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

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

JOHN M. DAVIS, 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.

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)(26), 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 "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice."

B. THE STATE MEDICAL BOARD OF OHIO is further empowered by Section 4731.22(B)(10), 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 "[c]ommission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act was committed."

C. 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(B)(26) and (B)(10), Ohio Revised Code set forth in the Notice of Immediate Suspension and Opportunity for Hearing issued by the BOARD on April 17, 1996, 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.

D. DOCTOR DAVIS ADMITS that the STATE MEDICAL BOARD OF OHIO immediately SUSPENDED his license to practice medicine and surgery, on or about April 17, 1996, pursuant to Section 3719.121(C), Ohio Revised Code.

E. Further, DOCTOR DAVIS admits that the acts, conduct, and/or omissions underlying the judicial finding of Eligibility for Treatment in Lieu of Conviction as referenced in the Notice of Immediate Suspension and Opportunity for Hearing issued by the BOARD on April 17, 1996, constitute commission of acts "that constitute a felony in this state" as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, and "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice" as that clause is used in Section 47314.22(B)(26), Ohio Revised Code.

WHEREFORE, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any further formal proceedings at this time pursuant to the Notice of Immediate Suspension and Opportunity for Hearing issued by the BOARD on April 17, 1996, the immediate suspension of DOCTOR DAVIS' certificate to practice medicine and surgery in the State of Ohio pursuant to Section 3719.121 of the Ohio Revised Code is terminated upon the effective date of this CONSENT AGREEMENT. Further, DOCTOR DAVIS knowingly and voluntarily agrees with THE STATE MEDICAL BOARD OF OHIO, (hereinafter BOARD), to the following terms, conditions and limitations:

I. The certificate of DOCTOR DAVIS to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time but not less than one (1) year. During the period of suspension, DOCTOR DAVIS shall:

A. abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of DOCTOR DAVIS' history of chemical dependency;

B. abstain completely from the use of alcohol;

C. provide authorization, through appropriate written consent forms, for disclosure of evaluative reports,

summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for DOCTOR DAVIS' chemical dependency or related conditions, or for purposes of complying with the CONSENT AGREEMENT, whether such treatment or evaluation occurred before or after the effective date of this CONSENT AGREEMENT. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute. DOCTOR DAVIS further agrees to provide the BOARD written consent permitting any treatment provider from whom he obtains treatment to notify the BOARD in the event he fails to agree or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this CONSENT AGREEMENT;

II. DOCTOR DAVIS shall immediately surrender his United States Drug Enforcement Administration certificate.

III. The BOARD shall not consider reinstatement of DOCTOR DAVIS' certificate to practice medicine and surgery unless and until all of the following conditions are met:

A. DOCTOR DAVIS shall submit an application for reinstatement, accompanied by appropriate fees, if any;

B. DOCTOR DAVIS 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 shall not be limited to, the following:

i. Certification from a provider approved under Section 4731.25 of the Revised Code that DOCTOR DAVIS has successfully completed any required inpatient treatment;

ii. Evidence of continuing full compliance with an aftercare contract or consent agreement;

iii. Two written reports indicating DOCTOR DAVIS' ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the BOARD for making such assessments and shall describe the basis for this determination.

C. In the event that DOCTOR DAVIS 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 DOCTOR DAVIS' fitness to resume practice.

IV. Upon reinstatement, DOCTOR DAVIS' certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a minimum of five (5) years:

A. DOCTOR DAVIS shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio, and all terms of probation imposed by the Court of Common Pleas for Franklin County, Ohio, in criminal case number 95CR-5397.

B. DOCTOR DAVIS 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 these PROBATIONARY TERMS become 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 DAVIS 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 DAVIS written notification of scheduled appearances, it is DOCTOR DAVIS' 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 DAVIS shall immediately submit to the BOARD a written request to be notified of his next scheduled appearance.

D. In the event that DOCTOR DAVIS should leave Ohio for three (3) continuous months, or reside or practice outside the State, DOCTOR DAVIS 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 DAVIS 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.

F. DOCTOR DAVIS shall be ineligible to hold, and shall not apply for, registration with the Drug Enforcement Administration to prescribe, dispense, or administer controlled substances without prior BOARD approval.

G. DOCTOR DAVIS shall not prescribe, administer, dispense, order, write orders for, give verbal orders for, or possess (except as allowed under Paragraph H below) any controlled substances as defined by State or Federal law.

