XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
THOMAS OSTLY
Deputy Attorney General
State Bar No. 209234
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3871
E-mail: Thomas.Ostly@doj.ca.gov
Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against, **JAMES DAVID MEGARGEL, M.D.** 470 Capri Dr. South Lake Tahoe CA 96150-6739 Physician's and Surgeon's Certificate No. C 139913 Respondent.	Case No. 800-2020-068061 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

1. On October 23, 2020, an employee of the Medical Board of California (Board) sent by certified mail a copy of Accusation No. 800-2020-068061, Statement to Respondent, Notice of Defense in blank, copies of the relevant sections of the California Administrative Procedure Act as required by sections 11503 and 11505 of the Government Code, and a request for discovery, to James David Megargel, M.D. (Respondent) at his address of record with the Board, which was and is, 470 Capri Drive, South Lake Tahoe, CA 96150-6739. The United States Post Office (USPS) tracking system shows that the Post Office was unable to deliver the package. (Accusation package, proof of service, USPS tracking information; Exhibit Package, Exhibit 1[1].)

///

///

[1] The evidence in support of this Default Decision and Order is submitted herewith as the "Exhibit Package."

2. There was no response to the Accusation. On November 18, 2020, an employee of the Attorney General's Office sent a Courtesy Notice of Default, by certified mail, addressed to Respondent at the address of record above. An additional copy of the Courtesy Notice of Default was served on the attorney who represented Respondent in the Ohio disciplinary action. The Courtesy Notice of Default advised Respondent of the service Accusation, and provided him with an opportunity to file a Notice of Defense and request relief from default. The United States Post Office tracking system shows that notice was left for Respondent on November 25, 2020. The package addressed to Respondent's Ohio attorney was delivered on December 4, 2020. (Exhibit Package, Exhibit 2, Courtesy Notice of Default, proof of service, USPS tracking.)

3. Respondent has not responded to service of the Accusation or the Notice of Default. He has not filed a Notice of Defense. As a result, Respondent has waived his right to a hearing on the merits to contest the allegations contained in the Accusation.

FINDINGS OF FACT

4. William Prasifka is the Board's Executive Director. The charges and allegations in the Accusation were at all times brought and maintained solely in the official capacity of the Board's Executive Director.

5. On December 28, 2015, Physician's and Surgeon's Certificate No. C 139913 was issued by the Board to James David Megargel, M.D. The certificate has an expiration date of October 31, 2021, but is suspended by virtue of an Order issued on July 24, 2020, pursuant to Business and Professions Code section 2310(a). (Exhibit Package, Exhibit 3, license certification.)

6. On October 23, 2020, Respondent was duly served with an Accusation, alleging causes for discipline against Respondent. A Courtesy Notice of Default was thereafter served on Respondent. Respondent failed to file a Notice of Defense.

///

///

///

///

7. The allegations of the Accusation are true as follows:

On May 13, 2020, a Consent Agreement that Respondent entered into with the State Medical Board of Ohio was approved and became effective. The Consent Agreement indefinitely suspended Respondent's license to practice medicine and surgery for at least 120 days. Respondent is subject to a $2,000 fine and general probationary requirements. Conditions for reinstatement of the Ohio license include entering into a consent agreement with probationary terms, conditions and limitations. The Consent Agreement is based on Respondent's admission that after he entered treatment for chemical dependency and his subsequent relapse, those actions and/or omissions, individually and/or collectively, constitute impairment of his ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice. The Consent Agreement terms for reinstatement include maintaining sobriety, toxicology testing, quarterly appearances, and completing a residential rehabilitation program. A copy of the Consent Agreement issued by the State Medical Board of Ohio is attached as Exhibit A to the Accusation, Exhibit Package, Exhibit 1.

DETERMINATION OF ISSUES

8. The Board has jurisdiction to adjudicate this case by default, and pursuant to Government Code section 11520, finds that Respondent is in default. The Board will take action without further proceedings or hearing and, based on Respondent's admissions by way of default and the evidence before the Board, contained in the Exhibit Package, finds that the allegations in the Accusation are true and correct.

