

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

PROTHONOTARY

2015 DEC 10 AM 11:17

Commonwealth of Pennsylvania
Bureau of Professional and
Occupational Affairs

File No.: 13-53-00534

Department of State

v.

Rochelle Marie Gilbert, LAT
Respondent

Docket No: 1710 -53-15

CONSENT AGREEMENT AND ORDER

PARTIES

The Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs ("Commonwealth") and Rochelle Marie Gilbert, LAT ("Respondent") stipulate as follows in settlement of the above-captioned case.

APPLICABLE LAW

1. This matter is before the State Board of Osteopathic Medicine ("Board") pursuant to the Osteopathic Medical Practice Act, Act of October 5, 1978, P.L. 1109, No. 261, ("Act"), as amended, 63 P.S. §§ 263-271.18; the Medical Care Availability and Reduction of Error ("MCARE") Act, Act of March 20, 2002, P.L. 154, No. 13, as amended, 40 P.S. §§ 1303.101-1303.910; and/or the Act of July 2, 1993, P.L. 345, No. 48 ("Act 48"), as amended, 63 P.S. §§ 2201-2207.

LICENSURE STATUS

2. The Respondent currently holds a license to practice as an osteopathic athletic trainer in the Commonwealth of Pennsylvania, license no. RTO000156, which was originally issued on December 13, 2012, and which is currently set to expire on December 31, 2016.

STIPULATED FACTS

3. The Respondent admits that the following allegations are true:
 - a. Absent further Board action, Respondent's license may be renewed, reactivated or reinstated upon the filing of the appropriate documentation and payment of the necessary fees.
 - b. Respondent's last known address, as on file with the Board, is 418 McKeen Street, Apt. 3, Easton, PA 18042
 - c. During the time period of July 14, 2007 through December 12, 2012, Respondent did not hold a license and/or certificate to practice as an osteopathic athletic trainer in the Commonwealth of Pennsylvania.
 - d. During the aforementioned time period, the Respondent performed the duties of an athletic trainer, including but not limited to providing athletic training services, in the Commonwealth of Pennsylvania.

ALLEGED VIOLATIONS

4. The Commonwealth alleges that the Board is authorized to suspend, revoke, or otherwise restrict Respondent's license under Sections 11(c) and 15(a) of the Act, 63 P.S. §§ 271.11(c) & 271.15(a); and/or impose a civil penalty upon Respondent under Sections 11(c) and 15(a) of the Act, 63 P.S. §§ 271.11(c) & 271.15(a), and /or Section 5(b)(4) of Act 48, 63 P.S. § 2205(b)(4); and/or impose the costs of investigation upon Respondent under Section 5(b)(5) of Act 48, 63 P.S. § 2205(b)(5), because the Respondent performed the duties of an athletic trainer, in the Commonwealth of Pennsylvania, without a license and/or certificate in violation Section 15(a)(6) of the Act, 63 P.S. § 271.15(a)(6), and the Board's regulations at 49 Pa. Code § 25.703.

PROPOSED ORDER

5. The parties, intending to be legally bound, consent to the issuance of the following Order in settlement of this matter:

a. The Board finds that it is authorized to suspend, revoke, or otherwise restrict Respondent's license under Sections 11(c) and 15(a) of the Act, 63 P.S. §§ 271.11(c) & 271.15(a); and/or impose a civil penalty upon Respondent under Sections 11(c) and 15(a) of the Act, 63 P.S. §§ 271.11(c) & 271.15(a), and/or Section 5(b)(4) of ACT 48, 63 P.S. § 2205(b)(4); and/or impose the costs of investigation upon Respondent under Section 5(b)(5) of ACT 48, 63 P.S. § 2205(b)(5), because the Respondent performed the duties of an athletic trainer, in the Commonwealth of Pennsylvania, without a license and/or certificate in violation Section 15(a)(6) of the Act, 63 P.S. § 271.15(a)(6), and the Board's regulations at 49 Pa. Code § 25.703.

PUBLIC REPRIMAND

b. A **PUBLIC REPRIMAND** shall be placed on Respondent's permanent disciplinary record with the Board.

CIVIL PENALTY

c. A **CIVIL PENALTY** of two thousand five hundred dollars (\$2,500.00) is levied upon Respondent.

COSTS OF INVESTIGATION

d. An assessment for the **COSTS OF INVESTIGATION** of six hundred nineteen dollars and eighty cents (\$619.80) is levied upon Respondent.

e. Respondent shall tender the full sum of three thousand dollars one hundred nineteen dollars and eighty cents (\$3,119.80) as follows:

(1) Respondent shall tender the sum of one thousand six hundred nineteen dollars and eighty cents (\$1,619.80) with this executed Consent Agreement;

(2) Respondent shall make the second payment of one thousand dollars (\$1,000.00) on or before January 9, 2016; and

(3) Respondent shall make the third and final payment of five hundred dollars (\$500.00) on or before February 9, 2016.

f. Each payment shall be made by certified check, cashier's check, attorney's check, or money order issued by a usual, customary, and reputable issuer (e.g. U.S. Postal Money Order, Western Union Money Order, etc.). The check or money order shall be made payable to the "Commonwealth of Pennsylvania," and shall be valid for a period of at least one hundred eighty (180) days. Respondent agrees that payment shall only be made by one of the methods indicated above and shall not be made by uncertified personal or corporate check. Payment of the costs of investigation and payment of the civil penalty may be combined into a single payment instrument.

g. If Respondent fails to make a payment as required by the terms of this Consent Agreement and Order, **all licenses** issued to the Respondent by the Board, as identified in paragraph 2 above, shall be **IMMEDIATELY AND INDEFINITELY SUSPENDED** without further action until such time as all payments as provided herein have been made to the Commonwealth of Pennsylvania

h. This Order constitutes disciplinary action by the Board and shall be reported to other licensing authorities and any applicable national licensing databank as a disciplinary action by the Board.

i. This case shall be deemed settled and discontinued upon the Board issuing an Order adopting this Consent Agreement.

