

FILED OF RECORD

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 823

AUG 28 2009

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE OSTEOPATHY IN THE COMMONWEALTH
OF KENTUCKY HELD BY NORMAN I. HIRSCH, D.O., LICENSE NO.
02422, 941 LATIFF LANE, CINCINNATI, OHIO 45230

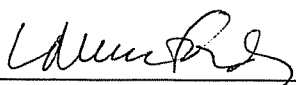
ORDER TERMINATING AGREED ORDER OF PROBATION

At its August 20, 2009 meeting, the Kentucky Board of Medical Licensure, acting by and through its Inquiry Panel A considered a request by the licensee to terminate the terms and conditions imposed upon his Kentucky medical license by Agreed Order of Probation filed of record August 23, 2007.

In addition to the licensee's request, the Panel has considered a memorandum by the Board's General Counsel dated July 27, 2009; the Agreed Order of Probation filed of record August 23, 2007; correspondence dated June 18, 2009 from the State Medical Board of Ohio terminating the May 8, 2002 Consent Agreement; CME course completion certification; and Compliance Inspection Reports prepared by Eric Tout, Medical Investigator, dated June 23 and December 24, 2008.


Having considered all of this information and being sufficiently advised, the Panel hereby GRANTS the licensee's request and **ORDERS** that the Agreed Order of Probation in this Case No. 823 be and is hereby **TERMINATED**, effective immediately upon the filing of this Order.

SO ORDERED on this 28th day of August, 2009.


LINDA A. MUMFORD, M.D.
CHAIR, INQUIRY PANEL A

Certificate of Service

I certify that the original of this Order Terminating Agreed Order of Probation was delivered to C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky and a copy was mailed to Norman I. Hirsch, D.O., 941 Latiff Lane, Cincinnati, Ohio 45203 on this 28th day of August, 2009.


C. Lloyd Vest II
General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
502/429-7150

FILED OF RECORD

AUG 23 2007

K.B.M.L.

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 823

IN RE: THE LICENSE TO PRACTICE OSTEOPATHY IN THE COMMONWEALTH
OF KENTUCKY HELD BY NORMAN I. HIRSCH, D.O., LICENSE NO.
02422, 941 LATIFF LANE, CINCINNATI, OHIO 45230

AGREED ORDER OF PROBATION

Come now the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Inquiry Panel A, and Norman I. Hirsch, D.O. ("the licensee"), and, based upon the Panel's decision to grant the licensee petition to reinstate his Kentucky license, hereby ENTER INTO the following **AGREED ORDER OF PROBATION:**

STIPULATIONS OF FACT

The parties stipulate the following facts, which serve as the factual bases for this Agreed Order of Probation:

1. At all relevant times, Norman I. Hirsch, D.O., was licensed by the Board to practice osteopathy within the Commonwealth of Kentucky.
2. The licensee's medical specialty is Psychiatry.
3. On February 9, 2001, the licensee voluntarily disclosed to the United States Department of Justice, Federal Bureau of Investigation (FBI) that he had violated the False Claims Act and other laws by submitting false claims for reimbursement. He submitted claims for reimbursement for services which were not performed and billed for a higher reimbursement rate than should have been submitted, commonly known as "upcoding."

4. At the time of the disclosure, the licensee had an approximate total of 14 Medicare/Medicaid patients; the remainder of his patients were Workers' Compensation cases. Each patient was typically treated once a month for pharmacological management. Visits typically lasted 10-15 minutes. Based upon this level of care and time necessary for treatment, the licensee should have utilized CPT Code 90862.
5. In year 2000 Medicare reimbursement requests, the licensee fraudulently billed for the higher CPT Code 99125 when CPT Code 90862 was appropriate for the services rendered. During that same year, the licensee also fraudulently billed for visits with these patients which did not occur. An extra visit was billed at an approximate two week interval from the date of the actual visit. The licensee also billed for missed visits by these patients.
6. In year 2000 Medicaid reimbursement requests, the licensee fraudulently billed the higher CPT Code 90807 when CPT Code 90862 or 90805 were appropriate for services rendered. He also billed for extra visits which did not occur, also known as "phantom visits," at CPT Code 90807.
7. From 1995 until 2000, the licensee upcoded to CPT Code 90844, a full hour psychiatric session, and G0074, from the 20-30 minute individual psychotherapy code. He also upcoded to CPT Code 90806 and 90807, 45-50 minute individual psychotherapy sessions, during this period. Also during this time period, the licensee billed Medicare for CPT Code 99214 and 99215 which were upcoded from the pharmacological management CPT Code 90862. Some of the CPT Code 90844 billings submitted to Medicare during this period were valid.

