

**CONSENT AGREEMENT  
BETWEEN  
MARCIANO DAVID BAUTISTA, D.O.  
AND  
THE STATE MEDICAL BOARD OF OHIO**

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

Dr. Bautista 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. Bautista 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 October 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. Bautista is licensed to practice osteopathic medicine and surgery in the State of Ohio, License # 34-006985 B. Dr. Bautista holds licenses to practice osteopathic medicine in Alaska, Colorado, and Michigan. Those licenses are current.
- D. Dr. Bautista admits that, as an oversight, he failed to renew his DEA certificate, which expired July 31, 2002, and continued in the course of his routine family practice in Alaska to write prescriptions for controlled substances in violation of state and federal law, and that, as a result, the Alaska Medical Board adopted a Memorandum of Agreement and Decision and Order placing a written reprimand in Dr. Bautista's file and imposing a civil fine in the amount of \$5,000, of which \$3,000 was suspended. Dr. Bautista further admits that his conduct supports

disciplinary action pursuant to R.C. 4731.22(B)(22), in that he has been subjected to disciplinary action in the form of a reprimand by the medical board of another state.

### **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. Bautista knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

### **REPRIMAND**

1. Dr. Bautista is hereby REPRIMANDED for his conduct as set forth in Paragraph D, above. This reprimand is permanent and cannot be modified, suspended, or terminated.

### **Required Reporting By Licensee**

2. Within thirty days of the effective date of this Consent Agreement, Dr. Bautista 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. Bautista 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. Bautista shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
3. Within thirty days of the effective date of this Consent Agreement, Dr. Bautista 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. Bautista 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. Bautista 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. Bautista 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. Bautista hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

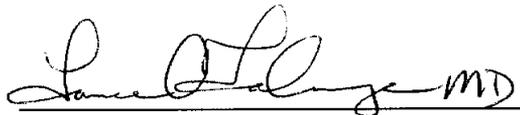
This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code, and may be reported to appropriate organizations, data banks, and governmental bodies. Dr. Bautista agrees to provide his social security number to the Board and hereby authorizes the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

**EFFECTIVE DATE**

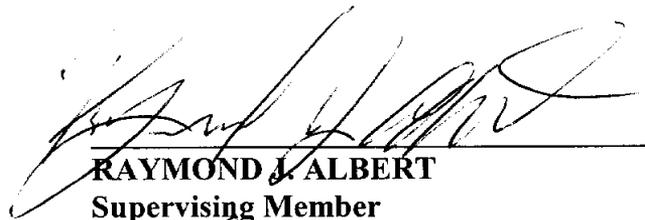
It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.

  
\_\_\_\_\_  
MARCIANO DAVID BAUTISTA, D.O.

01-08-04  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
LANCE TALMAGE, M.D.  
Secretary

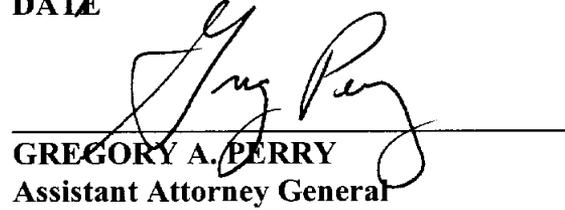
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DATE



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**RAYMOND J. ALBERT**  
Supervising Member

2/11/04  
DATE



---

**GREGORY A. PERRY**  
Assistant Attorney General

1/22/04  
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/](http://www.state.oh.us/med/)

October 8, 2003

Marciano D. Bautista, D.O.  
P.O. Box 197  
Kodiak, Alaska 99615

Dear Doctor Bautista:

In accordance with R.C. Chapter 119., 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) On or about December 20, 2002, the Alaska State Medical Board (Alaska Board) adopted a Memorandum of Agreement and Decision and Order, placing a reprimand in your licensing file and ordering a civil fine in the amount of \$5,000.00, of which the amount of \$3,000.00 was suspended.

The underlying conduct involving your writing prescriptions for controlled substances in Alaska after your U.S. Drug Enforcement Administration Controlled Substance Registration had expired, is provided in greater detail in the Alaska Board Memorandum of Agreement and Decision and Order, a copy of which is attached hereto and incorporated herein.

The Alaska Board Memorandum of Agreement and Decision and Order, as alleged in paragraph one (1) above, constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in R.C. 4731.22(B)(22).

Pursuant to R.C. Chapter 119., 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.

*Mailed 10-9-03*

Marciano D. Bautista, D.O.

