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OHIO STATE
MEDICAL BOARD

CONSENT AGREEMENT
BETWEEN
FREDERICK W. ELDER
AND
THE STATE MEDICAL BOARD OF OHIO

THIS CONSENT AGREEMENT is entered into by and between FREDERICK W. ELDER and the STATE MEDICAL BOARD OF OHIO, a state agency charged with enforcing Chapter 4730 and 4731 of the Ohio Revised Code.

WHEREAS, FREDERICK W. ELDER, is a medical doctor licensed to practice in the State of Ohio, and is subject to all laws and rules of Ohio regulating the practice of medicine.

WHEREAS, on June 17, 1985, the STATE MEDICAL BOARD OF OHIO issued a Notice of Opportunity for Hearing to FREDERICK W. ELDER alleging certain violations of Chapter 4731 of the Ohio Revised Code, and advising him of his right to request a formal adjudicatory hearing in the matter.

WHEREAS, the matter is now pending before the STATE MEDICAL BOARD OF OHIO pursuant to the terms in the attached letter dated September 6, 1985, from Christopher M. Culley, Assistant Attorney General of Ohio to Michael H. Gerlner, counsel for FREDERICK W. ELDER.

WHEREAS, FREDERICK W. ELDER is currently in treatment at Shepherd Hill in the Impaired Physicians Program.

WHEREAS, in lieu of a formal adjudication hearing, FREDERICK W. ELDER and the STATE MEDICAL BOARD OF OHIO have agreed to enter into this CONSENT AGREEMENT which the parties have resolved to be in their mutual best interests.

WHEREFORE, in consideration of the foregoing and mutual promises hereinafter set forth, FREDERICK W. ELDER and the STATE MEDICAL BOARD OF OHIO hereby Consent and Agree to the following stipulations, terms and conditions:

I. STIPULATIONS

- A. Frederick W. Elder, M.D., STIPULATES that on or about April 30, 1984, he was admitted to Harding Hospital for evaluation - a result of which were the following findings:

- 1) Early organic brain syndrome indicating some soft organic sign changes, some disorganization and impairment of judgment.
 - 2) An electroencephalogram taken May 1, 1984, showing abnormal bilateral slowing with occasional sharp waves.
 - 3) Diffuse cerebral dysfunction such as an encephalopathy or degenerated process.
 - 4) Presumed chronic alcohol dependency.
- B. Frederick W. Elder, M.D., STIPULATES that on or about June 19, 1985, he was evaluated in a clinical psychiatric interview conducted by Ralph F. Henn, M.D., and that the diagnostic impression indicated by Dr. Henn was as follows:
- 1) Mixed personality disorder, with narcissistic and avoidant traits.
- C. Frederick W. Elder, M.D., STIPULATES that on or about [September 17, 1985] he was admitted to the Shepherd Hill Impaired Physicians Program for a period of extended in-patient evaluation, testing and examination; and on or about January 15, 1986, he was released from this program with the following prognosis:
1. [Not recommended for the practice of medicine at the present time].

II. LICENSE TO PRACTICE

- D. Frederick W. Elder does hereby voluntarily, knowingly and intelligently AGREE that upon the effective date of this Agreement, his license to practice medicine in the State of Ohio shall be indefinitely suspended; and he does further AGREE that any and all documents, cards and certificates of licensure will be forwarded to the State Medical Board within seven (7) days of the effective date of this agreement.

III. REINSTATEMENT OF LICENSE

- E. Frederick W. Elder, M.D., does hereby voluntarily, knowingly and intelligently AGREE that he shall thereafter regain licensure only upon approval of the Board subject to completion, to the Board's satisfaction, of the following terms and preconditions:

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1. That he submit to two (2) independent physical and psychiatric examinations by two (2) psychiatrists selected by him and approved by the State Medical Board; and that those evaluations indicate that both psychiatrists in their professional judgment find FREDERICK W. ELDER in all respects competent and capable of resuming the practice of medicine.
2. That he satisfactorily pass the Flex examination Component 2 - Clinical.
3. That he abstain completely from all alcohol and drugs other than those prescribed by an attending physician.
4. That he continue psychiatric and/or alcoholism counseling and/or treatment as found necessary by a treating physician.
5. That he submit to random bi-weekly biological fluid testing performed by a physician of Dr. Elder's choosing and approved by the State Medical Board of Ohio for this particular testing.
6. That he thereafter prove to the satisfaction of the State Medical Board of Ohio, as a result of such testing, that he has remained drug free for a period of six (6) months.

