

STATE OF MAINE
BOARD OF OSTEOPATHIC LICENSURE

In re:)
Bradley N. Libenson, D.O.) CONSENT AGREEMENT
)

This document is a Consent Agreement, effective when signed by all parties, regarding the pending application for renewal of licensure to practice medicine in the State of Maine of Bradley N. Libenson, D.O. The parties to the Consent Agreement are: Bradley N. Libenson, D.O. ("Dr. Libenson"), the State of Maine Board of Osteopathic Licensure ("the Board") and the State of Maine Department of the Attorney General. This Consent Agreement is entered into pursuant to 10 M.R.S. § 8003(5)(B) and 32 M.R.S. § 2591-A.

STATEMENT OF FACTS

1. The Board first issued Dr. Libenson a license to practice osteopathic medicine in Maine on September 8, 1988 (License number DO 1276). Dr. Libenson has a family general practice.
2. On July 12, 2013, the Board received Dr. Libenson's application for renewal of licensure. On that application, Dr. Libenson answered "yes" to the question whether since his last renewal he had been notified of a complaint or had any disciplinary/adverse action taken against him (voluntary or otherwise) by a licensing Board. He supplied the following information in connection with the application:

NH Board Oct 2012- alleged that I was in violation of not physically handing out suggestion sheets to patients and changing the signature line from page 1 to page 2 on a document needed to be signed by my medical assistants, both during a period between 2009 and 2010. NH Board Apr 2011- alleged that my conditional

refusal to supply sensitive patient information to the board without a signed consent (as per federal HIPAA laws) was in violation of their particular state rule.

3. On August 2, 2013, the Board requested additional information including whether the reported allegations were still pending or resolved and requesting documentation if a matter was resolved.

4. On August 9, 2013, Dr. Libenson responded that the “2 New Hampshire hearings from 2011 and 2012 resulted in reprimands and fines of \$3000 and \$2000 respectively. Additionally, and along with the fact that I submitted a long detailed complaint towards board’s counsel to the NH Executive Ethics Committee, the Board felt it necessary to have me evaluated by a forensic psychologist (precisely the same thing this Board had me do over 5 years ago even though there have been no patient complaints or medical issues involved within that time period).” He also provided the Board with a copy of the June 6, 2011 New Hampshire Board of Medicine Final Decision and Order, Docket No. 11-05, and the November 14, 2012 New Hampshire Board of Medicine Final Decision and Order, Docket No. 11-09.

5. Upon investigation, the Board learned that Dr. Libenson had been notified of four complaints that were pending as informal investigations before the New Hampshire Board of Medicine, including specifically #2012-27, #2012-457, #2013-24, and #2013-135, that he did not disclose to the Board at the time that he submitted his application for renewal of licensure.

6. Dr. Libenson executed a Consent Agreement with the Board on April 10, 2008, which requires him, among other things, to have a chaperone

for female patients between the ages of 13 and 65 who signs the patient's medical chart.

7. In its Final Decision and Order dated November 14, 2012, the New Hampshire Board of Medicine found that Dr. Libenson engaged in professional misconduct between April 7, 2009 and March 25, 2010, by violating the April 7, 2009 Settlement Agreement of the New Hampshire Board of Medicine which incorporated the April 10, 2008 Consent Agreement requirements of the Board. Specifically, it found that he failed to comply with the documentation requirements for chaperones and the requirement to conduct and retain patient surveys. The New Hampshire Board of Medicine also found that Dr. Libenson violated provisions relating to staff notification.

8. Pursuant to 32 M.R.S. §§ 2571, 2591-A(2)(A), and 2(N), the Board may refuse to renew a license for disciplinary action taken by another state if the conduct resulting in disciplinary action would, if committed in this State, constitute grounds for discipline under the laws or rules of this State.

9. Pursuant to 32 M.R.S. §§ 2571, 2591-A(2)(F), 2(N), and 10 M.R.S. § 8003(5)(C)(4), the Board may refuse to renew a license for unprofessional conduct, or for disciplinary action taken by another state if the conduct resulting in disciplinary action would, if committed in this State, constitute grounds for discipline under the laws or rules of this State, or for noncompliance with a consent agreement.

10. On October 9, 2014, the Board reviewed the foregoing information and voted to preliminarily deny Dr. Libenson's application for renewal of licensure.

11. This Consent Agreement has been negotiated by Dr. Libenson, his legal counsel Kenneth W. Lehman, Esq., and the assigned legal counsel to the Board in order to resolve Dr. Libenson's pending application for renewal of licensure and the Board's preliminary denial of the application without an adjudicatory hearing. Absent ratification of this Consent Agreement by a majority vote of the Board, the matter shall proceed to an adjudicatory hearing.

COVENANTS

12. Dr. Libenson admits the foregoing facts and that such conduct constitutes grounds for denial of renewal of licensure and imposition of other discipline pursuant to 32 M.R.S. §§ 2571, 2591-A(2)(A), (2)(F), 2(N), and 10 M.R.S. § 8003(5)(C)(4).

