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STATE MEDICAL BOARD

**CONSENT AGREEMENT
BETWEEN
ANTHONY J. NAKHLE, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO**

THIS CONSENT AGREEMENT is entered into by and between ANTHONY J. NAKHLE, M.D. and THE STATE MEDICAL BOARD OF OHIO, a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

ANTHONY J. NAKHLE, M.D. enters into this 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.

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)(3), 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 selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, or a judicial finding of guilt of, a violation of any federal or state law regulating the possession, distribution, or use of any drug.**
- B. THE STATE MEDICAL BOARD OF OHIO is empowered by Section 4731.22(B)(9), 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 a plea of guilty to, or a judicial finding of guilt of, a felony.**
- C. THE STATE MEDICAL BOARD OF OHIO is empowered by Section 4731.22(B)(26), 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 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.**
- D. THE STATE MEDICAL BOARD OF OHIO enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Sections 4731.22(B)(3),(9) and (26) 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.**
- E. DOCTOR NAKHLE has filed an application for restoration of his license to practice medicine and surgery in the State of Ohio.**
- F. On or about August 30, 1983, DOCTOR NAKHLE voluntarily surrendered his license to practice medicine and surgery in the State of Ohio, after receiving a Notice of Opportunity for Hearing**

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letter dated March 10, 1983, in which the BOARD alleged that DOCTOR NAKHLE was unable to practice according to acceptable and prevailing standards of care by reason of illness, excessive use of alcohol, excessive use of controlled substances, drugs, or chemicals, or as a result of a mental or physical condition and after undergoing a BOARD ordered evaluation for the same.

- G. On or about February 20, 1985, the BOARD proposed to deny DOCTOR NAKHLE'S December, 1983 and January, 1984 requests for reinstatement of his license to practice medicine and surgery in the State of Ohio, due to his alleged continued impairment.
- H. On or about August 17, 1987, the BOARD again proposed to deny DOCTOR NAKHLE'S request for reinstatement of his license to practice medicine and surgery in the State of Ohio, based upon his September 30, 1985 conviction of two (2) felony counts of illegal processing of drug documents.
- I. On or about October 9, 1987, DOCTOR NAKHLE was ordered by the BOARD to submit to a mental examination based upon the foregoing.
- J. On or about October 13, 1987, the BOARD conducted an administrative hearing with respect to the charges filed against DOCTOR NAKHLE and on or about February 12, 1988, issued an Order in which DOCTOR NAKHLE'S request for reinstatement of his certificate to practice medicine and surgery in the State of Ohio was permanently denied. DOCTOR NAKHLE appealed this Order to the Franklin County Common Pleas Court where the Order was upheld.
- K. On or about December 14, 1989, the Court of Appeals for the Tenth Appellate District affirmed the trial court's denial of DOCTOR NAKHLE'S request for reinstatement, but reversed as to the prohibition preventing DOCTOR NAKHLE from applying for licensure in the future.
- L. Pursuant to that holding, on or about July 17, 1990, DOCTOR NAKHLE by and through his attorney, John Vaporis, requested reinstatement of his license to practice medicine and surgery in the State of Ohio, subject to any terms, conditions and limitations imposed by the BOARD.

WHEREFORE, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, ANTHONY J. NAKHLE, M.D. knowingly and voluntarily agrees with THE STATE MEDICAL BOARD OF OHIO, (hereinafter BOARD), to the following probationary terms, conditions and limitations:

- 1. DOCTOR NAKHLE shall take and satisfactorily pass the SPEX Examination prior to becoming licensed in the State of Ohio;
- 2. DOCTOR NAKHLE shall voluntarily submit to a mental and physical examination with a physician of the BOARD'S approval, prior to becoming licensed in the State of Ohio;

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3. Upon completion of items 1. and 2. to the BOARD'S satisfaction DOCTOR NAKHLE shall become licensed to practice medicine in the State of Ohio, subject to the remaining terms and conditions of this Consent Agreement;
4. DOCTOR NAKHLE shall limit his practice solely to administrative medicine, with the exception that he shall be allowed to take patient histories and perform physical examinations;
5. DOCTOR NAKHLE shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio;
6. DOCTOR NAKHLE shall submit quarterly declarations under penalty of perjury stating whether there has been compliance with all the conditions of this Consent Agreement;
7. DOCTOR NAKHLE shall appear in person for interviews before the full BOARD or its designated representatives at three month intervals, or as otherwise directed by the BOARD;
8. In the event that DOCTOR NAKHLE should leave Ohio for three continuous months, or reside or practice outside the State, DOCTOR NAKHLE must notify the BOARD in writing of the dates of departure and return.
9. DOCTOR NAKHLE shall be ineligible to hold, and shall not apply for, registration with the D.E.A. to prescribe, dispense or administer controlled substances without prior BOARD approval;
10. DOCTOR NAKHLE shall not prescribe, administer, dispense, order, write orders for, give verbal orders for, or possess (Except as allowed under Paragraph 12, below) any controlled substance as defined by State or Federal law;
11. DOCTOR NAKHLE shall not be permitted to order, write orders for, give verbal orders for, dispense or administer controlled substances as defined by State or Federal law under the D.E.A. registration of the hospital or institution in which he is employed and/or has privileges;
12. DOCTOR NAKHLE shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of DOCTOR NAKHLE'S history of chemical dependency;
13. DOCTOR NAKHLE shall abstain completely from the use of alcohol;
14. DOCTOR NAKHLE shall submit to random urine screenings for drugs and alcohol on a bi-weekly basis or as otherwise directed by the BOARD. DOCTOR NAKHLE is to ensure that all screening reports are forwarded directly to the BOARD on a quarterly basis;

