

**STATE OF TENNESSEE  
DEPARTMENT OF HEALTH**

<b>IN THE MATTER OF:</b>	)	<b>BEFORE THE TENNESSEE BOARD</b>
	)	<b>OF OSTEOPATHIC EXAMINATION</b>
<b>GARY D. O'SHAUGHNESSY, D.O.</b>	)	
<b>RESPONDENT</b>	)	<b>CASE NO: 2011016691</b>
	)	
<b>KNOXVILLE, TENNESSEE</b>	)	
<b>TENNESSEE LICENSE NO. 682</b>	)	

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**CONSENT ORDER**

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Come now the Division of Health Related Boards of the Tennessee Department of Health (hereinafter the "Division"), by and through the Office of General Counsel, and Respondent Gary D. O'Shaughnessy, D.O. (hereinafter "Respondent"), who would respectfully move the Tennessee Board of Osteopathic Examination (hereinafter the "Board") for approval of this Consent Order affecting Respondent's osteopathic license in the State of Tennessee.

The Board is responsible for the regulation and supervision of osteopathic professionals licensed to practice in the State of Tennessee. *See Tennessee Osteopathic Practice Act, Tennessee Code Annotated Section (hereinafter "TENN. CODE ANN. §") 63-9-101, et seq.* It is the policy of the Board to require strict compliance with the laws of this State, and to apply the laws so as to preserve the quality of osteopathic care provided in Tennessee. It is the duty and responsibility of the Board to enforce the Tennessee Osteopathic Practice Act in such a manner as to promote and protect the public health, safety and welfare in every practicable way, including disciplining osteopathic professionals who violate the provisions of TENN. CODE ANN. § 63-9-101, *et seq.* or the Rules and Regulations promulgated by the Board and recorded in the Official Compilation Rules and Regulations of the State of Tennessee (hereinafter "TENN. COMP. R. & REGS.").

Respondent Gary D. O'Shaughnessy, D.O., by his signature to this Consent Order, waives the right to a contested case hearing and any and all rights to judicial review in this matter. Respondent agrees that presentation to and consideration of this Consent Order by the Board for ratification and all matters divulged during that process shall not constitute unfair disclosure such that the Board or any of its members shall be prejudiced to the extent that requires their disqualification from hearing this matter should this Order not be ratified. Likewise, all matters, admissions and statements disclosed or exchanged during the attempted ratification process shall not be used against Respondent in any subsequent proceeding unless independently entered into evidence or introduced as admissions.

Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to challenge or contest the validity of this Consent Order. Respondent understands that by signing this Consent Order, Respondent is allowing the Board to issue its order without further process. Respondent acknowledges that this is a formal disciplinary action and will be reported to the Health Integrity and Protection Data Bank and/ or similar agency. In the event that the Board rejects this Consent Order for any reason, it will be of no force or effect for either party.

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## I. STIPULATIONS OF FACT

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1. Respondent has been at all times pertinent hereto licensed by the Board as an osteopathic doctor in the State of Tennessee, having been granted Tennessee osteopathic license number 682 by the Board on December 4, 1984, which has a current expiration date of March 31, 2014.

2. At least in or about August 2011, Respondent wrote prescriptions for controlled substances for an employee of The Cornerstone of Recovery, Inc. under an agreement that the employee would fill the prescription and give Respondent a portion of the drugs.
3. On February 15, 2012 Respondent signed an affidavit admitting to the behavior in paragraph 2, *supra*.

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## II. GROUNDS FOR DISCIPLINE

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The facts stipulated to in the Stipulations of Fact are sufficient to establish that grounds for discipline of Respondent's osteopathic license exist. Specifically, Respondent has violated the following statutes or rules which are part of the Tennessee Osteopathic Practice Act, (TENN. CODE ANN. § 63-9-101, *et seq.*) for which disciplinary action before and by the Board is authorized:

4. The facts stipulated in paragraphs 1 through 3, *supra*, constitute a violation of TENN. CODE ANN. § 63-9-111(b)(1):

Unprofessional, dishonorable or unethical conduct.

