

OHIO STATE MEDICAL BOARD
FEB 28 2000

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

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

ROBERT A. MCNUTT, M.D., 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 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 Section 4731.22(B)(26), Ohio Revised Code, as set forth in Paragraph(s) D, E, F, and G below, 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. ROBERT A. MCNUTT, M.D., is licensed to practice medicine and surgery in the State of Ohio.
- D. ROBERT A. MCNUTT, M.D., STATES that he is not currently licensed to practice medicine and surgery in any other state or jurisdiction. DOCTOR MCNUTT further STATES that he has been licensed to

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practice medicine and surgery in both Texas and Michigan; however, such licenses are inactive at this time.

- E. DOCTOR MCNUTT ADMITS that he suffers from alcoholism and further ADMITS that he has a history of depression for which he has received counseling.

DOCTOR MCNUTT further ADMITS that he was initially treated for alcoholism at the Marworth Chemical Dependency Treatment Center in Waverly, Pennsylvania, from January 23, 1989, to February 20, 1989. DOCTOR MCNUTT further ADMITS that the recommendations of the Marworth staff included that following his discharge he participate for a minimum of 90 days in an aftercare program with the Amarillo Council on Alcoholism and Drug Abuse in Amarillo, Texas, and that he participated in such aftercare following his discharge until May 1989.

DOCTOR MCNUTT further ADMITS that he relapsed on alcohol in or about 1995 and continued to abuse alcohol until in or about April 1999.

DOCTOR MCNUTT further ADMITS that on or about April 12, 1999, he was admitted to St. John West Shore Hospital in Westlake, Ohio, where he was found to be suffering from acute adjustment disorder and depression. DOCTOR MCNUTT further ADMITS that during this hospitalization he minimized his alcohol use history.

DOCTOR MCNUTT further ADMITS that on or about April 14, 1999, he was transferred (at his request) to the Cleveland Clinic Foundation (hereinafter "CCF") in Cleveland, Ohio, for treatment related to adjustment disorder and depression. DOCTOR MCNUTT further ADMITS that he was found at that time to again require treatment for alcoholism, and that he was transferred to the CCF Alcohol and Drug Recovery Center Inpatient Unit for such treatment, as well as alcohol detoxification and further evaluation of reactive depression. DOCTOR MCNUTT further ADMITS that he thereafter remained an inpatient until he was transferred to the CCF's day care treatment program on or about April 23, 1999. DOCTOR MCNUTT further ADMITS that following his completion of the day care treatment program on or about April 30, 1999, he resided at the Oxford House, a three-quarter way house, until in or about late June 1999.

DOCTOR MCNUTT further ADMITS that since June 30, 1999, he has regularly attended two hour individual therapy sessions with Susannah Perkinson, L.I.S.W., once every two weeks.

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- F. DOCTOR MCNUTT further ADMITS that he entered into a continuing care treatment contract with the CCF on or about April 29, 1999, and an advocacy contract with the Ohio Physicians Effectiveness Program (OPEP), on or about August 2, 1999, and further ADMITS that such contracts remain in effect to date.

DOCTOR MCNUTT STATES, and the BOARD ACKNOWLEDGES receipt of information to support, that he has remained fully compliant with his aftercare contract with the CCF and with his advocacy contract with OPEP.

DOCTOR MCNUTT further STATES that since April 1999 he has remained abstinent from the use of alcohol and medications not prescribed by a physician with knowledge of his history of chemical dependency and the disease of addiction. DOCTOR MCNUTT further STATES that he currently attends at least one Caduceus meeting and two A.A. meetings per week; that he continues monthly sessions with Dr. Collins for purposes of counseling, case management, and medication management, and that his current medication regime includes taking Serzone daily as prescribed by Dr. Collins; and that he attends a two hour individual therapy session with Ms. Perkinson once every two weeks.

- G. DOCTOR MCNUTT STATES, and the BOARD ACKNOWLEDGES, that Gregory Collins, M.D., of the CCF in Cleveland, Ohio, a BOARD approved treatment provider, and Robert Liebelt, M.D., of St. Thomas Hospital, in Akron, Ohio, a BOARD approved treatment provider, have provided written reports indicating that DOCTOR MCNUTT's ability to practice has been assessed and that he has been found capable of practicing medicine and surgery according to acceptable and prevailing standards of care, so long as certain treatment and monitoring requirements are in place.

In addition, DOCTOR MCNUTT STATES, and the BOARD ACKNOWLEDGES, that while at the CCF he underwent a neuropsychological examination by Gordon Chelune, Ph.D., ABPP-CN, on April 22, 1999. Following such examination, Dr. Chelune reported that he had observed "no significant neurocognitive deficits to suggest any long term adverse neuropsychological effects of the patient's longstanding history of alcohol use."