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DOCTOR NAKHLE shall submit the required urine specimens to a supervising physician to be approved by the BOARD. 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;

The supervising physician shall monitor DOCTOR NAKHLE and provide the BOARD with reports on the doctor's progress and status;

In the event that the designated supervising physician becomes unable or unwilling to so serve, DOCTOR NAKHLE must immediately notify the BOARD in writing, and make arrangements acceptable to the BOARD for another supervising physician as soon as practicable;

15. The BOARD retains the right to require, and DOCTOR NAKHLE agrees to submit, blood or urine specimens for analysis upon request and without prior notice.
16. Within 30 days of the effective date of this Consent Agreement, DOCTOR NAKHLE shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A.N.A., or Caduceus, acceptable to the BOARD no less than two (2) times per week. At his appearances before the BOARD or its designated representative, DOCTOR NAKHLE shall submit documentary evidence of continuing compliance with this program;
17. DOCTOR NAKHLE shall obtain the approval of the BOARD for any medical practice or employment related to the health care fields. The BOARD shall consider, among other factors, the adequacy and continuity of supervision and the feasibility of restricted access to controlled substances, which will ensure the protection of the public, prior to approval or disapproval of the proposed employment;
18. DOCTOR NAKHLE shall provide all employers and the Chief of Staff at each hospital where he has, applies for, or obtains privileges with a copy of this Consent Agreement;

The above described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties. However, this Agreement shall remain in force indefinitely.

If, in the discretion of the Secretary of THE STATE MEDICAL BOARD OF OHIO, DOCTOR NAKHLE appears to have violated or breached any terms or conditions of this Agreement, THE STATE MEDICAL BOARD OF OHIO 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 Agreement.

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DOCTOR NAKHLE acknowledges that he has had an opportunity to ask questions concerning the terms of this 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 NAKHLE 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.

This information may be reported to appropriate organizations, data banks and governmental bodies. This Consent Agreement shall become effective, upon the last date of signature below.

Anthony J. Nakhle M.D.
ANTHONY J. NAKHLE, M.D.

7-18-91
DATE

John Vaporis
JOHN VAPORIS, ESQ.

7-18-91
DATE

Henry G. Cramblett

HENRY G. CRAMBLETT, M.D.
Secretary

7/26/91
DATE

Timothy S. Jost
TIMOTHY S. JOST, ESQ.
Supervising Member

7/31/91
DATE

John C. Dowling
JOHN C. DOWLING, ESQUIRE
Assistant Attorney General

8/5/91
DATE

STATE OF OHIO
THE STATE MEDICAL BOARD OF OHIO
65 SOUTH FRONT STREET
SUITE 510
COLUMBUS, OHIO 43266-0315

February 12, 1988

Anthony J. Nakhle, M.D.
4861 Broadview Road
Cleveland, Ohio 44109

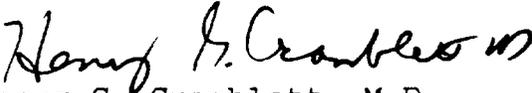
Dear Doctor Nakhle:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of the Minutes of the State Medical Board, meeting in regular session on February 10, 1988, including Motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal may be taken to the Franklin County Court of Common Pleas only.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO


Henry G. Cramblett, M.D.
Secretary

HGC:em

Enclosures

CERTIFIED MAIL NO. P 158 073 966
RETURN RECEIPT REQUESTED

cc: Michael H. Igoe, Esq.

CERTIFIED MAIL NO. P 158 073 967
RETURN RECEIPT REQUESTED

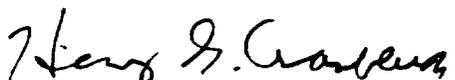
STATE OF OHIO
THE STATE MEDICAL BOARD OF OHIO
65 SOUTH FRONT STREET
SUITE 510
COLUMBUS, OHIO 43266-0315

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, State Medical Board of Ohio, and the Motions by the State Medical Board, meeting in regular session on February 10, 1988, approving and confirming said Report and Recommendation as the Findings and Order of the State Medical Board, constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Anthony J. Nakhle, M.D., as it appears in the Journal of the State Medical Board of Ohio.

This certification is made under the authority of the State Medical Board of Ohio and in its behalf.

(SEAL)


Henry G. Cramblett, M.D.
Secretary

February 12, 1988
Date

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REPORT AND RECOMMENDATION
IN THE CONSOLIDATED MATTERS OF ANTHONY J. NAKHLE, M.D.

