

STATE MEDICAL BOARD OF OHIO
JAN - 8 2001

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

This CONSENT AGREEMENT is entered into by and between ROBERT D. SMARSCH, D.O., and THE STATE MEDICAL BOARD OF OHIO, a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

ROBERT D. SMARSCH, D.O., 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 STATE MEDICAL BOARD OF OHIO is empowered by Section 4731.22(B)(26), Ohio Revised Code, to limit, revoke, permanently revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for “impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice.”
- B. THE STATE MEDICAL BOARD OF OHIO enters into this CONSENT AGREEMENT in lieu of formal proceedings based upon the violation of Section 4731.22(B)(26), 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 Agreement.
- C. ROBERT D. SMARSCH, D.O., has applied for a license to practice osteopathic medicine and surgery in the State of Ohio, and that application is still pending.
- D. ROBERT D. SMARSCH, D.O., STATES that he is not licensed to practice osteopathic medicine and surgery in any other state.

- E. ROBERT D. SMARSCH, D.O., ADMITS that he has been diagnosed as being alcohol dependent.

ROBERT D. SMARSCH, D.O., further ADMITS that he drank excessively throughout his college career. DOCTOR SMARSCH further ADMITS that he was found guilty of Driving Under the Influence in 1986, 1987, and 1994. DOCTOR SMARSCH STATES that he decided in May of 1997 to stop drinking, and that he has abstained from alcohol since that time.

ROBERT D. SMARSCH, D.O., further ADMITS that on or about June 16, 1999, he submitted to the Cleveland Clinic Foundation, a Board approved treatment provider, for a chemical dependency evaluation. Joseph W. Janesz, M.Ed., LPCC, CRC, CCDC III-E, and Gregory Collins, M.D., of the Cleveland Clinic Foundation, stated in a letter dated July 12, 1999, that DOCTOR SMARSCH did not present with any signs and symptoms of current intoxication or other pathological features associated with alcoholism, but that his drinking history suggests an impression of alcohol dependence. They recommended that he should initiate the following treatment/recovery guidelines: 1) weekly, random urine toxicology screens; 2) active participation within self-help (a minimum of two meetings per week); 3) active participation within the Physician Inner Circle group therapy at the Cleveland Clinic Foundation; and 4) active participation within the Ohio Physician Effectiveness Program (OPEP). DOCTOR SMARSCH further ADMITS that he entered into a treatment contract with the Cleveland Clinic Foundation on or about January 10, 2000, and an advocacy contract with OPEP on or about February 23, 2000.

ROBERT D. SMARSCH, D.O., further ADMITS that on June 26, 2000, he submitted to an evaluation at Shepherd Hill Hospital, a Board approved treatment provider, based upon the May 26, 2000, Order of the Board pursuant to Section 4731.22(B)(26), Ohio Revised Code, which is attached hereto and incorporated herein. As a result of the evaluation, Shepherd Hill Hospital determined that DOCTOR SMARSCH was alcohol dependent, and recommended that DOCTOR SMARSCH enter a residential treatment program as soon as possible and that he should not practice medicine until he had completed treatment and was in a post treatment program. In addition, Shepherd Hill Hospital reported that DOCTOR SMARSCH's urine drug screen tested positive for propoxyphene, a schedule IV controlled substance. DOCTOR SMARSCH STATES that he did not use propoxyphene.

ROBERT D. SMARSCH, D.O., further ADMITS that he entered into inpatient treatment at CCF on July 11, 2000, and successfully completed this treatment on August 11, 2000. In a letter dated December 18, 2000, Gregory B. Collins, M.D., of CCF informed the BOARD that DOCTOR SMARSCH was in full compliance with his treatment contract which he signed on September 12, 2000. The terms of this treatment contract includes abstinence from all mood altering chemicals; urine toxicology screens once a week for two years; weekly documented attendance at two AA/NA meetings for two years; and Antabuse 125 mg daily. In his letter dated December 18, 2000, Dr. Collins also opined that DOCTOR SMARSCH is capable of practicing medicine in accordance with acceptable and prevailing standards of care.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, ROBERT D. SMARSCH, D.O., shall be granted a license to practice osteopathic medicine and surgery in the State of Ohio, and knowingly and voluntarily agrees with THE STATE MEDICAL BOARD OF OHIO, (hereinafter BOARD), to the following PROBATIONARY terms, conditions and limitations:

1. DOCTOR SMARSCH shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio;
2. DOCTOR SMARSCH 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 the 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;
3. DOCTOR SMARSCH 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 SMARSCH written notification of scheduled appearances, it is DOCTOR SMARSCH'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 SMARSCH shall immediately submit to the BOARD a written request to be notified of his next scheduled appearance;

