

STATE OF MICHIGAN
DEPARTMENT OF COMMUNITY HEALTH
BUREAU OF HEALTH PROFESSIONS
BOARD OF OSTEOPATHIC MEDICINE & SURGERY
DISCIPLINARY SUBCOMMITTEE

In the Matter of

THOMAS FOLEY KABISCH, D.O.
License No. 51-01-012147

Complaint No. 51-07-105281
CONSENT ORDER AND STIPULATION

CONSENT ORDER

An Administrative Complaint was filed with the Disciplinary Subcommittee of the Board of Osteopathic Medicine & Surgery on March 17, 2009, charging Thomas Foley Kabisch, D.O. (Respondent), with having violated sections 16221(a), (b)(i), (b)(vi), and (c)(iv) of the Public Health Code, 1978 PA 368, as amended, MCL 333.1101 *et seq.*

The parties have stipulated that the Disciplinary Subcommittee may enter this Consent Order. The Disciplinary Subcommittee has reviewed the stipulation contained in this document and agrees that the public interest is best served by resolution of the outstanding Complaint. Therefore, the Disciplinary Subcommittee finds that the allegations of fact contained in the Complaint are true and that Respondent has violated section 16221(a) of the Public Health Code.

Accordingly, for this violation, IT IS ORDERED:

Respondent's license is LIMITED for a minimum period of ONE YEAR commencing on the effective date of this Order. Reduction of the limitation period shall occur only while

Respondent is employed as an osteopathic physician. The limitation period shall run concurrently with probation. The details of the limitation are as follows:

- A. SUPERVISION. Respondent's practice shall be only under the general supervision of one or more licensed physicians approved in advance by the Chairperson of the Disciplinary Subcommittee or the Chairperson's designee. When requesting approval of a proposed supervisor, Respondent shall provide a copy of the proposed supervisor's curriculum vitae to the Department. Respondent shall provide a copy of this Order and the Complaint dated March 17, 2009, to the proposed supervisor before requesting approval of the supervisor. Respondent shall not work in any capacity for which an osteopathic physician's license is required until Respondent receives written confirmation from the Department that the proposed supervisor has been approved.

"General supervision" means the oversight or participation in Respondent's work by a supervisor, with continuous availability of direct communication between Respondent and the supervisor in person or by radio, telephone, facsimile, electronic mail, or other communication device. The supervisor shall review Respondent's practice on a regularly scheduled basis, shall provide consultation to Respondent, shall review patient records generated by Respondent on a regularly scheduled basis, and shall further educate Respondent in the performance of his functions.

Specifically, Respondent shall have an in-person meeting with the supervisor at least one time per month and Respondent shall supply 5-10 patient records that have been randomly selected by the supervisor to review at each meeting.

The supervisor shall request a report reflecting Respondent's controlled substance prescribing practices from the Michigan Automated Prescriptions System (MAPS), at least one time each quarter. The supervisor shall check the MAPS report against information in Respondent's patient records. The supervisor does not need to verify every prescription on the MAPS report, but may randomly choose prescriptions to verify through the patient records.

- B. SUPERVISION CHANGE. Respondent shall report to the Department, in writing, any and all changes in Respondent's supervision within 15 days of such change.

Respondent shall provide copies of this Order and the Complaint dated March 17, 2009, to each successor supervisor. The successor supervisor shall be knowledgeable of Respondent's history and shall continue to file reports with the Department advising of Respondent's work performance, as set forth above.

Respondent shall not commence employment in a capacity for which an osteopathic physician's license is required until Respondent has received written notification from the Department confirming that the proposed supervisor has been approved.