5. The facts stipulated in paragraphs 1 through 3, *supra*, constitute a violation of TENN. CODE ANN. § 63-9-111(b)(5):

Habitual intoxication or personal misuse of any drugs or the use of intoxicating liquors, narcotics, controlled substances or other drugs or stimulants in such manner as to adversely affect the person's ability to practice medicine.

6. The facts stipulated in paragraphs 1 through 3, *supra*, constitute a violation of TENN. CODE ANN. § 63-9-111(b)(11):

Dispensing, prescribing or otherwise distributing any controlled substance or any other drug not in the course of professional practice, or not in good

faith to relieve pain and suffering or not to cure an ailment, physical infirmity or disease.

7. The facts stipulated in paragraphs 1 through 3, *supra*, constitute a violation of TENN.

CODE ANN. § 63-9-111(b)(12):

Dispensing, prescribing or otherwise distributing to any person a controlled substance or other drug is such person is addicted to the habit of using controlled substances without making a bona fide effort to cure the habit of such patient.

8. The facts stipulated in paragraphs 1 through 3, *supra*, constitute a violation of TENN.

CODE ANN. § 63-9-111(b)(13):

Dispensing, prescribing or otherwise distributing any controlled substance or any other drug to any person in violation of any law of the state or the United States.

9. The facts stipulated in paragraphs 1 through 3, *supra*, constitute a violation of TENN.

COMP. R. & REGS. RULE 1050-02-13(5)(b) which gives guidelines when evaluating the use of controlled substances for pain control.

10. The facts stipulated in paragraphs 1 through 3, *supra*, constitute a violation of TENN.

COMP. R. & REGS. RULE 1050-02-13(6) which is entitled *Prerequisites to Issuing Prescriptions or Dispensing Medications In Person, Electronically, and Over the Internet* and states:

- (a) Except as provided in subparagraph (b), it shall be a prima facie violation of T.C.A. § 63-9-111 (b) (1), (4), and (11) for a physician to prescribe or dispense any drug to any individual, whether in person or by electronic means or over the Internet or over telephone lines, unless the physician, or his/her licensed supervisee pursuant to appropriate protocols or medical orders, has first done and appropriately documented, for the person to whom a prescription is to be issued or drugs dispensed, all of the following:

1. Performed an appropriate history and physical examination;  
and

2. Made a diagnosis based upon the examinations and all diagnostic and laboratory tests consistent with good medical care; and
3. Formulated a therapeutic plan, and discussed it, along with the basis for it and the risks and benefits of various treatments options, a part of which might be the prescription or dispensed drug, with the patient; and
4. Insured availability of the physician or coverage for the patient for appropriate follow-up care.

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### III. POLICY STATEMENT

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The Tennessee Board of Osteopathic Examination takes this action in order to protect the health, safety and welfare of the citizens of the State of Tennessee.

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### IV. ORDER

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**NOW THEREFORE**, Respondent, for the purpose of avoiding further administrative action with respect to this cause, agrees to the following:

11. The Tennessee osteopathic license of Gary D. O'Shaughnessy, D.O., license number 682, is hereby **REPRIMANDED**.
12. Within thirty (30) days of entry of this order, Respondent must contact the Tennessee Medical Foundation (hereinafter "TMF") and schedule a meeting.
  - a. Respondent must get an evaluation for potential substance abuse issues with an evaluator recommended by TMF.
  - b. Respondent must abide by all recommendations of this evaluation.

