

**CONSENT AGREEMENT
BETWEEN
CHARLES B. BERTANI, D.O.
AND
THE STATE MEDICAL BOARD OF OHIO**

This Consent Agreement is entered into by and between Charles B. Bertani, D.O., and the State Medical Board of Ohio [Board], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

Dr. Bertani 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 R.C. 4731.22(B), 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 and Dr. Bertani enter into this Consent Agreement in lieu of further formal proceedings based upon the allegations set forth in the Notice of Opportunity for Hearing issued on January 8, 2003, 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 R.C. Chapter 4731., whether occurring before or after the effective date of this Consent Agreement.
- C. Dr. Bertani is licensed to practice osteopathic medicine and surgery in the State of Ohio, License # 34-002096. Dr. Bertani holds a license to practice osteopathic medicine in Florida and Missouri. Those licenses are inactive.
- D. Dr. Bertani admits that he engaged in sexual conduct with two patients while they were under his care, and that his conduct supports disciplinary action pursuant to R.C. 4731.22(B)(18) in that it constitutes a violation of the Code of Professional Ethics adopted by the American Osteopathic Association. Dr. Bertani further admits that his conduct constitutes a departure from or failure to conform to minimal standards of care as that language is used in R.C. 4731.22(B)(6).

- E. Dr. Bertani admits that he prescribed diuretics for weight loss purposes. Dr. Bertani further admits that he violated Ohio Adm. Code 4731-11-04 in his treatment of weight loss patients utilizing controlled substance anorectics and that pursuant to Ohio Adm. Code 4731-11-04(E), as in effect prior to June 30, 2000, any violation of Ohio Adm. Code 4731-11-04 is also a violation of R.C. 4731.22(B)(2), (3) and (6).
- F. The Board dismisses the allegations contained in Paragraphs 3(b) and (4).

AGREED CONDITIONS

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

REPRIMAND AND PERMANENT LIMITATION AND RESTRICTION

- 1. Dr. Bertani is hereby REPRIMANDED for his conduct as set forth in Paragraph E, above, and his certificate to practice osteopathic medicine and surgery in the State of Ohio shall be permanently limited and restricted as follows:

Dr. Bertani shall not prescribe, administer or personally furnish controlled substance anorectic medications or diuretics for weight loss.

SUSPENSION OF CERTIFICATE

- 2. The certificate of Dr. Bertani to practice osteopathic medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than 18 months, for his conduct as set forth in Paragraph D above.

CONDITIONS FOR REINSTATEMENT

- 3. The Board shall not consider reinstatement of Dr. Bertani's certificate to practice osteopathic medicine and surgery until all of the following conditions are met:
 - A. Dr. Bertani shall submit an application for reinstatement, accompanied by appropriate fees, if any.

Ethics Course

- B. At the time he submits his application for reinstatement, Dr. Bertani shall provide documentation of successful completion of a professional ethics

course or courses dealing specifically with the ethical principles Dr. Bertani violated in this matter. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee but in no event shall be less than thirty hours. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.

Controlled Substances Prescribing Course

- C. At the time he submits his application for reinstatement, Dr. Bertani shall provide acceptable documentation of successful completion of a course or courses dealing with the prescribing of controlled substances. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee but in no event shall be less than forty hours. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.
- D. In the event that Dr. Bertani has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Bertani's fitness to resume practice.

PROBATIONARY TERMS, CONDITIONS AND LIMITATIONS

- 4. Upon reinstatement, Dr. Bertani's certificate to practice osteopathic medicine and surgery shall be subject to the following PROBATIONARY terms, conditions and limitations for a period of at least three (3) years:
 - A. Dr. Bertani shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.

Monitoring Physician

- B. Before engaging in any medical practice, Dr. Bertani shall submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board and, unless that physician has previously been approved to serve as a monitoring physician,

for prior approval by the Board. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Bertani and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Bertani and his medical practice, and shall review Dr. Bertani's patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

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

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

Further, Dr. Bertani shall make his patient records available to the Board upon request.

Quarterly Declarations and Appearances

- C. Dr. Bertani shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the probationary 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 the probationary terms become effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

- D. Dr. Bertani shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which the probationary terms become effective. 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.

