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**CONSENT AGREEMENT
BETWEEN
DUANE J. KERSCHER SR., D.O.
AND
THE STATE MEDICAL BOARD OF OHIO**

THIS CONSENT AGREEMENT is entered into by and between DUANE J. KERSCHER, SR., D.O. and THE STATE MEDICAL BOARD OF OHIO, a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

DUANE J. KERSCHER SR., D.O. enters into this 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.

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

- A. THE STATE MEDICAL BOARD OF OHIO is empowered by Sections 4731.22(B)(2) and (6), 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 "(f)ailure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," and "(a) departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established."
- B. THE STATE MEDICAL BOARD OF OHIO enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Sections 4731.22(B)(2) and (6), Ohio Revised Code, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement.
- C. DUANE J. KERSCHER SR., D.O. is licensed to practice osteopathic medicine and surgery in the State of Ohio.

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STATE MEDICAL BOARD OF OHIO

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- D. DUANE J. KERSCHER SR., D.O. ADMITS that from April, 1987 through December, 1990 he excessively prescribed a schedule II barbiturate to a patient, at twice the recommended dose, for sleep induction. Further DOCTOR KERSCHER admits that he failed to appropriately document in the medical record all of the prescriptions issued to this patient.**

DOCTOR KERSCHER further ADMITS that from September, 1989 to January, 1991 he excessively prescribed schedule II narcotics to a patient in spite of knowledge that the patient was addicted to the medication and engaging in drug seeking behavior. Further DOCTOR KERSCHER admits that he failed to appropriately document in the medical record all of the prescriptions issued to this patient.

DOCTOR KERSCHER further ADMITS that from at least November, 1989 to November, 1990 he prescribed various controlled substances to a patient without maintaining a medical record on this prescribing. This patient was subsequently admitted to a detoxification center in June of 1991.

WHEREFORE, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, DUANE J. KERSCHER SR., D.O. knowingly and voluntarily agrees with THE STATE MEDICAL BOARD OF OHIO, (hereinafter BOARD), to the following terms, conditions and limitations:

- 1. The certificate of DOCTOR KERSCHER to practice osteopathic medicine and surgery in the State of Ohio shall be SUSPENDED for a period of thirty (30) days. Such suspension is STAYED, subject to the following PROBATIONARY terms, conditions and limitations for a period of two (2) years:**
 - a. DOCTOR KERSCHER shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio;**
 - b. DOCTOR KERSCHER shall submit quarterly declarations under penalty of perjury stating whether there has been compliance with all the conditions of this Consent Agreement;**

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- c. In the event that DOCTOR KERSCHER should leave Ohio for three continuous months, or reside or practice outside the State, DOCTOR KERSCHER must notify the BOARD in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this period under the CONSENT AGREEMENT, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed;
- d. DOCTOR KERSCHER shall not prescribe, dispense or administer any mood altering or potentially addicting drug for any member of his family;
- e. DOCTOR KERSCHER shall keep a log of all controlled substances prescribed, dispensed, or administered. Such log shall be submitted quarterly to the BOARD in the format approved by the BOARD;
- f. DOCTOR KERSCHER shall attend, at his expense, the next available session of the "Prescribing Controlled Substances Workshop," offered by St. Vincent's Charity Hospital in Cleveland, Ohio, or a similar course approved in advance by the BOARD. DOCTOR KERSCHER shall provide acceptable documentation of successful completion of this course. This program shall be in addition to the continuing medical education requirements contained in Chapter 4731, Ohio Revised Code;
- g. DOCTOR KERSCHER shall attend, at his expense, the next available session of the "Communicating and Record Keeping in Clinical Practice" workshop, offered by the Physicians Insurance Company of Ohio, or a similar course approved in advance by the BOARD. DOCTOR KERSCHER shall provide acceptable documentation of successful completion of this course. This program shall be in addition to the continuing medical education requirements contained in Chapter 4731, Ohio Revised Code;

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- h. Within thirty (30) days of the effective date of this Agreement, DOCTOR KERSCHER shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he contracts to provide physician services or receive training; and the Chief of Staff at each hospital where he has, applies for, or obtains privileges or appointment.**

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

If, in the discretion of the Secretary of THE STATE MEDICAL BOARD OF OHIO, DOCTOR KERSCHER appears to have violated or breached any term or condition of this Agreement, THE STATE MEDICAL BOARD OF OHIO 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 Agreement.

DOCTOR KERSCHER acknowledges that he has had an opportunity to ask questions concerning the terms of this 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.

DOCTOR KERSCHER hereby releases THE STATE MEDICAL BOARD OF OHIO, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

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This CONSENT AGREEMENT shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code, and shall become effective upon the last date of signature below.

Further, this information may be reported to appropriate organizations, data banks and governmental bodies.

Duane J. Kersch Sr. *Carla S. O'Day*
DUANE J. KERSCHER SR., D.O. CARLA S. O'DAY, M.D.

DUANE J. KERSCHER SR., D.O.

CARLA S. O'DAY, M.D.
Secretary

Dec 19, 1992
DATE

12/30/92
DATE

Robert W. Rowley
ROBERT W. ROWLEY, ESQ.
Attorney for Dr. Kersch

Ronald J. Kaplansky
RONALD J. KAPLANSKY, DPM
Supervising Member

12/19/92
DATE

1/2/93
DATE

A.C. Berry
ANNE C. BERRY, ESQ.
Assistant Attorney General

1/1/93
DATE