

BEFORE THE WEST VIRGINIA BOARD OF OSTEOPATHIC MEDICINE

WEST VIRGINIA BOARD OF OSTEOPATHIC MEDICINE

Complainant,

v.

**Complaint Nos. 04-22,05-23, 05-27,
06-04, 06-27, 06-32,
09-19**

BRIAN J. McDEVITT, D.O.,

Respondent.

CONSENT ORDER

The West Virginia Board of Osteopathic Medicine (hereinafter referenced as the "Board") initiated the above referenced complaints against the Respondent, Brian J. McDevitt, D.O., alleging that, Dr. McDevitt improperly prescribed and transported controlled substances. After the Board investigated the facts relating to these complaints, the Board and the Respondent reached an agreement as to an appropriate disposition of the complaints, resulting in a Consent Order in which the Board revoked Respondent's license for a period of three years and specified requirements for Respondent's application for reinstatement. Respondent now requests that the Board reinstate Respondent's license. After consideration of Respondent's request and after discussion with Respondent, the Board and Respondent have reached an agreement for the appropriate disposition of Respondent's request for reinstatement.

The West Virginia Board of Osteopathic Medicine and Brian J. McDevitt, D.O. therefore, agree to entry of the following Order:

FINDINGS OF FACT

The West Virginia Board of Osteopathic Medicine makes the following findings:

1. The Respondent, Brian J. McDevitt, D.O., was a licensee of the Board, holding Board-issued license #1665 to practice osteopathic medicine and surgery in the State of West Virginia.
2. On July 22, 2010, Respondent entered into a Consent Order with the Board in which he publicly admitted to unprofessional conduct.
3. According to the terms of the July 22, 2010 Consent Order and Respondent's admission of unprofessional conduct outlined therein, the Board revoked Respondent's license and placed the following conditions on Respondent's application for reinstatement:
 - a. Respondent must wait at least three years before application for reinstatement.
 - b. Respondent must not seek authorization to practice osteopathic medicine and surgery in the state of West Virginia as long as his license remains revoked.
 - c. In the event of application for reinstatement, Respondent must affirmatively demonstrate certain items, including: his awareness of the effects of his misconduct, that he has undergone an assessment of his functional, clinical, and ethical skills to practice.
 - d. In the event the Board reinstates Respondent's license it would be granted under certain terms, include the following: the license will be granted under terms of probation, including a requirement that he may only practice under the supervision of another licensed physician approved by the Board; the Respondent will not be granted a permit to prescribe Controlled Substances in West Virginia until he demonstrates, following two years of practice under probation, that he is sufficiently responsible and trustworthy that issuance of such authority would not adversely affect the public interest.

4. Respondent waited the three years specified in the July 22, 2010 Consent Order before reapplying for a license with the Board.

5. On December 13, 2016, the Respondent completed an assessment of his functional, clinical, and ethical skills to practice and passed a Comprehensive Osteopathic Medical Variable Purpose Examination (COMVEX).

6. On January 27, 2017, Respondent presented himself before the Board and expressed his understanding of the effects of his misconduct and his belief that he now has sufficient character and trustworthiness to be able to practice osteopathic medicine without the likelihood of engaging in subsequent unprofessional conduct.

CONCLUSIONS OF LAW

1. The West Virginia Board of Osteopathic Medicine is a licensing authority created for the purpose of regulating the practice of osteopathic medicine and surgery in the State of West Virginia. W. Va. Code §§ 30-14-1 and 30-14-3.

2. The West Virginia Board of Osteopathic Medicine has established rules outlining conduct, practices and acts which may render an individual unfit to practice or subject to disciplinary action. "Licensing Procedures for Osteopathic Physicians," 24 CSR 1.

3. The West Virginia Board of Osteopathic Medicine may revoke, suspend, or refuse to issue a license, or the Board may reprimand a licensee, establish probation orders and levy fines when a licensee of the Board is found to have engaged in conduct, practices or acts that the Board has defined as unprofessional in its rules. W. Va. Code § 30-1-8(a).

