



CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

New Jersey Office of the Attorney General

Division of Consumer Affairs
Orthotics and Prosthetics Board of Examiners
124 Halsey Street, 6th Floor, Newark, NJ 07102



JOHN J. HOFFMAN
Acting Attorney General

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P.O. Box 45034
Newark, NJ 07101
(973) 504-6445

July 11, 2014

Robert Carter Pierce
Attorney At Law
3350 Route 138, Bldg.1, Suite 113
Wall Township, New Jersey 07719

RE: David Rabe Lic # 45OR00000100,
45PR00000200

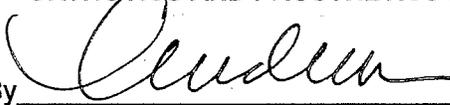
Dear Mr. Pierce:

Please find enclosed a copy of the fully executed consent order filed by the Orthotics and Prosthetics Board of Examiners the ("Board") on July 11, 2014, for your client David Rabe.

Please note that the penalties totaling the amount of \$ 12,500.00 will be due on or before August 11, 2014. If Mr. Rabe have chosen this payment in installments, the amount of \$ 1, 041.66 is due immediately, and eleven (11) monthly payments of \$ 1,041.66 due the first of each month thereafter until all (11) payments are completed.

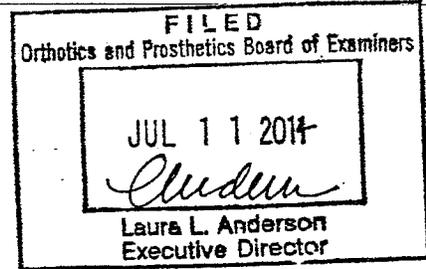
If you have any questions, please feel free to call this office at the above telephone number.

ORTHOTICS AND PROSTHETICS BOARD OF EXAMINERS

By 

Laura L. Anderson, Executive Director

c: David Rabe, L.O.P.
Swang Oo, Deputy Attorney General



JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Division of Law 5th Floor
124 Halsey Street
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By: Swang Oo
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Board of Examiners
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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
NEW JERSEY ORTHOTICS AND PROSTHETICS
BOARD OF EXAMINERS

IN THE MATTER OF :
 :
 : Administrative Action
 :
 DAVID RABE 45OR00000100, :
 :
 45PR00000200 :
 :
 : CONSENT ORDER
 :
 :
 LICENSED TO PRACTICE AS AN :
 ORTHOTIST/PROSTHETIST :
 :
 IN THE STATE OF NEW JERSEY :

This matter was opened to the New Jersey Orthotics and Prosthetics Board of Examiners (Board) upon receipt of two (2) patient complaints pertaining to the quality of treatment provided by David Rabe ("Respondent"), licensed in the State of New Jersey as an orthotist and prosthetist, alleging that Respondent engaged in professional misconduct and aided and abetted the unlicensed practice by knowingly allowing an unlicensed individual, John Mihlik, to treat patients.

In July 2009, patient H.M., a left leg below knee amputee, met with Respondent, a 50% owner of Allcare Orthotic and Prosthetics Services ("Allcare"), and John Mihlik, an employee of Allcare. The

first temporary prosthesis they provided broke after approximately forty (40) days of use, resulting in injuries to the patient's hands and scraping of his forearms, the side of his knee and his right hip. H.M. returned the temporary prosthesis to Respondent, after which the stump of his leg became infected from the prosthesis liner, resulting in his hospitalization. John Mihlik and Respondent provided a second temporary prosthesis, which broke after fifteen days of use, causing H.M. to injure himself again. After returning the second broken prosthesis, H.M. spent a year on crutches before finally receiving a permanent prosthesis from Respondent.

Patient E.T., a left leg below knee amputee, met with both Respondent and John Mihlik during the period June 2009 through December 2010. (E.T. had previously been a patient of Allcare for a shoe insert in connection with a right toe ulceration). E.T. had a left leg prosthesis at the time. Mr. Mihlik spoke to her about providing her with a new left leg prosthesis.

Mr. Mihlik under Respondent's direction, casted E.T. twice for a new left leg prosthesis, but it did not fit properly. In December 2009, Respondent took possession of the prosthesis to correct it. He did not return that prosthesis to her. In October 2010, E.T.'s right leg was amputated below the knee. She was provided with a temporary prosthesis for her right leg by the Kessler Institute, but Allcare was to provide her with new

permanent prostheses for both legs. Unbeknownst to E.T., Respondent treated her as a private patient.

Respondent casted E.T. for the new prostheses in both October and in December 2010, promising that they would be provided to her by Christmas Eve of 2010. The prostheses were not delivered, however, until March 2011. Medicare was billed for these final prostheses in both July 2009 and February 2010. From December 2009 through March 2011, E.T. did not receive her final prostheses, nor did Respondent return any of her calls.

By January 2011, E.T. still had not received her prostheses and discovered that Respondent's partnership with Allcare ended in December 2010. Respondent testified that during this time, he tried on various occasions to contact E.T., but was unsuccessful because he did not have her phone number. He testified that after speaking with Medicare, he was instructed to mail the prostheses to E.T. The patient received the prosthetic legs by mail on March 31, 2011. This preclude her from receiving appropriate adjustment or fitting on delivery.

