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**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BEFORE THE STATE BOARD OF OSTEOPATHIC MEDICINE**

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Department of State

**Commonwealth of Pennsylvania  
Bureau of Professional and  
Occupational Affairs**

v.

**Brian Charles Keeley, D.O.,  
Respondent**

**File No.: 17-53-06442**

**Docket No: 1920 -53-17**

Immediate Temporary Suspension at File No. 16-53-10810; Docket No. 0866-53-17

**CONSENT AGREEMENT AND ORDER**

**PARTIES**

The Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs ("Commonwealth") and **Brian Charles Keeley, D.O.** ("Respondent") stipulate as follows in settlement of the above-captioned case.

**APPLICABLE LAW**

1. This matter is before the State Board of Osteopathic Medicine ("Board") pursuant to the Osteopathic Medical Practice Act, Act of October 5, 1978, P.L. 1109, No. 261, ("Act"), *as amended*, 63 P.S. §§ 271.1-271.18; the Medical Care Availability and Reduction of Error ("MCARE") Act, Act of March 20, 2002, P.L. 154, No. 13, *as amended*, 40 P.S. §§ 1303.101-1303.910; and/or the Act of July 2, 1993, P.L. 345, No. 48 ("Act 48"), *as amended*, 63 P.S. §§ 2201-2207.

## LICENSURE STATUS

2. At all relevant and material times, Respondent held a license to practice as an osteopathic physician and surgeon in the Commonwealth of Pennsylvania, license no. OS008541L, which was originally issued on July 6, 1994, and which is presently under suspension.

## STIPULATED FACTS

3. The Respondent admits that the following allegations are true:

a. Absent further Board action, Respondent's license may be continually reactivated, renewed, or reinstated upon the filing of the appropriate documentation and payment of the necessary fees.

b. Respondent's last known address, as on file with the Board, is 10 Cavalier Drive, Ambler, PA 19002-4714.

c. On or about April 27, 2017, law enforcement personnel executed a duly authorized search warrant at the Respondent's medical office.

d. The search of the premises revealed conditions that constituted a failure to adhere to all applicable guidelines for infection control from the Centers for Disease Control ("CDC guidelines").

e. On or about April 27, 2017, following the execution of the search warrant, the Building Code Officer for the Borough of Ambler, Pennsylvania posted a notice that the Respondent's medical office was condemned as dangerous and unsafe.

f. On or about May 8, 2017, upon reinspection by the Ambler Building Code Officer, the condemnation of the Respondent's medical office was lifted, and the Respondent was permitted to re-open his office.

g. By Order dated May 9, 2017, at Docket No. 0866-53-17 and File No. 16-53-10810, the Probable Cause Screening Committee<sup>1</sup> of the Board imposed an Immediate Temporary Suspension of the Respondent's license to practice as an osteopathic physician and surgeon, license no. OS008541L.

h. Subsequently, the Respondent retained David H. Loughran, D.O., an infectious disease expert, who recommended infection control protocols and procedures and improvements to the Respondent's medical office to bring him in compliance with the CDC guidelines.

i. On or about June 22, 2017, Dr. Loughran followed-up with the Respondent and found him to be fully in compliance with his recommendations.

#### **ALLEGED VIOLATIONS**

4. The Commonwealth alleges that the Board is authorized to suspend, revoke, or otherwise restrict Respondent's license under Sections 11(c) and 15(a) of the Act, 63 P.S. §§ 271.11(c) and 271.15(a); and/or impose a civil penalty upon Respondent under Sections 11(c) and 15(a) of the Act, 63 P.S. §§ 271.11(c) and 271.15(a), and /or Section 5(b)(4) of ACT 48, 63 P.S. § 2205(b)(4); and/or impose the costs of investigation upon Respondent under Section 5(b)(5) of ACT 48, 63 P.S. § 2205(b)(5), because the Respondent engaged in unprofessional conduct in violation of Section 15(a)(8) of the Act, 63 P.S. § 271.15(a)(8).

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<sup>1</sup> Christopher S. Poggi, D.O., Burton T. Mark D.O. and John B. Bulger, D.O.

