

**CONSENT AGREEMENT  
BETWEEN  
JOHN S. MCDONALD, M.D.  
AND  
THE STATE MEDICAL BOARD OF OHIO**

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

JOHN S. MCDONALD, 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 December 3, 1997, 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. JOHN S. MCDONALD, M.D., is licensed to practice medicine and surgery in the State of Ohio.
- D. JOHN S. MCDONALD, M.D., ADMITS that he wrote or authorized the following prescriptions for controlled substances to himself and/or to family members, but that he did not maintain patient records reflecting his

examination, evaluation, diagnosis, and treatment 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>
10/12/92	3	Hydrocodone	54
7/30/93	2	Dihistine DH <sup>2</sup>	480 ml
11/10/93	2	Dihistine DH	360 ml
1/12/95	1	Robitussin AC	120 ml
4/14/95	2	Dihistine DH	240 ml
5/6/95	2	Dihistine DH	120 ml
5/7/95	2	Aspirin with codeine	20
6/3/95	2	Dihistine DH	120 ml
7/29/95	2	Dihistine DH	120 ml
11/25/95	3	Empirin with codeine	30
5/15/96	1	Aspirin with codeine	30
8/3/96	2	Dihistine DH	240 ml

- E. JOHN S. MCDONALD, M.D., ADMITS that he wrote or authorized the following prescriptions for controlled substances to himself and/or to family members, but that he did not maintain contemporaneous patient records reflecting his examination, evaluation, diagnosis, and treatment as required by Ohio Adm. Code 4731-11-02(D):

<u>Date</u>	<u>Patient</u>	<u>Drug</u>	<u>Quantity</u>
11/25/95	1,2,3,4	Dihistine DH	480 ml
9/18/96	4	Dicohistine	180 ml
11/27/96	6	Novahistine DH	180 ml
11/27/96	7	Novahistine DH	180 ml
12/3/96	2	Aspirin with codeine	40
12/3/96	5	Dihistine DH	120 ml

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

<sup>2</sup> Dihistine DH, Robitussin AC, Dicohistine and Novahistine DH are cough syrups containing codeine phosphate which are included on Schedule V under the provisions of R.C. 3719.41. These medications are exempt from the requirement of a prescription by a practitioner, provided that they are in amounts less than 120 ml. over a 48-hour period. R.C. 3719.09, 3719.15, 3719.16.

- F. JOHN S. MCDONALD, M.D., ADMITS that his records reflect that he may have written and/or authorized the following prescriptions for controlled substances to himself and/or to family members, but that his records were not created contemporaneously with the treatment, and so the records may not be accurate, in violation of Ohio Adm. Code 4731-11-02(D):

<u>Date</u>	<u>Patient</u>	<u>Drug</u>
6/2/95	3	Vicodin
7/9/95	2	Novahistine DH
8/5/95	8	Novahistine DH
8/15/95	2	Novahistine DH
12/15/95	2	Novahistine DH
3/19/96	2	Novahistine DH
12/3/96	2	Dihistine DH

### **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, JOHN S. MCDONALD, M.D., knowingly and voluntarily agrees with THE STATE MEDICAL BOARD OF OHIO, (hereinafter BOARD), to the following terms, conditions and limitations:

### **REPRIMAND**

- I. JOHN S. MCDONALD, M.D., shall be and hereby is REPRIMANDED.

### **PROBATION**

- II. The certificate of JOHN S. MCDONALD, 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 MCDONALD shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio.

- B. DOCTOR MCDONALD 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 MCDONALD 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 MCDONALD written notification of scheduled appearances, it is DOCTOR MCDONALD'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 MCDONALD 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 MCDONALD should leave Ohio for three (3) continuous months, or reside or practice outside the State, DOCTOR MCDONALD 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 MCDONALD 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 MCDONALD 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.

#### Development of Course on Prescribing of Controlled Substances and Related Issues

- G. Subsequent to his completion of the controlled substances prescribing course, DOCTOR MCDONALD shall prepare and submit to the BOARD for its approval a syllabus of a course designed for medical students, residents and/or practicing physicians concerning the prescribing of controlled substances. The topics addressed by the course shall include, but not be limited to, the laws and rules governing the prescribing of controlled substances, the signs and symptoms of addiction and/or dependency, issues concerning self and family prescribing, issues concerning the treatment of chronic pain, and alternatives to the utilization of controlled substances.

