

**STEP II  
CONSENT AGREEMENT  
BETWEEN  
MATTHEW D. KELLEMS, M.D.,  
AND  
THE STATE MEDICAL BOARD OF OHIO**

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

Dr. Kellems 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)(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," and/or Section 4731.22(B)(10), Ohio Revised Code, "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed."
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violations of Sections 4731.22(B)(26), Ohio Revised Code, and 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.22, Ohio Revised Code, Deception to Obtain a Dangerous Drug, and Section 2913.02, Ohio Revised Code, Theft of Drugs, as set forth in Paragraphs E through I 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. Kellems to obtain controlled substances or drugs for self-use other than as particularly described herein, criminal acts other than as specifically referenced herein, and/or acts involving patient care or otherwise involving others.

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- C. Dr. Kellems is seeking reinstatement of his certificate to practice medicine and surgery, license number 35.091034, which was indefinitely suspended, but not less than 270 days, pursuant to the Step I Consent Agreement Between Matthew D. Kellems, M.D., and the State Medical Board of Ohio [November 2009 Step I Consent Agreement], effective November 12, 2009, a copy of which is attached hereto and incorporated herein.
- D. Dr. Kellems states that he is not licensed to practice in any other state or jurisdiction.
- E. Dr. Kellems admits that he entered treatment for chemical dependency and major depression at the Cleveland Clinic Foundation [Cleveland Clinic], a Board-approved treatment provider in Cleveland, Ohio, on or about October 14, 2009, and that he was discharged treatment complete following completion of a 31-day residential program on or about November 13, 2009.
- F. Dr. Kellems states and the Board acknowledges receipt of information to support that he has remained compliant with the terms of his aftercare contract with the Cleveland Clinic which is effective from on or about November 13, 2009, to, at least, November 13, 2011.
- G. Dr. Kellems states, and the Board acknowledges receipt of information to support, that since November 2009, Dr. Kellems has continued to comply with his psychiatric treatment plan, including attending psychiatric appointments as scheduled and taking medications as prescribed for his depression.
- H. Dr. Kellems states and the Board acknowledges that Chris Adelman, M.D., of Rosary Hall Chemical Dependency Center, St. Vincent Charity Hospital and Health Center, a Board-approved treatment provider in Cleveland, Ohio, Gregory Collins, M.D., of the Cleveland Clinic, and Aaron Billowitz, M.D., who was approved by the Board for the purpose of conducting a psychiatric evaluation of Dr. Kellems pursuant to the requirements of paragraph 16.b.iv. of the above-referenced November 2009 Step I Consent Agreement, have provided written reports indicating that Dr. Kellems' 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.
- I. Dr. Kellems states and the Board acknowledges receipt of information to support that Dr. Kellems 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 November 2009 Step I Consent Agreement between Dr. Kellems and the Board.

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### AGREED CONDITIONS

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

1. Dr. Kellems shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
2. Dr. Kellems 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 November 2009 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. Kellems 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 November 2009 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. Kellems 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. Kellems 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. Kellems may travel between Ohio and that contiguous state without seeking prior approval of the Secretary or Supervising Member provided that Dr. Kellems 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. Kellems 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

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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. Kellems 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. Kellems' quarterly declaration is due, or as otherwise directed by the Board. Further, Dr. Kellems shall make his patient records with regard to such prescribing available for review by an agent of the Board immediately upon request.
  
7. For the purposes of facilitating Dr. Kellems' practice of anesthesiology, Dr. Kellems shall be permitted to possess controlled substances only to the extent that such possession is inherently necessary to administer or furnish controlled substances to patients during work periods at a hospital facility, in accordance with this paragraph. Otherwise, Dr. Kellems shall not administer, personally furnish, or possess (except as expressly allowed in this Consent Agreement) any controlled substances as defined by state or federal law.

Dr. Kellems' possession of controlled substances during work periods at a hospital facility shall be limited to controlled substances obtained by Dr. Kellems for immediate administration to each patient during the work period in which the controlled substances are acquired. Prior to accepting possession of any controlled substances, Dr. Kellems shall ensure that an accounting of the amounts and types of controlled substance being released to him has been performed and documented by another, who is legally authorized to possess such controlled substances. Further, at or prior to the end of the work period, Dr. Kellems shall return the unused controlled substances to another, who is legally authorized to possess such controlled substances, and shall ensure that an accounting of the amounts and types of controlled substances returned by him is performed and documented. In addition, Dr. Kellems shall provide to the individual performing the accounting of the unused medications, a log detailing the amount and type of the controlled substance administered to each patient during the work period, as well as the name of the patient to whom the medication was administered, and shall ensure that a comparative audit is performed to determine whether or not all controlled substances released to Dr. Kellems during the work period are appropriately accounted for, and shall further ensure that a comparative audit report is prepared reflecting the audit findings. Dr. Kellems shall not dispose of any unused "waste" controlled substances.

