

Final Order No. DOH-08-2083-^S-MQA
FILED DATE - 9/19/08
Department of Health
By: Lillie M. Hancock
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF OSTEOPATHIC MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

Case No.: 2007-23818

License No.: OS 7725

MARK A. KABAT, D.O.

Respondent.

_____ /

FINAL ORDER

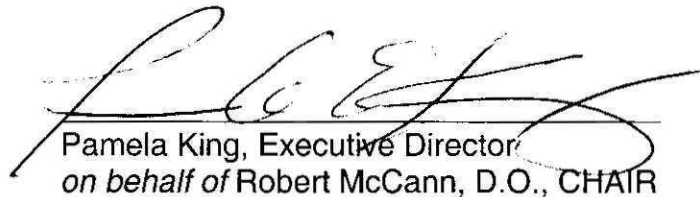
This matter appeared before the Board of Osteopathic Medicine at a duly-noticed public meeting on August 23, 2008, in Tampa, Florida, for consideration of a Settlement Agreement (attached hereto as Exhibit "A"). Petitioner was represented by Blake Hunter, Assistant General Counsel. Respondent was present with his counsel, Travis Godwin, Attorney at Law. Upon consideration of the Settlement Agreement, the documents submitted in support thereof, the arguments of the parties and otherwise being advised in the premises,

IT IS HEREBY ORDERED AND ADJUDGED that the Settlement Agreement be and hereby is approved and adopted in toto and incorporated by reference herein. Costs are assessed in the amount of **two thousand dollars (\$2,000.00)**, and payable within **thirty (30) days** of the filing date of this Final Order. Accordingly, the parties shall adhere to and abide by all the terms and conditions of the Settlement Agreement.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 18 day of September, 2008.

BOARD OF OSTEOPATHIC MEDICINE


Pamela King, Executive Director
on behalf of Robert McCann, D.O., CHAIR

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to **Mark Kabat, D.O.**, by sending same to his attorney of record, **Travis Godwin**, Attorney at Law, 401 E. Jackson Street, 27th Floor, Tampa, Florida 33602-5841; by interoffice mail to **Deborah B. Loucks**, Assistant Attorney General, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; **Blake Hunter**, Assistant General Counsel, Department of Health, 4052 Bald Cypress Way, Bin # C-65, Tallahassee, Florida 32399-3265 this 19 day of Sept, 2008.



Deputy Agency Clerk

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2007-23818

MARK A. KABAT, D.O.

Respondent.

_____ /

SETTLEMENT AGREEMENT

Mark A. Kabat, D.O., referred to as the "Respondent," and the Department of Health, referred to as "Department" stipulate and agree to the following Settlement Agreement and to the entry of a Final Order of the Board of Osteopathic Medicine, referred to as "Board," incorporating the Stipulated Facts and Stipulated Disposition in this matter.

Petitioner is a state agency charged with regulating the practice of osteopathic medicine pursuant to Section 20.43, Florida Statutes, and Chapter 456, Florida Statutes, and Chapter 459, Florida Statutes.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed osteopathic physician in the State of Florida having been issued license number OS 7725.
2. The Department charged Respondent with an Administrative Complaint that was filed and properly served upon Respondent with a violation of

Mark A. Kabat, D.O.: Case No 2007-23818

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Chapter 459, Florida Statutes, and the rules adopted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto as Exhibit A.

3. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint for purposes of these proceedings only.

STIPULATED CONCLUSIONS OF LAW

1. Respondent admits that, in his capacity as a licensed osteopathic physician, he is subject to the provisions of Chapters 456 and 459, Florida Statutes, and the jurisdiction of the Department and the Board.

2. Respondent admits that the facts alleged in the Administrative Complaint, if proven, would constitute a violation of Chapter 459, Florida Statutes, as alleged in the Administrative Complaint.

3. Respondent agrees that the Stipulated Disposition in this case is fair, appropriate and acceptable to Respondent.

STIPULATED DISPOSITION

1. **Reprimand** - The Board shall reprimand the license of Respondent.

2. **Fine** - The Board of Osteopathic Medicine shall impose an administrative fine of Five Thousand Dollars (\$5,000.00) against the license of Respondent, to be paid by Respondent to the Department of Health, Division of MQA/Compliance Mgmt. Unit, Post Office Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Osteopathic Medicine Compliance Officer, within thirty-days (30) from the date of filing of the Final Order accepting this Agreement. All

finer shall be paid by check or money order. The Board office does not have the authority to change the terms of payment of any fine imposed by the Board.