9. Respondent's conduct and the action of the State Medical Board of Ohio constitute cause for discipline within the meaning of Business and Professions Code sections 2305 and 141(a).

ORDER

IT IS SO ORDERED that Physician's and Surgeon's Certificate No. C 139913, heretofore issued to Respondent James David Megargel, M.D., is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective at 5:00 p.m. on February 25, 2021.

It is so ORDERED January 26, 2021.

WILLIAM PRASIFKA
EXECUTIVE DIRECTOR
FOR THE MEDICAL BOARD OF
CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

SF2020400873
42477442.docx

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
THOMAS OSTLY
Deputy Attorney General
State Bar No. 209234
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3871
Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	Case No. 800-2020-068061
James David Megargel, M.D. **470 Capri Dr.** **South Lake Tahoe, CA 96150-6739** **Physician's and Surgeon's Certificate No. C 139913,** Respondent.	**ACCUSATION**

PARTIES

1. William Prasifka (Complainant) brings this Accusation solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about December 28, 2015, the Medical Board issued Physician's and Surgeon's Certificate Number C 139913 to James David Megargel, M.D. (Respondent). The Physician's and Surgeon's Certificate will expire on October 31, 2021 unless renewed, and is SUSPENDED by virtue of an Order issued by the Board on July 24, 2020 pursuant to Business and Professions Code section 2310(a)..

////

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

A. Section 2227 of the Code states:

(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

(1) Have his or her license revoked upon order of the board.

(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

B. Section 2305 of the Code states:

The revocation, suspension, or other discipline, restriction or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter [Chapter 5, the Medical Practice Act] shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

C. Section 141 of the Code states:

(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the

practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.

FIRST CAUSE FOR DISCIPLINE

(Discipline, Restriction, or Limitation Imposed by Another State)

4. On May 13, 2020, a Consent Agreement that Respondent entered into with the State Medical Board of Ohio (Ohio Board) was approved and became effective. The Consent Agreement indefinitely suspended Respondent's license to practice medicine and surgery for at least one hundred twenty (120) days. He is subject to a two thousand dollar ($2,000.00) fine, general probationary requirements, and conditions for reinstatement including entering into a subsequent consent agreement with probationary terms, conditions and limitations. The Consent Agreement is based on Respondent's admission that after he entered treatment for chemical dependency and his subsequent relapse, those acts and or omissions, individually and/or collectively constitute 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. The Consent Agreement terms for reinstatement include maintaining sobriety, toxicology testing, quarterly appearances, and completing a residential rehabilitation program.

5. A copy of the Consent Agreement issued by the Ohio Board is attached as Exhibit A.

6. Respondent's conduct and the action of the Ohio Board, as set forth in the preceding paragraphs, above, constitute cause for discipline pursuant to sections 2305 and/or 141 of the Code.

////

////

////

////

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number C 139913, issued to James David Megargel, M.D.;

2. Revoking, suspending or denying approval of James David Megargel, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering James David Megargel, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED: OCT 23 2020

WILLIAM PRASIFKA
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

SF2020400873
Megargel client edits.docx

EXHIBIT A

Consent Agreement
State Medical Board of Ohio

STEP I
CONSENT AGREEMENT
BETWEEN
JAMES DAVID MEGARGEL, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO

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

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

BASIS FOR ACTION

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

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

B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Section 4731.22(B)(26), Ohio Revised Code; and/or Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.11, Ohio Revised Code, Possession of Controlled Substances, as set forth in Paragraph E below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement. Dr. Megargel attests that he has provided a full, complete, and honest account of the circumstances and facts involved in the underlying matter giving rise to this consent agreement; that no pertinent information has been withheld from the Board; and that the factual summary contained herein is an accurate representation of the information provided. Further, Dr. Megargel acknowledges he understands that in the event it is subsequently determined that he misrepresented the circumstances or facts of the instant matter, the Board intends to pursue by separate disciplinary action any violation of Section 4731.22(B)(34), Ohio Revised Code, and/or any other violations of the Medical Practices Act, even if such violations arise from the same common nucleus of operative fact contained in this consent agreement. Furthermore, Dr. Megargel acknowledges that such subsequent disciplinary action may supersede this consent agreement and may result in additional discipline, up to and including permanent revocation of his certificate.