In addition, Dr. Kellems shall ensure that an assay is performed of the contents of at least one vial, or equivalent unit, of unused medications returned during a one week period; that such vial, or equivalent unit, is randomly selected; and that all assays

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reported are forwarded directly to the Board on a quarterly basis. The costs associated with such assays shall be borne by Dr. Kellems.

In the event that the comparative audit report reveals a discrepancy related to any controlled substances possessed, administered, and returned, or should an assay report indicate that the controlled substance tested is adulterated, Dr. Kellems shall immediately notify the Board. Such notice shall be through telephone communication to the Board at the earliest opportunity, and shall be followed by written communication to the Board within seventy-two hours. In addition, Dr. Kellems shall ensure that all such audit reports are immediately forwarded directly to the Board.

Otherwise, all comparative audit reports and assay reports acquired under this paragraph must be received in the Board's offices no later than the due date for Dr. Kellems' quarterly declaration. It is Dr. Kellems' responsibility to ensure that all reports acquired pursuant to this paragraph are timely submitted.

Further, Dr. Kellems 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. Kellems' quarterly declaration is due, or as otherwise directed by the Board. Further, Dr. Kellems 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. Kellems 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. Kellems' history of chemical dependency and depression. Further, in the event that Dr. Kellems is so prescribed, dispensed or administered any controlled substance, carisoprodol, or tramadol, Dr. Kellems shall notify the Board in writing within seven days, providing the Board with the identity of the prescriber; the name of the drug Dr. Kellems 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. Kellems 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. Kellems shall abstain completely from the use of alcohol.

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**Drug and Alcohol Screens/Drug Testing Facility and Collection Site**

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

Dr. Kellems 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. Kellems 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 pursuant to the global contract between said facility and the Board, that provides for the Board to maintain ultimate control over the urine screening process and to preserve the confidentiality of all positive screening results in accordance with Section 4731.22(F)(5), Ohio Revised Code, and the screening process shall require a daily call-in procedure. Further, in the event that the Board exercises its discretion, as provided in Paragraph 11 below, to approve urine screenings to be conducted at an alternative drug testing facility and/or collection site or a supervising physician, such approval shall be expressly contingent upon the Board retaining ultimate control over the urine screening process in a manner that preserves the aforementioned confidentiality of all positive screening results.

Dr. Kellems shall submit, at his expense and on the day selected, urine specimens for drug and/or alcohol analysis. All specimens submitted by Dr. Kellems 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. Kellems 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, Dr. Kellems shall promptly provide to the Board written documentation of completion of such arrangements, including a copy of any contract entered into

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between Dr. Kellems and the Board-approved drug testing facility and/or collection site. Dr. Kellems' 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. Kellems and the Board further agree that in the event Dr. Kellems previously entered into the aforementioned financial and contractual agreements pursuant to the requirements of a prior consent agreement with the Board under which Dr. Kellems is currently participating in an ongoing urine screening process, then this requirement shall be waived under the instant consent agreement.

Dr. Kellems 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. Kellems 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. Kellems 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. Kellems must immediately notify the Board in writing, and make arrangements acceptable to the Board pursuant to Paragraph 11 below, as soon as practicable. Dr. Kellems 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. Kellems 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.

11. Dr. Kellems and the Board agree that it is the intent of this Consent Agreement that Dr. Kellems 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. Kellems, as determined in the sole discretion of the Board, then subject to the following requirements, the Board may approve an

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alternate drug testing facility and/or collection site, or a supervising physician, to facilitate the urine screening process for Dr. Kellems:

- a. Within thirty days of the date upon which Dr. Kellems 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. Kellems, 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. Kellems 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. Kellems' residence or employment location, or to a physician who practices in the same locale as Dr. Kellems. Dr. Kellems 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. Kellems 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. Kellems 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. Kellems must immediately notify the Board in writing. Dr. Kellems 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. Kellems 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. Kellems.
- d. The Board expressly reserves the right to disapprove any entity or facility proposed to serve as Dr. Kellems' designated alternate drug testing facility

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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.