The Consolidated Matters of Anthony J. Nakhle, M.D., came on for hearing before me, Wanita J. Sage, Esq., Hearing Examiner for the State Medical Board of Ohio, on October 13, 1987.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Mode of Conduct

During the course of this hearing, rules of evidence were relaxed, and both the State and the Respondent were given great latitude in demonstrating the relevancy and materiality of testimony and exhibits offered, as well as in attempting to discredit testimony and evidence presented by the opposing party.

II. Basis for Hearing

- A. By letter of March 10, 1983 (State's Exhibit #1), the State Medical Board notified Anthony J. Nakhle, M.D., that it proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board alleged that Dr. Nakhle was "unable to practice according to acceptable and prevailing standards of care by reason of illness, excessive use of alcohol, excessive use of controlled substances, drugs, or chemicals, or as a result of a mental or physical condition" as those phrases are used in Section 4731.22(B)(15), Ohio Revised Code, as in effect prior to March 17, 1987. Subsequently, on August 30, 1983, Dr. Nakhle voluntarily surrendered his license to practice medicine and surgery until such time as his license was reinstated by the State Medical Board (State's Exhibit #4).
- B. By letter received by the State Medical Board on December 27, 1983 (State's Exhibit #5), George J. Sadd, Esq., on behalf of Dr. Nakhle, requested reinstatement of Dr. Nakhle's medical license. By letter received by the State Medical Board on January 11, 1984 (State's Exhibit #6), Dr. Nakhle reiterated the request for reinstatement of his medical license.

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- C. By letter of February 20, 1985 (State's Exhibit #7), the State Medical Board notified Anthony J. Nakhle, M.D., that it proposed to refuse to reinstate his license to practice medicine and surgery in Ohio on the basis that he was "unable to practice medicine according to acceptable and prevailing standards of care by reason of illness, excessive use of alcohol, excessive use of controlled substances, drugs, or chemicals, or as a result of a mental or physical condition", in violation of Section 4731.22(B)(15), Ohio Revised Code, as in effect prior to March 17, 1987. Dr. Nakhle was also notified of his opportunity to request a hearing in this matter.
- D. By letter received by the State Medical Board on March 4, 1985 (State's Exhibit #8), Dr. Nakhle requested a hearing with regard to the Board's February 20, 1985, allegations.
- E. By letter of August 17, 1987 (State's Exhibit #13), the State Medical Board again notified Anthony J. Nakhle, M.D., that it proposed to take disciplinary action against or to refuse to register or reinstate his certificate to practice medicine and surgery. At this time, the Board alleged that Dr. Nakhle had been convicted, on or about September 30, 1985, of two felony counts of Illegal Processing of Drug Documents, which convictions and underlying actions constituted "conviction of violation of any federal or state law regulating the possession, distribution, or use of any drug", as that clause is used in Section 4731.22(B)(3), Ohio Revised Code, and "conviction of a felony whether or not committed in the course of his practice", as that clause is used in Section 4731.22(B)(9), Ohio Revised Code, as in effect at the time of his convictions.
- F. By letter received by the State Medical Board on August 24, 1987 (State's Exhibit #14), Dr. Nakhle requested a hearing in this matter with regard to the Board's August 17, 1987, allegations.
- G. Upon the State's Motion for Consolidation, this Hearing Examiner ordered by Entry of September 1, 1987, that the Board's February 20, 1985, and August 17, 1987, allegations be consolidated for purposes of hearing (State's Exhibits #16 and #17).

III. Appearance of Counsel

- A. On behalf of the State of Ohio: Anthony J. Celebrezze, Attorney General, by Christopher M. Culley, Assistant Attorney General.
- B. On behalf of the Respondent: Michael Igoe, Esq.

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IV. Testimony Heard

In addition to the live testimony of Dr. Nakhle, a tape-recorded conversation offered by the Respondent was transcribed as a part of the record in this matter. According to Dr. Nakhle, this tape recording was of a telephone conversation between Dr. Nakhle, his sister Rose, and their nephew, Dr. John Falko, and was made without the knowledge or consent of the other parties. No testimony other than that of Dr. Nakhle was offered to authenticate this recording.

V. Exhibits Examined

The following exhibits were identified and admitted into evidence in this matter:

A. Presented by the State

1. State's Exhibit #1: March 10, 1983, letter to Dr. Nakhle from the State Medical Board alleging violation of Section 4731.22(B)(15), Ohio Revised Code, and advising Dr. Nakhle of his right to request a hearing.
2. State's Exhibit #2: March 21, 1983, letter to the State Medical Board from Dr. Nakhle requesting a hearing with regard to the Board's March 10, 1983, allegations.
3. State's Exhibit #3: August 18, 1983, evaluation of Dr. Nakhle by Gregory B. Collins, M.D., Program Director, Cleveland Clinic, with an attachment consisting of an October 5, 1982, evaluation of Dr. Nakhle by Dr. Collins and Judith Colli, Alcohol Counselor, Cleveland Clinic.
4. State's Exhibit #4: Voluntary Surrender of License to Practice Medicine and Surgery signed by Dr. Nakhle and three witnesses on August 30, 1983.
5. State's Exhibit #5: December 22, 1983, letter to the State Medical Board from George J. Sadd, Esq., requesting reinstatement of Dr. Nakhle's medical license on behalf of Dr. Nakhle.
6. State's Exhibit #6: January 6, 1983, letter to the State Medical Board from Dr. Nakhle requesting reinstatement of his medical license.