- c. Respondent must get any additional evaluations as deemed necessary by TMF or the evaluators recommended by TMF.
  - d. Respondent must release the results of the evaluations and any suggested recommendations to the Board of Osteopathic Examination.
13. Respondent shall pay two (2) Type "A" civil penalties in the amount of one thousand dollars (\$1,000.00) each, for a total penalty of two thousand dollars (\$2,000.00), representing two violations of the Tennessee Osteopathic Practice Act.
  14. Respondent must pay, pursuant to TENN. CODE ANN. § 63-9-111(h) and Rule 1050-02-.10(1)(j) of the Official Compilation Rules and Regulations of the State of Tennessee, the actual and reasonable costs of prosecuting this case to the extent allowed by law, including all costs assessed against the Board by the Division's Bureau of Investigations in connection with the prosecution of this matter. These costs will be established by an Assessment of Costs prepared and filed by counsel for the Department. The maximum amount for the assessment of costs shall be Two Thousand Dollars (\$2,000.00).
  15. Respondent understands that this is a formal disciplinary action and will be reported to the Health Integrity and Protection Data Bank (H.I.P.D.B.) and/or similar agency.

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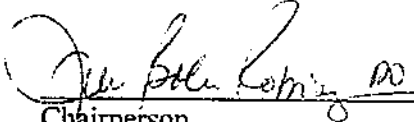
#### IV. NOTICE

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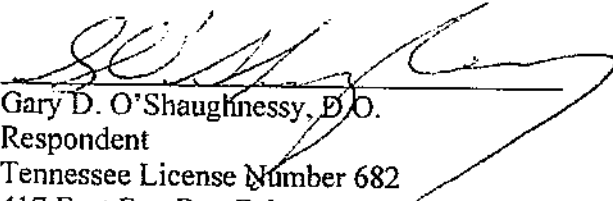
16. Any and all civil penalties/costs shall be paid in full within sixty (60) days from the issuance of the Assessment of Costs by submitting a **certified check, cashier's check, or money order** payable to the **State of Tennessee**, which shall be mailed or delivered to: **Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, 227 French Landing, Suite 201, Heritage Place Metro**

Center, Nashville, Tennessee 37243. A notation shall be placed on said check that it is payable for the costs of Gary D. O'Shaughnessy, D.O., case number 2011016691.

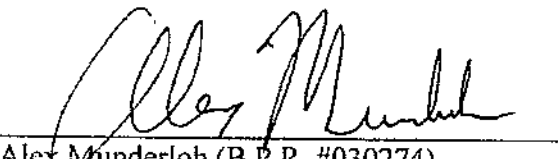
This **CONSENT ORDER** was approved by a majority of a quorum of the Tennessee Board of Osteopathic Examiners at a public meeting of the Board and signed this 15<sup>th</sup> day of August, 2012.

  
Chairperson  
Tennessee Board of Osteopathic Examination

**APPROVED FOR ENTRY:**

  
Gary D. O'Shaughnessy, D.O.  
Respondent  
Tennessee License Number 682  
417 East Fox Den Drive  
Knoxville, TN 37934

7/30/12  
DATE

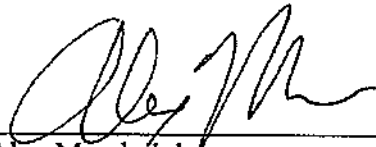
  
Alex Munderloh (B.P.R. #030274)  
Assistant General Counsel  
Office of General Counsel  
Tennessee Department of Health  
Plaza 1, Suite 210  
220 Athens Way  
Nashville, Tennessee 37243  
(615) 741-1611

8/15/12  
DATE

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of this document has been served upon Respondent, Gary D. O'Shaughnessy, D.O., 417 East Fox Drive, Knoxville, Tennessee 37934 and 11210 Crown Point Drive, Knoxville, Tennessee 37934 and 11002 Kingston Pike, Suite 105, Knoxville, Tennessee 37934, by delivering same in the United States Mail, Certified Numbers 7011 1150 0001 5218 2261 and 7011 1150 0001 5218 2278 and 7011 1150 0001 5218 2285, return receipts requested, and United States First Class Postage Pre-Paid Mail, with sufficient postage thereon to reach its destination.

This 17<sup>TH</sup> day of August, 2012.

  
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Alex Munderloh  
Assistant General Counsel