BEFORE THE STATE BOARD OF REGISTRATION FOR THE HEALING ARTS

STATE BOARD OF REGISTRATION FOR THE HEALING ARTS,	)	
Board,	)	
v.	)	HA01016548
JAMES B. MCGRIFF, D.O. 6213 Watchcreek Way, #301 Milford, Ohio 45150	)	
Licensee.	)	

SETTLEMENT AGREEMENT

James B. McGriff, D.O., ("Licensee") and the State Board of Registration for the Healing Arts (the "Board") enter into this Agreement for the purpose of resolving the question of whether Dr. McGriff's license as a physician or surgeon will be subject to discipline. Licensee and the Board jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to §621.045, RSMo Supp. 1997.

1. Licensee acknowledges that he understands the various rights and privileges afforded by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's own behalf; the right to a decision based upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee; and subsequently, the right to a disciplinary hearing before the Board at which time evidence

may be presented in mitigation of discipline. Having been advised of these rights provided Licensee by operation of law; Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Agreement and agrees to abide by the terms of this document as they pertain to Licensee.

2. Licensee acknowledges that he may, at the time this Agreement is effective or within fifteen days thereafter, submit this Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for discipline of Licensee's license.

3. Licensee acknowledges that he has been informed of his right to consult legal counsel in this matter.

4. Licensee hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claims, actions, causes of action, fees, costs, and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to §536.087, RSMo 1994, or any claim arising under 42 U.S.C. 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case or this Agreement, or from the negotiation or execution of this Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Agreement in that it survives in perpetuity even in the event that any court of law deems this Agreement, or any portion thereof, void or unenforceable.

5. The parties stipulate and agree that the disciplinary order agreed to by the

Board and Licensee in Part II herein is based only on the Agreement set out in Part I herein. Licensee understands that the Board may take disciplinary action against Licensee based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

6. Licensee understands and agrees that the Missouri State Board of Registration for the Healing Arts will maintain this Agreement as an open record of the Board as required by Chapters 334, 610, 620, and 621, RSMo, as amended.

I.

Based upon the foregoing, Board and Licensee herein jointly stipulate to the following:

JOINT PROPOSED FINDINGS OF FACT

1. The State Board of Registration for the Healing Arts (the "Board") is an agency of the State of Missouri created and established pursuant to §334.120, for the purpose of executing and enforcing the provisions of Chapter 334, RSMo.

2. James B. McGriff, D.O., is licensed by the Board as a physician and surgeon, license number 30324, which was first issued on June 26, 1965. Licensee's certificate of registration is current, and was current and active at all times mentioned herein.

3. McGriff also holds a license to practice osteopathic medicine in Ohio, number 34-001570 M, which was first issued on August 24, 1965.

4. On or about May 13, 1998, McGriff entered into a consent agreement with the State Medical Board of Ohio. A copy of the factual and legal allegations and the

consent agreement are attached as Exhibit 1 and incorporated by reference as though fully set forth.

5. The basis for the consent agreement was that on or about November 4, 1997, McGriff pled guilty to and was found guilty of three counts of Attempted Trafficking in Drugs, misdemeanors of the first degree, in violation of Ohio law.

6. As a result of this criminal proceeding, McGriff entered into the consent agreement with the State Medical Board of Ohio in which his license to practice medicine in Ohio was suspended and upon reinstatement, was probated.

JOINT PROPOSED CONCLUSIONS OF LAW

7. Cause exists to discipline Licensee's license pursuant to §334.100.2(8) RSMo Supp. 1997, which provides in pertinent part:

> 2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:
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> * * * *
>
> (8) Revocation, suspension, restriction, modification, limitation, reprimand, warning, censure, probation or other final disciplinary action against the holder of or applicant for a license or other right to practice any profession regulated by this chapter by another state, territory, federal agency or country, whether or not voluntarily agreed to by the licensee or applicant, including, but not limited to, the denial of licensure, surrender of the license, allowing the license to expire or lapse, or discontinuing or limiting the practice of medicine while subject to an investigation

or while actually under investigation by any licensing authority, medical facility, branch of the armed forces of the United States of America, insurance company, court, agency of the state or federal government, or employers;

* * *

9. Licensee's conduct, as established by the foregoing facts, falls within the intendment of §334.100.2(8), RSMo Supp. 1997.

10. Cause exists for the Board to take disciplinary action against Licensee's license under §334.100.2(8), RSMo Supp. 1997.

II.

