

BEFORE THE DELAWARE SECRETARY OF STATE

**DEPARTMENT OF STATE
OFFICE OF CONTROLLED SUBSTANCES**

Statutory Authority: 16 Del. C. § 4735

DAVID KALKSTEIN)	Case No.: 38-14-15
Controlled Substance)	
Registration No.: MD3396)	

FINAL ORDER

WHEREAS, the Secretary of the Delaware Department of State is in receipt of the attached Consent Agreement filed by the State of Delaware and David Kalkstein, M.D. regarding Dr. Kalkstein's controlled substance registration, number MD3396; and

WHEREAS, the Controlled Substance Advisory Committee reviewed and recommends approval of said Consent Agreement;

WHEREAS, the Secretary finds this Consent Agreement provides an acceptable resolution to the State's complaint filed pursuant to 16 Del. C. § 4735; and

WHEREAS, the Secretary finds that the agreed upon discipline in the Consent Agreement, a fine and Letter of Reprimand, is in the interest of public protection;

NOW, THEREFORE, IT IS ORDERED this 14 day of October, 2015 that the Consent Agreement is adopted as a Final Order of the Secretary.

SECRETARY OF STATE



Jeffrey W. Bullock



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October 12, 2015

David Kalkstein, M.D.



RE: Letter of Reprimand
Case No. 38-14-15
CSR No.: MD3396

Dear Dr. Kalkstein:

Pursuant to the Final Order approving the Consent Agreement in the above-referenced matter, you are found to have violated 16 *Del. C.* § 4735(b)(1) by failing to maintain effective controls against diversion of controlled substances. Specifically, when you closed your office in Wilmington, Delaware, you failed to remove a number of items, including controlled substance patient medications and prescription pads. You are therefore issued this Letter of Reprimand, which will be retained in your permanent file.

Sincerely,

Jeffrey W. Bullock
Delaware Secretary of State

cc: Zoe Plerhoples, Deputy Attorney General

**BEFORE THE DELAWARE SECRETARY OF STATE AND/OR
THE CONTROLLED SUBSTANCE ADVISORY COMMITTEE**

IN RE: DAVID KALKSTEIN

)

) **Case No.: 38-14-15**

REGISTRATION NO.: MD3396

)

CONSENT AGREEMENT

A written Complaint was filed with the Delaware Secretary of State and/or the Controlled Substance Advisory Committee ("Secretary") alleging that David Kalkstein ("Respondent") engaged in conduct that constituted grounds for discipline pursuant to Delaware's *Uniform Controlled Substances Act*. (16 Del.C. Ch. 47)

The State of Delaware and Respondent submit this Consent Agreement for approval by the Secretary as a means of resolving the pending administrative prosecution against Respondent.

IT IS UNDERSTOOD AND AGREED THAT:

1. Respondent is a medical doctor in the State of Delaware. His license, number C1-0005516, was issued January 5, 1999, and expires March 31, 2017. His license is currently active.
2. Respondent has a controlled substances registration (CSR), number MD3396. His CSR license was issued April 27, 1999, and is active.
3. Up until April of 2015, Respondent maintained a psychiatry practice at the Concord Plaza office complex ("Concord Plaza") located at 3411 Silverside Road, Suite 102 Wilmington Delaware 19810. Concord Plaza is managed by BPG Real Estate Services ("BPG").
4. Respondent terminated his lease with BPG effective March 31, 2015, and made a last visit to the office on February 6, 2015. After his last visit to that office, his office manager

for the last fifteen years assured him that everything had been removed from the office at Concord Plaza and taken to his Sussex County office. Respondent personally removed or oversaw the removal of most of the items from his office, but not all of them.

5. On or around April 1, 2015, BPG contacted the Division of Professional Regulation ("DPR") stating that numerous patient records, medications and prescription pads remained in the office. BPG had scheduled workers to clean out the office and throw away any remaining property on that date.

