

**CONSENT AGREEMENT  
BETWEEN  
JOSEPH HENRY BANKS, JR., M.D.,  
AND  
THE STATE MEDICAL BOARD OF OHIO  
Case No. 08-CRF-120**

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

Dr. Banks 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 R.C. 4731.22(B), 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 Board and Dr. Banks enter into this Consent Agreement in lieu of further formal proceedings based upon the allegations set forth in the Notice of Opportunity for Hearing issued on October 8, 2008, 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 R.C. Chapter 4731., whether occurring before or after the effective date of this Consent Agreement.
- C. Dr. Banks is licensed to practice medicine and surgery in the State of Ohio, License 35.028199. Dr. Banks is not licensed to practice medicine in any other state or jurisdiction.
- D. Dr. Banks admits to the factual and legal allegations as set forth in the October 8, 2008, Notice of Opportunity for Hearing.

**AGREED CONDITIONS**

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Dr. Banks knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

## **PERMANENT REVOCATION, STAYED; SUSPENSION**

1. The certificate of Dr. Banks to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Bank's certificate shall be suspended for an indefinite period of time, but not less than eighteen (18) months.

## **CONDITIONS FOR REINSTATEMENT**

2. The Board shall not consider reinstatement or restoration of Dr. Banks' certificate to practice medicine and surgery until all of the following conditions are met:
  - a. Dr. Banks shall submit an application for reinstatement or restoration, as appropriate, accompanied by appropriate fees, if any.
  - b. Dr. Banks shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but not be limited to the following:
    - i. A written report indicating that Dr. Banks' ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care.

The report shall be made by a physician from the Center for Marital & Sexual Health, or another physician evaluator knowledgeable in the area of psychiatry and human sexuality who has been approved in advance by the Board, who shall conduct a comprehensive psychiatric and sexual assessment of Dr. Banks. Prior to the assessment, Dr. Banks shall provide the evaluator with a copy of this Consent Agreement, and with copies of any and all records, including but not limited to patient records, related to any and all psychiatric, psychological, and/or sexual evaluations or treatment that he has received, whether such evaluations or treatment occurred before or after the effective date of this Consent Agreement. The report from the evaluator shall include the evaluator's diagnoses and conclusions; any recommendations for care, counseling, and treatment for the diagnoses; any conditions, restrictions, or limitations that should be imposed on Dr. Banks' practice; and the basis for the evaluator's determinations.

The report required pursuant to this paragraph shall be based upon examinations occurring within the three months immediately preceding any application for reinstatement.

3. In the event that Dr. Banks has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Banks' fitness to resume practice.

## PROBATION

4. Upon reinstatement or restoration, Dr. Banks' certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
  - a. **Modification of Terms:** Dr. Banks shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.
  - b. **Obey the law:** Dr. Banks shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
  - c. **Third-Party Presence During Exam/Treatment:** Dr. Banks shall have a third party present while examining or treating any patient.
  - d. **Abide by the Terms of the Comprehensive Psychiatric and Sexual Assessment:** In the event that the assessment of Dr. Banks referenced in paragraph 2 above results in a determination that Dr. Banks should be subject to any conditions, restrictions or limitations, Dr. Banks must comply with any recommendation in the assessment.
  - e. **Declarations of Compliance:** Dr. Banks 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 or before the first day of the third month following the month in which Dr. Banks' certificate is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
  - f. **Personal Appearances:** Dr. Banks shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Dr. Banks' certificate is restored or reinstated, or as otherwise directed by the Board. A subsequent appearance must occur six months later, and then must occur yearly, or as otherwise requested 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.

- g. **Tolling of Probationary Period While Out of State:** Dr. Banks shall obtain permission from the Board for departure or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary and Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.
- h. **Noncompliance Will Not Reduce Probationary Period:** In the event Dr. Banks is found by the Secretary of the Board to have failed to comply with any provision of this Consent Agreement, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Consent Agreement.

#### **REQUIRED REPORTING BY LICENSEE**

5. Within thirty days of the effective date of this Consent Agreement, Dr. Banks shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services (including but not limited to third party payors) or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Banks shall promptly 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. In the event that Dr. Banks provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within thirty days of the effective date of this Consent Agreement Dr. Banks shall provide a copy of this Consent Agreement to the Ohio Department of Public Safety, Division of Emergency Medical Services. Further, Dr. Banks shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.

