

**STATE OF MAINE
BOARD OF OSTEOPATHIC LICENSURE**

IN RE:)	
JOHN P. HERZOG, D.O.)	CONSENT AGREEMENT
CR 2013-16)	

This document is a Consent Agreement effective when signed by all parties, regarding disciplinary action upon John P. Herzog’s license to practice osteopathic medicine in the State of Maine. The parties to this Consent Agreement are: the Board of Osteopathic Licensure (hereafter “the Board”), John P. Herzog, D.O. (“Dr. Herzog”), and the Office of the Attorney General (“the Attorney General”).

FACTS

1. At all times relevant to this matter, Dr. Herzog was licensed to practice osteopathic medicine in the State of Maine, license number DO 1107, and practiced at Orthopedic Specialists, LLC, in Falmouth, Maine.
2. On or about July 15, 2013, the Board initiated a complaint against Dr. Herzog’s license to practice osteopathic medicine pursuant to 32 M.R.S. § 2591-A based upon an investigation initiated upon receipt of information from a law enforcement agency, and a review of patient records received pursuant to an investigative subpoena. The complaint contained allegations, including that

Dr. Herzog: 1) self-prescribed Zolpidem Tartrate on or about June 21, 2010, in violation of 32 M.R.S. § 2591-A(2)(H) and Board Rules Chapter 16, §§1, 2; and 2) prescribed Ambien, Zolpidem Tartrate, Hydrocodone/Acetaminophen, and Alprazolam to individuals between January 1, 2010, and March 15, 2013, without establishing a physician/patient relationship and/or conducting an examination, and without documenting the controlled substance prescription in the patient record in violation of 32 M.R.S. §§ 2591-A(2)(E)(F). The Board docketed the complaint as CR 2013-16 and sent it to Dr. Herzog for a response.

3. By letter dated December 16, 2013, Dr. Herzog submitted his response to the complaint. In that response, he admitted to self-prescribing Zolpidem Tartrate on June 21, 2010, but stated he was unaware that it violated Board rules. Dr. Herzog denied prescribing to any patients without establishing a patient relationship. He acknowledged a failure to document one of the prescriptions that he issued.

4. Dr. Herzog failed to produce a patient record for Patient 1, who was the son of Dr. Herzog's significant other at the time that prescriptions were written. When interviewed by the Board investigator, Patient 1 told the investigator that he was not and had never been a patient of Dr. Herzog. On four occasions during 2011, Dr. Herzog wrote prescriptions to Patient 1 for Ambien.

5. Patient 2 was also a son of Dr. Herzog's significant other at the time that prescriptions were written. Between October 19, 2010, and October 11, 2012, Dr. Herzog's patient record for Patient 2 failed to document nine prescriptions written to Patient 2 for Ambien or its generic equivalent, Zolpidem Tartrate.

6. Patient 3 was the significant other of Dr. Herzog at the time prescriptions were written. Between September 3, 2010, and February 14, 2013, Dr. Herzog prescribed Patient 3 nine prescriptions for Ambien or its generic equivalent Zolpidem Tartrate, eight prescriptions for Alprazolam, and two prescriptions for Hydrocodone/Acetaminophen 10/325 that were not documented in the patient record for Patient 3 maintained by Dr. Herzog.

7. Patient 4 is a former employee of Dr. Herzog. The patient record of Patient 4 reflects that between January 18, 2010 and October 25, 2011, several prescriptions written by Dr. Herzog for Patient 4 for Ambien or its generic equivalent Zolpidem Tartrate, Lorazepam, and Hydrocodone/Acetaminophen 5/325 were not documented in the patient record for Patient 4.

8. At its meeting on April 10, 2014, the Board reviewed all of the information gathered to date regarding Complaint No. CR 2013-16, and voted to schedule the matter for an adjudicatory hearing.

9. This Consent Agreement has been negotiated by Dr. Herzog, his legal counsel Christopher C. Taintor, Esq., and the assigned legal counsel to the Board in order to resolve CR 2013-16 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

10. Dr. Herzog admits the Facts stated above and that his conduct constitutes grounds for discipline pursuant to 32 M.R.S. §§ 2591-A(2)(E), (F), (H), and Board Rules Chapter 16, §§ 1, 2 .

