

STEP II
CONSENT AGREEMENT
BETWEEN
BRETON LEE MORGAN, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO

This Consent Agreement is entered into by and between Breton Lee Morgan, M.D., [Dr. Morgan], and the State Medical Board of Ohio [Board], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

Dr. Morgan 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 Board 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 a violation of Section 4731.22(B)(3), Ohio Revised Code, “[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,” and/or Section 4731.22(B)(9), Ohio Revised Code, “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony,” and/or Section 4731.22(B)(22), Ohio Revised Code, “[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” and/or Section 4731.22(B)(26), Ohio Revised Code, “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 Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Sections 4731.22(B)(3), (B)(22) and (26), Ohio Revised Code; and Section 4731.22(B)(9), Ohio Revised Code, to wit: 21 U.S.C. Section 843(a)(3), Obtaining a Schedule III Controlled Substance by Fraud; as set forth in Paragraphs E through K of the December 12, 2007 Step I Consent Agreement Between Breton Lee Morgan, M.D., and the State Medical Board of Ohio [December 2007 Step I Consent Agreement], a copy of which is attached hereto and fully incorporated herein, as well as set forth in Paragraphs E through J, below. The Board 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. Such express reservation includes, but is not limited to, violations based on any methods used by Dr. Morgan to obtain controlled substances or drugs for self-use other than as particularly described herein, criminal acts other than as specifically referenced herein, acts involving patient care or otherwise involving others, and/or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, any criminal offense(s) other than those specifically described herein.
- C. Dr. Morgan is seeking restoration of his certificate to practice medicine and surgery, license number 35.066241, which became inactive for nonrenewal on July 1, 2006, as thereafter was indefinitely suspended, but not less than 270 days, pursuant to the December 2007 Step I Consent Agreement.
- D. Dr. Morgan states that he is also licensed to practice medicine and surgery in the State of West Virginia, however this license is subject to probationary terms and conditions as detailed in Paragraph G below.
- E. Dr. Morgan admits that on or about March 10, 2006, he entered inpatient treatment for diagnoses including opioid dependence at Talbott Recovery Campus [Talbott], a Board-approved treatment provider in Atlanta, Georgia, and that he was discharged on or about June 16, 2006, treatment complete. Dr. Morgan further states and the Board acknowledges receipt of information to support that he has remained compliant with the terms of his Continuing Care Plan with Talbott, which is effective from on or about June 16, 2006, to June 16, 2011.
- F. Dr. Morgan states and the Board acknowledges that Richard Whitney, M.D., Medical Director of Shepherd Hill, a Board-approved treatment provider in Newark, Ohio, and David Goldberg, D.O., Medical Director of Greene Memorial Hospital, a Board-approved treatment provider in Xenia, Ohio, provided written reports indicating that Dr. Morgan'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.

- G. Dr. Morgan further admits that on or about July 28, 2008, he entered into a Consent Order with the West Virginia Board of Medicine [West Virginia Board] based upon his chemical dependency and his plea of guilty in the United States District Court, Southern District of West Virginia, at Huntington, to one count of obtaining a Schedule III Controlled Substance by Fraud, 21 U.S.C. 843(a)(3), in Case Number 3:06-00194, *United States of America v. Breton Lee Morgan, M.D.* The order granted to Dr. Morgan an active license, which was immediately revoked and stayed the revocation. For a five year period, Dr. Morgan's license has been placed on probation, which subjects his license to terms and conditions, including that he may not practice more than a total of forty hours in any seven day week, including on-call time, and including any practice of medicine in any other state. A copy of the West Virginia Board's 2008 Order is attached hereto and fully incorporated herein.
- H. Dr. Morgan states and the Board acknowledges that Dr. Morgan had to pass the Special Purpose Examination [SPEX] before the Board would consider his application for restoration of his license to practice medicine and surgery in the State of Ohio, pursuant to the requirements of paragraph 11 of the December 2007 Step I Consent Agreement. Dr. Morgan states and the Board acknowledges receipt of information to support that Dr. Morgan took the SPEX on December 4, 2007, and was thereafter notified of having received a passing score.
- I. Dr. Morgan states and the Board acknowledges receipt of information to support that Dr. Morgan is in compliance with all the Continuing Medical Education requirements for re-licensure, as contained in Section 4731.281, Ohio Revised Code.
- J. Dr. Morgan states and the Board acknowledges receipt of information to support that Dr. Morgan has fulfilled the conditions for reinstatement of his certificate to practice medicine and surgery in the State of Ohio, as established in the above-referenced December 2007 Step I Consent Agreement between Dr. Morgan and the Board.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, the certificate of Dr. Morgan to practice medicine and surgery in the State of Ohio shall be RESTORED, and Dr. Morgan knowingly and voluntarily agrees with the Board to the following PROBATIONARY terms, conditions and limitations:

1. Dr. Morgan shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
2. Dr. Morgan shall submit quarterly declarations under penalty of Board disciplinary action and/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 date his quarterly declaration would have been

due pursuant to his December 2007 Step I Consent Agreement with the Board, or as otherwise requested by the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. Dr. Morgan shall appear in person for an interview before the full Board or its designated representative. The first such appearance shall take place on the date his appearance would have been scheduled pursuant to his December 2007 Step I Consent Agreement with the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested 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.
4. Dr. Morgan shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed. Further, the Secretary and Supervising Member of the Board shall have the discretion to grant a waiver of part or all of the probationary terms set forth in this Consent Agreement for occasional periods of absence of fourteen days or less. In the event that Dr. Morgan resides and/or is employed at a location that is within fifty miles of the geographic border of Ohio and any of its contiguous states, Dr. Morgan may travel between Ohio and that contiguous state without seeking prior approval of the Secretary or Supervising Member provided that Dr. Morgan is able to otherwise maintain full compliance with all other terms, conditions and limitations set forth in this Consent Agreement.
5. In the event Dr. Morgan 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 this Consent Agreement.

MONITORING OF REHABILITATION AND TREATMENT

Drug Associated Restrictions

6. Dr. Morgan shall keep a log of all controlled substances prescribed. Such log shall be submitted, in the format approved by the Board, on the date upon which Dr. Morgan's quarterly declaration is due, or as otherwise directed by the Board. Further, Dr. Morgan shall make his patient records with regard to such prescribing available for review by an agent of the Board immediately upon request.
7. Dr. Morgan shall not, without prior Board approval, administer, personally furnish, or possess (except as allowed under Paragraph 8 below) any controlled substances as

defined by state or federal law. In the event that the Board agrees at a future date to modify this Consent Agreement to allow Dr. Morgan to administer or personally furnish controlled substances, Dr. Morgan shall keep a log of all controlled substances prescribed, administered or personally furnished. Such log shall be submitted in the format approved by the Board and shall be submitted to the Board no later than the date upon which Dr. Morgan's quarterly declaration is due, or as otherwise directed by the Board. Further, Dr. Morgan shall make his patient records with regard to such prescribing, administering, or personally furnishing available for review by an agent of the Board immediately upon request.

Sobriety

8. Dr. Morgan shall abstain completely from the personal use or personal possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. Morgan's history of chemical dependency. Further, in the event that Dr. Morgan is so prescribed, dispensed or administered any controlled substance, carisoprodol, or tramadol, Dr. Morgan shall notify the Board in writing within seven days, providing the Board with the identity of the prescriber; the name of the drug Dr. Morgan received; the medical purpose for which he received said drug; the date such drug was initially received; and the dosage, amount, number of refills, and directions for use. Further, within thirty days of the date said drug is so prescribed, dispensed, or administered to him, Dr. Morgan shall provide the Board with either a copy of the written prescription or other written verification from the prescriber, including the dosage, amount, number of refills, and directions for use.
9. Dr. Morgan shall abstain completely from the use of alcohol.

Drug and Alcohol Screens/Drug Testing Facility and Collection Site

10. Dr. Morgan shall submit to random urine screenings for drugs and alcohol at least two times per month, or as otherwise directed by the Board. Dr. Morgan 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, and shall include Dr. Morgan's drug(s) of choice.

Dr. Morgan shall abstain from the use of any substance and the consumption of poppy seeds or any other food or liquid that may produce a low level positive result in a toxicology screen. Dr. Morgan acknowledges that he understands that the consumption or use of such substances, including but not limited to substances such as mouthwash or hand cleaning gel, may cause a positive drug screen that may not be able to be differentiated from intentional ingestion, and therefore such consumption or use is prohibited under this Consent Agreement.

All such urine screenings for drugs and alcohol shall be conducted through a Board-approved drug testing facility and collection site, except as provided in Paragraph 11 below, and the screening process shall require a daily call-in procedure.

Dr. Morgan shall submit, at his expense and on the day selected, urine specimens for drug and/or alcohol analysis. All specimens submitted by Dr. Morgan shall be negative, except for those substances prescribed, administered, or dispensed to him in conformance with the terms, conditions and limitations set forth in this Consent Agreement. Refusal to submit such specimen, or failure to submit such specimen on the day he is selected or in such manner as the Board may request, shall constitute a violation of this Consent Agreement.

Further, within thirty days of the effective date of this Consent Agreement, Dr. Morgan shall enter into the necessary financial and/or contractual arrangements with the Board-approved drug testing facility and/or collection site in order to facilitate the urine screening process in the manner required by this Consent Agreement. Further, within thirty days of making such arrangements, Dr. Morgan shall provide to the Board written documentation of completion of such arrangements, including a copy of any contract entered into between Dr. Morgan and the Board-approved drug testing facility and/or collection site. Dr. Morgan's failure to timely complete such arrangements, or failure to timely provide written documentation to the Board of completion of such arrangements, shall constitute a violation of this Consent Agreement. However, Dr. Morgan and the Board further agree that in the event Dr. Morgan previously entered into the aforementioned financial and contractual agreements pursuant to the requirements of a prior consent agreement with the Board under which Dr. Morgan is currently participating in an ongoing urine screening process, then this requirement shall be waived under the instant consent agreement.

Dr. Morgan shall ensure that the urine screening process performed through the Board-approved drug testing facility and/or collection site requires a daily call-in procedure; that the urine specimens are obtained on a random basis; and that the giving of the specimen is witnessed by a reliable person. In addition, Dr. Morgan and the Board-approved drug testing facility and collection site shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Dr. Morgan shall ensure that the Board-approved drug testing facility and/or collection site provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, and whether all urine screens have been negative.

In the event that the Board-approved drug testing facility and/or collection site becomes unable or unwilling to serve as required by this Consent Agreement, Dr. Morgan must immediately notify the Board in writing, and make arrangements

acceptable to the Board pursuant to Paragraph 11 below, as soon as practicable. Dr. Morgan shall further ensure that the Board-approved drug testing facility and/or collection site also notifies the Board directly of its inability to continue to serve and the reasons therefore.

Dr. Morgan acknowledges that the Board expressly reserves the right to withdraw its approval of any drug testing facility and/or collection site in the event that the Secretary and Supervising Member of the Board determine that the drug testing facility and/or collection site has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

Further, in order to ensure that there will be no interruption in his current urine screening process, Dr. Morgan shall continue to provide random urine screenings for drugs and alcohol at least once per week to the Supervising Physician previously approved pursuant to the December 2007 Step I Consent Agreement until such time that Dr. Morgan has transitioned to the Board-approved drug testing facility and/or collection site as required pursuant to this Consent Agreement.

11. Dr. Morgan and the Board agree that it is the intent of this Consent Agreement that Dr. Morgan shall submit his urine specimens to the Board-approved drug testing facility and collection site chosen by the Board. However, in the event that utilizing said Board-approved drug testing facility and/or collection site creates an extraordinary hardship upon Dr. Morgan, as determined in the sole discretion of the Board, then subject to the following requirements, the Board may approve an alternate drug testing facility and/or collection site, or a supervising physician, to facilitate the urine screening process for Dr. Morgan:
 - a. Within thirty days of the date upon which Dr. Morgan is notified of the Board's determination that utilizing the Board-approved drug testing facility and/or collection site constitutes an extraordinary hardship upon Dr. Morgan, he shall submit to the Board in writing for its prior approval the identity of either an alternate drug testing facility and collection site, or the name of a proposed supervising physician, to whom Dr. Morgan shall submit the required urine specimens. In approving a facility, entity, or an individual to serve in this capacity, the Board will give preference to a facility located near Dr. Morgan's residence or employment location, or to a physician who practices in the same locale as Dr. Morgan. Dr. Morgan shall ensure that the urine screening process performed through the alternate drug testing facility and/or collection site, or through the supervising physician, requires a daily call-in procedure; that the urine specimens are obtained on a random basis; and that the giving of the specimen is witnessed by a reliable person. In addition, Dr. Morgan acknowledges that the alternate drug testing facility and collection site, or the supervising physician, shall assure that appropriate control over the specimen is

maintained and shall immediately inform the Board of any positive screening results.