C. Dr. Megargel is licensed to practice medicine and surgery in the State of Ohio, License number 35.130017.

D. Dr. Megargel states that he is also licensed to practice medicine and surgery in the States of Florida and California.

E. Dr. Megargel admits that he initially entered treatment on or about April 4, 2019, for chemical dependency at Hazelden Betty Ford, in Center City, Minnesota. Dr. Megargel admits that he was in residential treatment at Hazelden Betty Ford until on or about May 30, 2019, when his treatment was transferred to Sierra Tucson in Tucson, Arizona. Dr. Megargel admits that such prior inpatient treatment continued until on or about June 6, 2019, and it was related to his use of methamphetamine, his drug of choice. Dr Megargel asserts that he was exempted from mandatory disclosure to the Board at that time pursuant to the applicable statutes and administrative rules governing initial impairment. Dr. Megargel further admits that on or about July 17, 2019, he entered into a monitoring agreement with the Ohio Physicians Health Program [OPHP].

Dr. Megargel admits that he has relapsed. In the fall of 2019, he took a sip of a rare expensive wine offered to him by a friend. Dr. Megargel further admits that from on or about January 17, 2020, to January 19, 2020, he resumed using methamphetamine. Dr. Megargel further admits that following his relapse, OPHP recommended that he re-enter residential treatment, and that on or about March 9, 2020, he entered inpatient treatment at Glenbeigh Hospital, and such treatment remains ongoing at this time.

With respect to his use of methamphetamine, Dr. Megargel admits that he first used this drug during the time frame of November 2013 to June 2015, and that he used it a few times thereafter, including from February 2018 to March 2019, and January 17, 2020 to January 19, 2020 Dr. Megargel attests that he obtained the drug from acquaintances, and that he never obtained methamphetamines and/or controlled substances for self-use by any other means or method. Dr. Megargel further states that at no time did he ever divert, sell or give any dangerous drugs or controlled substances to anyone else (other than medication that he appropriately prescribed or provided to patients for legitimate and therapeutic purposes in the course of medical treatment). Dr. Megargel further attests that he never obtained or received any controlled substances or dangerous drugs from patients, and he never directly or indirectly involved patients or other individuals in any of his efforts to obtain dangerous drugs or controlled substances for self-use. Dr. Megargel further attests that he never used methamphetamine, alcohol or any controlled substances while actively caring for patients.

Furthermore, Dr. Megargel specifically attests that the aforementioned treatment at Hazelden Betty Ford and Sierra Tucson in 2019 and his current treatment at Glenbeigh is the only treatment he has ever received related to chemical abuse or chemical dependency, and that the relapse giving rise to disclosure of his impairment to the board at this time is the first and only relapse he has ever experienced. Dr. Megargel further specifically attests that since initially entering treatment at Hazelden Betty Ford April 2019, he has not practiced medicine. Further, Dr. Megargel acknowledges that pursuant to Rule 4731-16-02(B), Ohio Administrative Code, he is required to complete an inpatient or residential treatment program of at least twenty-eight days at a board

approved treatment provider due to having relapsed prior to one year following completion of his initial treatment.

Dr. Megargel further admits that he previously has been diagnosed with mental health disorders, including generalized anxiety disorder, depressive disorder, and ADHD. Dr. Megargel states that is under the care of a physician related to those diagnosed conditions, and that he is compliant with his treatment plan.

Dr. Megargel states that he last actively practiced medicine on or about March 19, 2019.

