

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

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

Dr. Kunkel 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 R.C. 4731.22(B), 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 any of the enumerated violations.
- B. The Board and Dr. Kunkel enter into this Consent Agreement in lieu of further formal proceedings based upon the allegations set forth in the Notice of Opportunity for Hearing issued on October 8, 2003, attached hereto as Exhibit A and incorporated herein by this reference. Further, 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 Consent Agreement.
- C. Dr. Kunkel states that he is also licensed to practice medicine and surgery in the State of California. His license to practice medicine and surgery in the State of California was granted on a probationary basis and outlined in a stipulated agreement that is attached as Exhibit B.
- D. Dr. Kunkel admits to the factual and legal allegations set forth in the October 8, 2003 notice of opportunity for hearing letter which is attached as Exhibit A.

## **AGREED CONDITIONS**

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

1. Dr. Kunkel shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
2. Dr. Kunkel shall submit declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether he has complied with all the terms, conditions, and limitations imposed by the Medical Board of California. Moreover, Dr. Kunkel shall cause to be submitted to the Board copies of any reports that he submits to the California Board whenever California requires such submission. Dr. Kunkel shall ensure that the declarations of compliance with the California Board Order and any copies of 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. Kunkel's quarterly declaration.
3. Dr. Kunkel shall appear in person for an interview before the full Board or its designated representative during the 3rd month following the month in which this Agreement becomes effective or as otherwise directed by the Board. Dr. Kunkel shall also appear upon his request for termination of the probationary period, and /or as otherwise requested by the Board.
4. In the event Dr. Kunkel 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**

5. Dr. Kunkel shall continue meeting the terms of probation set by the California Board. Dr. Kunkel shall comply with his psychiatric treatment plan, including taking medications as prescribed and/or ordered for his psychiatric disorder.

Dr. Kunkel shall ensure that all reports forwarded to the California Board are also forwarded to the Ohio Board.

6. Dr. Kunkel shall refrain from commencing practice in Ohio without prior written approval of the Board. Moreover, should Dr. Kunkel commence

practice in Ohio, the Board may place his certificate under additional probationary terms, conditions, or limitations, including the following:

- a. Before commencing practice, Dr. Kunkel must submit, for board approval, the name of a treating psychotherapist, and
  - b. Dr. Kunkel's California psychotherapist must provide a final report to the Ohio Board, and
  - c. Dr. Kunkel's new psychotherapist must provide the Board with an assessment and treatment plan.
7. The Board retains the right to require, and Dr. Kunkel agrees to submit blood specimens for analysis for therapeutic levels of medication that may be prescribed for Dr. Kunkel's psychiatric disorder or for any other substance, at Dr. Kunkel's expense, upon the Board's request and without prior notice. Dr. Kunkel's refusal to submit a blood specimen upon request of the Board shall result in a minimum of one year of actual license suspension.

#### **Releases**

8. Dr. Kunkel shall provide continuing authorization, through appropriate written consent forms, for disclosure by his treatment providers to the Board, to treating and monitoring physicians, and to others involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations.

#### **Required Reporting by Licensee**

9. Within thirty days of the effective date of this Consent Agreement, Dr. Kunkel 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. Kunkel 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.
10. Within thirty days of the effective date of this Consent Agreement, Dr. Kunkel 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. Kunkel 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. Kunkel shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

## **Notification of Change in Terms of probation by Dr. Kunkel**

11. Dr. Kunkel shall immediately notify the Board in writing of any modification or change to any term, condition, or limitation imposed by the California State Medical Board.

### **FAILURE TO COMPLY**

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Kunkel 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. Kunkel has violated any term, condition or limitation of this Consent Agreement, Dr. Kunkel 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. Kunkel shall not request termination of this Consent Agreement for a minimum of five years. In addition, Dr. Kunkel 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. Kunkel 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. Kunkel hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

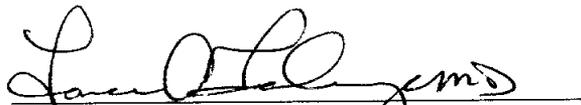
This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code, and may be reported to appropriate organizations,

data banks, and governmental bodies. Dr. Kunkel agrees to provide his social security number to the Board and hereby authorizes the Board to utilize that number in conjunction with that reporting.

**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 F. KUNKEL, M.D.

  
\_\_\_\_\_  
LANCE A. TALMAGE, M.D.  
Secretary

04/28/2004  
\_\_\_\_\_  
DATE

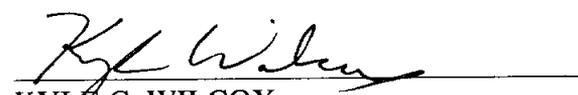
5-12-04  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
JIM MCGOVERN, ESQ.  
Attorney for Dr. Kunkel

  
\_\_\_\_\_  
RAYMOND J. ALBERT  
Supervising Member

4/28/04  
\_\_\_\_\_  
DATE

5/12/04  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
KYLE C. WILCOX  
Attorney for the O.S.M.B.

