

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

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

Dr. Whalen 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)(19), 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 “[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills.”
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Section 4731.22(B)(19), Ohio Revised Code, as set forth in Paragraphs E and F, below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Consent Agreement.
- C. Dr. Whalen has applied for restoration of his license to practice medicine and surgery in the State of Ohio, License # 35.073148, which expired on or about October 1, 2001, due to non-renewal.
- D. Dr. Whalen states that he is also licensed to practice medicine and surgery in the State of Kentucky, where he has been actively engaged in family practice, and that he previously held a license to practice medicine and surgery in the State of Michigan, which expired on or about January 31, 1998.

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- E. Dr. Whalen admits that, in or around July 1999, he was referred by the Kentucky Board of Medical Licensure [Kentucky Board] to the Kentucky Physicians Health Foundation [KPHP] Impaired Physicians Program for evaluation, due to his disclosure on his Application for Medical/Osteopathic Licensure that that he had been treated for depression in 1996.

Dr. Whalen further admits that, as a result of his evaluation by KPHP, he was diagnosed with Depression and Bipolar II Disorder, and that his diagnoses were reported to the Kentucky Board. Dr. Whalen further admits that he was thereafter granted a license by the Kentucky Board under a Letter of Agreement, filed on or about October 5, 1999, which required him to work with KPHP and continue medical treatment for Depression and Bipolar II Disorder. Dr. Whalen admits that on or about November 2, 1999, he entered into a contract with KPHP and was required to participate in individual therapy sessions with a psychiatrist and to have work site monitoring reported to KPHP.

Dr. Whalen states, and the Board acknowledges receipt of information to support, that he was compliant with the terms of his contract with KPHP, and that he was discharged from the program on or about November 2, 2004, in good standing.

- F. Dr. Whalen further states, and the Board acknowledges receipt of information to support, that his former treating psychiatrist, Robert E. Elliott, M.D., of Elliott Psychiatric Services, PLLC, and his current treating psychiatrist, Suzanne Sumida, M.D., of McGrath Adolescent & Family Center, who have been approved by the Secretary and Supervising Member of the Board for the purpose of assessing Dr. Whalen, have provided written reports indicating that Dr. Whalen's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care, so long as certain treatment and monitoring conditions are in place, including that he continue to take medication on a regular basis, and that he continue to see a psychiatrist at least once every eight weeks for one year, and then quarterly thereafter.

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. Whalen to practice medicine and surgery in the State of Ohio shall be restored, and Dr. Whalen knowingly and voluntarily agrees with the Board to the following PROBATIONARY terms, conditions and limitations:

1. Dr. Whalen shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
2. Dr. Whalen 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

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received in the Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. In the event Dr. Whalen 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.
4. Dr. Whalen 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.

Psychiatric Treatment

5. Within thirty days of the effective date of this consent agreement, Dr. Whalen shall submit to the Board for its prior approval the name and qualifications of a psychiatrist of his choice. Upon approval by the Board, Doctor Whalen shall undergo and continue psychiatric treatment at least once every eight weeks for one year, and quarterly thereafter, or as otherwise directed by the Board. Doctor Whalen shall comply with his psychiatric treatment plan, including taking medications as prescribed and/or ordered for his psychiatric disorder. Dr. Whalen shall ensure that psychiatric reports are forwarded by his treating psychiatrist to the Board on a quarterly basis, or as otherwise directed by the Board. The psychiatric reports shall contain information describing Dr. Whalen's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Whalen's compliance with his treatment plan; Dr. Whalen's mental status; Dr. Whalen's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. Whalen shall ensure that his treating psychiatrist immediately notifies the Board of his failure to comply with his psychiatric treatment plan and/or any determination that Dr. Whalen is unable to practice due to his psychiatric disorder. It is Dr. Whalen's responsibility to ensure that quarterly reports are received in the Board's offices no later than the due date for Dr. Whalen's quarterly declaration.

In the event that the designated treating psychiatrist becomes unable or unwilling to serve in this capacity, Dr. Whalen must immediately so notify the Board in writing. In addition, Dr. Whalen shall make arrangements acceptable to the Board for another treating psychiatrist within thirty days after the previously designated treating psychiatrist becomes unable or unwilling to serve, unless otherwise determined by the

Board. Furthermore, Dr. Whalen shall ensure that the previously designated treating psychiatrist also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

Monitoring Physician

6. Before engaging in any medical practice, Dr. Whalen shall submit 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. Whalen and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Whalen and his medical practice, and shall review Dr. Whalen'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. Whalen and his medical practice, and on the review of Dr. Whalen's patient charts. Dr. Whalen 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. Whalen's quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Whalen must immediately so notify the Board in writing. In addition, Dr. Whalen 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. Whalen 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.

Releases

7. Dr. Whalen 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. Whalen's psychiatric conditions 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. Whalen 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

8. Within thirty days of the effective date of this Consent Agreement, Dr. Whalen 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. Whalen 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.
9. Within thirty days of the effective date of this Consent Agreement, Dr. Whalen 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. Whalen 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 for reinstatement of any professional license. Further, Dr. Whalen shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
10. Dr. Whalen shall provide a copy of this Consent Agreement to all persons and entities that provide Dr. Whalen psychiatric treatment or monitoring.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Whalen 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. Whalen has violated any term, condition or limitation of this Consent Agreement, Dr. Whalen 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. Whalen shall not request termination of this Consent Agreement for a minimum of two years. In addition, Dr. Whalen 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.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Whalen 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.

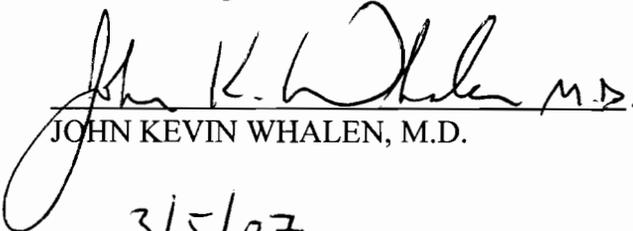
Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

Dr. Whalen 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. Whalen 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.



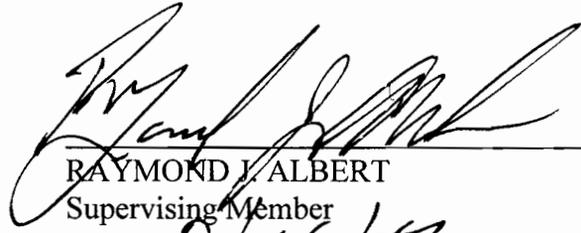
JOHN KEVIN WHALEN, M.D.
3/5/07

DATE



LANCE A. TALMAGE, M.D.
Secretary
3-14-07

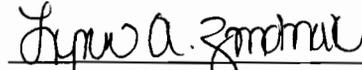
DATE



RAYMOND J. ALBERT
Supervising Member

3/14/07

DATE



LYNN A. ZONDORAK
Enforcement Attorney

3/8/07

DATE

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