- b. Dr. Morgan shall ensure that the alternate drug testing facility and/or collection site, or the supervising physician, provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, and whether all urine screens have been negative.
 - c. In the event that the designated alternate drug testing facility and/or collection site, or the supervising physician, becomes unable or unwilling to so serve, Dr. Morgan must immediately notify the Board in writing. Dr. Morgan shall further ensure that the previously designated alternate drug testing facility and collection site, or the supervising physician, also notifies the Board directly of the inability to continue to serve and the reasons therefore. Further, in order to ensure that there will be no interruption in his urine screening process, upon the previously approved alternate drug testing facility, collection site, or supervising physician becoming unable to serve, Dr. Morgan shall immediately commence urine screening at the Board-approved drug testing facility and collection site chosen by the Board, until such time, if any, that the Board approves a subsequent alternate drug testing facility, collection site, or supervising physician, if requested by Dr. Morgan.
 - d. The Board expressly reserves the right to disapprove any entity or facility proposed to serve as Dr. Morgan's designated alternate drug testing facility and/or collection site, or any person proposed to serve as his supervising physician, or to withdraw approval of any entity, facility or person previously approved to so serve in the event that the Secretary and Supervising Member of the Board determine that any such entity, facility or person has demonstrated a lack of cooperation in providing information to the Board or for any other reason.
12. All screening reports required under this Consent Agreement from the Board-approved drug testing facility and/or collection site, or from the alternate drug testing facility and/or collection site or supervising physician, must be received in the Board's offices no later than the due date for Dr. Morgan's quarterly declaration. It is Dr. Morgan's responsibility to ensure that reports are timely submitted.
 13. The Board retains the right to require, and Dr. Morgan agrees to submit, blood, urine, breath, saliva and/or hair specimens for screening for drugs and alcohol, for analysis of therapeutic levels of medications that may be prescribed for Dr. Morgan, or for any other purpose, at Dr. Morgan's expense upon the Board's request and without prior notice. Dr. Morgan's refusal to submit a specimen upon request of the Board shall result in a minimum of one year of actual license suspension. Further, the collection

of such specimens shall be witnessed by a representative of the Board, or another person acceptable to the Secretary or Supervising Member of the Board.

Monitoring Physician

14. Before engaging in any medical practice in Ohio, Dr. Morgan shall submit to the Board in writing the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary and Supervising Member will give preference to a physician who practices in the same locale as Dr. Morgan and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Morgan and his medical practice, and shall review Dr. Morgan's patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Morgan and his medical practice, and on the review of Dr. Morgan's patient charts. Dr. Morgan shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Morgan's quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Morgan must immediately so notify the Board in writing. In addition, Dr. Morgan shall make arrangements acceptable to the Board for another monitoring physician within thirty days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Morgan shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

The Board expressly reserves the right to disapprove any person proposed to serve as Dr. Morgan's designated monitoring physician, or to withdraw approval of any person previously approved to serve as Dr. Morgan's designated monitoring physician, in the event that the Secretary and Supervising Member of the Board determine that any such monitoring physician has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

Work Hour Limitation

15. Dr. Morgan shall limit his work hours to no more than forty hours of work per week, which shall include his combined total work hours in Ohio and any other state where

he is employed, until otherwise approved by the Board. Dr. Morgan shall keep a log reflecting the dates, times, and facilities and/or locations at which he works. Dr. Morgan shall submit his work log for receipt in the Board's offices no later than the due date for Dr. Morgan's quarterly declaration.

Any request by Dr. Morgan for modification of the limitation on work hours set forth in this paragraph shall be accompanied by documentation from a physician affiliated with a Board approved treatment provider, or other physician approved by the Board for this purpose, who has evaluated Dr. Morgan, indicating that such physician supports Dr. Morgan's request for modification.

Rehabilitation Program

16. Dr. Morgan shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval.

Dr. Morgan shall submit acceptable documentary evidence of continuing compliance with this program, including submission to the Board of meeting attendance logs, which must be received in the Board's offices no later than the due date for Dr. Morgan's quarterly declarations.

Aftercare

17. Dr. Morgan shall maintain participation with an appropriate impaired physicians committee, approved by the Board, to arrange for assistance in recovery or aftercare.
18. Dr. Morgan shall maintain continued compliance with the terms of the aftercare contract entered into with a Board-approved treatment provider, provided that, where terms of the aftercare contract conflict with terms of this Consent Agreement, the terms of this Consent Agreement shall control.

Releases

19. Dr. Morgan shall 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 Dr. Morgan's chemical dependency or related conditions, or for purposes of complying with this Consent Agreement, whether such treatment or evaluation occurred before or after the effective date of this Consent Agreement. To the extent permitted by law, 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. Dr. Morgan 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 to 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.

Required Reporting by Licensee

20. Within thirty days of the effective date of this Consent Agreement, Dr. Morgan shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services (including but not limited to third party payors) or is receiving training, and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Morgan shall promptly 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. In the event that Dr. Morgan provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within thirty days of the effective date of this Consent Agreement Dr. Morgan shall provide a copy of this Consent Agreement to the Ohio Department of Public Safety, Division of Emergency Medical Services. Further, Dr. Morgan shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.
21. Within thirty days of the effective date of this Consent Agreement, Dr. Morgan shall provide a copy of this Consent Agreement to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Dr. Morgan further agrees to provide a copy of this Consent Agreement at time of application to the proper licensing authority of any state in which he applies for any professional license or for reinstatement of any professional license. Further, Dr. Morgan shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original

facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.

22. Dr. Morgan shall promptly provide a copy of this Consent Agreement to all persons and entities that provide Dr. Morgan chemical dependency treatment or monitoring. Further, Dr. Morgan shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.
23. Dr. Morgan shall notify the Board in writing of any change of principal practice address or residence address within thirty days of such change.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Morgan 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 Dr. Morgan has violated any term, condition or limitation of this Consent Agreement, Dr. Morgan 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

Dr. Morgan shall not request termination of this Consent Agreement for a minimum of five years. In addition, Dr. Morgan shall not request modification to the probationary terms, limitations, and conditions contained herein for at least one 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.

In the event that the Board initiates future formal proceedings against Dr. Morgan, including but not limited to issuance of a Notice of Opportunity for Hearing, this Consent Agreement shall continue in full force and effect until such time that it is superseded by ratification by the Board of a subsequent Consent Agreement or issuance by the Board of a final Board Order.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Morgan 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.

Dr. Morgan hereby releases the Board, 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. Dr. Morgan acknowledges that his social security number will be used if this information is so reported and agrees to provide his social security number to the Board for such purposes.

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.



BRETON LEE MORGAN, M.D.



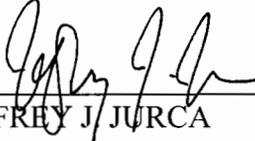
LANCE A. TALMAGE, M.D.
Secretary

11-4-08

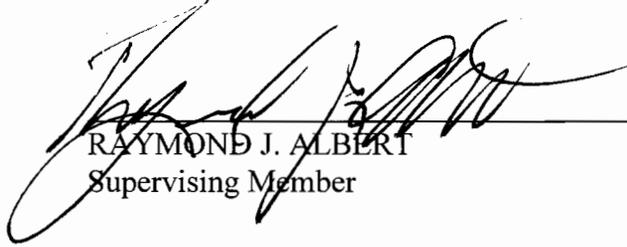
DATE

11-20-08

DATE



JEFFREY J. JURCA
Attorney for Dr. Morgan



RAYMOND J. ALBERT
Supervising Member

11-6-08

DATE

DATE



MARCIE PASTRICK
Enforcement Attorney

Nov. 7, 2008

DATE

STATE NUCLEAR BOARD
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This Consent Agreement is entered into on the basis of the following stipulations, admissions and understandings:

- A. The Board 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 a violation of Section 4731.22(B)(3), Ohio Revised Code, “[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,” and/or Section 4731.22(B)(9), Ohio Revised Code, “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony,” and/or Section 4731.22(B)(22), Ohio Revised Code, “[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” and/or Section 4731.22(B)(26), Ohio Revised Code, “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 Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Sections 4731.22(B)(3), (B)(22) and(26), Ohio Revised Code; and Section 4731.22(B)(9), Ohio Revised Code, to wit: 21 U.S.C. Section 843(a)(3), Obtaining a Schedule III Controlled Substance by Fraud; as set forth in Paragraphs E through K below. The Board 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. Such express reservation includes, but is not limited to, violations based on any methods used by Dr. Morgan to obtain controlled substances or drugs for self-use other than as particularly described herein, criminal acts other than as specifically referenced herein, acts involving patient care or otherwise involving others, and/or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, any criminal offense(s) other than those specifically described herein.
- C. Dr. Morgan is applying for reinstatement of his license to practice medicine and surgery in the State of Ohio, License number 35.066241, which became inactive for nonrenewal on July 01, 2006.
- D. Dr. Morgan states that he is also licensed to practice medicine and surgery in the State of West Virginia, however this license was revoked on or about May 18, 2007, as detailed in paragraph I below.
- E. Dr. Morgan admits that in or about 1999, he began to use hydrocodone for personal use in an attempt to control pain related to spinal disease. Dr. Morgan further admits that he obtained medications, including hydrocodone, from prescriptions written for him and from prescriptions which he wrote for family members and friends. Dr. Morgan further admits that he shared a portion of the aforementioned drugs with the people to whom he had prescribed said drugs. Dr. Morgan further admits that from on or about November 2, 2004, to on or about September 6, 2005, he signed for samples of hydrocodone from representatives of a pharmaceutical company, misrepresenting that his intention was for use in his practice for his patients, when in fact he intended the drugs for his personal use. Dr. Morgan further admits that in or about November 2005, he became aware of the fact that the Drug Enforcement Agency and the West Virginia Board of Medicine initiated an investigation into his prescribing and drug use.
- F. Dr. Morgan further admits that on or about March 10, 2006, he entered inpatient treatment for diagnoses including opioid dependence at Talbott Recovery Campus [Talbott], a Board-approved treatment provider in Atlanta, Georgia, and that he was discharged on or about June 16, 2006, treatment complete. Dr. Morgan further states that he entered into a Continuing Care Contract with Talbott upon discharge, which is effective until on or about June 16, 2011.
- G. Dr. Morgan further admits that on or about April 4, 2006, he surrendered his license to practice medicine and surgery to the West Virginia Board of Medicine [West Virginia

- Board]. Dr. Morgan further admits that on or about December 11, 2006, he entered into a Consent Order with the West Virginia Board, which reinstated Dr. Morgan's medical license in an inactive status, immediately upon issuance his inactive license was revoked and such revocation was immediately stayed; and subjected his license to certain conditions and limitations including a three-year period of probation. Copies of Dr. Morgan's April 4, 2006 Surrender and the West Virginia Board's December 11, 2006 Consent Order are attached hereto and fully incorporated herein.
- H. Dr. Morgan further admits that on or about December 11, 2006, he entered a plea of guilty in the United States District Court, Southern District of West Virginia, at Huntington, West Virginia, to one count of Obtaining a Schedule III Controlled Substance by Fraud, 21 U.S.C. Section 843(a)(3). Under 18 U.S.C. Section 3559(a)(5), a violation of 21 U.S.C. Section 843(a)(3) is a felony. Dr. Morgan further admits that on or about March 12, 2007, he was sentenced to 30 days incarceration at the Ashland Federal Prison Camp and 90 days home confinement. Dr. Morgan further admits that on or about July 23, 2007, he successfully completed all the requirements imposed by the Federal Court and is no longer under its supervision.
- I. Dr. Morgan further admits that effective on or about May 18, 2007, the West Virginia Board revoked his inactive license to practice medicine and surgery issued by the West Virginia Board in December 2006, based upon his plea of guilty to a felony involving administering and dispensing a controlled substance under state or federal law for other than generally accepted therapeutic purposes. A copy of the West Virginia Board's May 18, 2007 Order of Revocation of License to Practice Medicine and Surgery is attached hereto and fully incorporated herein.
- J. Dr. Morgan states and the Board acknowledges receipt of information to support that he has remained compliant with the terms of his Continuing Care Plan with Talbott, which is effective from on or about June 16, 2006, to June 16, 2011; and with the terms of his Monitoring Agreement with the West Virginia Professional Advocacy Group Effort [WV-PAGE], which was effective from on or about March 31, 2006 to March 20, 2007.
- K. Dr. Morgan further admits that he has not been engaged in the active practice of medicine and surgery since in or about April 2006.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Dr. Morgan knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

1. The certificate of Dr. Morgan to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, and Dr. Morgan shall not apply for reinstatement or restoration of his certificate prior to 270 days from the effective date of this Consent Agreement

Sobriety

2. Dr. Morgan 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 Dr. Morgan's history of chemical dependency.
3. Dr. Morgan shall abstain completely from the use of alcohol.