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. Megargel knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

SUSPENSION OF CERTIFICATE

1. The certificate of Dr. Megargel to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than 120 days.

GENERAL PROBATIONARY REQUIREMENTS:

Obey all Laws

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

Sobriety

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

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

Absences from Ohio

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

   Further, in the event that Dr. Megargel does not reside or practice in Ohio while subject to the requirements of this Consent Agreement, the Secretary and Supervising Member of the Board, in their sole discretion, may allow this Board's monitoring of Dr. Megargel to be coordinated with an entity or board from another jurisdiction provided the Secretary and Supervising Member determine that such coordination ensures substantial compliance with the requirements of this Consent Agreement.

Releases; Quarterly Declarations and Appearances

6. Dr. Megargel 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. Megargel's chemical dependency or related conditions, or for purposes of complying with this Consent Agreement, whether such treatment or evaluation occurred before or after the effective date of this Consent Agreement. To the extent permitted by law, the above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. Dr. Megargel further agrees to provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Consent Agreement.

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

8. Dr. Megargel 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.

Toxicology Screens; Designated Testing Facility

9. Dr. Megargel shall submit to random toxicology screenings of biological materials (including but not limited to blood, urine, hair, saliva, breath, or fingernail samples) for drugs and alcohol at least four times per month, or as otherwise directed by the Board. Dr. Megargel shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board, and shall include Dr. Megargel's drug(s) of choice.

   Dr. Megargel shall abstain from the use of any substance and the consumption of poppy seeds or any other food or liquid that may produce a low level positive result in a toxicology screen. Dr. Megargel acknowledges that he understands that the consumption or use of such substances, including but not limited to substances such as mouthwash or hand cleaning gel, may cause a positive screen that may not be able to be differentiated from intentional ingestion, and therefore such consumption or use is prohibited under this Consent Agreement. Further, Dr. Megargel shall ensure his use of over-the-counter medications complies with the "Guide to Alcohol-Free Products" brochure as utilized by the Board's Compliance division.

   All such screenings for drugs and alcohol shall be conducted through the Board-approved drug testing facility and collection site pursuant to the global contract between said facility [designated testing facility] and the Board that provides for the Board to maintain ultimate control over the toxicology screening process and to preserve the confidentiality of all positive screening results in accordance with Section 4731.22(F)(5), Ohio Revised Code. Further, the screening process shall require a daily call-in procedure. Dr. Megargel's failure to timely call-in each day as directed by the Board shall constitute a violation of this Consent Agreement.

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

   Further, within thirty days of the effective date of this Consent Agreement, Dr. Megargel shall enter into the necessary financial and/or contractual arrangements with the designated testing facility in order to facilitate the screening process in the manner required by this Consent Agreement. Further, Dr. Megargel shall promptly provide to the Board written documentation of completion of such arrangements, including a copy of any contract entered into between Dr. Megargel and the designated testing facility. Dr. Megargel's failure to timely complete such arrangements, or failure to timely provide

written documentation to the Board of completion of such arrangements, shall constitute a violation of this Consent Agreement.

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

Dr. Megargel shall ensure that the designated testing facility provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all screens have been conducted in compliance with this Consent Agreement, and whether all screens have been negative.

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

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

10. Dr. Megargel and the Board agree that it is the intent of this Consent Agreement that Dr. Megargel shall submit his specimens to the designated testing facility chosen by the Board. However, in the event that utilizing said designated testing facility creates an extraordinary hardship upon Dr. Megargel, as determined in the sole discretion of the Board, the Board may approve an alternate testing facility provided the Board determines in its sole discretion that the alternative testing facility is acceptable for the purpose of conducting the random toxicology testing required by this Consent Agreement.

