

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
BUREAU OF REGULATORY SERVICES**

In re: Jan Silberstein, M.D.
Petition Numbers 950705-001-141, 990309-001-048, 990330-001-067, 990330-001-068,
9905005-001-097

CONSENT ORDER

WHEREAS, Jan Silberstein, M.D. of ^{Christenbury} ~~Burlington~~, Connecticut (hereinafter "respondent") has been issued license number 026007 to practice as a physician and surgeon by the Department of Public Health (hereinafter "the Department") pursuant to Chapter 370 of the General Statutes of Connecticut, as amended; and,

WHEREAS, the Department alleges and Respondent denies that:

1. During a period from 1992 through 1999, the Department received seven complaints from patients of respondent's otolaryngology practice which alleged departures from the standard of care in diagnosis and treatment.
2. During a period from on or about November 28, 1995 through on or about July 29, 1998, Charlotte Hungerford Hospital undertook a preliminary fact finding investigation concerning certain questions raised regarding the adequacy of documentation, diagnosis, surgical procedure and outcome. The proceedings ended, without a decision, when respondent closed his otolaryngology practice in Torrington. Respondent's relocated practice consisted primarily of the use of lasers to remove varicose veins, scars, and lesions.
3. In the matter of patient R.T. (Petition No. 990505-001-097), which resulted in a verdict for respondent, followed by being set aside for juror misconduct and subsequently a

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settlement, respondent failed to obtain the patient's informed consent for an operation, performed an atticotomy improperly, and failed to follow up on post-operative complications.

4. In the matter of patient S.N. (Petition No. 990330-001-068), respondent claimed to have performed a lingual tonsillectomy, yet the patient's subsequent treating physician noted a few weeks later that the patient presented with bilateral hypertrophy of the lingual tonsils and granulomas of the vocal cords.
5. In the matter of patient D.K. (Petition No. 990330-001-067), respondent performed facial surgery which left excessive scarring.
6. In the matter of patient L.G. (Petition No. 950705-001-141), which resulted in a plaintiff's verdict, respondent incorrectly diagnosed and treated patient's nasal condition.
7. In various cases investigated by the Department and the Charlotte Hungerford Hospital Ad Hoc Committee, respondent's records were inaccurate, incorrect, incomplete, and/or written long after the events described.
8. In the matter of patient J.P. (Petition No. 990309-001-048), respondent failed to maintain proper communication with his patient and failed to make acceptable fee and billing arrangements for a cosmetic procedure.

WHEREAS the Department and Respondent agree that:

9. Respondent has had a diagnosis of ~~bipolar disorder~~ since 1990. Respondent has had a diagnosis of ~~depression~~ since November 1998. Respondent is currently engaged in appropriate medical care for these diagnoses.
Depression 1992
Bipolar Disorder
10. The above described facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, §20-13c, including, but not limited to:
 - a. §20-13c(2); and/or
 - b. §20-13c(4).

WHEREAS, respondent, in consideration of this Consent Order has chosen not to contest the above allegations of wrongdoing but, while admitting no guilt or wrongdoing, agrees that for purposes of this or any future proceedings before the Connecticut Medical examining Board (hereinafter "the Board"), this Consent Order shall have the same effect as if proven and ordered after a full hearing held pursuant to §§19a-10, 19a-14, and 20-13e of the General Statutes of Connecticut.

NOW THEREFORE, pursuant to §§19a-14, 19a-17, and 20-13e of the General Statutes of Connecticut, respondent hereby stipulates and agrees to the following:

1. Respondent waives his right to a hearing on the merits of this matter.
2. Respondent's license number 026007 to practice as a physician and surgeon in the State of Connecticut is hereby permanently restricted to forbid the practice of otolaryngology and is further permanently restricted such that respondent may perform only the procedures listed in Appendix A or such other procedures as the Connecticut Medical Examining Board may approve upon respondent's application. Respondent's right to prescribe medications shall, accordingly, be limited to such prescriptions as are appropriate to the restricted scope of his practice. Respondent shall make appropriate referrals for patients whose presenting conditions are outside the scope of his practice, as restricted by this Consent Order, and shall note such referrals in the patient's records.
3. Respondent shall not use lasers or broad band intense pulsed light (for example, EpiLight [TM]) in his practice of medicine except upon the following terms:
 - a. Respondent shall assess each patient prior to and during the use of said modalities.
 - b. Respondent may not delegate the use of said modalities to any person unless said person (a) possesses a valid current Connecticut license as a physician's assistant, a registered nurse, licensed practical nurse, or paramedic and (b) has successfully

completed a course of training, pre-approved by the Department of Public Health, in the use of said modality.