Releases; Quarterly Declarations and Appearances

4. Dr. Morgan shall 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 Dr. Morgan's chemical dependency or related conditions, or for purposes of complying with this 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. Dr. Morgan 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 to 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.
5. Dr. Morgan shall submit quarterly declarations under penalty of Board disciplinary action and/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 sixteenth 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.

6. Dr. Morgan shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested 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.

Drug & Alcohol Screens; Supervising Physician

7. Dr. Morgan shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Morgan 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.

Dr. Morgan shall abstain from consumption of poppy seeds or any other food or liquid that may produce false results in a toxicology screen.

Within thirty days of the effective date of this Consent Agreement, Dr. Morgan shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Morgan 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 Dr. Morgan. Dr. Morgan and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Dr. Morgan shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, as set forth in the materials provided by the Board to the supervising physician, 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 or her responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Morgan must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Morgan shall further ensure that the previously designated supervising physician also notifies the Board directly of his or her 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 Dr. Morgan's

quarterly declaration. It is Dr. Morgan's responsibility to ensure that reports are timely submitted.

8. The Board retains the right to require, and Dr. Morgan agrees to submit, blood or urine specimens for analysis at Dr. Morgan's expense upon the Board's request and without prior notice.

Rehabilitation Program

9. Dr. Morgan shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval.

Dr. Morgan shall submit acceptable documentary evidence of continuing compliance with this program which must be received in the Board's offices no later than the due date for Dr. Morgan's quarterly declarations.

CONDITIONS FOR REINSTATEMENT OR RESTORATION

10. The Board shall not consider reinstatement of Dr. Morgan's certificate to practice medicine and surgery until all of the following conditions are met:
 - a. Dr. Morgan shall submit an application for reinstatement, accompanied by appropriate fees, if any.
 - b. Dr. Morgan 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 treatment provider approved under Section 4731.25 of the Revised Code that Dr. Morgan has successfully completed any required inpatient treatment.
 - ii. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
 - iii. Evidence of continuing full compliance with this Consent Agreement.
 - iv. Two written reports indicating that Dr. Morgan's 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 physicians knowledgeable in the area of addictionology and who are either affiliated with a current Board-approved treatment provider or otherwise have been approved in advance by the Board to provide an assessment of Dr. Morgan. Prior to the assessments, Dr. Morgan shall provide the evaluators with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The reports from the evaluators shall include any recommendations for treatment, monitoring, or supervision of Dr. Morgan, and any conditions, restrictions, or limitations that should be imposed on Dr. Morgan's practice. The reports shall also describe the basis for the evaluator's determinations.

All reports required pursuant to this paragraph shall be based upon examinations occurring within the three months immediately preceding any application for reinstatement.

- c. Dr. Morgan shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the Board or, if the Board and Dr. Morgan are unable to agree on the terms of a written Consent Agreement, then Dr. Morgan further agrees to abide by any terms, conditions and limitations imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code.

Further, upon reinstatement of Dr. Morgan's certificate to practice medicine and surgery in this state, the Board shall require continued monitoring which shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Revised Code. Moreover, upon termination of the consent agreement or Board Order, Dr. Morgan shall submit to the Board for at least two years annual progress reports made under penalty of Board disciplinary action or criminal prosecution stating whether Dr. Morgan has maintained sobriety.

11. In the event that Dr. Morgan 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 Dr. Morgan's fitness to resume practice.

REQUIRED REPORTING BY LICENSEE

12. Within thirty days of the effective date of this Consent Agreement, Dr. Morgan 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, Dr. Morgan

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.

13. Within thirty days of the effective date of this Consent Agreement, Dr. Morgan 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. Dr. Morgan 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, Dr. Morgan shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
14. Dr. Morgan shall provide a copy of this Consent Agreement to all persons and entities that provide Dr. Morgan chemical dependency treatment or monitoring.

The above-described terms, conditions and limitations may be amended or terminated in writing at any time upon the agreement of both parties.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Morgan 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.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Morgan 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.

Dr. Morgan hereby releases the Board, 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. Dr. Morgan acknowledges that his social security number will be used if this information is so reported and agrees to provide his social security number to the Board for such purposes.

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.



BRETON LEE MORGAN, M.D.



LANCE A. TALMAGE, M.D.
Secretary

12/7/07

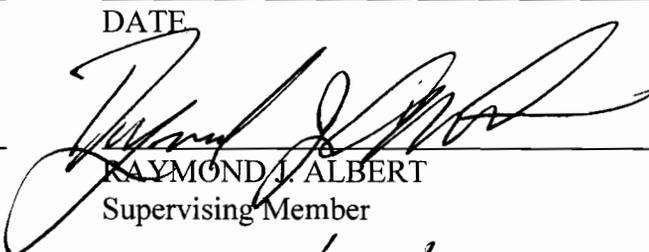
DATE

12-12-07

DATE



CHRISTOPHER TENOGLIA, ESQ.
Attorney for Dr. Morgan



RAYMOND J. ALBERT
Supervising Member

12/7/07

DATE

12/12/07

DATE



MARCIE PASTRICK
Enforcement Attorney

12/07/07

DATE

BLM Attachments

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

WEST VIRGINIA BOARD OF MEDICINE,
PETITIONER,

v.

BRETON L. MORGAN, M.D.,
RESPONDENT,

STATE MEDICAL BOARD
OF OHIO
2006 MAY -5 A 9 54

GENERAL ORDER OF CONTINUANCE AND RECOMMENDATION OF DISMISSAL OF CHARGES

On April 4, 2006, came Respondent Breton L. Morgan, M.D. ("Dr. Morgan") by Counsel George Guthrie, Esq. and Raymond G. Musgrave, Esq. and Petitioner West Virginia Board of Medicine ("Board") by Counsel Stephen D. Greer, II, Esq. before the Honorable Anne B. Charnock, Esq., Hearing Examiner for a telephonic conference for the purpose of discussing Respondent's "Superseding Motion for Continuance of Hearing" filed on March 27, 2006, by Respondent, and for the purpose of determining Respondent's intentions as to whether he was surrendering his medical license.

Counsel for Respondent, George Guthrie, represented to the Court and the Board that he had obtained the authorization of Dr. Morgan to surrender his license to practice medicine and surgery to the appropriate representative of the Board, and would do so by hand delivery of said medical license to the Board on the same day of April 4, 2006.

Petitioner received said surrendered medical license, which surrender is effective April 4, 2006, at 5:00 p.m., and has no objections to the General Continuance of said hearing until after the next meeting of the Board on May 8, 2006.

There being no objections by the parties, the Hearing Examiner, Anne B. Charnock, Esq. hereby grants a General Continuance of this matter scheduled for April 11 – 13, 2006, until after May 8, 2006, at which time the Board will vote on the matter of the undersigned Hearing Examiner hereby recommending dismissal of the charges in light of Respondent's medical license surrender.

Entered this 10th day of April, 2006.



Anne B. Charnock, Esq.
Hearing Examiner

STATE MEDICAL BOARD
OF OHIO
2006 MAY -5 A 9:54

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

WEST VIRGINIA BOARD OF MEDICINE,
PETITIONER,

V.

BRETON LEE MORGAN, M.D.,
RESPONDENT.

STATE MEDICAL BOARD
OF OHIO
2006 MAY 26 A 9:57

ORDER

A Complaint and Notice of Hearing was filed on November 18, 2005, in the above-referenced matter. A hearing was scheduled for January 18 and 19, 2006, with the undersigned selected as Hearing Examiner by the Respondent.

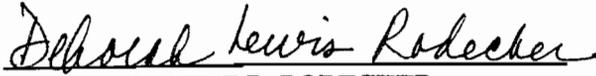
The undersigned Hearing Examiner continued the hearing by Order entered January 26, 2006, until April 11, 12, and 13, 2006.

Effective April 4, 2006, at 5:00 p.m., Respondent surrendered his license to the Board and the undersigned Hearing Examiner granted a general continuance of the matter until after May 8, 2006, at which time at its regular meeting, the Board voted on the matter of the Hearing Examiner recommending dismissal of the charges in light of Respondent's medical license surrender. The Board voted to dismiss its charges filed against Respondent, agreeing to waive and terminate the continuation of the above proceedings filed against Respondent. In this matter, Doctors Ferrebee, Simmons, Wade, and Wazir did not participate, nor did Rev. Bowyer. Dr. Georges and Ms. Griffin were absent from the meeting.

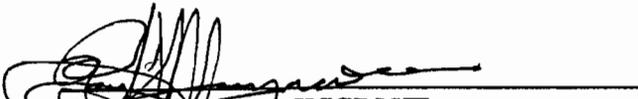
ACCORDINGLY, this matter is terminated and concluded
and hereby stricken from the Board's docket.

Entered this 15th day of May, 2006.

Prepared by:


DEBORAH LEWIS RODECKER
COUNSEL FOR PETITIONER

Inspected by:


RAYMOND G. MUSGRAVE
COUNSEL FOR RESPONDENT


GEORGE G. GUTHRIE
COUNSEL FOR RESPONDENT


ANNE B. CHARNOCK
HEARING EXAMINER

STATE MEDICAL BOARD
OF OHIO
2006 MAY 26 A 9:51



Rev. Richard Bowyer
Fairmont

Michael L. Ferrebee, MD
Morgantown

Ms. Doris M. Griffin
Martinsburg

M. Khalid Hasan, MD
Beckley

Ms. Beth Hays
Bluefield

J. David Lynch, Jr., MD
Morgantown

Vettivelu Maheswaran, MD
Charles Town

Bill May, DPM
Huntington

Leonard Simmons, DPM
Fairmont

Lee Elliott Smith, MD
Princeton

Badshah J. Wazir, MD
South Charleston

Kenneth Dean Wright, PA-C
Huntington

State of West Virginia

West Virginia Board of Medicine

101 Dee Drive, Suite 103

Charleston, WV 25311

Telephone (304) 558-2921

Fax (304) 558-2084

MEMORANDUM

TO: Entities Listed Under West Virginia Code §30-3-14(l)(2)

FROM: Robert C. Knittle, Executive Director
West Virginia Board of Medicine

DATE: April 4, 2006

RE: BRETON LEE MORGAN, M.D.
Valley Drive 117
Point Pleasant, West Virginia 25550
WV LICENSE NO. 15143
DATE OF BIRTH: 07/03/1960

STATE MEDICAL BOARD
OF OHIO
2006 MAY -5 A 9:54

Please be advised that effective April 4, 2006, at 5:00 p.m., the active West Virginia medical license of BRETON LEE MORGAN, M.D., has been SURRENDERED to the West Virginia Board of Medicine. Consequently, Dr. Morgan is unable to practice medicine in West Virginia in any manner whatsoever.

eb

PRESIDENT
Angelo N. Georges, MD
Wheeling

VICE PRESIDENT
John A. Wade, Jr., MD
Point Pleasant

SECRETARY
Catherine Slempp, MD, MPH
Charleston

COUNSEL
Deborah Lewis Rodecker
Charleston

EXECUTIVE DIRECTOR
Robert C. Knittle
Charleston

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

IN RE:

BRETON LEE MORGAN, M.D.

CONSENT ORDER

The West Virginia Board of Medicine (“Board”) and Breton Lee Morgan, M.D. (“Dr. Morgan”), freely and voluntarily enter into the following Order pursuant to West Virginia Code §30-3-1, et seq.

FINDINGS OF FACT

1. Dr. Morgan held a license to practice medicine and surgery in West Virginia, License No. 15143, and practiced medicine in Point Pleasant, West Virginia until he surrendered his license to the Board in March, 2006.

2. Dr. Morgan underwent treatment for chemical dependency at the Talbott Recovery Center, Atlanta, Georgia and is in continuing treatment through the West Virginia Physician’s Health Program.

3. Dr. Morgan appeared before the Licensure Committee in November, 2006, expressing a desire to resume the practice of medicine, and a full discussion as to his situation and health and well being was had.

4. The Licensure Committee thoroughly reviewed all pertinent documents and materials in connection with Dr. Morgan’s treatment for chemical dependency.

5. The Licensure Committee recommended to the Board and the Board finds that Dr. Morgan meets the requirements for reinstatement of an inactive license to practice medicine and surgery and that it is in the public interest to reinstate Dr. Morgan's license to practice medicine and surgery in West Virginia in an inactive status, though permitting him such reinstatement without attaching certain limitations, conditions, and accommodations upon his inactive license could adversely affect the health and welfare of patients.

CONCLUSIONS OF LAW

1. The Board has a mandate to protect the public interest pursuant to West Virginia Code §30-3-1.

2. Probable cause exists to substantiate charges of disqualification from the practice of medicine and surgery due to a violation of West Virginia Code §30-3-14(c)(21), "the inability to practice medicine and surgery... with reasonable skill and safety due to ... abuse of drugs..."

