

STATE MEDICAL BOARD
OF OHIO
96 MAY 29 PM 12:54

**CONSENT AGREEMENT
BETWEEN
ALAN M. RUBEN, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO**

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

ALAN M. RUBEN, 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), 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 violations of 4731.22(B)(2), Ohio Revised Code, "(f)ailure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease;" Section 4731.22(B)(6), Ohio Revised Code, "(a) departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established;" Section 4731.22(B)(22), Ohio Revised Code, "(t)he limitation, revocation, or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, or the imposition of probation by that authority, for an action that also would have been a violation of this chapter, except for the nonpayment of fees."

- B. THE STATE MEDICAL BOARD OF OHIO enters into this CONSENT AGREEMENT in lieu of formal proceedings based upon the violation of Section 4731.22(B)(2), (6), and (22), Ohio Revised Code, as detailed in Paragraphs D, E, F, and G, 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;

- C. ALAN M. RUBEN, M.D., is licensed to practice medicine and surgery in the State of Ohio;
- D. ALAN M. RUBEN, M.D., ADMITS that he maintained an office policy which permitted nurses to write and sign his name to prescriptions, subject to his review. DOCTOR RUBEN further ADMITS that that the acts, conduct, or omissions, as stated in this paragraph, constitute a violation of Section 4731.22(B)(2), Ohio Revised Code, and 4731.22(B)(6), Ohio Revised Code;
- E. ALAN M. RUBEN, M.D., ADMITS that he maintained an office policy which permitted his office staff, including nurses, to make wholesale orders for dangerous drugs, including controlled substances, as defined by state and federal law, by utilizing his D.E.A. number and/or name. The medications ordered pursuant to this policy were to have been those for which a prescription had been issued, either by him or by another physician, and were to be utilized by staff members and their families, not for patients in his practice. DOCTOR RUBEN further ADMITS that that the acts, conduct, or omissions, as stated in this paragraph, constitute a violation of Section 4731.22(B)(2), Ohio Revised Code, and 4731.22(B)(6), Ohio Revised Code;
- F. ALAN M. RUBEN, M.D., further ADMITS that his supervision and monitoring of the policy described in Paragraph E, above, was inadequate. Medications were being ordered without checking or verifying the validity or existence of the prescriptions. DOCTOR RUBEN further ADMITS that that the acts, conduct, or omissions, as stated in this paragraph, constitute a violation of Section 4731.22(B)(2), Ohio Revised Code, and 4731.22(B)(6), Ohio Revised Code;
- G. ALAN M. RUBEN, M.D., ADMITS that he entered into a Consent Order with the West Virginia Board of Medicine (a copy of which is attached hereto and fully incorporated herein) and that the said Consent Order was based upon his conduct and/or omissions as detailed in Paragraphs D, E, and F, above, and that the said Consent Order placed limitations upon his license to practice medicine and surgery in the State of West Virginia. DOCTOR RUBEN further ADMITS that the acts, conduct, or omissions, as stated in this paragraph, constitute a violation of Section 4731.22(B)(2), Ohio Revised Code, to wit: Section 4731.22(B)(2) and (6), Ohio Revised Code.