11. As discipline for the conduct described above, Dr. Herzog agrees to accept the following:

A. Obtain a comprehensive written evaluation that shall include a psychological, substance abuse, and neuro-cognitive evaluation from an individual or individuals qualified and acceptable to the Case Reporter, which evaluation(s) shall be provided to the Board within thirty (30) days of the effective date of this Consent Agreement;

B. If any treatment or monitoring is recommended as a result of the evaluation(s) conducted pursuant to Paragraph 11(A), including any limitations on use of prescription medications, Dr. Herzog shall within thirty (30) days of receipt of the written recommendation identify and propose to the

Board an individual who shall be responsible for monitoring and reporting his compliance therewith ("the Case Manager"). It is expressly understood that the Case Manager is being selected by Dr. Herzog as an alternative to utilizing the services of the Maine Medical Professionals Health Program. The proposed Case Manager shall be subject to approval by the Board, which approval shall not be unreasonably withheld. Once approved, the Case Manager shall agree to report independently and directly to the Board on Dr. Herzog's compliance with any recommended treatment and monitoring for a period up to five (5) years from the date the Case Manager is engaged. Notwithstanding Dr. Herzog's sole responsibility for any and all costs associated with any treatment and monitoring, the Case Manager shall agree that his/her monitoring and reporting obligations lie exclusively with the Board. Dr. Herzog expressly agrees that the Case Manager's exclusive obligation is to the Board to monitor and report on his compliance with any recommended treatment and monitoring and he waives any rights or privileges that may interfere therewith. The frequency and content of the Case Manager's compliance reporting obligation shall be determined by the parties upon approval of the Case Manager. There shall be an agreement in writing with the Case Manager regarding Dr. Herzog's obligations associated with any treatment and monitoring, which agreement shall include a provision requiring that the Case Manager provide written

notification to the Board within three (3) business days any violation of any term of the agreement by Dr. Herzog, or of any amendment or modification thereto. A copy of the written agreement with the Case Manager shall be provided to the Board. Dr. Herzog shall execute any and all releases necessary to obtain copies of any medical, psychological, substance abuse, counseling or treatment records or evaluations requested by the Board, Board staff, counsel assigned to the Board, or the Case Manager;

C. Obtain twenty (20) hours of continuing medical education ("CME") in addition to those required for renewal of his license regarding medical ethics and prescribing practices. Proof of completion of the additional CME required by this paragraph shall be submitted to the Board no later than December 31, 2015; and

D. Pay a CIVIL PENALTY in the amount of ten thousand dollars (\$10,000.00) within thirty (30) 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;

12. Dr. Herzog is solely responsible for all costs associated with his compliance with the terms and conditions of this Consent Agreement.

13. This Consent Agreement is not appealable and is effective until

modified or rescinded in writing by the parties hereto.

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

15. 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.

16. All evaluation(s) performed pursuant to Paragraph 11(A) of this Consent Agreement and any health care records that may be provided to the Board are confidential in accordance with applicable law, including but not limited to 1 M.R.S. §§ 402(3)(A),(B), and 22 M.R.S. § 1711-C(2).

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

18. This Consent Agreement constitutes disciplinary action that is reportable to the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank, and the Federation of State Medical Boards.

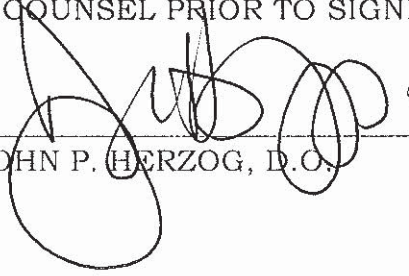
19. Dr. Herzog acknowledges by his signature hereto that he has read this Consent Agreement, that he has had an opportunity to consult with an attorney before executing this Consent Agreement, that he executed this Consent Agreement of his own free will, and that he agrees to abide by all

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terms and conditions set forth herein.

I, JOHN P. HERZOG, D.O., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING I WAIVE CERTAIN RIGHTS INCLUDING THE RIGHT TO A HEARING BEFORE THE BOARD. KNOWING THIS, I SIGN THIS AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THE CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN, OR OTHERWISE. I ACKNOWLEDGE THAT I HAVE HAD THE OPPORTUNITY TO DISCUSS THE CONSENT AGREEMENT WITH LEGAL COUNSEL PRIOR TO SIGNING IT.


DATED: 4/3/15



JOHN P. HERZOG, D.O.

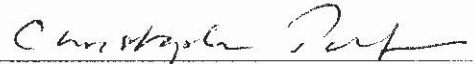
STATE OF MAINE
CUMBERLAND, SS.

Before me this 3rd day of April, 2015, personally appeared John P. Herzog, D.O., who after first being duly sworn, signed the foregoing Consent Agreement in my presence or affirmed that the signature above is his own.



Notary-Public/Attorney at Law
My commission expires:

DATED: 4/3/15



CHRISTOPHER C. TAINTOR, Esq.
Legal Counsel for Dr. Herzog
BOARD OF OSTEOPATHIC LICENSURE

DATED: April 9, 2015 
JOSEPH R. D. DEKAY, Chair

OFFICE OF THE ATTORNEY GENERAL

DATED: April 9, 2015 
MICHAEL MILLER
Assistant Attorney General