

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

In the Matter of

DAVID ROBERT GENDERNALIK, M. D.  
License No. 43-01-033160,  
Respondent.

File No. 43-18-152385

CONSENT ORDER

On June 6, 2019, the Department of Licensing and Regulatory Affairs executed an Administrative Complaint charging Respondent with violating the Public Health Code, MCL 333.1101 *et seq.*

Respondent has admitted that the facts alleged in the Complaint are true and constitute violation(s) of the Public Health Code. The Michigan Board of Medicine's Disciplinary Subcommittee (DSC) has reviewed this Consent Order and Stipulation and agrees that the public interest is best served by resolution of the outstanding Complaint.

Therefore, IT IS FOUND that the facts alleged in the Complaint are true and constitute violation(s) of MCL 333.16221(a) and (b)(i), and (b)(vi).

Accordingly, IT IS ORDERED that for the cited violation(s) of the Public Health Code, Respondent is placed on PROBATION for a minimum of one (1) year and not to exceed two (2) years, commencing on the effective date of this Order. The probationary period shall only be reduced while Respondent is employed as a physician. The terms of probation shall be as follows:

1. CONTINUING EDUCATION: Respondent shall successfully complete and submit satisfactory evidence of completing a minimum of 32 hours of continuing education (CE) acceptable to the Board in the area of Elevating Civility and Communication in Health Care.

This CE **shall not** apply in computing Respondent's current continuing education requirements for license renewal.

Respondent shall seek and obtain pre-approval of the CE from the Board Chairperson, or their designee.

Respondent shall send requests for pre-approval and proof of the successful completion to the Department as set forth below.

The timely filing of all information relating to this Order shall be Respondent's responsibility, and failure to file the required information within the time limitations provided shall be deemed a violation of this Order.

2. MEETING WITH BOARD APPROVED REVIEWER:

Within 30 days of the effective date of this Order, Respondent shall submit to the Department written correspondence requesting approval of a proposed physician reviewer from a Board approved monitoring organization who shall review Respondent's professional practice and records and provide quarterly reports to the Department focusing Respondent's practice and documentation. The request shall include, at a minimum, a current curriculum vitae or resume, the individual's name, address, telephone number, and monitoring organization affiliation, if applicable. Respondent shall provide a copy of this Order and the Administrative Complaint dated June 6, 2019 to the proposed reviewer before requesting approval.

The proposed physician reviewer may review Respondent's files and practices without needing to perform an in-person worksite review of Respondent's

workplace.

**Respondent shall direct any communications that are required by the terms of this Order to BPL-Monitoring@michigan.gov or by mail, to the Department of Licensing and Regulatory Affairs, Enforcement Division, Compliance Section, P.O. Box 30670, Lansing, MI 48909.**

Once the physician reviewer has been identified and approved, Respondent shall then be responsible for scheduling the time and place of the meetings with the physician reviewer. Respondent shall meet quarterly with the physician reviewer to review Respondent's professional practice and records. The review shall focus on Respondent's practice and documentation. The initial meeting shall occur at the end of the third month of probation, and subsequent meetings shall occur every third month thereafter until the period of probation ends. The physician reviewer shall submit reports to the Department as set forth below.

3. PHYSICIAN REVIEWER CHANGE: If the approved physician reviewer is unable to review Respondent's professional practice, Respondent shall report this information in writing to the Department within 15 days of such change and request approval of another physician reviewer. Respondent shall submit the request for the designated physician reviewer assignment to the Department at the address and in the same manner as set forth above.
4. RECORDS REVIEW: During the period of probation, the designated physician reviewer shall review 25 of Respondent's current patient's charts quarterly. The designated physician reviewer shall check the patient charts for appropriate documentation, including the presence or absence of the following: medical history and physical examination; diagnostic, therapeutic, and laboratory results; evaluation and consultations; treatment objectives; discussion of risks and benefits; treatments; medications (including date, type, dosage and quantity prescribed); instructions and agreements; and periodic reviews. This review may occur at the quarterly meetings set forth above.
5. DESIGNATED PHYSICIAN REVIEWER REPORTS:

Respondent's designated physician reviewer shall file reports with the Department, as further provided below, advising of Respondent's practice and records. If, at any time, Respondent fails to comply with minimal standards of acceptable and prevailing practice, or appears unable to practice with reasonable skill and safety, the designated physician reviewer shall immediately notify the Department.