7. State's Exhibit #7: February 20, 1985, letter to Dr. Nakhle from the State Medical Board proposing to refuse to reinstate his license to practice medicine and surgery based upon an alleged violation of Section 4731.22(B)(15), Ohio Revised Code, and advising Dr. Nakhle of his right to request a hearing in this matter.
8. State's Exhibit #8: February 22, 1985, letter to the State Medical Board from Dr. Nakhle requesting a hearing with regard to the Board's February 20, 1985, allegations.
9. State's Exhibit #9: March 18, 1985, letter to Dr. Nakhle from the State Medical Board advising that a hearing initially set for March 21, 1985, was postponed pursuant to Section 119.09, Ohio Revised Code.
10. State's Exhibit #10: May 15, 1987, letter to Dr. Nakhle from the State Medical Board setting a date for hearing of July 23, 1987.
11. State's Exhibit #11: Respondent's July 17, 1987, request for continuance of the July 23, 1987, hearing.
12. State's Exhibit #12: Undated Entry of this Hearing Examiner granting Respondent's Motion for Continuance and rescheduling the hearing for August 28, 1987.
13. State's Exhibit #13: August 17, 1987, letter to Dr. Nakhle from the State Medical Board advising him of the Board's intent to take disciplinary action against or to refuse to register or reinstate his certificate to practice medicine and surgery based upon alleged violations of Sections 4731.22(B)(3) and (B)(9), Ohio Revised Code, and advising him of his right to request a hearing in this matter.
14. State's Exhibit #14: August 19, 1987, letter to the State Medical Board from Dr. Nakhle requesting a hearing with regard to the Board's August 17, 1987, allegations.
15. State's Exhibit #15: August 26, 1987, letter to Dr. Nakhle from the State Medical Board advising him that a hearing initially set for September 2, 1987, was postponed pursuant to Section 119.09, Ohio Revised Code.

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16. State's Exhibit #16: August 26, 1987, Motion by the State for consolidation of the February 20, 1985, and the August 17, 1987, allegations against Dr. Nakhle.
17. State's Exhibit #17: September 1, 1987, Entry of this Hearing Examiner granting the State's Motion for Consolidation and scheduling October 26, 1987, as a date for hearing of these consolidated matters.
18. State's Exhibit #18: October 9, 1987, letter to Dr. Nakhle from the State Medical Board ordering him to report for a mental examination before Gregory B. Collins, M.D., on October 13, 1987.
19. State's Exhibit #19: October 20, 1987, report to the State Medical Board from Dr. Collins, Cleveland Clinic Foundation, with regard to his October 13, 1987, psychiatric re-evaluation of Dr. Nakhle.
20. State's Exhibit #20: October 27, 1987, Entry of this Hearing Examiner confirming the granting via telephone conference call of Respondent's Motion for Continuance of the October 26, 1987, hearing, and rescheduling the hearing for November 13, 1987.
21. State's Exhibit #21: November 3, 1987, Waiver by Michael H. Igoe, Esq., on behalf of Dr. Nakhle, of the requirement under Section 4731.23, Ohio Revised Code, that the Hearing Examiner's Findings of Fact and Conclusions of Law be issued within 30 days of the close of hearing.
22. State's Exhibit #22: September 30, 1985, Journal Entry of the Cuyahoga County Common Pleas Court setting forth Dr. Nakhle's plea of guilty to two counts of drug violation under Section 2925.23, Ohio Revised Code, and sentencing him to one year of imprisonment in the Chillicothe Correctional Institution, suspending the execution of said sentence, and placing the Defendant upon two years' probation; May 29, 1984, Bill of Indictment charging Anthony J. Nakhle with intentionally making, uttering, or selling a false or forged prescription for Valium on December 6, 1983, in violation of Section 2925.23, Ohio Revised Code; Bill of Indictment charging Anthony J. Nakhle with intentionally making, uttering, or selling a false or forged prescription for Biphedamine on December 6, 1983, in violation of Section 2925.23, Ohio Revised Code.