H. DOCTOR DAVIS shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of DOCTOR DAVIS' history of chemical dependency.

I. DOCTOR DAVIS shall abstain completely from the use of alcohol.

J. DOCTOR DAVIS shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the BOARD. DOCTOR DAVIS shall ensure that all screening reports are forwarded directly to the BOARD on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

Within thirty (30) days following the reinstatement of his license, DOCTOR DAVIS shall submit to the BOARD for its prior approval the name of a supervising physician to whom DOCTOR DAVIS shall submit the required urine specimens. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the BOARD of any positive screening results.

DOCTOR DAVIS shall ensure that the supervising physician provides quarterly reports to the BOARD, on forms approved or provided by the BOARD, verifying whether all urine screens have been conducted in compliance with this CONSENT AGREEMENT, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to so serve, DOCTOR DAVIS must immediately notify the BOARD in writing, and make arrangements acceptable to the BOARD for another supervising physician as soon as practicable. DOCTOR DAVIS shall further ensure that the previously designated supervising physician also notifies the BOARD directly of the inability to continue to serve and the reasons therefore.

All screening reports and supervising physician reports required under this paragraph must be received in the BOARD's offices no later than the due date for DOCTOR DAVIS' quarterly declaration. It is DOCTOR DAVIS' responsibility to ensure that reports are timely submitted.

K. The BOARD retains the right to require, and DOCTOR DAVIS agrees to submit, blood or urine specimens for analysis upon request and without prior notice. DOCTOR DAVIS' refusal to submit a blood or urine specimen upon request of the BOARD shall result in a minimum of one year of actual license suspension.

L. Within thirty (30) days following the reinstatement of his license, DOCTOR DAVIS shall submit for the BOARD's prior approval the name of a monitoring physician, who shall review DOCTOR DAVIS' patient charts and shall submit a written report of such review to the BOARD on a quarterly basis. Such chart review may be done on a random basis, with the frequency and

number of charts reviewed to be determined by the BOARD. It shall be DOCTOR DAVIS' responsibility to ensure that the monitoring physician's quarterly reports are submitted to the BOARD on a timely basis.

Further, the monitoring physician shall otherwise monitor DOCTOR DAVIS and provide the BOARD with quarterly reports on the doctor's progress and status. DOCTOR DAVIS shall ensure that such reports are forwarded to the BOARD on a quarterly basis. In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, DOCTOR DAVIS must immediately so notify the BOARD in writing, and make arrangements acceptable to the BOARD for another monitoring physician as soon as practicable. DOCTOR DAVIS shall further ensure that the previously designated monitoring physician also notifies the BOARD directly of the inability to continue to serve and the reasons therefore.

All monitoring physician reports required under this paragraph must be received in the BOARD's offices no later than the due date for DOCTOR DAVIS' quarterly declaration. It is DOCTOR DAVIS' responsibility to ensure that reports are timely submitted.

M. Within thirty (30) days following the reinstatement of his license, DOCTOR DAVIS shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., or Caduceus, or any other program approved in advance by the BOARD specifically for DOCTOR DAVIS no less than three (3) times per week. Substitution of any specific program must receive prior BOARD approval.

DOCTOR DAVIS shall submit with each quarterly declaration required under Paragraph IV. B. of this CONSENT AGREEMENT acceptable documentary evidence of continuing compliance with this program.

N. DOCTOR DAVIS shall obtain the approval of the BOARD for any medical practice or employment related to the health care fields. The BOARD shall consider, among other factors, the adequacy and continuity of supervision and the feasibility of restricted access to controlled substances, which will ensure the protection of the public, prior to approval or disapproval of the proposed employment.

O. DOCTOR DAVIS shall contact an appropriate impaired physicians committee, approved by the BOARD, to arrange for assistance in recovery or aftercare.

P. DOCTOR DAVIS shall maintain continued compliance with the terms of the aftercare contract entered into with his treatment provider, provided, that where terms of the aftercare contract conflict with terms of this AGREEMENT, the terms of this AGREEMENT shall control.

Q. DOCTOR DAVIS shall provide continuing authorization, through appropriate written consent forms, for disclosure by his treatment provider to the BOARD, to treating and monitoring physicians, and to others involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations.

R. DOCTOR DAVIS 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 DAVIS 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.

S. DOCTOR DAVIS agrees that if, without prior permission from the BOARD, he fails to submit to random screenings for drugs and alcohol at least as frequently as required by Paragraph IV.J., of this CONSENT AGREEMENT, he shall cease practicing immediately upon receipt from the BOARD of notice of the violation and shall refrain from practicing for thirty (30) days for the first instance of a single missed screen. Practice during this time period shall be considered unlicensed practice in violation of Section 4731.41 of the Revised Code.

T. DOCTOR DAVIS agrees that if he fails to participate in an alcohol and drug rehabilitation program at least as frequently as required by Paragraph IV.M. of this CONSENT AGREEMENT, he shall cease practicing immediately upon receipt from the BOARD of notice of the violation and shall refrain from practicing for fifteen (15) days following a first missed meeting. Practice during this time period shall be considered unlicensed practice in violation of Section 4731.41 of the Revised Code.

