

**CONSENT AGREEMENT
BETWEEN
SCOTT RAY SWOPE, D.O.
AND
THE STATE MEDICAL BOARD OF OHIO**

This CONSENT AGREEMENT is entered into by and between SCOTT RAY SWOPE, D.O., and THE STATE MEDICAL BOARD OF OHIO (hereinafter BOARD), a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

DOCTOR SWOPE voluntarily 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.

This CONSENT AGREEMENT contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this CONSENT AGREEMENT.

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 any of the enumerated violations.
- B. The BOARD enters into this CONSENT AGREEMENT in lieu of further formal proceedings based upon the violations of Section 4731.22, Ohio Revised Code, set forth in the Notice of Opportunity for Hearing issued by the BOARD on February 10, 1999, attached hereto as Exhibit A and incorporated herein by this reference. The BOARD expressly reserves the right to institute additional formal proceedings based upon any other violations of Chapter 4731 of the Ohio Revised Code whether occurring before or after the effective date of this CONSENT AGREEMENT.
- C. DOCTOR SWOPE is licensed to practice osteopathic medicine and surgery in the State of Ohio.

- D. DOCTOR SWOPE ADMITS the factual and legal allegations set forth in the Notice of Opportunity for Hearing issued by the BOARD on February 10, 1999, attached hereto as Exhibit A and incorporated herein by reference.

AGREED CONDITIONS

WHEREFORE, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any further formal proceedings at this time, DOCTOR SWOPE knowingly and voluntarily agrees with the BOARD to the following terms, conditions and limitations:

STAYED REVOCATION; SUSPENSION OF CERTIFICATE

- I. The certificate of DOCTOR SWOPE to practice osteopathic medicine and surgery in the State of Ohio is hereby permanently REVOKED. Such revocation shall be STAYED, and DOCTOR SWOPE's certificate shall be SUSPENDED for an indefinite period of time, but not less than six (6) months. In accordance with such suspension, DOCTOR SWOPE shall promptly surrender his current wallet registration card and wall certificate to the BOARD or its designee. Any period of suspension in effect prior to receipt by the BOARD or its designee of the current wallet registration card and wall certificate shall not apply toward the minimum period of suspension specified by this CONSENT AGREEMENT. Upon completion of the suspension period and reinstatement of DOCTOR SWOPE's certificate, the wall certificate and a current wallet registration card will be promptly returned to DOCTOR SWOPE.

CONDITIONS FOR REINSTATEMENT

- II. The BOARD shall not consider reinstatement of DOCTOR SWOPE's certificate to practice unless and until all of the following minimum requirements are met:
- A. DOCTOR SWOPE shall submit an application for reinstatement, accompanied by appropriate fees.
- B. DOCTOR SWOPE shall provide acceptable documentation of successful completion of a course dealing with the prescribing of controlled substances. The exact number of hours and the

specific content of the course shall be subject to the prior approval of the BOARD or its designee, but shall be at least forty (40) hours in length. Any course taken in compliance with this provision shall be in addition to the Continuing Medical Education Requirements for relicensure for the biennial registration period in which it is completed.

- C. DOCTOR SWOPE shall also provide acceptable documentation of successful completion of a course dealing with medical record keeping. The exact number of hours and the specific content of the course shall be subject to the prior approval of the BOARD or its designee, but shall be at least ten (10) hours in length. Any course taken in compliance with this provision shall be in addition to the Continuing Medical Education Requirements for relicensure for the biennial registration period in which it is completed.
- D. In the event that DOCTOR SWOPE has not been engaged in the active practice of osteopathic medicine and surgery for a period in excess of two years prior to reinstatement, the BOARD may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of DOCTOR SWOPE's fitness to resume practice.

PROBATIONARY CONDITIONS

- III. Upon reinstatement, DOCTOR SWOPE's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three (3) years:
 - A. DOCTOR SWOPE shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio.
 - B. DOCTOR SWOPE shall submit quarterly declarations under penalty of BOARD disciplinary action 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.