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B. Presented by the Respondent

1. Respondent's Exhibit A: December 20, 1984, letter to the State Medical Board from Dr. Erika DeLong, psychiatrist, with regard to her treatment of Dr. Nakhle from August 26, 1982, to December 13, 1984.
2. Respondent's Exhibit B: December 31, 1984, letter to the State Medical Board from Earl A. Brightman, M.D., orthopedic surgeon, with regard to his September 11, 1984, evaluation of Dr. Nakhle.
3. Respondent's Exhibit C: February 4, 1985, letter to the State Medical Board from Orest M. Ryzij, M.D., commending Dr. Nakhle and reporting his progress since May, 1983.
4. Respondent's Exhibit D: August 22, 1987, Affidavit of Lola Khoury with regard to Dr. Nakhle's December 6, 1983, prescription of Valium for her.
5. Respondent's Exhibit E: August 22, 1987, Affidavit of Lola Khoury stating that all prescriptions written for her by Dr. Nakhle over a period of 10 years had been pursuant to an office visit and medical examination.
6. Respondent's Exhibit F: August 22, 1987, Affidavit of George Khoury with regard to Dr. Nakhle's December 6, 1983, prescription of "reducing pills" for him.
7. Respondent's Exhibit G: August 22, 1987, Affidavit of George Khoury stating that all prescriptions written for him by Dr. Nakhle over a period of 21 years had been pursuant to an office visit and medical examination.
8. Respondent's Exhibit H: Dr. Nakhle's diary of continuing education activities for 1985, 1986, and 1987.
9. Respondent's Exhibit I: Dr. Nakhle's diary of continuing education activities for 1984.
10. Respondent's Exhibit J: Dr. Nakhle's diary of continuing education activities for 1983.

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A. J. NAKHLE
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11. Respondent's Exhibit K: Letters of support for Dr. Nakhle from Msgr. Joseph C. Feghali, St. Maron's Church; Robert C. Bianchi, Esq.; Rev. Ignatius Ghattas, St. Elias Catholic Church; Eli T. Naffah, Esq.; and Barbara C. Pringle, State Representative.
12. Respondent's Exhibit L: Letters of support for Dr. Nakhle from 12 of Dr. Nakhle's physician colleagues in the Cleveland area.
13. Respondent's Exhibit M: Approximately 191 letters of support for Dr. Nakhle from Dr. Nakhle's former patients.
14. Respondent's Exhibit N: Cassette tape purportedly of a July 4, 1984, telephone conversation between Dr. Nakhle, Dr. Nakhle's sister Rose, and their nephew Dr. John Falko. The contents of this tape were transcribed into the record in this matter. (Tr. at 49-59)

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FINDINGS OF FACT

1. On August 30, 1983, Anthony J. Nakhle, M.D., voluntarily surrendered his license to practice medicine and surgery in Ohio. Dr. Nakhle requested reinstatement of his license in December, 1983, and January, 1984.

These facts are established by State's Exhibits #4, #5, and #6.

2. By his own admission, Dr. Nakhle self-administered Demerol and various anti-depressant medications, mostly Limbitrol, from approximately June, 1980, until his August, 1983, detoxification treatment at the Cleveland Clinic. Dr. Nakhle claimed that he has not self-administered such medications since August, 1983.

These facts are established by the testimony of Dr. Nakhle (Tr. at 16-21, 27, 63-70).

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3. From August 26, 1982, to August 9, 1984, Dr. Nakhle was treated by Erika DeLong, M.D., with psychotherapy and anti-depressant medication for depression and drug dependency. After August 9, 1984, Dr. Nakhle continued treatment with Dr. DeLong without medications until treatment was discontinued in February, 1985.

These facts are established by State's Exhibit #19, Respondent's Exhibit A, and the testimony of Dr. Nakhle (Tr. at 23-25, 77-78).

4. Although Dr. Nakhle stopped going to a physician's AA group when it disbanded at the end of 1985, he claimed at hearing that he had continued to attend once a week an unsupervised, self-help AA group which met near his home. However, Dr. Collins' report of his October 13, 1987, evaluation of Dr. Nakhle indicates that Dr. Nakhle at that time stated that he had not been to AA since 1985. Further Dr. Collins' report indicates that Rose Tadrus, Dr. Nakhle's sister whom Dr. Collins contacted for corroboration, stated, "I tried to encourage him to continue with AA but he thought he could work at home. I'll encourage the meetings for him if you wish."

These facts are established by the testimony of Dr. Nakhle (Tr. at 37-38, 90-91) and State's Exhibit #19.

5. Dr. Nakhle admitted that he has never undergone in-patient chemical dependency treatment at a rehabilitation center, as recommended by the Cleveland Clinic in both 1982 and 1983. However, no evidence was presented at hearing to rebut Dr. Nakhle's assertion that he has had no scheduled medications since December, 1984.

These facts are established by the testimony of Dr. Nakhle (Tr. at 25, 96-97), State's Exhibit #3, and Respondent's Exhibit A.

6. On or about September 30, 1985, pursuant to his plea of guilty, Dr. Nakhle was convicted of two counts of violating Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents, each count constituting a felony. Thereupon, Dr. Nakhle was sentenced to one year in the Chillicothe Correctional Institution, the execution of said sentence being suspended upon conditions of a two year probation.

These facts are established by State's Exhibit #22.

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7. Dr. Nakhle admitted that these convictions resulted from his writing two prescriptions on December 6, 1983, using the DEA number and signing the name of his nephew, Dr. John Falko. One of these prescriptions was for Valium, a Schedule IV controlled substance, and the other was for Biphettamine, a Schedule II controlled substance. At hearing, Dr. Nakhle claimed that his nephew had given him permission by telephone to use his DEA number and to sign his name on these prescriptions. However, Dr. Nakhle admitted that these prescriptions were written by himself, upon the basis of his own medical judgment, at a time when he did not hold a license to practice medicine and surgery in Ohio.

