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

Feb 15 10 52 AM '98

Commonwealth of Pennsylvania,	:	
Bureau of Professional and	:	
Occupational Affairs	:	
	:	Docket No. 0539-53-98
vs.	:	File No. 98-53-03119
	:	
Joseph M. Garbely, D.O.,	:	
Respondent	:	

CONSENT AGREEMENT AND ORDER

The Commonwealth and Respondent stipulate as follows in settlement of the above-captioned case.

1. This matter is before the State Board of Osteopathic Medicine pursuant to the Osteopathic Medical Practice Act, Act of October 5, 1978, P.L. 1109, No. 261, as amended ("Act"), 63 P.S. §271.1 et seq.

2. At all relevant and material times, Joseph M. Garbely, D.O. ("Respondent") held a license to practice osteopathic medicine in the Commonwealth of Pennsylvania, License No. OS-007583-L.

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

a. Respondent's license is current through October 31, 2000 and may be renewed thereafter upon the filing of

the appropriate documentation and payment of the necessary fees.

b. Respondent's last known address on file with the Board is 1235 Old York Road, Suite 113, Abington, PA 19001.

c. On or about June 26, 1998, at Abington Memorial Hospital [AMH] in Abington, Pennsylvania, Respondent withdrew a syringe of morphine from a patient's IV morphine bag and replaced the morphine with a syringe of saline solution.

d. Respondent later injected himself with the morphine he had withdrawn from the patient's IV morphine bag with the intent to commit suicide.

e. On two occasions recently prior to June 26, 1998, Respondent had withdrawn a syringe of morphine from a discarded patient's IV morphine bag awaiting disposal and later injected himself with the syringe of morphine.

f. Respondent had abused oral controlled dangerous substances during the year preceding June 26, 1998.

g. On or about June 29, 1998, Respondent enrolled with the Physician's Health Program [PHP] of the Pennsylvania Medical Society and has been entered in the

William J. Farley Center [Farley] for addiction treatment for psychological and physical evaluation and recommended treatment.

4. The actions of Respondent, described above, violated the Act at 63 P.S. §271.15(a)(5) in that Respondent is unable to practice osteopathic medicine and surgery with reasonable skill and safety to patients by reason of excessive use of controlled substances.

5. The parties consent to the issuance of the following Order in settlement of this matter:

a. Respondent violated the Act at 63 P.S. §271.15(a)(5) in that Respondent is unable to practice osteopathic medicine and surgery with reasonable skill and safety to patients by reason of excessive use of controlled substances.

b. Respondent's license, No. OS-007583-L, is **SUSPENDED** for a period of five (5) years.

c. Respondent shall immediately, upon adoption of this Consent Agreement and Order, cease and desist from the practice of the profession, and shall not represent himself as a board licensee in any matter during the active period of suspension;

d. Respondent shall, within ten (10) days of adoption of this Consent Agreement and Order, surrender Respondent's wall certificate, registration certificate and wallet card by mailing them or delivering them in person to:

Prosecuting Attorney  
116 Pine Street  
P.O. Box 2649  
Harrisburg, PA 17105-2649

e. Following a period of twelve (12) months beginning September 1, 1998, the remaining period of the Suspension is to be immediately **STAYED** in favor of **PROBATION** subject to the following terms and conditions:

GENERAL

(1) 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 of the profession in this Commonwealth or any other state or jurisdiction in which Respondent holds a license to practice a health care profession. Provided, however, summary

traffic violations shall not constitute a violation of this Order;

(2) Respondent shall at all times cooperate with the Bureau of Professional and Occupational Affairs ("Bureau"), any of its agents or employees and the Professional Health Monitoring Programs ("PHMP") 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, PHMP or any of its agents or employees;

(3) Respondent's failure to fully cooperate with and successfully complete the PHMP program shall be deemed a violation of this Consent Agreement and Order;

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

(5) Respondent may not be absent from the Commonwealth of Pennsylvania for any period exceeding twenty (20) days unless Respondent seeks and receives prior written permission from the Bureau or the PHMP subject to any additional terms and conditions required by the Bureau or the PHMP;

