

**STATE OF MAINE
BOARD OF OSTEOPATHIC LICENSURE**

IN RE: BRADLEY N. LIBENSON, D.O.)
)
) **CONSENT AGREEMENT
) AND BOARD ORDER**

The State of Maine Board of Osteopathic Licensure (hereafter "the Board"), Bradley N. Libenson, D.O., and the Office of Attorney General enter into this Consent Agreement, to resolve a pending investigation and application for renewal.

As a basis for this Agreement, the parties stipulate that, if this matter went to hearing, the Board could find the following:

I. FINDINGS

1. Dr. Libenson applied to the Board for renewal of his license to practice osteopathic medicine on August 10, 2007.
2. On or about April 13, 1995, the Oregon Board of Medical Examiners ("Oregon Board") issued a Final Order imposing a formal reprimand on Dr. Libenson and requiring that he have an adult chaperone in the room whenever he examined any female patient. There was no time limit on the conditions.
3. In August of 2002, the New Hampshire Board, based upon the Final Order, chose to impose a similar condition on Dr. Libenson's practice in the State of New Hampshire but with an expiration date of August 2004.
4. On June 25, 2003, the Maine Board issued a letter of warning to Dr. Libenson that he must abide by the terms of the August 12, 2002 New Hampshire Consent Agreement while practicing in the State of Maine, until the New Hampshire Order expired in August, 2004.

5. Dr. Libenson is a professional photographer and owns a gallery, then located in Dover, New Hampshire. In August, 2005, J.L.-A, an employee of his gallery, was at Dr. Libenson's home to babysit his children later that evening. While there, J.L.-A consented to a portfolio shoot. During the portfolio shoot, Dr. Libenson, without J.L.-A's consent, briefly repositioned her bathing suit. J.L.-A. filed a complaint, and in April 2006, Dr. Libenson was convicted of simple assault by the Laconia Court, County of Belknap, State of New Hampshire.

6. On the same date in August 2005, Dr. Libenson, for a brief period, was in J.L.-A's presence wearing boxer shorts, which J.L.-A. found offensive.

7. J.L.-A. had been examined by Dr. Libenson in November 2003 and she thereafter married and moved to Arizona. The Board finds that, even if J.L.-A. was not a patient of Dr. Libenson's at the time of the events in 2005, the behavior described in these Findings is evidence of poor personal boundaries and questionable judgment. The Board finds that this conduct is grounds to discipline Dr. Libenson, pursuant to 32 M.R.S.A. § 2591-A (2)(F); 32 M.R.S.A. § 2591-A (2)(G), 5 M.R.S.A. §§ 5301-5303, and 02 CMR 383, Chapter 10.

Based on the above findings, the Board renews Bradley N. Libenson, D.O.'s, license to practice osteopathic medicine in the State of Maine, subject to the following terms and probationary conditions:

II. CONDITIONS

Dr. Libenson understands that the following Conditions apply regardless of whether he practices in Maine or outside of Maine, so long as he continues to be licensed by the State of Maine.

1. **Requirement of a Chaperone.**

A. Dr. Libenson shall not treat and/or examine any female patient between the ages of 13 to 65, regardless of the setting, unless there is an adult chaperone present at all times during the treatment and/or examination. The term "chaperone" includes a medical assistant and a parent or other family member. Any individual acting as a chaperone shall not be a relative of Dr. Libenson.

B. In all instances in which a chaperone is required, Dr. Libenson must have the adult chaperone, who is not a family member, sign the medical chart, whether in a paper or electronic format, on the date of the office visit, signifying that the individual acted as a chaperone during the treatment and/or examination provided by Dr. Libenson. In the case of a family member, Dr. Libenson shall make a chart entry identifying the chaperone. The documentation shall be done in a manner and format approved by the Board or Case Reporter at the time of the execution of this Agreement.

C. This condition shall be in effect so long as Dr. Libenson is licensed to practice osteopathic medicine in Maine, unless amended by the Board in accordance with Section II, Condition 10.

