STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF PROFESSIONAL LICENSING
BOARD OF OSTEOPATHIC MEDICINE AND SURGERY
DISCIPLINARY SUBCOMMITTEE

In the Matter of

MARK LAWRENCE GOLDBERGER, D.O.          Complaint No. 51-17-149150
License No. 51-01-012692    CONSENT ORDER AND STIPULATION

CONSENT ORDER

An administrative complaint was filed with the Disciplinary Subcommittee of the Board of Osteopathic Medicine and Surgery on November 9, 2018, charging Mark Lawrence Goldberger, D.O. (Respondent) with having violated sections 16221(a) and (b)(i) of the Public Health Code, 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 these violations, IT IS ORDERED:

Respondent is FINED Five Thousand and 00/100 Dollars ($5,000.00) to be paid by check, money order, or cashier's check made payable to the State of
Michigan (with complaint number 51-17-149150 clearly indicated on the check or money order), and shall be payable within sixty (60) days of the effective date of this order. The timely payment of the fine shall be Respondent's responsibility.

Respondent shall mail the fine to: Department of Licensing and Regulatory Affairs Bureau of Professional Licensing, Enforcement Division, Compliance Section, P.O. Box 30189, Lansing, Michigan 48909.

If Respondent fails to timely pay the fine, his license shall be suspended until payment is received. If Respondent's license remains suspended for more than six months, reinstatement of the license shall not be automatic. If Respondent petitions for reinstatement of his license, the petition shall be in accordance with sections 16245 and 16247 of the Public Health Code and Mich Admin Code, R 792.10711. Under these provisions, Respondent must demonstrate the following by clear and convincing evidence: (1) good moral character; (2) the ability to practice the profession with reasonable skill and safety; (3) satisfaction of the guidelines on reinstatement adopted by the Department; and (4) that it is in the public interest for the license to be reinstated.

Count II of the complaint, alleging a violation of section 16221(b)(i) of the Public Health Code and Factual Allegations 6a. and b., are DISMISSED.

Respondent shall direct any communications to the Department that are required by the terms of this order to: Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing, Enforcement Division, Compliance Section, P.O. Box 30670, Lansing, Michigan 48909.
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.

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 ________

April 2, 2020

MICHIGAN BOARD OF OSTEOPATHIC MEDICINE AND SURGERY

By ____________________________
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, 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 Kathleen Kudray, D.O. Dr. Kudray 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. Kudray and the parties considered the following factors in reaching this agreement:

A. Respondent is a board-certified neurosurgeon. He has been licensed since 1996 and this is his first discipline. Respondent explained he has performed this surgery possibly 150 to 200 times in his career.

B. Respondent contends that he met the standard of care regarding the failure to obtain an immediate post-surgical MRI as he believed an MRI would not have provided any useful information at that point based on his evaluation of the surgical procedure and due to swelling.

CONTINUES ON NEXT PAGE
By signing this stipulation, the parties confirm that they have read, understand, and agree with the terms of the consent order.

AGREED TO BY:

Jennifer Fitzgerald (P60109)
Assistant Attorney General
Attorney for Complainant
Dated: 1-25-2020

AGREED TO BY:

Mark Lawrence Goldberger, D.O.
Respondent
Dated: 11-20-2020

Scott A. Saurbier (P19914)
Attorney for Respondent
Dated: 12-31-20

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF PROFESSIONAL LICENSING
BOARD OF OSTEOPATHIC MEDICINE AND SURGERY
DISCIPLINARY SUBCOMMITTEE

In the Matter of
MARK LAWRENCE GOLDBERGER, D O
License No. 51-01-012692,
Respondent

File No 51-17-149150

ADMINISTRATIVE COMPLAINT

The Michigan Department of Licensing and Regulatory Affairs, by Cheryl Wykoff Pezon, Director, Bureau of Professional Licensing, complains against Respondent as follows

1. The Michigan Board of Osteopathic Medicine and Surgery is an administrative agency established by the Public Health Code, MCL 333.1101 et seq. Pursuant to MCL 333 16226, the Board's Disciplinary Subcommittee is empowered to discipline persons for violations of the Public Health Code.

2. Respondent is licensed to practice as an osteopathic physician in the state of Michigan and has a controlled substance license.

3. At all relevant times, Michigan Head & Spine Institute (facility) in Southfield, Michigan, employed Respondent as a neurosurgeon.

4. On October 19, 2012, patient J.M. (initials are used to protect the patient's identity) presented to Respondent for a neurosurgical consultation regarding low

5. On October 26, 2012, Respondent performed surgery on patient J.M. Immediately following the surgery, Respondent suffered from incomplete paraplegia.

6. As part of the Department’s investigation into the above conduct, an expert was retained and identified the following errors:

   a. Respondent failed to obtain a computed tomography (CT) scan prior to surgery,

   b. Respondent failed to utilize intraoperative monitoring of motor-evoked potentials; and

   c. Following surgery, Respondent failed to timely order magnetic resonance imaging (MRI) and/or CT scans to investigate the cause of the paraplegia.

COUNT I

Respondent’s conduct, as set forth above, evidences a violation of general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or not injury results, in violation of MCL 333 16221(a).
COUNT II

Respondent's conduct, as set forth above, evidences a departure from, or failure to conform to, minimal standards of acceptable and prevailing practice for the health profession, whether or not actual injury to an individual occurs, in violation of MCL 333.16221(b)(i)

RESPONDENT IS NOTIFIED that, pursuant to MCL 333.16231(8), Respondent has 30 days from the date of receipt of this Complaint to answer this Complaint in writing and to show compliance with all lawful requirements for licensure. Respondent shall submit the response to the Bureau of Professional Licensing, Department of Licensing and Regulatory Affairs, P O. Box 30670, Lansing, MI 48909.

Respondent's failure to submit an answer within 30 days is an admission of the allegations in this Complaint. If Respondent fails to answer, the Department shall transmit this Complaint directly to the Board's Disciplinary Subcommittee to impose a sanction, pursuant to MCL 333.16231(9)

Dated: 11/9/18

Cheryl Wykoff Pezon, Director
Bureau of Professional Licensing

MFW