F. FREDERICK W. ELDER, M.D., does hereby AGREE that if and when his license is thereafter reinstated in accordance with this Agreement, he shall for a period of one (1) year thereafter appear before the State Medical Board of Ohio and/or its agents on a quarterly basis to answer fully any questions from that Board regarding his practice following reinstatement.

It is agreed by and between the parties that this CONSENT AGREEMENT hereby settles all issues pending before the STATE MEDICAL BOARD OF OHIO resulting from the June 17, 1985, Notice of Opportunity for Hearing to FREDERICK W. ELDER, M.D.

FREDERICK W. ELDER, M.D., accepts and agrees to the terms and conditions of this CONSENT AGREEMENT. FREDERICK W. ELDER, M.D., enters into this CONSENT AGREEMENT voluntarily and after consultation with counsel, recognizing that he is waiving his right to a formal adjudication hearing under Chapter 119 of the Ohio Revised Code and all other substantive and procedural protections afforded by law.

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FREDERICK W. ELDER, M.D., hereby releases the members of the STATE MEDICAL BOARD OF OHIO, jointly and severally, from any and all liability arising from the within matter.

THE STATE MEDICAL BOARD OF OHIO agrees to these terms and conditions in lieu of formal disciplinary proceedings on the allegations contained in the Notice of Opportunity, dated June 17, 1985.

The terms and conditions of this CONSENT AGREEMENT shall become effective on the 15th day of March, 1986.

Upon consent of both parties, the terms and conditions of this Agreement may be modified in writing.

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It is AGREED and UNDERSTOOD by and between the parties that this CONSENT AGREEMENT shall be considered to be a public record as that term is used in Section 149.43, Ohio Revised Code.

By:

THE STATE MEDICAL BOARD OF OHIO

Henry G. Cranblett
Henry G. Cranblett, M.D.
Secretary

3/18/86
Date

William W. Johnston
William W. Johnston
Supervising Member

17 Mar 86
Date

Christopher M. Culley
Christopher M. Culley
Assistant Attorney General
For The State Medical Board of Ohio

3/21/86
Date

LICENSEE

Frederick W. Elder
Frederick W. Elder, M.D.
Licensee

3/13/86
Date

Michael H. Gertner
Michael H. Gertner
Attorney for Frederick W. Elder, M.D.

3/13/86
Date

86 MAR 14 AM 10:27



**Attorney General
Anthony J. Celebrezze, Jr.**

September 6, 1985

9/10/85
ES - Copies
to Dr. Crandlett -
WS - DT - original
to (JWR) for
file
Ray
done
9/10/85

Michael H. Gertner, Esq.
Gertner & Gertner
Suite 1435
88 East Broad Street
Columbus, Ohio 43215-3506

85 SEP -9 P 7:07

Re: Frederick W. Elder, M.D.

Dear Mr. Gertner:

Pursuant to agreement of counsel reached this morning in chambers of Judge Britt, the following terms will govern the further conduct of the matters involving the above-named physician as they relate to the State Medical Board:

- Dr. Elder will be afforded an Opportunity to be Heard at an administrative hearing before the State Medical Board or its representative within 7-10 days of today's date.
- Dr. Elder will be notified of the exact date, time and place of this hearing no later than Monday, September 9, 1985.
- Any Report and Recommendation resulting from said hearing will be issued within 24 hours of hearing and mailed to Dr. Elder no later than 48 hours after hearing.
- Counsel for Dr. Elder will have the right to respond to that Report and Recommendation by written Objections filed with the Medical Board within 10 days of the mailing of the Report and Recommendation.
- The State Medical Board shall thereafter deliberate and decide the matter at it's meeting of October 9-10.
- Dr. Elder agrees to voluntarily suspend the practice of medicine or surgery in Ohio during the pendency of this administrative process, until at least October 10, 1985.
- Any continuance request by Dr. Elder must be made no later than 24 hours prior to hearing. Such a request shall automatically extend the voluntary suspension of license until the next regularly scheduled Board meeting following issuance of a Report and Recommendation or until the November 6-7, 1985 meeting of the

the State Medical Board, whichever is later.

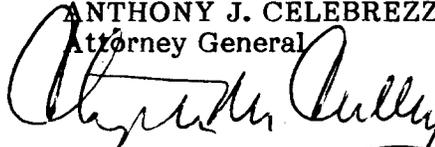
- As long as Dr. Elder voluntarily suspends his practice, any reasonable request for a continuance of his hearing will be granted.
- This agreement of Dr. Elder to so suspend the practice of medicine and surgery constitutes a limitation on license, the violation of which will result in further administrative and/or civil action.