(6) Respondent shall notify the PHMP, in writing, within twenty (20) days of the filing of any criminal charges, the initiation of any legal action pertaining to the practice of a health care profession, the initiation, action, restriction or limitation relating to Respondent by the professional licensing authority of any state or jurisdiction or the Drug Enforcement Agency of the U. S. Department of Justice, or any investigation, action, restriction or limitation relating to Respondent's privileges to practice a health care profession at any health care facility;

(7) Respondent shall notify the PHMP by telephone within 72 hours and in writing

within ten (10) days of the change of his home address, phone number, place of employment and/or practice at a health care facility;

EVALUATION - TREATMENT

(8) Within thirty (30) days prior to the effective date of the PROBATION, Respondent shall obtain and forward to the Board and its representative, Unit II, PHMP, P.O. Box 10749, Harrisburg, PA 17105-0749, (717) 783-4857, a PHMP-approved assessment/treatment evaluation assessing Respondent's fitness to actively practice the profession. If the assessment determines that Respondent is not fit to practice, the Respondent shall immediately cease practicing the profession and remain inactive until a PHMP-approved provider and PHMP case manager determines that Respondent is fit to resume practice with reasonable skill and safety to patients and the Board issues an Order re-activating Respondent's license;

(9) Respondent shall provide the PHMP-approved provider with a copy of any prior evaluations and counseling records and with a copy of this Agreement and Order;

(10) Respondent shall submit to the PHMP satisfactory evidence, in writing, that Respondent is fit to safely practice as a health care professional, along with a copy of the PHMP-approved provider's assessment;

(11) If the assessment includes a recommendation that Respondent obtain treatment, Respondent must fully comply with those recommendations as part of these probationary requirements;

(12) Respondent shall ensure that written reports from the PHMP-approved provider regarding a treatment program shall be submitted to the PHMP upon request or at least every sixty (60) days after issuance of this Order. The reports shall contain, at least, the following information:



(a) Verification that the provider has received a copy of this Consent Agreement and Order and understands the conditions of this probation;

(b) A treatment plan, if developed;

(c) Progress reports, including information regarding compliance with the treatment plan;

(d) Physical evaluations, if applicable;

(e) The results of any testing;

(f) Modifications in treatment plan, if applicable;

(g) Administration or prescription of any drugs to Respondent;

(h) Discharge summary and continuing care plan at discharge;

(13) Respondent shall identify a primary care physician who shall send written notification to the PHMP case manager certifying Respondent's health status as requested;

SUPPORT GROUP ATTENDANCE

(14) Respondent shall attend and actively participate in any support group programs recommended by the provider or the PHMP case manager at the frequency recommended by the provider, but no less than twice a week.

(15) Respondent shall provide written verification of attendance to the PHMP on at least a monthly basis or as otherwise directed by the PHMP;

ABSTENTION

(16) Respondent shall completely abstain from the use of controlled substances, mood altering drugs or drugs of abuse including alcohol in any form except under the following conditions:

(a) Respondent is a bona fide patient of a licensed health care practitioner who is aware of Respondent's participation in the PHMP;

(b) Such medications are lawfully prescribed by Respondent's treating

practitioner and approved by the PHMP case manager; and

(c) Respondent provides the PHMP, within seventy-two (72) hours of receiving the medication, the name of the practitioner prescribing the drug, the illness or medical condition diagnosed, the type, strength, amount and dosage of the medication and a signed statement consenting to the release of the medical information from the prescribing practitioner to the PHMP or its designated representative for the purpose of verification;

**MONITORED/SUPERVISED PRACTICE**

(17) Respondent may not work in any practice setting without direct monitoring/supervision;

(18) Respondent shall provide the PHMP, in writing, within 72 hours notification of the following:

(a) Name and address of the monitor/supervisor responsible for Respondent's practice;

(b) The name(s) and address(es) of the place(s) at which Respondent will practice the profession and a description of Respondent's duties and responsibilities at such places of practice;

(c) Any restrictions on Respondent's practice;

(19) Respondent shall supply any monitor/supervisor or any current or prospective employer with a copy of this Consent Agreement and Order;

(20) Respondent shall have his monitor/supervisor submit to the PHMP the following information in writing:

(a) Verification that the monitor/supervisor has received a copy of this Consent Agreement and Order and

understands the conditions of this probation;