- H. ALAN M. RUBEN, M.D., STATES and the BOARD acknowledges the following:
1. DOCTOR RUBEN's West Virginia license has been subject to probation since October 30, 1994, and that he has paid a \$10,000.00 fine imposed by the West Virginia Board of Medicine based on his conduct described in Paragraph H., above;
 2. DOCTOR RUBEN has paid a fine of \$80,000.00 imposed by the Drug Enforcement Administration (D.E.A.) based on his conduct as described in Paragraphs E and F, above;
 3. DOCTOR RUBEN has no prior disciplinary record in the State of Ohio;
 4. DOCTOR RUBEN, in his conduct described in Paragraphs D, E, F, and G, above, did not demonstrate a dishonest or selfish motive;
 5. DOCTOR RUBEN gave free and full disclosure to the BOARD of his conduct described above in Paragraphs D, E, F, and G; and
 6. DOCTOR RUBEN's conduct described in Paragraphs D, E, F, and G, above, is unlikely to recur based upon the limitations imposed by the West Virginia Board of Medicine and the D.E.A., as described in Paragraph's H 1 and H 2, above, and based on the action taken by the BOARD, below.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, ALAN M. RUBEN, 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 RUBEN shall not prescribe, administer, dispense, order, write orders for, give verbal orders for, or possess (except those prescribed, dispensed or administered to him by another so authorized by law) any controlled substances as defined by state or federal law without prior BOARD approval;
 - a. Prior to requesting BOARD approval to prescribe, administer, dispose, order, write orders for, or possess controlled substances, DOCTOR RUBEN must pass an examination to be administered by the BOARD or its designee related to the content of the D.E.A. Physician's Manual, which manual may be obtained from the offices of the BOARD. In the event that DOCTOR RUBEN fails this examination, he must wait one (1) month between re-examinations;
 - b. Prior to requesting BOARD approval to prescribe, administer, dispose, order, write orders for, or possess controlled substances,

DOCTOR RUBEN shall provide acceptable documentation of successful completion of a course dealing with the management of controlled substances, such course to be approved in advance by the BOARD or its designee;

2. Within one (1) year of the effective date of this Agreement, or as otherwise approved by the BOARD, DOCTOR RUBEN shall complete a course on office practice management, such course to be approved in advance by the BOARD or its designee;
3. DOCTOR RUBEN shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio;
4. DOCTOR RUBEN 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 the 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;
5. DOCTOR RUBEN 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 RUBEN written notification of scheduled appearances, it is DOCTOR RUBEN'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 RUBEN shall immediately submit to the BOARD a written request to be notified of his next scheduled appearance; and

6. Within thirty (30) days of the effective date of this Agreement, DOCTOR RUBEN shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he contracts to provide physician services or receive training; and the Chief of Staff at each hospital where he has, applies for, or obtains privileges or appointments.

This Agreement shall remain in force for a minimum of three (3) years prior to any request for termination of said Agreement. Otherwise, the above described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties.

If, in the discretion of the Secretary and Supervising Member of THE STATE MEDICAL BOARD OF OHIO, DOCTOR RUBEN 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.

DOCTOR RUBEN 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.

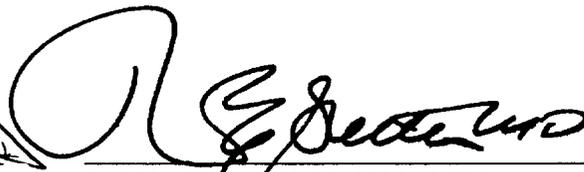
Any action initiated by the BOARD based on alleged violations of this CONSENT AGREEMENT shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

DOCTOR RUBEN 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. 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.

Further, this information may be reported to appropriate organizations, data banks and governmental bodies.


ALAN M. RUBEN, M.D.


THOMAS E. GRETTER, M.D.
Secretary

May 22, 1996
DATE

Terence M. Gurley
TERENCE M. GURLEY, ESQ.

May 22, 1996
DATE

6/12/96
DATE

Raymond J. Albert
RAYMOND J. ALBERT
Supervising Member

6/12/96
DATE

Anne C. Berry Strait
ANNE C. BERRY STRAIT, ESQ.
Assistant Attorney General

6/12/96
DATE

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

IN RE:

ALAN M. RUBEN, M.D.

CONSENT ORDER

The West Virginia Board of Medicine ("Board") and Alan M. Ruben, M.D. ("Dr. Ruben") freely and voluntarily enter into the following Order pursuant to West Virginia Code §30-3-14(n):

FINDINGS OF FACT

1. Dr. Ruben currently holds a license to practice medicine and surgery in the State of West Virginia, License No. 11124. Dr. Ruben's address of record with the Board is in Wheeling, West Virginia.