6. An investigator from DPR responded to the location to take possession of the above-referenced items.

7. An inventory of the items left in the property revealed that Respondent had left multiple patient intake forms and financial information, multiple sample packs of non-controlled prescriptive medications, three vials of controlled substance patient medications, and 560 prescription pads in the office. Eleven prescription pads contained the DEA number of an employee of the practice but none contained Respondent's DEA number.

8. At all times relevant, Respondent possessed a key to the property and had the ability to enter the property.

9. Respondent violated 16 *Del. C.* § 4735(b)(1) by failing to maintain effective controls against diversion of controlled substances.

10. Respondent admits that the facts set forth in paragraphs 1 through 9 above are true and accurate.

11. Respondent and State respectfully submit to the Secretary that the appropriate disciplinary sanctions for Respondent's conduct should be as follows:

- a. Respondent shall be issued a letter of reprimand;

- b. Respondent shall pay a fine of one thousand dollars (\$1,000.00) payable to the State of Delaware and mailed to the Division of Professional Regulation, The Controlled Substance Advisory Committee, Cannon Building, Suite 203, 861 Silver Lake Boulevard, Dover, Delaware 19904 within one hundred and eighty (180) days of the final order of the Secretary; and
- c. Within 90 days of this Consent Agreement being adopted as a final order of the Secretary, Respondent shall complete a total of six (6) continuing education credits in record-keeping and patient privacy. These credits shall be in addition to any continuing education credits required for re-certification.

12. The parties to this Consent Agreement are the State of Delaware and Respondent. The parties agree and acknowledge that nothing contained in this Consent Agreement shall affect any rights or interests of any person or entity not a party to this Agreement.

13. Respondent acknowledges that he is waiving his rights under 16 *Del. C. Ch. 47* and 29 *Del. C. Ch. 101* to a hearing before the Secretary prior to the imposition of disciplinary sanctions.

14. Respondent hereby acknowledges and agrees that he has carefully read and understands this Consent Agreement, and is entering into this Consent Agreement freely, knowingly, voluntarily, and after having received or having been afforded the opportunity to receive the advice of counsel.

15. Respondent acknowledges that this Consent Agreement is a public record within the meaning of 29 *Del. C.* § 10002 and will be available for public inspection and copying as provided for by 29 *Del. C.* § 10003.

16. The parties acknowledge and agree that this Consent Agreement is subject to approval by the Secretary.

17. The parties acknowledge and agree that if the Secretary does not accept this Consent Agreement, it shall have no force or effect, except as follows:

- a. Respondent, nor anyone on his behalf, will in any way or in any forum challenge the ability of the Secretary, the Controlled Substance Advisory Committee or any of its members to conduct an evidentiary hearing relating to the allegations in the subject Complaint;
- b. The Consent Agreement, or conduct or statements made in negotiating the Consent Agreement, will be inadmissible at any administrative, civil or criminal legal proceeding; and
- c. No provision contained in the Agreement shall constitute or have the effect of an admission by Respondent as to any fact alleged in the Complaint in this matter or in this Agreement.


18. If the Secretary accepts the Consent Agreement and enters it as an Order, the Consent Agreement shall be admissible as evidence at any future proceedings before the Secretary and/or the Controlled Substance Advisory Committee.

19. Respondent acknowledges and agrees that the Secretary will report this Consent Agreement to the licensing authority of any other state in which he is licensed to practice.


20. The parties acknowledge and agree that this Consent Agreement, along with any

exhibits, addendums, or amendments hereto, encompasses the entire agreement of the parties and supersedes all previous understandings and agreements between the parties, whether oral or written. There are no other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever concerning this agreement.

21. This Consent Agreement shall be effective upon acceptance by the Secretary and entry of the Secretary's Order.


David Kalkstein
Respondent

Dated: 9/11/15


Zoe Plerhoples (I.D. No. 5415)
Deputy Attorney General

Dated: 9/17/15