

IN RE: WILLIAM ARTHUR BIRGE, DO) DOCKET Nos. OS06-0305
License No. 032-0000313) OS05-0105

Concerta prescriptions for his employee M.J. with the instruction that once M.J. filled the prescriptions, the Concerta would be turned over to the Respondent, so he could treat his ADD. M.J. complied with the Respondent's request after filling the prescriptions at a local pharmacy.

9. Between October 7, 2004 and December 8, 2004 the Respondent wrote four separate Methylphenidate prescriptions for D.B., the son of his employee L.B. with the instruction that once L.B. filled the prescriptions, the Methylphenidate would be turned over to the Respondent, so he could treat his ADD. L.B. complied with the Respondent's request after filling the prescriptions at a local pharmacy.
10. The Respondent wrote the above referenced prescriptions for his own personal use, with the intention of treating his ADD and receiving the Methylphenidate for his personal use.
1. On September 20, 2004 the Respondent, on his license renewal application, indicated that he was in good standing on his child support obligations with the Vermont Office of Child Support. On September 20, 2004 the Respondent, on his license renewal application, indicated that he was in good standing in respect to his tax obligations with the Vermont Department of Taxes. On September 20, 2004 the Respondent was not in good standing with either his child support obligations or his tax obligations.
12. The Respondent does not dispute that the State's evidence would show that as of July 12, 2005 he was not in good standing with either the Vermont Office of Child Support or the Vermont Department of Taxes.
13. The Respondent admits that he has difficulty maintaining the full spectrum of patient records

Charges

14. By committing the above act(s), circumstance(s) and/or omission(s), the Respondent has engaged in unprofessional conduct by violating the Vermont Statutes and Rules, as outlined above in paragraphs 2-5.

Understandings

5. Respondent understands that the Board of Osteopathic Physicians and Surgeons must review and accept the terms of the Consent Order. If the Board rejects any portion, the entire Stipulation and Consent Order shall be null and void.
16. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
7. Respondent voluntarily enters this agreement after the opportunity to consult with legal counsel and is not being coerced by anyone into signing this Stipulation and

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Consent Order.

18. Respondent voluntarily waives his right to charges and a contested hearing before the Board of Osteopathic Physicians and Surgeons.
19. Respondent is not under the influence of any drugs or alcohol at the time he signs this Stipulation.
20. The Respondent specifically waives any claims that any disclosures made to the full Board during its review of this agreement have prejudiced his rights to a fair and impartial hearing in future proceedings if this agreement is not accepted by the Board.
21. The Respondent agrees that the Order set for the below may be entered by the Board.

CONSENT ORDER

Based upon the stipulation above, it is **ORDERED AND ADJUDGED** as follows:

A. Respondent's actions described above demonstrate grounds for discipline because the Respondent engaged in unprofessional conduct by violating the laws and rules detailed in paragraphs 2-7 above.

B. _____

AND

The Respondent shall have six (6) months from the date of entry of this Order to come into good standing with the Vermont Department of Taxes and the Vermont Office of Child Support. The Respondent shall provide proof of his good standing status to the Board or its designee. If Respondent fails to provide proof of his good standing for either the Vermont Department of Taxes and/or the Vermont Office of Child Support within six (6) months of the date of entry of this Order, his license shall forthwith be **suspended indefinitely** until he provides proof of his good standing status.

The Board of Osteopathic Physicians and Surgeons hereby **CONDITIONS** the Respondent's license to practice as an osteopath for a minimum period of **THREE (3) YEARS** from the date of entry of this Order and the following conditions shall apply:

(1) Re-issuance of License

Upon the imposition of these conditions, Respondent shall be issued a license labeled "conditioned."

(2) Length of Time Conditions Imposed

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The conditions shall remain in place until Respondent has completed all conditions ordered and the Board approves of removing the conditions.

(3) Psychiatric Evaluation

The Respondent must submit to the Board a detailed psychiatric evaluation conducted by a psychiatrist approved by the Board or its designee in advance. The Board may accept the evaluation that was performed by Dr. Robert E. Linder on or about August 19, 2005. The evaluation should survey all of the Respondent's psychomedical history and current diagnosis. The evaluation must also indicate that the Respondent does not present a current risk to the health, safety or welfare of his patients. This evaluation must be received by the Board within sixty (60) days of the date of entry of this Stipulation and Consent Order. If the evaluation is not received within sixty (60) days, or the evaluation indicates that the Respondent presents a risk to his patients, then after notice an opportunity to be heard the Respondent's license shall be indefinitely suspended.