6. Within thirty days of the effective date of this Consent Agreement, Dr. Banks shall provide a copy of this Consent Agreement to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Dr. Banks further agrees to provide a copy of this Consent Agreement 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. Banks shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.
7. Dr. Banks shall notify the Board in writing of any change of principal practice address or residence address within thirty days of such change.

#### **FAILURE TO COMPLY**

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Banks 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.

#### **ACKNOWLEDGMENTS/LIABILITY RELEASE**

Dr. Banks 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.

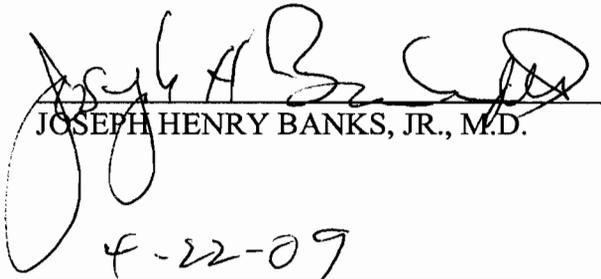
Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

Dr. Banks 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. Banks 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.

  
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JOSEPH HENRY BANKS, JR., M.D.

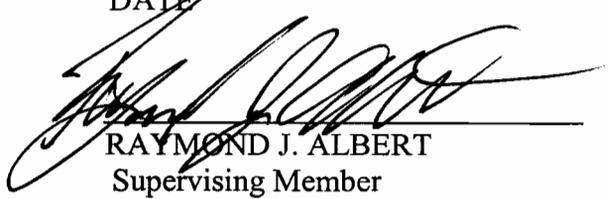
4-22-09  
DATE

  
\_\_\_\_\_  
LANCE A. TALMAGE, M.D.  
Secretary

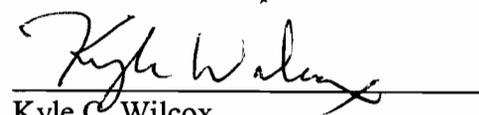
5-13-09  
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\_\_\_\_\_  
R. KEVIN KERNS  
Attorney for Dr. Banks

April 22, 2009  
DATE

  
\_\_\_\_\_  
RAYMOND J. ALBERT  
Supervising Member

5/19/09  
DATE

  
\_\_\_\_\_  
Kyle C. Wilcox  
Assistant Attorney General

April 30, 2009  
DATE

# State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.  
Executive Director

(614) 466-3934  
med.ohio.gov

October 8, 2008

Case number: 08-CRF-120

Joseph Henry Banks, Jr., M.D.  
2626 Chartwell Road  
Columbus, Ohio 43221

Dear Doctor Banks:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio [Board] intends to determine whether or not to limit, revoke, permanently 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:

- (1) On or about March 12, 2008, a complaint was filed against you in the Franklin County, Ohio, Municipal Court, alleging that on or about February 6, 2008, you put your hand inside the bra of a named female and fondled her breast. The female named in the complaint was the mother of one of your pediatric patients and the incident occurred at your pediatric medical office.

On or about September 17, 2008, you pled no contest to, and were found guilty of, the amended charge of Attempted Sexual Imposition, a fourth degree misdemeanor.

Your plea of guilty or the judicial finding of guilt as alleged in paragraph (1) above, individually and/or collectively, constitute “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice,” as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.

Further, 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: Prohibitions, Rule 4731-26-02, Ohio Administrative Code. Pursuant to Rule 4731-26-03(A)(1), Ohio Administrative Code, a violation of Rule 4731-26-02, Ohio Administrative Code, also violates Section 4731.22(B)(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

*Mailed 10-09-08*

Jospeph H. Banks, M.D.

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and must be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice.

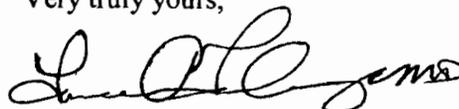
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at 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 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, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand you or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.  
Secretary

LAT/KHM/flb  
Enclosures

CERTIFIED MAIL #91 7108 2133 3934 3685 9254  
RETURN RECEIPT REQUESTED

R. Kevin Kerns, Esq.  
Kegler Brown Hill & Ritter  
Capitol Square – Suite 1800  
65 East State Street  
Columbus, Ohio 43215-4294

CERTIFIED MAIL #91 7108 2133 3934 3685 9261  
RETURN RECEIPT REQUESTED