

STEP II
CONSENT AGREEMENT
BETWEEN
TIMOTHY SCOTT KRESS, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO

This CONSENT AGREEMENT is entered into by and between TIMOTHY SCOTT KRESS, M.D., and THE STATE MEDICAL BOARD OF OHIO, a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

TIMOTHY SCOTT KRESS, M.D., 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 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 who is in violation of Section 4731.22(B)(9), Ohio Revised Code, “[a] plea of guilty to, or a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony,” and 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.”
- B. THE STATE MEDICAL BOARD OF OHIO enters into this CONSENT AGREEMENT in lieu of formal proceedings based upon the violations of Section 4731.22(B)(9) and (26), Ohio Revised Code, as set forth in Paragraphs D, E, and F of the January 2000 Consent Agreement between TIMOTHY SCOTT KRESS, M.D., and THE STATE MEDICAL BOARD OF OHIO, a copy of which is attached hereto and incorporated herein, and based upon the stipulations set forth in Paragraphs D, E, F, and G below. THE STATE MEDICAL BOARD OF OHIO 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.

- C. TIMOTHY SCOTT KRESS, M.D., is applying for reinstatement of his license to practice medicine and surgery in the State of Ohio, which was suspended pursuant to the terms of the above referenced January 2000 Consent Agreement.
- D. TIMOTHY SCOTT KRESS, M.D., STATES and THE STATE MEDICAL BOARD OF OHIO ACKNOWLEDGES that DOCTOR KRESS has substantially complied with the reinstatement conditions as set forth in his January 2000 Consent Agreement.
- E. Pursuant to paragraph III.B.i. of the January 2000 Consent Agreement, the STATE MEDICAL BOARD OF OHIO received a letter on or about November 19, 1999, from Shepherd Hill Hospital, a Board approved treatment provider, which states that DOCTOR KRESS entered treatment on September 2, 1999, and completed treatment and was discharged on November 19, 1999.
- F. Pursuant to paragraph III.B.ii. of the January 2000 Consent Agreement, on January 5, 2001, Shepherd Hill Hospital informed the STATE MEDICAL BOARD OF OHIO in a phone conversation that DOCTOR KRESS is in compliance with his aftercare contract.
- G. Pursuant to paragraph III.B.iii. of the January 2000 Consent Agreement, DOCTOR KRESS obtained the following evaluations from Board approved treatment providers:
 - 1. On or about November 10, 2000, the STATE MEDICAL BOARD OF OHIO received an assessment report concerning DOCTOR KRESS from Frederick N. Karaffa, M.D., of Shepherd Hill Hospital. Dr. Karaffa stated that he thought "returning to the high stress obstetrical practice would be a high risk" for a recovering physician, and that he concurred with DOCTOR KRESS' plan to explore a position with Planned Parenthood of Cincinnati. Further, Dr. Karaffa opined that DOCTOR KRESS "should not have any difficulty in practicing medicine to current and acceptable standards," noting that in light of Dr. Kress' well-established recovery program he was able to recommend that DOCTOR KRESS reapply for his license.
 - 2. On or about December 13, 2000, the STATE MEDICAL BOARD OF OHIO received an assessment report concerning

DOCTOR KRESS from John Peterangelo, D.O., of Greene Hall Chemical Dependency Services, a Board approved treatment provider. Dr. Peterangelo stated that he found DOCTOR KRESS to be a "sincere individual who is highly motivated to continuing a solid recovery program," and that he recommends that DOCTOR KRESS be allowed to resume the practice of medicine.