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE IS HIS/HER LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE FINE IS NOT PAID AS AGREED TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN 45 DAYS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE FINE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

3. **Reimbursement Of Costs** - Pursuant to Section 456.072, Florida Statutes, Respondent agrees to pay the Department for any administrative costs incurred in the investigation and preparation of this case. Such costs exclude the costs of obtaining supervision or monitoring of the practice, the cost of quality assurance reviews, and the Board's administrative cost directly associated with Respondent's probation, if any. The agreed upon amount of Department costs to be paid in this case includes but shall not exceed Two Thousand Dollars (\$2,000). Respondent will pay costs to the Department of Health, Division of MQA/Compliance Mgmt. Unit, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Osteopathic Medicine Compliance Officer within thirty-days (30)

from the date of filing of the Final Order in this cause. Any post-Board costs, such as the costs associated with probation, are not included in this agreement.

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE COSTS IS HIS/HER LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE COSTS ARE NOT PAID AS AGREED TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN 45 DAYS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE COSTS NOTED ABOVE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

4. **Continuing Medical Education** - Within one year of the date of the filing of a Final Order in this cause, Respondent shall attend five (5) hours of Continuing Education (CE) in Sexual Boundaries. Respondent shall first submit a written request to the Board for approval prior to performance of said continuing medical education course(s). Respondent shall submit documentation in the form of certified copies of the receipts, vouchers, certificates, or other papers, such as physician's recognition awards, documenting completion of this medical course within one (1) year of the date of filing of the Final Order in this matter. All such documentation shall be sent to the Board of Osteopathic Medicine, regardless of whether some or any of such documentation was provided previously during the

course of any audit or discussion with counsel for the Department. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board, said continuing medical education course(s) shall consist of a formal, live lecture format.

5. **Professional Resource Network (PRN)** - Respondent will be restricted from practicing osteopathic medicine in the State of Florida until he submits to an evaluation by a PRN approved evaluator, complies with PRN, and the Board of Osteopathic Medicine deems him safe to practice osteopathic medicine. PRN in its discretion may accept physician evaluations that have already been performed. If PRN requires Respondent to enter into a PRN contract, Respondent will enter into the contract and comply with the PRN requirements. Respondent shall execute a release for the PRN to authorize the PRN to release information and medical records (including psychiatric records) to the Board as needed to monitor the progress of Respondent in the PRN program. Respondent shall cause the director of PRN to report to the Board any problems that may occur with Respondent and any violations of Chapter 459, Florida Statutes, which occur within thirty (30) days of the occurrence of any problems or violations of the law. Violation of the PRN contract shall constitute a violation of the terms of the Final Order.

6. **Probation Language** - Effective on the date the Board of Osteopathic Medicine deems Respondent safe to practice osteopathic medicine in the State of Florida, Respondent's license to practice osteopathic medicine shall be

placed on probation for a period of five (5) years. The purpose of probation is not to prevent Respondent from practicing osteopathic medicine. Rather, probation is a supervised educational experience designed by the Board to make Respondent aware of certain obligations to Respondent's patients and the profession and to ensure Respondent's continued compliance with the high standards of the profession through interaction with another osteopathic physician in the appropriate field of expertise. The Board in its discretion may terminate the probation prior to its complete term. To this end, during the period of probation, Respondent shall comply with the following obligations and requirements:

(A) **Restrictions During Probation** - During the period of probation, Respondent's license shall be restricted as follows:

1. **Indirect Supervision** - Respondent shall practice only under the indirect supervision of a Board-approved osteopathic physician or allopathic physician, hereinafter referred to as the "monitor", whose responsibilities are set by the Board. Indirect supervision does not require that the monitor practice on the same premises as Respondent, however, the monitor shall practice within a reasonable geographic proximity to Respondent, which shall be within 20 miles unless otherwise provided by the Board and shall be readily available for consultation. The monitor shall be Board Certified in Respondent's specialty area unless otherwise provided by the Board. In this regard, Respondent shall allow the monitor access to

Respondent's medical records, calendar, patient logs or other documents necessary for the monitor to supervise Respondent as detailed below.

ii. **Required Supervision:**

a) If the terms of the Settlement Agreement include indirect monitoring of the licensee's practice, Respondent shall not practice osteopathic medicine without an approved monitor/supervisor, as specified by the Agreement, unless otherwise ordered by the Board.

b) The monitor/supervisor must be a licensee under Chapters 458 or 459, Florida Statutes, in good standing and without restriction or limitation on his license. In addition, the Board may reject any proposed monitor/supervisor on the basis that he has previously been subject to any disciplinary action against his medical license in this or any other jurisdiction, is currently under investigation, or is the subject of a pending disciplinary action. The monitor/supervisor must be actively engaged in the same or similar specialty area unless otherwise provided by the Board and be practicing within a reasonable distance of Respondent's practice, a distance of twenty (20) miles unless otherwise specifically provided for in the