4. In the event that DOCTOR SMARSCH should leave Ohio for three (3) continuous months, or reside or practice outside the State, DOCTOR SMARSCH 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;
5. In the event DOCTOR SMARSCH 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 the CONSENT AGREEMENT;

MONITORING OF REHABILITATION AND TREATMENT

Sobriety

6. DOCTOR SMARSCH shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of DOCTOR SMARSCH's history of chemical dependency;
7. DOCTOR SMARSCH shall abstain completely from the use of alcohol;

Drug and Alcohol Screens/Supervising Physician

8. DOCTOR SMARSCH shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the BOARD. DOCTOR SMARSCH shall ensure that all screening reports are forwarded directly to the BOARD on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the BOARD;

Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR SMARSCH shall submit to the BOARD for its prior approval the name of a supervising physician to whom DOCTOR SMARSCH shall submit the required urine specimens. In approving an individual to serve in this capacity, the BOARD will give preference to a physician who practices in the same locale as DOCTOR SMARSCH. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the BOARD of any positive screening results;

DOCTOR SMARSCH shall ensure that the supervising physician provides quarterly reports to the BOARD, on forms approved or provided by the BOARD, verifying whether all urine screens have been conducted in compliance with this CONSENT AGREEMENT, whether all urine screenings have been negative, and whether the supervising physician remains willing and able to continue in his responsibilities;

In the event that the designated supervising physician becomes unable or unwilling to so serve, DOCTOR SMARSCH must immediately notify the BOARD in writing, and make arrangements acceptable to the BOARD for another supervising physician as soon as practicable. DOCTOR SMARSCH shall further ensure that the previously designated supervising physician also notifies the BOARD directly of the inability to continue to serve and the reasons therefore;

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

9. The BOARD retains the right to require, and DOCTOR SMARSCH agrees to submit, blood or urine specimens for analysis at DOCTOR SMARSCH's expense upon the BOARD's request and without prior notice. DOCTOR SMARSCH's refusal to submit a blood or urine

specimen upon request of the BOARD shall result in a minimum of one year of actual license suspension;

Monitoring Physician

10. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR SMARSCH shall submit for the BOARD's prior approval the name of a monitoring physician, who shall review DOCTOR SMARSCH's patient charts and shall submit a written report of such review to the BOARD on a quarterly basis. In approving an individual to serve in this capacity, the BOARD will give preference to a physician who practices in the same locale as DOCTOR SMARSCH and who is engaged in the same or similar practice specialty. 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 SMARSCH'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 SMARSCH and provide the BOARD with quarterly reports on the doctor's progress and status. DOCTOR SMARSCH 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 SMARSCH must immediately so notify the BOARD in writing, and make arrangements acceptable to the BOARD for another monitoring physician as soon as practicable. DOCTOR SMARSCH 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 SMARSCH's quarterly declaration. It is DOCTOR SMARSCH's responsibility to ensure that reports are timely submitted;

Rehabilitation Program

11. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR SMARSCH shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., or Caduceus, no less than three (3) times per week. Substitution of any other specific program must receive prior BOARD approval;

DOCTOR SMARSCH shall submit with each quarterly declaration required under Paragraph 2 of this CONSENT AGREEMENT acceptable documentary evidence of continuing compliance with this program;

Aftercare

12. DOCTOR SMARSCH shall contact an appropriate impaired physicians committee, approved by the BOARD, to arrange for assistance in recovery or aftercare;
13. DOCTOR SMARSCH shall maintain continued compliance with the terms of the aftercare contract entered into with his treatment provider, provided, that where terms of the aftercare contract conflict with terms of this CONSENT AGREEMENT, the terms of this CONSENT AGREEMENT shall control;

Releases

14. DOCTOR SMARSCH shall provide continuing authorization, through appropriate written consent forms, for disclosure by his treatment provider to the BOARD, to treating and monitoring physicians, and to others involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations;

Required Reporting by Licensee

15. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR SMARSCH 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, DOCTOR SMARSCH 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;
16. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR SMARSCH 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. DOCTOR SMARSCH 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, DOCTOR SMARSCH shall provide this BOARD with a copy of the return receipt as proof of notification within thirty (30) days of receiving that return receipt;