8. From 1997 until 2000, the licensee fraudulently billed Medicare and Medicaid for missed sessions and upcoded pharmacological services.
9. From 1995 until 2000, the licensee fraudulently billed the Medicare and Medicaid programs. The false claims submitted were neither consistent nor regular. The investigation estimated and concluded that overpayments were made to the licensee by Medicare in the amount of \$59,294.88 and by Medicaid in the amount of \$5,717.52.
10. On December 13, 2001, the licensee entered into a Plea Agreement with the United States, under which he plead guilty to one count of False Statements Relating to Health Care Matters, a felony.
11. The licensee negotiated a settlement agreement with the Department of Health and Human Services, regarding the licensee's billings from October 1, 1995 through the present, by which Medicare/Medicaid would be reimbursed under a repayment schedule to be determined by the parties. The licensee acknowledged submitting invoices to the Bureau showing that he had performed CPT Code 90807 or 90844, knowing that this was a higher level of service than he had performed in each instance. The Bureau determined that, based upon these false billings, it had overpaid the licensee \$73,763.52. The licensee has agreed to reimburse the Bureau under a repayment schedule agreed upon by the parties.
12. The licensee entered into a Consent Agreement with the State Medical Board of Ohio on May 8, 2002. Pursuant to that Consent Agreement, the licensee's Ohio license was suspended for a period of two (2) years from that date.

13. At the Panel's request, the licensee entered into an Agreed Order of Surrender on August 22, 2002.

14. The licensee's Ohio license was reinstated on May 8, 2004, pursuant to the Consent Agreement. His Ohio license has been on probation since that time.

Under the Ohio Consent Agreement, the licensee was required to complete community service and ethics training. Two of the conditions of the Ohio Consent Agreement requires,

Prior to or at the time that Dr. Hirsch submits his application for reinstatement, he shall submit for the Board's prior approval the name of a Certified Public Accountant who shall oversee Dr. Hirsch's medical business practices on an ongoing basis as specified in Paragraph 3.b, below.

...

Dr. Hirsch's financial practices shall be overseen by a Certified Public Accountant, who shall generally review Dr. Hirsch's business records to ensure that they comply with standard accounting practices; shall specifically review Dr. Hirsch's patient charts, appointment schedules, and associated billing records to verify that all claims submitted for reimbursement are based upon appropriate CPT codes for services rendered; and shall prepare a written report of such review to the Board on a quarterly basis. Dr. Hirsch shall cause such quarterly financial reports to be received in the Board's offices no later than the due date for Dr. Hirsch's quarterly declarations, and shall promptly make any and all underlying information used as the basis for such quarterly financial reports available to the Board upon demand. The Certified Public Accountant's specific review of Dr. Hirsch's patient charts, appointment schedules, and associated billing records may be based upon a random sampling, with the number of patient encounters to be determined by the Board. In the event that the approved Certified Public Accountant becomes unable or unwilling to serve, Dr. Hirsch shall immediately notify the Board in writing and shall submit for the Board's prior approval he name of another Certified Public Accountant within 30 days. Dr. Hirsch shall refrain from practicing until such supervision is in place, unless otherwise determined by the Board.

Pursuant to the Ohio Consent Agreement, the licensee's Ohio license is on probation for a period of five (5) years from the date of reinstatement.

STIPULATED CONCLUSIONS OF LAW

The parties stipulate the following Conclusions of Law, which serve as the legal bases for this Agreed Order of Probation:

1. The licensee's medical license is subject to regulation and discipline by the Board.
2. Based upon the Stipulations of Fact, the licensee has engaged in conduct which violates the provisions of KRS 311.595(4), (10) and (9), as illustrated by KRS 311.597(4). Furthermore, the parties agree that, pursuant to KRS 311.607(3), a new license issued following reinstatement shall be under probation for a period of not less than two (2) nor more than five (5) years. Accordingly, there are legal grounds for the parties to enter into this Agreed Order of Probation.
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve this pending grievance without an evidentiary hearing by entering into an informal resolution such as this Agreed Order of Probation.

AGREED ORDER OF PROBATION

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to fully and finally resolve this pending grievance without an evidentiary hearing, the parties hereby ENTER INTO the following

AGREED ORDER OF PROBATION:

1. The license to practice osteopathy held by Norman I. Hirsch, D.O., is hereby PLACED ON PROBATION, for a period of five (5) years, with that period of probation to become effective immediately upon the filing of this Agreed Order of Probation.