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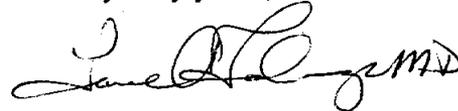
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at 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, R.C. 4731.22(L) 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 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,



Lance A. Talmage, M.D.  
Secretary

LAT/jag  
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5150 6226  
RETURN RECEIPT REQUESTED

104 Center Avenue, Suite 100  
Kodiak, Alaska 99615

CERTIFIED MAIL # 7000 0600 0024 5150 6219  
RETURN RECEIPT REQUESTED

STATE OF ALASKA  
DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT  
DIVISION OF OCCUPATIONAL LICENSING  
BEFORE THE STATE MEDICAL BOARD

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In the Matter of: )  
)  
Marciano D. Bautista, D.O. )  
)  
Respondent )  
Case No: 2802.02.31 )



MEMORANDUM OF AGREEMENT

IT IS HEREBY AGREED by the Department of Community and Economic Development, Division of Occupational Licensing (Division) and Marciano D. Bautista, (Bautista) as follows:

1. Licensure Bautista is currently licensed as an osteopathic physician in the State of Alaska and holds License number #4535. This license was first issued on November 02, 2000 and will expire unless renewed by December 31, 2002.
2. Admission/Jurisdiction Bautista admits and agrees that the State Medical Board (Board) has jurisdiction over the subject matter of his license to practice medicine in Alaska and over this Memorandum of Agreement (agreement).
3. Facts/Admissions. Bautista admits to the following facts:
  - a. that he has actively practiced medicine in Alaska since November 2, 2002.2000.
  - b. that on November 13, 1996, he was issued U.S. Drug Enforcement Administration (DEA) Controlled Substance Registration Number BB5119791 by the DEA which authorized him to prescribe, administer and dispense controlled substance medications, as defined by federal law.
  - c. that on November 12, 2002, a representative of the DEA advised this Division that Bautista's Controlled Substance Registration Number expired July 31, 2002, therefore, ending his authority to handle controlled substance medications. On November 12, 2002 DEA reactivated his registration for a period of thirty (30) days.

State Of Alaska  
Department Of Community and Economic Development  
Division of Occupational Licensing  
550 West 7<sup>th</sup> Avenue, Suite 1500  
Anchorage, Alaska 99501-3567  
Telephone 907-269-8160 Fax 907-269-8195

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1 d. that between August 1, 2002 and November 12, 2002, in addition to writing at  
2 least 20 hospital orders for controlled substance medications in a hospital setting, Bautista  
3 admits that he issued in excess of fifty written prescriptions for controlled substances at  
4 various pharmacies since the expiration of his DEA Number.

5 e. that Bautista asserts that he did not intend to practice without a valid DEA  
6 registration number and that his failure to renew was an oversight on his part.

7  
8 Bautista admits that as a result of the above facts, grounds exist for a possible  
9 suspension, revocation, or other disciplinary sanctions of his osteopathic physician's license  
10 pursuant to AS 08.01.075 and 08.64.326 (5).

11 4. Formal Hearing Process. It is the intent of the parties to this agreement to provide  
12 for the compromise and settlement of all issues which could be raised by an accusation to  
13 revoke, suspend or impose disciplinary sanctions against Bautista's physician's license  
14 through a formal hearing process.

15 5. Waiver of Rights. Bautista understands that he has the right to consult with an  
16 attorney of his own choosing and that he has a right to an administrative hearing on the  
17 facts in this case. He understands and agrees that by signing this agreement he is waiving  
18 his rights to counsel and to a hearing. Further, he understands and agrees that he is  
19 relieving the Division of any burden it has of proving the facts he admits above. Bautista  
20 further understands and agrees that by signing this agreement he is voluntarily and  
21 knowingly giving up his right to present oral and documentary evidence, to present rebuttal  
22 evidence, to cross-examine witnesses against him, and to appeal the Board's decision to  
23 Superior Court.

24  
25 6. Effect of Nonacceptance of Agreement Bautista and the Division agree that this  
26 agreement is subject to the approval of the Board. They agree that, if the Board rejects this  
27 agreement, it will be void, and an accusation may be filed. If this agreement is rejected by  
28 the Board it will not constitute a waiver of Bautista's right to a hearing on the matters  
29 alleged in an accusation and the admissions contained herein will have no effect. Bautista  
30 agrees that, if the Board rejects this agreement, the Board may decide the matter after a  
31 hearing, and its consideration of this agreement shall not alone be grounds for claiming that  
32 the Board is biased against him, that it cannot fairly decide the case, or that it has received  
33 ex parte communication.  
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1 7. Memorandum of Agreement, Decision and Order. Bautista agrees that the Board  
2 has the authority to enter into this agreement and to issue the following Decision and Order.

3  
4 PROPOSED DECISION AND ORDER

5  
6 IT IS HEREBY ORDERED that this order shall take effect immediately upon adoption by  
7 the Board.