    The Board expressly reserves the right to disapprove any entity or facility proposed to serve as Dr. Megargel's alternate testing facility, or to withdraw approval of any entity or facility approved to so serve in the event that the Secretary and Supervising Member of the Board determine that any such entity or facility has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

11. All screening reports required under this Consent Agreement from the designated testing facility or alternate testing facility must be received in the Board's offices no later than the due date for Dr. Megargel's quarterly declaration. It is Dr. Megargel's responsibility to ensure that reports are timely submitted.

12. The Board retains the right to require, and Dr. Megargel agrees to submit biological materials (including but not limited to blood, urine, hair, saliva, breath, or fingernail samples) for screening for drugs and alcohol, for analysis of therapeutic levels of medications that may be prescribed for Dr. Megargel, or for any other purpose, at Dr. Megargel's expense upon the Board's request and without prior notice. Dr. Megargel's refusal to timely submit a specimen upon request of the Board shall result in a minimum of one year of actual license suspension. Further, the collection of such specimens shall be witnessed by a representative of the Board, or another person acceptable to the Secretary or Supervising Member of the Board.

Rehabilitation Program

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

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

CONDITIONS FOR REINSTATEMENT/RESTORATION

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

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

    b. Dr. Megargel 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. Megargel has successfully completed any required inpatient treatment, including at least twenty-eight days of inpatient or residential treatment for chemical abuse/dependence, as set forth in Rules 4731-16-02 and 4731-16-08, Ohio Administrative Code, completed consecutively.

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

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

iv. Three written reports indicating that Dr. Megargel's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care.

Two reports shall be made by physicians knowledgeable in the area of addictionology and who are either affiliated with a current Board-approved treatment provider or otherwise have been approved in advance by the Board to provide an assessment of Dr. Megargel Further, the two aforementioned physicians shall not be affiliated with the same treatment provider or medical group practice. Prior to the assessments, Dr. Megargel 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. Megargel, and any conditions, restrictions, or limitations that should be imposed on Dr. Megargel's practice The reports shall also describe the basis for the evaluator's determinations.

One report shall be made by a psychiatrist, approved in advance by the Board, who shall conduct a psychiatric examination of Dr. Megargel. Prior to the examination, Dr Megargel shall provide the psychiatrist with copies of patient records from any prior evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The report from the evaluating psychiatrist shall include the psychiatrist's diagnoses and conclusions; any recommendations for care, counseling, and treatment for the psychiatric diagnoses, any conditions, restrictions, or limitations that should be imposed on Dr. Megargel's practice; and the basis for the psychiatrist's determinations.

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

v. In the event that the Board initiates future formal proceedings against Dr. Megargel, including but not limited to issuance of a Notice of Opportunity for Hearing, Dr. Megargel shall be ineligible for reinstatement/restoration until such proceedings are fully resolved by ratification by the Board of a subsequent Consent Agreement or a final Board Order taking effect

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

Further, upon reinstatement/restoration of Dr Megargel'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/restoration or with conditions imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Revised Code

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

REQUIRED REPORTING BY LICENSEE

17. Within thirty days of the effective date of this Consent Agreement, Dr. Megargel shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services (including but not limited to third party payors) or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Megargel shall promptly provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. In the event that Dr. Megargel provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within thirty days of the effective date of this Consent Agreement Dr. Megargel shall provide a copy of this Consent Agreement to the Ohio Department of Public Safety, Division of Emergency Medical Services. Further, within thirty days of the date of each such notification, Dr. Megargel shall provide documentation acceptable to the Secretary and Supervising Member of the Board demonstrating that the required notification has occurred.

18. Within thirty days of the effective date of this Consent Agreement, Dr. Megargel shall provide a copy of this Consent Agreement by certified mail to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Dr.

Megargel further agrees to provide a copy of this Consent Agreement by certified mail 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. Additionally, within thirty days of the effective date of this Consent Agreement, Dr. Megargel shall provide a copy of this Consent Agreement to any specialty or subspecialty board of the American Board of Medical Specialties or the American Osteopathic Association Bureau of Osteopathic Specialists under which he currently holds or has previously held certification. Further, within thirty days of the date of each such notification, Dr. Megargel shall provide documentation acceptable to the Secretary and Supervising Member of the Board demonstrating that the required notification has occurred.