Dr. Nakhle claimed at hearing that he had written the Valium prescription for George Khoury, a former patient, because his nervous condition was detrimental to the heart condition for which Dr. Nakhle had last treated him in August, 1983. The Biphettamine, Dr. Nakhle claimed, had been prescribed for Lola Khoury, also a former patient, because she was overweight after having had a baby. However, according to the affidavits of the Khourys, identified at hearing as Respondent's Exhibits D and F, Dr. Nakhle prescribed the Biphettamine for George Khoury because his weight gain "would be detrimental to his diabetes and cholesterol", and the Valium for Lola Khoury because of her "bad case of nerves and anxiety".

These facts are established by the testimony of Dr. Nakhle (Tr. at 29-37, 82-90, 97-108), State's Exhibit #22, and Respondent's Exhibits D through G.

CONCLUSIONS

Dr. Nakhle admitted that he self-administered Demerol and other controlled substances for approximately two and one-half years and that his drug addiction was the reason he voluntarily surrendered his license in August, 1983. No evidence other than Dr. Nakhle's testimony was presented at hearing to support his claim of having maintained sobriety for the past four years. Dr. Nakhle admitted that he had not participated in any inpatient rehabilitation treatment and had not been under psychiatric or other ongoing treatment since February, 1985. Although Dr. Nakhle claimed that Dr. DeLong had done weekly blood and urine screens during 1983 and 1984 (Tr. at 77-78), no test results were offered at hearing or mentioned in Dr. DeLong's letter (Respondent's Exhibit A).

As Dr. Nakhle will recognize from his AA participation prior to December, 1985, it is the generally accepted view that a drug-free physician with a history of addiction is a "recovering", rather than a "recovered", physician. Likewise, Dr. Nakhle, who has an admitted history of addiction, must be considered as an impaired physician subject to appropriate monitoring until such time as he has established a documented history of sobriety which this Board deems to be of sufficient duration to ensure the public protection.

Accordingly, I find that the acts, conduct, and/or omissions of Anthony J. Nakhle, M.D., with regard to Findings of Facts #1 through #5, above, constitute violation of Section 4731.22(B)(15), Ohio Revised Code, as in effect prior to March 17, 1987. In view of Dr. Nakhle's apparent progress toward maintaining sobriety, the finding of such violation would not normally be an absolute deterrent to the reinstatement of Dr. Nakhle's license with appropriate restrictions and provisions for monitoring. However, in this case, the Board must also consider the issue of Dr. Nakhle's September, 1985, felony conviction.

Dr. Nakhle admitted to his felony conviction on two counts of violating Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents. Dr. Nakhle further admitted that this conviction resulted from his prescribing controlled substances to two of his former patients on December 6, 1983, at which time he had no license to practice medicine and surgery in Ohio, by using the DEA number of and signing the name of his nephew, Dr. John Falko, on the prescriptions.

Accordingly, I find that the acts, conduct, and/or omissions of Anthony J. Nakhle, M.D., with regard to Findings of Fact #6 and #7, above, constitute violations of:

- a. Section 4731.22(B)(3), Ohio Revised Code, "Conviction of violation of any federal or state law regulating possession, distribution, or use of any drug"; and
- b. Section 4731.22(B)(9), Ohio Revised Code, as in effect prior to March 17, 1987, "Conviction of a felony whether or not committed in a course of his practice".

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MEDICAL

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Dr. Nakhle claimed in mitigation that he had used his nephew's name and DEA number on these prescriptions with his nephew's consent and that he had subsequently pled guilty to the criminal charges to avoid implicating his nephew. If true, these factors do not substantially mitigate the fact of Dr. Nakhle's felony conviction. Section 2925.23, Ohio Revised Code, prohibits the intentional making, uttering, or selling of either a false or forged prescription. Certainly Dr. Nakhle intentionally placed his nephew's name and DEA number upon prescriptions Dr. Nakhle issued upon his own medical judgment. Such issuance of a false prescription is deemed a felony under Section 2925.23, Ohio Revised Code. Neither his nephew's consent nor Dr. Nakhle's claimed ignorance of the law make his admitted actions less felonious. Nor is Dr. Nakhle's conviction less a conviction because it was based upon a plea of guilty.

This Board has in the past taken the position that the conviction of a licensed physician for a felony, even though not committed in the course of practice, seriously violates the public trust and cannot be tolerated in the profession. Especially in cases where the felonious conduct was directly related to the physician's practice of his profession, this Board has seen fit to impose the sanction of revocation. Accordingly, it would appear that the appropriate sanction in Dr. Nakhle's case, which involved illegal conduct in the unauthorized practice of his profession, would be the permanent denial of reinstatement of his certificate to practice medicine and surgery in Ohio. It should be noted that Dr. Nakhle's testimony indicates that he was not impaired at the time he committed the acts in December, 1983, which led to his felony conviction. Even if he had been, it is this Board's expressed policy that impairment cannot excuse acts resulting in conviction or causing potential harm to others.

