

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

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

Dr. Powell 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. Powell has submitted an application for a certificate to practice medicine and surgery in the State of Ohio, and said application is currently pending.
- D. Dr. Powell states that he is licensed to practice medicine and surgery in the State of Kentucky.
- E. Dr. Powell admits that, in or about the spring of 2003, he developed severe clinical depression. He further admits that, on or about July 13, 2003, he suffered a "complete

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collapse" and attempted suicide. Dr. Powell admits that he entered the Professional Enhancement Program at Pine Grove Hospital, Hattiesburg, Mississippi, and spent eight weeks in "an intensive, community based group therapy program." Dr. Powell further admits that he has worked closely with the Kentucky Physicians Health Foundation, and that he is currently undergoing psychiatric counseling.

- F. Dr. Powell admits that, on or about December 1, 2005, he underwent a Board-ordered psychiatric evaluation, which resulted in a determination that Dr. Powell has a diagnosis of Major Depressive Disorder, Recurrent, now classified as in full remission. Dr. Powell further admits that the evaluating psychiatrist has concluded that Dr. Powell can practice medicine and surgery according to acceptable and prevailing standards of care as long as certain treatment and monitoring requirements are in place, including that he see a psychiatrist once every two weeks during the first six months of the Consent Agreement; that he engage in psychotherapy with a licensed mental health professional for least one hour every two weeks; that he remain on antidepressant medications at therapeutic dosages as prescribed by his psychiatrist; and that he provide continued authorization of release of his medical records to 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, Dr. Powell shall be granted a certificate to practice medicine and surgery in the State of Ohio, upon receipt of all necessary and appropriate documentation, and Dr. Powell knowingly and voluntarily agrees with the Board that said certificate to practice medicine and surgery shall be subject to the following PROBATIONARY terms, conditions and limitations:

1. Dr. Powell shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
2. Dr. Powell shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which 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. Dr. Powell 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

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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. Powell 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.
5. In the event Dr. Powell 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.

**Psychiatric Treatment**

6. Within thirty days of the effective date of this Consent Agreement, Dr. Powell shall submit to the Board for its prior approval the name and qualifications of a psychiatrist of his choice. Upon approval by the Board, Dr. Powell shall undergo and continue psychiatric treatment at least once every two weeks, or as otherwise directed by the Board. In addition, within thirty days of the effective date of this Consent Agreement, Dr. Powell shall undergo and continue individual psychotherapy at least once every two weeks for one hour or as otherwise directed by the Board. Dr. Powell shall comply with his psychiatric treatment plan, including taking medications as prescribed and/or ordered by his approved treating psychiatrist for his psychiatric disorder.

Dr. Powell 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. Powell's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Powell's compliance with his treatment plan; Dr. Powell's mental status; Dr. Powell's progress in treatment; and the results of any laboratory studies that have been conducted since the prior report. Dr. Powell 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. Powell is unable to practice due to his psychiatric disorder. It is Dr. Powell's responsibility to ensure that quarterly reports are received in the Board's offices no later than the due date for Dr. Powell's quarterly declaration. The psychotherapy required pursuant to this paragraph may be delegated by Dr. Powell's treating psychiatrist to an appropriately

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licensed mental health professional approved in advance by the Board, so long as Dr. Powell's treating psychiatrist oversees/supervises such psychotherapy; includes information concerning Dr. Powell's participation and progress in psychotherapy in his or her reports; and continues to meet personally with Dr. Powell at least once every two weeks.

Should the psychotherapy required pursuant to this provision be delegated to a licensed mental health professional, Dr. Powell shall ensure that psychotherapy reports are forwarded by his treating licensed mental health professional to the Board on a quarterly basis, or as otherwise directed by the Board. The psychotherapy reports shall contain the following information: Dr. Powell's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Powell's compliance with his treatment plan; Dr. Powell's mental status; Dr. Powell's progress in treatment; and the results of any laboratory studies that have been conducted since the prior report. Dr. Powell shall ensure that his treating licensed mental health professional immediately notifies the Board of his failure to comply with his psychotherapy treatment plan and/or any determination that Dr. Powell is unable to practice. These psychotherapy reports shall be in addition to the psychiatric reports. It is Dr. Powell's responsibility to ensure that quarterly reports (psychiatric and psychotherapy, if applicable) are received in the Board's offices no later than the due date for Dr. Powell's quarterly declaration.

