

**CONSENT AGREEMENT  
BETWEEN  
KENNETH H. OBERHEU, M.D.  
AND  
THE STATE MEDICAL BOARD OF OHIO**

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

KENNETH H. OBERHEU, M.D., voluntarily 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 contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this CONSENT AGREEMENT.

**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), 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 any of the enumerated violations.
- B. THE STATE MEDICAL BOARD OF OHIO enters into this CONSENT AGREEMENT in lieu of further formal proceedings based upon the violations of Section 4731.22, Ohio Revised Code set forth in the Notice of Opportunity for Hearing issued by the BOARD on April 10, 1998, attached hereto as Exhibit A and incorporated herein by this reference. The BOARD expressly reserves the right to institute additional formal proceedings based upon any other violations of Chapter 4731 of the Ohio Revised Code whether occurring before or after the effective date of this AGREEMENT.
- C. KENNETH H. OBERHEU, M.D., is licensed to practice medicine and surgery in the State of Ohio.

- D. KENNETH H. OBERHEU, M.D., ADMITS that he wrote or authorized the following prescriptions for controlled substances to patients 1, 2 and 3, persons related to him, without maintaining patient records reflecting his examination, evaluation, diagnosis, and treatment of those patients in connection with such prescriptions, as required by Ohio Adm. Code 4731-11-02(D):

<u>Date</u>	<u>Patient</u> <sup>1</sup>	<u>Drug</u>	<u>Quantity</u>
10/11/95	1	Phenergan syrup with codeine	480 ml
8/19/95	2	Tylenol #3	12
10/25/95	3	Ativan .5 mg	20
11/16/95	3	Ativan .5 mg	20

- E. KENNETH H. OBERHEU, M.D., ADMITS that on two occasions prior to 1997, he wrote or authorized controlled substance prescriptions for Ativan 1 mg, quantity 50, to Patient 1, and that on one occasion prior to 1997, he wrote or authorized a controlled substance prescription for Vicodin 5/500, quantity 30, to Patient 1, all without maintaining patient records reflecting his examination, evaluation, diagnosis and treatment of Patient 1 in connection with such prescriptions, as required by Ohio Adm. Code 4731-11-02(D).

#### **AGREED CONDITIONS**

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

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<sup>1</sup> Key confidential pursuant to R.C. 4731.22(C)(1), and not subject to public disclosure.

**REPRIMAND**

- I. KENNETH H. OBERHEU, M.D., shall be and hereby is REPRIMANDED.

**LIMITATIONS**

- II. The certificate of KENNETH H. OBERHEU, M.D., to practice medicine and surgery in the state of Ohio shall be permanently LIMITED AND RESTRICTED as follows:

**Self and Family Prescribing**

- A. DOCTOR OBERHEU shall refrain from self-treating, and from treating any family member, except in the event of life-threatening emergency. For the purposes of this AGREEMENT, the term "family member" shall include DOCTOR OBERHEU's spouse, children, children-in-law, grandchildren, siblings, parents, and parents-in-law.
- B. DOCTOR OBERHEU shall not prescribe, administer, dispense, order, write orders for, or give verbal orders for, any controlled substances for himself or for any family member.

**PROBATION**

- III. The certificate of KENNETH H. OBERHEU, M.D., to practice medicine and surgery in the State of Ohio shall be subject to the following PROBATIONARY terms, conditions, and limitations for a minimum period of TWO (2) years:

**Laws, Appearances and Declarations**

- A. DOCTOR OBERHEU shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio.
- B. DOCTOR OBERHEU 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, 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.

- C. DOCTOR OBERHEU 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 OBERHEU written notification of scheduled appearances, it is DOCTOR OBERHEU'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 OBERHEU shall immediately submit to the BOARD a written request to be notified of his next scheduled appearance.

#### Tolling Provisions

- D. In the event that DOCTOR OBERHEU should leave Ohio for three (3) continuous months, or reside or practice outside the State, DOCTOR OBERHEU 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.
- E. In the event DOCTOR OBERHEU is found by the Secretary of the BOARD to have failed to comply with any provision of this agreement, and is so notified of that deficiency in writing, such periods of noncompliance will not apply to the reduction of the probationary period under this CONSENT AGREEMENT.

Controlled Substances Prescribing Course

- F. Within twelve (12) months of the effective date of this AGREEMENT, or as otherwise agreed by the BOARD, DOCTOR OBERHEU shall provide acceptable documentation of successful completion of a course dealing with the prescribing of controlled substances. The exact number of hours and the specific content of the course shall be subject to the prior approval of the Board or its designee, but shall be at least forty (40) hours in length. Any course taken in compliance with this provision shall be in addition to the Continuing Medical Education Requirements for relicensure for the biennial registration period in which it is completed.