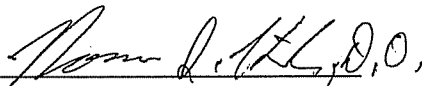
2. During the effective period of this Agreed Order of Probation, the licensee's osteopathic license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:
- a. The licensee SHALL FULLY COMPLY with all terms and conditions of the May 8, 2002 Ohio Consent Agreement, and any amended Consent Agreements entered into between the licensee and the State Medical Board of Ohio.
 - b. The licensee will take all necessary steps, to include signing any required waivers and/or releases, to ensure that the probationary compliance officer for the State Medical Board of Ohio provides this Board with quarterly reports detailing his compliance with the Ohio Consent Agreement.
 - c. The licensee SHALL complete three (3) hours of Continuing Medical Education (CME) in the areas of Ethics and Coding during each year of this Agreed Order of Probation, and SHALL provide the Board with written documentation of his completion of these CME requirements, within two (2) weeks of completion of each CME course.
 - d. The Panel will favorably consider a request by the licensee to terminate this Agreed Order of Probation that is accompanied by written Verification that his probation under the Ohio Consent Agreement has been terminated by the State Medical Board of Ohio, provide that he is currently in compliance with the terms of this Agreed Order of Probation.
 - e. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.

3. The licensee expressly agrees that if he should violate any term or condition of this Agreed Order of Probation, the licensee's practice will constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that if the Board should receive information that he has violated any term or condition of this Agreed Order of Probation, the Panel Chair is authorized by law to enter an Emergency Order of Suspension or Restriction immediately upon a finding of probable cause that a violation has occurred, after an *ex parte* presentation of the relevant facts by the Board's General Counsel or Assistant General Counsel. If the Panel Chair should issue such an Emergency Order, the parties agree and stipulate that a violation of any term or condition of this Agreed Order of Probation would render the licensee's practice an immediate danger to the health, welfare and safety of patients and the general public, pursuant to KRS 311.592 and 13B.125; accordingly, the only relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated a term or condition of this Agreed Order of Probation.
4. The licensee understands and agrees that any violation of the terms of this Agreed

Order of Probation shall result in automatic revocation of his license pursuant to KRS
311.607(3).

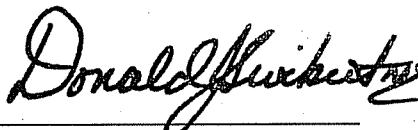
SO AGREED on this 22nd day of August, 2007.

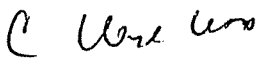
FOR THE LICENSEE:


NORMAN I. HIRSCH, D.O.

COUNSEL FOR THE LICENSEE
(IF APPLICABLE)

FOR THE BOARD:


DONALD J. SWIKERT, M.D.
CHAIR, INQUIRY PANEL A



C. LLOYD VEST II
General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
(502) 429-7150

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 823

FILED OF RECORD

AUG 22 2002

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE OSTEOPATHY IN THE COMMONWEALTH
OF KENTUCKY HELD BY NORMAN I. HIRSCH, D.O., LICENSE NO.
02422, 100 CRISLER AVENUE, #205, CRESCENT SPRINGS, KENTUCKY
41017

AGREED ORDER OF SURRENDER

Come now the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Inquiry Panel A, and Norman I. Hirsch, D.O., and, based upon their mutual desire to fully and finally resolve a pending grievance without formal evidentiary proceedings, hereby ENTER INTO the following AGREED ORDER OF SURRENDER:

STIPULATIONS OF FACT

The parties stipulate the following facts, which serve as the factual bases for this Agreed Order of Surrender:

1. At all relevant times, Norman I. Hirsch, D.O., was licensed by the Board to practice osteopathy in the Commonwealth of Kentucky. The licensee has also been licensed to practice osteopathy by the State of Ohio.
2. The licensee's osteopathic specialty is Psychiatry.
3. On February 9, 2001, the licensee voluntarily disclosed to the United States Department of Justice, Federal Bureau of Investigation (FBI) that he had violated the False Claims Act and other laws by submitting false claims for reimbursement. He submitted claims for reimbursement for services which were not performed and billed for a higher reimbursement rate than should have been submitted, commonly known as "upcoding."

4. At the time of the disclosure, the licensee had an approximate total of 14 Medicare/Medicaid patients; the remainder of his patients were Workers' Compensation cases. Each patient was typically treated once a month for pharmacological management. Visits typically lasted 10-15 minutes. Based upon this level of care and time necessary for treatment, the licensee should have utilized CPT Code 90862.
5. In year 2000 Medicare reimbursement requests, the licensee fraudulently billed for the higher CPT Code 99125 when CPT Code 90862 was appropriate for the services rendered. During that same year, the licensee also fraudulently billed for visits with these patients which did not occur. An extra visit was billed at an approximate two week interval from the date of the actual visit. The licensee also billed for missed visits by these patients.
6. In year 2000 Medicaid reimbursement requests, the licensee fraudulently billed the higher CPT Code 90807 when CPT Code 90862 or 90805 were appropriate for services rendered. He also billed for extra visits which did not occur, also known as "phantom visits," at CPT Code 90807.
7. From 1995 until 2000, the licensee upcoded to CPT Code 90844, a full hour psychiatric session, and G0074, from the 20-30 minute individual psychotherapy code. He also upcoded to CPT Code 90806 and 90807, 45-50 minute individual psychotherapy sessions, during this period. Also during this time period, the licensee billed Medicare for CPT Code 99214 and 99215 which were upcoded from the pharmacological management CPT Code 90862. Some of the CPT Code 90844 billings submitted to Medicare during this period were valid.

