

By: Sounya J. Suddon  
Deputy Agency Clerk

**STATE OF FLORIDA  
BOARD OF OSTEOPATHIC MEDICINE**

DEPARTMENT OF HEALTH,

Petitioner,  
vs.

CASE NO.: 2002-09556  
LICENSE NO.: OS 0008402

DENNIS SCOTT DEVINNEY, D.O.,  
Respondent.

**FINAL ORDER APPROVING CONSENT AGREEMENT**

THIS MATTER came before the Board of Osteopathic Medicine at a duly-noticed public meeting held on February 22, 2003, in Fort Lauderdale, Florida, pursuant to Section 120.57(4), Florida Statutes, for consideration of the Draft Administrative Complaint (attached hereto as Exhibit A) and the proposed Consent Agreement (attached hereto as Exhibit B) entered into between the parties in the above styled case. Petitioner was represented by Richard Shoop, Senior Attorney. Respondent was present and represented by Edward M. Copeland, Esq.

Upon consideration of the Administrative Complaint and the proposed Consent Agreement in this matter, and being otherwise fully advised in the premises, it is hereby

**ORDERED AND ADJUDGED:**

1. The proposed Consent Agreement is hereby approved, adopted, and incorporated herein by reference.
2. Pursuant to paragraph 3 of the Stipulation, Administrative Costs are assessed at \$1,768.24.
3. Respondent will adhere to and abide by all of the terms and conditions of the Consent Agreement and this Order.
4. This Order shall be placed in and become a part of Respondent's official records and shall become effective upon filing with the Clerk of the Department of Health.

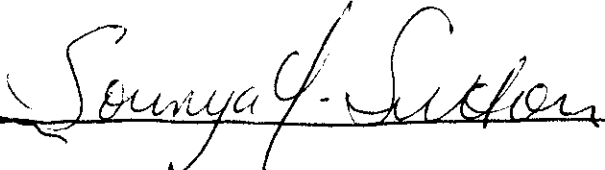
DONE AND ORDERED this 8 day of April, 2003.

**BOARD OF OSTEOPATHIC MEDICINE**

  
Pamela King  
Executive Director

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U. S. Mail to Dennis Scott Devinney, D.O., 4175 E. Fowler Avenue, Tampa, Florida 33617; Edward M. Copeland, Esq., MacFarlane, Ferguson & McMullen, 400 North Tampa Street, Suite 2300, Tampa, Florida 33601, and by hand delivery/United States Mail to the Clerk, Department of Health and its Counsel, 4052 Bald Cypress Way, Bin A02, Tallahassee, Florida 32399-1703, this 9<sup>th</sup> day of April, 2003.

  
Sonya G. Sutton

**STATE OF FLORIDA  
BOARD OF OSTEOPATHIC MEDICINE**

**DEPARTMENT OF HEALTH,**

**Petitioner,**

**v.**

**DOH Case Number 2002-09556**

**DENNIS SCOTT DEVINNEY, D.O.**

**Respondent.**

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**CONSENT AGREEMENT**

Dennis Scott Devinney, D.O., referred to as the "Respondent," and the Department of Health, referred to as "Department," stipulate and agree to the following 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.

**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 8402.
2. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint, for purposes of these proceedings only.

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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 set forth in the Administrative Complaint, if proven, would constitute violations of Chapter 459, Florida Statutes, as alleged in the Administrative Complaint.

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

STIPULATED DISPOSITION

1. FUTURE CONDUCT. Respondent shall not in the future violate Chapters 456, 459 and 893, Florida Statutes, or the rules promulgated pursuant thereto. Prior to signing this agreement, Respondent will read Chapters 456, 459, and 893, Florida Statutes, and the Rules of the Board of Osteopathic Medicine, at Section 64B-15, Florida Administrative Code.