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AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, ROBERT A. MCNUTT, 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 MCNUTT shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio;
2. DOCTOR MCNUTT 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;
3. DOCTOR MCNUTT 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 MCNUTT written notification of scheduled appearances, it is DOCTOR MCNUTT'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 MCNUTT shall immediately submit to the BOARD a written request to be notified of his next scheduled appearance;

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

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MCNUTT 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;

5. In the event DOCTOR MCNUTT 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 the CONSENT AGREEMENT;

MONITORING OF REHABILITATION AND TREATMENT

Sobriety

6. DOCTOR MCNUTT 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 MCNUTT's history of chemical dependency;
7. DOCTOR MCNUTT shall abstain completely from the use of alcohol;

Drug and Alcohol Screens/Supervising Physician

8. DOCTOR MCNUTT shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the BOARD. DOCTOR MCNUTT 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 of the effective date of this CONSENT AGREEMENT, DOCTOR MCNUTT shall submit to the BOARD for its prior approval the name of a supervising physician to whom DOCTOR MCNUTT shall submit the required urine specimens. In approving an individual to serve in this capacity, the BOARD will give preference to a physician who practices in the same locale as DOCTOR MCNUTT. 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;

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DOCTOR MCNUTT 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 screenings 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 MCNUTT must immediately notify the BOARD in writing, and make arrangements acceptable to the BOARD for another supervising physician as soon as practicable. DOCTOR MCNUTT 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 MCNUTT's quarterly declaration. It is DOCTOR MCNUTT's responsibility to ensure that reports are timely submitted;

9. The BOARD retains the right to require, and DOCTOR MCNUTT agrees to submit, blood or urine specimens for analysis at DOCTOR MCNUTT's expense upon the BOARD's request and without prior notice. DOCTOR MCNUTT's 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;

Monitoring Physician

10. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR MCNUTT shall submit for the BOARD's prior approval the name of a monitoring physician, who shall review DOCTOR MCNUTT's patient charts and shall submit a written report of such review to the BOARD on a quarterly basis. In approving an individual to serve in this capacity, the BOARD will give preference to a physician who practices in the same locale as DOCTOR MCNUTT and who is engaged in the same or similar practice specialty. 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 MCNUTT's responsibility to ensure that the monitoring physician's quarterly reports are submitted to the BOARD on a timely basis;

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Further, the monitoring physician shall otherwise monitor DOCTOR MCNUTT and provide the BOARD with quarterly reports on the doctor's progress and status. DOCTOR MCNUTT 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 MCNUTT must immediately so notify the BOARD in writing, and make arrangements acceptable to the BOARD for another monitoring physician as soon as practicable. DOCTOR MCNUTT 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 MCNUTT's quarterly declaration. It is DOCTOR MCNUTT's responsibility to ensure that reports are timely submitted;

Rehabilitation Program

11. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR MCNUTT shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., or Caduceus, no less than three (3) times per week. Substitution of any other specific program must receive prior BOARD approval;

DOCTOR MCNUTT shall submit with each quarterly declaration required under Paragraph 2 of this CONSENT AGREEMENT acceptable documentary evidence of continuing compliance with this program;

12. DOCTOR MCNUTT shall continue to meet with Gregory Collins, M.D., on a monthly basis, or as otherwise directed by the BOARD, for purposes of case management, medication management, and counseling. In the event that Dr. Collins is unable or unwilling to continue in this role, DOCTOR MCNUTT must immediately so notify the BOARD in writing, and within thirty days of receiving notice that Dr. Collins is unable or unwilling to continue, DOCTOR MCNUTT shall submit to the BOARD for its prior approval the name and qualifications of another psychiatrist, with demonstrated knowledge of chemical dependency and related issues, of his choice. Upon approval by the BOARD, DOCTOR MCNUTT shall undergo and continue meeting with such psychiatrist on a monthly basis, or as otherwise directed by the BOARD, for purposes of case management, medication management, and counseling.

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DOCTOR MCNUTT shall comply with the recommended treatment plans, including, but not limited to, any recommended pharmacological treatment and any recommended counseling. DOCTOR MCNUTT shall ensure that reports are forwarded by the designated psychiatrist to the BOARD on a quarterly basis, or as otherwise directed by the BOARD. The reports shall contain information describing DOCTOR MCNUTT's current treatment plans, including, but not limited to, any recommended pharmacological treatment and any recommended counseling, and any changes that have been made to such plans since the prior report; DOCTOR MCNUTT's compliance with such plans; DOCTOR MCNUTT's mental status; and DOCTOR MCNUTT's progress in treatment. DOCTOR MCNUTT shall ensure that the designated psychiatrist immediately notifies the BOARD of his failure to comply with his recommended treatment plans. It is DOCTOR MCNUTT's responsibility to ensure that such quarterly reports are received in the BOARD's offices no later than the due date for DOCTOR MCNUTT's quarterly declaration;

13. DOCTOR MCNUTT shall continue individual therapy with Susannah Perkinson, L.I.S.W., at least once every two weeks, or as otherwise directed by the BOARD. In the event that Ms. Perkinson is unable or unwilling to continue providing such counseling and/or individual therapy, DOCTOR MCNUTT must immediately so notify the BOARD in writing, and within thirty days of receiving notice that Ms. Perkinson is unable or unwilling to continue, DOCTOR MCNUTT shall submit to the BOARD for its prior approval the name and qualifications of another qualified mental health professional of his choice. Upon approval by the BOARD, DOCTOR MCNUTT shall undergo and continue counseling and/or individual therapy at least once every two weeks, or as otherwise directed by the BOARD.