(b) An evaluation of Respondent's work performance on a 60-day or more frequent basis as requested by the Bureau or PHMP; and

(c) Any suspected violation by Respondent of this probation;

**BODY FLUID TOXICOLOGY SCREENING**

(21) Respondent shall submit, if requested, to unannounced and observed body fluid toxicology screens by the PHMP for the detection of substances prohibited under this Order within twenty-four (24) hours after a request is made. A positive result on a body fluid toxicology screen shall constitute an irrefutable violation of this Order unless Respondent has complied with the provisions of this Order pertaining to the use of drugs. Failure to provide a specimen when requested will be considered a violation of this Agreement;

(22) Respondent shall avoid all foods which contain poppy seeds. Ingestion of poppy seeds will not be accepted as a valid explanation for a positive screen;

REPORTING/RELEASES

(23) Respondent, his providers, monitor(s)/supervisor(s), employers or other persons shall cause any reports, data or other information required to be filed with the PHMP or the Bureau under this Order, unless otherwise directed, with:

PHMP  
Unit II, DMU  
Box 10749  
Harrisburg, PA 17105-0749

(24) Respondent consents to the release by the Bureau or PHMP of any information or data produced as a result of this probation to any treatment provider, employer or monitor/supervisor;

(25) Respondent shall sign waivers and/or release forms upon request of the Bureau or PHMP or its designated representative for any

and all records, inclusive of medical or other health related records, pertaining to treatment rendered to Respondent;

(26) Respondent shall execute any waivers or consent forms required to allow the Bureau or PHMP to obtain access to any agreements or any other records generated through the Bureau or PHMP or its agents;

#### COSTS

(27) Respondent shall bear the responsibility of all costs incurred by Respondent in complying with the terms of this Order, including psychiatric or psychotherapy treatments, payment for Bureau or PHMP toxicology screenings prior to each screen being conducted and production of treatment or other records;

#### BUREAU/PHMP EVALUATIONS

(28) Upon request of the Bureau or PHMP, the Respondent shall submit to evaluations, physical examination or interviews by a provider approved by the Bureau or PHMP, and

by Bureau or PHMP representatives. Failure of Respondent to submit to such examination or interview when directed shall constitute a violation of this Order.

VIOLATION OF THIS ORDER

f. 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 license to practice osteopathic medicine in the Commonwealth of Pennsylvania as follows:

(1) The prosecuting attorney for the Commonwealth shall file with the Board a Petition which indicates that Respondent has violated any terms or conditions of this Consent Agreement and Order;

(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 license;

(3) Respondent shall be notified of the Board's Preliminary Order 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;

(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 violation of probation, in which Respondent may seek relief from the Preliminary Order activating the suspension. Respondent shall serve the prosecuting attorney for the Commonwealth with a copy of the answer and all subsequent filings in this matter;

(5) 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;

(6) 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;

(7) The facts and averments in this Consent Agreement and Order shall be deemed admitted and uncontested at this hearing;

(8) 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;

(9) 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;

g. 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 practicing the profession. Continued failure by Respondent to comply with the unaffected terms and conditions of probation shall result in 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. Nothing in this Order shall preclude the Prosecuting Attorney 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;

j. Upon successful completion of probation, Respondent may petition the Board to reinstate Respondent's license to unrestricted, non-probationary status upon an affirmative showing that Respondent has complied with all terms and conditions and that Respondent's resumption of unmonitored practice does not present a threat to the public health and safety;

k. This case shall be deemed settled and discontinued upon Board adoption of the Consent Agreement;

l. This Order shall take effect immediately upon Board adoption of the Consent Agreement.

6. Respondent's execution of this Consent Agreement shall constitute a consent for release of all medical health related and psychological records pertaining to Respondent to the Prosecuting Attorney, the Bureau and the PHMP.

7. Respondent's execution of this Consent Agreement shall also constitute a release for any employment, peer review or review records pertaining to Respondent's practice of the profession to the Prosecuting Attorney, the Bureau and the PHMP.

8. Respondent acknowledges receipt of an Order to Show Cause in this matter. Respondent knowingly and voluntarily waives the

right to an administrative hearing in this matter, and to the following rights related to that hearing: to be represented by counsel at the hearing; the right 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.

