

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

IN RE:

Richard L. O'Brien, D.O.
License No. 32-476

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)

Docket No. OS04-1198

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COME the State of Vermont by and through its Attorney General and Richard L. O'Brien, D.O. and hereby agree and stipulate as follows:

1. Richard Lee O'Brien (hereinafter Respondent) is an Osteopathic Physician licensed by the State of Vermont, who at all times relevant to this matter held license number 32-476.
2. The Board of Osteopathic Physicians and Surgeons (hereinafter Board) has jurisdiction to investigate allegations of unprofessional conduct committed by Osteopathic Physicians and accept stipulations pursuant to 3 V.S.A. § 129a and 26 V.S.A. §§ 1842 and 1843.
3. The Board has authority to discipline any licensee who has had a license revoked, suspended, limited or conditioned by a licensing agency in another jurisdiction for an offense that would constitute unprofessional conduct in this state. 3 V.S.A. § 129(a)(7).
4. Respondent admits that, in 1998, while practicing as a resident in the St. Elizabeth Family Medicine Residency Program in Utica, New York, he was charged by the State of New York with unprofessional conduct.
5. Respondent admits that about October 12, 1998, a Consent Order was entered by the chairperson of the New York State Board for Professional Medical Conduct based on and pursuant to a consent agreement executed by Respondent on or about October 2, 1998, wherein Respondent plead no contest to specifications First, Sixth and Seventh that:

First: That he performed professional services which he was authorized to perform only under the supervision of a licensed professional without such supervision.

Sixth: That he willfully harassed or intimidated a patient verbally.

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Seventh: That he failed to maintain a record for each patient, which accurately reflects the evaluation and treatment of the patient.

6. As a result of said charges and admissions, Respondent was censured, reprimanded and placed on three years probation by the State of New York, Board for Professional Medical Conduct.

7. Respondent agrees that he would not contest charges if made against him, for professional misconduct by the State of Vermont as set forth in paragraph 5, supra, and does agree to the entry of an order in accordance with this stipulation and hereby agrees that his Vermont license number: 32-476 be subject to the conditions as set forth in the Order below.

8. Respondent agrees and admits that if such specifications as set forth in paragraph 5 above were proven, that such conduct would support a finding of unprofessional conduct pursuant to 3 V.S.A. § 129a(a)(11), exercising undue influence on or taking improper advantage of a person using professional services and 26 V.S.A. § 1842(b)(5), failure to keep written medical records justifying the course of treatment of the patient, including patient histories, examination results and test results.

9. Respondent understands that the Board 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.

10. 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 hearings if this agreement is not accepted by the Board.

11. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.

12. Respondent is not under the influence of any drugs or alcohol at the time he signs this Stipulation and Consent Order.

13. 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 Consent Order.

14. Respondent voluntarily waives his right to the filing of charges and a contested hearing in this matter.

15. Respondent agrees that the Board has jurisdiction in this matter.

16. Respondent agrees that the order set forth below may be entered by the Board.

ORDER

Based on the stipulation above, for a Consent Order, which Stipulation is made a part hereof, it is hereby **ORDERED AND ADJUDGED** as follows:

- A. That the Stipulation and the provisions thereof are hereby adopted and **SO ORDERED**.
- B. The Board hereby **CONDITIONS** Respondent's license as follows:
1. Prior to commencing practice in the State of Vermont, Respondent shall advise the Board's designee of the location and nature of his intended practice.
 2. Prior to commencing practice in the State of Vermont, Respondent shall propose to the Board's designee a practice supervisor. The practice supervisor shall be subject to approval of the Board's designee and licensed as an osteopathic physician or medical doctor.
 3. Respondent shall provide the practice supervisor with a copy of this Stipulation and Consent Order and shall authorize said supervisor to communicate with the Board's designee concerning Respondent's practice.
 4. Respondent shall authorize the practice supervisor to have access to all of his patient records and to the premises in which Respondent practices and to submit quarterly written reports to the Board's designee regarding Respondent's practice. Said reports shall address all aspects of Respondent's practice including quality of care and adequacy of records.
 5. Respondent shall be counseled or undergo therapy with a therapist, proposed by Respondent and approved by the Board's designee. Said counseling or therapy shall commence within 30 days of Respondent's commencing practice in Vermont and shall continue for a minimum of one year or longer as the therapist deems necessary. Said therapist shall be provided with a copy of this Stipulation and Consent Order. Respondent shall authorize the therapist who was approved under his terms of probation in New York State to contact the therapist selected under this paragraph. Additionally, Respondent shall cause the therapist to submit quarterly reports to the Board's designee. Said reports will advise of the frequency of Respondent's attendance at therapy sessions and shall certify that Respondent is in compliance with the therapist's treatment plan.

6. Respondent may not treat any patient in a location other than in his medical office or in a licensed medical facility. Notwithstanding this provision, Respondent may render emergency medical care to an individual. If Respondent renders such care in a location other than his office or a licensed medical facility, Respondent shall bear the burden of proving by clear and convincing evidence that the care was rendered in emergent circumstances.

C. A violation of any of the above conditions shall be grounds for additional disciplinary action.

D. Respondent may petition the Board to be relieved of the conditions imposed by this Stipulation and Consent Order. No such petition may be filed until one year after approval of a practice supervisor by the Board's designee. Any such petition must demonstrate that Respondent has successfully complied with all conditions contained herein.

E. This Stipulation and Consent Order is a Public Record and may be reported to other licensing authorities as provided by 3 V.S.A. § 129(a)(8).

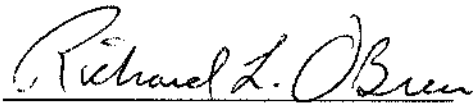
F. This Stipulation and Consent Order will remain part of Respondent's licensing file and may be used in determining sanctions in future disciplinary matters.

G. Respondent shall bear the cost of compliance with this stipulation.

AGREED TO:

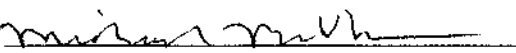
BY: RICHARD L. O'BRIEN D.O.
RESPONDENT

DATE: 4/5/01


Richard L. O'Brien D.O.

AND BY: WILLIAM H. SORRELL
ATTORNEY GENERAL

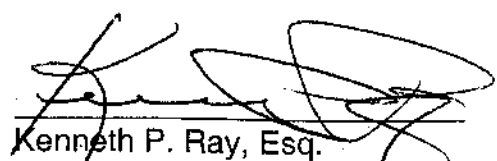
DATE: 3/23/01


Michael McShane
Assistant Attorney General

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APPROVED AS TO FORM:

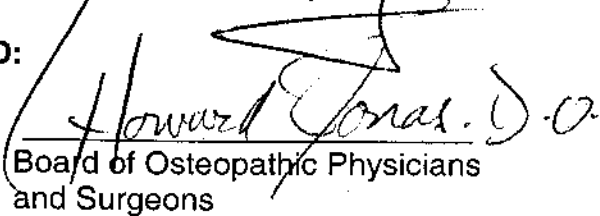
DATE:


Kenneth P. Ray, Esq.

ACCEPTED AND SO ORDERED:

DATE:

4/18/01


Board of Osteopathic Physicians
and Surgeons

Date of Entry:

4/25/01

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