Respondent is responsible to ensure that the designated physician reviewer submits quarterly reports.

6. REPORT OF NON-EMPLOYMENT: If, at any time during the period of probation, Respondent is not employed as a physician, Respondent shall file a report of non-employment with the Department. Respondent shall file this report within 15 days after becoming unemployed. Respondent shall continue to file reports of non-employment on a quarterly basis until Respondent returns to practice as a physician. If Respondent subsequently returns to practice as a physician, Respondent shall notify the Department of this fact within 15 days after returning to practice.
7. RESIDENCY AND PRACTICE OUTSIDE MICHIGAN: Periods of residency and practice outside Michigan shall not reduce the probationary period of this Order. Respondent shall report any change of residency or practice outside Michigan no more than 15 days after the change occurs. Compliance with this provision does not satisfy the requirements of MCL 333.16192(1) and MCL. 333.16221(g) regarding Respondent's duty to report name or mailing address changes to the Department.
8. REPORTING PROCEDURE: Unless requiring immediate notification as indicated above, all reports required herein shall be filed on a quarterly basis, the first report to be filed at the end of the third month of probation, and subsequent reports to be filed every three months thereafter until Respondent is discharged from probation. All reports must be submitted on a form approved by the Department.

Respondent authorizes the Department or its authorized representative to periodically contact the



reviewing individual or agency to inquire of Respondent's progress.

**Respondent shall direct any communications that are required by the terms of this Order to BPL-Monitoring@michigan.gov or by mail, to the Department of Licensing and Regulatory Affairs, Enforcement Division, Compliance Section, P.O. Box 30670, Lansing, MI 48909.**

The timely filing of all information relating to this Order shall be Respondent's responsibility, and failure to file the required information within the time limitations herein provided shall be deemed a violation of an order of the Disciplinary Subcommittee.

9. COMPLIANCE WITH THE PUBLIC HEALTH CODE: Respondent shall comply with all applicable provisions of the Public Health Code and rules promulgated thereunder.
10. COSTS: Respondent shall be solely responsible for payment of all costs incurred in complying with the terms of this Order.

Respondent shall be automatically discharged from probation after one (1) year, upon receipt of satisfactory evidence of the successful completion of the probation terms as set forth above, PROVIDED compliance occurs within the maximum two (2) year period, Respondent has paid the fine as set forth below, has complied with the terms of this Order and has not violated the Public Health Code.

IT IS FURTHER ORDERED that for the cited violation(s) of the Public Health Code, Respondent is FINED \$4,000.00 to be paid to the State of Michigan within 120 days of the effective date of this Order. Respondent shall submit payment to the **Department of Licensing and Regulatory Affairs, Enforcement Division, Compliance Section, P.O. Box 30189, Lansing, MI 48909.** The fine shall be paid by

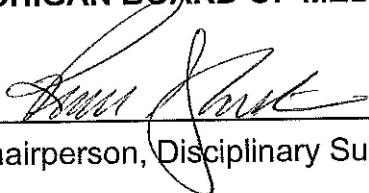
check or money order made payable to the State of Michigan, and the check or money order shall clearly display file number **43-18-152385**.

IT IS FURTHER ORDERED that if Respondent fails to comply with the terms and conditions of this Order, Respondent's license shall be automatically suspended for a minimum of one day. If, within six months of the suspension of the license, Respondent complies with the terms of this Order, the license shall be automatically reinstated.

IT IS FURTHER ORDERED that if Respondent's license remains suspended for more than six months, Respondent must apply for reinstatement of the license. If Respondent applies for reinstatement of the license, application for reinstatement shall be in accordance with sections MCL 333.16245 and 333.16247.

IT IS FURTHER ORDERED that this Order shall be effective 30 days from the date signed by the DSC, as set forth below.

