OHIO STATE MEDICAL BOARD

JUL - 6 2005

CONSENT AGREEMENT
BETWEEN
JOHN RUSSELL OGDEN, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO

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

Dr. Ogden 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, 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 violation of Section 4731.22(B)(2), Ohio Revised Code, "[f]ailure to maintain minimal standards applicable to the selection or administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease;" Section 4731.22(B)(6), Ohio Revised Code, "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established;" 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; and/or Section 4731.22(B)(20), Ohio Revised Code, "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board."

B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violations, as set forth in paragraph E below, of Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents; Section 4731.22(B)(20), Ohio Revised Code, to wit: Section 4731.291, Ohio Revised Code, Training Certificate, Rule 4731-6-30(C), Ohio Administrative Code, Training Certificate, and Rule 4731-11-02(D), Ohio Administrative Code, General Provisions; and as pursuant to Rule 4731-11-02(F), a violation of Rule 4731-11-02 constitutes a violation of Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code, Section 4731.22(B)(2), Ohio Revised Code, and Section 4731.22(B)(6), Ohio Revised Code. The Board expressly reserves the right to

institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Consent Agreement.

C. Dr. Ogden holds a training certificate to practice medicine and surgery in the State of Ohio, Training Certificate # 57.004758.

D. Dr. Ogden states that he does not hold a training certificate nor is he licensed to practice medicine and surgery in any other state or jurisdiction.

E. Dr. Ogden admits that on or about May 16, 2005, through his attorney, Dr. Ogden self-reported to the Board that, at the recommendation of his residency training program, he had voluntarily commenced a 72-hour evaluation for chemical dependency at The Woods at Parkside after it became known that Dr. Ogden had prescribed controlled substances and other dangerous drugs to two persons who were not patients affiliated with his residency training program. Specifically, Dr. Ogden admits that during or about June 2001 through November 2004, he prescribed to his then girlfriend birth control pills, antibiotics for the treatment of urinary tract infections, and on a few occasions, Ultram and Percocet for menstrual pain, and that on one occasion he prescribed to a medical student/friend Percocet for post-operative pain. Dr. Ogden further admits that such prescribing was outside the authorized legal scope of his training certificate to practice medicine and surgery in Ohio. Further, Dr. Ogden admits that on approximately four occasions when experiencing severe headaches, he received from his aforementioned girlfriend Percocet tablets from the medication supply resulting from the prescriptions he had issued to her. Dr. Ogden further admits that he issued such prescriptions without personally conducting any examination or evaluation of the two aforementioned persons and that he failed to complete and maintain medical records reflecting the diagnosis and purpose for which such controlled substances were being utilized.

Dr. Ogden further admits that during the course of his aforementioned evaluation at The Woods at Parkside, a Board-approved treatment provider, he disclosed that after moving to Ohio for his internship, he began engaging in intermittent experimentation with chemical substances, including drinking alcohol to intoxication on a few occasions, smoking marijuana approximately four times, and ingesting ecstasy once. Dr. Ogden states, and the Board acknowledges receipt of information to support, that Edna Jones, M.D., of The Woods at Parkside, has opined that Dr. Ogden has a history of polysubstance abuse in an experimental fashion, that there is no evidence of impairment, that Dr. Ogden does not require treatment for chemical dependency, and that he does not require monitoring by the Ohio Physicians Health Program. Dr. Ogden further admits that although Dr. Jones determined that Dr. Ogden did not suffer from chemical dependency nor require addiction treatment, Dr. Jones nonetheless made the recommendation that Dr. Ogden submit to chain of custody urine drug screens through his residency program.

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. Ogden knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

SUSPENSION OF CERTIFICATE

1. The training certificate of Dr. Ogden to practice medicine and surgery in the State of Ohio shall be SUSPENDED for 180 days. During such suspension period, Dr. Ogden shall be ineligible to receive or hold any other certificate issued by the Board.

INTERIM MONITORING TERMS

2. During the period of time that Dr. Ogden's training certificate to practice medicine and surgery is suspended, Dr. Ogden shall comply with the following terms, conditions and limitations:

   A. Dr. Ogden shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.

   B. Dr. Ogden 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.

   C. Dr. Ogden shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

   Required Reporting by Licensee

   D. Within thirty days of the effective date of this Consent Agreement, Dr. Ogden 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. Ogden 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.

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

F. Dr. Ogden shall provide a copy of this Consent Agreement to all persons and entities that provide Dr. Ogden treatment, evaluation, or monitoring related to chemical dependency or abuse or any related conditions.

Releases

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

Drug and Alcohol Screens / Personal Use of Drugs

H. Dr. Ogden shall abstain completely from the personal use of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. Ogden's history of polysubstance abuse.