V. Within thirty (30) days of the effective date of this AGREEMENT, DOCTOR DAVIS 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 DAVIS 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.

VI. Within thirty (30) days of the effective date of this AGREEMENT, DOCTOR DAVIS 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 DAVIS 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 DAVIS shall provide this BOARD with a copy of the return receipt as proof of notification within thirty (30) days of receiving that return receipt.

VII. Any violation of paragraphs I.A., I.B., IV.H., or IV.I., of this AGREEMENT shall constitute grounds to revoke or permanently revoke DOCTOR DAVIS' certificate. DOCTOR DAVIS agrees that the minimum discipline for such a violation shall include actual license suspension. This paragraph does not limit the Board's authority to suspend, revoke or permanently revoke DOCTOR DAVIS' certificate based on other violations of this CONSENT AGREEMENT.

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 DAVIS 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.

If the Secretary and Supervising Member of the BOARD determine that there is clear and convincing evidence that DOCTOR DAVIS has violated any term, condition or limitation of this CONSENT AGREEMENT, DOCTOR DAVIS agrees that the violation, as alleged, also constitutes clear and convincing evidence that his continued practice presents a danger of immediate and serious harm to the public for the purposes of initiating a summary suspension pursuant to Section 4731.22(D), Ohio Revised Code.

DOCTOR DAVIS 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 DAVIS 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.

John M. Davis
JOHN M. DAVIS, M.D.

June 4, 1996
DATE

THOMAS E. GRETTER, M.D.
Secretary

6/12/96
DATE

Attorney for Dr. Davis

6/4/96
DATE

RAYMOND J. ALBERT
Supervising Member

6/12/96
DATE

Patrick W Beatty by
PATRICK W. BEATTY
Assistant Attorney General

6/12/96
DATE

patrick\davis.ag2

STATE MEDICAL BOARD OF OHIO
77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

**NOTICE OF IMMEDIATE SUSPENSION**
**AND**
**OPPORTUNITY FOR HEARING**

April 17, 1996

John M. Davis, M.D.
4435 Shire Creek Ct.
Hilliard, OH 43026

Dear Doctor Davis:

In accordance with Sections 2929.17 and/or 3719.12(B), Ohio Revised Code, the Office of the Prosecuting Attorney of Franklin County, Ohio, reported that on or about February 8, 1996, the Franklin County Court of Common Pleas found you eligible for Treatment in Lieu of Conviction for a violation of Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents, pursuant to Section 2951.041 of the Ohio Revised Code.

Therefore, pursuant to Section 3719.121(C), Ohio Revised Code, you are hereby notified that your license to practice medicine and surgery in the State of Ohio is immediately suspended. Continued practice after this suspension shall be considered practicing medicine without a certificate in violation of Section 4731.41, Ohio Revised Code.

Furthermore, 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) On or about February 8, 1996, in the Franklin County Court of Common Pleas, you pleaded guilty to one (1) felony count of Illegal Processing of Drug Documents in violation of Section 2925.23, Ohio Revised Code, and were granted Treatment in Lieu of Conviction pursuant to Section 2951.041, Ohio Revised Code.

(2) Moreover, in order to grant your request for Treatment in Lieu of Conviction, the Court was required by statute to find that your "drug dependence was a factor leading to the criminal activity with which (you were) charged, and rehabilitation through treatment would substantially reduce the likelihood of criminal activity."

The acts, conduct, and/or omissions underlying this judicial finding of Eligibility for Treatment in Lieu of Conviction for a violation of Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents, as alleged in paragraph (1) above, individually and/or collectively constitute "(c)ommission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act was committed," as that clause is used in

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Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of a Drug Document.

Further, the acts, conduct, and/or omissions underlying this judicial finding of Eligibility for Treatment in Lieu of Conviction for a violation of Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents, as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute "(i)mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

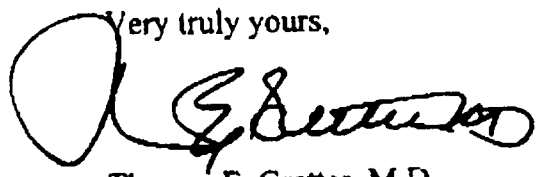
Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing 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,



Thomas E. Gretter, M.D.
Secretary

TEG/bjs
Enclosures
CERTIFIED MAIL #P 152 983 733
RETURN RECEIPT REQUESTED

cc: Douglas E. Graff, Esq.
CERTIFIED MAIL #P 152 983 406
RETURN RECEIPT REQUESTED