- C. DOCTOR SWOPE shall appear in person for quarterly interviews before the BOARD or its designated representative, or as otherwise directed 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. (Example: The first quarterly appearance is scheduled for February, but based upon the doctor's serious personal illness he is permitted to delay appearance until April. The next appearance will still be scheduled for May, three months after the appearance as originally scheduled.) Although the BOARD will normally give DOCTOR SWOPE written notification of scheduled appearances, it is DOCTOR SWOPE's responsibility to know when personal appearances will occur. If he does not receive written notification from the BOARD by the end of the month in which the appearance should have occurred, DOCTOR SWOPE shall immediately submit to the BOARD a written request to be notified of his next scheduled appearance.

- D. In the event that DOCTOR SWOPE should leave Ohio for three (3) continuous months, or reside or practice outside the State, DOCTOR SWOPE 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.
- E. In the event DOCTOR SWOPE is found by the Secretary of the BOARD to have failed to comply with any provision of this agreement, and is so notified of that deficiency in writing, such periods of noncompliance will not apply to the reduction of the

probationary period under this CONSENT AGREEMENT.

Monitoring Physician

- F. Within thirty (30) days after the reinstatement of his certificate under section II of this CONSENT AGREEMENT, DOCTOR SWOPE shall submit for the BOARD's prior approval the name of a monitoring physician, who shall review DOCTOR SWOPE's patient charts and shall submit a written report of such review to the BOARD on a quarterly basis. Such chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the BOARD. It shall be DOCTOR SWOPE's responsibility to ensure that the monitoring physician's quarterly reports are submitted to the BOARD on a timely basis.

Further, the monitoring physician shall otherwise monitor DOCTOR SWOPE and provide the BOARD with quarterly reports on the doctor's progress and status. DOCTOR SWOPE shall ensure that such reports are forwarded to the BOARD on a quarterly basis. In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, DOCTOR SWOPE must immediately so notify the BOARD in writing, and make arrangements acceptable to the BOARD for another monitoring physician as soon as practicable. DOCTOR SWOPE shall further ensure that the previously designated monitoring physician also notifies the BOARD directly of the inability to continue to serve and the reasons therefore.

All monitoring physician reports required under this paragraph must be received in the BOARD's offices no later than the due date for DOCTOR SWOPE's quarterly declaration. It is DOCTOR SWOPE's responsibility to ensure that reports are timely submitted.

Weight Loss/Control Medications

- G. DOCTOR SWOPE shall not prescribe, dispense, or administer any prescription medications for weight loss or weight control.

Failure to comply

- H. DOCTOR SWOPE agrees that if any declaration or report required by this CONSENT AGREEMENT is not received in the BOARD's offices on or before its due date, DOCTOR SWOPE shall cease practicing beginning the day next following receipt from the BOARD of notice of non-receipt, either by writing, by telephone, or by personal contact until the declaration or report is received in the BOARD offices. Any practice during this time period shall be considered unlicensed practice in violation of Section 4731.43 of the Revised Code.

REQUIRED REPORTING BY LICENSEE

- IV. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR SWOPE shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he under contract to provide physician services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, DOCTOR SWOPE shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he contracts to provide physician services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
- V. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR SWOPE 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 a license to practice. DOCTOR SWOPE 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 licensure or reinstatement of licensure. Further, DOCTOR SWOPE shall provide this BOARD with a copy of the return receipt as proof of notification within thirty (30) days of receiving that return receipt.

If, in the discretion of the Secretary and Supervising Member of the BOARD, DOCTOR SWOPE 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 DOCTOR SWOPE has violated any term, condition or limitation of this CONSENT AGREEMENT, DOCTOR SWOPE 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 the purposes of initiating a summary suspension pursuant to Section 4731.22(G), Ohio Revised Code.