3. The Board has determined that it is appropriate to reinstate Dr. Morgan's license in an inactive status provided limitations, conditions, and accommodations are placed upon his inactive license to practice medicine and surgery in West Virginia.

CONSENT

Breton Lee Morgan, 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. Morgan acknowledges that he is fully aware that, without his consent, here given 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. Morgan 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. Morgan waives all such rights to a hearing;

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

5. Dr. Morgan understands that this Order is considered public information and that matters herein may be reported, as required by law, to the National Practitioner Data Bank and the Healthcare Integrity and Protection 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. Morgan, the West Virginia Board of Medicine hereby **ORDERS** as follows:

1. Dr. Morgan, having met the requirements for medical licensure in the State of West Virginia, is again licensed to practice medicine and surgery in the State of West Virginia, License No. 15143, effective December 11, 2006, in an **INACTIVE** status.

2. Said License No. 15143 is issued subject to the following:

a. Immediately upon issuance, Dr. Morgan's **INACTIVE** license is **REVOKED**, and such revocation is immediately **STAYED**, and Dr.

Morgan's license shall for a three (3) year period be placed on **PROBATION**, terminating December 11, 2009.

b. Dr. Morgan shall appear in person for an interview with the Licensure Committee at its regularly scheduled meetings in November, 2007, November, 2008, and November, 2009, and as otherwise requested by the Licensure Committee.

c. Dr. Morgan shall attend a minimum of ninety (90) meetings of Alcoholics Anonymous, Narcotics Anonymous, or Caduceus in ninety (90) days, beginning December 11, 2006. Thereafter, he shall attend a minimum of five (5) Alcoholics Anonymous, Narcotics Anonymous, or Caduceus meetings each week.

d. Dr. Morgan shall refrain from ingesting alcohol and poppy seeds.

e. Dr. Morgan shall refrain from the use of all controlled substances/mood altering drugs/psychoactive drugs unless prescribed to him by a licensed treating physician.

f. Dr. Morgan shall maintain a log of his Alcoholics Anonymous, Narcotics Anonymous, and Caduceus meetings in a hand held spiral notebook, which shall be open to the Board's inspection at any time, and he shall bring the log to any and all meetings of the Licensure Committee.

g. Dr. Morgan shall seek and maintain a sponsor in Alcoholics Anonymous, Narcotics Anonymous, or Caduceus who will regularly be permitted to review his log and who will discuss his progress and who will file reports with the Board every sixty (60) days, beginning

February 15, 2007, confirming Dr. Morgan's required attendance at all Alcoholics Anonymous, Narcotics Anonymous, and Caduceus meetings.

h. Dr. Morgan shall, at his own expense, submit to unlimited, random and unannounced testing of bodily fluids, all carried out in a manner directed and approved by the Board and at any time upon the request of the Board.

i. Dr. Morgan shall comply with all provisions of his Monitoring Agreement with West Virginia Professional Advocacy Group Effort ("WV-PAGE"), a true and accurate copy of which is attached hereto and incorporated by reference herein.

j. Dr. Morgan shall ensure that copies of results of any specimens submitted to WV-PAGE under the aforesaid Monitoring Agreement shall be promptly submitted to the Board.

k. Copies of any prescriptions registered with WV-PAGE shall be promptly submitted to the Board.

l. Dr. Morgan shall review this Consent Order on a regular basis in order that he understands fully his responsibilities as outlined and to prevent any noncompliance with provisions contained in this document.

m. Within five (5) days of entry of this Consent Order, Dr. Morgan shall present a copy of this Consent Order to his Alcoholics Anonymous, Narcotics Anonymous, or Caduceus sponsor and to his case manager at WV-PAGE.

n. At the option of either Dr. Morgan or the Board, this Consent Order or a modified version thereof may be again entered into by the parties at the end of the three (3) year probationary period.

The failure of Dr. Morgan to comply with any of the terms of this Consent Order shall constitute grounds for the revocation of his **INACTIVE** license to practice medicine and surgery in the State of West Virginia, and further if Dr. Morgan violates probation in any respect, as determined by the Board, the Board may **TERMINATE** and **DISSOLVE** the **STAY** of **REVOCAION** herein imposed, upon written notice of the same to Dr. Morgan, and Dr. Morgan understands that, notwithstanding any provision of law to the contrary, such termination and dissolution of the **STAY** of **REVOCAION** may occur without any hearing provided by the Board, and by his signing of this Consent Order, Dr. Morgan has consented to the same.

The foregoing was entered this _____ day of December, 2006.

West Virginia Board of Medicine

John A. Wade, Jr., M.D.,
President

Catherine Slempp, M.D., M.P.H.,
Secretary

Breton Lee Morgan, M.D.

Date: _____

STATE OF _____

COUNTY OF _____, to wit:

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

Given under my hand this _____ day of _____, 2006.

My commission expires _____.

Notary Public



West Virginia Professional Advocacy Group Effort

WV-PAGE

P. O. Box 11
Charleston, West Virginia 25321
(304) 340-6900



◆ Professionals Helping Professionals Stay Healthy ◆ Professionals Helping Professionals Stay Healthy ◆ Professionals Helping Professionals Stay Healthy ◆

MONITORING AGREEMENT

West Virginia Professional Advocacy Group Effort (WV-PAGE) agrees to serve as the support and advocate of this professional in her/his effort toward a lifetime program of wellness and health. This advocacy includes assisting reentry and maintenance of health among peers, family and the medical community.

I, Bretton Lee Morgan MD, agree to the following conditions and in return WV-PAGE agrees to offer support and facilitate compliance:

1. Refrain from the use of all controlled substances/mood altering drugs/psychoactive drugs with the exception of those prescribed by my treating physician, to be selected, or my primary care physician, to be selected.
2. Secure a primary care physician to treat my illness and give her/him authorization to communicate directly with the WV-PAGE Case Manager on my progress. I will inform the WV-PAGE Case Manager who this physician will be.
3. I will not treat myself for any illness but will contact my primary care physician.
4. Attend and participate in all recommended treatments as prescribed by a mutually agreed upon treating physician/clinician. This includes, but is not limited to:

A. Treatment plan review by my treating physician/clinician on a regular basis (minimum quarterly) whom I authorize to communicate directly with WV-PAGE Case Manager on my progress.

B. Medical/Psychiatric Therapies:

all

Medication: all

Workplace Restrictions/Behavioral Plan all

5. Agree to request WV-PAGE to submit reports to WV Board of Medicine
as, and if, requested by them with a copy to: OH Board of Medicine
DEA
Monica Schwartz
Fed Prosecutor
Charleston WV

6. Contact the WV-PAGE Case Manager at least monthly for the first year and as revised thereafter.
7. Submit specimens for toxicology:
 - A. "For cause" and monitored within twenty-four hours of the call from WV-PAGE.
 - B. At random and monitored within twenty-four hours of the call from WV-PAGE. The specimens will be submitted at a frequency of PN.
 - C. Register all prescriptions and over-the-counter medication with WV-PAGE prior to ingesting them.
 - D. Notify WV-PAGE ten days in advance prior to being unavailable to toxicology due to vacations, attendance at meeting, etc.

Bretton Lee Morgan will be responsible for the cost of toxicology and specified fee for the monitoring

8. I agree to notify WV-PAGE of any changes of physical and mental health, address, or employment.
9. I authorize WV-PAGE to communicate directly with my employer, designated practice associate or other agreed upon workplace/practice monitor: _____.
10. I agree to pay the sum of \$ 100.00 per month to WV-PAGE for the cost of case management services.
11. I understand that if I fail to meet the conditions of this Agreement, I may lose the advocacy of WV-PAGE.

[Signature] MP 5-31-06
Recovering Professional Date

Treating Physician/Clinician Date

L. Renee Green 3/30/2006
Case Manager Date

Medical Director WV-PAGE Date

The West Virginia Professional Advocacy Group Effort will:

1. Help Bretton Lee Morgan locate the appropriate resources in her/his area.
2. Act in an advocacy role for the professional in cooperation with the treating physician/clinician and supervising physician/clinician in all matters involving the professional's area of practice, employment group, hospital or other agencies as long as the provisions of the Agreement are met.
3. (If submitting specimens for toxicology) Coordinate toxicology as specified, choose the panel of drugs that are tested, and provide the Medical Review Officer function for the program.
4. (If submitting specimens for toxicology) Submit toxicology reports to treating physician/clinician quarterly or to notify the treating physician/clinician within seventy-two hours of confirmed use of non-prescribed psychoactive drugs.

Stipulations of this Agreement will be renegotiated usually on an annual basis.

Either party may withdraw with one month's written notice. Violation of this

Agreement will be reported to the treating physicians/clinicians and to WV and OH
Boards of Medicine as specified in paragraph #5 in this Agreement.
DEA, Fed Prosecutors

This Agreement shall be effective from March 20, 2006 to March 20, 2007.

- A. I hereby release and hold harmless WV-PAGE from any claims whatsoever arising out of actions taken by WV-PAGE in good faith without malice in furtherance of the objectives of this Monitoring Agreement.
- B. I agree to allow WV-PAGE use of the data in my record for the purpose of quality improvement, research and reporting of statistical information with other supporting organizations they become identified. I understand that my name and/or other identifying information will not be used without my written permission.

Signed *Adrienne J. Morgan* (Date) 5-31-06
(Recovering Professional)
Address: 20 Windsor Court Point Pleasant WV 25550
(Home)
Valley Drive 117 Point Pleasant WV 25558
(Office)
Telephone: 304 675 7000 304 593 36 304 675 6892
(Home) (Office)
304 675 4340 304 593 8678
(Pager) (Cell Phone)
E-Mail: BLM@mc at Hethersell.com

Signed *Adrienne J. Morgan* ^{ENRPT} (Date) 5-31-06
(Treating Physician/Clinician)
Address: _____
(Home)

(Office)
Telephone: _____
(Home) (Office)

(Pager) (Cell Phone)
E-Mail: _____

Signed: L. Renie Green, B.S.N. (Date) 3-30-2006
(Case Manager)

Signed: *Brian McDevitt* (Date) 3/30/06
Brian McDevitt, D.O., Medical Director, WV-PAGE

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

IN RE: BRETON LEE MORGAN, M.D.

**ORDER OF REVOCATION OF LICENSE TO PRACTICE MEDICINE AND
SURGERY**

1. Breton Lee Morgan, M.D. ("Dr. Morgan") holds an inactive license to practice medicine in the State of West Virginia, License No. 15143, issued December 11, 2006, by the West Virginia Board of Medicine ("Board") subsequent to Dr. Morgan's surrender of his license to the Board in April, 2006. Dr. Morgan's address of record with the Board is in Point Pleasant, West Virginia.

2. In March, 2007, Dr. Morgan entered a plea of guilty in the United States District Court, Southern District of West Virginia, at Huntington, to one (1) count of Obtaining a Schedule III Controlled Substance by Fraud, 21 U.S.C. §843(a)(3), in Case Number 3:06-00194, United States of America v. Breton Lee Morgan, M.D.

3. By pleading guilty to said count, as set forth in paragraph two (2) of this Order, Dr. Morgan did plead guilty to a charge that he had knowingly and intentionally acquired and obtained possession of a quantity of hydrocodone, a Schedule III controlled substance from a pharmaceutical company by misrepresentation, fraud, deception, and subterfuge, as demonstrated by the following:

a. From on or about November 2, 2004, to on or about September 6, 2005, Dr. Morgan signed for samples of hydrocodone from representatives of a pharmaceutical company, misrepresenting that his

intention was to use the samples lawfully for patients, and instead diverted some of the samples for himself and his use.

IN VIOLATION OF 21 U.S.C. §843(a)(3).

4. 21 U.S.C. §843(a)(3) reads as follows:

(a) Unlawful acts.

It shall be unlawful for any person knowingly or intentionally . . .

(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

5. Under the provisions of 21 U.S.C. §843(d) and 18 U.S.C. §3559(a)(5), a violation of 21 U.S.C. §843(a)(3) is a felony.

6. Under the provisions of W. Va. Code §30-3-14(d):

The Board . . . shall revoke the license of any physician . . . licensed . . . within this state who, is found guilty by any court of competent jurisdiction of any felony involving prescribing, selling, administering, dispensing, mixing or otherwise preparing any prescription drug, including any controlled substance under state or federal law, for other than generally accepted therapeutic purposes. Presentation to the Board of a certified copy of the guilty verdict or plea rendered in the court is sufficient proof thereof for the purposes of this article . . .

7. Attached to this Order and incorporated by reference herein is a certified copy of the following document: a six (6) page Judgment in a Criminal Case entered March 14, 2007, by United States District Judge Robert C. Chambers in the case United States of America v. Breton Lee Morgan, M.D., Case Number 3:06-00194. Also attached to this Order and incorporated by reference herein is a copy of the Transcript of Guilty Plea Before the Honorable Robert C. Chambers, United States Judge in the same case, made on December 11, 2006.

