

**CONSENT AGREEMENT
BETWEEN
ANDRE PROCHOROFF, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO**

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

Dr. Prochoroff 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(A) to revoke or refuse to grant a certificate to a person found to have committed "fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration." The Board is also empowered by Section 4731.22(B)(5), 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 "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board."
- B. Further, the Board is empowered to refuse to register an applicant who has not completed an examination sequence acceptable to this Board as required by Sections 4731.14 and 4731.29, Ohio Revised Code, and Rules 4731-6-14 and 4731-6-16, Ohio Administrative Code.
- C. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violations of Section 4731.22(A) and (B)(5), Ohio Revised Code, as set forth in the Notice of Opportunity for Hearing issued on March 9, 2005, a copy of which is attached hereto and fully incorporated herein, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731.

of the Revised Code, whether occurring before or after the effective date of this Consent Agreement.

- D. Further, the Board enters into this Consent Agreement in lieu of formal proceedings based upon the failure to complete an examination sequence acceptable to this Board, as set forth in the Notice of Opportunity for Hearing issued on March 9, 2005, based upon rules in effect at the time of application and at the time of issuance of the Notice of Opportunity for Hearing.
- E. Dr. Prochoroff has an application for a certificate to practice medicine and surgery in the State of Ohio pending.
- F. Dr. Prochoroff states that he is licensed to practice medicine and surgery in the State of New York.
- G. Dr. Prochoroff admits the factual and legal allegations set forth in the Notice of Opportunity for Hearing, issued March 9, 2005.
- H. Dr. Prochoroff and the Board agree that, although Dr. Prochoroff was not eligible for a waiver of the seven year time period in which to complete his examination sequence under Rule 4731-6-14, Ohio Administrative Code, as in effect at the time he submitted his application and at the time the Notice of Opportunity for Hearing was issued, he is eligible for consideration for a waiver under Rule 4731-6-14, Ohio Administrative Code, as in effect beginning June 30, 2005.
- I. Dr. Prochoroff requests that the Board grant him a waiver of the seven year time period pursuant to Rule 4731-6-14(C)(3), as in effect beginning June 30, 2005, on the basis that he had good cause for not completing the examination sequence within seven years, to wit: he completed six years of graduate medical education through the sixth year level although only two years through the second year level was required for initial licensure in Ohio. Further, Dr. Prochoroff states, and the Board acknowledges, that he completed his examination sequence in less than ten years and that he has not failed any Step of the USMLE three times or more.

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 Board grants Dr. Prochoroff's request for a waiver of the seven year time period, and accepts his examination sequence pursuant to Rule 4731-6-14(C)(3), Ohio Administrative Code, as in effect beginning June 30, 2005. Further, Dr. Prochoroff shall be granted a certificate to practice medicine and surgery in the State of Ohio. Such certificate shall be immediately **SUSPENDED** for a period of three months, such time to be calculated from July 1, 2005, the date immediately following the expiration of Dr. Prochoroff's medical training certificate. Upon reinstatement of his certificate on October 1, 2005, Dr.

Prochoroff shall be subject to the following PROBATIONARY terms, conditions and limitations:

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

Personal Ethics Course

4. Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Prochoroff shall provide acceptable documentation of successful completion of a course or courses dealing with personal ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Prochoroff submits the documentation of successful completion of the course or courses dealing with personal ethics, he shall also submit to the Board a written report describing the course, setting forth what he learned from the course, and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

5. In the event Dr. Prochoroff 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.

Required Reporting by Licensee

6. Within thirty days of the effective date of this Consent Agreement, Dr. Prochoroff 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. Prochoroff 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.

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

FAILURE TO COMPLY

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

DURATION/MODIFICATION OF TERMS

Dr. Prochoroff shall not request termination of this Consent Agreement for a minimum of two years. Dr. Prochoroff's probation shall last for a minimum of two years. In addition, Dr. Prochoroff shall not request modification to the probationary terms, limitations, and conditions contained herein for at least one year. Otherwise, the above-described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Prochoroff 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. Prochoroff hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

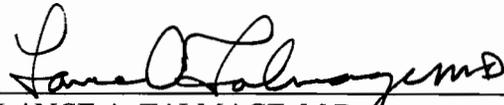
This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. Dr. Prochoroff acknowledges that his social security number will be used if 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.



ANDRE PROCHOROFF, M.D.



LANCE A. TALMAGE, M.D.
Secretary

9/12/05

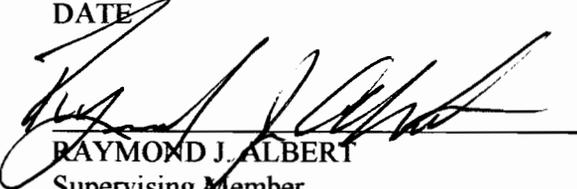
DATE

9-14-05

DATE



JAMES MCGOVERN, ESQ.
Attorney for Dr. Prochoroff



RAYMOND J. ALBERT
Supervising Member

9/13/05

DATE

9/14/05

DATE



JONATHAN R. FULKERSON, ESQ.
Deputy Attorney General

05/9/14

DATE



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.med.ohio.gov

March 9, 2005

Andre Prochoroff, M.D.
3309 Elsmere Road
Shaker Heights, OH 44120

Dear Dr. Prochoroff:

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

- (1) On or about February 3, 2003, you submitted an Application for Certificate – Medicine or Osteopathic Medicine [License Application] to the State Medical Board of Ohio. The FCVS was received on October 4, 2004. Your License Application is currently pending. Included in the License Application is an Affidavit and Release of Applicant form signed by you with the notarized date of January 27, 2002. By signing the Affidavit and Release of Applicant form, you certified that the information provided therein was true.

