

**CONSENT AGREEMENT
BETWEEN
MICHAEL A. CLEMENS, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO**

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

MICHAEL A. CLEMENS, 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)(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 enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Sections 4731.22(B)(10), (22) and (26), 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. DOCTOR CLEMENS is licensed to practice medicine and surgery in the State of Ohio.
- D. MICHAEL A. CLEMENS, M.D. ADMITS that on or about September 13, 1990 he entered into a Consent Order with the Virginia Board of Medicine which resulted in a stayed suspension, indefinite probation, and terms and conditions being placed upon his license to practice medicine in the Commonwealth of Virginia. This Consent Order was based on DOCTOR CLEMENS' drug addiction and resulting hospitalization, and at least 21 instances where DOCTOR CLEMENS diverted Fentanyl or Alfentanyl during operative procedures. A copy of the aforementioned Consent Order is attached hereto and fully incorporated herein.

WHEREFORE, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, MICHAEL A. CLEMENS, 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 CLEMENS shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio;

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2. DOCTOR CLEMENS shall submit quarterly declarations under penalty of perjury stating whether there has been compliance with all the conditions of this Consent Agreement;
3. DOCTOR CLEMENS shall comply completely with the terms and conditions of the Consent Order issued to him by the Virginia Board of Medicine on September 13, 1990;
4. DOCTOR CLEMENS shall give prior notification to the BOARD in writing if he plans to practice medicine or surgery in Ohio, or plans to reside in Ohio at any time during which the Virginia Consent Order remains in effect;
5. DOCTOR CLEMENS may be placed under such terms and conditions by the BOARD as it deems appropriate, should he relocate to Ohio at any time during which the Virginia Consent Order remains in effect;
6. This CONSENT AGREEMENT will remain in effect until DOCTOR CLEMENS has satisfactorily complied with the terms and conditions of, and been fully released from, the Consent Order entered into with the Virginia Board of Medicine;
7. DOCTOR CLEMENS shall submit to the Board copies of all reports required by the Virginia Consent Order and copies of any requests for full restoration of his license to practice medicine in Virginia at the time such documents are submitted to the Virginia Board;
8. Upon successful completion of the probationary period with the Virginia Board of Medicine, DOCTOR CLEMENS shall submit documentation acceptable to the BOARD, of his satisfactory compliance with the terms and conditions of the Consent Order;
9. DOCTOR CLEMENS shall notify the BOARD in writing should he fail to satisfactorily comply with the terms and conditions of the Consent Order entered into with the Virginia Board of Medicine;
10. Upon submitting full documentation of restoration of his license to practice medicine and release from probation by the Virginia Board of Medicine, DOCTOR CLEMENS may petition the State Medical Board of Ohio for full restoration of his license to practice medicine and surgery.

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 of THE STATE MEDICAL BOARD OF OHIO, DOCTOR CLEMENS 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.

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DOCTOR CLEMENS 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 CLEMENS 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, 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.

Michael A. Clemens MD
MICHAEL A. CLEMENS, M.D.

3/20/92
DATE

Henry G. Cramblett
HENRY G. CRAMBLETT, M.D.
Secretary

3/31/92
DATE

Timothy S. Jost
TIMOTHY S. JOST, ESQ.
Supervising Member

3/30/92
DATE

Odella Lampkin
ODELLA LAMPKIN, ESQ.
Assistant Attorney General

4/7/92
DATE

92 MAR 30 AM 11:32
STATE MEDICAL BOARD

STATE MEDICAL BOARD
91 JUL 22 PM 1:25

VIRGINIA:

BEFORE THE BOARD OF MEDICINE

IN RE: MICHAEL A. CLEMENS, M.D.