8. The Transcript of Guilty Plea shows that under questioning by the Judge, Dr. Morgan testified that he had recently received treatment from the Talbott Recovery Center for drug addiction, (p. 3) that he pled guilty to Count Twenty-Eight (28) of the Indictment as set forth on page 8 of the Transcript, and the factual basis for his guilty plea (pp. 10 – 11), is set forth below.

Q. Dr. Morgan, do you believe you're guilty of the charge in Count Twenty-Eight?

A. Yes, sir.

Q. Tell me in your own words what you did that makes you guilty of this charge.

A. I signed for the samples knowing that I would take some of them.

Q. All right. You said you signed for samples. Can you elaborate on that? I don't know anything about the facts here, so tell me what happened.

A. The drug reps come to your office, and, you know, they present you these cards that deliver samples by mail to the office, and I signed for those. The medicine came to the office, and then I would go up to my office and divert some of the samples to myself.

Q. All right. And the medicine you're talking about was hydrocodone?

A. Yes, sir.

Q. And you knew that was a Schedule III controlled substance?

A. Yes, sir.

Q. All right. And by signing for these samples, intending that you were actually going to keep some of it for yourself and use, were you misrepresenting –

A. Yes, sir.

Q. – to the drug reps your intention with regard to what you were going to do with these samples?

A. Yes, sir.

Q. Were the drug reps and therefore their pharmaceutical company led to believe that you were going to use these samples only lawfully and for your patients?

A. Yes, sir.

Q. All right. This alleges that this conduct occurred from between November 2, 2004 to about September 6, 2005. Is that accurate?

A. Yes, sir.

Q. Is this something that you did over a period of time?

A. Yes, sir.

Q. This also alleges that – the indictment alleges that this occurred at or near Point Pleasant, in Mason County, West Virginia. Is that where your conduct took place?

A. That's where my practice is, yes, sir. (Tr. pp. 10 – 11)

9. The Transcript of Guilty Plea shows that the Diversion Investigator for the Drug Enforcement Administration (“DEA”) testified that a notice of inspection was served at Dr. Morgan’s office on November 9, 2005, requesting records from Dr. Morgan as to his dispensing of the samples containing hydrocodone he had acquired, and he had no records (pp. 11 – 15). The transcript shows the DEA Diversion Investigator testified under questioning of the Judge as set forth below:

Q. And based on your investigation, Dr. Morgan didn’t keep records of these controlled substances and didn’t distribute them to his patients; is that correct?

A. He was unable to provide any records pertaining to his acquiring or his dispensing of these controlled substances.

Q. And based on your investigation, you found out that he, in fact, was ingesting hydrocodone himself; is that correct?

A. That's correct.

Q. And that he was either treating his own pain and/or addicted to hydrocodone, is that right, based on your investigation?

A. Yes.

Q. And it was also -- your investigation also determined that Dr. Morgan was, in fact, acquiring the hydrocodone from Athlon, [a pharmaceutical company] which is a Schedule III controlled substance, for the purpose of taking it himself rather than distributing it to his patients, at least in part; is that right?

A. Yes. (Tr. pp. 15 – 16.)

10. The Transcript of Guilty Plea shows that Dr. Morgan affirmed that the DEA Diversion Investigator's testimony was substantially correct and accurate and that his counsel affirmed that if the case went to trial there would be no meritorious legal defense to Count Twenty-Eight (28) of the Indictment. (Tr. p. 16)

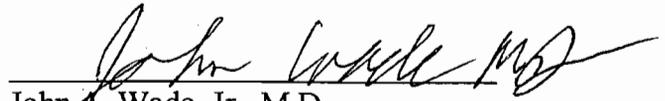
11. Copies of the above-referenced documents having been presented to the Board of Medicine at a regular meeting of the Board on May 14, 2007, where a quorum of the Board was present and voting, the Board determined that Dr. Morgan has been found guilty by a court of competent jurisdiction of a felony involving administering and dispensing a controlled substance under state or federal law for other than generally accepted therapeutic purposes. The Board concluded that as a matter of law, the inactive license to practice medicine and surgery of Dr. Morgan, License No. 15143, must be **REVOKED** under the provisions of W. Va. Code §30-3-14(d), and accordingly, the Board voted at said regular meeting to **REVOKE** the inactive license to

practice medicine and surgery of Dr. Morgan effective May 18, 2007. John A. Wade, Jr., M.D., took no part in this matter and did not vote.

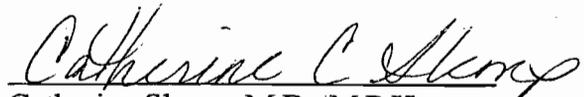
WHEREFORE, it is **ORDERED** that the inactive license to practice medicine and surgery of Breton Lee Morgan, M.D., License No. 15143, issued by the Board in December, 2006, is **REVOKED**, effective May 18, 2007.

Entered this 3/14th day of May, 2007.

West Virginia Board of Medicine



John A. Wade, Jr., M.D.
President



Catherine Slemp, M.D., M.P.H.
Secretary

UNITED STATES DISTRICT COURT

Southern

District of

West Virginia, at: HUNTINGTON

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

BRETTON LEE MORGAN, MD

Case Number: 3:06-00194

USM Number: 08055-088

Thomas Smith, James Casey
Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) 28 of the indictment

pleaded nolo contendere to count(s)
which was accepted by the court.

was found guilty on count(s)
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count	
21 U.S.C. § 843(a)(3)	Obtaining a Schedule III Controlled Substance by Fraud	09/06/05	28	of the indictment

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

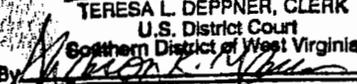
The defendant has been found not guilty on count(s)

Count(s) 1-27 and 29 is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

03/12/07
Date of Imposition of Judgment


ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE

A TRUE COPY CERTIFIED ON
MAR 23 2007
TERESA L. DEPPNER, CLERK
U.S. District Court
Southern District of West Virginia
By  Deputy

03/14/07
Date

DEFENDANT: BRETON LEE MORGAN, MD
CASE NUMBER: 3:06-00194

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

30 days.

The court makes the following recommendations to the Bureau of Prisons:
that the defendant be housed at the prison camp at FCI, Ashland, KY, or the prison camp at FCI, Morgantown, WV.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: BRETON LEE MORGAN, MD
CASE NUMBER: 3:06-00194

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

3 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: BRETON LEE MORGAN, MD
CASE NUMBER: 3:06-00194

SPECIAL CONDITIONS OF SUPERVISION

Defendant will begin serving his supervised release term of home confinement pending designation to a prison camp.

During the 3 month term of supervised release, the defendant will be placed on home detention with electronic monitoring as a substitute for imprisonment. During this period, the defendant shall remain in his place of residence at all times except for approved absences for gainful employment, community service, religious services, medical care, educational or training programs, matters concerning joint custody of his children or such other absences as the probation officer specifically approves. Defendant will pay the cost of electronic monitoring.

The defendant will participate in a program of testing, counseling and treatment for drug and alcohol abuse as directed by the probation officer.

Payment of the fine is a special condition of supervised release.

In connection with payment of the fine, the Court imposes two additional special conditions of supervised release: the defendant is prohibited from incurring new credit charges or opening additional lines of credit without the probation officer's approval unless he is in compliance with the fine payment schedule; the defendant will provide the probation officer access to any requested financial information.

DEFENDANT: BRETON LEE MORGAN, MD
CASE NUMBER: 3:06-00194

CRIMINAL MONETARY PENALTIES

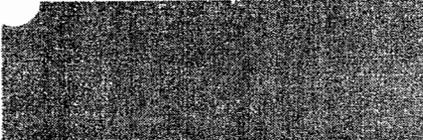
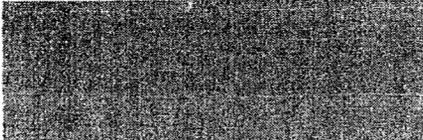
The defendant must pay the total criminal monetary penalties under the schedule of payments below.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ <u>100</u>	\$ <u>5000</u>	\$ <u> </u>

The determination of restitution is deferred until _____.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name and Address of Payee</u>	<u>Total Loss</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
			
			
			
TOTALS	<u>\$0.00</u>	<u>\$0.00</u>	

Restitution amount ordered pursuant to plea _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: BRETON LEE MORGAN, MD
CASE NUMBER: 3:06-00194

ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES

The \$5000 fine is due immediately.

If the probation officer determines that a modification of the installment payments is necessary while the defendant is on supervised release, the probation officer can petition the Court to reevaluate the payments.

The \$100 special assessment has been paid.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT HUNTINGTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 3:06-00194-01

BRETON LEE MORGAN, M.D.,

Defendant.

Huntington, West Virginia
December 11, 2006

TRANSCRIPT OF GUILTY PLEA
BEFORE THE HONORABLE ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:

MONICA K. SCHWARTZ, ESQ.
U. S. ATTORNEY'S OFFICE
P. O. Box 1713
Charleston, WV 25326-1713

For the Defendant:

THOMAS W. SMITH, ESQ.
THOMAS W. SMITH LAW OFFICE
2008 Quarrier Street
Charleston, WV 25311

JAMES M. CASEY, ESQ.
CASEY LAW OFFICES
P. O. Box 427
Pt. Pleasant, WV 25550-0427

Probation Officer:

CAROL JAMES

Defendant Present in Person.

Court Reporter:

TERESA M. RUFFNER, RPR
P. O. Box 1570
Huntington, WV 25716
(304) 528-7583

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

1 Monday, December 11, 2006, at 1:30 p.m. in open court

2 THE COURT: All right. Are we ready to proceed in
3 Mr. Morgan's case?

4 MS. SCHWARTZ: The United States is ready to
5 proceed, Your Honor.

6 MR. SMITH: As is the defense counsel, Your Honor.
7 Tom Smith --

8 THE COURT: All right. Oh, I'm sorry.

9 MR. SMITH: Tom Smith and James Casey for
10 Dr. Morgan, who is present.

11 THE COURT: All right. Dr. Morgan and counsel, if
12 you would please stand during this proceeding.

13 I understand that Dr. Morgan has decided to enter a
14 guilty plea to Count Twenty-Eight of the indictment; is that
15 correct?

16 MR. SMITH: Yes, Your Honor.

17 THE COURT: All right. Madam clerk, would you
18 administer the oath to Dr. Morgan.

19 CLERK JUSTICE: Please raise your right hand.

20 (The defendant was duly sworn.)

21 QUESTIONS BY THE COURT TO THE DEFENDANT:

22 Q. Dr. Morgan, do you understand that you're now under oath
23 and if you answer any of my questions falsely, you could be
24 prosecuted for perjury or for making a false statement?

25 A. Yes, sir.

1 Q. Would you state your full name.

2 A. Breton Lee Morgan.

3 Q. How old are you, Dr. Morgan?

4 A. Forty-six.

5 Q. How much education have you had?

6 A. A medical degree.

7 Q. You can read and write without any difficulty?

8 A. Yes, sir.

9 Q. Have you recently been under the care of a doctor or
10 psychiatrist or other medical professional for any serious
11 physical or emotional illness?

12 A. Yes, sir.

13 Q. Can you tell me what?

14 A. Back surgery, and then I've been to Talbott Recovery
15 Center for drug addiction.

16 Q. All right. Are you currently using any type of
17 medication or controlled substances or alcohol?

18 A. No, sir.

19 Q. Are you able to understand fully what's going on here in
20 court today?

21 A. Yes, sir.

22 THE COURT: Mr. Smith, Mr. Casey, do you have any
23 reason to question the competence of Dr. Morgan?

24 MR. SMITH: No, Your Honor.

25 MR. CASEY: None whatsoever.

1 BY THE COURT:

2 Q. All right. Dr. Morgan, I find you're competent and
3 capable of entering an informed plea.

4 Have you had enough time to discuss this case with your
5 lawyers?

6 A. Yes, sir.

7 Q. Have they been able to answer your questions about how
8 you should proceed?

9 A. Yes, sir.

10 Q. Are you completely satisfied with the legal advice
11 they've given you?

12 A. Yes, sir.

13 THE COURT: Counsel, has Dr. Morgan been cooperative
14 with you?

15 MR. SMITH: Yes, Your Honor.

16 THE COURT: And have you had enough time to
17 investigate his case fully and discuss all these matters with
18 him?

19 MR. SMITH: Yes, Your Honor.

20 THE COURT: All right. I understand there's a
21 proposed plea agreement. Mr. Smith or Mr. Casey, would one of
22 you summarize the plea agreement.

23 MR. SMITH: Your Honor, it's under the date of
24 October 30, 2006. It's a standard plea letter addressed to
25 both Mr. Casey and myself.