19. Dr. Megargel shall promptly provide a copy of this Consent Agreement to all persons and entities that provide Dr. Megargel chemical dependency treatment or monitoring. Further, within thirty days of the date of each such notification, Dr. Megargel shall provide documentation acceptable to the Secretary and Supervising Member of the Board demonstrating that the required notification has occurred.

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

MONETARY FINE:

21. Within thirty days of the effective date of this Consent Agreement, Dr. Megargel shall remit payment in full of a monetary fine of two thousand dollars ($2,000.00) related to his felonious conduct in connection with his violation of Section 4731.22(B)(10), Ohio Revised Conduct. Such payment shall be made in full via credit card in the manner specified by the Board through its online portal, or by other manner as specified by the Board. Further, Dr. Megargel acknowledges and agrees that his failure to timely remit full payment shall constitute a violation of this agreement and agrees to pay all reasonable costs associated with the collection of any payment.

DURATION/MODIFICATION OF TERMS

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

Further, in the event that Dr. Megargel's certificate to practice is not reinstated/restored within five years of the effective date of this Consent Agreement, this agreement shall remain in effect but the provisions set forth within the "General Probationary Requirements" and the "Required Reporting by Licensee" sections, above, shall automatically terminate at that time.

In the event that any term, limitation, or condition contained in this Consent Agreement is determined to be invalid by a court of competent jurisdiction, Dr. Megargel and the Board agree

that all other terms, limitations, and conditions contained in this Consent Agreement shall be unaffected.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Megargel 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

By executing his signature on this Consent Agreement, Dr. Megargel agrees that in the event the Board, in its discretion, does not ratify this Consent Agreement, this settlement offer is withdrawn and shall be of no evidentiary value and shall not be relied upon or introduced in any disciplinary action or appeal by either party. Dr. Megargel and the Board further agree that if this Consent Agreement is not approved, it shall not constitute an admission against interest in this proceeding and shall not prejudice the ability of the Board to adjudicate this matter.

This Consent Agreement represents the sole and entire agreement of the parties hereto and supersedes all prior written or oral negotiations, agreements, or understandings between the parties. No party to this agreement has been induced to enter into the Consent Agreement by any representations or inducements except those expressly set forth in this written agreement. Further, all parties agree that to the extent any language in the agreement will be interpreted in a subsequent dispute, no ambiguous language shall be construed against the party drafting this Consent Agreement.

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

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. Dr. Megargel 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. Further, Dr. Megargel specifically acknowledges that the electronic

transmission of a scanned or photostatic copy of any executed signature to this Consent Agreement, upon being received by the Board, shall be deemed to have the full legal force and effect as the original.

JAMES DAVID MEGARGEL, M.D.

Apr 30, 2020
DATE

KIM G. ROTHERMEL, M.D.
Secretary

DATE

DANIEL S. ZINSMASTER
Attorney for Dr. Megargel

DATE

BRUCE R. SAFERIN, D.P.M.
Supervising Member

DATE

Mark Blackmer/sjn
MARK R. BLACKMER by authority
Enforcement Attorney

05/04/2020
DATE

transmission of a scanned or photostatic copy of any executed signature to this Consent Agreement, upon being received by the Board, shall be deemed to have the full legal force and effect as the original.

JAMES DAVID MEGARGEL, M.D.

DATE

DANIEL S. ZINSMASTER
Attorney for Dr. Megargel

4/30/2020
DATE

Kim G. Rothermel MD by KCA
Per authorization

KIM G. ROTHERMEL, M.D.
Secretary

5-13-20
DATE

Bruce R. Saferin DPM by KCA
Per authorization

BRUCE R. SAFERIN, D.P.M.
Supervising Member

5-13-20
DATE

MARK R. BLACKMER
Enforcement Attorney

DATE