CONSENT ORDER

Pursuant to Sections 9-6.14:11 and 54.1-2919 of the Code of Virginia (1950), as amended ("Code"), informal conferences were held with Michael A. Clemens, M.D. on January 11, 1990 and August 16, 1990 in Fredericksburg, Virginia. Members of the Virginia Board of Medicine ("Board") serving on the informal conference committees ("Committee") were: Franklin J. Pepper, M.D.; Tony C. Butera, D.P.M.; Catherine S. Casey, M.D.; and Charles H. Crowder, Jr., M.D. Dr. Clemens was present and, on August 16, 1990, was represented by counsel, Warren G. Stambaugh, Esquire. The Board was represented by Frank W. Pedrotty, Assistant Attorney General. The purpose of the informal conferences was to inquire into allegations that Dr. Clemens may have violated certain laws governing the practice of medicine in Virginia, as set forth in the Board's notice of informal conference dated December 12, 1989.

FINDINGS OF FACT

Now having considered the evidence presented, the Committee makes the following findings of fact:

1. On divers occasions between May 22, 1989 and June 13, 1989, while on duty as an anesthesiologist at Loudoun Hospital Center, Leesburg, Virginia, Dr. Clemens diverted for his own personal and unauthorized use certain Schedule II controlled substances by altering anesthesia records to falsely indicate administration of narcotics in at least 21 operative procedures, to wit:

- a. On May 22, 1989 Dr. Clemens diverted 8 cc. of Fentanyl during an operative procedure on Patient A;
- b. On May 23, 1989 Dr. Clemens diverted 7.1 cc. of Alfentanyl during an operative procedure on Patient B;
- c. On May 23, 1989 Dr. Clemens diverted 5 cc. of Fentanyl during an operative procedure on Patient C;
- d. On May 24, 1989 Dr. Clemens diverted 2 cc. of Fentanyl during an operative procedure on Patient D;
- e. On May 30, 1989 Dr. Clemens diverted 14 cc. of Fentanyl during an operative procedure on Patient E;
- f. On June 2, 1989 Dr. Clemens diverted 3 cc. of Fentanyl during an operative procedure on Patient F;
- g. On June 4, 1989 Dr. Clemens diverted 4 cc. of Fentanyl during an operative procedure on Patient G;
- h. On June 4, 1989 Dr. Clemens diverted 4 cc. of Fentanyl during an operative procedure on Patient H;
- i. On June 5, 1989 Dr. Clemens diverted 4 cc. of Fentanyl during an operative procedure on Patient I;
- j. On June 5, 1989 Dr. Clemens diverted 4 cc. of Fentanyl during an operative procedure on Patient J;
- k. On June 6, 1989 Dr. Clemens diverted 10 cc. of Fentanyl during an operative procedure on Patient K;
- l. On June 8, 1989 Dr. Clemens diverted 4 cc. of Fentanyl during an operative procedure on Patient L;
- m. On June 9, 1989 Dr. Clemens diverted 6 cc. of Fentanyl during an operative procedure on Patient M;
- n. On June 10, 1989 Dr. Clemens diverted 70 cc. of Fentanyl during an operative procedure on Patient N;
- o. On June 13, 1989 Dr. Clemens diverted 5 cc. of Fentanyl during an operative procedure on Patient O;
- p. On June 13, 1989 Dr. Clemens diverted 5 cc. of Fentanyl during an operative procedure on Patient P;
- q. On June 13, 1989 Dr. Clemens diverted 6 cc. of Fentanyl during an operative procedure on Patient Q;
- r. On June 13, 1989 Dr. Clemens diverted 4 cc. of Fentanyl during an operative procedure on Patient R;
- s. On June 13, 1989 Dr. Clemens diverted 8 cc. of Alfentanyl during an operative procedure on Patient S;

- t. On June 13, 1989 Dr. Clemens diverted 10 cc. of Fentanyl during an operative procedure on Patient T; and
- u. On June 13, 1989 Dr. Clemens diverted 5 cc. of Fentanyl during an operative procedure on Patient U.

2. Dr. Clemens may be impaired to practice medicine with reasonable skill and safety as evidenced by his excessive, unauthorized use of Schedule II controlled substances and his June 1989 hospitalization at Prima Vera Treatment Center, Culpeper, Virginia for substance abuse.

CONCLUSIONS OF LAW

The Committee concludes that Dr. Clemens has violated Section 54.1-2915.A(1), (2) and (3), as further defined in Section 54.1-2914.A(3), (7), (9), (10), (11) and (14) of the Code.