1 Paragraph 1 sets forth the charges in the 29-count
2 indictment and with specificity.

3 Paragraph 2 states the proposed resolution of the
4 charges; and it is that Dr. Morgan, as the Court noted, would
5 enter a plea to Count Twenty-Eight of said indictment,
6 obtaining a Schedule III controlled substance by fraud. The
7 Government agrees at final disposition to dismiss the
8 remaining 28 counts.

9 Paragraph 3 sets forth the maximum potential penalties,
10 which are imprisonment for a period of up to four years, a
11 fine of \$250,000 or twice the pecuniary gain or loss, a term
12 of supervised release of not more than one year, a mandatory
13 special assessment of \$100, which has been paid, and proof
14 thereof has been supplied the Government.

15 Pursuant to -- it also states that pursuant to 21 U.S.C.
16 861(b)(1) (sic), the Court has the discretion to deny certain
17 benefits, federal benefits, to Dr. Morgan for a period of a
18 year, and restitution is understood may be ordered by the
19 Court pursuant to 18 U.S.C. Sections 3663 and 3664.

20 As the special assessment has been paid, I'll skip
21 paragraph 4.

22 Paragraph 5 deals with cooperation, and it's the standard
23 provision requiring Dr. Morgan to be forthright and truthful
24 with the U. S. Attorney's Office and law enforcement agencies
25 and the standard requirements of giving signed, sworn

1 statements and grand jury and trial testimony if requested to
2 do so.

3 Paragraph 6 is the standard use immunity provision, which
4 states that unless the agreement becomes void, nothing
5 Dr. Morgan gives in any statement or testimony will be used
6 against him directly or indirectly for purposes of prosecution
7 or determining appropriate applicable guideline ranges.

8 Paragraph 7 is the standard limitations on immunity
9 clause which makes it clear that perjury and false statements
10 are not covered by the agreement and that any evidence found
11 from an independent, legitimate source other than Dr. Morgan
12 could still subject Dr. Morgan to prosecution.

13 Paragraph 8 makes it clear that Dr. Morgan agrees not to
14 object to any monetary penalties, including special
15 assessment, fine, court costs, etcetera, that do not exceed
16 the amount set forth in the plea agreement, and that such are
17 due and payable immediately.

18 Paragraph 9 deals with appeal of sentence wherein the
19 United States and Dr. Morgan voluntarily and knowingly agree
20 to waive their right to seek appellate review of the
21 reasonableness of any sentence imposed by the district court
22 as long as it's within the guideline range.

23 Paragraph 10 sets forth the standard rights of the
24 parties at final disposition.

25 Paragraph 11 makes it clear that if either party breaches

1 the terms of this agreement, the other party has the right to
2 void the agreement.

3 And paragraph 12 sets forth that this written agreement
4 is the entirety of the agreement between the parties.

5 The document is signed by Assistant U. S. Attorney Monica
6 Schwartz on behalf of the Government and is signed on all of
7 its pages by Dr. Morgan, Mr. Casey, and myself.

8 THE COURT: All right. Miss Schwartz, is that a
9 fair statement of the agreement?

10 MS. SCHWARTZ: It is, Your Honor.

11 BY THE COURT:

12 Q. Dr. Morgan, do you understand what this agreement does
13 and what it requires of you?

14 A. Yes, sir.

15 Q. Did you go over each of these paragraphs with your lawyer
16 before you signed this plea agreement?

17 A. Yes, sir.

18 Q. Do you want me to accept the plea agreement?

19 A. Yes, sir.

20 Q. Well, I'm going to defer accepting the plea agreement
21 until I can review a presentence report on you, Dr. Morgan,
22 but the original agreement may be filed as a part of the
23 record in this case.

24 MS. SCHWARTZ: May I approach, Your Honor?

25 THE COURT: You may.

1 BY THE COURT:

2 Q. All right. Dr. Morgan, have you received a copy of the
3 indictment returned against you?

4 A. Yes, sir.

5 Q. Have you read it?

6 A. Yes, sir.

7 Q. All right. I'm going to read Count Twenty-Eight to you
8 now and then ask for your plea.

9 This is styled United States of America versus Breton Lee
10 Morgan, M.D. Count Twenty-Eight.

11 From on or about November 2, 2004, to on or about
12 September 6, 2005, at or near Point Pleasant, Mason County,
13 West Virginia, and within the Southern District of West
14 Virginia and elsewhere, defendant Breton Lee Morgan, Jr.
15 Knowingly and intentionally acquired and obtained possession
16 of a quantity of hydrocodone, a Schedule III controlled
17 substance, from Pharmaceutical Company "A," by misrepresenta-
18 tion, fraud, deception, and subterfuge, in violation of
19 Title 21, United States Code, Section 843(a)(3).

20 Dr. Morgan, how do you plead as to that charge?

21 A. Guilty, sir.

22 Q. All right. Now, before I accept your guilty plea, I want
23 to discuss several things with you. First, I want to make
24 sure there's a factual basis for your guilty plea. Then I
25 want to make sure that you understand the nature of the charge

1 and the consequences of pleading guilty to it, that you
2 understand the constitutional and other legal rights you give
3 up by pleading guilty, and that you're pleading guilty
4 voluntarily.

5 Now, first, let's go over the charge in more detail.
6 You're charged with violating Section 843, which states, in
7 part, it shall be unlawful for any person knowingly or
8 intentionally to acquire or obtain possession of a controlled
9 substance by misrepresentation, fraud, forgery, deception, or
10 subterfuge.

11 Now, if the Government had to go to trial on this charge,
12 the Government would have to prove these two elements beyond a
13 reasonable doubt:

14 First, that you knowingly or intentionally acquired or
15 obtained possession of a controlled substance, hydrocodone in
16 this case; and second, that you acquired or obtained
17 possession of that controlled substance by misrepresentation,
18 fraud, forgery, deception, or subterfuge.

19 Now, "hydrocodone" is a controlled substance.

20 An act is done "knowingly" if it's done voluntarily and
21 intentionally and not because of a mistake or accident or
22 other innocent reason.

23 An act is done "intentionally" if it's done knowing the
24 act is one the law forbids and purposefully intending to
25 violate the law.

1 Now, considering this explanation, Dr. Morgan, do you
2 believe you're guilty of the charge in Count Twenty-Eight?

3 A. Yes, sir.

4 Q. Tell me in your own words what you did that makes you
5 guilty of this charge.

6 A. I signed for the samples knowing that I would take some
7 of them.

8 Q. All right. You said you signed for samples. Can you
9 elaborate on that? I don't know anything about the facts
10 here, so tell me what happened.

11 A. The drug reps come to your office, and, you know, they
12 present you these cards that deliver samples by mail to the
13 office, and I signed for those. The medicine came to the
14 office, and then I would go up to my office and divert some of
15 the samples to myself.

16 Q. All right. And the medicine you're talking about was
17 hydrocodone?

18 A. Yes, sir.

19 Q. And you knew that was a Schedule III controlled
20 substance?

21 A. Yes, sir.

22 Q. All right. And by signing for these samples, intending
23 that you were actually going to keep some of it for yourself
24 and use, were you misrepresenting --

25 A. Yes, sir.

1 Q. -- to the drug reps your intention with regard to what
2 you were going to do with these samples?

3 A. Yes, sir.

4 Q. Were the drug reps and therefore their pharmaceutical
5 company led to believe that you were going to use these
6 samples only lawfully and for your patients?

7 A. Yes, sir.

8 Q. All right. This alleges that this conduct occurred from
9 between November 2, 2004 to about September 6, 2005. Is that
10 accurate?

11 A. Yes, sir.

12 Q. Is this something that you did over a period of time?

13 A. Yes, sir.

14 Q. This also alleges that -- the indictment alleges that
15 this occurred at or near Point Pleasant, in Mason County,
16 West Virginia. Is that where your conduct took place?

17 A. That's where my practice is, yes, sir.

18 THE COURT: All right. You can sit down for a few
19 minutes.

20 Miss Schwartz, do you want to offer testimony to show
21 what the Government could prove if it had to go to trial?

22 MS. SCHWARTZ: Yes, Your Honor. The United States
23 would call Steve Utt.

24 STEPHEN UTT, GOVERNMENT'S WITNESS, SWORN

25

DIRECT EXAMINATION

Utt - Direct

1 BY MS. SCHWARTZ:

2 Q. Please state your name.

3 A. Stephen L. Utt.

4 Q. How are you employed?

5 A. I'm employed by the Drug Enforcement Administration.

6 Q. How long have you been so employed?

7 A. Approximately seven years.

8 Q. Prior to that, what was your job?

9 A. I was employed by the Charleston, West Virginia Police
10 Department.

11 Q. For how long?

12 A. Twenty-seven years.

13 Q. And during that time did you work in the drug unit for a
14 period of time?

15 A. Yes.

16 Q. How many years did you do that?

17 A. Approximately 13.

18 Q. Since you became employed as a diversion investigator for
19 DEA --

20 A. Yes.

21 Q. -- did you have occasion to investigate Dr. Breton Lee
22 Morgan of Point Pleasant, West Virginia?

23 A. Yes.

24 Q. Approximately when did Dr. Morgan come to your attention?

25 A. September of 2005.

Utt - Direct

1 Q. Specifically calling your attention to Count Twenty-Eight
2 of the indictment pending against Dr. Morgan, please explain
3 what happened with regard to Pharmaceutical Company "A" as per
4 your investigation.

5 A. Pharmaceutical Company "A" is Athlon Pharmaceutical
6 Company, and basically it came to my attention that a drug
7 representative employed by Athlon Pharmaceutical Company was
8 distributing samples to Dr. Morgan, and --

9 Q. What type of samples are you speaking of?

10 A. Hydrocodone samples and codeine samples, specifically
11 Vopac and Brovex HC.

12 Q. That's V-o-p-a-c for Vopac?

13 A. Yes.

14 Q. And Brovex is B-r-o-v-e-x?

15 A. Yes.

16 Q. Why did -- why were those two substances specifically
17 called to your attention as the DEA diversion agent?

18 A. Initially we received information from several current
19 and former employees of Dr. Morgan that he may be diverting
20 controlled substances. I then -- DEA has a computer database
21 that tracks samples that are distributed to physicians'
22 office, and I gained this information from our computer system
23 and learned that Athlon was distributing some samples to
24 Dr. Morgan's office.

25 Q. And you learned that from November 2, '04 through

Utt - Direct

1 September 6 of '05, Dr. Morgan had received samples of Brovex
2 and Vopac, which both contained hydrocodone; is that correct?

3 A. Correct.

4 Q. And that was from Athlon?

5 A. Yes.

6 Q. And the Brovex was a liquid; is that right?

7 A. Correct.

8 Q. And the Vopac was in tablet form?

9 A. Yes.

10 Q. What did you do once you got that information?

11 A. We -- mainly myself and another diversion investigator
12 basically served a notice of inspection at Dr. Morgan's office
13 on November 9, 2005, specifically looking and requesting
14 records from Dr. Morgan as to his acquiring and his dispensing
15 of the samples that he had acquired.

16 Q. Did you obtain such records?

17 A. No, we did not.

18 Q. Was there a reason given why the records did not exist?

19 A. There were several reasons given. Basically, Dr. Morgan
20 mentioned that some of the UPS drivers may be stealing the
21 samples from him, drug reps themselves may be stealing samples
22 from him, and employees may not be keeping proper records of
23 the dispensing from his office.

24 Q. A variety of reasons were given?

25 A. Yes.

Utt - Direct

1 Q. So your investigation continued; is that correct?

2 A. Yes, it did.

3 Q. And as a result of your investigation, a 29-count
4 indictment was returned on August 30th of this year; is that
5 correct?

6 A. Yes.

7 Q. And Count Twenty-Eight relates specifically to the
8 pharmaceutical samples that were obtained by Dr. Morgan from
9 Athlon, correct?

10 A. Correct.

11 Q. And as part of the procedure for a physician obtaining
12 controlled substances samples specifically from Athlon
13 required the doctor to sign for them; is that right?

14 A. That's correct.

15 Q. And based on your investigation, Dr. Morgan didn't keep
16 records of these controlled substances and didn't distribute
17 them to his patients; is that correct?

18 A. He was unable to provide any records pertaining to his
19 acquiring or his dispensing of these controlled substances.

20 Q. And based on your investigation, you found out that he,
21 in fact, was ingesting hydrocodone himself; is that correct?

22 A. That's correct.

23 Q. And that he was either treating his own pain and/or
24 addicted to hydrocodone, is that right, based on your
25 investigation?

Utt - Direct

1 A. Yes.

2 Q. And it was also -- your investigation also determined
3 that Dr. Morgan was, in fact, acquiring the hydrocodone from
4 Athlon, which is a Schedule III controlled substance, for the
5 purpose of taking it himself rather than distributing it to
6 his patients, at least in part; is that right?