Paragraph 4 of the Affidavit and Release of Applicant form states, "I further understand that my application for a license to practice medicine or osteopathic medicine in the State of Ohio is an ongoing process. I will immediately notify the State Medical Board of Ohio in writing of any changes to the answers to any of the questions contained in the ADDITIONAL INFORMATION section of the application if such a change occurs at any time prior to a license to practice medicine or osteopathic medicine being granted to me by the State Medical Board of Ohio." (Emphasis in the original.)

- (2) You answered "No" in response to question number 4 in the "Additional Information" section of your License Application, which asks:

"Have you ever resigned from, withdrawn from, or have you ever been warned by, censured by, disciplined by, been put on probation by, been requested to withdraw from, dismissed from, been refused renewal of a contract by, or expelled from, a medical school, clinical clerkship, externship, preceptorship, residency, or graduate medical education program?"

Mailed 3-10-05

In fact, on or about January 28, 2003, you met with Kerry H. Levin, M.D., Program Director of Neurology Residency and Clinical Neurophysics at the Cleveland Clinic, who verbally notified you of a performance warning and provided you with a copy of the January 16, 2003, memorandum documenting the Department of Neurology Education Committee's decision to issue a performance warning because of "disorganized presentations, lack of neurological thought processing, difficulty with synthesis of history and exam into an appropriate differential diagnosis, and lack of fund of knowledge."

Further, the memorandum stated that you failed to interpret patient reports and relay them to the team. You were warned that your performance did not meet minimal standards for successful completion of the residency program and, if your performance failed to improve, termination from the program was likely. In summary, during this meeting, Dr. Levin discussed with you the negative reports, the special requirements and several plans to correct these deficiencies.

You failed to include and/or update your Licensure Application with this information, as is required by the Affidavit and Release.

- (3) You answered "No" to the questions on your Federation Credentials Verification Service [FCVS] application, which asked whether there were any unusual circumstances associated with any of your postgraduate medical education, specifically:

- were you ever disciplined or placed under investigation;
- were any negative reports ever filed by instructors; and
- were any limitations or special requirements imposed on you because of academic, incompetence, disciplinary problems or any other reason?

In fact:

- you were advised of disciplinary action against you, which included a performance warning during your neurology residency at the Cleveland Clinic;
- on January 7, 2003, you reviewed and signed the Cleveland Clinic Foundation's Composite Evaluation of your performance in pediatric neurology for the July to December 2002 period, which issued eight unsatisfactory and marginal ratings; and
- you were directed to participate in academic remediation during your neurology residency at the Cleveland Clinic.

- (4) Although you have a license issued by another state as required by Section 4731.29, Ohio Revised Code, you have not completed an examination sequence acceptable to this Board as required by Sections 4731.14 and 4731.29, Ohio Revised Code, and Rules 4731-6-14 and 4731-6-16, Ohio Administrative Code. You began your examination sequence on June 8, 1993, when you passed the USMLE Step I examination on your first attempt. Although, on March 3, 1997, you passed the USMLE Step II examination on your second attempt, you did not pass the USMLE Step III until your second attempt, which was on March 9, 2001. Therefore, because the period of eligibility ended in June 2000, you have not passed all three Steps of the USMLE within a seven-year period.

Your acts, conduct, and/or omissions as alleged in paragraphs (1), (2) and (3) above, individually and/or collectively, constitute "fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1), (2) and (3) above, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Further, your failure to successfully complete all three steps of the USMLE within a seven-year period, as alleged in paragraph (4) above, constitutes a failure to fulfill the requirements of Sections 4731.29 and 4731.14, Ohio Revised Code, and Rules 4731-6-14 and 4731-6-16, Ohio Administrative Code. Pursuant to Sections 4731.29 and 4731.14, Ohio Revised Code, and Rule 4731-6-16, Ohio Administrative Code, an applicant must have passed one of the examinations specified in Paragraph (C) of Rule 4731-6-16, Ohio Administrative Code. Pursuant to Rule 4731-6-16(C)(6), Ohio Administrative Code, all three Steps of the USMLE must be passed in accordance with paragraph (C)(3) of Rule 4731-6-14, Ohio Administrative Code, which states that "[a]ll three steps must have been passed within a seven year period and the performance achieved on each step must have been recognized by the USMLE program as a recommended passing performance."

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

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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.
Secretary

Enclosures

CERTIFIED MAIL #7000 0600 0024 5143 7438
RETURN RECEIPT REQUESTED