JOINT AGREED DISCIPLINARY ORDER

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the order entered by the State Board of Registration for the Healing Arts in this matter under the authority of §621.110, RSMo 1994. This agreement will be effective immediately on the date entered and finalized by the Board.

A. Effective the date the Board enters into the Agreement:

1. The medical license, No. DO30324, issued to Licensee is hereby VOLUNTARILY SURRENDERED in lieu of disciplinary action.

B. Licensee hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees costs and expenses, and compensation, including, but not limited to any claims for attorneys fees and

expenses, including any claims pursuant to §536.087, RSMo, or any claim arising under 42 USC §1983, which may be based upon, arise out of, or relate to any of the matters raised in this agreement, of from the negotiation or execution of this agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this agreement in that it survives in perpetuity even in the event that any court of law deems this agreement or any portion thereof void or unenforceable.

C. In consideration of the foregoing, the parties consent to the termination of any further proceedings based upon the facts set forth herein.

LICENSEE

James B. McGriff, D.O. Date 2/7/00

BOARD

Tina Steinman 2/16/2000
Tina Steinman Date
Executive Director

JEREMIAH W. (JAY) NIXON
Attorney General

2/15/00
JAMES O. ERTLE Date
Assistant Attorney General
Missouri Bar No. 49166

Broadway State Office Building
Post Office Box 899
Jefferson City, MO 65102
(573)751-4087
(573)751-5660 Facsimile
Attorneys for Board

EFFECTIVE THIS 16 DAY OF February, 2000.

CONSENT AGREEMENT
BETWEEN
JAMES B. MCGRIFF, D.O.
AND
THE STATE MEDICAL BOARD OF OHIO

This CONSENT AGREEMENT is entered into by and between JAMES B. MCGRIFF, D.O., and THE STATE MEDICAL BOARD OF OHIO, a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

JAMES B. MCGRIFF, D.O., voluntarily enters into this 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.

This CONSENT AGREEMENT contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this CONSENT AGREEMENT.

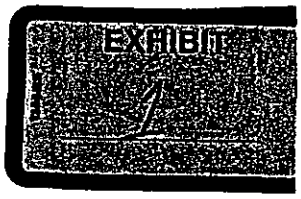
BASIS FOR ACTION

This CONSENT AGREEMENT is entered into on the basis of the following stipulations, admissions and understandings:

A. THE STATE MEDICAL BOARD OF OHIO 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 any of the enumerated violations.

B. THE STATE MEDICAL BOARD OF OHIO enters into this CONSENT AGREEMENT in lieu of further formal proceedings based upon the violations of Section 4731.22, Ohio Revised Code, set forth in the Notice of Opportunity for Hearing issued by the BOARD on January 14, 1998, attached hereto as Exhibit A and incorporated herein by this reference. The BOARD expressly reserves the right to institute additional formal proceedings based upon any other violations of Chapter 4731 of the Ohio Revised Code whether occurring before or after the effective date of this AGREEMENT.

C. JAMES B. MCGRIFF, D.O., is licensed to practice osteopathic medicine and surgery in the State of Ohio.



D. JAMES B. MCGRIFF, D.O., ADMITS the factual and legal allegations set forth in the Notice of Opportunity for Hearing issued by the BOARD on January 14, 1998, attached hereto as Exhibit A and incorporated herein by reference.

AGREED CONDITIONS

WHEREFORE, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any further formal proceedings at this time, JAMES B. MCGRIFF, D.O., knowingly and voluntarily agrees with THE STATE MEDICAL BOARD OF OHIO, (hereinafter BOARD), to the following terms, conditions and limitations:

STAYED REVOCATION; SUSPENSION OF CERTIFICATE

I. The certificate of JAMES B. MCGRIFF, D.O., to practice osteopathic medicine and surgery in the State of Ohio is hereby permanently REVOKED. Such revocation shall be STAYED, and DOCTOR MCGRIFF's certificate shall be SUSPENDED for an indefinite period of time, but not less than six (6) months. Such suspension shall become effective immediately upon the effective date of this CONSENT AGREEMENT. In accordance with such suspension, DOCTOR MCGRIFF shall promptly surrender his current wallet registration card and wall certificate to the BOARD or its designee. Any period of suspension in effect prior to receipt by the BOARD or its designee of the current wallet registration card and wall certificate shall not apply toward the minimum period of suspension specified by this CONSENT AGREEMENT. Upon completion of the suspension period and reinstatement of DOCTOR MCGRIFF'S license, the wall certificate and a current wallet registration card will be promptly returned to DOCTOR MCGRIFF.