Settlement Agreement. The Board may also reject any proposed monitor/supervisor for good cause shown.

iii. Mechanism For Approval Of Monitor/Supervisor:

a) **Temporary Approval** - The Board confers authority on the Chairman of the Board to temporarily approve Respondent's monitor/supervisor. To obtain this temporary approval, Respondent shall submit to the Chairman of the Board the name and curriculum vitae of the proposed monitor/supervisor at the time this agreement is considered by the Board. **Once a Final Order adopting the Agreement is filed, Respondent shall not practice osteopathic medicine without an approved monitor/supervisor. Temporary approval shall only remain in effect until the next meeting of the Board.**

b) **Formal Approval** - Respondent shall have the monitor/supervisor with Respondent at Respondent's first probation appearance before the Board. Prior to the consideration of the monitor/supervisor by the Board, Respondent shall provide to the monitor/supervisor a copy of the Administrative Complaint and Final Order in this case. Respondent shall submit a current curriculum vita and a description of current practice from the proposed.

monitor/supervisor to the Board office no later than fourteen (14) days before Respondent's first scheduled probation appearance. Respondent's monitor/supervisor shall also appear before the Board at such other times as directed by the Board. It shall be Respondent's responsibility to ensure the appearance of the monitor/supervisor as directed. Failure of the monitor/supervisor to appear as directed shall constitute a violation of the terms of this Settlement Agreement and shall subject Respondent to disciplinary action.

iv. Change In Monitor/Supervisor - In the event that Respondent's monitor/supervisor is unable or unwilling to fulfill the responsibilities of a monitor/supervisor as described above, Respondent shall immediately advise the Board of this fact. Respondent shall immediately submit to the Chairman of the Board the name of a temporary monitor/supervisor for consideration. Respondent shall not practice pending approval of this temporary monitor/supervisor by the Chairman of the Board. Furthermore, Respondent shall make arrangements with his temporary monitor/supervisor to appear before the Board at its next regularly scheduled meeting for consideration of the monitor/supervisor by the Board. Respondent shall only practice under the auspices of the temporary

monitor/supervisor (approved by the Chairman) until the next regularly scheduled meeting of the Board at which the issue of the Board's approval of Respondent's new monitor/supervisor shall be addressed.

v. **Responsibilities Of The Monitor/Supervisor** - The Monitor shall:

a) Review 25 percent of Respondent's active patient records at least once every quarter for the purpose of ascertaining that Respondent is examining and treating female patients and all minors (including male and female patients) under the age of eighteen (18) years-old in the presence of a Florida licensed health care provider. The Respondent must document in the medical record the name of the Florida licensed health care provider that was in the room during the examination and/or treatment of the female patient or a minor under the age of eighteen (18). The monitor shall go to Respondent's office once every quarter and shall review Respondent's calendar or patient log and shall select the records to be reviewed.

b) Submit reports on a quarterly, in affidavit form, which shall include:

- 1) A brief statement of why Respondent is on probation;
 - 2) A description of Respondent's practice (type and composition);
 - 3) A statement addressing Respondent's compliance with the terms of probation;
 - 4) A brief description of the monitor's relationship with Respondent;
 - 5) A statement advising the Board of any problems which have arisen; and
 - 6) A summary of the dates the monitor went to Respondent's office, the number of records reviewed, and the overall quality of the records reviewed, and the dates Respondent contacted the monitor pursuant to subsection b), 3), above.
- c) Report immediately to the Board any violations by Respondent of Chapters 456 or 459, Florida Statutes, and the rules promulgated thereto.
- d) Respondent's monitor shall appear before the Board at the first meeting of said Board following commencement of the probation, and at such other times as

directed by the Board. It shall be Respondent's responsibility to ensure the appearance of Respondent's monitor to appear as requested or directed. If the approved monitor fails to appear as requested or directed by the Board, **Respondent shall immediately cease practicing osteopathic medicine until such time as the approved monitor or alternate monitor appears before the Board.**

vi. **Reports From Respondent** - Respondent shall submit quarterly reports, in affidavit form, the contents of which may be further specified by the Board, but which shall include:

- a) A brief statement of why Respondent is on probation;
- b) A description of practice location;
- c) A description of current practice (type and composition);
- d) A brief statement of compliance with probationary terms;
- e) A description of the relationship with monitoring osteopathic physician;
- f) A statement advising the Board of any problems which have arisen; and

g) A statement addressing compliance with any restrictions or requirements imposed.

vii. **Continuity Of Practice:**

a) **Tolling Provisions** - In the event Respondent leaves the State of Florida for a period of thirty days or more or otherwise does not engage in the active practice of medicine in the State of Florida, then certain provisions of Respondent's probation (and only those provisions of the probation) shall be tolled as enumerated below and shall remain in a tolled status until Respondent returns to active practice in the State of Florida:

- 1) The time period of probation shall be tolled;
- 2) The provisions regarding supervision whether direct or indirect by another osteopathic physician, and required reports from the monitor/supervisor shall be tolled;
- 3) The provisions regarding preparation of investigative reports detailing compliance with this Settlement Agreement shall be tolled; and
- 4) Any provisions regarding community service shall be tolled.

b) **Active Practice** - In the event that Respondent leaves the active practice of medicine for a period of one year or more, the Board may require Respondent to appear before the Board and demonstrate his ability to practice medicine with skill and safety to patients prior to resuming the practice of medicine in this State.