- E. In the event that Dr. Bertani should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Bertani 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 this 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.
- F. In the event Dr. Bertani is found by the Secretary of the Board to have failed to comply with any provision of this Consent Agreement, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Consent Agreement.

Required Reporting By Licensee

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

FAILURE TO COMPLY

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

DURATION/MODIFICATION OF TERMS

Dr. Bertani shall not request modification to the probationary terms, limitations, and conditions contained herein for at least one year following reinstatement of his certificate to practice osteopathic medicine and surgery. The reprimand and limitation set forth in Paragraph 1 above are permanent and cannot be terminated. Otherwise, the above-described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Bertani 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., and Ohio Revised Code.

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

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

EFFECTIVE DATE

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



CHARLES B. BERTANI, D.O.

11/11/03

DATE



LANCE TALMAGE, M.D.

Secretary

11-12-03

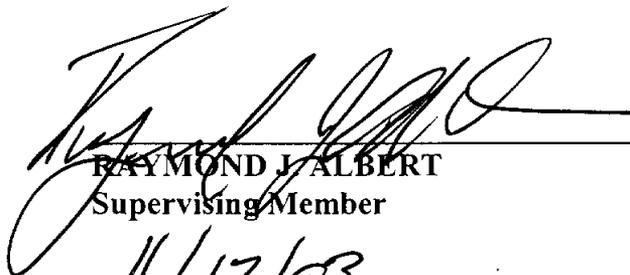
DATE



DOUGLAS GRAFF
Attorney for Dr. Bertani

11/11/03

DATE



RAYMOND J. ALBERT
Supervising Member

11/12/03

DATE



REBECCA J. ALBERS
Assistant Attorney General

11/12/03

DATE



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/

January 8, 2003

Charles B. Bertani, D.O.
4222 Waddington Rd.
Columbus, OH 43220

Dear Doctor Bertani:

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, permanently 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 treatment of Patients 1-29 (as identified on the attached Patient Key- Key confidential to be withheld from public disclosure).
- (2) In or about 1974 you began treating Patient 28 and documented a transfer of her care to another physician in your office on or about August 1, 1991. Thereafter, despite your documented transfer of Patient 28, you intermittently treated her and engaged in sexual conduct with her during the period of approximately 1993 to 1999.
 - (3) (a) During the course of your treatment of Patient 29, which began in or about 1994 and continued through 2002 and included controlled substance prescribing, you engaged in sexual conduct with her during the period of in or about May 2001 through, at a minimum, June 2002.
 - (b) Further, you inappropriately prescribed controlled substances including Valium, Vicodin, Lortab, Fiorinal with Codeine #3, Adipex and codeine cough syrup to Patient 29 in increasing amounts despite information indicating that Patient 29 had a very serious drinking problem, used drugs and had asked her sister for her Fiorinal several times. Further, you inappropriately prescribed Adipex to Patient 29 for seven years for the treatment of chronic fatigue syndrome.
- (4) During the course of your treatment of Patient 3, you inappropriately prescribed Phrenalin to this patient for over three years without documenting any indication for its use.

Mailed 1-9-03

- (5) You utilized controlled substance anorectics for purposes of weight reduction in the treatment of obesity for Patients 1-27.
- (a) Prior to initiating your treatment of Patients 1-10, 12-19, 21-24 and 26-27 with controlled substance anorectics, you failed to determine and/or you failed to document that the patients had made a substantial effort to lose weight in a treatment program utilizing a regimen of weight reduction based on caloric restriction, nutritional counseling, behavior modification, or exercise, without the use of controlled substances, and that said treatment had been ineffective.
 - (b) Further, in your treatment of Patients 1-3 and 18 with controlled substance anorectics, you failed to obtain and/or you failed to document that you obtained a thorough history, and further you failed to perform and/or your records fail to document that you performed a thorough physical examination of these patients. Further, in your treatment of Patients 3, 11, 13, 22, 24 and 26 with controlled substance anorectics on or after November 11, 1998, you failed to determine and/or you failed to document that you determined that the patients had a Body Mass Index [BMI] of at least thirty, or a BMI of at least twenty-seven with comorbid factors.
 - (c) Further, you continued prescribing controlled substance anorectics to Patients 1-3, 6, 9-12, 14-20, 22 and 24-27 prior to November 11, 1998, when these patients failed to lose weight over a fourteen-day period.
 - (d) Further, you continued prescribing controlled substance anorectics to Patients 5, 8, 11, 13, 16, 22 and 23 on or after November 11, 1998, when these patients failed to lose weight over a thirty-day period.
 - (e) Further, you continued prescribing controlled substance anorectics to Patients 1-3, 9, 11, 14-16, 20, 22 and 23 despite indications that the patients developed tolerance to the anorectics.
 - (f) Further, you continued prescribing controlled substance anorectics to Patients 1, 3 and 5 despite indications that the patients had a history of or showed a propensity for alcohol or drug abuse.
 - (g) Further, you continued prescribing controlled substance anorectics to Patients 1, 9, 11-15 and 18 despite indications that the patients were noncompliant with your directions for use.
 - (h) Further, your total course of treatment using controlled substance anorectics for weight reduction exceeded twelve weeks in Patients 3, 5, 6, 13, 16, 22 and 24.