Respondent is placed on PROBATION for a period of TWO YEARS commencing on the effective date of this Order. Reduction of the probationary period shall occur only while Respondent is employed as an osteopathic physician. Respondent shall be automatically discharged from probation at the end of the probationary period provided Respondent has complied with the terms of this Order. The terms and conditions of the probation, which Respondent must complete within the period of probation, are as follows:

- A. SUPERVISOR REPORTS. Respondent's supervisor shall file reports with the Department, as further provided below, advising of his work performance. Respondent's supervisor is required to file reports only during the period of limitation. If, at any time, Respondent fails to comply with minimal standards of acceptable and prevailing practice, or appears unable to practice with reasonable skill and safety, his supervisor shall immediately notify the Department.
- B. COMPLIANCE WITH THE PUBLIC HEALTH CODE. Respondent shall comply with all applicable provisions of the Public Health Code and rules promulgated under the Public Health Code.
- C. RESIDENCY AND PRACTICE OUTSIDE MICHIGAN. Periods of residency and practice outside Michigan shall not reduce the probationary period of this Order. Respondent shall report any change of residency or practice outside Michigan to the Department within fifteen days after the change occurs. Compliance with this provision does not satisfy the requirements of section 16192(1) and 16171(f) of the Public Health Code regarding Respondent's duty to report name or mailing address changes to the Department.
- D. CONTINUING EDUCATION CREDITS. Respondent shall successfully complete one continuing medical education course in each of the following areas:
 - (1) Documentation/ Medical Record Keeping, as available from Case Western University School of Medicine, see website <http://casemed.case.edu/cme/documents/MEDICALRECORDKEEPING.pdf> (or an equivalent course as approved by the Board Chairperson or his designee);

- (2) Medical Ethics, Boundaries, & Professionalism, as available from Case Western University School of Medicine, see website <http://casemed.case.edu/cme/documents/MEDICALETHICSWEB.pdf> (or an equivalent course as approved by the Board Chairperson or his designee); and
- (3) Controlled Substance Management, as available from Case Western University School of Medicine, see website <http://casemed.case.edu/cme/documents/CONTROLLEDSUBSTANCE.pdf> (or an equivalent course as approved by the Board Chairperson or his designee).

These credit hours shall not count toward the number of credit hours required for license renewal. Respondent must seek and obtain advance approval of the continuing education courses from the Chairperson of the Board or the Chairperson's designee. Respondent shall mail requests for approval of a course and proof of successful completion of a course to the Department at the address set forth below.

- E. REPORT OF NON-EMPLOYMENT. If, at any time during the period of probation, Respondent is not employed as an osteopathic physician, he shall file a report of non-employment with the Department. Respondent shall file this report within 15 days after becoming unemployed. Respondent shall continue to file reports of non-employment on a quarterly basis until he returns to practice as an osteopathic physician. If Respondent subsequently returns to practice as an osteopathic physician, he shall notify the Department of this fact within 15 days after returning to practice. If Respondent is required to work under supervision as a term of limitation imposed by this Order, then Respondent must notify the Department before returning to work and must not return to work until a supervisor is approved, as required by the terms of limitation.
- F. REPORTING PROCEDURE. Unless otherwise provided above, all reports required by the terms of probation shall be filed on a quarterly basis, the first report to be filed at the end of the third month of probation, and subsequent reports every three months until Respondent is discharged from probation. In addition to receiving reports as required above, the Department or its authorized representative may periodically contact the reporting individuals or agencies to inquire of Respondent's progress. By accepting the terms of this Consent Order and Stipulation, Respondent has authorized the release of all necessary records and information.

Any violation of the Public Health Code by Respondent during the period of probation shall be deemed a violation of probation and constitute grounds for further disciplinary action.

Complainant withdraws paragraphs 4-6, 22, 23, 29-31, 36-38, 42, 43, 48-50, 55-57, and 61-63 of the Complaint, and DISMISSES the alleged violations of sections 16221(b)(i), (b)(vi), and (c)(iv) of the Public Health Code.

Respondent shall direct the communications to the Department that are required by the terms of this Order to: Sanction Monitoring Unit, Bureau of Health Professions, Department of Community Health, P.O. Box 30670, Lansing, Michigan 48909.

Reclassification of Respondent's limited license shall not be automatic, but Respondent may petition for reclassification of the limited license upon conclusion of the limitation period. In the event Respondent petitions for reclassification of the license, the petition shall be in accordance with section 16249 of the Public Health Code and 1996 AACCS, R 338.1636. Under these provisions, Respondent must demonstrate that he (1) will practice the profession safely and competently within the area of practice and under conditions stipulated by the Disciplinary Subcommittee, and (2) should be permitted in the public interest to so practice.