7. **Restriction of Practice (Sexual Misconduct)** - Respondent's practice is restricted in that Respondent may not examine or treat female patients or minor children (male or female) under the age of eighteen (18) years-old during the time that Respondent is on probation without the presence of a Florida licensed health care provider who shall maintain a log of each such patient contact with said log immediately available to a Department inspector upon request.

STANDARD PROVISIONS

8. **Appearance:** Respondent is required to appear before the Board at the meeting of the Board where this Agreement is considered, if Respondent can obtain permission from his probation officer to appear at the Board meeting. If Respondent is unable to obtain permission from his probation officer to attend the Board meeting where this Settlement Agreement is considered, Respondent will provide a letter to the Board from his probation officer stating that Respondent is not allowed to attend the meeting and Respondent will not be required to attend. If Respondent is unable to attend, Respondent's counsel will make every effort to

attend the Board meeting where this Agreement is considered to answer questions from the Board.

9. **No force or effect until final order** - It is expressly understood that this Agreement is subject to the approval of the Board and the Department. In this regard, the foregoing paragraphs (and only the foregoing paragraphs) shall have no force and effect unless the Board enters a Final Order incorporating the terms of this Agreement.

10. **Addresses** - Respondent must keep current residence and practice addresses on file with the Board. Respondent shall notify the Board within ten (10) days of any changes of said addresses.

11. **Future Conduct** - In the future, Respondent shall not violate Chapter 456, 459 or 893, Florida Statutes, or the rules promulgated pursuant thereto, or any other state or federal law, rule, or regulation relating to the practice or the ability to practice medicine. Prior to signing this agreement, the Respondent shall read Chapters 456, 459 and 893 and the Rules of the Board of Osteopathic Medicine, at Chapter 64B15, Florida Administrative Code.

12. **Violation of terms considered** - It is expressly understood that a violation of the terms of this Agreement shall be considered a violation of a Final Order of the Board, for which disciplinary action may be initiated pursuant to Chapters 456 and 459, Florida Statutes.

13. **Purpose of Agreement** - Respondent, for the purpose of avoiding further administrative action with respect to this cause, executes this Agreement.

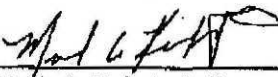
In this regard, Respondent authorizes the Board to review and examine all Investigative file materials concerning Respondent prior to or in conjunction with consideration of the Agreement. Respondent agrees to support this Agreement at the time it is presented to the Board and shall offer no evidence, testimony or argument that disputes or contravenes any stipulated fact or conclusion of law. Furthermore, should this Agreement not be accepted by the Board, it is agreed that presentation to and consideration of this Agreement and other documents and matters by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings.

14. **No preclusion of additional proceedings** - Respondent and the Department fully understand that this Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or the Department against Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit A.

15. **Waiver of attorney's fees and costs** - Upon the Board's adoption of this Agreement, the parties hereby agree that with the exception of costs noted above, the parties will bear their own attorney's fees and costs resulting from prosecution or defense of this matter. Respondent waives the right to seek any attorney's fees or costs from the Department and the Board in connection with this matter.

16. **Waiver of further procedural steps** - Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreement and the Final Order of the Board incorporating said Agreement.

SIGNED this 14 day of March, 2008.


Mark A. Kabat, D.O.

Before me, personally appeared Mark A Kabat DO, whose identity is known to me by Pennsylvania Drivers Lic. (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 14th day of March, 2008.

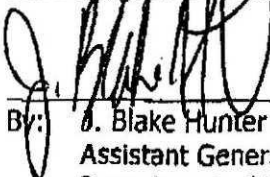



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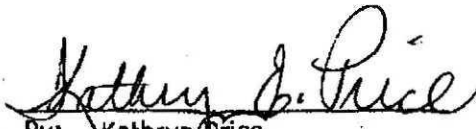
My Commission Expires: 9/6/09

APPROVED this 17th day of March, 2008.