- e. In the event that the Board approved an alternate drug testing facility and/or collection site, or a supervising physician, pursuant to the November 2009 Step I Consent Agreement between Dr. Kellems and the Board, Dr. Kellems and the Board agree that the entity, facility or person previously approved by the Board to so serve pursuant to the November 2009 Step I Consent Agreement is hereby approved to continue as Dr. Kellems' designated alternate drug testing facility and collection site or as his supervising physician under this Consent Agreement.
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. Kellems' quarterly declaration. It is Dr. Kellems' responsibility to ensure that reports are timely submitted.
13. The Board retains the right to require, and Dr. Kellems 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. Kellems, or for any other purpose, at Dr. Kellems' expense upon the Board's request and without prior notice. Dr. Kellems' 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.

### **Mental Health Treatment**

14. Dr. Kellems and the Board agree that the person previously approved by the Board to serve as Dr. Kellems' psychiatrist pursuant to the November 2009 Step I Consent Agreement is hereby approved to continue as Dr. Kellems' designated psychiatrist under this Consent Agreement, unless within thirty days of the effective date of this Consent Agreement, Dr. Kellems shall submit to the Board for its prior approval the name and qualifications of a psychiatrist of his choice. Dr. Kellems shall undergo and continue psychiatric treatment for medication management at least monthly, coupled with individual psychotherapy, at least two weeks, or as otherwise directed by the Board. Dr. Kellems shall comply with his psychiatric treatment plan, including taking medications as prescribed and/or ordered. Dr. Kellems shall ensure that psychiatric reports are forwarded by his treating psychiatrist to the Board on a

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quarterly basis, or as otherwise directed by the Board. The psychiatric reports shall contain information describing Dr. Kellems' current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Kellems' compliance with his treatment plan; Dr. Kellems' mental status; Dr. Kellems' progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. Kellems 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. Kellems is unable to practice due to his psychiatric disorder. It is Dr. Kellems' responsibility to ensure that quarterly reports are received in the Board's offices no later than the due date for Dr. Kellems' quarterly declaration.

The psychotherapy required as part of Dr. Kellems' psychiatric treatment pursuant to this paragraph may be delegated by Dr. Kellems' treating psychiatrist to an appropriately licensed mental health professional approved in advance by the Board, so long as Dr. Kellems' treating psychiatrist oversees/supervises such psychotherapy; includes information concerning Dr. Kellems' participation and progress in psychotherapy in his or her quarterly reports; and continues to meet personally with Dr. Kellems at least monthly. Should the psychotherapy required pursuant to this provision be delegated to a licensed mental health professional, Dr. Kellems 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 information describing Dr. Kellems' current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Kellems' compliance with his treatment plan; Dr. Kellems' mental status; Dr. Kellems' progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. Kellems 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. Kellems is unable to practice due to his psychiatric disorder. These psychotherapy reports shall be in addition to the reports submitted by Dr. Kellems' treating psychiatrist. It is Dr. Kellems' responsibility to ensure that all quarterly reports are received in the Board's offices no later than the due date for Dr. Kellems' quarterly declaration.

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

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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 proposed to serve as Dr. Kellems' designated treating psychiatrist and/or any licensed mental health professional proposed to serve as Dr. Kellems' designated treating licensed mental health professional, or to withdraw approval of any such psychiatrist or licensed mental health professional previously approved to serve as Dr. Kellems' designated treating psychiatrist or licensed mental health professional, in the event that the Secretary and Supervising Member of the Board determine that any such psychiatrist or licensed mental health professional has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

### **Monitoring Physician**

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

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

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Kellems must immediately so notify the Board in writing. In addition, Dr. Kellems 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. Kellems 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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The Board expressly reserves the right to disapprove any person proposed to serve as Dr. Kellems' designated monitoring physician, or to withdraw approval of any person previously approved to serve as Dr. Kellems' 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.

### **Rehabilitation Program**

16. Dr. Kellems 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. Kellems 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. Kellems' quarterly declarations.

### **Aftercare**

17. Dr. Kellems shall contact an appropriate impaired physicians committee, approved by the Board, to arrange for assistance in recovery or aftercare.
18. Dr. Kellems 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. Kellems 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. Kellems' chemical dependency, depression, 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. Kellems 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.