VIOLATION OF PROBATIONARY TERMS

17. Any violation of Paragraph 6 or Paragraph 7 of this CONSENT AGREEMENT shall constitute grounds to revoke or permanently revoke DOCTOR SMARSCH's certificate. DOCTOR SMARSCH agrees that the minimum discipline for such a violation shall include actual license suspension. This paragraph does not limit the BOARD's authority to suspend, revoke or permanently revoke DOCTOR SMARSCH's certificate based on other violations of this CONSENT AGREEMENT;
18. DOCTOR SMARSCH 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 SMARSCH 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;
19. DOCTOR SMARSCH AGREES that if, without prior permission from the BOARD, he fails to submit to random screenings for drugs and alcohol at least as frequently as required by Paragraph 8 of this CONSENT AGREEMENT, he shall cease practicing immediately upon receipt from the BOARD of notice of the violation and shall refrain from practicing for thirty (30) days for the first instance of a single missed screen. Practice during this time period shall be considered unlicensed practice in violation of Section 4731.43 of the Revised Code; and,
20. DOCTOR SMARSCH AGREES that if he fails to participate in an alcohol and drug rehabilitation program at least as frequently as required by Paragraph 11 of this CONSENT AGREEMENT, he shall cease practicing immediately upon receipt from the BOARD of notice of the violation, and shall refrain from practicing for fifteen (15) days following a first missed meeting. Practice during this time period shall be considered unlicensed practice in violation of Section 4731.43 of the Revised Code.

FAILURE TO COMPLY

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

DURATION/MODIFICATION OF TERMS

DOCTOR SMARSCH shall not request termination of this CONSENT AGREEMENT for a minimum of five (5) years. In addition, DOCTOR SMARSCH shall not request modification to the probationary terms, limitations and conditions contained herein for at least one (1) year. 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

DOCTOR SMARSCH 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 SMARSCH 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.

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 Member and that it shall become effective upon the last date of signature below.



ROBERT D. SMARSCH, D.O.



ANAND G. GARG, M.D.
Secretary

1/5/01
DATE

01/10/01
DATE



RAYMOND J. ALBERT
Supervising Member

1/10/01
DATE



ANNE B. STRAIT, ESQ.
Assistant Attorney General

1/10/01
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/

May 26, 2000

Personal and Confidential

Robert D. Smarsch, D.O.
1468 Wilmar Road
Cleveland Heights, Ohio 44141

Dear Doctor Smarsch:

The State Medical Board of Ohio has determined that it has reason to believe that you are in violation of Section 4731.22(B)(26), Ohio Revised Code, to wit: “[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice.”

This determination is based upon one or more of the following reasons:

- (1) You were convicted of Driving While Intoxicated in 1986, 1987, and 1994.
- (2) You were evaluated by the Alcohol and Drug Recovery Center at the Cleveland Clinic Foundation (“CCF”) on June 16, 1999. Their review of your drinking history suggested an impression of alcohol dependence. CCF strongly suggested that you initiate the following treatment/recovery guidelines:
 1. Weekly, random urine toxicology screens.
 2. Active participation within Self-Help (a minimum of two meetings per week).
 3. Active participation within the Physician Inner Circle group therapy, at the Cleveland Clinic Foundation.
 4. Active participation within the Ohio Physician Effectiveness Program.
- (3) You did not sign a treatment contract with CCF until January 10, 2000.
- (4) You did not sign an advocacy contract with the Ohio Physician Effectiveness Program until February 23, 2000.

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ROBERT D. SMARSCH, D.O.
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By the authority vested in the State Medical Board of Ohio by Section 4731.22(B)(26), Ohio Revised Code, you are ordered to submit to an examination. This examination will take place at Shepherd Hill Hospital, 200 Mesimer Drive, Newark, Ohio 43058-1067, phone number (740) 348-4870. You are to report to Dr. Frederick N. Karaffa, on June 26, 2000, at 9:00 a.m., for a three-day in-patient evaluation.

Pursuant to Section 4731.22(B)(26), Ohio Revised Code, effective March 9, 1999, you are responsible for the expense of this evaluation. The total estimated cost of this evaluation is \$2,500.00. You must present a certified check or money order in the amount of \$2,000.00 made payable to Shepherd Hill Hospital and a certified check or money order in the amount of \$500.00 made payable to Licking Memorial Health Professionals to the examiner prior to the beginning of the examination. Failure to present a certified check or money order in the amount specified to the examiner will result in the examination being canceled, and will be deemed by the Board to be a failure to submit to the examination as directed due to circumstances within your control. Please be advised that failure to submit to this examination as directed constitutes an admission of the allegations against you unless the failure is due to circumstances beyond your control, and that a default and final order may thereupon be entered without the taking of testimony or presentation of evidence.

Copies of the applicable statute sections are enclosed for your information.

Very truly yours,



Anand G. Garg, M.D.
Secretary

AGG/bjs
Enclosures

CERTIFIED MAIL #Z 395 591 182
RETURN RECEIPT REQUESTED

cc: John R. Irwin, M.D., Esq.
CERTIFIED MAIL #Z 496 164 996
RETURN RECEIPT REQUESTED