Ana M. Viamonte BBS, M.D., M.P.H.
State Surgeon General


By: J. Blake Hunter
Assistant General Counsel
Department of Health

Priority One Case



By: Kathryn Price
Interim Deputy General Counsel
Department of Health

J. Blake Hunter
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way
Tallahassee, FL 32399-3265
Florida Bar No. 0570788
(850) 245-4640 Telephone
(850) 245-4682 FAX

Mark A. Kabat, D.O.; Case No. 2007-23818

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No. 0416 P. 19/19

Mar. 17. 2008 6:39AM

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2007-23818

MARK A. KABAT, D.O.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Osteopathic Medicine against Respondent, Mark A. Kabat, D.O., and in support thereof alleges:

1. Petitioner is the state department charged with regulating the practice of osteopathic medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 459, Florida Statutes.

2. At all times material to this Complaint, Respondent was a licensed osteopathic physician within the State of Florida, having been issued license number OS 7725.

3. Respondent's address of record is 10431 28TH Place, Denver, Colorado 80238.

4. On or about February 15, 2006, a detective with the Sarasota Police Department entered a chat room on the internet posing as a fourteen (14) year-old girl named "Lori14."

5. While in the chat room, the detective was contacted by an individual with the screen name of "Markus3."

6. During the chat, Markus3 stated that he lived in the West Palm Beach area of Florida and then engaged Lori14 in a sexually explicit chat. During the conversation, Markus3 asked Lori14 whether she wanted to experience oral [sex], anal [sex], sexual contact with "props", and he asked whether she had any sexual fantasies. Markus3 further asked Lori14 whether she had a guy "give her oral yet." He stated that maybe Lori14 "would find out." Markus3 further stated that he loved the thought of pleasing women and that he would love to see Lori14.

7. Markus3 gave Lori14 his e-mail address: mark33fl@hotmail.com.

8. Markus3 told Lori14 that he would love to bring her to a climax, he wished that he could be next to Lori14 so that he could run his hands under her "sweats", and he asked her whether she would ever meet someone like him for a one time fling.

9. During the conversation, Lori14 told Markus3 that she was in the 9th grade.

10. On or about February 16, 2006, the detective posing as Lori14 was contacted by Markus3 over the internet. Markus3 stated that he thought how he might get to see Lori14 and asked if Lori14 could "road trip." Lori14 stated that she could not drive yet.

11. On or about February 28, 2006, Markus3 contacted the detective posing as Lori14 over the internet. Markus3 stated that it would take him four (4) hours to get to Lori14's location. Markus3 told Lori14 that he wished he could let her see how

wonderful a man's touch could be. Markus3 asked Lori14 if her legs were spread apart and her hand was in her crotch. Markus3 asked Lori14 to remove her bra and he told her that he wanted "to get her off".

12. Markus3 asked Lori14 to call him and gave her the telephone number: (561) 670-9148. The phone number came back to a pharmaceutical company that had given the phone to Respondent to call in prescriptions.

13. On or about March 31, 2006, Markus3 contacted the detective posing as Lori14 over the internet. Markus3 stated that he liked Lori14. Markus3 told Lori14 that he would give her some money, pay for a bus ticket, and she could come work for him. Markus3 asked Lori14 what she wanted to do when they met. Markus3 asked if she wanted to learn to give a guy a great "blowjob" and have sexual intercourse. Markus3 asked Lori14 about anal sex and stated that "he loved to give oral." Markus3 asked Lori14 if she ever got sucked on until she had a climax and Markus3 offered to do it to Lori14. Markus3 asked Lori14 if he could stroke her leg, cup her breast, and play with her nipples.

14. Markus3 sent a picture of himself to the detective posing as Lori14 via e-mail. The picture matched Respondent's drivers' license photograph.

15. On or about April 5, 2006, Markus3 contacted the detective posing as Lori14 over the internet. Markus3 told Lori14 that his birthday was August 31st and that he may be moving to Colorado.

16. Respondent was born on August 31, 1968.

17. On or about May 11, 2006, Markus3 contacted Lori14 and asked her when

he was going to see what her pretty little face looked like and Lori14 stated that she would give her picture to Markus3 on May 12, 2006. Markus3 gave Lori14 his telephone number again and told her to call him.

18. On or about May 12, 2006, Markus3 contacted the detective posing as Lori14 over the internet. Markus3 talked about meeting Lori14 and he asked her what they could do when they met. Markus3 stated that he would get a hotel room and bathe Lori14. Markus3 told Lori14 that she was getting him aroused.

19. Markus3 then asked Lori14 for her picture. The detective posing as Lori14 sent Markus3 a picture of an undercover female officer.

20. Markus3 then told Lori14 that he wanted to taste her and smell her. Markus3 told Lori14 that he would love to share an orgasm with her and that he would be "kissing u, touching u, rubbing u, licking u, fingering u." Markus3 stated "every part of your skin, mouth, breasts, clit." Markus3 further stated that he would love to touch Lori14 and the sexually explicit chat continued.