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### Required Reporting by Licensee

20. Within thirty days of the effective date of this Consent Agreement, Dr. Kellems 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. Kellems 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. Kellems 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. Kellems shall provide a copy of this Consent Agreement to the Ohio Department of Public Safety, Division of Emergency Medical Services. Further, Dr. Kellems 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. Kellems 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. Kellems 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. Kellems 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

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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. Kellems shall promptly provide a copy of this Consent Agreement to all persons and entities that provide Dr. Kellems chemical dependency and/or mental health treatment or monitoring. Further, Dr. Kellems 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. Kellems 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. Kellems 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. Kellems has violated any term, condition or limitation of this Consent Agreement, Dr. Kellems 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. Kellems shall not request termination of this Consent Agreement for a minimum of five years. In addition, Dr. Kellems shall not request modification to the probationary terms, limitations, and conditions contained herein for at least one year, except that Dr. Kellems may

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make such request with the mutual approval and joint recommendation of the Secretary and Supervising Member. 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. Kellems, 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.

In the event that any term, limitation, or condition contained in this Consent Agreement is determined to be invalid by a court of competent jurisdiction, Dr. Kellems and the Board agree that all other terms, limitations, and conditions contained in this Consent Agreement shall be unaffected.

#### ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Kellems 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. Kellems 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. Kellems 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.



MATTHEW D. KELLEMS, M.D.

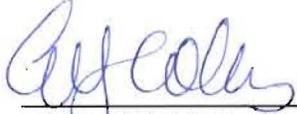


LANCE A. TALMAGE, M.D.  
Secretary

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OF OHIO

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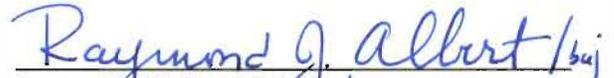
DATE



ELIZABETH COLLIS  
Attorney for Dr. Kellems

10-13-10

DATE

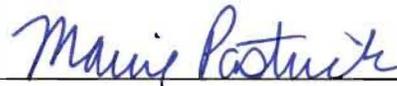
  
RAYMOND J. ALBERT  
Supervising Member *by authorization*

10-1-10

DATE

Oct. 13, 2010

DATE



MARCIE PASTRICK  
Enforcement Attorney

Oct. 7, 2010

DATE

**STEP I  
CONSENT AGREEMENT  
BETWEEN  
MATTHEW D. KELLEMS, M.D.,  
AND  
THE STATE MEDICAL BOARD OF OHIO**

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

Dr. Kellems 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)(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," and/or Section 4731.22(B)(10), Ohio Revised Code, "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed."
- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violations of Sections 4731.22(B)(26), Ohio Revised Code, and 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.22, Ohio Revised Code, Deception to Obtain a Dangerous Drug, and Section 2913.02, Ohio Revised Code, Theft of Drugs, as set forth in Paragraph E 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. Kellems to obtain controlled substances or drugs for self-use other than as particularly described herein, criminal acts other than as specifically referenced herein, and/or acts involving patient care or otherwise involving others.

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- C. Dr. Kellems is licensed to practice medicine and surgery in the State of Ohio, License number 35.091034.
- D. Dr. Kellems states that he is not licensed to practice in any other state or jurisdiction.
- E. Dr. Kellems admits that he initially entered treatment for opiate dependence at the Cleveland Clinic Foundation [Cleveland Clinic], a board-approved treatment provider in Cleveland, Ohio, on or about June 12, 2008, and completed 29 days of inpatient treatment. Dr. Kellems further admits that this treatment was precipitated by his self-injecting Dilaudid, which he obtained as waste medication from the operating rooms, while he was an anesthesiology resident at University Hospital in Cleveland, Ohio.

Dr. Kellems further admits that on or about October 14, 2009, he was readmitted to the Cleveland Clinic, because he relapsed on Propofol, a general anesthetic, which he diverted from the waste of an operating room at the University Hospital of Cleveland, Ohio, on or about October 11, 2009. Dr. Kellems further admits that he has been diagnosed with depression, which may have contributed to his relapse.

Dr. Kellems attests that he obtained all of the general anesthetics exclusively by taking hospital waste, and specifically denies obtaining any controlled substances for self-use by any other method. Dr. Kellems further attests that he never directly or indirectly involved patients in any of his efforts to obtain controlled substances for self-use.

### **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. Kellems knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

#### **SUSPENSION OF CERTIFICATE**

1. The certificate of Dr. Kellems to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than 270 days.

#### **Obey all Laws**

2. Dr. Kellems shall obey all federal, state, and local laws.

#### **Sobriety**

3. Dr. Kellems 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. Kellems's history of chemical dependency. Further, in the event that Dr. Kellems is so prescribed, dispensed or

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administered any controlled substance, carisoprodol, or tramadol, Dr. Kellems shall notify the Board in writing within seven days, providing the Board with the identity of the prescriber; the name of the drug Dr. Kellems 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. Kellems 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.