**PROPOSED ORDER**

5. The parties, intending to be legally bound, consent to the issuance of the following Order in settlement of this matter:

a. The Board finds that it is authorized to suspend, revoke, or otherwise restrict Respondent's license under Sections 11(c) and 15(a) of the Act, 63 P.S. §§ 271.11(c) & 271.15(a); and/or impose a civil penalty upon Respondent under Sections 11(c) and 15(a) of the Act, 63 P.S. §§ 271.11(c) & 271.15(a), and/or Section 5(b)(4) of ACT 48, 63 P.S. § 2205(b)(4); and/or impose the costs of investigation upon Respondent under Section 5(b)(5) of ACT 48, 63 P.S. § 2205(b)(5), because the Respondent engaged in unprofessional conduct in violation of Section 15(a)(8) of the Act, 63 P.S. § 271.15(a)(8).

**SUSPENSION**

b. Respondent's license to practice as an osteopathic physician and surgeon in the Commonwealth of Pennsylvania, along with any other licenses, registrations, certificates, approvals, authorizations, or permits (hereinafter referred to collectively as "authorizations to practice the profession") issued by the Board to Respondent at the time this Consent Agreement is adopted by the Board are hereby **SUSPENDED INDEFINITELY**.

c. Respondent shall, within ten (10) days of the beginning of any period of active suspension, surrender his wall certificate, biennial renewal certificate and wallet card (or notarized affidavit of their loss or destruction) by mailing them to:

Mark R. Zogby  
Prosecuting Attorney  
Bureau of Professional and Occupational Affairs  
P.O. Box 69521  
Harrisburg, PA 17106-9521

or by delivering them in person at:

Bureau of Professional and Occupational Affairs  
One Penn Center  
2601 North 3rd St.  
Harrisburg, Pennsylvania

d. During any period of active suspension, Respondent shall cease and desist from practicing as a medical physician and surgeon, and shall not represent himself as a Board licensee in any matter during any period of active suspension.

e. Respondent is advised that if the period of active suspension continues past the end of the current renewal period, prior to Respondent's license being reinstated, Respondent will be required to comply with the requirements for renewal of his license in effect at that time.

**PROBATION**

f. The suspension of Respondent's authorizations to practice the profession shall be immediately **STAYED IN FAVOR OF PROBATION** subject to the following terms and conditions:

(1) During the period of probation, the Respondent shall not write prescriptions for any controlled substance, Schedule II through V;

(2) Within thirty (30) days of the approval of this Agreement, the Respondent shall retain a practice monitor through the LifeGuard Program at The Foundation for the Pennsylvania Medical Society;

(3) The Respondent shall make available for the practice monitor's review infection control protocols and procedures implemented through Dr. Loughran and the Respondent shall implement any recommended changes that the practice monitor may have;

(4) During the period of probation, the Respondent shall comply with the aforementioned infection control protocols and procedures;

(5) The practice monitor shall monitor the Respondent's continued compliance with paragraph 5(f)(1) above and with the aforementioned infection control protocols and procedures;

(6) Beginning on November 30, 2017 and continuing throughout the period of probation, the practice monitor shall submit bi-monthly monitoring reports to the Probation Compliance Officer and Prosecuting Attorney by the last day of every other month addressing the Respondent's continued compliance with paragraph (f)(1) above and with the aforementioned infection control protocols and procedures;

(7) During the period of probation, Respondent shall submit to office inspections by an agent of BEI, at any time, announced or otherwise, relating to the issues described in paragraph 3(d) above and relating to compliance with paragraph 5(f)(1) above;

(8) During the aforementioned inspections, Respondent and any individual employed by and/or working at Respondent's office shall submit to complete interviews with the agent of BEI, relating to the issues described in paragraph 3(d) above and relating to compliance with paragraph 5(f)(1) above;

(9) During the aforementioned inspections, Respondent shall permit the agent of BEI to enter any area of the medical office and adjoining area associated with the medical practice, relating to the issues described in

paragraph 3(d) above and relating to compliance with paragraph 5(f)(1) above;