**MICHIGAN BOARD OF MEDICINE**

By:   
Chairperson, Disciplinary Subcommittee

Dated: 1-15-2020

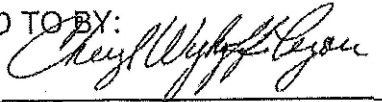
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## STIPULATION

1. The facts alleged in the Complaint are true and constitute violation(s) of MCL 333.16221(a) and (b)(i), and (b)(vi).
2. Respondent understands and intends that by signing this Stipulation Respondent is waiving the right, pursuant to the Public Health Code, the rules promulgated thereunder, and the Administrative Procedures Act, 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 Respondent is waiving the right to appear with an attorney and such witnesses as Respondent may desire to present a defense to the charges.
3. This matter is a public record required to be published and made available to the public pursuant to the Michigan Freedom of Information Act, MCL 15.231 *et seq.*, and this action will be reported to the National Practitioner Data Bank and any other entity as required by state or federal law.
4. This Order is approved as to form and substance by Respondent and the Department and may be entered as the final order of the DSC in this matter.
5. Mohammed Arsiwala, M.D., Board chairperson who supports this proposal, and the Department's representative are free to discuss this matter with the DSC and recommend acceptance of the resolution set forth in this Order.

6. This proposal is conditioned upon acceptance by the DSC. Respondent and the Department expressly reserve the right to further proceedings without prejudice should this Order be rejected.

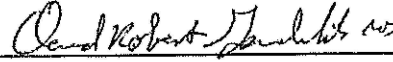
AGREED TO BY:



Cheryl Wykoff Pezon, Director  
Bureau of Professional Licensing

Dated: 09/10/19

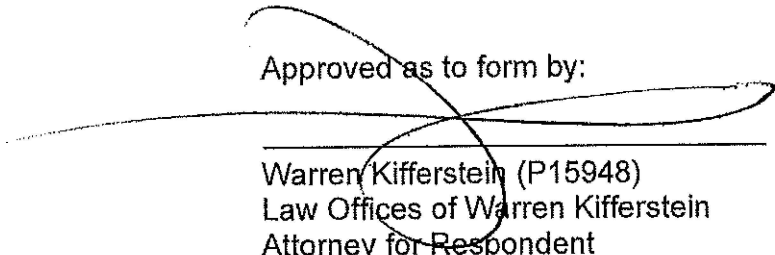
AGREED TO BY:



David Robert Gendernalik, M.D.  
Respondent

Dated: 9/7/2019

Approved as to form by:



Warren Kifferstein (P15948)  
Law Offices of Warren Kifferstein  
Attorney for Respondent

Dated: 9/7/19

CW

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
BUREAU OF PROFESSIONAL LICENSING  
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In the Matter of

DAVID ROBERT GENDERNAIK, M.D.  
License No. 43-01-033160,  
Respondent.

File No. 43-18-152385

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 Medicine 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 currently licensed to practice as a medical doctor in the state of Michigan and holds a controlled substance license.
3. At all relevant times, Easterseals Michigan (facility) in Pontiac, Michigan, employed Respondent as an adult psychiatrist.

4. On November 21, 2017, Respondent began treating patient D.S. (initials are used to protect individuals' identities) for Attention Deficit Hyperactivity Disorder (ADHD). Respondent treated patient D.S. with a combination of therapy and prescribing her 10 milligrams of Adderall twice a day.

5. On July 9, 2018, patient D.S. presented to Respondent's office. Respondent informed patient D.S. he would no longer prescribe her Adderall. Respondent indicated he had previously informed patient D.S. he would no longer prescribe her Adderall, which patient D.S. denied. Patient D.S. told Respondent she would not leave Respondent's office until he refilled her prescription for Adderall and allowed her to wean off the drug. Facility staff, including J.F., arrived to Respondent's office in an effort to diffuse the situation. J.F. suggested Respondent write patient D.S. a final month's prescription of Adderall while providing clear medical instructions for gradually eliminating her usage of Adderall. Respondent became angry, lunged out of his chair, walked increasingly closer to J.F., and began to mock J.F. as he stood face to face with her. Respondent began swinging his arms around in an aggressive manner. As patient D.S. and other facility staff left his office, J.F. attempted to talk to Respondent. However, Respondent moved closer to J.F. until she was standing in his office doorway, at which point Respondent chest bumped her.

6. On July 10, 2018, the facility terminated Respondent's employment due to the July 9, 2018 altercation and subsequently notified the Department.

### 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).

### COUNT III

Respondent's conduct, as set forth above, demonstrates Respondent's lack of a "propensity . . . to serve the public in the licensed area in a fair, honest, and open manner," MCL 338.41(1), and accordingly a lack of "good moral character," in violation of MCL 333.16221(b)(vi).

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: June 6, 2019



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Cheryl Wykoff Pezon, Director  
Bureau of Professional Licensing

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