If the terms above comport with your understanding of our agreement reached earlier this morning, and if you have authorization from Dr. Elder to approve these terms on his behalf, please initial this letter and return it to me in the self-addressed, stamped envelope provided.

If you have any further questions, please feel free to call.

Very truly yours,

ANTHONY J. CELEBREZZE, JR.
Attorney General



CHRISTOPHER M. CULLEY
Assistant Attorney General
(614) 466-2980

Approval:



CMC:kar

cc: Hon. James C. Britt
William Johnson, Esq.
Ray Q. Bumgardner, esq.
Lauren Lubow, Esq.

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

IN THE MATTER OF THE
LICENSE SUSPENSION OF:

85CV-09-4959

FREDERICK W. ELDER, M. D.,
340 East State Street
Columbus, Ohio 43215,

Appellant,

vs.

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

Appellee.

Case No. _____

RECEIVED
OFFICE
1985 SEP 17 12:33
JUDGE BRITT

FILED
COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
1985 SEP -4 AM 10:5
THOMAS J. LINSCH
CLERK OF COURTS

NOTICE OF APPEAL FROM THE OHIO STATE MEDICAL BOARD
SUSPENDING LICENSE TO PRACTICE MEDICINE AND SURGERY

Notice is hereby given by Appellant, pursuant to Ohio Revised Code Section 119.12, to this Court of an appeal from a proceeding known as In The Matter Of Frederick W. Elder, M. D. ordering the suspension of Appellant's license to practice medicine and surgery. A copy of the Notice of Suspension is attached hereto as Exhibit A and incorporated herein by reference.

The order from which this appeal is taken adversely affects the Appellant, a copy of which is attached hereto, marked "Exhibit A" and incorporated herein by reference.

On or about June 17, 1985, Henry G. Cramblett, M. D., Secretary to the Ohio State Medical Board wrote a letter, a copy of which is attached as part of Exhibit A, to Appellant, notifying him that the Ohio State Medical Board intended to determine "whether or not to limit, revoke, suspend, refuse to register, or reinstate" his certificate to practice medicine and surgery. Citing Ohio Revised Code Section 4731.22(B)(15) the letter required Appellant to appear before Dr. Ralph Henn, at Dr. Henn's office at 300 East Town Street, Columbus, Ohio, on June 19, 1985, at 2:00 p.m. The very next two sentences in the letter state:

Pursuant to Chapter 119., Ohio Revised Code, be advised you are entitled to a hearing in this matter.

GERTNER & GERTNER
ATTORNEYS AT LAW
88 EAST BROAD STREET
COLUMBUS, OHIO 43215
TELEPHONE: 463-8383

If you wish to request a hearing that request must be filed at the Board's offices within thirty (30) days of the time of mailing of this notice.

Appellant interpreted this notice as meaning that he must submit to a psychiatric examination from Dr. Henn, or if he were not willing to undergo such examination, then he should file a request for a hearing. Appellant did consult with Dr. Henn, and for that reason, he did not request a hearing. Appellant's Affidavit is attached hereto as Exhibit B and incorporated herein by reference.

Pursuant to Ohio Revised Code Section 119.07, the State Medical Board was required to give Appellant notice of his right to a hearing. The letter of June 17, 1985, was vague, ambiguous, and unclear that Appellant must appear before Dr. Henn and request a hearing on his license suspension irrespective of whether he appeared before Dr. Henn.

The failure of an agency to give proper notice invalidates any order entered pursuant to such hearing. Therefore, the Ohio State Medical Board lacks the authority to order the suspension of Appellant's license to practice medicine and surgery.

Notice of this Appeal has been filed with the State Medical Board and with the Court of Common Pleas, Franklin County, Ohio.

Respectfully submitted,

GERTNER & GERTNER

By Michael H. Gertner
MICHAEL H. GERTNER (GER12)
Attorneys for Appellant,
Frederick W. Elder, M. D.
88 East Broad Street
Columbus, Ohio 43215
(614) 463-9393

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal From The Ohio State Medical Board Suspending License To Practice Medicine and Surgery was hand-delivered to Jana Smith, the State Medical Board, Suite 510, 65 South Front Street, Columbus, Ohio 43215, this 4th day of September, 1985.