2. FINE. The Board shall impose an administrative fine in the amount of five thousand dollars (\$5000.00) against the Respondent. The Respondent shall pay the fine to the Board of Osteopathic Medicine within SIXTY (60) days of its imposition by Final Order of the Board. **THE RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE IS HIS LEGAL OBLIGATION AND RESPONSIBILITY AND THE RESPONDENT AGREES TO CEASE PRACTICING IF THE FINE IS NOT PAID**

**AS AGREED TO IN THIS CONSENT AGREEMENT, SPECIFICALLY: IF THE RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE FINE HAS BEEN RECEIVED BY THE BOARD OFFICE WITHIN 60 DAYS OF THE FILING OF THIS FINAL ORDER, THE RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY THE RESPONDENT FROM THE BOARD. (SEE EXHIBIT A OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS).**

3. REIMBURSEMENT OF COSTS. In addition to the amount of any fine noted above, the Respondent agrees to reimburse the Department for any administrative costs incurred in the investigation and preparation of this case, including costs assessed by the Division of Administrative Hearings, if applicable, and by the Board of Osteopathic Medicine office. The agreed upon Department costs to be reimbursed in this case is not to exceed two thousand dollars (\$2,000). The costs in this case are currently one thousand seven hundred three dollars and thirty-two cents (\$1,703.32). The Respondent shall pay the costs to the Board of Osteopathic Medicine within SIXTY (60) days of its imposition by Final Order of the Board. **THE RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE COSTS IS HIS LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE COSTS ARE NOT PAID AS AGREED TO IN THIS CONSENT AGREEMENT, SPECIFICALLY: IF THE RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE COSTS NOTED**

**ABOVE HAS BEEN RECEIVED BY THE BOARD OFFICE WITHIN 60 DAYS OF THE FILING OF THIS FINAL ORDER, THE RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY THE RESPONDENT FROM THE BOARD. (SEE EXHIBIT A OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS.**

4. CONTINUING MEDICAL EDUCATION. Respondent shall complete five hours of CMEs in Risk Management within one (1) year of the Final Order of the Board. In addition, 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 education course within one (1) year of the filing of the Final Order incorporating this Agreement. All such documentation shall be sent to the Board of Osteopathic Medicine, regardless of whether some or any of such documentation was previously provided during the course of any audit or discussion with counsel for the Department. These hours shall be in addition to those required for renewal of licensure. Unless otherwise approved by the Board, said continuing medical education courses shall consist of a live, lecture format.

5. LECTURE. Respondent shall give a one-hour lecture on wrong-site surgery at a hospital where the Respondent has privileges and provide documentation of that lecture to the Board of Osteopathic Medicine within one year of the filing of the Final Order incorporating this Agreement. Said documentation shall consist of a letter from the

Risk Manager or continuing medical education coordinator of the facility indicating that the lecture/seminar has been completed.

6. LETTER OF CONCERN. The Respondent shall receive a Letter of Concern from the Board of Osteopathic Medicine. It is the understanding of the Petitioner and the Respondent that a Letter of Concern is not reported to the National Practitioner Data Bank.

7. MITIGATING FACTORS: In arriving at this disposition the parties considered the following mitigating factors: Respondent has been licensed in Florida as an osteopathic physician for over a year with no prior discipline.

8. 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.

9. Respondent shall appear before the Board at the meeting of the Board where this Agreement is considered. Respondent, in conjunction with the consideration of this Agreement by the Board, shall respond to questions under oath from the Board, Board Staff or Department Staff. Respondent shall be prepared to explain the circumstances involved in this matter and what measures have been taken to prevent a recurrence.

10. Should this Agreement be rejected, no statement made in furtherance of this Agreement by the Respondent may be used as direct evidence against the

Respondent in any proceeding; however, such statements may be used by the Petitioner for impeachment purposes.

11. Respondent and the Department fully understand that this joint Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or the Department against the Respondent for acts or omissions not specifically set forth in the Administrative Complaint.

12. 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.

13. Respondent waives the right to seek any attorney's fees or costs from the Department in connection with this matter.

14. This Agreement is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. 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. Furthermore, should this joint 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.

SIGNED this 30<sup>th</sup> day of December, 2002.

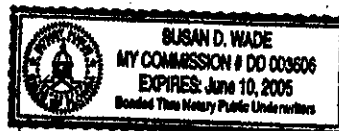
*Dennis Scott Devinney*  
Dennis Scott Devinney, D.O.

Before me, personally appeared Dennis Scott Devinney, D.O., whose identity is known to me by MI D.L. D156 134 760 653 (type of identification) and who, under oath, acknowledges that his signature appears above.

Sworn to and subscribed before me this 30<sup>th</sup> day of December, 2002.