21. On or about May 25, 2006, a detective made a controlled telephone call to Respondent and left a message, which Respondent acknowledged in an e-mail to the detective posing as Lori14.

22. On or about June 13, 2006, Markus3 told the detective posing as Lori14 over the internet that he had been working in Colorado and he would be moving there for good. Markus3 told Lori14 that he had to return his telephone soon, but that Lori14 was still in his thoughts.

23. On or about September 15, 2006, a detective with the Denver Police

Department went to Respondent's residence and left a card for him to call the detective. On or about September 18, 2006, the detective received a return telephone call from Respondent.

24. During the conversation with the detective with the Denver Police Department, Respondent admitted using the screen name of Markus3 on the internet and chatting with Lori14. Respondent said at first that he believed that Lori14 was 14 years-old, then 15 or 16 years-old. Respondent admitted that the chats became sexually explicit and that he sent a photograph of himself to Lori14.

25. At the time of Respondent's conversation with the detective from the Denver Police Department, Respondent worked with sex offenders in a treatment facility.

26. On or about October 24, 2007, Respondent pled nolo contendere to one (1) count of computer solicitation of minor for sexual activity in violation of Section 847.0135(3), Florida Statutes. Respondent was sentenced to sixty (60) days in jail, three (3) years of sex offender probation, and he was ordered to pay court costs.

27. Section 459.015(1)(c), Florida Statutes (2007), subjects a licensee to discipline, including suspension, for being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of osteopathic medicine or to the ability to practice osteopathic medicine. A plea of nolo contendere shall create a rebuttable presumption of guilt to the underlying criminal charges.

28. Respondent's plea of nolo contendere to one (1) count of computer solicitation of minor for sexual activity in violation of Section 847.0135(3), Florida Statutes, is directly related to Respondent's practice of osteopathic medicine or to his ability to practice osteopathic medicine.

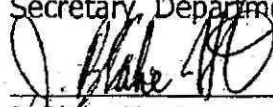
29. Respondent's plea of nolo contendere is directly related to Respondent's practice of osteopathic medicine or to his ability to practice osteopathic medicine, because his profession puts him in daily contact with patients who could be easily influenced by him. Patients and physicians have a very close relationship and patients typically put faith and trust in their physician. Respondent has demonstrated that he is capable of abusing this trust.

30. Based on the foregoing, Respondent has violated Section 459.015(1)(c), Florida Statutes (2007), by being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of osteopathic medicine or to the ability to practice osteopathic medicine.

WHEREFORE, Petitioner respectfully requests that the Board of Osteopathic Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 19th day of December, 2007.

Ana M. Viamonte Ros, M.D., M.P.H
Secretary, Department of Health



J. Blake Hunter
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar No. 0570788
(850) 245-4640
(850) 245-4682 FAX

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: Lilli M.hardt
DATE 12/20/07

PCP: 12-19-07

PCP Members: Moran + Suona

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.

STATE OF FLORIDA
DEPARTMENT OF HEALTH

Final Order No. DOH-07-2264-ESG-MQA
FILED DATE - 12 11 07
Department of Health
By: Kelli McFarland
Deputy Agency Clerk

IN RE: The Emergency Restriction of the License of
Mark A. Kabat, D.O.
License Number: OS 7725
Case Number: 2007-23818

ORDER OF EMERGENCY RESTRICTION OF LICENSE

Ana M. Viamonte Ros, M.D., M.P.H., State Surgeon General, ORDERS the emergency restriction of the license of Mark A. Kabat, D.O. ("Dr. Kabat"), to practice as an osteopathic physician. Dr. Kabat holds license number OS 7725, and his address of record is 10431 28th Place, Denver, CO 80238. The following Findings of Fact and Conclusions of Law support the emergency restriction of Dr. Kabat's license to practice as an osteopathic physician.

FINDINGS OF FACT

1. The Department of Health ("Department") is the state agency charged with regulating the practice of osteopathic medicine pursuant to Chapters 20, 456, and 459, Florida Statutes. Section 456.073, Florida Statutes, authorizes the State Surgeon General to summarily restrict Dr. Kabat's license to practice as an osteopathic physician in the State of Florida in accordance with Section 120.60(6), Florida Statutes.
2. At all times material hereto, Dr. Kabat was licensed to practice osteopathic medicine in the State of Florida pursuant to Chapter 459, Florida Statutes.
3. On or about February 15, 2006, a detective with the Sarasota Police Department entered a chat room on the internet posing as a 14 year-old girl named "Lori14."