DOCTOR MCNUTT shall comply with his treatment plan. DOCTOR MCNUTT shall ensure that reports are forwarded by the mental health professional to the BOARD on a quarterly basis, or as otherwise directed by the BOARD. The reports shall contain information describing DOCTOR MCNUTT's current treatment plan and any changes that have been made to the treatment plan since the prior report; DOCTOR MCNUTT's compliance with his treatment plan; DOCTOR MCNUTT's mental status; and DOCTOR MCNUTT's progress in treatment. DOCTOR MCNUTT shall ensure that the mental health professional immediately notifies the BOARD of his failure to comply with his treatment plan. It is DOCTOR MCNUTT's responsibility to ensure that

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such quarterly reports are received in the BOARD's offices no later than the due date for DOCTOR MCNUTT's quarterly declaration;

Aftercare

14. DOCTOR MCNUTT shall maintain continued compliance with the terms of the advocacy contract entered into with the Ohio Physicians Effectiveness Program and with any continuing care or aftercare contracts entered into with his treatment provider, provided that, where terms of the advocacy contract, continuing care contract, or aftercare contract conflict with terms of this CONSENT AGREEMENT, the terms of this CONSENT AGREEMENT shall control;

Releases

15. DOCTOR MCNUTT 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;

Required Reporting by Licensee

16. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR MCNUTT shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, DOCTOR MCNUTT shall 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;
17. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR MCNUTT 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 any professional license. DOCTOR MCNUTT 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 any professional license or reinstatement of any professional license. Further, DOCTOR MCNUTT shall provide this BOARD with a copy of the return receipt as

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proof of notification within thirty (30) days of receiving that return receipt;

VIOLATION OF PROBATIONARY TERMS

18. Any violation of Paragraph 6 or Paragraph 7 of this CONSENT AGREEMENT shall constitute grounds to revoke or permanently revoke DOCTOR MCNUTT's certificate. DOCTOR MCNUTT 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 MCNUTT's certificate based on other violations of this CONSENT AGREEMENT;
19. DOCTOR MCNUTT AGREES that if any declaration or report required by this CONSENT AGREEMENT is not received in the BOARD's offices on or before its due date, DOCTOR MCNUTT 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;
20. DOCTOR MCNUTT 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 8 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; and,
21. DOCTOR MCNUTT AGREES that if he fails to participate in an alcohol and drug rehabilitation program at least as frequently as required by Paragraph 11 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.

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FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the BOARD, DOCTOR MCNUTT 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.

If the Secretary and Supervising Member of the BOARD determine that there is clear and convincing evidence that DOCTOR MCNUTT has violated any term, condition or limitation of this CONSENT AGREEMENT, DOCTOR MCNUTT 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 purposes of initiating a summary suspension pursuant to Section 4731.22(G), Ohio Revised Code.

DURATION/MODIFICATION OF TERMS

DOCTOR MCNUTT shall not request termination of this CONSENT AGREEMENT for a minimum of five (5) years. In addition, DOCTOR MCNUTT shall not request modification to the probationary terms, limitations and conditions contained herein for at least one (1) year. Otherwise, the above described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties.

ACKNOWLEDGMENTS/LIABILITY RELEASE

DOCTOR MCNUTT 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.

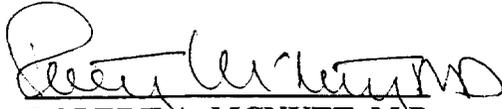
Any action initiated by the BOARD based on alleged violations of this CONSENT AGREEMENT shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

DOCTOR MCNUTT 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 that it shall become effective upon the last date of signature below.



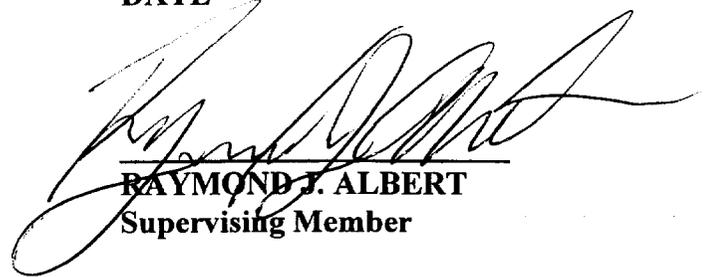
ROBERT A. MCNUTT, M.D.

2/24/00
DATE



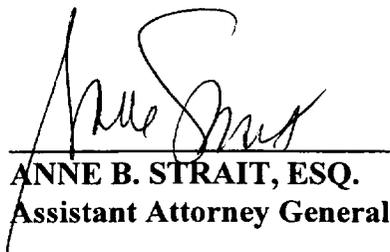
ANAND G. GARG, M.D.
Secretary

3/8/00
DATE



RAYMOND J. ALBERT
Supervising Member

3/8/00
DATE



ANNE B. STRAIT, ESQ.
Assistant Attorney General

3/8/00
DATE