5-12-04  
\_\_\_\_\_  
DATE



# State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: [www.state.oh.us/med/](http://www.state.oh.us/med/)

October 8, 2003

John F. Kunkel, M.D.  
1400 Technology Lane, Apt. 210  
Petaluma, California 94954

Dear Doctor Kunkel:

In accordance with R.C. Chapter 119., you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) By Decision and Order effective June 10, 2003, the Medical Board of California (California Board) accepted and adopted a Stipulation for Probationary License. The terms, conditions and limitations are provided in detail in the California Board Decision and Order, a copy of which is attached hereto and incorporated herein.

The California Board Decision and Order, as alleged in paragraph one (1) above, constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, 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," as that clause is used in R.C. 4731.22(B)(22).

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

You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

*Mailed 10-9-03*

John F. Kunkel, M.D.

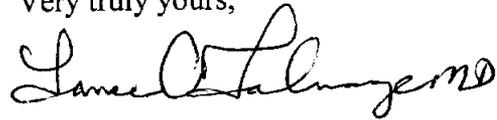
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In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, R.C. 4731.22(L) provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.  
Secretary

LAT/jag  
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5150 5991  
RETURN RECEIPT REQUESTED

The Permanente Medical Group, Inc.  
401 Bicentennial Way  
Santa Rosa, California 95403

CERTIFIED MAIL # 7000 0600 0024 5150 5984  
RETURN RECEIPT REQUESTED

BEFORE THE  
DIVISION OF LICENSING  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Application of: )  
)  
)  
JOHN FITZGERALD KUNKEL )  
)  
)  
For a Physician's and Surgeon's )  
License )  
)  
\_\_\_\_\_ Applicant. )

File No: 20-2003-143084

ORDERED BY THE BOARD  
AUG 19 2003

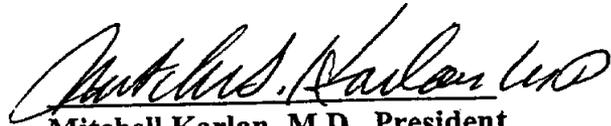
DECISION AND ORDER

The attached Stipulation for a Probationary License is hereby accepted and adopted as the Decision and Order by the Division of Licensing of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective on June 10, 2003 and the license will only be issued and probation to commence upon completion of any remaining requirements for licensure.

IT IS SO ORDERED June 10, 2003

MEDICAL BOARD OF CALIFORNIA

  
Mitchell Karlan, M.D., President  
Division of Licensing

BEFORE THE  
DIVISION OF LICENSING  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

CALIFORNIA MEDICAL BOARD  
AUG 19 2003

In the Matter of the Application of: )

JOHN FITZGERALD KUNKEL )

For a Physician and Surgeon's )  
License )

STIPULATION FOR A  
PROBATIONARY LICENSE

1) John Fitzgerald Kunkel, applicant for a physician and surgeon's license, and Lucinda James, Chief of the Licensing Program, Medical Board of California, hereby stipulate as follows:

2) This 36 year old applicant is a 1995 graduate of the University of Cincinnati. He completed approximately two months of internal medicine postgraduate training at the University of North Carolina between June 24, 1995 and August 25, 1995. Following an extended break, he then commenced and satisfactorily completed five years of pathology postgraduate training at University Hospitals of Cleveland between July 1, 1996 and June 30, 2001. The applicant holds a full and unrestricted license to practice medicine in Ohio.

3) The applicant's history included hospitalization and treatment for major depression and bipolar disorder. On November 9, 2002 and November 11, 2002, the applicant voluntarily underwent a psychiatric evaluation by a board-certified psychiatrist selected by the Board. After interviewing the applicant, reviewing prior medical and psychological records, and conducting current psychological testing, the psychiatrist determined that the applicant is currently stable and compliant with medications and therapy; however, a risk of relapse remains a concern. A relapse will require additional treatment and possible hospitalization, and would compromise the applicant's ability to practice medicine safely. Therefore, the psychiatric consultant recommended that the applicant undergo a period of probation with required treatment and monitoring.

John F. Kunkel

4) The applicant disclosed on his application that he has a condition that may impair or limit his ability to practice medicine with reasonable skill and safety. Practicing medicine while impaired would constitute unprofessional conduct under Business and Professions Code Sections 480 (a) (3) and 2234, and would be grounds for denial. However, the results of the psychiatric evaluation indicated that it would not be against the public interest to issue the applicant a probationary license under terms and conditions designed to ensure public protection.

5) The applicant acknowledges he has a right to request a Statement of Issues and hearing upon denial of license for cause. Applicant waives notice of hearing and judicial review in favor of this Stipulation for a Probationary License, which is subject to approval by the Division. If not approved, this Stipulation is null and void and may not be used for any purpose.