4. While in the chat room, the detective was contacted by an individual with the screen name of "Markus3."

5. During the chat, Markus3 stated that he lived in the West Palm Beach area of Florida and then engaged Lori14 in a sexually explicit chat. During the conversation, Markus3 asked Lori14 whether she wanted to experience oral [sex], anal [sex], and sexual contact with "props", and he asked whether she had any sexual fantasies. Markus3 asked Lori14 whether she had a guy "give her oral yet". He stated that maybe Lori14 "would find out". Markus3 further stated that he loved the thought of pleasing women and he would love to see Lori14.

6. Markus3 gave Lori14 his e-mail address: mark33fl@hotmail.com.

7. Markus3 told Lori14 that he would love to bring her to a climax, he wished that he could be next to Lori14 so that he could run his hands under her "sweats", and he asked her whether she would ever meet someone like him for a one time fling.

8. During the conversation, Lori14 told Markus3 that she was in the 9th grade.

9. On or about February 16, 2006, the detective posing as Lori14 was contacted by Markus3 over the internet. Markus3 stated that he had thought about how he might get to see Lori14 and asked if Lori14 could "road trip." Lori14 stated that she could not drive yet.

10. On or about February 28, 2006, Markus3 contacted the detective posing as Lori14 over the internet. Markus3 stated that it would take him four hours to get to Lori14's location. Markus3 told Lori14 that he wished he could let her see how

wonderful a man's touch could be. Markus3 asked Lori14 if her legs were spread apart and her hand was in her crotch. Markus3 asked Lori14 to remove her bra and he told her that he wanted "to get her off".

11. Markus3 asked Lori14 to call him at the telephone number: (561) 670-9148. The number was for a pharmaceutical company that had given the telephone to Dr. Kabat to call in prescriptions.

12. On or about March 31, 2006, Markus3 contacted the detective posing as Lori14 over the internet. Markus3 stated that he liked Lori14. Markus3 told Lori14 that he would give her some money, pay for a bus ticket, and she could come work for him. Markus3 asked Lori14 what she wanted to do when they met. Markus3 asked if she wanted to learn to give a guy a great "blowjob" and have sexual intercourse. Markus3 asked Lori14 about anal sex and stated that "he loved to give oral". Markus3 asked Lori14 if she ever got sucked on until she had a climax and Markus3 offered to do it to Lori14. Markus3 asked Lori14 if he could stroke her leg, cup her breast, and play with her nipples.

13. Markus3 sent a picture of himself to the detective posing as Lori14 via e-mail. The picture matched Dr. Kabat's drivers' license photograph.

14. On or about April 5, 2006, Markus3 contacted the detective posing as Lori14 over the internet. Markus3 told Lori14 that his birthday was August 31st and that he may be moving to Colorado.

15. Dr. Kabat was born on August 31, 1968.

16. On or about May 11, 2006, Markus3 contacted Lori14 and asked her when

he was going to see what her pretty little face looked like and Lori14 stated that she would give her picture to Markus3 on May 12, 2006. Markus3 again gave Lori14 his telephone number and told her to call him.

17. On or about May 12, 2006, Markus3 contacted the detective posing as Lori14 over the internet. Markus3 talked about meeting Lori14 and asked her what they could do when they met. Markus3 stated that he would get a hotel room and bathe Lori14. Markus3 told Lori14 that she was getting him aroused.

18. Markus3 then asked Lori14 for her picture. The detective posing as Lori14 sent Markus3 a picture of an undercover female officer.

19. Markus3 then told Lori14 that he wanted to taste her and smell her. Markus3 told Lori14 that he would love to share an orgasm with her and that he would be "kissing u, touching u, rubbing u, licking u, fingering u." Markus3 stated "every part of your skin, mouth, breasts, clit." Markus3 further stated that he would love to touch Lori14, and the sexually explicit chat continued.

20. On or about May 25, 2007, a detective made a controlled telephone call to Dr. Kabat and left a message, which Dr. Kabat acknowledged in an e-mail to the detective posing as Lori14.

21. On or about June 13, 2006, Markus3 told the detective posing as Lori14 that he had been working in Colorado and he would be moving there for good. Markus3 told Lori14 that he had to return his telephone soon, but that Lori14 was still in his thoughts.

22. On or about September 15, 2006, a detective with the Denver Police

Department went to Dr. Kabat's residence and left a card and message for him to call the detective. On or about September 18, 2006, the detective received a telephone call from Dr. Kabat.

23. During the conversation with the detective with the Denver Police Department, Dr. Kabat admitted using the screen name of Markus3 on the internet and chatting with Lori14. Dr. Kabat said that he first believed that Lori14 was 14 years old, then 15 or 16 years-old. Dr. Kabat admitted that the chats became sexually explicit, and that he sent a photograph of himself to Lori14.