CONSENT

I, Michael A. Clemens, M.D., by affixing my signature hereto, acknowledge that:

1. I have been specifically advised to seek the advice of counsel prior to signing this document;
2. I am aware that without my consent, no legal action can be taken against me, except pursuant to the Virginia Administrative Process Act, Section 9-6.14:1 et seq., of the Code;
3. I have the following rights, among others: the right to a formal fact finding hearing before the Board, to reasonable notice of said hearing, to representation by counsel, and the right to cross-examine witnesses against me;
4. I waive all such rights to a formal hearing;
5. I admit to the foregoing findings of fact; and
6. I consent to the entry of this Consent Order affecting my license to practice medicine in the Commonwealth of Virginia and I understand this Consent Order constitutes the administrative action taken by the Board with regard to these findings of fact.

ORDER

WHEREFORE, it is hereby ORDERED that the license of Michael A. Clemens, M.D. to practice medicine in the Commonwealth of Virginia be SUSPENDED, and that said suspension be immediately STAYED and his license placed on INDEFINITE PROBATION upon the following terms and conditions:

1. Dr. Clemens shall comply with and successfully complete his September 29, 1989 aftercare contract with the Medical Society of Virginia's Physicians' Health and Effectiveness Committee.

2. Dr. Clemens shall not prescribe, administer or dispense any Schedule II controlled substances. He shall notify the federal Drug Enforcement Administration and the Virginia Board of Pharmacy of said restriction. Dr. Clemens shall not reapply for Schedule II controlled substances prescribing privileges without the express authorization of the Board.

3. Dr. Clemens shall practice medicine only in a supervised clinical setting with at least one other physician associate available at all times for consultation.

4. Dr. Clemens shall earn a minimum of fifty (50) credit hours of category one continuing medical education ("CME") annually. During the first year of Dr. Clemens' stayed suspension at least twenty-five (25) credit hours of said CME shall be in pharmacology and/or addictionology. All CME shall be approved in advance of registration by the Board.

5. Within one year of the entry of this Consent Order, Dr. Clemens shall be interviewed by the psychiatric consultants for the Board who shall provide a detailed and informative report of findings to the Board. Further, Dr. Clemens shall sign an authorization for release of medical information providing for unrestricted communication between the Board, psychiatric consultants for the Board and other treatment providers.

6. In one year and upon receipt of the report of the psychiatric consultants for the Board, Dr. Clemens shall be noticed to appear before the informal conference committee. Said Committee shall provide the ongoing

monitoring of Dr. Clemens' stayed suspension, determine the frequency of further appearances by Dr. Clemens before it, and shall serve as the instrument of the Board responsible for approving and reviewing all information relative to the terms and conditions of this Consent Order.

7. Dr. Clemens shall maintain a course of conduct commensurate with the requirements of Chapter 29, Title 54.1 of the Code and all laws of the Commonwealth.

Violation of this Consent Order shall constitute grounds for the revocation of the license of Michael A. Clemens, M.D. In the event Dr. Clemens violates any of the terms and conditions of this Consent Order, a formal administrative hearing shall be convened to determine whether the license of Michael A. Clemens, M.D. should be revoked.

Pursuant to Section 9-6.14:14 of the Code, the signed original of this Consent Order shall remain in the custody of the Department of Health Professions as a public record and shall be made available for public inspection and copying upon request.

FOR THE BOARD:

Hilary H. Connor

Hilary H. Connor, M.D.
Executive Director
Virginia Board of Medicine

ENTERED: 9-13-90

SEEN AND AGREED TO:

Michael A. Clemens
Michael A. Clemens, M.D.

STATE MEDICAL BOARD
91 JUL 22 PM 1:26

COMMONWEALTH OF VIRGINIA

COUNTY/CITY OF Fairfax, to wit:

Subscribed and sworn to before me, the undersigned Notary Public, in and for the Commonwealth of Virginia at large, this 12th day of September, 1990 by Michael A. Clemens, M.D.

Teri A. Carr

Notary Public

My commission expires: Commission Expires February 28, 1994

RECEIVED: September 14, 1990

Bernard L. Henderson, Jr.

Bernard L. Henderson, Jr., Director
Department of Health Professions

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