Respondent has acknowledged he was aware that Mr. Mihlik was not licensed by the Board, and yet permitted Mr. Mihlik to cast and measure patient H.M., for the creation of a socket for a new prosthetic leg in July of 2009 and to fabricate a temporary prosthetic (socket). Based on review of the invoices provided, Respondent has billed Medicare for protheses for E.T. prior to

having completed work. Additionally, some of the items billed under Respondent's provider number were performed by Mr. Mihlik.

Respondent is currently working as a sales representative for D.G.O. Global (Don Joy), a national company selling medical devices including orthotics braces. Don Joy currently has no offices in New Jersey and is not required to have an office in New Jersey. N.J.S.A. 45:12B-20 requires that every practicing licensed practitioner for orthotics, prosthetics, or both, must maintain an office in this State. Respondent, as an employee of Don Joy, testified that he saw patients at physicians' offices, but disputed providing or recommending orthotic devices including custom knee braces. Respondent denied making necessary adjustments or providing orthotic services at physicians' offices or at patients' homes. Respondent also denied not keeping any contemporaneous patient records for those services, a violation of N.J.A.C. 13:44-9.1.

These facts establish a basis for disciplinary action in that Respondent engaged in gross and repeated acts of negligence or incompetence in his treatment of H.M. and E.T. pursuant to N.J.S.A. 45:1-21(c) and (d); failed to maintain an office in this State while working for Don Joy, in violation of N.J.S.A. 45:12B-20 and failed to comply with the Board's record keeping regulation in violation of N.J.A.C. 13:44-9.1 in violation of N.J.S.A. 45:1-21(h), aided and abetted unlicensed practice as defined in N.J.S.A. 45:12B-17 in violation of N.J.S.A. 45:1-21(n); and engaged in

professional misconduct by and through these acts and omissions in violation of N.J.S.A. 45:1-21(e).

Based on the serious violation of Board statutes and regulations, the Board finds it appropriate to suspend Respondent's licenses to practice prosthetics and orthotics and to impose civil penalties.

Although Respondent disputes these allegations, Respondent desires to resolve this matter without recourse to formal proceedings, having waived any right to such proceedings, and for good cause shown;

IT IS ON THIS 11th DAY OF July, 2014

HEREBY ORDERED AND AGREED THAT:

1. The license of David Rabe, L.P., to practice prosthetics in the State of New Jersey shall be suspended for a period of two (2) years of which one (1) year shall be served as a period of active suspension, the remaining portion to be stayed and served as a period of probation. The suspension shall commence upon the entry of this Consent Order.

2. The license of David Rabe, L.O., to practice orthotics in the State of New Jersey shall be suspended for a period of one (1) year of which two (2) months shall be served as a period of active suspension, the remaining portion to be stayed and served as a period of probation. The suspension shall commence upon the entry of this Consent Order.

3. During the period of active suspension of his licenses, Respondent agrees not to perform any acts requiring licensure in this State, including but not limited to patient evaluation and measuring, designing, constructing, assembling, fitting, adjusting and servicing of orthotic appliances or orthoses for the correction or alleviation of musculoskeletal diseases, injuries or deformities or of any type of upper and lower extremity prosthetic appliance. He may act as a representative for Don Joy or any entity engaged in the offer and sale of medical devices including orthotics braces.

4. Upon reinstatement of his orthotics or prosthetics license, he must maintain an office consistent with N.J.S.A. 45:12B-20 to practice orthotics and/or prosthetics.

5. Respondent shall immediately cease and desist from aiding and abetting the unlicensed practice of prosthetics and/or orthotics.

6. Respondent is assessed civil penalties, pursuant to N.J.S.A. 45:1-25, totaling \$7,000 for gross and repeated acts of negligence, professional misconduct, aiding and abetting unlicensed practice, failure to maintain an office in the State, failure to maintain contemporaneous patient records, and improper billing.

7. Respondent shall pay investigative costs in the amount of \$5,500.00.

8. Payment of civil penalties and costs totaling \$12,500.00 shall be made no later than thirty (30) days from the entry of this Consent Order, by bank check or money order made payable to the State of New Jersey and forwarded to Laura L. Anderson, Executive Director, Board of Orthotics and Prosthetics Examiners, 124 Halsey Street, P.O. Box 45034,

Jul. 7. 2014 10:13AM MARK R AIKINS LLC

No. 7642 P. 2

Newark, New Jersey 07101. In the alternative, Respondent shall pay \$1,041.65 upon the entry of this Consent Order and thereafter. Respondent shall make eleven (11) monthly payments of \$1,041.65 per payment with the first payment due by the first of each month thereafter until all eleven (11) payments are completed. In the event that Respondent does not make a timely payment, the full balance will immediately become due.

Failure to timely remit any and all payments required by this order will result in the filing of a certificate of debt as well as other proceedings permitted by law.

6. Subsequent violations will subject Respondent to enhanced penalties pursuant to N.J.S.A. 45:1-25.

BOARD OF ORTHOTICS AND PROSTHETICS EXAMINERS

By: Mildred Calasio, L.O.

Mildred Calasio, L.O.
Board Vice President

I have read and understand the within Consent Order and agree to be bound by its terms. Consent is hereby given to the Board to enter this Order.

David Xabe
David Xabe, L.P.O.

Date: 6/25/14

I consent to the entry of this order as to form.

Robert Carter Pierce
Robert Carter Pierce, Esq.
Attorney for David Xabe, L.P.O.
Date: _____