2. In September, 1993, complaints were received at the Board offices filed by two (2) separate individuals alleging various actions which indicated that Dr. Ruben might be delegating professional responsibilities to persons in his office who were not qualified by licensure to perform such responsibilities.

3. The Complaint Committee of the Board initiated an investigation of these allegations and conducted various interviews and subpoenaed various materials from Dr. Ruben's offices and Dr. Ruben appeared for a full discussion of the complaints filed with the Complaint Committee before the Complaint Committee of the Board in May, 1994. Dr. Ruben cooperated fully and voluntarily with this entire investigation.

4. During the course of the investigation, several issues were developed. Dr. Ruben acknowledged to the Complaint Committee that, from time to time over the years, he had prescribed controlled substances for his own use for the relief of headaches. There is no evidence that he used such substances either in inappropriate quantities or for inappropriate purposes. Dr. Ruben also acknowledged that there had been a policy in his office whereby his nurses signed his name to certain prescriptions for patients, which prescriptions were thereafter examined and ratified by him. There is no evidence that any patient was in fact harmed as a result of this practice, but there is also no question that such a policy had, in fact, been in effect in his office. Prior to these matters (self-prescription and signing of prescription forms) being brought to his attention, Dr. Ruben was unaware that either such activity was in any way improper. Both activities have now been completely halted. Dr. Ruben is now aware of the requirements, and will comport himself accordingly, and consistent with this Consent Order.

5. Dr. Ruben was asked to undergo and did undergo a full physical and mental examination which resulted in an evaluation that there was no evidence of impairment or incapacitation.

6. The parties acknowledge the profound obligation imposed upon the Board to protect the health and welfare of patients. It is within this context that the following has been voluntarily agreed to by both the Board and Dr. Ruben. Dr. Ruben's

practice will be closely monitored by the Board so that no harm can result from the aforementioned problems.

CONCLUSIONS OF LAW

1. The West Virginia Medical Practice Act declares that the practice of medicine is a privilege and that as a matter of public policy, the provisions in the act are necessary to protect the public interest (West Virginia Code §30-3-1).

2. Probable cause exists to file charges against Dr. Ruben pursuant to the provisions of West Virginia Code §30-3-14(c)(16) and (17), 11 CSR 1A 12.1(e) as referenced at 12.2(a)(C), 11 CSR 1A 12.1(w) and 11 CSR 12.2(h), all pertaining to improper delegation of authority and failure to comply with dispensing regulations of the Board and prescribing controlled substances to himself.

3. The Board has determined that it is appropriate to waive the commencement of proceedings against Dr. Ruben and to proceed without the filing of charges or a formal Complaint and Notice of Hearing, subject to Dr. Ruben's full compliance with all conditions and limitations specified herein.

CONSENT

Alan M. Ruben, M.D., by affixing his signature hereon, agrees solely and exclusively for purposes of this agreement and the entry of the Order provided for and stated herein, and

proceedings conducted in accordance with this Order to the following:

1. Dr. Ruben acknowledges that he is fully aware that, without his consent, no permanent legal action may be taken against him except after a hearing held in accordance with West Virginia Code §30-3-14(h) and §29A-5-1, et seq.;

2. Dr. Ruben acknowledges that he has the following rights, among others: the right to a formal hearing before the West Virginia Board of Medicine, the right to reasonable notice of said hearing, the right to be represented by counsel at his own expense, and the right to cross-examine witnesses against him;

3. Dr. Ruben waives all rights to such a hearing;

4. Dr. Ruben consents to the entry of this Order relative to his practice of medicine in the State of West Virginia; and,

5. Dr. Ruben understands that this Order is considered public information, and that matters contained herein may be reported, as required by law, to the National Practitioner Data Bank.