- (i) Further, you failed to weigh and/or document the weight of Patient 3 at least every thirtieth day in order to determine if the patient had lost weight while under treatment for weight reduction with controlled substance anorectics.
- (j) Further, you initiated a new course of treatment utilizing controlled substances for purposes of weight reduction for Patients 6 and 8 after these patients had received controlled substances for purposes of weight reduction within the previous six-month period.
- (k) Further, you inappropriately prescribed Adipex-P to Patient 12, who was 15 years old at the time. Further, you continued to prescribe Adipex to Patient 12 after recording a diagnosis of TIA for that patient.
- (l) Further, you inappropriately prescribed HCTZ to Patients 1-14 and 18-27 for weight loss purposes. You also failed to obtain baseline and periodic potassium levels for Patients 1, 3, 5, 6, 9-15, 19, 21, 22 and 24-26 during their diuretic treatment. You also failed to document any advice to these patients to eat potassium rich foods regularly.
- (m) Further, you initially inappropriately diagnosed Patients 4 and 13 with exogenous obesity, despite the fact that Patient 4's height was five feet six inches and weight was 139 pounds and Patient 13's height was five feet four inches and weight was 154 pounds.
- (n) Further, you inappropriately continued to diagnose Patients 4, 5 and 11 with exogenous obesity during anorectic treatment despite the fact that their BMIs were, respectively, 23, 21 and 21.

Your acts, conduct, and/or omissions as alleged in paragraphs (2) through (5) above, individually and/or collectively, constitute "[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," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

Further, your acts, conduct, and/or omissions that occurred after July 1996 and prior to March 9, 1999, as alleged in paragraph (2) above, individually and/or collectively, constitute "[v]iolation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations as are determined, by rule, by the state medical board," as that clause is used in Section 4731.22(B)(18), Ohio Revised Code, as in effect prior to March 9, 1999, to wit: Section 15 of the American Osteopathic Association's Code of Ethics.

Further, your acts, conduct, and/or omissions as alleged in paragraph (3)(a) above, individually and/or collectively, constitute "[v]iolation of any provision of a code of

ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule," as that clause is used in Section 4731.22(B)(18), Ohio Revised Code, to wit: Section 15 of the American Osteopathic Association's Code of Ethics.

Further, your acts, conduct, and/or omissions that occurred prior to October 31, 1998, as alleged in paragraphs (5)(a)-(c) and (e)-(g) 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), Ohio Administrative Code. 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.

Further, your acts, conduct, and/or omissions that occurred on or after October 31, 1998, as alleged in paragraphs (5)(a)-(b), (d) and (f)-(j) 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(C), Ohio Administrative Code. Pursuant to Rule 4731-11-04(E), 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 days of the time of mailing of this notice.

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

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

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses

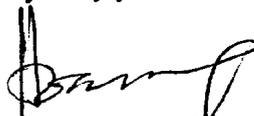
Charles B. Bertani, D.O.

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to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Anand G. Garg, M.D.
Secretary

AGG/blt
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5150 7841
RETURN RECEIPT REQUESTED

Duplicate mailing to: Douglas E. Graff, Esq.
604 East Rich Street Ste. 2100
Columbus, OH 43215-5468

CERTIFIED MAIL # 7000 0600 0024 5150 7858
RETURN RECEIPT REQUESTED