- c. Respondent shall provide on-site supervision to any person to whom he delegates the use of said modalities
4. Respondent's license shall be placed on probation for a period of three years under the following terms and conditions:
- a. Respondent shall participate in regularly scheduled therapy at his own expense with a licensed psychiatrist or psychologist pre-approved by the Department (hereinafter "therapist").
 - (1) Respondent shall provide a copy of this Consent Order to his therapist.
 - (2) Respondent's therapist shall furnish written confirmation to the Department of his or her engagement in that capacity and receipt of a copy of this Consent Order within fifteen (15) days of the effective date of this Consent Order.
 - (3) If the therapist determines that therapy is no longer necessary, that a reduction in frequency of therapy sessions is warranted, or that respondent should be transferred to another therapist, the therapist shall advise the Department, and the Department shall pre-approve said termination of therapy, reduction in frequency of therapy sessions, and/or respondent's transfer to another therapist.
 - (4) The therapist shall submit reports monthly for the duration of probation, which shall address, but not necessarily be limited to, respondent's ability to practice medicine and surgery safely and competently. Said reports shall continue until the therapist determines that therapy is no longer necessary or the period of probation has terminated.

- (5) The therapist shall immediately notify the Department in writing if the therapist believes respondent's continued practice poses a danger to the public, or if respondent discontinues therapy and/or terminates his or her services.
 - (6) Respondent shall comply with all prescription orders of his treating psychiatrist, if any, and all referrals to group therapy, if any.
- b. Respondent shall obtain at his own expense, the services of a physician, pre-approved by the Department (hereinafter "supervisor"), to conduct a monthly random review of fifteen percent (15%) or twenty of respondent's patient records, whichever is the larger number. In the event respondent has twenty (20) or fewer patients, the supervisor shall review all of respondent's patient records. After the first year of probation, the review shall be quarterly for the remainder of the probation.
- (1) Respondent's supervisor shall meet with him not less than once every month for the first year of his probationary period and quarterly for the remainder of the probationary period.
 - (2) The supervisor shall have the right to monitor respondent's practice by any other reasonable means which he or she deems appropriate. Respondent shall fully cooperate with the supervisor in providing such monitoring.
 - (3) Respondent shall be responsible for providing written supervisor reports directly to the Department monthly for the first year of the probationary period and quarterly for the remainder of the probationary period. Such supervisor's reports shall include documentation of dates and duration of meetings with respondent, number and a general description of the patient records and patient medication orders and prescriptions reviewed, additional

monitoring techniques utilized, and statement that respondent is practicing with reasonable skill and safety and in conformity with the provisions of paragraph 3 (b)(4) below.

- (4) Respondent's patient records shall conform to §19a-14-40, R.C.S.A. and in addition shall meet any other applicable standard of record keeping. In addition, respondent's patient records shall be prepared contemporaneously with the care of the patient, shall be signed by respondent, and shall be prepared in an uneraseable medium. Every patient file will contain an appropriate patient medical history form signed by the patient. Every patient file will contain a statement of the risks, side effects, and known statistical likelihood of success of the procedure to be used, and a statement from the patient that he/she understands the aforesaid materials. Each patient file shall also contain the following:

(a) The name and address of the patient's primary care physician, if applicable. Respondent shall forward a copy of his records to said primary care physician, unless his chart contains a signed request from the patient that he not send the records to his/her primary care physician.

(b) One or more color photographs of the patient's presenting condition.

(c) A written fee agreement signed by the patient for uninsured treatment.

- c. Within the final six months of the probationary period, respondent shall, at his own expense, undergo a psychiatric and/or psychological evaluation, by a psychiatrist and/or psychologist pre-approved by the Department (hereinafter "the

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evaluator(s)”), who shall not be any practitioner who has served as respondent’s therapist. Respondent shall fully cooperate with all requests made by the evaluator(s). Respondent hereby agrees that the evaluation report(s) shall be provided by the evaluator(s) directly to the Department. The evaluator(s) shall conclude that respondent can safely practice as a physician and surgeon without having any restrictions on his license, except the restrictions in paragraph 2 above. If the evaluator(s) reach(es) any other conclusion, such finding shall constitute a violation of this Consent Order, to be addressed by the provisions of paragraphs 9, 10, and/or 11 of this Consent Order. The Department may provide the evaluator with a copy of the Consent Order and additional information including, but not limited to, prior psychiatric evaluations of respondent, reports received by the Drug Control Division of the Department of Consumer Protection, the monitoring file including all therapist and employer reports and any reports received from the police or any other authority.