The staff recommends to the Division that a Probationary License be issued as follows:

#### ORDER

IT IS ORDERED THAT JOHN F. KUNKEL, applicant, be issued a physician and surgeon's license on a probationary basis, subject to the following terms and conditions:

1) Applicant is placed on probation for five years beginning the effective date of this decision.

2) Within 60 days of the effective date of this decision, applicant shall submit to the Division or its designee for its prior approval the name and qualifications of a psychotherapist of applicant's choice. Upon approval, applicant shall undergo weekly therapy and treatment of psychopharmacologic management, including any drug testing necessary to ensure that applicant is compliant with the prescribed drug regimen, for the first three years of the probationary period. Applicant shall have the treating psychotherapist submit quarterly status reports to the Division or its designee. The Division or its designee may require applicant to undergo psychiatric evaluations by a Division-appointed psychiatrist and shall require such an evaluation prior to termination of probation. If, prior to the termination of probation, applicant is found not to be mentally fit to resume the practice of medicine without restrictions, the Division shall retain continuing jurisdiction over the applicant's license and the period of probation shall be extended until the Division determines that the applicant is mentally fit to resume the practice of medicine without restrictions. The applicant shall pay the cost of therapy and evaluations.

John F. Kunkel

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- 3) Within 30 days of the effective date of this decision, applicant shall submit to the Division or its designee for its prior approval a plan of practice in which applicant's practice shall be monitored by another physician in respondent's field of practice, who shall provide periodic reports to the Division or its designee. If the monitor resigns or is no longer available, applicant shall, within 15 days, move to have a new monitor appointed, through nomination by applicant and approval by the Division or its designee. A practice monitor shall have no prior or current business or personal relationship with applicant, or other relationship that might compromise the ability of the practice monitor to render fair and unbiased reports to the Division and shall be in applicant's field of practice. Applicant shall pay all monitoring costs.
- 4) Applicant shall have no direct patient care responsibilities.
- 5) Applicant shall not prescribe, administer, dispense, order or possess any controlled substances as defined in the California Uniform Controlled Substances Act.
- 6) Applicant shall obey all federal, state and local laws, and all rules governing the practice of medicine in California.
- 7) Applicant shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all conditions of probation.
- 8) Applicant shall comply with the Division of Medical Quality's probation surveillance program. Applicant shall, at all times, keep the Division informed of his business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Division. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code Section 2021(b). Applicant shall, at all times, maintain a current and renewed physician and surgeon license. Applicant shall also immediately inform the Division, in writing, of any travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) days.
- 9) Applicant shall appear in person for interviews with the Division, its designee or its designated physician(s) upon request at various intervals with reasonable notice.
- 10) In the event the applicant should leave the State of California to reside or to practice, applicant shall notify the Division or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar days in which applicant is not engaging in any activities defined in Sections 2051 and 2052 of the Business and Professions Code. All time spent in an intensive training program outside the State of California which has been approved by the Division or its designee shall be considered as time spent in the

practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve applicant of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws and Probation Unit Compliance. Applicant's license shall be automatically canceled if applicant's periods of temporary or permanent residence outside California totals two years. However, applicant's license shall not be canceled as long as applicant is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

11) In the event applicant resides in the State of California and for any reason applicant stops practicing medicine in California, applicant shall notify the Division or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve application of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding thirty calendar days in which applicant is not engaging in any activities defined in Sections 2051 and 2052 of the Business and Professions Code. All time spent in an intensive training program which has been approved by the Division or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice. Applicant's license shall be automatically canceled if applicant resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code Sections 2051 and 2052.

12) During probation, applicant is prohibited from supervising physician assistants.

13) The Division of Licensing reserves the right to evaluate the applicant's probationary history at or near the end of the probationary period and to exercise its discretion whether to grant a clear license without conditions, or to take any other action deemed appropriate and reasonable under the circumstances.

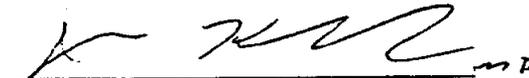
14) If the applicant violates probation in any respect, the Division of Medical Quality, after giving applicant notice and the opportunity to be heard, may revoke probation and terminate the probationary license. If an accusation or petition to revoke probation is

John F. Kunkel

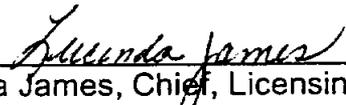
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filed against the applicant during probation, the Division of Medical Quality shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

Applicant agrees to comply with the terms and conditions of the above Order.

  
\_\_\_\_\_  
John F. Kunkel, Applicant

06/02/2003  
Date

  
\_\_\_\_\_  
Lucinda James, Chief, Licensing Program

6/06/2003  
Date