*Busan D. Wade*  
NOTARY PUBLIC

My Commission Expires:



APPROVED this 7<sup>th</sup> day of January, 2003 <sup>(6236)</sup>

John O. Agwunobi, M.D., M.B.A.  
Secretary, Department of Health

By: *Wings S. Benton*  
Wings S. Benton  
Deputy General Counsel

2002-09556

**EXHIBIT A**

**STANDARD TERMS APPLICABLE TO CONSENT AGREEMENTS**

The following are the standard terms applicable to all consent agreements, including supervision and monitoring provisions applicable to licensees on probation.

A. PAYMENT OF FINES. Unless otherwise directed by the consent agreement, all fines shall be paid by check or money order and sent to the Board address set forth in paragraph E, below. The Board office does not have the authority to change the terms of payment of any fine imposed by the Board.

B. COMMUNITY SERVICE AND CONTINUING EDUCATION UNITS. Unless otherwise directed by the consent agreement, all community service requirements, continuing education units/courses must be completed, and documentation of such completion submitted to the Board of Osteopathic Medicine at the address set forth below in paragraph E, **WITHIN ONE YEAR OF THE DATE OF THE FINAL ORDER.**

C. 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. Furthermore, if the Respondent's license is on probation, the Respondent shall notify the Board within ten (10) days in the event that Respondent leaves the active practice of osteopathic medicine in Florida.

D. COSTS. Pursuant to Section 459.015(2), Florida Statutes, the Respondent shall pay all costs necessary to comply with the terms of this Consent Agreement. Such

costs include, but are not limited to, the costs of preparation of Investigative Reports detailing compliance with the terms of the Consent Agreement, obtaining supervision or monitoring of the practice, the cost of quality assurance reviews, and the Board's administrative costs directly associated with Respondent's probation.

E. BOARD ADDRESS. Unless otherwise directed by the Board office, all fines and costs shall be sent to: **Department of Health, HMQAMS/Client Services, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attn.: Medical Compliance Officer.** Unless otherwise directed by the Board office, all other correspondence shall be sent to: **Department of Health, HMQAMS/Client Services/Bin #C01, 4052 Bald Cypress Way, Tallahassee, Florida 32399-3251, Attn.: Medical Compliance Officer.**

**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH, )  
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 PETITIONER, )  
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 v. )  
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 DENNIS SCOTT DEVINNEY, D.O., )  
 )  
 RESPONDENT. )  
\_\_\_\_\_ )

CASE NO. 2002-09556

**ADMINISTRATIVE COMPLAINT**

COMES NOW the Petitioner, Department of Health, hereinafter referred to as "Petitioner," and files this Administrative Complaint before the Board of Osteopathic Medicine against Dennis Scott Devinney, D.O., hereinafter referred to as "Respondent," and alleges:

1. Petitioner is the state agency 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. Respondent is and has been at all times material hereto a licensed osteopathic physician in the state of Florida, having been issued license number OS 008402.
3. Respondent's last known address of record is 4175 E. Fowler Avenue, Tampa, Florida 33617.

4. On or about February 6, 2002, Patient J.R. presented to Respondent with complaints of left knee pain. Respondent ordered a magnetic resonance imaging test (MRI) on Patient J.R.'s left knee.

5. On or about February 26, 2002, after reviewing the MRI, Respondent diagnosed a tear to the posterior horn of the medial meniscus in the left knee and recommended left knee arthroscopic surgery.

6. On or about February 27, 2002, Patient J.R. indicated "yes" on a Procedure Consent Form for a "left knee arthroscopy, possible meniscectomy, possible meniscopectomy, possible arthrotomy."

7. On or about March 11, 2002, Respondent admitted Patient J.R. to Tampa General Hospital to perform the surgery to the left knee referred to in paragraph six above.

8. Patient J.R. was placed under general anesthesia and Respondent failed to identify the appropriate site, the left knee, for the procedure.

9. Respondent performed a right knee arthroscopy, noted that Patient had a complex tear of the medial meniscus and performed a medial meniscopectomy to the right knee.