ADMISSIBILITY OF CONSENT AGREEMENT IN FUTURE PROCEEDINGS

6. Respondent agrees that if Respondent is charged with a violation of an Act enforced by this Board in the future, this Consent Agreement and Order shall be admitted into evidence without objection in that proceeding.

ACKNOWLEDGMENT OF NOTICE AND WAIVER OF HEARING

7. 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 knowingly and voluntarily waives the following rights related to that hearing: to be represented by counsel at the hearing; 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.

ACKNOWLEDGMENT OF RIGHT TO ATTORNEY

8. Respondent acknowledges that she is aware that she has the right to consult with, and/or be represented by, private legal counsel of Respondent's choosing and at Respondent's expense when reviewing, considering and accepting the terms of this Consent Agreement. To the extent that Respondent is not represented by legal counsel, Respondent has knowingly elected to proceed without the assistance of legal counsel.

WAIVER OF CLAIM OF COMMINGLING AND OTHER CONSTITUTIONAL CLAIMS

9. Respondent expressly waives any constitutional rights and issues, such as commingling of prosecutorial and adjudicative functions by the Board or its counsel, which may arise or have arisen during the negotiation, preparation and/or presentation of this Consent Agreement. Respondent specifically agrees that if the Board rejects this agreement, it may assume that the facts and averments as alleged in this Consent Agreement are true and correct for the limited purpose of recommending a sanction, based on those assumed facts, that would be acceptable to the Board before hearing the case. In the event that the Board does assume the facts and averments as alleged in this Consent Agreement are true for purposes of making a recommendation as to an acceptable sanction, such action shall not constitute commingling of prosecutorial and adjudicative functions by the Board or its counsel, and the Respondent expressly waives any constitutional rights and issues related to alleged commingling, bias, or violation of due process rights to have an unbiased and impartial adjudicator in any subsequent hearing. If a hearing is subsequently held, neither this Consent Agreement nor the proposed terms of settlement may be admitted into evidence and any facts, averments, and allegations contained in the Consent Agreement must be proven at hearing unless otherwise separately stipulated. This paragraph is binding on the participants even if the Board does not approve this Consent Agreement.

NO MODIFICATION OF ORDER

10. 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.

AGREEMENT NOT BINDING ON OTHER PARTIES

11. The Office of General Counsel has approved this Consent Agreement as to form and legality; however, this Consent Agreement shall have no legal effect unless and until the Board issues the stipulated Order.

EFFECT OF BOARD'S REJECTION OF CONSENT AGREEMENT

12. 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. This paragraph is binding on the participants even if the Board does not approve this Consent Agreement.

ENTIRE AGREEMENT

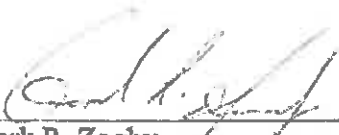
13. This agreement contains the whole agreement between the participants; provided however, that the captions printed in the various provisions of this agreement are for ease of reading only and are not to be interpreted as forming any part of this agreement. There are no other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever concerning this agreement.

AGREEMENT DOES NOT PREVENT ADDITIONAL DISCIPLINE BASED ON OTHER COMPLAINTS

14. Nothing in this Order shall preclude the Prosecution Division 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;

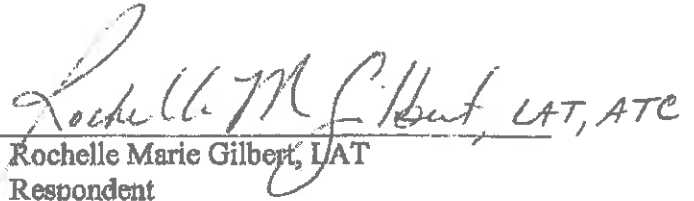
VERIFICATION OF FACTS AND STATEMENTS

15. Respondent verifies that the facts and statements set forth in this Consent Agreement are true and correct to the best of Respondent's knowledge, information and belief. Respondent understands that statements in this Consent Agreement are made subject to the criminal penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.



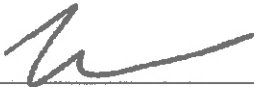
Mark R. Zogby
Prosecuting Attorney

DATED: 11/20/15



Rochelle Marie Gilbert, LAT
Respondent

DATED: November 19, 2015



Lucas J. Repka
Attorney for Respondent

DATED: 11/20/15

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ORDER

AND NOW, this 9th day of Dec, 2015, the STATE BOARD OF OSTEOPATHIC MEDICINE ("Board") 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.

BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS

BY ORDER:
STATE BOARD OF OSTEOPATHIC
MEDICINE



Ian J. Harlow
Commissioner



Jeffrey A. Heebner, D.O.
Chairman

For the Commonwealth:

Mark R. Zogby, Esquire
2601 North Third Street
P. O. Box 69521
Harrisburg, PA 17106-9521

Respondent:

Lucas J. Repka, Esquire
Repka Law Offices, LLC
108 East Center Street
Nazareth, PA 18064

Date of mailing:

December 10, 2015