CONDITIONS FOR REINSTATEMENT

II. The STATE MEDICAL BOARD shall not consider reinstatement of DOCTOR MCGRIFF's certificate to practice unless and until all of the following minimum requirements are met:

A. DOCTOR MCGRIFF shall submit an application for reinstatement, accompanied by appropriate fees.

B. DOCTOR MCGRIFF shall provide acceptable documentation of successful completion of a course dealing with the prescribing of controlled substances. The exact number of hours and the specific

content of the course shall be subject to the prior approval of the Board or its designee, but shall be at least forty (40) hours in length. Any course taken in compliance with this provision shall be in addition to the Continuing Medical Education Requirements for relicensure for the biennial registration period in which it is completed.

C. DOCTOR MCGRIFF shall also provide acceptable documentation of successful completion of a course dealing with medical record keeping. The exact number of hours and the specific content of the course shall be subject to the prior approval of the Board or its designee, but shall be at least ten (10) hours in length. Any course taken in compliance with this provision shall be in addition to the Continuing Medical Education Requirements for relicensure for the biennial registration period in which it is completed.

D. In the event that DOCTOR MCGRIFF has not been engaged in the active practice of osteopathic medicine and surgery for a period in excess of two years prior to reinstatement, the BOARD may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of DOCTOR MCGRIFF's fitness to resume practice.

PROBATIONARY CONDITIONS

III. Upon reinstatement, DOCTOR MCGRIFF's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three (3) years:

A. DOCTOR MCGRIFF shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio, and all terms of probation imposed by the Logan County Court of Common Pleas in criminal case number CR93-09-0088.

B. DOCTOR MCGRIFF 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, provided that if the effective date

is on or after the 16th day of the month, the first quarterly declaration must be received in the BOARD'S offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the BOARD'S offices on or before the first day of every third month.

C. DOCTOR MCGRIFF shall appear in person for quarterly interviews before the BOARD or its designated representative, or as otherwise directed 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. (Example: The first quarterly appearance is scheduled for February, but based upon the doctor's serious personal illness he is permitted to delay appearance until April. The next appearance will still be scheduled for May, three months after the appearance as originally scheduled.) Although the BOARD will normally give DOCTOR MCGRIFF written notification of scheduled appearances, it is DOCTOR MCGRIFF's responsibility to know when personal appearances will occur. If he does not receive written notification from the BOARD by the end of the month in which the appearance should have occurred, DOCTOR MCGRIFF shall immediately submit to the BOARD a written request to be notified of his next scheduled appearance.

D. In the event that DOCTOR MCGRIFF should leave Ohio for three (3) continuous months, or reside or practice outside the State, DOCTOR MCGRIFF must notify the BOARD in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this period under the CONSENT AGREEMENT, unless otherwise determined by motion of the BOARD in instances where the BOARD can be assured that probationary monitoring is otherwise being performed.

E. In the event DOCTOR MCGRIFF is found by the Secretary of the BOARD to have failed to comply with any provision of this agreement, and is so notified of that deficiency in writing, such periods of noncompliance will not apply to the reduction of the probationary period under this CONSENT AGREEMENT.

Monitoring Physician

F. Within thirty (30) days after the reinstatement of his certificate under section II of this AGREEMENT, DOCTOR MCGRIFF shall submit for the BOARD's prior approval the name of a monitoring physician, who shall review DOCTOR MCGRIFF's patient charts and shall submit a written report of such review to the BOARD on a quarterly basis. Such chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the BOARD. It shall be DOCTOR MCGRIFF's responsibility to ensure that the monitoring physician's quarterly reports are submitted to the BOARD on a timely basis.

Further, the monitoring physician shall otherwise monitor DOCTOR MCGRIFF and provide the BOARD with quarterly reports on the doctor's progress and status. DOCTOR MCGRIFF shall ensure that such reports are forwarded to the BOARD on a quarterly basis. In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, DOCTOR MCGRIFF must immediately so notify the BOARD in writing, and make arrangements acceptable to the BOARD for another monitoring physician as soon as practicable. DOCTOR MCGRIFF shall further ensure that the previously designated monitoring physician also notifies the BOARD directly of the inability to continue to serve and the reasons therefore.

All monitoring physician reports required under this paragraph must be received in the BOARD's offices no later than the due date for DOCTOR MCGRIFF's quarterly declaration. It is DOCTOR MCGRIFF's responsibility to ensure that reports are timely submitted.

Weight Loss/Control Medications

G. DOCTOR MCGRIFF shall not prescribe, dispense, or administer any prescription medications for weight loss or weight control.

