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Department of State

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

Commonwealth of Pennsylvania :
Bureau of Professional and Occupational Affairs :
 :
v. :
 :
Allan William Clark, M.D., :
Respondent :

Docket no. 1315-49-03
DOS File no. 03-49-03107

ADJUDICATION AND ORDER

Frank C. Kahoe, Jr.
Hearing Examiner

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

DATE DISTRIBUTED 6-24-2005
PROSECUTION ✓
COUNSEL ✓
HRS FROM _____

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 1985,¹ 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 December 15, 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.

¹ 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)

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.

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.Cmwlt. 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

\$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.

² 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.

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DEPARTMENT OF STATE
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v.

**Allan William Clark, M.D.,
Respondent**

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**Docket no. 1315-49-03
DOS File no. 03-49-03107**

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

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;
- b. 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

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

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.

- 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 than three years of suspension, petition the Board for reinstatement based upon an affirmative showing that Respondent has at

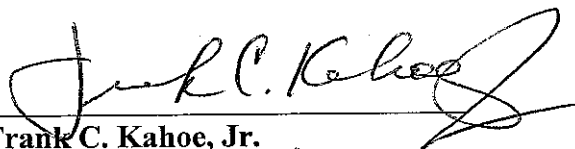
least 60 months of sustained documented recovery, a PHMP-approved provider's evaluation that Respondent is fit to safely practice, and verification that Respondent has abided by and obeyed all laws of the United States, the Commonwealth of Pennsylvania and its political subdivisions, and all rules and 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

DATE OF MAILING:

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

NOTICE

(Medicine)

REHEARING AND/OR RECONSIDERATION BY HEARING EXAMINER

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

APPEAL TO BOARD

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

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

STAY OF HEARING EXAMINER'S ORDER

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

FILING AND SERVICE

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

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

STATUTES 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.