GERTNER & GERTNER

By Michael H. Gertner
MICHAEL H. GERTNER (GER12)
Attorneys for Appellant

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

85CV - 09 - 4959

IN THE MATTER OF THE
LICENSE SUSPENSION OF:

FREDERICK W. ELDER, M. D.
Appellant,

vs.

STATE MEDICAL BOARD,
Appellee.

FILED
COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
1985 SEP - 4 AM 10:53
THOMAS E. ENRIGHT
CLERK OF COURTS
Case No. _____

MOTION TO STAY EXECUTION OF ORDER PENDING APPEAL

Now comes Appellant, Frederick W. Elder, M. D., by and through counsel, and respectfully requests this Court for an Order staying execution of, or any proceedings to enforce, the Order of the State Medical Board suspending Appellant's license to practice medicine and surgery, effective August 15, 1985, pursuant to Ohio Rules of Civil Procedure, on the ground that irreparable injury and unusual hardship may result to the Appellant.

Appellant, Frederick W. Elder, M. D., through counsel, further requests this Court to order that the requirement of a bond as set forth in Rule 62(B), be waived,

Respectfully submitted,

GERTNER & GERTNER

By *Michael H. Gertner*

MICHAEL H. GERTNER (GER12)
Attorneys for Appellant,
Frederick W. Elder, M. D.
88 East Broad Street
Suite 1435
Columbus, Ohio 43215
(614) 463-9393

MEMORANDUM IN SUPPORT

Ohio Revised Code Section 119.12 provides for a stay upon appeal, "if it appears to the Court that an unusual hardship and irreparable injury to Appellant may result from the execution of the agency's order pending determination of the appeal." Unusual hardship and irreparable injury will in fact result to Appellant in that indefinite suspension will

will result in loss of employment to the Appellant, and life long loss of reputation in the medical community and among his patients.

Request is made for an order waiving the requirement of a supercedeas bond as set forth in Rule 62(B) for the reason that there is no monetary judgment involved in this case.

GERTNER & GERTNER

By Michael H. Gertner
MICHAEL H. GERTNER (GER12)
Attorneys for Appellant,
Frederick W. Elder, M. D.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion To Stay Execution Pending Appeal was hand-delivered to Jana Smith, the State Medical Board, Suite 510, 65 South Front Street, Columbus, Ohio 43215, this 4th day of September, 1985.

GERTNER & GERTNER

By Michael H. Gertner
MICHAEL H. GERTNER (GER12)
Attorneys for Appellant,
Frederick W. Elder, M. D.

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

August 21, 1985

Frederick W. Elder, M.D.
340 East State Street
Columbus, Ohio 43215

Dear Doctor Elder:

Please find enclosed a certified copy of the Findings, Order, and Journal Entry approved and confirmed by the State Medical Board meeting in regular session on August 15, 1985.

In order to be considered for reinstatement of your license you must:

- A. Make application for reinstatement with the Board;
- B. Submit a favorable medical examination, including both physical and mental status, indicating you are able to practice medicine in accordance with acceptable and prevailing standards of care;
- C. Pass FLEX Component I and FLEX Component II licensing examination.

Conditions which the Board may require for reinstatement, include, but are not limited to:

1. Successful completion of a treatment program;
2. Random urine screenings;
3. Board appearances and monitoring.

In addition, the provisions of Section 4731.222, Ohio Revised Code may be applicable in the event your certificate remains inactive for a period of two (2) years or more.

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

Page 2

Frederick W. Elder, M.D.

August 21, 1985

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal may be taken to the Court of Common Pleas in the county in which your place of business is located or to said court of the county in which you reside. If you are not a resident of and have no place of business in Ohio, you may appeal to the Court of Common Pleas in Franklin County. Such an appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the appropriate court 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.

Please note the notification of appeal contained herein.

Very truly yours,



Henry G. Cramblett, M.D.
Secretary

HGC:em

Enclosures

CERTIFIED MAIL NO. P 569 457 929
RETURN RECEIPT REQUESTED

cc: John S. Zonak, Esq.
Attorney at Law
88 E. Broad Street
Columbus, Ohio 43215

CERTIFIED MAIL NO. P 569 457 930
RETURN RECEIPT REQUESTED

Sec. 4731.222 Conditions for restoration of inactive certificate.

Before restoring to good standing a certificate issued under Chapter 4731, of the Revised Code which has been in a suspended or inactive state for any cause for more than two years, the state medical board may require the applicant to pass an oral or written examination, or both, to determine his present fitness to resume practice.