- d. Within the first six months of the probationary period, respondent shall attend and successfully complete twenty hours of training in the use of lasers in cosmetic procedures and coursework, up to a maximum of twenty hours, in the injection of collagen in cosmetic procedures, such course or courses to be pre-approved by the Department. Respondent shall attend and successfully attend an additional 20 hours of training in both subjects, such courses to be pre-approved by the Department, annually thereafter. Within fifteen days of the completion of such coursework, respondent shall provide the Department with proof, to the Department’s satisfaction, of the successful completion of such course(s).
- e. Respondent shall notify each of his health care professionals of all medications prescribed for him by any and all other health care professionals.

5. All correspondence and reports are to be addressed to:

Bonnie Pinkerton, Nurse Consultant
Department of Public Health
Division of Health Systems Regulation
410 Capitol Avenue, MS #12HSR
P.O. Box 340308
Hartford, CT 06134-0308

6. All reports required by the terms of this Consent Order shall be due according to a schedule to be established by the Department of Public Health.
7. Respondent shall comply with all state and federal statutes and regulations applicable to his licensure.
8. Respondent shall pay all costs necessary to comply with this Consent Order.
9. Any alleged violation of any provision of this Consent Order may result in the following procedures at the discretion of the Department:
- a. The Department shall notify respondent in writing by first-class mail that the term(s) of this Consent Order have been violated, provided that no prior written consent for deviation from said term(s) has been granted.
 - b. Said notification shall include the acts or omission(s) which violate the term(s) of this Consent Order.
 - c. Respondent shall be allowed fifteen (15) days from the date of the mailing of notification required in paragraph 9a above to demonstrate to the satisfaction of the Department that he has complied with the terms of this Consent Order or, in the alternative, that he has cured the violation in question.
 - d. If respondent does not demonstrate compliance or cure the violation by the limited fifteen (15) day date certain contained in the notification of violation to the

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satisfaction of the Department, he shall be entitled to a hearing before the Board which shall make a final determination of the disciplinary action to be taken.

- e. Evidence presented to the Board by either the Department or respondent in any such hearing shall be limited to the alleged violation(s) of the term(s) of this Consent Order.
10. In the event respondent violates any term of this Consent Order, respondent agrees immediately to refrain from practicing as a physician and surgeon, upon request by the Department, with notice to the Board, for a period not to exceed 45 days. During that time period, respondent further agrees to cooperate with the Department in its investigation of the violation and to submit to and complete a medical, psychiatric and/or psychological evaluation, if requested to do so by the Department; and, that the results of the evaluation shall be submitted directly to the Department. Respondent further agrees that failure to cooperate with the Department in its investigation during said 45 day period shall constitute grounds for the Department to seek a summary suspension of respondent's license. In any such summary action, respondent stipulates that his failure to cooperate with the Department's investigation shall constitute an admission that his conduct constitutes a clear and immediate danger as required pursuant to the General Statutes of Connecticut, sections 4-182(c) and 19a-17(c).
11. In the event respondent violates any term of this Consent Order, said violation may also constitute grounds for the Department to seek a summary suspension of his license before the Board.
12. In the event respondent is not employed as a physician and surgeon for periods of thirty (30) consecutive days or longer, or is employed as a physician and surgeon less than twenty (20) hours per week, or is employed outside of the State of Connecticut, respondent

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shall notify the Department in writing. Such periods of time shall not be counted in reducing the probationary period covered by this Consent Order.