4. Dr. Kellems shall abstain completely from the use of alcohol.

Absences from Ohio

5. Dr. Kellems 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 monitoring terms set forth in this Consent Agreement for occasional periods of absence of fourteen days or less. In the event that Dr. Kellems 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. Kellems may travel between Ohio and that contiguous state without seeking prior approval of the Secretary or Supervising Member provided that Dr. Kellems is able to otherwise maintain full compliance with all other terms, conditions and limitations set forth in this Consent Agreement.

Releases; Quarterly Declarations and Appearances

6. Dr. Kellems 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. Kellems'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. Kellems 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.

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7. Dr. Kellems 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, 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.
8. Dr. Kellems 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 rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

Drug & Alcohol Screens; Drug Testing Facility and Collection Site

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

Dr. Kellems 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. Kellems 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 pursuant to the global contract between said facility and the Board, that provides for the Board to maintain ultimate control over the urine screening process and to preserve the confidentiality of all positive screening results in accordance with Section 4731.22(F)(5), Ohio Revised Code, and the screening process shall require a daily call-in procedure. Further, in the event that the Board exercises its discretion, as provided in Paragraph 10 below, to approve urine screenings to be conducted at an alternative drug testing facility and/or collection site or a supervising physician, such approval shall be expressly contingent upon the Board retaining ultimate control over the urine screening process in a manner that preserves the aforementioned confidentiality of all positive screening results.

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Dr. Kellems shall submit, at his expense and on the day selected, urine specimens for drug and/or alcohol analysis. All specimens submitted by Dr. Kellems 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. Kellems 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, Dr. Kellems shall promptly provide to the Board written documentation of completion of such arrangements, including a copy of any contract entered into between Dr. Kellems and the Board-approved drug testing facility and/or collection site. Dr. Kellems'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.

Dr. Kellems 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. Kellems 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. Kellems 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. Kellems must immediately notify the Board in writing, and make arrangements acceptable to the Board, pursuant to Paragraph 10 below, as soon as practicable. Dr. Kellems 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. Kellems 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.

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10. Dr. Kellems and the Board agree that it is the intent of this Consent Agreement that Dr. Kellems 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. Kellems, 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. Kellems:
  - a. Within thirty days of the date upon which Dr. Kellems 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. Kellems, 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. Kellems 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. Kellems's residence or employment location, or to a physician who practices in the same locale as Dr. Kellems. Dr. Kellems 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. Kellems 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. Kellems 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. Kellems must immediately notify the Board in writing. Dr. Kellems 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. Kellems shall immediately commence urine screening at the Board-approved drug testing facility and collection site chosen by the Board, until such

Matthew D. Kellem

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time, if any, that the Board approves a subsequent alternate drug testing facility, collection site, or supervising physician, if requested by Dr. Kellems.

- d. The Board expressly reserves the right to disapprove any entity or facility proposed to serve as Dr. Kellems'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.
11. 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. Kellems's quarterly declaration. It is Dr. Kellems's responsibility to ensure that reports are timely submitted.
12. The Board retains the right to require, and Dr. Kellems 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. Kellems, or for any other purpose, at Dr. Kellems's expense upon the Board's request and without prior notice. Dr. Kellems'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.

#### Rehabilitation Program

13. Within thirty days of the effective date of this Consent Agreement, Dr. Kellems shall undertake and 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. Kellems 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. Kellems's quarterly declarations.

14. Immediately upon completion of any required treatment for chemical dependency for his relapse, Dr. Kellems shall enter into a new aftercare contract with a Board-approved treatment provider and shall maintain continued compliance with the terms of said aftercare contract, provided that, where the terms of the aftercare contract conflict with the terms of this Consent Agreement, the terms of this Consent Agreement shall control.

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Psychiatric Treatment

15. Within thirty days of the effective date of this Consent Agreement, Dr. Kellems 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. Kellems shall undergo and continue psychiatric treatment monthly or as otherwise directed by the Board. Dr. Kellems shall comply with his psychiatric treatment plan, including taking medications as prescribed and/or ordered for his psychiatric disorder. Dr. Kellems 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. Kellems's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Kellems's compliance with his treatment plan; Dr. Kellems's mental status; Dr. Kellems's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. Kellems 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. Kellems is unable to practice due to his psychiatric disorder. It is Dr. Kellems's responsibility to ensure that quarterly reports are received in the Board's offices no later than the due date for Dr. Kellems's quarterly declaration.

