

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

10. In the event that Dr. Clark has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Clark's fitness to resume practice.

REQUIRED REPORTING BY LICENSEE

- 11. Within thirty days of the effective date of this Consent Agreement, Dr. Clark shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Clark further agrees to provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Clark shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
- 12. Within thirty days of the effective date of this Consent Agreement, Dr. Clark shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Clark shall provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training,

and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

The above-described terms, conditions and limitations may be amended or terminated in writing at any time upon the agreement of both parties.

FAILURE TO COMPLY

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

ACKNOWLEDGMENTS/LIABILITY RELEASE

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

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

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

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code, and may be reported to appropriate organizations, data banks, and governmental bodies. Dr. Clark agrees to provide his social security number to the Board and hereby authorizes the Board to utilize that number in conjunction with that reporting.

EFFECTIVE DATE

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

ALLAN WILLIAM CLARK, M.D.

ANAND G. GARG Secretary

DATE

12-11-02

DATE

STEP I CONSENT AGREEMENT Allan William Clark, M.D. PAGE 8

RAYMOND J. ALBERT

Supervising Member

DATE/

REBECCA ALBERS

Assistant Attorney General

DATE

Rev. 08/08/01