ORDER

WHEREFORE, on the basis of the foregoing Findings of Fact and Conclusions of Law of the Board, and on the basis of the consent of Dr. Ruben, the West Virginia Board of Medicine hereby ORDERS as follows:

30 DrP

1. That effective October 1, 1994, at 12:01 a.m., the license of Dr. Ruben to practice medicine and surgery in the State of West Virginia, License No. 11124, is placed on PROBATION for a period of two (2) years, during which two (2) year period the practice of medicine and surgery of Dr. Ruben may take place only with the supervision of another licensed physician, duly approved by the Board, who will file reports with the Board every sixty (60) days, beginning December 1, 1994, confirming the ability of Dr. Ruben to practice medicine with reasonable skill and safety, and should the performance of Dr. Ruben at any time fall below the level of reasonable skill and safety, the approved supervising physician shall immediately notify the Board.

2. During the two (2) years that this Consent Order is in effect, Dr. Ruben shall, at his own expense, submit to random testing of blood and urine carried out in a manner directed and approved by the Board at any time and the approved supervising physician shall be responsible for the forwarding and submission of all such tests to the Board.

3. During the two (2) years that this Consent Order is in effect, Dr. Ruben shall refrain from the use of any controlled substances except as specifically prescribed to him by another duly licensed physician who is engaged in the regular care and treatment of Dr. Ruben.

4. Dr. Ruben agrees to surrender, and not reapply for within five (5) years of the date of this document, any dispensing registration obtained pursuant to the provision of 11 CSR 5 1 et

seq., the receipt of which dispensing registration is acknowledged by the signatures of the President and Secretary of the Board on this Consent Order. It is explicitly understood by Dr. Ruben that he does not have a right to automatically receive the dispensing registration if he does reapply after five (5) years, but only upon his adequate demonstration to the Board's satisfaction of his meeting all appropriate eligibility requirements.

5. Dr. Ruben shall pay a fine in the amount of ten thousand dollars (\$10,000.00) to the West Virginia Board of Medicine, in conjunction with the matters addressed hereinabove, the receipt of which is acknowledged by the signatures of the President and Secretary of the Board on this Consent Order.

6. No later than October 30, 1994, Dr. Ruben shall present a copy of this Consent Order to any employer or health care or medical facility where Dr. Ruben is practicing medicine, and during the two (2) years that this Consent Order is in effect, Dr. Ruben shall present a copy of this Consent Order to any employer or health care or medical facility where he practices medicine or seeks to practice medicine.

7. Dr. Ruben agrees to comply with all laws, rules and regulations of the West Virginia Board of Medicine and agrees not to delegate the signing of his name on prescriptions to personnel in his office.

The failure of Dr. Ruben to comply with any of the terms of this Consent Order, as determined by the Board, shall constitute grounds for revocation of his license to practice medicine and surgery in the State of West Virginia.

Entered this 26th day of October, 1994.

WEST VIRGINIA BOARD OF MEDICINE

Jesus T. Ho, M.D.
President

William T. Wallace, Jr., M.D., M.P.H.
Secretary

Alan M. Ruben, M.D.
Alan M. Ruben, M.D.

Date: October 21, 1994

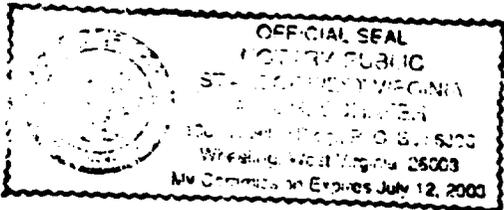
STATE OF WEST VIRGINIA

COUNTY OF OHIO, to-wit:

I, Alan M. Schmitt, a Notary Public for said county and state do hereby certify that Alan M. Ruben, M.D., whose name is signed on the previous page has this day acknowledged the same before me.

Given under my hand this 21st day of October, 1994.

My Commission expires July 12, 2000.



Alan M. Schmitt
Notary Public