The authority of the board to impose terms and conditions includes the following:

A- Requiring the applicant to obtain additional training and to pass an examination upon completion of such training;

B- Restricting or limiting the extent, scope, or type of practice of the applicant.

The board shall consider the moral background and the activities of the applicant during the period of suspension or inactivity, in accordance with section 4731.08 of the Revised Code.

IN THE MATTER OF *
*
FREDERICK W. ELDER, M.D. *

FINDINGS, ORDER, AND JOURNAL ENTRY

This matter came on for consideration after a citation letter was issued to Frederick W. Elder, M.D., by the Ohio State Medical Board on June 17, 1985.

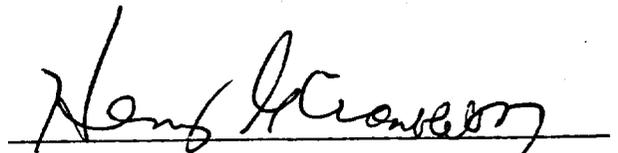
On June 17, 1985, notice was given to Frederick W. Elder, M.D., that the State Medical Board of Ohio intended to consider disciplinary action regarding his license to practice medicine and surgery in Ohio, and that he was entitled to a hearing if such hearing was requested within thirty (30) days of the mailing of said notice. Dr. Elder has not requested a hearing, and thirty (30) days have elapsed since the mailing of the aforesaid notice.

WHEREFORE, it is hereby ORDERED that for the reasons outlined in the June 17, 1985 letter of notice which is attached hereto and incorporated herein, accordingly, the license of Frederick W. Elder, M.D. to practice medicine and surgery in Ohio be indefinitely suspended with no consideration for relicensure unless Dr. Elder passes FLEX Component I and FLEX Component II licensing examination, and submits a favorable medical examination, including both physical and mental status, indicating he is able to practice medicine in accordance with acceptable and prevailing standards of care.

This Order shall become effective on the 15th day of August, 1985.

This Order is hereby entered upon the Journal of the State Medical Board of Ohio for the 15th day of August, 1985, and the original thereof shall be kept with said Journal.

(SEAL)



Henry G. Cramblett, M.D.
Secretary

August 21, 1985

Date

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

June 17, 1985

Frederick W. Elder, M.D.
340 East State Street
Columbus, OH 43215

Dear Doctor Elder:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine under the provisions of Section 4731.22, Ohio Revised Code, whether or not to limit, revoke, suspend, refuse to register, or reinstate your certificate to practice medicine and surgery, or to reprimand or place on you on probation, 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, as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.
 - (a) Pursuant to Section 4731.22(B)(15) of the Ohio Revised Code you are hereby required to submit to a mental and/or physical examination by the State Medical Board of Ohio. Further, be advised that this section of the Ohio Revised Code states failure to submit to a mental or physical examination, or both, required by and at the expense of the State Medical Board when so directed, constitutes an admission of the allegations against you, unless the failure is due to circumstances beyond your control. A DEFAULT and FINAL ORDER may be entered without the taking of testimony or presentation of evidence if you should fail to appear at the examination as so directed herein.

The State Medical Board of Ohio pursuant to its authority under Section 4731.22(B)(15), Ohio Revised Code, hereby requires you to appear before Dr. Ralph Henn, at Dr. Henn's office at 300 East Town Street, Columbus, Ohio, on June 19, 1985 at 2:00 P.M.

Frederick W. Elder, M.D.
Page Two

June 17, 1985

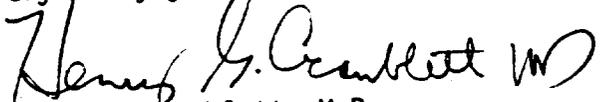
Pursuant to Chapter 119., Ohio Revised Code, be advised you are entitled to a hearing in this matter. If you wish to request a hearing that request must be filed at the Board's offices within thirty (30) days of the time of mailing of this notice.

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or you may present your positions, 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 limit, reprimand, revoke, suspend, place on probation, refuse to register, or reinstate your certificate to practice medicine and surgery in the State of Ohio.

Enclosed is a copy of the applicable provisions of the Medical Practice Act for your information.

Very truly yours,


Henry G. Cramblett, M.D.
Secretary

HGC:jmb

Enclosures:

CERTIFIED MAIL #P 569 363 193
RETURN RECEIPT REQUESTED