

**STATE OF MAINE
BOARD OF OSTEOPATHIC LICENSURE**

IN RE: JAMES KIRSH, D.O. CR 12 24)))))	CONSENT AGREEMENT AND BOARD ORDER
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The Board of Osteopathic Licensure (hereafter “the Board”), James Kirsh, D.O. (hereafter “Dr. Kirsh”) and the Office of the Attorney General enter into the following Consent Agreement in order to resolve violations of Board statutes and rules. This Consent Agreement is entered into pursuant to 32 M.R.S § 2591-A(1)(A) and 10 M.R.S. § 8003(5).

I. FACTS

1. Dr. Kirsh is a physician who is licensed with the Board. Dr. Kirsh has been licensed with the Board since June 1985, license no. 1129.
2. Sometime in January 2008, “A” became a patient of Dr. Kirsh’s practice, and was first seen by Dr. Kirsh as a patient in February 2008.
3. Subsequent to “A” becoming Dr. Kirsh’s patient, Dr. Kirsh and “A” developed a close personal relationship, which included attending the same yoga classes together, spending substantial amounts of time together and engaging in what Dr. Kirsh describes as “self-revealing discussions,” about each other’s lives, including their relationships with their respective spouses.
4. Dr. Kirsh’s relationship with “A” became intimate, and from late Spring 2008 to April 2011, Dr. Kirsh and “A” engaged in a relationship of a sexual nature. During part of the time that Dr. Kirsh engaged in an intimate sexual relationship with “A”, he continued to treat “A” as a patient.

FINDINGS AND CONCLUSIONS

5. Dr. Kirsh acknowledges that the Board has sufficient evidence based on paragraphs one through five, above, to support findings which constitute grounds for discipline pursuant to the following statutes and/or rules:

- a. 32 M.R.S. § 2591-A(2)(H), violation of a rule of the Board, specifically Board Rule 02 383 ch. 10 §§ 1(3)(A) and (B), sexual misconduct; and
- b. 32 M.R.S. § 2951-A(2)(F), unprofessional conduct.

SANCTIONS

Based on the foregoing findings and conclusions, the Board imposes the following disciplinary sanctions on James Kirsh, D.O., to which Dr. Kirsh agrees:

6. **Reprimand.**

The Board issues a reprimand to Dr. Kirsh for violation of 32 M.R.S. § 2591-A(2)(F) and (H), and Board Rules 02 383 ch. 10 §§ 1(3)(A) and (B) and ch. 16 § 2.

7. **Fine.**

Dr. Kirsh shall pay a fine in the amount of \$15,000.00, to be remitted within ninety (90) days of his execution of this Consent Agreement. Payment shall be made by shall be made by check or money order payable to the "Treasurer, State of Maine" and delivered to Susan E. Strout, Executive Secretary, Maine Board of Osteopathic Licensure, 142 State House Station, Augusta, Maine 04333-0142.

8. **Ethics and Boundaries Education.**

From October 31, 2012 to November 2, 2012, Dr. Kirsh attended a 22.75 hour continuing medical education course, "Maintaining Proper Boundaries," at the Center for Professional

Health at Vanderbilt University Medical Center (“VUMC”). Dr. Kirsh has provided to the Board copies of course materials. Upon completion of Dr. Kirsh’s presentation to the Board as outlined in paragraph 9, below, the Board shall decide whether Dr. Kirsh’s attendance at the VUMC course satisfies the ethics and boundaries education requirement. If the Board decides that the VUMC course is not satisfactory, Dr. Kirsh shall attend and successfully complete the ProBe course on Ethics and Boundaries or such other course as pre-approved by the Board. If an additional course is required, Dr. Kirsh shall provide proof of completion to the Board before December 31, 2013, unless Dr. Kirsh seeks and obtains from the Board an extension of time.

9. **Presentation to the Board.** At the earliest opportunity, Dr. Kirsh shall give a presentation to the Board on the topic of sexual boundaries to illustrate what he has learned and how in the future he will avoid sexual boundary violations.

10. **Further Sexual Boundaries Presentation.** Dr. Kirsh shall give a presentation on the topic of sexual boundary issues to medical students and/or members of the medical profession. The material for the presentation shall be pre-approved by the Board. This presentation shall occur before March 31, 2014.

II. COVENANTS

11. This Consent Agreement is a public record within the meaning of 1 M.R.S. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S. § 408.

12. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.

13. The Board and Dr. Kirsh agree that no further agency or legal action will be initiated against him by the Board regarding CR 12 24, except or unless he fails

to comply with the terms and conditions of this consent agreement.

14. The action taken by the Board in this Consent Agreement may be reported to the National Practitioner Data Bank ("NPDB").

I, JAMES KIRSH, D.O., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING I WAIVE CERTAIN RIGHTS INCLUDING THE RIGHT TO FURTHER HEARINGS OR APPEALS REGARDING THIS CONSENT AGREEMENT. KNOWING THIS, I SIGN THIS AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THE CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN, OR OTHERWISE. I ACKNOWLEDGE THAT I HAVE HAD THE OPPORTUNITY TO DISCUSS THE CONSENT AGREEMENT WITH LEGAL COUNSEL PRIOR TO SIGNING IT.


This document may be signed in multiple counterparts.

Dated: 02/27/2013



James Kirsh, D.O.

STATE OF MAINE
CUMBERLAND, SS.

Before me this 27 day of February, 2013, personally appeared James Kirsh, D.O., who after first being duly sworn, signed the foregoing Consent Agreement in my presence or affirmed that the signature above is his own.


~~Notary Public~~/Attorney at Law KENNETH W. LEHMAN
ME BAR #3283
My commission expires:

Dated: February 27, 2013


Kenneth W. Lehman, Esq.
Attorney for Dr. Kirsh

BOARD ORDER

IT IS HEREBY ORDERED by vote of the Maine Board of Osteopathic Licensure that James Kirsh's license to practice osteopathic medicine is subject to the terms and conditions of the Consent Agreement signed by Dr. Kirsh on February 27, 2013, which are incorporated by reference.

STATE OF MAINE
BOARD OF OSTEOPATHIC LICENSURE

Dated:

3/14/2013

JR DeKay 3/14/2013
Board (Vice) Chair

Approved by:

STATE OF MAINE, OFFICE OF
ATTORNEY GENERAL

Dated:

3-14-13

Carrie L. Carney
Carrie L. Carney
Assistant Attorney General