8. From 1997 until 2000, the licensee fraudulently billed Medicare and Medicaid for missed sessions and upcoded pharmacological services.
9. From 1995 until 2000, the licensee fraudulently billed the Medicare and Medicaid programs. The false claims submitted were neither consistent nor regular. The investigation estimated and concluded that overpayments were made to the licensee by Medicare in the amount of \$59,294.88 and by Medicaid in the amount of \$5,717.52.
10. On December 13, 2001, the licensee entered into a Plea Agreement with the United States, under which he plead guilty to one count of False Statements Relating to Health Care Matters, a felony.
11. The licensee is negotiating a settlement agreement with the Department of Health and Human Services, regarding the licensee's billings from October 1, 1995 through the present, by which Medicare/Medicaid will be reimbursed under a repayment schedule to be determined by the parties. The licensee acknowledged submitting invoices to the Bureau showing that he had performed CPT Code 90807 or 90844, knowing that this was a higher level of service than he had performed in each instance. The Bureau determined that, based upon these false billings, it had overpaid the licensee \$73,763.52. The licensee has agreed to reimburse the Bureau under a repayment schedule agreed upon by the parties.

STIPULATED CONCLUSIONS OF LAW

The parties stipulate the following Conclusions of Law, which serve as the legal bases for this Agreed Order of Surrender:

1. The licensee's Kentucky osteopathic license is subject to regulation and discipline by the Board.
2. Based upon the Stipulations of Fact, the licensee had engaged in conduct which violates KRS 311.595(4), (10) and (9), as illustrated by KRS 311.597(4).
Accordingly, there are legal ground upon which the Board may discipline the licensee's Kentucky osteopathic license.
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve the pending grievance without formal evidentiary proceedings by entering into an informal resolution, such as this Agreed Order of Surrender.

AGREED ORDER OF SURRENDER

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to fully and finally resolve the pending grievance without formal evidentiary proceedings, the parties hereby ENTER INTO the following **AGREED ORDER OF SURRENDER**:

1. The licensee shall SURRENDER his Kentucky osteopathic license, with that surrender to become effective immediately upon the filing of this Agreed Order of Surrender.
2. Following the effective date of the surrender of his license, the licensee may not engage in any act which would constitute the "practice of osteopathy" as that term is defined by KRS 311.550(10) – the diagnosis, treatment, or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities – until approved to do so by the Panel.

3. The licensee may petition for reinstatement of his Kentucky osteopathic after two calendar years have elapsed following the filing of this Agreed Order of Surrender. The terms of KRS 311.607 shall apply to any petition for reinstatement filed by the licensee. The licensee understands and agrees that he may be required to complete certain assessments/evaluations, at his expense, to be considered by the Panel in conjunction with a petition for reinstatement. The licensee also understands and agrees that the decision whether to grant any petition for reinstatement lies within the sole discretion of the Panel.
4. The licensee expressly agrees that if the licensee should violate any term or condition of this Agreed Order of Surrender, the licensee's practice will constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that if the Board should receive information that he has violated any term or condition of this Agreed Order of Surrender, the Panel Chair is authorized by law to enter an Emergency Order of Suspension or Restriction immediately upon a finding of probable cause that a violation has occurred, after an *ex parte* presentation of the relevant facts by the Board's General Counsel or Assistant General Counsel. If the Panel Chair should issue such an Emergency Order, the parties agree and stipulate that a violation of any term or condition of this Order would render the licensee's practice an immediate danger to the health, welfare and safety of patients and the general public, pursuant to KRS 311.592 and 13B.125; accordingly, the only relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would

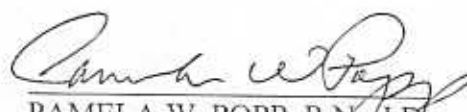
be whether the licensee violated a term or condition of this Agreed Order of Surrender.

5. The licensee understands and agrees that any violation of this Agreed Order of Surrender may serve as the basis for additional disciplinary action pursuant to KRS 311.595(13), including revocation of his Kentucky osteopathic license.


SO AGREED on this 22nd day of August, 2002.

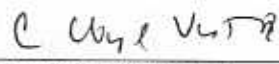
FOR THE LICENSEE:


NORMAN I. HIRSCH, D.O.


PAMELA W. POPP, R.N., J.D.
COUNSEL FOR THE LICENSEE

FOR THE BOARD:


DONALD C. SWIKERT, M.D.
CHAIR, INQUIRY PANEL A


C. LLOYD VEST II
General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
(502) 429-8046

ENTERED: 08/22/02