10. The procedure Respondent performed on Patient J.R.'s right knee was a health care service.

11. After the procedure, Respondent realized that he had performed the procedure on the wrong knee.

12. While Patient J.R. was in the post anesthesia recovery unit (PACU), Respondent discussed the situation with Patient J.R. and his family, and Patient J.R. agreed to have the surgery, specifically the left knee arthroscopy and medial meniscoplasty, done to the left knee as originally planned.

13. Respondent then performed a left knee arthroscopy with arthroscopic medial meniscoplasty on Patient J.R.

14. Respondent performed health care services on the wrong site by performing a right knee arthroscopy and medial meniscoplasty when the procedure was planned for, and consent was given for, a left knee arthroscopy and medial meniscoplasty.

15. Respondent performed an unauthorized procedure by performing a right knee arthroscopy and medial meniscoplasty when the procedure was planned for, and consent was given for, a left knee arthroscopy and medial meniscoplasty.

16. Respondent failed to practice osteopathic medicine with that level of care, skill, and treatment, which is recognized by a reasonably prudent similar osteopathic physician as being acceptable under similar conditions and circumstances by failing to identify the appropriate site, specifically the left knee, for a surgical procedure.

17. Respondent failed to practice osteopathic medicine with that level of care, skill, and treatment, which is recognized by a reasonably prudent similar osteopathic physician as being acceptable under similar conditions and circumstances by performing surgery on the wrong site, specifically on the right knee when the procedure was planned, and the consent was given, for the left knee.

### **COUNT ONE**

18. Petitioner realleges and incorporates by reference paragraphs one (1) through seventeen (17) as if fully incorporated herein this Count One.

19. Respondent failed to identify the appropriate site for surgery and performed surgery on the right knee when the surgery was planned for, and consent was given for, the left knee.

20. Based on the foregoing, Respondent violated Section 459.015(1)(x), Florida Statutes (2001), gross or repeated malpractice or the failure to practice osteopathic medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar osteopathic physician as being acceptable under similar conditions and circumstances.

### **COUNT TWO**

21. Petitioner realleges and incorporates by reference paragraphs one (1) through seventeen (17) as if fully incorporated herein this Count Two.

22. By performing surgery on the right knee when surgery was planned, and consent was given, for the left knee, Respondent performed health care services on the wrong site and/ or performed an unauthorized procedure.

23. Based on the foregoing, Respondent violated Section 459.015(1)(pp), Florida Statutes (2001) by violating any provision of Chapter 456, to wit: Section 456.072(1)(aa), Florida Statutes (2001), by performing or attempting to perform health care services on the wrong patient, a wrong-site procedure, a wrong procedure, or an unauthorized procedure or a procedure that is medically unnecessary or otherwise

unrelated to the patient's diagnosis or medical condition. For the purposes of this paragraph, performing or attempting to perform health care services includes the preparation of the patient.

### **COSTS**

24. Petitioner has incurred costs related to the investigation and prosecution of this matter.

25. Pursuant to Section 456.072(4), Florida Statutes, The Board shall assess costs related to the investigation and prosecution of a disciplinary matter on a respondent in addition to any other discipline imposed.

WHEREFORE, the Petitioner respectfully requests that the Board of Osteopathic Medicine enter an order imposing one or more of the following penalties, in addition to the assessment of the costs related to the investigation and prosecution of this case as provided for in Section 456.072(4), Florida Statutes (2001):

- (A) Revocation of Respondent's license;
- (B) Suspension of Respondent's license for an appropriate period of time;
- (C) Restriction of the Respondent's practice;
- (D) Imposition of an administrative fine;
- (E) Issuance of a reprimand;
- (F) Placement of the Respondent on probation;

(G) Administrative costs, and/or any other relief that the Board deems appropriate.

SIGNED this 8 day of January, 2003.

John O. Agwunobi, M.D., M.B.A.  
Secretary, Department of Health



Kathy Gatziaff  
Assistant General Counsel  
Florida Bar # 0494461  
Department of Health  
Office of The General Counsel  
Prosecution Services Unit  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, Florida 32399-3265  
Phone (850) 487-9633  
Facsimile (850) 414-1991

**FILED**  
DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK *Vicki R. Kenon*  
DATE 1/8/03

Reviewed and approved by DKK, date 11/15/02  
PCP Date: probable cause waived  
PCP Members: Robert Hand, D.O., Chairperson  
Ronald Kaufman, D.O.