#### Self and Family Prescribing

- H. DOCTOR MCDONALD 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 MCDONALD's spouse, children, children-in-law, grandchildren, siblings, parents, and parents-in-law.
- I. DOCTOR MCDONALD shall not prescribe, administer, dispense, order, write orders for, or give verbal orders for, any controlled substances for himself or for any family member.

**Required Reporting by Licensee**

- J. Within thirty (30) days of the effective date of this AGREEMENT, DOCTOR MCDONALD 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 MCDONALD 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.
- K. Within thirty (30) days of the effective date of this AGREEMENT, DOCTOR MCDONALD 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 MCDONALD 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 MCDONALD 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**

- L. DOCTOR MCDONALD 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 MCDONALD 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 MCDONALD 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

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but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Agreement.

**ACKNOWLEDGMENTS/LIABILITY RELEASE**

DOCTOR MCDONALD 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.

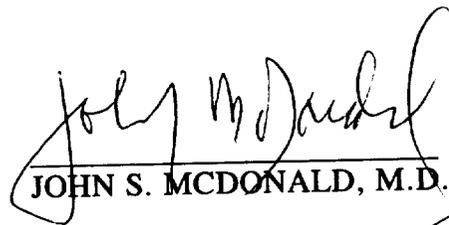
Any action initiated by the BOARD based on alleged violations of this CONSENT AGREEMENT shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

DOCTOR MCDONALD 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.

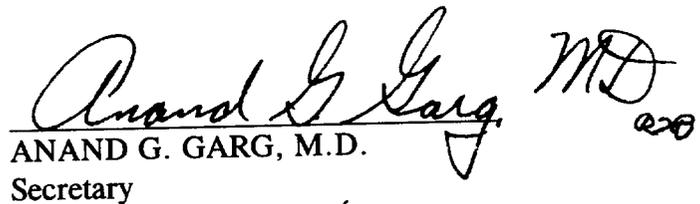
**EFFECTIVE DATE**

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.

  
JOHN S. MCDONALD, M.D.

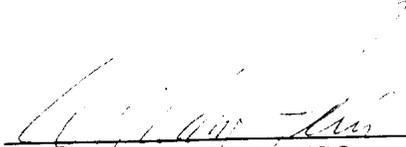
DATE

3/16/98

  
ANAND G. GARG, M.D.  
Secretary

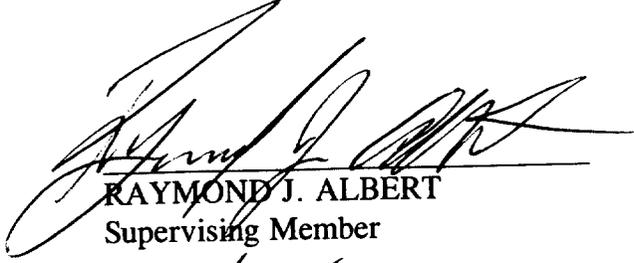
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4/9/98



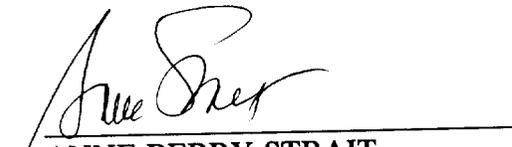
WILLIAM S. FEIN, ESQ.  
Attorney for Dr. McDonald

2/16/98  
DATE



RAYMOND J. ALBERT  
Supervising Member

4/8/98  
DATE



ANNE BERRY STRAIT  
Assistant Attorney General

4/8/98  
DATE



# STATE MEDICAL BOARD OF OHIO

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

December 3, 1997

John Samuel McDonald, M.D.  
2667 Sandover Drive  
Columbus, OH 43220

Dear Doctor McDonald:

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) a You prescribed Schedule III and Schedule V controlled substances to Patients 1 through 3 (as identified on the attached Patient Key - Key confidential and not subject to public disclosure) as follows:

Patient	Date	Quantity	Drug
Patient 3	10/12/92	54	Hydrocodone
Patient 2	07/30/93	480 ml	Dihistine DH
Patient 2	11/10/93	360 ml	Dihistine DH
Patient 1	01/12/95	120 ml	Robitussin AC
Patient 2	04/14/95	240 ml	Dihistine DH
Patient 2	05/06/95	120 ml	Dihistine DH
Patient 2	05/07/95	20	Aspirin with Codeine
Patient 3	06/02/95	unknown	Vicodin
Patient 2	06/03/95	120 ml	Dihistine DH

However, for these prescriptions issued from October 1992 through June 1995, you failed to document any physical examinations and you failed to keep any patient records or any other documentation for Patients 1 through 3.

- (1) b. You prescribed Schedule III and Schedule V controlled substances to Patients 1 through 8 (as identified on the attached Patient Key - Key confidential and not subject to public disclosure) as follows:

Patient	Date	Quantity	Drug
Patient 2	07/09/95	unknown	Novahistine DH

*Mailed 12/4/97*

Patient 2	07/29/95	120 ml	Dihistine DH
Patient 8	08/05/95	unknown	Novahistine DH
Patient 2	08/15/95	unknown	Novahistine DH
Patient 3	11/25/95	30	Empirin with Codeine
Patient 3 and/or Patients 1, 2 and 4	11/25/95	480 ml	Dihistine DH
Patient 2	12/15/95	unknown	Novahistine DH
Patient 2	03/19/96	unknown	Novahistine DH
Patient 1	05/15/96	30	Aspirin with Codeine
Patient 2	08/03/96	240 ml	Dihistine DH
Patient 4	09/18/96	180 ml	Dicohistine
Patient 6	11/27/96	180 ml	Novahistine DH
Patient 7	11/27/96	180 ml	Novahistine DH
Patient 2	12/03/96	40	Aspirin with Codeine
Patient 2	12/03/96	unknown	Dihistine DH
Patient 5	12/03/96	120 ml	Dihistine DH

However, for these prescriptions issued from July 1995 through December 1996, you failed to make or maintain contemporaneous medical records detailing any history or physical examination for Patients 1 through 8. You also failed to make any records of the specific controlled substances prescribed, or to list the amount prescribed.

In fact, during a deposition taken pursuant to an investigation by the State Medical Board of Ohio on November 6, 1997, you testified that between mid-December 1996 and mid-January 1997, you attempted to create patient records corresponding to the prescriptions that you issued from July 1995 through December 1996 for Patients 1 through 8.

- (2) In February 1997, you were interviewed by a Columbus Police Division Narcotics Bureau Detective. During this interview, you produced what you stated were all of your patient records for Patients 1 through 8.

On October 31, 1997, pursuant to an investigative subpoena issued by the State Medical Board of Ohio, you also produced to the Board what you purported to be all of your patient records for Patients 1 through 8.

On November 6, 1997, you appeared for a deposition taken pursuant to an investigation by the State Medical Board of Ohio and testified that the patient records you produced to the Board on October 31, 1997 included handwritten notes that were created by you between mid-December 1996 and mid-January 1997. During the November 6, 1997 deposition, you further testified that in February 1997, you provided the Columbus Police Division Narcotics Bureau Detective with all of the patient records that you possessed for Patients 1 through 8. In fact, the records produced to the Columbus Police Division Narcotics Bureau Detective did not include the handwritten notes that you testified you created between mid-December 1996 and mid-January 1997.

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) and (E), Ohio Administrative Code. Pursuant to Rule 4731-11-02(F), Ohio Administrative Code, violation of Rules 4731-11-02(D) and (E), Ohio Administrative Code, also violates Sections 4731.22(B)(2), (3), and (6), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), 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,

A handwritten signature in cursive script that reads "Thomas E. Gretter, M.D." with a small "R28" written at the end of the signature.

Thomas E. Gretter, M.D.  
Secretary

TEG/par  
Enclosures  
CERTIFIED MAIL # P 152 982 774  
RETURN RECEIPT REQUESTED

cc: William S. Fein, Esq.  
CERTIFIED MAIL # P 152 984 503  
RETURN RECEIPT REQUESTED