Respondent shall be responsible for all costs and expenses incurred in complying with the terms and conditions of this Consent Order.

Respondent shall be responsible for the timely compliance with the terms of this Consent Order, including the timely filing of any documentation. Failure to comply within the time limitations provided will constitute a violation of this Order.

If Respondent violates any term or condition set forth in this order, Respondent will be in violation of 1996 AACRS, R 338.1632, and section 16221(h) of the Public Health Code.

This Order shall be effective thirty days from the date signed by the Chairperson of the Disciplinary Subcommittee or the Disciplinary Subcommittee's authorized representative, as set forth below.

Signed on 2-04, ^{2010 PM}~~2009~~.

MICHIGAN BOARD OF OSTEOPATHIC
MEDICINE & SURGERY

By *Pauline Lindberg*
Chairperson, Disciplinary Subcommittee

STIPULATION

The parties stipulate as follows:

1. Respondent does not contest the allegations of fact and law in the Complaint. Respondent understands that, by pleading no contest, he does not admit the truth of the allegations but agrees that the Disciplinary Subcommittee may treat the allegations as true for resolution of the Complaint and may enter an order treating the allegations as true.

2. Respondent understands and intends that, by signing this Stipulation, he is waiving the right under the Public Health Code, rules promulgated under the Public Health Code, and the Administrative Procedures Act of 1969, 1969 PA 306, as amended, MCL 24.201 *et seq*, to require the Department to prove the charges set forth in the Complaint by presentation of evidence and legal authority, and to present a defense to the charges before the Disciplinary Subcommittee or its authorized representative. Should the Disciplinary Subcommittee reject the proposed Consent Order, the parties reserve the right to proceed to hearing.

3. The Disciplinary Subcommittee may enter the above Consent Order, supported by Board conferee Steven A. Acker, D.O. Dr. Acker or an attorney from the Licensing and Regulation Division may discuss this matter with the Disciplinary Subcommittee in order to recommend acceptance of this resolution.

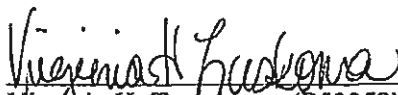
4. Dr. Acker and the parties considered the following factors in reaching this agreement:

- A. Dr. Kabisch has been licensed since 1994 (15 years). This is the first disciplinary action taken against his license.
- B. During the compliance conference, Dr. Kabisch acknowledged his poor documentation. Dr. Kabisch stated that he had become complacent as a sole practitioner and began to think of his documentation as an instrument he utilized to keep track of patient treatment instead of a tool upon which another health care provider might need to rely to maintain continuity of care. Dr. Kabisch claimed he has dramatically improved his documentation by returning to the "SOAP" method of documentation. Dr. Kabisch also expressed a willingness to take additional CME in the area of documentation.
- C. Dr. Kabisch informed us that 15% of his practice is traditional medicine, including pain management, and that the remainder of his practice is alternative medicine, including teaching stress management techniques and performing osteopathic manual manipulation.

- D. Dr. Kabisch has educated himself regarding the clinical use of Suboxone and Subutex (Buprenorphine) through personal study and CME. He is properly licensed to prescribe Buprenorphine and he has successfully moved the majority of his pain management patients to its use.

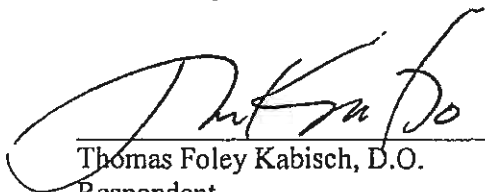
By signing this stipulation, the parties confirm that they have read, understand and agree with the terms of the Consent Order.

AGREED TO BY:



Virginia H. Trzaskoma (P53352)
Assistant Attorney General
Attorney for Complainant
Dated: 11-19-09

AGREED TO BY:



Thomas Foley Kabisch, D.O.
Respondent
Dated: 11/14/09