7 A. Yes.

8 Q. And this all happened at or near Point Pleasant, Mason
9 County, West Virginia, correct?

10 A. That's correct.

11 MS. SCHWARTZ: Nothing further, Your Honor.

12 THE COURT: All right. Any questions?

13 MR. SMITH: No, Your Honor. Thank you.

14 THE COURT: All right. You may step down.

15 All right. Counsel, Dr. Morgan, if you would again
16 stand.

17 Dr. Morgan, was the witness's testimony substantially
18 correct and accurate?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Mr. Smith, are you satisfied that if
21 this case went to trial, there would be no meritorious legal
22 defense to this charge?

23 MR. SMITH: Yes, Your Honor.

24 THE COURT: Are you satisfied that Dr. Morgan's
25 constitutional and other rights have been observed fully?

1 MR. SMITH: Yes, Your Honor.

2 BY THE COURT:

3 Q. All right. Dr. Morgan, I find there's a sufficient
4 factual basis for your guilty plea. Now, I want to go over
5 the penalties that you're exposed to.

6 Do you understand you're pleading guilty to a felony
7 offense and if I accept your plea, you'll be adjudged guilty
8 of that felony?

9 A. Yes, sir.

10 Q. Do you understand that that judgment may deprive you of
11 valuable civil rights, such as your right to vote, your right
12 to hold public office, your right to serve on a jury, and your
13 right to possess any kind of firearm or gun?

14 A. Yes, sir.

15 Q. Do you understand that you expose yourself to a maximum
16 penalty of four years' imprisonment under this plea agreement?

17 A. Yes, sir.

18 Q. Do you understand you would also be subject to supervised
19 release of not more than a year?

20 A. Yes, sir.

21 Q. Do you understand that supervised release means after
22 imprisonment, you would be supervised by the probation office
23 under conditions set by the Court?

24 A. Yes, sir.

25 Q. And do you understand that if you violate the terms of

1 supervised release, the Court may revoke it and send you back
2 to prison for an additional period?

3 A. Yes, sir.

4 Q. Do you understand you could also be fined up to \$250,000
5 or twice the amount of gain or loss resulting from your
6 conduct?

7 A. Yes, sir.

8 Q. Do you understand you'll be required to pay a \$100
9 special assessment for this felony conviction?

10 A. Yes, sir.

11 Q. Do you understand you could also be denied certain
12 federal benefits for up to a year?

13 A. Yes, sir.

14 Q. Do you understand you could also be required to make
15 restitution if there are any crime victims?

16 A. Yes, sir.

17 Q. Have you and your lawyers discussed the sentencing
18 guidelines and how they might apply to your case?*

19 A. Yes, sir.

20 Q. Do you understand that the Court cannot determine the
21 guideline range for your case until this presentence report is
22 completed and you and your lawyers and the Government have a
23 chance to review it and challenge it if either side thinks
24 it's wrong?

25 A. Yes, sir.

1 Q. Do you understand that the sentence I may impose could be
2 different from any estimate your lawyers have given you?

3 A. Yes, sir.

4 Q. Do you understand that although I have to consider the
5 sentencing guidelines, I have authority to impose a sentence
6 that's more severe or less severe than the guidelines might
7 call for?

8 A. Yes, sir.

9 Q. Do you understand that parole has been abolished and you
10 will not be released on parole if you get a prison sentence?

11 A. Yes, sir.

12 Q. Do you understand that even if you do not like the
13 sentence I impose upon you, you will still be bound by this
14 guilty plea and have no right to withdraw it?

15 A. Yes, sir.

16 Q. Do you understand you may have the right to appeal your
17 conviction if you believe your guilty plea today was unlawful
18 or involuntary or if there's some other fundamental defect in
19 these proceedings that you haven't waived by pleading guilty?

20 A. Yes, sir.

21 Q. Do you understand that both you and the Government may
22 have the right to appeal the sentence I impose?

23 A. Yes, sir.

24 Q. In the plea agreement, you agreed to give up your right
25 to appeal the reasonableness of your sentence as long as it

1 falls within the range provided for by the sentencing
2 guidelines. You also agreed not to -- you also agreed to give
3 up your right to appeal a fine unless the fine is above the
4 guideline range.

5 Now, these waivers are generally enforceable, but if you
6 want to challenge it, you'd have to present a challenge in the
7 appeals court. Do you understand that?

8 A. Yes, sir.

9 Q. Do you understand that with few exceptions, any notice of
10 appeal must be filed within 10 days of judgment being entered
11 in your case?

12 A. Yes, sir.

13 Q. All right. Dr. Morgan, I find you understand the nature
14 of the charge and the consequences of a guilty plea.

15 Now let's go over the constitutional and other legal
16 rights you give up when you plead guilty. Do you understand
17 you have a right to plead not guilty to this charge?

18 A. Yes, sir.

19 Q. Do you understand that by pleading guilty, you're giving
20 up your right to a speedy and public jury trial?

21 A. Yes, sir.

22 Q. Do you understand that by pleading guilty, you're giving
23 up your right to force the Government to produce witnesses and
24 evidence against you?

25 A. Yes, sir.

1 Q. Do you understand that you would be presumed innocent
2 until the Government presented enough evidence to convince
3 both a judge and a jury beyond a reasonable doubt that you
4 were guilty?

5 A. Yes, sir.

6 Q. Do you understand that when you admit your guilt, as you
7 have here, you relieve the Government of the burden of proving
8 your guilt?

9 A. Yes, sir.

10 Q. Do you understand you would have the right to the
11 assistance of your lawyers at trial?

12 A. Yes, sir.

13 Q. Do you understand that you and your lawyers could
14 confront the witnesses and they could cross-examine them to
15 test the truth of what they said?

16 A. Yes, sir.

17 Q. Do you understand that by pleading guilty, you're giving
18 up that right?

19 A. Yes, sir.

20 Q. Do you understand that had you desired to go to trial,
21 you'd be entitled to bring witnesses to court under subpoena?

22 A. Yes, sir.

23 Q. Do you understand that by pleading guilty, you're giving
24 up your right to call witnesses except for the limited
25 purposes of a sentencing hearing?

1 A. Yes, sir.

2 Q. Do you understand you would have the right to go to trial
3 and remain silent? That is, you wouldn't have to testify or
4 even present any evidence.

5 A. Yes, sir.

6 Q. Do you understand that I would instruct the jury that
7 they couldn't even discuss the fact that you exercised your
8 right of silence and that in any event they could convict you
9 only if the Government proved its case beyond a reasonable
10 doubt?

11 A. Yes, sir.

12 Q. All right. Dr. Morgan, I find you understand the
13 constitutional and other legal rights you're giving up by
14 pleading guilty.

15 Knowing all these things, do you still want to plead
16 guilty at this time?

17 A. Yes, sir.

18 Q. Has anyone forced you, threatened you, intimidated you,
19 or talked you into pleading guilty against your will?

20 A. No, sir.

21 Q. Are you acting voluntarily and of your own free will in
22 entering this guilty plea?

23 A. Yes, sir.

24 Q. Is pleading guilty your own idea?

25 A. Yes, sir.

1 Q. Has anyone promised you something or told you anything
2 different from what we've discussed here in court today to get
3 you to plead guilty?

4 A. No, sir.

5 Q. All right. If not, I'm going to ask that you step up
6 here -- or I find that your guilty plea is voluntary. Do you
7 have any questions or second thoughts about entering this
8 guilty plea?

9 A. No, sir.

10 Q. If not, please step up here and sign the plea and have
11 your lawyer sign it.

12 CLERK JUSTICE: "In the presence of Thomas Smith and
13 James Casey, my counsel, who have fully explained the charges
14 contained in the indictment against me, and having received a
15 copy of the indictment before being called upon to plead, I
16 hereby plead guilty to the charge contained in Count
17 Twenty-Eight of the indictment."

18 (The document was executed.)

19 THE COURT: The record may reflect that Dr. Morgan
20 has signed the plea of guilty, and his counsel signed it.
21 It's been filed with the clerk.

22 In the case of United States of America versus Breton L.
23 Morgan, M.D., I find that Dr. Morgan is fully competent and
24 capable of entering an informed plea, there's a sufficient
25 factual basis for his guilty plea, he understands the nature

1 of the charge and the consequences of a guilty plea, he
2 understands the constitutional and other legal rights he's
3 giving up by pleading guilty, and his plea is voluntary.

4 While I've deferred accepting the plea agreement until I
5 can review a presentence report on you, Dr. Morgan, I do
6 accept your guilty plea. You are now adjudged guilty and
7 stand convicted of violating 21, United States Code, Section
8 843(a)(3).

9 I direct the probation office to conduct a presentence
10 investigation of Dr. Morgan, prepare a report and disclose it
11 to the Government and the defendant by January 29. Counsel
12 may make objections no later than February 12. The final
13 report will be due to the Court by February 26. And I'm
14 setting this case down for sentencing here in Huntington on
15 March 12, 2007, at 1:30 p.m.

16 All right. Miss Schwartz, what's the Government's
17 position concerning the amount of drugs that would count as
18 offense conduct or any other relevant conduct you would
19 attribute to the defendant?

20 MS. SCHWARTZ: It's my understanding, Your Honor,
21 based on the way the guidelines are that relevant conduct is
22 not calculated for an obtaining by fraud charge. It's a base
23 offense level of 8 regardless of the amount of drugs involved.

24 THE COURT: All right. And do you seek any other
25 conduct that would result in additional guideline points?

1 MS. SCHWARTZ: There may be other enhancements that
2 would apply under Section 3, perhaps abuse of position of
3 trust, but no other enhancement in terms --

4 THE COURT: All right.

5 MS. SCHWARTZ: -- of the amount of drugs involved.

6 THE COURT: Well, I think in keeping with my usual
7 practice on drug cases, although this may not fit exactly,
8 I'll require that the Government advise the defendant within
9 14 days of its position concerning any other increases in the
10 guideline points based upon other conduct so that the
11 defendant is aware, as well as the probation officer, of the
12 nature of the conduct that you attribute to the defendant and
13 the basis for it, the source of the information, whether it's
14 grand jury testimony or something similar.

15 All right. As I understand it, the defendant has been
16 released on a \$10,000 unsecured bond.

17 MR. SMITH: That's correct, Your Honor.

18 MS. SCHWARTZ: Yes. Yes, Your Honor.

19 THE COURT: Does the Government have any objection
20 to him remaining free --

21 MS. SCHWARTZ: No objection to remaining on that
22 bond, Your Honor.

23 THE COURT: All right.

24 MR. SMITH: We would so move, Your Honor.

25 THE COURT: Dr. Morgan, I'm going to allow you to

1 remain free on your current bond with the additional condition
2 that you report back here for sentencing on March 12, 2007, at
3 1:30 p.m.

4 If you knowingly fail to appear back here for your
5 sentencing, then I can impose an additional sentence of up to
6 two years in prison and a \$250,000 fine. Also, if you commit
7 any crime whatsoever between now and then, I can impose an
8 additional penalty. If you commit a felony, I can add up to
9 10 years. If it's a misdemeanor, I can add up to one year to
10 whatever sentence you get for this conviction.

11 Do you understand all that?

12 THE DEFENDANT: Yes.

13 THE COURT: All right. Are there any other matters
14 we need to address in Dr. Morgan's case?

15 MS. SCHWARTZ: May I consult with counsel one
16 moment?

17 THE COURT: Certainly.

18 (Counsel conferred private off the record.)

19 MR. SMITH: Your Honor, I have to -- after
20 consulting with the Government, we would move, if probation
21 doesn't have an objection, for an expedited sentencing date in
22 this case if they've got time to get the report done. It
23 should be relatively simple. There are no --

24 PROBATION OFFICER JAMES: I'll give it my best
25 shot --

1 THE COURT: Well, if the parties will promptly give
2 the probation officer all the information that is typically
3 provided, I'll ask Miss James to review it and then to advise
4 me if she thinks it's possible to speed up the report; and, if
5 so, we'll accelerate the deadlines and reschedule the
6 sentencing if that's what you want to do.

7 MR. SMITH: Thank you, Your Honor, we appreciate it.

8 THE COURT: All right. If there's nothing further,
9 then, we'll stand in recess before the next case is called.

10 (Hearing concluded at 1:56 p.m.)

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21 I, Teresa M. Ruffner, certify that the foregoing is a
22 correct transcript from the record of proceedings in the
23 above-entitled matter.