4. The Respondent engaged in unprofessional conduct as defined in the Board's rules, 24 C.S.R. § 1.18.1.cc.

5. The West Virginia Board of Osteopathic Medicine is authorized to enter into consent decrees and probation orders where such instruments may afford reasonable supervision and oversight of any person, subject to the licensing requirements of the Board, for

the benefit of the practice of osteopathic medicine and protection of the public interest. W. Va. Code §30-1-8(b).

LICENSEE'S ACKNOWLEDGMENT OF RIGHTS

I, **BRIAN J. MCDEVITT**, have read this document and, by signing my name to it, I understand and acknowledge the following:

1. This is a legally binding document that affects my rights and privileges.
2. I have the right to consult a lawyer concerning the terms of this agreement and the legal rights and remedies that may otherwise be available to me.
3. I understand that I have a right to a hearing regarding any charges against me or any action taken against my license. The West Virginia Board of Osteopathic Medicine may not suspend, revoke, or take any other disciplinary action regarding my license unless one of three conditions occur: 1) I give my consent to entry of an order restricting, suspending or revoking my license, or 2) the West Virginia Board of Osteopathic Medicine conducts an evidentiary hearing in which I may participate, or 3) the Board finds that my continuation in practice constitutes an immediate danger to the public.
4. I acknowledge that this agreement is also a legally binding order. If I accept this agreement, I admit to violation of standards of professional conduct. I also acknowledge and admit that, if I violate any terms and conditions of this order, the Board may suspend or revoke my license without a prior hearing.
5. I understand that this is a public document and that the Board is legally obligated to allow any person to review this Consent Order. I also understand that this action and order may be reported to other jurisdictions and to the National Practitioner Data Bank and to the Federation of State Medical Boards.

TERMS OF ORDER

1. After Respondent satisfies all statutory and regulatory requirements for licensure, the Board will **REINSTATE** Board-issued license 1665 under the following terms:

- a. The Board will place Respondent's license to practice osteopathic medicine and surgery on probation for a period of twenty-four months.
- b. During the twenty-four month probationary period, Respondent will only practice under the supervision of another licensed physician approved by the Board for such purpose.
- c. The Respondent shall not receive a permit to prescribe Controlled Substances in this State until he demonstrates to the satisfaction of the Board, following at least two years of practice under probation, that he is sufficiently responsible and trustworthy that the public interest would not be adversely affected through the issuance of such authority AND Respondent has registered with the Drug Enforcement Administration under the Controlled Substances Act of 1970.

4. The term of probation shall commence immediately upon the filing of this Consent Agreement and Order.

5. The preceding terms and conditions apply, and shall remain in effect, throughout the duration of the period of probation, unless modified by order of the West Virginia Board of Osteopathic Medicine.

6. If the Respondent fails to comply with, or complete any of the terms stated herein, or engages in any act inconsistent with accepted standards of professional conduct, the West Virginia Board of Osteopathic Medicine may rescind or modify this order and take any other action, including revocation of the Respondent's license, which is authorized by law.

7. This probationary period does not expire automatically at the end of the period stated above. The Respondent must apply to the West Virginia Board of Osteopathic Medicine to lift the probationary restrictions and he must demonstrate to the Board that he has satisfactorily completed and complied with all of the terms of this Order.

ACKNOWLEDGMENT OF LICENSEE:

I have reviewed the provisions of this Consent Order. I understand that, by entering into this agreement, I am giving up the legal rights set out above, but I do so voluntarily and I do not wish to assert those rights in this matter. I agree to abide by the terms set out herein and to be bound by them.

Signed: Brian J. McDevitt D.O. (original)
BRIAN J. MCDEVITT, D.O.

Date: 02/27/17

ENTRY

By agreement of the West Virginia Board of Osteopathic Medicine, it is so ORDERED and entered this 28 day of February, 2017.

WEST VIRGINIA BOARD OF OSTEOPATHIC MEDICINE

By: Ernest Miller D.O.
ERNEST MILLER, D.O.

President

West Virginia Board of Osteopathic Medicine