Dr. Ogden shall notify the Board in writing within seven days of each and every blood or urine specimen submitted for analysis to his residency training program, an impaired physicians committee, or any other source whatsoever, that demonstrates a positive result for drugs and/or alcohol, specifying the circumstances surrounding such positive result. Further, Dr. Ogden shall attach a photostatic copy of said test result to such written notification to the Board.

The Board retains the right to require, and Dr. Ogden agrees to submit, blood or urine specimens for analysis at Dr. Ogden's expense upon the Board's request and without prior notice. Dr. Ogden's refusal to submit a blood or urine specimen upon request of the Board shall result in a minimum of one year of actual license suspension.

Further, Dr. Ogden expressly agrees that in the event any blood or urine specimen from any source demonstrates a positive test result, as verified through

gas chromatography/mass spectrometry analysis or similar laboratory confirmation, for any illegal drug and/or any drug not prescribed, dispensed or administered to him by another so authorized by law who had full knowledge of Dr. Ogden's history of polysubstance abuse, then such positive test result shall constitute proof of Dr. Ogden's violation of this Consent Agreement.

PROBATIONARY TERMS

3. Upon reinstatement of Dr. Ogden's training certificate to practice medicine and surgery in Ohio pursuant to this agreement, or issuance of any other certificate to Dr. Ogden by the Board, Dr. Ogden's certificate shall be subject to the following probationary terms, conditions and limitations:

   A. Dr. Ogden shall continue to be subject to all of the terms, conditions and limitations set forth in paragraphs 2.A. through 2.H. of this Consent Agreement.

   B. Dr. Ogden 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.

   C. In the event Dr. Ogden is found by the Secretary of the Board to have failed to comply with any provision of this Consent Agreement, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Consent Agreement.

Monitoring Physician

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

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

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

While Dr. Ogden participates in a residency program accredited by the ACGME or AOA, the Board shall accept a quarterly statement from the director of Dr. Ogden's residency program, or alternatively, from the attending physician specifically designated by the residency director as the person having responsibility to directly oversee Dr. Ogden's clinical rotations, addressing Dr. Ogden's performance (clinical and otherwise) in the residency program, as well as his progress and status, if timely submitted, as satisfaction of the requirements of this paragraph. Should Dr. Ogden desire to utilize this option in lieu of having a monitoring physician while he participates in a residency program, Dr. Ogden shall so notify the Board by providing a writing, signed by both himself and his residency director, and, if applicable, by the attending physician specifically designated by the residency director as the person having responsibility to directly oversee Dr. Ogden's clinical rotations, to the Board before participating in the residency program. Further, should Dr. Ogden cease participation in an accredited residency or should he obtain full medical licensure in Ohio and desire to practice outside his residency, or should his residency director or the designated attending physician become unable or unwilling to serve, Dr. Ogden must immediately so notify the Board in writing and within thirty days make arrangements for a monitoring physician, as discussed above.

All residency director reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Ogden's quarterly declaration. It is Dr. Ogden's responsibility to ensure that reports are timely submitted.

Prescribing Course

E. Before the end of the first year of probation, Dr. Ogden shall provide documentation acceptable to the Board verifying his successful completion of a medical education course approved in advance by the Board dealing specifically with the prescribing of controlled substances. The exact number of hours and

the specific content of the course(s) shall be subject to the prior approval of the Board or its designee but in no event shall be less than thirty hours. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for licensure renewal for the Continuing Medical Education acquisition period(s) in which they are completed.

FAILURE TO COMPLY

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

All subsequent training certificates or other certificates that may be granted by the Board to Dr. Ogden shall be subject to the same terms, conditions and limitations, unless otherwise determined by the Board, until Dr. Ogden has completed at least a two year probationary period with the Board. Moreover, the term of probation shall be tolled during any period in which Dr. Ogden's training certificate has lapsed and no other certificate has been issued by the Board. In addition, Dr. Ogden shall not request modification to the probationary terms, limitations and conditions contained herein until he has completed at least one year of probation. 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. Ogden 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. Ogden 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. Ogden acknowledges that his social security number will be used if this information is so reported and agrees to provide his social security number to the Board for such purposes.

EFFECTIVE DATE

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

JOHN RUSSELL OGDEN, M.D.

7/6/05
DATE

LANCE A. TALMAGE, M.D.
Secretary

7-13-05
DATE

JAMES PHILLIPS, ESQ.
Attorney for Dr. Ogden

07/06/05
DATE

RAYMOND J. ALBERT
Supervising Member

7/13/05
DATE

REBECCA J. MARSHALL, ESQ.
Enforcement Attorney

July 6, 2005
DATE