24

25

Teresa M. Ruffner

April 4, 2007

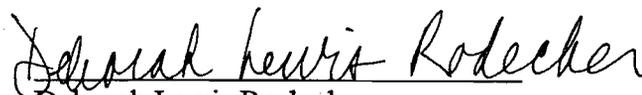
CERTIFICATE OF SERVICE

I, Deborah Lewis Rodecker, counsel for the West Virginia Board of Medicine, do hereby certify that on May 14, 2007, I served a copy of the foregoing **ORDER OF REVOCATION OF LICENSE TO PRACTICE MEDICINE AND SURGERY** upon Breton Lee Morgan, M.D., by depositing the same in the United States Mail, certified, postage prepaid, addressed to him and to his counsel, as follows:

Breton Lee Morgan, M.D.
20 Windsor Ct
Point Pleasant, WV 25550

and

James M. Casey, Esq.
PO Box 421
Point Pleasant, WV 25550-0427


Deborah Lewis Rodecker
West Virginia Bar #3144
West Virginia Board of Medicine
101 Dee Drive
Charleston, West Virginia 25311
(304) 558-2921

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

IN RE:

BRETON LEE MORGAN, M.D.

CONSENT ORDER

The West Virginia Board of Medicine (“Board”) and Breton Lee Morgan, M.D. (“Dr. Morgan”), freely and voluntarily enter into the following Order pursuant to W. Va. Code § 30-3-1, et seq.

FINDINGS OF FACT

1. Dr. Morgan held a license to practice medicine and surgery in West Virginia, License No. 15143, and practiced medicine in Point Pleasant, West Virginia, until he surrendered his license to the Board in March, 2006.

2. Dr. Morgan underwent treatment for chemical dependency at the Talbott Recovery Center, Atlanta, Georgia, for a three (3) month period and has been in continuing treatment and monitoring through the West Virginia Professional Advocacy Group Effort since his discharge.

3. Dr. Morgan appeared before the Licensure Committee in November, 2006, expressing a desire to resume the practice of medicine, and a full discussion as to his situation and health and well being was had. He was in compliance with an agreement he had with the West Virginia Professional Advocacy Group Effort.

4. The Licensure Committee thoroughly reviewed all pertinent documents and materials in connection with Dr. Morgan's treatment for chemical dependency.

5. The Licensure Committee recommended to the Board and the Board found that Dr. Morgan met the requirements for reinstatement of an inactive license to practice medicine and surgery and on December 11, 2006, the Board reinstated Dr. Morgan's license to practice medicine and surgery in West Virginia in an inactive status, through a Consent Order attaching appropriate limitations, conditions, and accommodations upon his inactive license. Dr. Morgan complied with the limitations, conditions, and accommodations.

6. In March, 2007, Dr. Morgan entered a plea of guilty in the United States District Court, Southern District of West Virginia, at Huntington, to one (1) count of obtaining a Schedule III Controlled Substance by Fraud, 21 U.S.C. 843(a)(3), in Case Number 3:06-00194, *United States of America v. Breton Lee Morgan, M.D.*

7. On May 14, 2007, Dr. Morgan's medical license was revoked by the Board, pursuant to provisions mandating the same in the West Virginia Medical Practice Act, § 30-3-14(d).

8. Dr. Morgan has completed his sentence of confinement, probation or other court-ordered supervision and has fully satisfied a fine and other fees imposed by the sentencing court and has applied for a license to practice medicine and surgery in West Virginia.

9. Dr. Morgan appeared before the Licensure Committee in November, 2007, again expressing a desire to resume the practice of medicine, and again, a full discussion of his situation and health and well being was had, and his logs of Alcoholics

Anonymous meetings and continuing medical education credits were presented and reviewed, as well as continuing reports of compliance with his agreement with the West Virginia Professional Advocacy Group Effort.

10. The Licensure Committee recommended to the Board and the Board found that Dr. Morgan should sit for and pass the Special Purpose Examination (SPEX) to determine if Dr. Morgan is, except for the underlying conviction, otherwise qualified to practice medicine.

11. The SPEX measures the knowledge and cognitive abilities required of all physicians, regardless of specialty practiced, and who are five (5) years or more beyond medical school graduation.

12. The Licensure Committee recommended to the Board and the Board found that provided he did sit for and pass the SPEX, it would be appropriate to issue a license to practice medicine and surgery to Dr. Morgan, through a Consent Order containing appropriate conditions, limitations, and accommodations.

13. Dr. Morgan sat for and passed the SPEX.

14. On December 12, 2007, Dr. Morgan's certificate to practice medicine in Ohio was suspended through a Consent Order entered into between D. Morgan and the State Medical Board of Ohio, and he is not eligible to apply for reinstatement of his certificate in Ohio until two hundred and seventy (270) days from December 12, 2008, which will be after August 12, 2008.

15. The suspension of Dr. Morgan's certificate to practice medicine in Ohio was based upon similar circumstances that caused the West Virginia Board of Medicine to revoke his license to practice medicine and surgery, that being his plea of

guilty to one (1) count of Obtaining a Controlled Substance by Fraud and was also based upon the fact that his medical license in West Virginia had been revoked.

16. In June, 2008, Dr. Morgan was excluded from participation in the Medicare and Medicaid programs for a minimum period of five (5) years as a result of the felony conviction, and he is appealing this exclusion.

17. Dr. Morgan appeared before the Licensure Committee in July, 2008, again expressing a desire to resume the practice of medicine, and a full discussion as to his health and well being was had. He remains in his recovery.

18. Despite the fact that his certificate to practice medicine in Ohio is suspended, Dr. Morgan is, except for the underlying conviction, otherwise qualified to practice medicine in West Virginia.

19. Dr. Morgan has the right to request the Board of Medicine for reinstatement of his license to practice medicine and surgery in West Virginia

CONCLUSIONS OF LAW

1. The Board has a mandate to protect the public interest pursuant to W. Va. Code § 30-3-1.

2. Probable cause exists to substantiate disqualification from the practice of medicine due to a violation of W. Va. Code § 30-3-14(c)(2) and (d) relating to being convicted of a felony involving administering and dispensing a controlled substance under state or federal law, for other than generally accepted therapeutic purposes.

3. The Board has determined in accordance with the Findings of Fact in this Consent Order, that it is appropriate and lawful to grant Dr. Morgan a license to

practice medicine and surgery in the State of West Virginia, provided limitations, conditions, and accommodations are placed upon such license.

CONSENT

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

2. Dr. Morgan 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. Morgan waives all such rights to a hearing;

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

5. Dr. Morgan understands that this Order is considered public information and that matters herein may be reported, as required by law, to the National Practitioner Data Bank and the Healthcare Integrity and Protection 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. Morgan, the West Virginia Board of Medicine hereby **ORDERS** as follows:

1. Dr. Morgan, having met the requirements for medical licensure in the State of West Virginia, is licensed to practice medicine and surgery in the State of West Virginia, License No. 15143, effective upon entry of this Order, in **ACTIVE** status.

2. Said License No. 15143 is issued subject to compliance with all of the following:

- a. Immediately upon issuance, Dr. Morgan's active license is **REVOKED** and such revocation is immediately **STAYED** and Dr. Morgan's license for a five (5) year period is placed on **PROBATION**.
- b. Dr. Morgan shall appear in person for an interview with the Licensure Committee at its regularly scheduled meetings in January, 2009; July, 2009, and annually thereafter in July, and as otherwise requested by the Licensure Committee.
- c. Dr. Morgan shall attend a minimum of three (3) Alcoholics Anonymous, Narcotics Anonymous, or Caduceus meetings each week in person.
- d. Dr. Morgan shall maintain a log of his Alcoholics Anonymous, Narcotics Anonymous, or Caduceus meetings in a hand held spiral notebook, which shall be open to the Board's inspection at any time, and he shall bring the log to any and all meetings of the Licensure Committee at which he is requested or scheduled to appear.
- e. Dr. Morgan shall refrain from ingesting poppy seeds and alcohol in any form.
- f. Within ten (10) days of entry of this Order, Dr. Morgan shall advise the Board, in writing, of the identity of any and all of his treating physician(s), and Dr. Morgan shall ensure that the Board is fully and

completely apprised on a continuing basis of the identity of any and all of his treating physician(s), and he shall refrain from the use of all controlled substances/mood altering drugs/psychoactive drugs unless prescribed to him by his duly licensed treating physician, and such duly licensed treating physician must immediately document in writing to the Board what and why such controlled substances/mood altering drugs/psychoactive drugs have been prescribed to Dr. Morgan at any time the same are prescribed.

- g. Dr. Morgan shall seek and maintain a sponsor in Alcoholics Anonymous, Narcotics Anonymous, or Caduceus who will regularly review his log and who will discuss his progress and who will file reports with the Board every sixty (60) days, beginning October 1, 2008, confirming Dr. Morgan's required attendance at all Alcoholics Anonymous, Narcotics Anonymous, and Caduceus meetings.
- h. Dr. Morgan shall, at his own expense, participate in the monitoring service offered by the West Virginia Medical Professionals Health Program, Inc., which shall include random and unannounced testing of bodily fluids and hair analysis, all carried out in a manner directed and approved by the Board, and at any time upon request of the Board.
- i. Dr. Morgan's practice of medicine may occur only with a Board approved monitoring and supervising internist who shall meet with Dr. Morgan every two (2) weeks and select two (2) random charts from each treatment day during the prior two (2) weeks for review.

- j. The Board approved monitoring and supervising physician shall file a report in writing with the Executive Director of the Board every thirty (30) days, beginning October 1, 2008, attesting to the adequacy of the care and treatment rendered by Dr. Morgan during the last thirty (30) days based on review of the randomly selected charts, and shall advise the Board as to whether Dr. Morgan appears to be practicing medicine and providing treatment at an acceptable and reasonable level of care, skill, and safety for patients.
- k. Should the performance of Dr. Morgan as a physician at any time fall below the level of acceptable and reasonable care, skill and safety, the Board approved monitoring and supervising physician shall immediately notify the Executive Director of the Board.
- l. Dr. Morgan may not practice more than a total of forty (40) hours in any seven (7) day week, including on-call time, and including any practice of medicine in any other state.
- m. Dr. Morgan may not register as a dispensing physician with the Board under Board rule 11 CSR 5.
- n. Dr. Morgan may not receive, administer, distribute or dispense professional samples which are controlled substances.
- o. Dr. Morgan may not apply for a Drug Enforcement Administration (“DEA”) number for six months from entry of this Consent Order.
- p. Dr. Morgan may not make any request for a modification to this Consent Order for a period of one (1) year from entry of this Consent Order.

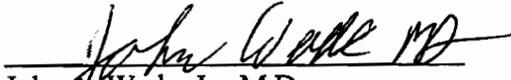
- q. Dr. Morgan shall review this Consent Order on a regular basis in order that he fully understands its requirements and to prevent any noncompliance.
- r. Dr. Morgan shall present a copy of this Consent Order, when entered, to his Board approved monitoring and supervising physician, his Alcoholics Anonymous, Narcotics Anonymous or Caduceus Sponsor, and to his duly licensed treating physician(s), and within ten (10) days of entry, each of such persons shall confirm in writing to the Board that they understand their responsibilities hereunder.
- s. Throughout the probationary period, Dr. Morgan shall present a copy of this Consent Order to any employer or health care or medical facility where Dr. Morgan seeks to practice medicine.
- t. At the option of either Dr. Morgan or the Board, this Consent Order or a modified version thereof may again be entered into by the parties at the end of the five (5) year probationary period.
- u. Dr. Morgan shall abide by all laws and rules of the Board.

The failure of Dr. Morgan to comply with any of the terms of this Consent Order shall constitute grounds for the revocation of his license to practice medicine and surgery in the State of West Virginia, and if Dr. Morgan violates any of the terms of this Consent Order, in any respect, as determined by the Board, the Board may **TERMINATE** and **DISSOLVE** the **STAY of REVOCATION** herein imposed, upon written notice of the same to Dr. Morgan, and Dr. Morgan understands that, notwithstanding any provision of law to the contrary, such termination and dissolution of the **STAY of REVOCATION** may

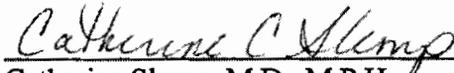
occur without any hearing provided by the Board, and by his signing of this Consent Order,
Dr. Morgan has consented to the same.

The foregoing was entered this 28th day of July, 2008

WEST VIRGINIA BOARD OF MEDICINE



John A. Wade, Jr., M.D.
President



Catherine Slemp, M.D., M.P.H.
Secretary



Breton Lee Morgan, M.D.

Date: 7/21/08

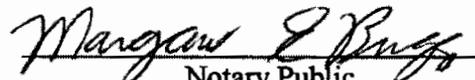
STATE OF WEST VIRGINIA

COUNTY OF KANAWHA, to wit:

I, MARGARET E. BRIGGS, a Notary Public for said county and
state do hereby certify that Breton Lee Morgan, M.D., whose name is signed on this page,
has this day acknowledged the same before me.

Given under my hand this 21st day of July, 2008.

My commission expires March 19, 2016.



Notary Public

