

**CONSENT AGREEMENT
BETWEEN
BENNIE RAY UPCHURCH, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO**

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

Dr. Upchurch 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)(14), Ohio Revised Code, for “[c]ommission of an act involving moral turpitude that constitutes a misdemeanor 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 violation of Section 4731.22(B)(14), Ohio Revised Code, 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 Consent Agreement.
- C. Dr. Upchurch is licensed to practice medicine and surgery in the State of Ohio, license number 35.067988.
- D. Dr. Upchurch states that he is not licensed to practice in any other state or jurisdiction.
- E. Dr. Upchurch admits that on or about August 31, 2023, he plead to Disorderly Conduct a fourth degree misdemeanor in the Franklin County Municipal Court as a lesser included offense of an original charge that was a First Degree Misdemeanor.

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

REPRIMAND:

1. Dr. Upchurch is hereby REPRIMANDED.

PROBATIONARY TERMS:

2. Dr. Upchurch shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
3. Dr. Upchurch 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, 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.
4. Dr. Upchurch shall appear for an interview before the Board or its designated representative, as requested.
5. Within six months of the effective date of this Consent Agreement, or as otherwise approved by the Board, Dr. Upchurch shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics/boundaries. 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 course(s) 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. Upchurch submits the documentation of successful completion of the course(s) dealing with professional ethics/boundaries, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice in the future. The Board may consider credit for any ethics/boundaries courses taken by Dr. Upchurch as a result of the admissions in Paragraph E.
6. Within thirty days of the effective date of this Consent Agreement, Dr. Upchurch 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. Upchurch 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. Upchurch 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. Upchurch shall provide a copy of this Consent Agreement to the Ohio Department of Public Safety, Division of Emergency Medical Services. Further, within thirty days of the date of each such notification, Dr. Upchurch shall provide documentation acceptable to the Secretary and Supervising Member of the Board demonstrating that the required notification has occurred.

7. Within thirty days of the effective date of this Consent Agreement, Dr. Upchurch shall provide a copy of this Consent Agreement by certified mail 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. Upchurch further agrees to provide a copy of this Consent Agreement by certified mail 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. Additionally, within thirty days of the effective date of this Consent Agreement, Dr. Upchurch shall provide a copy of this Consent Agreement to any specialty or subspecialty board of the American Board of Medical Specialties or the American Osteopathic Association Bureau of Osteopathic Specialists under which he currently holds or has previously held certification. Further, within thirty days of the date of each such notification, Dr. Upchurch shall provide documentation acceptable to the Secretary and Supervising Member of the Board demonstrating that the required notification has occurred.
8. Dr. Upchurch shall notify the Board in writing of any change of principal practice address or residence address within thirty days of such change.
9. Within thirty days of the effective date of this Consent Agreement, Dr. Upchurch shall remit payment in full of a monetary fine of seven thousand five hundred dollars (\$7,500). Such payment shall be made in full via credit card in the manner specified by the Board through its online portal, or by other manner as specified by the Board. Further, Dr. Upchurch acknowledges and agrees that his failure to timely remit full payment shall constitute a violation of this agreement and agrees to pay all reasonable costs associated with the collection of any payment.

FAILURE TO COMPLY

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

Consent Agreement, Dr. Upchurch 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

The Reprimand of Dr. Upchurch shall not terminate. Further, Dr. Upchurch shall not request termination of the probationary terms contained in this Consent Agreement until he submits, and the Board has accepted as satisfactory, both the documentation of successful completion of the required medical education courses set forth herein, as well as the corresponding written reports to the Board. 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. Upchurch, 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 upon this Consent Agreement being superseded by a subsequent final Board Order taking effect.

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. Upchurch and the Board agree that all other terms, limitations, and conditions contained in this Consent Agreement shall be unaffected.

ACKNOWLEDGMENTS/LIABILITY RELEASE

By executing his signature on this Consent Agreement, Dr. Upchurch agrees that in the event the Board, in its discretion, does not ratify this Consent Agreement, this settlement offer is withdrawn and shall be of no evidentiary value and shall not be relied upon or introduced in any disciplinary action or appeal by either party. Dr. Upchurch and the Board further agree that if this Consent Agreement is not approved, it shall not constitute an admission against interest in this proceeding and shall not prejudice the ability of the Board to adjudicate this matter.

This Consent Agreement represents the sole and entire agreement of the parties hereto and supersedes all prior written or oral negotiations, agreements, or understandings between the parties. No party to this agreement has been induced to enter into the Consent Agreement by any representations or inducements except those expressly set forth in this written agreement. Further, all parties agree that to the extent any language in the agreement will be interpreted in a subsequent dispute, no ambiguous language shall be construed against the party drafting this Consent Agreement.

Dr. Upchurch 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. Upchurch 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. Upchurch 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. Further, Dr. Upchurch specifically acknowledges that the electronic transmission of a scanned or photostatic copy of any executed signature to this Consent Agreement, upon being received by the Board, shall be deemed to have the full legal force and effect as the original.


BENNIE RAY UPCHURCH, M.D.

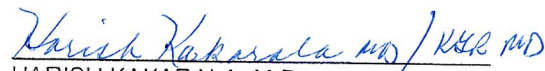
3/12/2024
DATE


KIM G. ROTHERMEL, M.D.
Secretary

4-10-24
DATE


LARRY ZUKERMAN
Attorney for Dr. Upchurch

3/12/24
DATE


HARISH KAKARALA, M.D.
Supervising Member

4-10-24
DATE


PATRICK HEAGERTY
Enforcement Attorney

3/13/24
DATE

Revised 11-16-2018