(4) Practice Under Supervision

Respondent shall permit his practice to be supervised by the Board through another physician approved by the Board or its designee. Respondent shall submit the names and qualifications of two potential supervisors within thirty (30) days of the date of entry of this Order. The Respondent must disclose any personal, professional or community relationship that he has had with the potential supervisor. The supervisor must be licensed as an osteopath or medical doctor in the State of Vermont or another jurisdiction for at least five (5) years. The supervisor must meet with the Respondent for at least one (1) hour every two weeks. A supervision plan shall be submitted to the Board for approval within sixty (60) days of the Board's approval of a supervisor. The supervision plan shall detail a) the nature of the unprofessional conduct; b) the goals and objectives to address the unprofessional conduct; c) identification of relevant professional resources that will be utilized; and d) a description of how the Respondent's clinical practice will be assessed. The supervisor shall maintain all written records for supervisory contacts, that shall reflect the Respondent's progress in meeting identified goals. The supervisor shall provide to the Board reports within ninety (90) days of supervision plan approval and quarterly thereafter. The reports shall provide a description of how the goals and objectives are being met and an assessment of the Respondent's progress. If any changes are made to the supervision plan after its initial approval, those changes shall be approved by the Board or its designee in advance before taking effect.

(5) Record Keeping

The Respondent shall take a minimum of nine (9) hours in course work at the professional level concerning record keeping for osteopaths. This course work shall be approved in advance by the Board or its designee. The Respondent shall allow his supervisor to audit his records concerning patient treatment and intake. This audit shall consist of the supervisor reviewing 24 complete files, selected by the supervisor at random, of the Respondent's past and current patients. If the supervisor finds that the Respondent's record

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keeping is deficient, he or she shall notify the Board or its designee within one (1) week of this deficiency coming to the attention of the supervisor. The Respondent shall keep all medical records in a secure, non-public area.

(6) Participation in Substance Abuse Group

The Respondent shall participate as recommended by his psychiatrist, in a substance abuse recovery group.

(7) Abstain from Drug Use

THE PARTIES HAVE NOT REACHED AGREEMENT ON THIS POINT AND RESPONDENT IS FREE TO ARGUE THAT THIS CONDITION IS NOT NECESSARY. The State recommends that:

The Respondent shall abstain completely from the consumption or possession of drugs, legal or illegal, with the exception of legitimately prescribed medications. Respondent may take scheduled/controlled medications lawfully prescribed for a bona fide condition by a medical doctor, osteopath, advance practice nurse or dentist. The Respondent shall ensure that the medical doctor, osteopath, advance practice nurse or dentist informs the Board, in writing on appropriate letterhead, of the Respondent's past medical/psychiatric history within one (1) week of entering into the practitioner/patient relationship. The Respondent shall keep a written record of all medications taken, including over-the-counter drugs, and produce such record upon the request of the Board or its designee.

(8) Random Drug Testing

THE PARTIES HAVE NOT REACHED AGREEMENT ON THIS POINT AND RESPONDENT IS FREE TO ARGUE THAT THIS CONDITION IS NOT NECESSARY. The State recommends that:

The Respondent shall submit to random full spectrum drug screenings at the request of the Board or its designee, but no less than once a month. The drug screenings shall be performed under supervision by a person or collections agency that is approved by the Board in advance. All testing shall be done on an unannounced basis and analyzed by a laboratory qualified to analyze samples for forensic purposes. All urine samples collected for such testing shall be collected in an observed setting. All drug and alcohol screens shall be negative.

(9) Interview with Board or Designee

The Respondent shall appear in person for interviews with the Board or its upon request.

(10) Prescription Writing

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The Respondent shall not write any prescriptions for himself, family members, relatives or any non-patient. The Respondent shall only write prescriptions for controlled substances if allowed by the laws of the State of Vermont and the United States. The Respondent may petition the Board for reinstatement of prescription authority before the expiration of the three year period.

(11) Self-Reporting

If the Respondent suffers from any relapse in respect to his any medical or mental health condition or related to his use of any drugs, he shall immediately report such relapse to the Board. Failure to self report shall constitute a violation of this Order.

(12) License Renewal

If the Respondent's license expires while this Order is still in effect, this Order does not automatically extend the license. In that situation, in order to continue to practice osteopathy, the Respondent must timely apply for renewal, pay the applicable fee and demonstrate that he has otherwise complied with the requirements for license renewal.

(13) Costs

The Respondent shall bear all costs of complying with this Consent Order.

(14) Violation of this Order

If the Respondent violates the terms of this Order in any respect, the Board, after giving the Respondent notice and an opportunity to be heard, may rescind or modify this Order and impose additional appropriate disciplinary actions. If a complaint of unprofessional conduct is made against the Respondent during the term of this Order, this Order shall be automatically extended until the unprofessional conduct matter is concluded

(15) Completion of Conditional License Period

After the conditional license period, the Respondent may petition the Board to remove any and all conditions on his license. The Respondent must present proof that he has fully complied with the terms of this Order.

(16) Release of Information Form

The conditions of this Order require the Respondent to authorize drug and/or alcohol treatment providers to report information in verbal and/or written format and/or to discuss the Respondent and any and all treatment rendered to the Respondent for drugs and/or alcohol with the Board or its designee. The conditions of this Order must allow any and all information from the Respondent's treatment providers to also be provided to the Office of Professional Regulation investigators and that the information may be used for further prosecutions if so warranted or if the Office of Professional Regulation determines that said

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information violates the terms of this Order or any rules or laws governing the profession of nursing.

The Respondent is entitled to revoke this consent at any time. However, any revocation by the Respondent of such consent to disclosure during the term of this Order shall be considered a violation of this Order.

