

**PROBATIONARY
CONSENT AGREEMENT
BETWEEN
MALCOLM A. BRAHMS, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO**

This Consent Agreement is entered into by and between Malcolm A. Brahms, M.D. [Dr. Brahms], and the State Medical Board of Ohio [Board], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

Dr. Brahms 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)(5), Ohio Revised Code, “[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,” and/or a violation of Section 4731.22(B)(10), Ohio Revised Code “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed.”
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Sections 4731.22(B)(5) and (B)(10), Ohio Revised Code, to wit: Section 4731.99(A), Ohio Revised Code, as it incorporates a violation of Section 4731.41, Practice of medicine or surgery without certificate, as set forth in Paragraphs E through H below. The Board 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. Dr. Brahms is applying for restoration of his license to practice medicine and surgery in the State of Ohio, License # 35.017008, which expired on July 1, 2007, and subsequently was granted emeritus status.

- D. Dr. Brahms states that he is not licensed to practice medicine and surgery in any other state or jurisdiction.
- E. Dr. Brahms states, and the Board acknowledges, that Dr. Brahms held a full and unrestricted active license to practice medicine and surgery in Ohio until July 1, 2007, when his license expired, and he subsequently was granted emeritus status. At that time, Dr. Brahms did not intend to practice patient care. Rather, he intended to retire from the active practice of medicine and perform patient chart review related to and provide testimony for the Social Security Administration, but only on a part-time basis.
- F. Dr. Brahms admits that he continuously performed patient chart review and provided testimony for the Social Security Administration until in or around January 2008, despite the fact that he was not licensed to do so effective July 1, 2007.
- G. Dr. Brahms admits that, in or around October 2007, he learned that he could not perform patient chart review and provide expert testimony without an active license. Dr. Brahms admits that, on or about October 11, 2007, he submitted to the Board an Application for Emeritus Restoration Medicine or Osteopathic Medicine [Application].
- H. Dr. Brahms admits that, on his Application, he answered "no" to question 17, which reads as follows: "Have you been a defendant in a legal action involving professional liability (malpractice), or had a professional liability claim paid on your behalf, or paid such a claim yourself?" Dr. Brahms admits that he has been named a defendant in one or more legal actions.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, the certificate of Dr. Brahms to practice medicine and surgery in the State of Ohio shall be RESTORED, upon receipt of all necessary and appropriate documentation, and Dr. Brahms knowingly and voluntarily agrees with the Board that said certificate to practice medicine and surgery shall be subject to the following terms, conditions and limitations:

PERMANENT LICENSURE LIMITATION

1. Dr. Brahms' license to practice medicine and surgery in the State of Ohio shall be PERMANENTLY LIMITED AND RESTRICTED as follows:
 - a. Dr. Brahms shall limit his practice of medicine and surgery to the review of patient charts related to and providing testimony in hearings for the Social Security Administration, Office of Disability and Rehabilitation.

- b. Dr. Brahms shall not provide actual patient care, shall not examine patients and shall not prescribe any medications. Nor shall Dr. Brahms review patient charts or provide testimony in any forum not authorized by this Agreement.

PROBATIONARY TERMS AND CONDITIONS

2. Dr. Brahms shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
3. Dr. Brahms 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, or as otherwise requested by the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

REQUIRED REPORTING BY LICENSEE

4. Within thirty days of the effective date of this Consent Agreement, Dr. Brahms 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. Brahms 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.
5. Within thirty days of the effective date of this Consent Agreement, Dr. Brahms 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. Brahms 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. Brahms shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Brahms 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 Dr. Brahms has violated any term, condition or limitation of the Consent Agreement, Dr. Brahms 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

Dr. Brahms shall not request termination of his probationary status, as established by this Consent Agreement, for a minimum of five years. In addition, Dr. Brahms shall not request modification to the probationary terms, limitations and conditions contained herein for a minimum of one year. Otherwise, with the exception of the permanent licensure limitation specified in paragraph 1 above, the above-described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties.

Upon successful completion of probation, as evidenced by a written release for the Board, Dr. Brahms' certificate will be restored, but shall thereafter be PERMANENTLY LIMITED AND RESTRICTED as specified in paragraph 1 above.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Brahms 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.

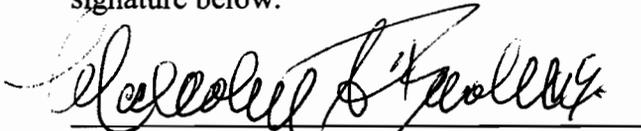
Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

Dr. Brahms 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. Brahms 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.


MALCOLM A. BRAHMS, M.D.


LANCE A. TALMAGE, M.D.
Secretary

4-3-08

DATE

4-9-08

DATE


MARC W. GROEDEL
Attorney for Dr. Brahms


RAYMOND J. ALBERT
Supervising Member

4/3/08

DATE

4/09/08

DATE


CHERYL D. POKORNY
Enforcement Attorney

4/7/08

DATE