2. **Monitoring.**

Dr. Libenson agrees that an agent of the Board may make unannounced visits to his place of employment and/or where his medical records are stored, during regular business hours, in order to monitor compliance with the Conditions of this Agreement. This monitoring may include, but is not limited to, the review of a random sample of the records of his patients and speaking with office staff.

3. Professional Boundaries/Ethics.

A. **Within nine months** of the execution of this Agreement, Dr. Libenson must attend or participate in an educational program(s) approved by the Case Reporter of at least ten (10) hours duration in total regarding issues related to ethics and professional boundaries. Dr. Libenson will submit to the Case Reporter for approval a plan for completion of this requirement, **no later than four months** after the execution of this Agreement.

B. Dr. Libenson will ensure that the Board receives a report from the educational program(s) that indicates that he has satisfactorily completed the program(s).

C. Dr. Libenson agrees that the Board, the Case Reporter or the Board's Attorney may in their discretion speak directly with appropriate individuals at the educational programs to obtain additional information regarding Dr. Libenson's participation and performance in these programs.

D. The education required by this Condition will be part of the 100 hours that Dr. Libenson is required to obtain for biennial renewal of his license.

E. Dr. Libenson understands and agrees that if he does not satisfactorily complete this program(s), the Board may consider whether amendments or other Board action is needed in accordance with Section II, Condition 9.

4. Patient Surveys.

A. **Prior to the execution of this Agreement**, Dr. Libenson shall have in place a system to assess patient satisfaction or concerns that is approved by the Board or Case Reporter. The patient survey used to assess patient satisfaction or concerns must be disseminated by office staff to each patient or responsible party at the end of each patient encounter and must contain

information on how to contact the Maine Board of Osteopathic Licensure.

B. Dr. Libenson shall assure that the patient satisfaction surveys are retained in such a manner that the information can be easily reviewed by an agent of the Board, upon request.

5. Evaluation.

A. Dr. Libenson will submit to a comprehensive evaluation by a psychologist selected by the Board or Case Reporter, **within 3 months** following the execution of this Agreement. Prior to the evaluation, the Board will provide the evaluator with a copy of this Agreement, the Notice of Preliminary Denial, Dr. Libenson's statements and other background information gathered during the investigation. The Board will provide Dr. Libenson with a copy of what is sent to the evaluator. Dr. Libenson will have an opportunity to provide additional written information to the evaluator but must provide the Board with a copy of this information prior to the evaluation.

B. Dr. Libenson will make reasonable efforts to assure that the professional performing the psychological evaluation provides a comprehensive report to the Board **within two months of the completion of the evaluation.**

C. At a minimum, this evaluation and report will assess Dr. Libenson's cognitive and emotional and interpersonal functioning and provide guidance to the parties regarding the following:

1. The factors that have contributed to Dr. Libenson's poor personal boundaries and questionable judgment in the past and whether there are factors that continue to make Dr. Libenson vulnerable to engaging in similar behavior in the future;

2. Dr. Libenson's current understanding of why he engaged in the behavior described in the Findings and the impact on J.L.-A.
3. Diagnoses, if any, and treatment recommendations; and
4. Assessment of whether the current conditions of this Agreement are sufficient to enable Dr. Libenson to maintain appropriate boundaries with patients.

D. Dr. Libenson agrees that the Case Reporter and the Board's Attorney can speak directly with the evaluator regarding any issues related to the evaluation or report, and that he will provide written releases as necessary.

E. Dr. Libenson agrees that he will work in good faith to implement the recommendations made by the evaluator and by the Board based on the evaluation.

F. Dr. Libenson understands that the Board may need to reassess the terms and conditions of this Agreement depending on the results of the evaluation. Any further modifications of the Agreement will be governed by Condition 9.

6. Waiver of Physician/Therapist/Patient Privilege.

A. Dr. Libenson agrees that, for the purpose of monitoring and enforcement of this Agreement, the Board, its agents and the Office of the Attorney General shall have access to all confidential information, assessments, evaluations, diagnoses, records, reports, test results and data relevant to this Agreement. Dr. Libenson also agrees that the Board or its authorized agents or the Office of the Attorney General may communicate orally with professionals involved in testing, care, monitoring and treatment of Dr. Libenson in connection with this Agreement. Dr. Libenson agrees that he will promptly sign any and all authorizations required by the Board to

monitor and carry out the purposes of this Agreement.