This consent expires when the conditions are removed from the Responden

This Stipulation and Consent Order shall constitute a valid written consent pursuant to the requirements of 42 C.F.R. § 2.31.

The Respondent understands that his treatment provider may require him to sign a separate and distinct consent meeting the requirements of 42 C.F.R. § 2.31.

C. Notwithstanding any provision above, the Respondent must continue to meet all Board requirements for maintaining a license, license renewal and license reinstatement.

D. This Stipulation and Consent Order is a matter of public record and may be reported to other licensing authorities as provided in 3 V.S.A. § 129(a).

E. This Stipulation and Consent Order will remain part of the Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

**STATE OF VERMONT
SECRETARY OF STATE**

Dated: 3/9/06

By:

State Prosecuting Attorney

Dated: 3/9/06

WILLIAM A. BIRGE

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

Birge

Approved as to form:

Dated: 3/9/06

Attorney for Respondent

APPROVED AND SO ORDERED:

VERMONT BOARD OF
OSTEOPATHIC PHYSICIANS AND
SURGEONS

Dated: 3/9/06

By: *m. J. Malone*
Chairperson

Date of Entry: 3/14/06

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**STATE OF VERMONT
SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
BOARD OF OSTEOPATHIC PHYSICIANS AND SURGEONS**

**IN RE: WILLIAM ARTHUR BIRGE, DO) DOCKET Nos. OS06-0305
License No. 032-0000313) OS05-0105**

SPECIFICATION OF CHARGES

Board Authority

1. The Vermont Board of Osteopathic Physicians and Surgeons (the "Board") has jurisdiction to investigate and adjudicate allegations of unprofessional conduct committed by osteopaths pursuant to 3 V.S.A. §§ 129, 129a; 26 V.S.A. Chapter 33 and; the rules of the Board and the Vermont Office of Professional Regulation.
2. Fraudulent or deceptive procurement or use of a license is unprofessional conduct. 3 V.S. A. § 129a(a)(1).
3. Failing to comply with provisions of federal or state statutes or rules governing the practice of the profession is unprofessional conduct. 3 V.S.A. § 129a(a) (3).
4. Failure to practice competently by any reason of any cause on a single occasion or on multiple occasions . . . performance of unsafe or unacceptable patient care and failure to conform to the essential standards of acceptable and prevailing practice is unprofessional conduct. 3 V.S.A. §§ 129a(b)(1) and (2)
5. Inability to practice osteopathic medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals or any other type of material or as a result of any mental or physical condition is unprofessional conduct. 26 V.S.A. § 1842(b)(1).
6. Misrepresentation or concealment of a material fact in the obtaining of a license to practice osteopathic medicine, or renewal or reinstatement of a license is unprofessional conduct. 26 V.S.A. § 1842(b)(2).
7. Failure to keep written medical records justifying the course of treatment of a patient, including, patient histories, examination results and test results is unprofessional conduct. 26 V.S.A. § 1842(b)(5).

Statement of Facts

8. William Arthur Birge (the "Respondent") of Newport, Vermont is an osteopathic physician holding license number 032-0000313, issued by the State of Vermont. This license was originally issued on or about December 17, 1986, and is set to expire on September 30, 2006.

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9. Prior to April 9, 2004 the Respondent was diagnosed as having attention deficit disorder ("ADD"). The Respondent attempted to obtain a prescription through his personal physician for Methylphenidate in order to treat the ADD, but was unsuccessful. Concerta and Ritalin are brand names for Methylphenidate which is classified as a central nervous system stimulant and is a Schedule II DEA regulated drug.
10. Between April 9, 2004 and May 18, 2004 the Respondent wrote three separate Concerta prescriptions for his employee M.J. with the instruction that once M.J. filled the prescriptions, the Concerta would be turned over to the Respondent, so he could treat his ADD. M.J. complied with the Respondent's request after filling the prescriptions at a local pharmacy.
11. Between October 7, 2004 and December 8, 2004 the Respondent wrote four separate Methylphenidate prescriptions for D.B., the son of his employee L.B. with the instruction that once L.B. filled the prescriptions, the Methylphenidate would be turned over to the Respondent, so he could treat his ADD. L.B. complied with the Respondent's request after filling the prescriptions at a local pharmacy.
12. The Respondent wrote the above referenced prescriptions for his own personal use, with the intention of treating his ADD and receiving the Methylphenidate for his personal use.
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14. As of July 12, 2005, the Respondent was not in good standing with either the Vermont Office of Child Support or the Vermont Department of Taxes.
15. The Respondent keeps little or no patient charts/notes and does little or nothing to document patient visits.

Charges

16. By committing the above act(s), circumstance(s) and/or omission(s), the Respondent has engaged in unprofessional conduct by violating the Vermont Statutes and Rules, as outlined above in paragraphs 2-15.

WHEREFORE, the license of William Arthur Birge, DO should be revoked, suspended or otherwise disciplined.

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DATED at Montpelier, Vermont this 3rd day of October 2005.

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SECRETARY OF STATE

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State Prosecuting Attorney

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