9. 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.

10. This Consent Agreement is between the Commonwealth and Respondent only. Except as otherwise noted, this Agreement is to have no legal effect unless and until the Office of General Counsel approves the contents as to form and legality and the Board issues the stipulated Order.

11. 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. The participants waive any objection to a Board member's consideration of this Agreement in the event that the member participated in a prior decision to prosecute this matter. This paragraph is binding on the participants even if the Board does not approve this Consent Agreement.

12. This agreement contains the whole agreement between the participants. There are no other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever concerning this agreement.

13. The terms of the Board Order adopting this agreement will be reported to the National Practitioner Data Bank.

14. Respondent verifies that the facts and statements set forth in this Agreement are true and correct to the best of Respondent's knowledge, information and belief. Respondent understands that statements in this Agreement are made subject to

the criminal penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

B. A. Cero

Benjamin A. Cero  
Prosecuting Attorney  
Bureau of Professional and  
Occupational Affairs

DATED: 1/11/99

Joseph M. Carbely

Joseph M. Carbely, D.O.  
Respondent

DATED: 1/6/99

John Rodgers Carroll

John Rodgers Carroll, Esquire  
Counsel for Respondent

DATED: 1-5-99

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ORDER

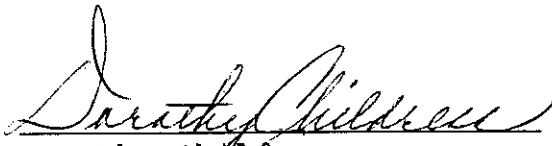
AND NOW, this 10 day of February, 1999, the State Board of Osteopathic Medicine adopts and approves the foregoing Consent Agreement and incorporates the terms of paragraph 5, which shall constitute the Board's Order and is now issued in resolution of this matter.


This Order shall take effect immediately.

BY ORDER:

BUREAU OF PROFESSIONAL AND  
OCCUPATIONAL AFFAIRS

STATE BOARD OF OSTEOPATHIC  
MEDICINE

  
Dorothy Childress  
Commissioner

  
Silvia M. Ferretti, D.O.  
Chairperson

Date of Mailing:

2/18/99

For the Commonwealth:

Benjamin A. Cero, Esquire  
P. O. Box 2649  
Harrisburg, PA 17105-2649

For Respondent:

John Rodgers Carroll, Esquire  
400 Market Street, Suite 850  
Philadelphia, PA 19106

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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

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Docket No.

0873-53.02

File No. 02-53-03609

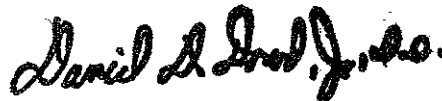
v.

Joseph M. Garbely, D.O.  
Respondent

ORDER REINSTATING LICENSE

AND NOW, this 16<sup>th</sup> day of July, 2002, upon consideration of the Respondent's Petition for early termination of his probation, the memorandum from the Physician's Health Program indicating that the Respondent has fulfilled the obligations pertaining to the PHMP monitoring program and expressing support for Respondent's request for early termination of his probation, and having heard no objection from the Commonwealth, the State Board of Osteopathic Medicine therefore **ORDERS** that the Respondent's license to practice medicine, license number OS-007583-L, will be **REINSTATED** to unrestricted, non-probationary status effective December 31, 2002.

BY ORDER:  
STATE BOARD OF OSTEOPATHIC MEDICINE



Daniel D. Dowd, Jr. D.O.,  
Chairman

Respondent's Attorney:

Ellen C. Brotman, Esquire  
601 Walnut Street  
Suite 1150  
Philadelphia, PA 19106

Prosecuting Attorney:

Benjamin A. Cero, Esquire  
116 Pine Street, P.O. Box 2649  
Harrisburg, PA 17105-2649

Case manager:

Case Manager  
Professional Health Monitoring Programs  
124 Pine Street, 5<sup>th</sup> Floor

Board Counsel:

Amy L. Nelson, Counsel  
116 Pine Street, P.O. Box 2649  
Harrisburg, PA 17105-2649

Date of Mailing:

*July 16, 2002*