(10) During the aforementioned inspections, Respondent shall permit the agent of BEI to review any records relevant to infection control and relevant to compliance with paragraph 5(f)(1) above and obtain a copy of said records if necessary;

(11) Respondent shall not have any criminal charges pending; Respondent being charged with any crime, state and/or federal, misdemeanor and/or felony, shall constitute a violation of probation;

(12) Respondent shall abide by and obey all laws of the United States, the Commonwealth of Pennsylvania and its political subdivisions and all rules and regulations and laws pertaining to the practice as an osteopathic physician and surgeon in this Commonwealth or any other state or jurisdiction in which Respondent holds an authorization to practice the profession. Provided, however, summary traffic violations shall not constitute a violation of this Order;



(13) Respondent shall at all times cooperate with the Bureau of Professional and Occupational Affairs ("Bureau"), any of its agents or employees and the Bureau of Enforcement and Investigation ("BEI") and its agents and employees, in the monitoring, supervision and investigation of Respondent's compliance with the terms and conditions of this Order, including Respondent causing to be submitted at his own expense written reports, records and verifications of actions that may be required by the Bureau, BEI or any of its agents or employees;

(14) Respondent's failure to fully cooperate with and successfully comply with the terms and conditions of this probation shall be deemed a violation of this Consent Agreement and Order;

(15) Respondent shall not falsify, misrepresent or make material omission of any information submitted pursuant to this Order;

(16) Respondent shall notify BEI, in writing, within twenty (20) days of the filing of any criminal charges, the initiation of any other legal action (civil or administrative) pertaining to the Respondent's practice as an osteopathic physician and surgeon, and/or the initiation,

action, restriction or limitation relating to Respondent by the professional licensing authority of any state or jurisdiction.

(17) Respondent shall notify BEI by telephone within seventy-two (72) hours, and shall notify both BEI and the Board in writing within ten (10) days of any change in the name(s) and address(es) of the place(s) at which Respondent will practice as an osteopathic physician and surgeon and a description of Respondent's duties and responsibilities at such places of practice;

(18) Respondent shall notify BEI by telephone within seventy-two (72) hours, and shall notify both BEI and the Board in writing within ten (10) days of any change in the Respondent's home address and/or telephone number.

(19) If Respondent will be absent from the Commonwealth of Pennsylvania for any period exceeding twenty (20) days, Respondent must notify BEI, in writing, of Respondent's absence and must provide a list of the jurisdiction(s) in which Respondent intends to stay more than forty-eight (48) hours. Respondent consents to the release by the Bureau or BEI of any information or data produced as a result of this Agreement or probation to the proper licensing authority of any jurisdiction in which

Respondent intends to remain for greater than forty-eight (48) hours.

(20) During any period of Active Suspension or Ordered Probation, Respondent shall supply any current professional employer with a copy of this Consent Agreement and Order.

(21) Within fifteen (15) days of the date of this Order, and within (15) days of the date of any change in professional employer Respondent shall have his professional employer submit to BEI written verification that the professional employer *a)* has received a copy of this Consent Agreement and Order, *b)* understands the conditions of this probation, and *c)* agrees to report any suspected violation by Respondent of this probation. If Respondent is or becomes self-employed, Respondent shall submit a statement to that effect to BEI and shall produce any requisite documentation to BEI to substantiate such a statement,

(22) Respondent consents to the release by the Bureau or BEI of any information or data produced as a result of this probation to any professional employer or prospective professional employer,

(23) Unless otherwise directed, Respondent, his professional employer, and any other person needing or required to make reports under this Order concerning Respondent's practice and contact information shall cause those reports, data or other information to be filed with BEI at:

Probation Compliance Officer Bureau of Enforcement and Investigation Box 2649 Harrisburg, PA 17105-2649 717-783-7230
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**VIOLATION(S) OF PROBATION**

g. Notification of a violation of the terms or conditions of this Consent Agreement and Order shall result in the **IMMEDIATE VACATING** of the stay order, **TERMINATION** of the period of probation, and **ACTIVATION** of the entire period of suspension of Respondent's authorizations to practice the profession in the Commonwealth of Pennsylvania as follows:

(1) The prosecuting attorney for the Commonwealth shall file with the Board a Petition which alleges that Respondent has violated any terms or conditions of this Consent Agreement and Order other than failure to complete the Ordered remedial education in a timely manner;

(2) Upon a probable cause determination that Respondent has violated any of the terms or conditions of this Consent Agreement and Order, the Board shall, without holding a formal hearing, issue a preliminary order vacating

the stay of the suspension in this matter, terminating the period of probation and activating the entire period of suspension of Respondent's authorizations to practice the profession, without credit for any period of suspension stayed in favor of probation;

(3) Notification of the Board's Preliminary Order shall be mailed to Respondent within three (3) days of its issuance by certified mail and first class mail postage prepaid, sent to the last registered address on file with the Board. If service by mail is unsuccessful, the Commonwealth is authorized to attempt service by personal service and/or publication of legal notice in a newspaper of general circulation in the county of Respondent's last known address.

(4) Within twenty (20) days of mailing of the notification of the Board's action, Respondent may answer the Commonwealth's Petition and request that a formal hearing be convened concerning Respondent's alleged violation of probation, in which Respondent may seek relief from the Preliminary Order activating the suspension. **The answer shall be set forth in numbered paragraphs corresponding to the numbered paragraphs of the Petition. Respondent shall admit or deny each of the**

**allegations set forth in the paragraphs in the Petition.**

Respondent shall mail the original answer and request for hearing, and all other pleadings to

Office of Prothonotary Bureau of Professional and Occupational Affairs 2601 N. 3rd Street P.O. Box 2649 Harrisburg, PA 17105-2649
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(5) Respondent shall send a copy of the answer, request for hearing, and all subsequent filings in the matter to the prosecuting attorney for the Commonwealth;

(6) If a request for a formal hearing is received from Respondent, the Board shall convene a formal hearing within forty-five (45) days from the date of the Board's receipt of Respondent's request for a formal hearing;

(7) If Respondent files an answer and request for a hearing within the twenty (20) day period, the Preliminary Order activating the suspension shall remain in effect unless and until the Board issues a determination favorable to Respondent after holding the formal hearing;

(8) The facts and averments in paragraphs 3 and 4 of this Consent Agreement and Order shall be deemed admitted and uncontested for purposes of the hearing;

(9) If the Board after such hearing makes a determination adverse to Respondent, the Board will issue a Final Order activating the suspension of Respondent's license and imposing any additional disciplinary measures it deems appropriate;

(10) If a request for a formal hearing is not received from Respondent within the prescribed twenty (20) day period, the Board's Preliminary Order shall become a Final Order twenty (20) days after the date of its mailing;

(11) If the stay is terminated, Respondent shall still comply with all terms and conditions of probation during the active suspension, other than those terms and conditions pertaining to the active practice of the profession. Continued failure by Respondent to comply with the unaffected terms and conditions of probation shall result in

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further disciplinary action against Respondent;

h. Respondent's failure to fully comply with any terms of this Order may also constitute grounds for additional disciplinary action.

i. The Respondent shall not apply to reinstate his authorizations to practice the profession while any and all criminal investigations and/or criminal charges are pending against him.

j. Should Respondent be convicted of a crime, as defined by Section 14(b) and Section 15(a)(3) of the Act, 63 P.S. §271.14(b) and 63 P.S. §271.15(a)(3), Respondent's authorizations to practice the profession shall remain suspended until after another Consent Agreement is reached or a Final Order is issued by the Board concerning the conviction of the Respondent.

k. Should the Respondent be acquitted of any and all criminal charges, the Respondent's authorizations to practice the profession shall remain suspended unless and/or until the Respondent requests reinstatement in writing and is granted reinstatement of his authorizations to practice the profession by the Board.

l. A written Petition to reinstate the Respondent's license to practice as an osteopathic physician and surgeon in the Commonwealth of Pennsylvania shall include the following:

(1) A current Criminal History Record Information (a/k/a "Criminal Record Check") from the state-wide governmental agencies of all states where the Respondent has resided since January 1, 2017, compiled no more than three (3) months prior to the Petition for Reinstatement;

(2) A signed verification that Respondent has not practiced as an osteopathic physician and surgeon in the Commonwealth of Pennsylvania during any period of active suspension;



(3) Proof that Respondent has successfully completed all conditions precedent to reinstatement set forth above.

m. Prior to reinstatement, a formal hearing shall be conducted before the Board or its designee at which Respondent will have the burden of proving, to the satisfaction of the Board, that there are no criminal charges and/or criminal investigations pending against him, that he has not been convicted of any crime, as defined by Section 14(b) and Section 15(a)(3) of the Act, 63 P.S. §271.14(b) and 63 P.S. §271.15(a)(3), that he has fully complied with the aforementioned conditions precedent, that he has the requisite honesty, trustworthiness, and integrity to be entrusted to hold a license to practice as an osteopathic physician and surgeon in the Commonwealth of Pennsylvania, and that he is able to practice with reasonable skill and safety to patients and is sufficiently competent to be entrusted to hold a license to practice as an osteopathic physician and surgeon in the Commonwealth of Pennsylvania.

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n. Respondent shall comply with any and all other requirements of reinstatement imposed by the Board and/or set forth in the Act.

o. Respondent shall bear the responsibility for any and all expenses and/or costs incurred in complying with the terms of this Order.

p. This Consent Agreement and Order shall not be construed in any way to limit the Commonwealth's ability to proceed with further disciplinary action regardless of the outcome of the pending criminal charges.

q. This Order constitutes disciplinary action by the Board and shall be reported to other licensing authorities and any applicable national licensing databank as a disciplinary action by the Board.

r. This case shall be deemed settled and discontinued upon the Board issuing an Order adopting this Consent Agreement.

s. The Immediate Temporary Suspension of Respondent's licenses and permits at file no. 16-53-10810 and docket no. 0866-53-17 is hereby **MADE FINAL** by this Order.

#### **ADMISSIBILITY OF CONSENT AGREEMENT IN FUTURE PROCEEDINGS**

6. Respondent agrees that if Respondent is charged with a violation of an Act enforced by this Board in the future, this Consent Agreement and Order shall be admitted into evidence without objection in that proceeding.

#### **ACKNOWLEDGMENT OF NOTICE AND WAIVER OF HEARING**

7. Respondent waives the filing of an Order to Show Cause in this matter. Respondent knowingly and voluntarily waives the right to an administrative hearing in this matter, and knowingly and voluntarily waives the following rights related to that hearing: to be represented by counsel at the hearing; to present witnesses and testimony in defense or in mitigation of any sanction that may be imposed for a violation; to cross-examine witnesses and to challenge evidence presented by the Commonwealth; to present legal arguments by means of a brief; and to take an appeal from any final adverse decision.

#### **ACKNOWLEDGMENT OF RIGHT TO ATTORNEY**

8. Respondent acknowledges that he is aware that he has the right to consult with, and/or be represented by, private legal counsel of Respondent's choosing and at Respondent's expense when reviewing, considering and accepting the terms of this Consent Agreement. Respondent had an opportunity to consult with and has been advised by Attorney Nicholas C. Harbist, regarding this Consent Agreement.

#### **WAIVER OF CLAIM OF COMMINGLING AND OTHER CONSTITUTIONAL CLAIMS**

9. Respondent expressly waives any constitutional rights and issues, such as commingling of prosecutorial and adjudicative functions by the Board or its counsel, which may arise or have arisen during the negotiation, preparation and/or presentation of this Consent Agreement. Respondent specifically agrees that if the Board rejects this agreement, it may assume that the facts and averments as alleged in this Consent Agreement are true and correct for the limited purpose of recommending a sanction, based on those assumed facts, that would be acceptable to the Board before hearing the case. In the event that the Board does assume the facts and averments as alleged in this Consent Agreement are true for purposes of making a recommendation as to an acceptable sanction, such action shall not constitute commingling of prosecutorial and adjudicative functions by the Board or its counsel, and the Respondent expressly waives any constitutional rights and issues related to alleged commingling, bias, or violation of due process rights to have an unbiased and impartial adjudicator in any subsequent hearing. If a hearing is subsequently held, neither this Consent Agreement nor the proposed terms of settlement may be admitted into evidence and any facts, averments, and allegations contained in the Consent Agreement must be proven at hearing unless otherwise separately stipulated. This paragraph is binding on the participants even if the Board does not approve this Consent Agreement.