13. Legal notice shall be sufficient if sent to respondent's last known address of record reported to the Licensure and Registration Section of the Division of Health Systems Regulation of the Department.
14. This Consent Order is effective on the first day of the month immediately following the date this Consent Order is accepted and ordered by the Board.
15. Respondent agrees that this Consent Order shall be deemed a public document, and the Department's allegations as contained in this Consent Order shall be deemed true in any subsequent proceeding before the Board in which his compliance with this Consent Order or with §20-13c of the General Statutes of Connecticut, as amended, is at issue.
16. Any extension of time or grace period for reporting granted by the Department shall not be a waiver or preclude the Department from taking action at a later time. The Department shall not be required to grant future extensions of time or grace periods.
17. This Consent Order and terms set forth herein are not subject to reconsideration, collateral attack or judicial review under any form or in any forum. Further, this Order is not subject to appeal or review under the provisions of Chapters 54 or 368a of the General Statutes of Connecticut, provided that this stipulation shall not deprive respondent of any rights that he may have under the laws of the State of Connecticut or of the United States.
18. This Consent Order is a revocable offer of settlement which may be modified by mutual agreement or withdrawn by the Department at any time prior to its being executed by the last signatory.
19. Respondent permits a representative of the Legal Office of the Bureau of Regulatory Services to present this Consent Order and the factual basis for this Consent Order to the

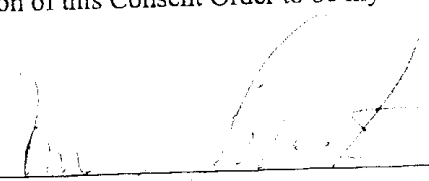
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Board. Respondent understands that the Board has complete and final discretion as to whether this executed Consent Order is approved or accepted.


20. Respondent understands and agrees that he is responsible for satisfying all of the terms of this Consent Order during vacations and other periods in which he is away from his residence.
21. Respondent has the right to consult with an attorney prior to signing this document.



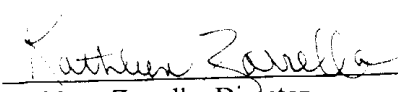
I, Jan Silberstein, M.D., have read the above Consent Order, and I stipulate and agree to the terms as set forth therein. I further declare the execution of this Consent Order to be my free act and deed.


Jan Silberstein

Subscribed and sworn to before me this 24th day of August 2000.


Notary Public or person authorized
by law to administer an oath or affirmation

The above Consent Order having been presented to the duly appointed agent of the
Commissioner of the Department of Public Health on the 5th day of
September 2000, it is hereby accepted.


Kathleen Zarrella, Director
Division of Health Systems Regulation

The above Consent Order having been presented to the duly appointed agent of the _____
on the 19th day of September 2000, it is hereby ordered and accepted.

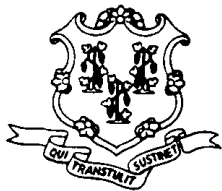

Connecticut Medical Examining Board

dmt/silberstein
consent

APPENDIX A

1. Carbon Dioxide laser for facial resurfacing and removal of skin cancer lesions;
2. Application of non-coherent and coherent pulses of light (e.g. Photoderm, Vasculite, and Epilight) for removal of benign vascular lesions, pigmented lesions, hemangioma, and telangiectasia, and for epilation;
3. Collagen injections for treatment of wrinkles but not for breast implants or other augmentations; and
4. Microabrasion of skin with Powerpeel or similar product.





STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

December 2, 2003

Jan Silberstein, MD
991 Main Street, Suite 2A
East Hartford, CT 06108-2274

Re: Consent Order
Petition Nos. 950705-001-141
990309-001-048
990330-001-067
990330-001-068
990505-001-097
License No. 026007
DOB: 10/25/49

Dear Dr. Silberstein:

Please accept this letter as notice that your license probation under the terms of the above-referenced Consent Order terminated on 10/1/03. Please note that your license remains permanently restricted, in that you may not practice otolaryngology, and you may perform only the procedures set forth below:

1. Carbon Dioxide laser for facial resurfacing and removal of skin cancer lesions;
2. Application of non-coherent and coherent pulses of light (e.g. Photoderm, Vasculite, and Epilight) for removal of benign vascular lesions, pigmented lesions, hemangioma, and telangiectasia, and for epilation;
3. Collagen injections for treatment of wrinkles but not for breast implants or other augmentations; and,
4. Microabrasion of skin with Powerpeel or similar product.

Likewise, your right to prescribe medications is limited to such prescriptions as are appropriate to the restricted scope of your practice.

If in the future you wish to expand the restricted scope of your practice, you must first make application to and obtain the approval of the Connecticut Medical Examining Board.

Finally, your license remains on probation until 8/15/04, under the terms of Consent Order, Petition No. 2000-0209-001-024.

Very truly yours,

Bonnie Pinkerton, RNC
Division of Health Systems Regulation

cc: J. Filippone



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