PERMANENT LIMITATION

Upon successful completion of probation, DOCTOR SWOPE's certificate will be restored, but shall thereafter be PERMANENTLY LIMITED AND RESTRICTED in that he will be PROHIBITED from prescribing, dispensing or administering any prescription medication for weight loss or weight control.

ACKNOWLEDGMENTS LIABILITY RELEASE

DOCTOR SWOPE 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.

DOCTOR SWOPE hereby releases the BOARD, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

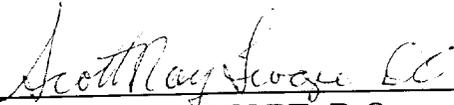
This CONSENT AGREEMENT shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies.

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

SCOTT RAY SWOPE, D.O.
Consent Agreement
Page 8

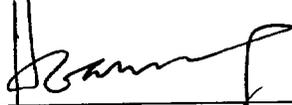
Member and shall become effective on July 1, 1999, or the last date of signature below, whichever is later.



SCOTT RAY SWOPE, D.O.

5/14/99

DATE



ANAND G. GARG, M.D.
Secretary

6/10/99

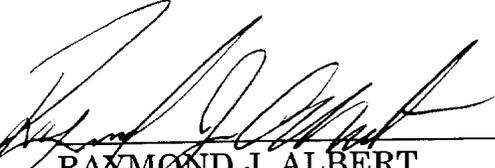
DATE



DAVID A. CHICARELLI, Esq.
Attorney for SCOTT RAY SWOPE, D.O.

5-14-99

DATE



RAYMOND J. ALBERT
Supervising Member

6/10/99

DATE



JAMES M. McGOVERN
Assistant Attorney General

6/10/99

DATE



State Medical Board of Ohio

77 S. High Street, 17th Floor • Columbus, Ohio 43266-0315 • 614/466-3934 • Website: www.state.oh.us/med/

February 10, 1999

Scott Ray Swope, D.O.
810 West Central Avenue
Springboro, OH 45066

Dear Doctor Swope:

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

- (1) In the routine course of your practice, you undertook the care of Patients 1 - 17 (as identified on the attached Patient Key - Key confidential and not subject to public disclosure) with controlled substance anorectics for weight loss.
 - (a) Prior to initiating treatment of Patients 1 - 17 with controlled substance anorectics, you failed to determine and/or your records fail to reflect that you determined the patients had made a substantial good faith effort to lose weight in a treatment program utilizing a regimen of weight reduction based on caloric restriction, nutritional counseling, behavior modification, and exercise, without the use of controlled substances, and that said treatment had been ineffective.
 - (b) Further, prior to initiating treatment of Patients 1 - 17 with controlled substance anorectics, you failed to obtain and/or your records fail to reflect that you obtained a thorough history, and further you failed to perform and/or your records fail to reflect that you performed a thorough physical examination.
 - (c) Further, you failed to determine and/or your records fail to reflect whether Patients 5, 8, 12 and 16 lost weight over a fourteen day period; in fact, you failed to reflect in your records any weight measurement on one or more occasions.
 - (d) Further, you failed to discontinue dispensing controlled substance anorectics to Patients 1, 3 - 5, 7 - 9, 11 - 14, 16 and 17 when you determined that these patients had failed to lose weight over a fourteen day period.

mailed 2/11/99

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "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," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: 4731-11-04(B)(1), (2), and (5), Ohio Administrative Code (as in effect prior to October 31, 1998). Pursuant to Rule 4731-11-04(C), Ohio Administrative Code, violation of Rule 4731-11-04, Ohio Administrative Code, also violates Sections 4731.22(B)(2), (3) and (6), 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 be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that 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 (30) 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, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,


Anand G. Garg, M.D.
Secretary

AGG/bjs
Enclosures

CERTIFIED MAIL #Z 395 591 058
RETURN RECEIPT REQUESTED

cc: David A. Chicarelli, Esq.
CERTIFIED MAIL #Z 395 591 080
RETURN RECEIPT REQUESTED