13. The Board hereby terminates the April 10, 2008 Consent Agreement with Dr. Libenson.

14. Dr. Libenson agrees to accept the following Board action:

a) a Reprimand for failing to comply with the terms of his consent agreement as found by the New Hampshire Board of Medicine, as set forth in Paragraph 7 above;

b) pay a Civil Penalty in the amount of five thousand dollars (\$5,000.00), within ninety (90) days of the effective date of this Consent Agreement. Payment shall be made by certified check or money order made payable to "Treasurer, State of Maine" and remitted to the Maine Board of Osteopathic Licensure, 142 State House Station, Augusta, Maine 04333-0142;

c) a period of probation of two (2) years during which Dr. Libenson shall:

i) not treat or examine any female patient, regardless of the setting, unless there is an adult chaperone present at all times during the treatment or examination. The term "chaperone" includes an adult medical assistant and a parent or other family member of the patient. Any individual acting as a chaperone shall not be a relative of Dr. Libenson. In all instances in which a chaperone is required, Dr. Libenson must cause the chaperone, who is not a family member, to sign the patient chart on the date of the treatment or examination. If the chaperone is a family member of the patient, Dr. Libenson shall identify the chaperone in the patient chart;

ii) within fourteen (14) days of the execution of this Consent Agreement, provide the Board in writing a list of all locations where he practices medicine and the name and direct contact information for any individuals currently utilized as chaperones in his medical practice who are not a member of a patient's family. Should any information provided by Dr. Libenson pursuant to this subparagraph change, Dr. Libenson shall notify the Board in writing within fourteen (14) days of the change;

iii) within fourteen (14) days of the execution of this Consent Agreement, provide the Board in writing information regarding any pending administrative or civil matter related to his medical practice in any state, including patient complaints or notices of claims, or any pending criminal matter. Dr. Libenson shall provide any related documentation requested by the Board. Should any information provided by Dr. Libenson pursuant to this

subparagraph change, Dr. Libenson shall notify the Board in writing within fourteen (14) days of the change;

iv) permit random unannounced inspections of his medical practice and review of patient records by Board staff and Board counsel for the purpose of confirming compliance with this Consent Agreement, and pay all costs associated with said inspections within thirty (30) days of receipt of an invoice from the Board. Board staff or counsel may request copies of patient records during the inspections which shall be promptly provided. Board staff or Board counsel shall also have access to and may interview any chaperone. Inspections made pursuant to this subparagraph shall occur at least once in every calendar year quarter;

v) any failure to provide the information or to permit the inspections required in this paragraph 13(c), as determined in the sole discretion of the Board, shall result in an automatic ten (10) day suspension of Dr. Libenson's license to practice osteopathic medicine unless granted a waiver by the Board for good cause; and

vi) upon the conclusion of two (2) years from the date of the execution of this Consent Agreement, this Consent Agreement shall terminate as long as the Board in its sole discretion has determined that Dr. Libenson materially complied with its terms.

d) shall reimburse the Board the sum of one hundred twenty dollars and no cents (\$120.00), actual costs of incurred by the Board for investigation of this matter within thirty (30) days of the execution of this Consent Agreement. Payment shall be made by certified check or money order

made payable to "Treasurer, State of Maine" and remitted to the Maine Board of Osteopathic Licensure, 142 State House Station, Augusta, Maine 04333-0142.

15. Notwithstanding any other provision herein, violation of any of the terms or conditions of this Consent Agreement by Dr. Libenson may constitute unprofessional conduct and grounds for additional discipline of his license by the Board, including but not limited to imposition of civil penalties, or modification, suspension, and revocation of licensure.

16. This Consent Agreement is not appealable, constitutes disciplinary action, is reportable to the National Practitioner Data Bank, the Federation of State Medical Boards, and other licensing jurisdictions, and is effective until modified or rescinded in writing by all of the parties hereto.

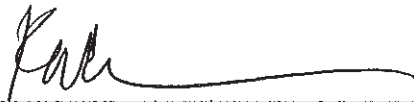
17. The Board and the Department of Attorney General may communicate and cooperate regarding any matter related to this Consent Agreement.

18. This Consent Agreement is a public record within the meaning of 1 M.R.S. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S. § 408.

19. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.


I, BRADLEY N. LIBENSON, D.O., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING IT, THAT I WAIVE CERTAIN RIGHTS. I SIGN THIS CONSENT AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: 10/30/15 
BRADLEY N. LIBENSON, D.O.

DATED: 11/2/15 
KENNETH W. LEHMAN, Esq.
Counsel for Licensee

STATE OF Maine
Cumberland, S.S. (County)

Personally ^{affirmed to} ~~appeared before~~ me the above-named Bradley N. Libenson, D.O., and swore to the truth of the foregoing based upon his own personal knowledge, or upon information and belief, and so far as upon information and belief, he believes it to be true.

DATED: 11/2/15 
~~NOTARY PUBLIC~~ Kenneth W. Lehman, Attorney at Law
~~MY COMMISSION ENDS.~~
Maine Bar No. 3283

DATED: 11/12/2015 
JOSEPH R. DEKAY, Chair
MAINE BOARD OF
OSTEOPATHIC LICENSURE

DATED:

November 3, 2015



MICHAEL MILLER, AAG
DEPARTMENT OF THE ATTORNEY
GENERAL