Having inspected the many letters of support from Dr. Nakhle's former patients, this Hearing Examiner would hope that Dr. Nakhle will find constructive ways to channel his apparent capacity for devotion and concern for others in any future endeavor he chooses. However, it must be recognized that the Board is in the best position to be fully cognizant of the facts in this matter and to impose a sanction consistent with its duty to establish and enforce standards for the profession in furtherance of the protection of the public at large.

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MEDICAL BOARD

PROPOSED ORDER

It is hereby ORDERED:

1. That the request for reinstatement of Anthony J. Nakhle, M.D.'s certificate to practice medicine and surgery in Ohio shall be and is hereby DENIED.
2. Further, that Anthony J. Nakhle, M.D., shall not at any time in the future be eligible to either apply for or obtain licensure to practice medicine and surgery or its related branches in the State of Ohio.



Wanita J. Sage
Attorney Hearing Examiner

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HOSPITAL

EXCERPT FROM THE MINUTES OF FEBRUARY 10, 1988

REPORTS AND RECOMMENDATIONS

.....

Dr. Stephens asked if each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of Carlos D. Huerto, M.D.; Anthony J. Nakhle, M.D.; Reuben Richardson, M.D.; Donald R. Williams, M.D.; Thomas H. McCarthy, D.O.; and Bernard B. Megaffin, M.D. A roll call was taken:

ROLL CALL:	Dr. Cramblett	- aye
	Dr. Lancione	- aye
	Dr. Barnes	- aye
	Dr. Kaplansky	- aye
	Dr. Lovshin	- aye
	Dr. Rauch	- aye
	Mr. Albert	- aye
	Dr. O'Day	- aye
	Ms. Rolfes	- aye
	Mr. Jost	- aye
	Dr. Stephens	- aye

.....

REPORT AND RECOMMENDATION IN THE MATTER OF ANTHONY J. NAKHLE, M.D.

.....

DR. O'DAY MOVED TO APPROVE AND CONFIRM MS. SAGE'S FINDINGS OF FACT AND CONCLUSIONS IN THE MATTER OF ANTHONY J. NAKHLE, M.D. DR. BARNES SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Lancione	- aye
	Dr. Barnes	- aye
	Dr. Kaplansky	- aye
	Dr. Lovshin	- aye
	Dr. Rauch	- abstain
	Mr. Albert	- aye
	Dr. O'Day	- aye
	Ms. Rolfes	- aye
	Mr. Jost	- aye

The motion carried.

.....

EXCERPT FROM THE MINUTES OF FEBRUARY 10, 1988
CONCERNING THE REPORT AND RECOMMENDATION IN
THE MATTER OF ANTHONY J. NAKHLE, M.D.
Page 2

MS. ROLFES MOVED TO APPROVE AND CONFIRM MS. SAGE'S PROPOSED ORDER IN THE MATTER OF ANTHONY J. NAKHLE, M.D. DR. O'DAY SECONDED THE MOTION.

.....

A roll call vote was taken on Ms. Rolfes' motion to approve and confirm:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Lancione	- aye
	Dr. Barnes	- aye
	Dr. Kaplansky	- aye
	Dr. Lovshin	- aye
	Dr. Rauch	- abstain
	Mr. Albert	- aye
	Dr. O'Day	- aye
	Ms. Rolfes	- aye
	Mr. Jost	- aye

The motion carried.

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio 43215

August 17, 1987

Anthony J. Nakhle, M.D.
4861 Broadview Road
Cleveland, OH 44109

Dear Doctor Nakhle:

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, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand you or place you on probation for one or more of the following reasons, in addition to and independent of the reasons for proposed action contained in the letter issued to you by the State Medical Board dated February 20, 1985:

- (1) On or about September 30, 1985, you were convicted of two (2) counts of violating Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents. Each said count constitutes a felony.

Such acts in the above paragraph (1), individually and/or collectively, constitute "conviction of violation of any federal or state law regulating the possession, distribution, or use of any drug", as that clause is used in Section 4731.22(B)(3), Ohio Revised Code (as in effect prior to March 17, 1987).

Further, such acts in the above paragraph (1), individually and/or collectively, constitute "conviction of a felony whether or not committed in the course of his practice", as that clause is used in Section 4731.22(B)(9), Ohio Revised Code (as in effect prior to March 17, 1987).

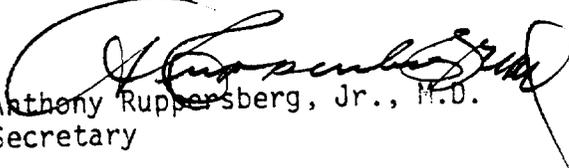
Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, that request must be made within thirty (30) days of the time of mailing of this notice.

Anthony J. Nakhle, M.D.
March 10, 1983

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Please find enclosed copies of the applicable Sections of the Ohio Revised Code for your reference.