**NO MODIFICATION OF ORDER**

10. Respondent agrees, as a condition of entering into this Consent Agreement, not to seek modification at a later date of the Stipulated Order adopting and implementing this Consent Agreement without first obtaining the express written concurrence of the Prosecution Division.

**AGREEMENT NOT BINDING ON OTHER PARTIES**

11. The Office of General Counsel has approved this Consent Agreement as to form and legality; however, this Consent Agreement shall have no legal effect unless and until the Board issues the stipulated Order.

**EFFECT OF BOARD'S REJECTION OF CONSENT AGREEMENT**

12. Should the Board not approve this Consent Agreement, presentation to and consideration of this Consent Agreement and other documents and matters by the Board shall not prejudice the Board or any of its members from further participation in the adjudication of this matter. This paragraph is binding on the participants even if the Board does not approve this Consent Agreement.

**ENTIRE AGREEMENT**

13. This agreement contains the whole agreement between the participants; provided however, that the captions printed in the various provisions of this agreement are for ease of reading only and are not to be interpreted as forming any part of this agreement. There are no other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever concerning this agreement.

**AGREEMENT DOES NOT PREVENT ADDITIONAL DISCIPLINE BASED ON OTHER COMPLAINTS**

14. Nothing in this Order shall preclude the Prosecution Division for the Commonwealth from filing charges or the Board from imposing disciplinary or corrective measures for violations or facts not contained in this Consent Agreement;

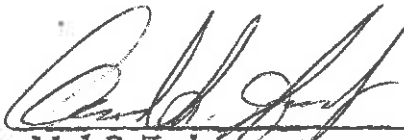
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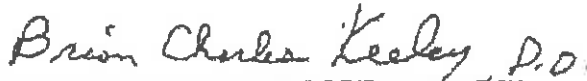
VERIFICATION OF FACTS AND STATEMENTS

15. Respondent verifies that the facts and statements set forth in this Consent Agreement are true and correct to the best of Respondent's knowledge, information and belief. Respondent understands that statements in this Consent Agreement are made subject to the criminal penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.



Mark R. Zogby  
Prosecuting Attorney

DATED: 8/21/17



Brian Charles Keeley, D.O.  
Respondent

DATED: August 15, 2017



Nicholas C. Harbist  
Attorney for Respondent

DATED: 8/14/17

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BEFORE THE STATE BOARD OF OSTEOPATHIC MEDICINE

Commonwealth of Pennsylvania  
Bureau of Professional and  
Occupational Affairs

File No.: 17-53-06442

v.

Brian Charles Keeley, D.O.,  
Respondent

Docket No: -53-17

ORDER


AND NOW, this 4<sup>th</sup> day of Oct. 2017, the STATE BOARD OF OSTEOPATHIC MEDICINE ("Board") adopts and approves the foregoing Consent Agreement and incorporates the terms of paragraph 5, which shall constitute the Board's Order and is now issued in resolution of this matter.

This Order shall take effect immediately.

BUREAU OF PROFESSIONAL AND  
OCCUPATIONAL AFFAIRS

BY ORDER:  
STATE BOARD OF OSTEOPATHIC  
MEDICINE

  
Ian J. Harlow  
Commissioner

  
Frank M. Tursi, DO  
Chairman

For the Commonwealth:

Mark R. Zogby, Esquire  
2601 North Third Street  
P. O. Box 69521  
Harrisburg, PA 17106-9521

For the Respondent:

Nicholas C. Harbist, Esquire  
Blank Rome, LLP  
301 Carnegie Center, 3rd Floor  
Princeton, New Jersey 08540

Date of mailing:

October 5, 2017