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 TIMOTHY SCOTT KRESS, M.D., to practice medicine and surgery in the State of Ohio shall be reinstated, and TIMOTHY SCOTT KRESS, M.D., knowingly and voluntarily agrees with THE STATE MEDICAL BOARD OF OHIO, (hereinafter BOARD), to the following PROBATIONARY terms, conditions and limitations:

1. DOCTOR KRESS 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 Darke County Court of Common Pleas in Case Number 99-CR-11982.
2. DOCTOR KRESS 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 the 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;
3. DOCTOR KRESS 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 KRESS written notification of scheduled appearances, it is DOCTOR KRESS' 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 KRESS shall immediately submit to the BOARD a written request to be notified of his next scheduled appearance;

4. In the event that DOCTOR KRESS should leave Ohio for three (3) continuous months, or reside or practice outside the State, DOCTOR KRESS 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;
5. In the event DOCTOR KRESS 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 the CONSENT AGREEMENT;

MONITORING OF REHABILITATION AND TREATMENT

Drug Associated Restrictions

6. DOCTOR KRESS shall keep a log of all controlled substances prescribed. Such log shall be submitted in the format approved by the BOARD thirty (30) days prior to DOCTOR KRESS' personal appearance before the BOARD or its designated representative, or as otherwise directed by the BOARD;
7. DOCTOR KRESS shall not, without prior BOARD approval, administer, dispense, or possess (except as allowed under Paragraph 8 below) any controlled substances as defined by state or federal law. In the event that the BOARD agrees at a future date to modify this CONSENT AGREEMENT to allow DOCTOR KRESS to administer or dispense controlled substances, DOCTOR KRESS shall keep a log of all controlled substances administered or dispensed. Such log shall be submitted in the format approved by the BOARD thirty (30) days prior to DOCTOR KRESS' personal appearance before the BOARD or its designated representative, or as otherwise directed by the BOARD;

Sobriety

8. DOCTOR KRESS shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of DOCTOR KRESS' history of chemical dependency;
9. DOCTOR KRESS shall abstain completely from the use of alcohol;

Drug and Alcohol Screens/Supervising Physician

10. DOCTOR KRESS shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the BOARD. DOCTOR KRESS 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;

Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR KRESS shall submit to the BOARD for its prior approval the name of a supervising physician to whom DOCTOR KRESS shall submit the required urine specimens. In approving an individual to serve in this capacity, the BOARD will give preference to a physician who practices in the same locale as DOCTOR KRESS. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the BOARD of any positive screening results;

DOCTOR KRESS shall ensure that the supervising physician provides quarterly reports to the BOARD, on forms approved or provided by the BOARD, verifying whether all urine screens have been conducted in compliance with this CONSENT AGREEMENT, whether all urine screenings have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities;

In the event that the designated supervising physician becomes unable or unwilling to so serve, DOCTOR KRESS must immediately notify the BOARD in writing, and make arrangements acceptable to the BOARD for another supervising physician as soon as practicable. DOCTOR KRESS shall further ensure that the previously designated supervising physician also notifies the BOARD directly of the inability to continue to serve and the reasons therefore;

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

11. The BOARD retains the right to require, and DOCTOR KRESS agrees to submit, blood or urine specimens for analysis at DOCTOR KRESS' expense upon the BOARD's request and without prior notice. DOCTOR KRESS' 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;

Monitoring Physician

12. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR KRESS shall submit for the BOARD's prior approval the name of a monitoring physician, who shall review DOCTOR KRESS' patient charts and shall submit a written report of such review to the BOARD on a quarterly basis. In approving an individual to serve in this capacity, the BOARD will give preference to a physician who practices in the same locale as DOCTOR KRESS and who is engaged in the same or similar practice specialty. 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 KRESS' 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 KRESS and provide the BOARD with quarterly reports on the doctor's progress and status. DOCTOR KRESS 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 KRESS must immediately so notify the BOARD in writing, and make arrangements acceptable to the BOARD for another monitoring physician as soon as practicable. DOCTOR KRESS 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 KRESS' quarterly declaration. It is DOCTOR KRESS' responsibility to ensure that reports are timely submitted;

Rehabilitation Program

13. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR KRESS shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., or Caduceus, no less than three (3) times per week. Substitution of any other specific program must receive prior BOARD approval;

DOCTOR KRESS shall submit with each quarterly declaration required under Paragraph 2 of this CONSENT AGREEMENT acceptable documentary evidence of continuing compliance with this program;

Aftercare

14. DOCTOR KRESS shall maintain continued compliance with the terms of the aftercare contract entered into with Shepherd Hill Hospital and the advocacy contract entered with the Ohio Physicians Effectiveness Program in November 1999, provided that where terms of the aftercare contract or advocacy contract conflict with terms of this CONSENT AGREEMENT, the terms of this CONSENT AGREEMENT shall control;