8 A. Civil Fine. \* \$3000.00 of this fine will be suspended. <sup>10/12/2012</sup>

9  
10 Bautista shall pay a civil fine of \$5000.00. \* <sup>unsuspended portion of</sup> This fine shall be paid to the State of  
11 Alaska via Investigator Debra Luker within sixty (60) days from the date this Memorandum  
12 of Agreement is accepted by the Board. Payment shall be in the form of a personal or  
13 cashiers check payable to the "State of Alaska."

14 B. Reprimand. The following reprimand shall be placed in Bautista's licensing file  
15 in the form of this Memorandum of Agreement:

16 In Alaska the Medical Board expects licensees practicing medicine under the  
17 Board's authority to do so in compliance with all applicable laws, statutes, and regulations  
18 which pertain to the practice of medicine. Your failure to comply with federal law in  
19 relation to your authority to prescribe, administer and dispense controlled substances, as  
20 defined by federal law, is considered a serious breach of professionalism. Your continued  
21 prescribing of controlled substance medication has placed you in violation of federal and  
22 state laws that govern the practice of medicine in Alaska. You are hereby cautioned that  
23 failure to insure you hold the proper authorization to handle controlled substances in the  
24 future will subject you to further administrative action by the Board. You are reprimanded  
25 for your failure to comply with the law.

26  
27 C. Compliance with Laws.

28 Bautista shall obey all laws of the United States, the State of Alaska, and all laws  
29 pertaining to the practice of medicine in Alaska.

30 D. Compliance with Agreement.

31 If Bautista fails to comply with any term or condition of this agreement his license  
32 will automatically suspended. If his license is suspended, he will be entitled to a hearing on  
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State Of Alaska  
Department Of Community and Economic Development  
Division of Occupational Licensing  
550 West 7<sup>th</sup> Avenue, Suite 1500  
Anchorage, Alaska 99501-3567  
Telephone 907-269-8160 Fax 907-269-8195

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the issue of the suspension. If Bautista's license is suspended he will continue to be responsible for all licensing requirements pursuant to AS 08.64.

E. Good Faith.

All parties agree to act in good faith in carrying out the stated intentions of this agreement.

F. Address of the Board.

All required communications concerning compliance with this agreement shall be addressed to:

Debra Luker, Investigator  
State Medical Board  
550 W 7<sup>th</sup> Ave, Suite 1500  
Anchorage, Alaska 99501

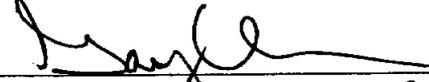
Telephone: (907) 269.8176 Fax: (907) 269.8195

IT IS HEREBY FURTHER ORDERED that this Order shall take effect immediately upon its adoption by the Board and is a public record of the Board and the State of Alaska. The State may provide a copy of it to any person or entity.

DATED this 29<sup>th</sup> day of March, 2002 at

Anchorage, Alaska.

JEFFREY W. BUSH  
ACTING COMMISSIONER  
DEPARTMENT OF COMMUNITY AND  
ECONOMIC DEVELOPMENT

  
Gary Veres, Chief Investigator for  
Catherine Reardon, Director  
Division of Occupational Licensing

State Of Alaska  
Department Of Community and Economic Development  
Division of Occupational Licensing  
550 West 7<sup>th</sup> Avenue, Suite 1500  
Anchorage, Alaska 99501-3567  
Telephone 907-269-8160 Fax 907-269-8195

1 I, Marciano D. Bautista, have read the Memorandum of Agreement, understand it,  
2 and agree to be bound by its terms and conditions.

3 DATED: 12-14-02

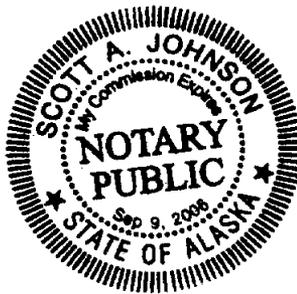
Marciano D. Bautista

5 SUBSCRIBED AND SWORN TO before me this 14 day of  
6 December, 2002 at Anchorage,  
7 Alaska.

Scott A. Johnson

Notary Public in and for Alaska

My commission expires: 9.9.2006



RECEIVED

DEC 27 2002

DIVISION OF  
OCCUPATIONAL LICENSING  
JUNEAU

ORDER

16 The Medical Board for the State of Alaska, having examined the Memorandum of  
17 Agreement and Proposed Decision and Order, Case No. 2802.02.31, adopted the  
18 Memorandum of Agreement and Decision and Order in this matter on  
19 12-20-02.

21 DATED this 20<sup>th</sup> day of December, 2002,  
22 at Anchorage, Alaska.

STATE MEDICAL BOARD

28 By: Christine Living  
29 for: Chairperson

State Of Alaska  
Department Of Community and Economic Development  
Division of Occupational Licensing  
550 West 7<sup>th</sup> Avenue, Suite 1500  
Anchorage, Alaska 99501-3567  
Telephone 907-269-8160 Fax 907-269-8195

ORIGINAL