Very truly yours,


Anthony Ruppertsberg, Jr., M.D.
Secretary

AR:prf

Enclosure:

CERTIFIED MAIL #P308 910 961

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio 43215

February 20, 1985

Anthony J. Nakhle, M.D.
4861 Broadview Road
Cleveland, OH 44109

Dear Doctor Nakhle:

In accordance with Chapter 119., Ohio Revised Code, and under authority of Section 4731.22, Ohio Revised Code, this is to advise you that the State Medical Board of Ohio proposes to refuse to reinstate your license to practice medicine and surgery in the State of Ohio for one or more of the following reasons:

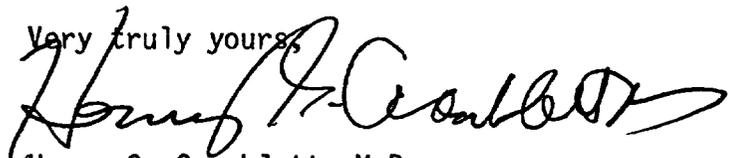
1. You are unable to practice medicine according to acceptable and prevailing standards of care by reason of illness, excessive use of alcohol, excessive use of controlled substances, drugs, or chemicals, or as a result of a mental or physical condition, in violation of Section 4731.22(B)(15), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, please be advised that you may request a hearing on this matter. If you wish to request such a hearing, that request must be made within thirty (30) days of the time of mailing of this notice.

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, 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 there is no request for such hearing made within thirty (30) 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, reprimand, revoke, suspend, place on probation, refuse to register, or reinstate your certificate to practice medicine or surgery.

Very truly yours,



Henry G. Cramblett, M.D.
Secretary

HGC:ls

Enclosure

CERTIFIED MAIL NO. P 569 362 500
RETURN RECEIPT REQUESTED

Cleveland

~~REFUND FROM THE~~
~~RENEWAL CARD~~
~~FOR THE~~
~~PRACTICE OF MEDICINE AND SURGERY~~
VOLUNTARY SURRENDER OF LICENSE TO
PRACTICE OF MEDICINE AND SURGERY

I, ANTHONY J. NAKHLE, M.D., am aware of my rights to representation by counsel, the right of being ~~formally charged~~ ^{represented} and having a formal adjudicative hearing, and do hereby freely execute this document and choose to take the actions described herein.

I, ANTHONY J. NAKHLE, M.D., do hereby voluntarily, knowingly, and intelligently ~~surrender my license to~~ ^{SURRENDER MY LICENSE TO} the practice of medicine and surgery effective AUGUST 30, 1983.

I, ANTHONY J. NAKHLE, M.D., do hereby voluntarily, knowingly, and intelligently surrender my renewal card in connection with my certificate to practice medicine and surgery, No. 020429, to the Ohio State Medical Board.

I understand that I am no longer permitted to practice medicine and surgery in any form or manner in the State of Ohio, UNTIL REINSTATEMENT OF MY LICENSE.

Signed this 30 day of AUGUST, 19 83 in the office of CLEVELAND CLINIC 7B.

Anthony J. Nakhle
M.D.

Joseph P. O'Rourke MD
WITNESS

Carol Dunbar RN
WITNESS

Thomas K. Shann

Sworn to and signed before me this _____ day of _____, 19____.

Notary Public

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio 43215

March 10, 1983

Anthony J. Nakhle, M.D.
4861 Broadview Road
Cleveland, Ohio 44109

Dear Dr. Nakhle:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio proposes to limit, revoke, suspend, refuse to register or refuse to reinstate, reprimand or place on probation your certificate to practice medicine and surgery in Ohio, under authority of Section 4731.22, Ohio Revised Code, for one or more of the following reasons:

1. You are unable to practice according to acceptable and prevailing standards of care by reason of illness, excessive use of alcohol, excessive use of controlled substances, drugs, or chemicals, or as a result of a mental or physical condition.

Pursuant to Section 4731.22(B)(15), Ohio Revised Code, effective August 27, 1982, (Section 4731.22(B)(16), effective prior to August 27, 1982) the Ohio Medical Board may limit, revoke, suspend, refuse to register or reinstate, reprimand or place on probation your certificate because you are unable to practice according to acceptable and prevailing standards of care for any of the reasons stated in Paragraph 1 above.

In accordance with Chapter 119., Ohio Revised Code, you are hereby advised that you have a right to a hearing in this matter. If you wish to request such a hearing, this request must be made within thirty (30) days of the time of mailing of this notice.

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, 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 there is no request for such hearing made within thirty (30) days of the time of mailing of this notice, the State Medical Board of Ohio may, in your absence and upon consideration of this matter, determine whether or not to refuse to grant you a certificate to practice medicine and surgery in the State of Ohio.

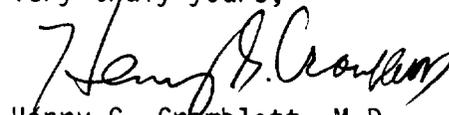
August 17, 1987

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, 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 made within thirty (30) 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, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Henry G. Cramblett, M.D.
Secretary

HGC:jmb
Encls.

CERTIFIED MAIL #P 026 074 655
RETURN RECEIPT REQUESTED