Required Reporting by Licensee

- G. Within thirty (30) days of the effective date of this AGREEMENT, DOCTOR OBERHEU shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he is under contract to provide physician services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, DOCTOR OBERHEU shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he contracts to provide physician services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
- H. Within thirty (30) days of the effective date of this AGREEMENT, DOCTOR OBERHEU 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 a license to practice. DOCTOR OBERHEU 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 licensure or reinstatement of licensure. Further, DOCTOR OBERHEU shall provide this BOARD with a copy of the return receipt as proof of notification within thirty (30) days of receiving that return receipt.

Failure to comply

- I. DOCTOR OBERHEU agrees that if any declaration or report required by this AGREEMENT is not received in the BOARD's offices on or before its due date, DOCTOR OBERHEU 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 4731.41 of the Revised Code.

If, in the discretion of the Secretary and Supervising Member of THE STATE MEDICAL BOARD OF OHIO, DOCTOR OBERHEU appears to have violated or breached any term or condition 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.

**ACKNOWLEDGMENTS/LIABILITY RELEASE**

DOCTOR OBERHEU 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 OBERHEU 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.

*Kenneth H. Oberheu, M.D.*  
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**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.

*Kenneth H. Oberheu M.D.*  
KENNETH H. OBERHEU, M.D.

*Anand G. Garg*  
ANAND G. GARG, M.D.  
Secretary

8-10-98  
DATE

*William S. Fein*  
WILLIAM S. FEIN, ESQ.  
Attorney for Dr. OBERHEU

09/09/98  
DATE

*Raymond J. Albert*  
RAYMOND J. ALBERT  
Supervising Member

9-10-98  
DATE

7/9/98  
DATE

*James M. McGovern*  
JAMES M. McGOVERN  
Assistant Attorney General

\_\_\_\_\_  
DATE



# STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

April 8, 1998

Kenneth H. Oberheu, M.D.  
30 Apple Street, Suite 6252  
Dayton, Ohio 45409

Dear Doctor Oberheu:

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 or place you on probation for one or more of the following reasons:

- (1) You authorized Schedule III, Schedule IV, and Schedule V controlled substances for Patients 1, 2, and 3 (as identified on the attached Patient Key - Key confidential and not subject to public disclosure) as follows:

Patient	Date Received	Drug	Quantity
Patient 1	01/27/95	Vicodin 5/500	30
Patient 1	02/23/95	Ativan 1 mg	50
Patient 1	02/23/95	Vicodin 5/500	30
Patient 1	04/06/95	Vicodin 5/500	30
Patient 1	04/06/95	Ativan 1 mg	50
Patient 1	05/04/95	Vicodin 5/500	30
Patient 1	05/18/95	Ativan 1 mg	50
Patient 1	06/22/95	Ativan 1 mg	50
Patient 1	08/01/95	Ativan 1 mg	50
Patient 1	09/22/95	Ativan 1 mg	50
Patient 1	10/11/95	Phenergan w/codeine syrup	480 ml
Patient 1	11/02/95	Ativan 1 mg	50
Patient 1	11/25/95	Ativan 1 mg	50
Patient 1	01/09/96	Ativan 1 mg	50
Patient 1	02/16/96	Ativan 1 mg	50
Patient 1	04/12/96	Ativan 1 mg	50
Patient 1	05/30/96	Ativan 1 mg	50
Patient 1	07/03/96	Ativan 1 mg	50
Patient 1	08/09/96	Ativan 1 mg	50
Patient 1	09/24/96	Ativan 1 mg	50
Patient 2	08/19/95	Tylenol w/codeine #3	12
Patient 3	10/25/95	Ativan .5 mg	20
Patient 3	11/16/95	Ativan .5 mg	20



mailed 4/9/98  
Corrected Copy mailed 4/10/98

However, you failed to keep any medical records for Patients 2 and 3, and you failed to keep any medical records regarding these prescriptions for Patient 1.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Section 4731-11-02(D), Ohio Administrative Code. Pursuant to Rule 4731-11-02(F), Ohio Administrative Code, violation of Rule 4731-11-02(D), Ohio Administrative Code, also violates Sections 4731.22(B)(2) and (6), Ohio Revised Code.

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, the request must be made in writing and must be received in the offices of the State Medical Board 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 by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty (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,

  
Anand G. Garg, M.D.  
Secretary

AGG/bjs  
Enclosures

CERTIFIED MAIL # Z 395 591 322  
RETURN RECEIPT REQUESTED

(Corrected) Certified Mail # Z 233 839 020

cc: William S. Fein, Esq.

CERTIFIED MAIL # P 152 984 759  
RETURN RECEIPT REQUESTED

(Corrected) Certified Mail # Z 233 839 021