B. Dr. Libenson waives his right to claim the physician-patient, or therapist-patient, privilege and any statutory or common law right to confidentiality in any proceedings that may be undertaken for the purposes of enforcement of this Agreement or any amendments thereto. This Condition is not intended to waive any attorney work product or attorney/client privilege.

7. **Notice of Consent Agreement.**

A. **Within two weeks** of the execution of this Agreement, or after any amendments thereto, Dr. Libenson shall provide a copy of this Agreement and any amendment, to the following and **send a signed acknowledgment from those receiving the Agreement to the Board.**

1. Any current employer(s) for whom he performs medical services as a physician or does work which directly or indirectly involves patient care;
2. Other physicians in the same practice;
3. Any professional providing treatment related to this Agreement;
4. Any other state medical licensing board that currently licenses Dr. Libenson or with whom Dr. Libenson files an application for a license.

B. **Within two weeks** of the execution of this Agreement, or after any amendments to Section II, Conditions 1, 2 and 4, Dr. Libenson will provide a copy of these Conditions to office staff who may be asked to serve as a chaperone and **retain in his files for inspection by Board representatives, a signed and dated acknowledgment from each office staff that he or she has read these Conditions, or any subsequent amendments.**

C. If the persons who provided the acknowledgements described in A and B of this Condition change during the course of this Agreement, Dr. Libenson shall, within 2 weeks of the change, provide a copy of the required information to the new individual(s) retain in his files for Board inspection the signed and dated acknowledgement.

8. Costs.

A. Dr. Libenson agrees to reimburse the Board for all investigative costs incurred prior to the execution of this Agreement, in the amount provided to him prior to the time he executes this Agreement. He must reimburse the Board for these costs on or before **April 1, 2011**. Dr. Libenson shall pay the latter costs by cashier's check or money order made out to the "Board of Osteopathic Licensure".

B. Dr. Libenson will be responsible for all costs resulting from the carrying out or enforcement of this Agreement, pursuant to 10 M.R.S.A. §8003-D.

9. Amendments.

A. Amendments will be decided in the discretion of the Board, with or without a hearing, and must have the approval of a representative of the Attorney General. There will be no appeal from the discretionary decisions regarding amendments of this Agreement.

B. Requests for amendments to this Agreement by Dr. Libenson shall be submitted to the Board in writing and supported by professional opinions, as appropriate.

C. Requests for amendments, or offers of amendment by the Board, will not suspend any obligations under this Agreement. Dr. Libenson will be expected to comply with the terms of the Agreement until the Board votes favorably on the amendment and it is signed by him, the appropriate Board official and by a representative of the Office of the Attorney General.

D. Any amendments sent to Dr. Libenson must be signed and returned to the Board within **30 days of receipt** in order to avoid possible sanctions under III.2.

E. Any action by the Board seeking to increase the conditions for licensure will be taken only after hearing, unless allowed by law, this Agreement or by subsequent agreement of the parties.

F. Except for good cause, requests for amendment from Dr. Libenson will not be considered by the Board more frequently than every six months.

G. Conditions 1 and 2 are not subject to Amendment, so long as Dr. Libenson is licensed by the Board, except as the Board may determine after review in accordance with Condition 10.

10. Term of Board Order.

Dr. Libenson understands and agrees that his license will remain subject to the terms and conditions of this Agreement, as subsequently amended, so long as he is licensed by the Board. The terms of Condition 1 will be automatically reviewed by the Board at its meeting in **April 2013.**

11. Notices.

Any notices or other communication between the parties provided pursuant to this Agreement will be sent to the following:

Board of Osteopathic Licensure
142 State House Station
Augusta, ME 04333-0142
(207) 287-2480
Fax: (207) 287-3015
e-mail: susan.e.strout@maine.gov

Bradley N. Libenson, D.O.
P.O. Box 719
Berwick, ME 03901
(207)
Fax: (207) 698-7977
e-mail

Dr. Libenson agrees that at, or prior to, the execution of the Agreement he will provide the Board's Executive Secretary with his home number, his cell phone and/or beeper number, and his e-mail address or fax numbers, if any. This contact information, to the extent that it is not generally available to the public, will be kept confidential and used by the Board only for the purposes intended in this Agreement.

