

2007 NOV 27 A 11: 37

**CONSENT AGREEMENT
BETWEEN
JAMES ROBERT FISCO, D.O.
AND
THE STATE MEDICAL BOARD OF OHIO**

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

Dr. Fisco 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)(20), Ohio Revised Code, "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," to wit: Rule 4731-11-02(C), Ohio Administrative Code. Pursuant to Rule 4731-11-02(F), Ohio Administrative Code, violation of Rule 4731-11-02(C), Ohio Administrative Code, also constitutes violation of Sections 4731.22(B)(2) and (6), Ohio Revised Code.
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-02(C), Ohio Administrative Code, to wit: Sections 4731.22(B)(2) and (6), Ohio Revised Code, 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 Consent Agreement.
- C. Dr. Fisco is licensed to practice osteopathic medicine and surgery in the State of Ohio, License # 34-004435.
- D. Dr. Fisco states that he is not licensed to practice osteopathic medicine and surgery in any other state or jurisdiction.

- E. Dr. Fisco admits that from in or about September 2000 to November 2005, he provided care and treatment on a regular basis to a patient who had complaints of chronic low back pain and depression, and that he routinely utilized controlled substances, including narcotic pain medications and benzodiazepines, in his treatment of the patient. Dr. Fisco further admits that he continued to prescribe such medications to the patient despite documentation in the patient's medical chart that the patient's family members had called Dr. Fisco's office indicating the patient was abusing the medications, that the patient had requested early refills of his medications on multiple occasions, that the patient was receiving controlled substances from other medical providers, that the patient had multiple arrests for DUIs, and that the patient had indicated on several occasions that he had injured himself by falling. Dr. Fisco further states that while he suspected the patient was abusing his medications, he did not establish a pain contract with the patient, refer the patient to a pain specialist, or require the patient to provide random urine or blood screens, as he was waiting for the patient to admit his addiction and/or misuse of the medications.

Dr. Fisco represents that since discussing his failure to comply with the Board's administrative rules related to controlled substances with a Board investigator on or about June 7, 2006, including Rule 4731-11-02(C), Ohio Administrative Code, requiring that a physician shall not utilize a controlled substance without taking into account the drug's potential for abuse, the possibility the drug may lead to dependence, or the possibility that the patient will obtain the drug for a non-therapeutic use, he has been fully compliant with those rules.

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

Reprimand

1. Dr. Fisco shall be and is hereby REPRIMANDED.

Required Controlled Substances Prescribing Course

2. Within one year from the effective date of this Consent Agreement, or as otherwise approved in advance by the Board, Dr. Fisco shall provide acceptable documentation of successful completion of a course entitled *Intensive Course in Controlled Substance Management*, which is sponsored by the Case Western Reserve University, School of Medicine, or an alternate course approved in advance by the Board. This course, after taken in compliance with this provision, may be used to satisfy the

Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which it is completed.

In addition, at the time Dr. Fisco submits the documentation of successful completion of the *Intensive Course in Controlled Substance Management*, or an alternate course approved by the Board, he shall also submit to the Board a written report describing the course, setting forth what he learned from the course, and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

FAILURE TO COMPLY

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

Dr. Fisco 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. Fisco 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. Fisco 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.

JAMES ROBERT FISCO, D.O.
JAMES ROBERT FISCO, D.O.

LANCE A. TALMAGE, M.D.
LANCE A. TALMAGE, M.D.
Secretary

November 29, 2007
DATE

*(by Mark Blackmer
per telephone authority
on 11/29/07)*

12-12-07
DATE

RAYMOND J. ALBERT
Supervising Member

12/12/07
DATE

MARK R. BLACKMER
MARK R. BLACKMER
Enforcement Attorney

November 23, 2007
DATE

STATE MEDICAL BOARD
OF OHIO
2007 NOV 27 A 11:38