Failure to comply

H. DOCTOR MCGRIFF agrees that if any declaration or report required by this AGREEMENT is not received in the BOARD's

offices on or before its due date, DOCTOR MCGRIFF shall cease practicing beginning the day next following receipt from the BOARD of notice of non-receipt, either by writing, by telephone, or by personal contact until the declaration or report is received in the BOARD offices. Any practice during this time period shall be considered unlicensed practice in violation of Section 4731.43 of the Revised Code.

REQUIRED REPORTING BY LICENSEE

IV. Within thirty (30) days of the effective date of this AGREEMENT, DOCTOR MCGRIFF shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he under contract to provide physician services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, DOCTOR MCGRIFF shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he contracts to provide physician services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

V. Within thirty (30) days of the effective date of this AGREEMENT, DOCTOR MCGRIFF 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 a license to practice. DOCTOR MCGRIFF 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 licensure or reinstatement of licensure. Further, DOCTOR MCGRIFF shall provide this BOARD with a copy of the return receipt as proof of notification within thirty (30) days of receiving that return receipt.

If, in the discretion of the Secretary and Supervising Member of THE STATE MEDICAL BOARD OF OHIO, DOCTOR MCGRIFF appears to have violated or breached any term or condition of this Agreement, THE STATE MEDICAL BOARD OF OHIO 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 Agreement.

If the Secretary and Supervising Member of the BOARD determine that there is clear and convincing evidence that DOCTOR MCGRIFF has violated any term, condition or

limitation of this CONSENT AGREEMENT, DOCTOR MCGRIFF 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 the purposes of initiating a summary suspension pursuant to Section 4731.22(D), Ohio Revised Code.

PERMANENT LIMITATION

Upon successful completion of probation, DOCTOR MCGRIFF'S certificate will be restored, but shall thereafter be PERMANENTLY LIMITED AND RESTRICTED in that he will be PROHIBITED from prescribing, dispensing or administering any prescription medication for weight loss or weight control.

ACKNOWLEDGMENTS/LIABILITY RELEASE

DOCTOR MCGRIFF acknowledges that he has had an opportunity to ask questions concerning the terms of this 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.

DOCTOR MCGRIFF hereby releases the STATE MEDICAL BOARD OF OHIO, 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.

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.

JAMES B. MCGRIFF, D.O.

4/23/98
DATE

ANAND G. GARG, M.D.
Secretary

05/07/98
DATE

CHARLES W. DALEY, ESQ.
Attorney for Dr. McGriff

4-23-98
DATE

RAYMOND J. ALBERT
Supervising Member

5/13/98
DATE

ANNE BERRY STRAIT
Assistant Attorney General

5/13/98
DATE

mcgriff.agr

State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43266-0315 • (614) 466-3934 • Website: www.state.oh.us/med/

EXHIBIT
A

January 14, 1998

James B. McGriff, D.O.
123-25 South Main Street
DeGraff, Ohio 43318

Dear Doctor McGriff

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

(1) On or about November 4, 1997, in the Logan County Court of Common Pleas, you pleaded guilty to and were found guilty of three (3) counts of Attempted Trafficking In Drugs, misdemeanors of the first degree, in violation of Section 2923.02, Ohio Revised Code, to wit: Section 2925.03(A)(1), Ohio Revised Code.

The acts underlying your guilty plea and the judicial finding of guilt were committed in the course of practice and include that you knowingly engaged in conduct which, if successful, would have constituted or resulted in the offense of Trafficking in Drugs, in that you attempted to sell phendimetrazine tartrate, a schedule 3 controlled substance, in an amount less than the minimum bulk amount, between March 12, 1991, to April 24, 1991; phentermine HCL, a schedule 4 controlled substance, in an amount less than the minimum bulk amount, between January 3, 1991, to December 19, 1991; and phendimetrazine tartrate, a schedule 3 controlled substance, in an amount less than the minimum bulk amount, between March 5, 1991, to April 4, 1991.

Your guilty plea and/or the judicial finding of guilt, as alleged in paragraph (1) above, individually and/or collectively, constitute "[a] plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.

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

Mailed 1/16/98

be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that 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 (30) 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, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Anand G. Garg, M.D.
Secretary

AGG/lsg

Enclosures

CERTIFIED MAIL #Z 395 591 341
RETURN RECEIPT REQUESTED

cc: R.William Meeks, Esq.
Samuel H. Shamansky, Esq.

CERTIFIED MAIL #Z 395 591 342
RETURN RECEIPT REQUESTED