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

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

**CONDITIONS FOR REINSTATEMENT**

16. The Board shall not consider reinstatement or restoration of Dr. Kellems's certificate to practice medicine and surgery until all of the following conditions are met:
- a. Dr. Kellems shall submit an application for reinstatement or restoration, as appropriate, accompanied by appropriate fees, if any.

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- b. Dr. Kellems 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. Kellems has successfully completed any required inpatient treatment, including at least twenty-eight days of inpatient or residential treatment for chemical abuse/dependence, as set forth in Rules 4731-16-02 and 4731-16-08, Ohio Administrative Code, completed consecutively.
  - ii. Evidence of continuing full compliance with, or successful completion of, 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 entered into after the date of his relapse. 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. Three written reports indicating that Dr. Kellems's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care.

Two 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. Kellems. Further, the two aforementioned physicians shall not be affiliated with the same treatment provider or medical group practice. Prior to the assessments, Dr. Kellems 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. Kellems, and any conditions, restrictions, or limitations that should be imposed on Dr. Kellems's practice. The reports shall also describe the basis for the evaluator's determinations.

One report shall be made by a psychiatrist, approved in advance by the Board, who shall conduct a psychiatric examination of Dr. Kellems. Prior to the examination, Dr. Kellems shall provide the psychiatrist with copies of patient records from any prior evaluations and/or treatment that he has received, and a copy of this Consent Agreement. The report from the evaluating psychiatrist shall include the psychiatrist's diagnoses and conclusions; any

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recommendations for care, counseling, and treatment for the psychiatric diagnoses; any conditions, restrictions, or limitations that should be imposed on Dr. Kellems's practice; and the basis for the psychiatrist'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. Further, at the discretion of the Secretary and Supervising Member of the Board, the Board may request an updated assessment and report if the Secretary and Supervising Member determine that such updated assessment and report is warranted for any reason.

- c. Dr. Kellems shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the Board within 180 days of the date upon which all the above-specified conditions for reinstatement or restoration have been completed or, if the Board and Dr. Kellems are unable to agree on the terms of a written Consent Agreement, then Dr. Kellems 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. The Board shall provide notice to Dr. Kellems that said hearing has been scheduled, advising Dr. Kellems of his hearing rights, and stating the date, time, and location of the hearing at which the Board will present its evidence, after which the Board will make a determination of the matter by Board Order.

Further, upon reinstatement of Dr. Kellems'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. Kellems 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. Kellems has maintained sobriety.

17. In the event that Dr. Kellems 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. Kellems's fitness to resume practice.

#### **REQUIRED REPORTING BY LICENSEE**

18. Within thirty days of the effective date of this Consent Agreement, Dr. Kellems 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. Kellems shall promptly provide a copy of this

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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. Kellems 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. Kellems shall provide a copy of this Consent Agreement to the Ohio Department of Public Safety, Division of Emergency Medical Services. Further, Dr. Kellems 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.

19. Within thirty days of the effective date of this Consent Agreement, Dr. Kellems 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. Kellems 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 reinstatement of any professional license. Further, Dr. Kellems 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.
20. Dr. Kellems shall promptly provide a copy of this Consent Agreement to all persons and entities that provide Dr. Kellems chemical dependency and/or mental health treatment or monitoring. Further, Dr. Kellems 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

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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.

20. Dr. Kellems shall notify the Board in writing of any change of principal practice address or residence address within thirty days of such change.

#### **DURATION/MODIFICATION OF TERMS**

The above-described terms, conditions and limitations 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. Kellems, 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.

#### **FAILURE TO COMPLY**

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

MEDICAL BOARD

NOV - 9 2009

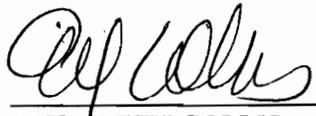
**EFFECTIVE DATE**

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.

  
MATTHEW D. KELLEMS, M.D.

  
LANCE A. TALMAGE, M.D.  
Secretary

11/6/09  
DATE

  
ELIZABETH COLLIS  
Attorney for Dr. Kellem

11-12-09  
DATE

  
RAYMOND J. ALBERT  
Supervising Member

11/9/09  
DATE

11/12/09  
DATE

  
MARCIE PASTRICK  
Enforcement Attorney

11/10/09  
DATE

MEDICAL BOARD

NOV - 9 2009