Releases

15. DOCTOR KRESS 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;

Approval of Employment

16. DOCTOR KRESS shall obtain the approval of the BOARD for any medical practice or employment related to the health care fields. The BOARD shall consider, among other factors, the adequacy and continuity of supervision and the feasibility of restricted access to controlled substances, which will ensure the protection of the public, prior to approval or disapproval of the proposed employment;

Required Reporting by Licensee

17. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR KRESS 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, DOCTOR KRESS 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;

18. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR KRESS 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. DOCTOR KRESS 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 reinstatement of any professional license. Further, DOCTOR KRESS shall provide this BOARD with a copy of the return receipt as proof of notification within thirty (30) days of receiving that return receipt;

VIOLATION OF PROBATIONARY TERMS

19. Any violation of Paragraph 8 or Paragraph 9 of this CONSENT AGREEMENT shall constitute grounds to revoke or permanently revoke DOCTOR KRESS' certificate. DOCTOR KRESS agrees that the minimum discipline for such a violation shall include actual license suspension. This paragraph does not limit the BOARD's authority to suspend, revoke or permanently revoke DOCTOR KRESS' certificate based on other violations of this CONSENT AGREEMENT;
20. DOCTOR KRESS AGREES that if any declaration or report required by this CONSENT AGREEMENT is not received in the BOARD's offices on or before its due date, DOCTOR KRESS 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 4731.41 of the Revised Code;
21. DOCTOR KRESS AGREES that if, without prior permission from the BOARD, he fails to submit to random screenings for drugs and alcohol at least as frequently as required by Paragraph 10 of this CONSENT AGREEMENT, he shall cease practicing immediately upon receipt from the BOARD of notice of the violation and shall refrain from practicing

for thirty (30) days for the first instance of a single missed screen. Practice during this time period shall be considered unlicensed practice in violation of Section 4731.41 of the Revised Code; and,

22. DOCTOR KRESS AGREES that if he fails to participate in an alcohol and drug rehabilitation program at least as frequently as required by Paragraph 13 of this CONSENT AGREEMENT, he shall cease practicing immediately upon receipt from the BOARD of notice of the violation, and shall refrain from practicing for fifteen (15) days following a first missed meeting. Practice during this time period shall be considered unlicensed practice in violation of Section 4731.41 of the Revised Code.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the BOARD, DOCTOR KRESS 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 DOCTOR KRESS has violated any term, condition or limitation of this CONSENT AGREEMENT, DOCTOR KRESS 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

DOCTOR KRESS shall not request termination of this CONSENT AGREEMENT for a minimum of five (5) years. In addition, DOCTOR KRESS shall not request modification to the probationary terms, limitations and conditions contained herein for at least one (1) 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

DOCTOR KRESS 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.

DOCTOR KRESS 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

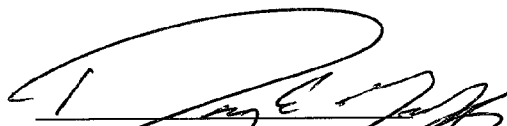
It is expressly understood that this CONSENT AGREEMENT is subject to ratification by the BOARD prior to signature by the Secretary and Supervising Member and that it shall become effective upon the last date of signature below.

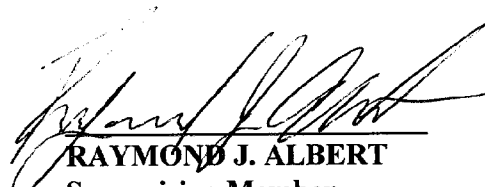

TIMOTHY SCOTT KRESS, M.D.


ANAND G. GARG, M.D.
Secretary

1-8-2001
DATE

01/10/01
DATE


DOUGLAS E. GRAFF, Esq.
Attorney for Dr. KRESS


RAYMOND J. ALBERT
Supervising Member

1/11/01
DATE

1/10/01
DATE

Anne B. Strait
ANNE B. STRAIT, ESQ.
Assistant Attorney General

1/10/01

DATE