In the event that the designated treating psychiatrist and/or the designated treating licensed mental health professional becomes unable or unwilling to serve in this capacity, Dr. Powell must immediately so notify the Board in writing. In addition, Dr. Powell shall make arrangements acceptable to the Board for another treating psychiatrist and/or another treating licensed mental health professional within thirty days after the previously designated treating psychiatrist and/or treating licensed mental health professional becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Powell shall ensure that the previously designated treating psychiatrist and/or treating licensed mental health professional 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 psychiatrist and/or another treating licensed mental health professional proposed to serve as Dr. Powell's designated treating psychiatrist and/or designated treating licensed mental health professional, or to withdraw approval of any psychiatrist and/or another treating licensed mental health professional previously approved to serve as Dr. Powell's designated treating psychiatrist and/or designated treating licensed mental health professional, in the event that the Secretary and Supervising Member of the Board determine that any such psychiatrist and/or another treating licensed mental health

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professional has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

7. The Board retains the right to require, and Dr. Powell agrees to submit, blood or urine specimens for analysis, as directed by his treating psychiatrist or upon the Board's request and without prior notice, for levels of any medication that is prescribed for his psychiatric disorder or for any other purpose. Any such collection and analysis shall be at Dr. Powell's expense. Dr. Powell's refusal to submit a specimen upon request of the Board shall result in a minimum of one year of actual license suspension. Such specimens shall be obtained by or under the direction and supervision of a representative designated by the Board, or Dr. Powell's treating psychiatrist or another physician approved in advance by the Board.

**Monitoring Physician**

8. Before engaging in any medical practice, Dr. Powell 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. Powell and who is engaged in the same or similar practice specialty.

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

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

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**Releases**

9. Dr. Powell shall provide continuing 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. Powell's psychiatric condition and/or related conditions, or for purposes of complying with this Consent Agreement, whether such treatment or evaluations 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. Powell shall also provide the Board written consent permitting any psychiatrist, counselor, licensed mental health professional or other treatment provider from whom Dr. Powell obtains treatment to notify the Board in the event he fails to agree to or comply with any recommended treatment. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Consent Agreement.

**Required Reporting by Licensee**

10. Within thirty days of the effective date of this Consent Agreement, Dr. Powell 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. Powell 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.
11. Within thirty days of the effective date of this Consent Agreement, Dr. Powell 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. Powell 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. Powell shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
12. Dr. Powell shall provide a copy of this Consent Agreement to all persons and entities that provide Dr. Powell psychiatric and/or mental health treatment or monitoring.

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### **FAILURE TO COMPLY**

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Powell 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. Powell has violated any term, condition or limitation of this Consent Agreement, Dr. Powell 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. Powell shall not request termination of this Consent Agreement for a minimum of three years. In addition, Dr. Powell shall not request modification to the probationary terms, limitations, and conditions contained herein for at least six months. 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. Powell 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. Powell 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. Powell 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.

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EFFECTIVE DATE

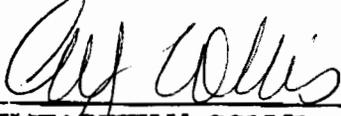
It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.

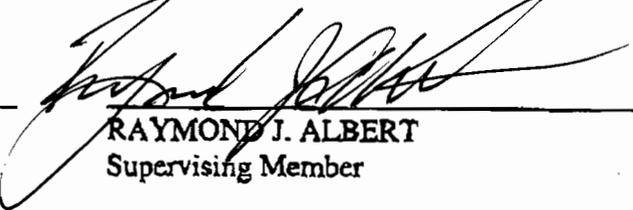
  
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JOHN CLARK POWELL, M.D.

  
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LANCE A. TALMAGE, M.D.  
Secretary

December 31, 2005  
\_\_\_\_\_  
DATE

1-12-06  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
ELIZABETH Y. COLLIS  
Attorney for Dr. Powell

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

1-4-06  
\_\_\_\_\_  
DATE

1-12-06  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
KATHLEEN S. PETERSON  
Enforcement Attorney

January 4, 2006  
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DATE