Dr. Libenson further agrees that he will promptly notify the Board if he changes address or any of the methods of contacting him identified in this Condition.

III. VIOLATION OF AGREEMENT

1. General.

A. Dr. Libenson agrees that if he fails to meet any of the obligations of this Agreement and any amendments thereto, the Board may impose by agreement, or after notice and an opportunity for hearing, any of the sanctions stated in Title 10 M.R.S.A. § 8003, Title 32 M.R.S.A. §§ 2591-A, in this Agreement, or as otherwise allowed by law.

B. Any violation, technical or otherwise, of the terms and conditions of this Agreement shall be a separate and sufficient basis for disciplinary action by the Board.

C. The parties agree that the Board may consider the findings that form the basis for this Agreement as evidence of a pattern of conduct in the event that similar grounds for discipline are proved against the licensee or agreed to by him in the future. Additionally, the parties agree that the Board may consider the fact that discipline was imposed by this Agreement as a factor in determining what discipline should be imposed, if further grounds for discipline are proved against the licensee in the future.

2. Failure to Meet Reporting and Time Requirements.

Dr. Libenson agrees that if he fails to meet any of the reporting or other time requirements set out in this Agreement and any amendments (without first having obtained an amendment executed by all parties, which changes the reporting or time requirements), the Board may, in its discretion, automatically and without the need to hold a hearing, assess Dr. Libenson a fine of \$100 for each month, or portion of a month, that he is out of compliance with the reporting or other time requirement set out in this Agreement and any amendments thereto. Dr. Libenson will be notified of the assessment of the fine in writing by the Board. Dr. Libenson must pay the fine to the Board within 30 days of receiving notice that the fine was assessed. He must do so by cashier's check or money order made out to "Treasurer, State of Maine." The Board's decision not to impose this sanction in one instance of noncompliance with a reporting or other time requirement does not constitute a waiver of the Board's right to impose a fine regarding a subsequent violation of the same reporting or other time requirement.

I, BRADLEY N. LIBENSON, D.O., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING I WAIVE CERTAIN RIGHTS, INCLUDING THE RIGHT TO FURTHER HEARINGS REGARDING MY APPLICATION FOR RENEWAL. I ALSO WAIVE THE RIGHT TO APPEAL TO THE COURT REGARDING ANY PORTION OF THIS AGREEMENT. KNOWING THIS, I SIGN THE 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. I ACKNOWLEDGE THAT I HAVE HAD THE OPPORTUNITY TO DISCUSS THIS CONSENT AGREEMENT WITH LEGAL COUNSEL PRIOR TO SIGNING IT.

Dated: _____

4/16/08



BRADLEY N. LIBENSON, D.O.

STATE OF MAINE

Kennebec, SS.

Before me this 14th day of April, 2008, personally appeared Bradley N. Libenson, 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

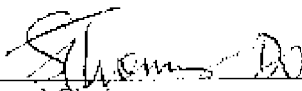
My commission expires:

BOARD ORDER

IT IS HEREBY ORDERED by vote of the Maine Board of Osteopathic Licensure that the application for renewal to practice osteopathic medicine in the State of Maine of Bradley N. Libenson, D.O. dated August 10, 2007, is approved, subject to the terms and conditions of the Consent Agreement signed by him on April 10, 2008, which are incorporated herein by reference.

STATE OF MAINE
BOARD OF OSTEOPATHIC LICENSURE


Dated: 4/10/08

By 
Board Chair

APPROVED:

STATE OF MAINE, OFFICE OF
ATTORNEY GENERAL

Dated: 4/10/08

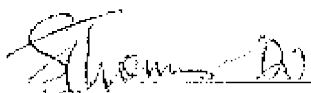
By 
Carmen L. Coulombe
Assistant Attorney General

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STATE OF MAINE, OFFICE OF
ATTORNEY GENERAL

Dated: 4/10/08

By 
Carmen L. Coulombe
Assistant Attorney General