24. At the time of Dr. Kabat's conversation with the detective from the Denver Police Department, Dr. Kabat worked with sex offenders in a treatment facility.

25. On or about October 24, 2007, Dr. Kabat pled nolo contendere to one count of computer solicitation of a minor for sexual activity in violation of Section 847.0135(3), Florida Statutes. Dr. Kabat was sentenced to 60 days in jail, three years of sex offender probation, and he was ordered to pay court costs.

GENERAL ALLEGATIONS

26. Section 459.015(1)(c), Florida Statutes (2007), subjects a licensee to discipline, including suspension, for being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of osteopathic medicine or to the ability to practice osteopathic medicine. A plea of nolo contendere creates a rebuttable presumption of guilt as to the underlying criminal charges.

27. Dr. Kabat's plea of nolo contendere to one count of computer solicitation of minor for sexual activity in violation of Section 847.0135(3), Florida Statutes, is directly related to Dr. Kabat's practice or to his ability to practice osteopathic medicine.

28. Section 120.60(6), Florida Statutes (2007), authorizes the Department to restrict an osteopathic physician's license if the Department finds that the osteopathic physician presents an immediate serious danger to the public health, safety, or welfare.

29. Dr. Kabat pled nolo contendere to a crime which involved Dr. Kabat using a computer to solicit a detective posing as a 14 year old girl for sex. Based on these circumstances, Dr. Kabat cannot be trusted to observe appropriate boundaries with women or minor children. Patients place themselves in vulnerable positions when seeing a physician. One of the main duties of a physician is to give a patient advice regarding a variety of health related topics including how the patient lives his or her life. In general, patients trust much if not all of the information the physician tells the patient. As a physician, Dr. Kabat has the opportunity to be alone with and form close relationships with vulnerable minors. If Dr. Kabat is allowed to continue to treat female patients and minor children, he could use his position as an osteopathic physician and the vulnerability of his patients to commit additional acts of sexual misconduct. Dr. Kabat attempted to exploit the vulnerability of a female minor child when he solicited what he thought was a female minor child for sex over the internet. Dr. Kabat could continue to exploit the vulnerability of his female and minor patients if he is allowed to continue to treat them. His unrestrained practice of osteopathic medicine constitutes an immediate serious threat to the public health, safety, or welfare. Dr. Kabat has

demonstrated a flagrant disregard for the duties and responsibilities imposed upon an osteopathic physician practicing in the State of Florida and for the health and welfare of his patients. Nothing short of restricting Dr. Kabat's license will adequately protect the public.

30. Even though Dr. Kabat is currently located in the State of Colorado, nothing prevents Dr. Kabat from leaving Colorado and returning to treat patients in the State of Florida.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the State Surgeon General concludes that:

1. The Department of Health has jurisdiction over this matter pursuant to Section 456.073(8), Florida Statutes, and Section 20.43, Florida Statutes.

2. Dr. Kabat has violated Section 459.015(1)(c), Florida Statutes (2007), by being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of osteopathic medicine or to the ability to practice osteopathic medicine. His plea of nolo contendere created a rebuttable presumption of guilt as to the underlying criminal charges.

3. Dr. Kabat's continued, unrestricted practice as an osteopathic physician constitutes an immediate serious danger to the health, safety, and welfare of the public and this summary procedure is fair under the circumstances to adequately protect the public.

In accordance with Section 120.60(6), Florida Statutes, it is ordered that:

1. The license of Mark A. Kabat, D.O., license number OS 7725, shall reflect that he is immediately restricted from examining, treating, seeing, and providing medical care for any female patients and he cannot be alone with any female patient in the course of his professional practice.

2. The license of Mark A. Kabat, D.O., license number OS 7725, shall reflect that he is immediately restricted from examining, treating, seeing, and providing medical care for any patients under the age of 18 years and he cannot be alone with any patient under the age of 18 years in the course of his professional practice.

3. A proceeding seeking formal restriction or discipline of the license of Mark A. Kabat, D.O., to practice as an osteopathic physician will be promptly instituted and acted upon in compliance with Sections 120.569 and 120.60(6), Florida Statutes.

DONE and ORDERED this 10th day of December, 2007.



Ana M. Viamonte Ros, M.D., M.P.H.
State Surgeon General

PREPARED BY:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

Pursuant to Sections 120.60(6) and 120.68, Florida Statutes, the Department's findings of immediate serious danger, necessity, and procedural fairness shall be judicially reviewable. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Petition for Review, in accordance with Florida Rule of Appellate Procedure 9.100, with the Department of Health and a second copy of the petition accompanied by a filing fee prescribed by law with the District Court of Appeal within 30 days of the date this Order is filed.