

STATE OF VERMONT BOARD OF MEDICAL PRACTICE

In re: Frederick Fries, M.D.

)
)
)
)

Docket Nos. MPS 118-1008
MPS 159-1208

STIPULATION AND CONSENT ORDER

IN THE ABOVE-REFERENCED MATTERS, Frederick Fries, M.D. (Respondent), and the State of Vermont, by and through Attorney General William H. Sorrell and undersigned Assistant Attorney General James S. Arisman, and agree and stipulate as follows:

1. Frederick Fries, M.D., Respondent, holds Vermont Medical License Number 042-0007105, issued by the Vermont Board of Medical Practice on June 13, 1984. Respondent, a neurologist, practices in Montpelier, Vermont.
2. Jurisdiction vests in the Vermont Board of Medical Practice (Board) by virtue of 26 V.S.A. §§ 1353-1361 & 1398.

I. Background.

3. The Vermont Board of Medical Practice in 2008 opened Docket No. MPS 118-1008 for investigation following receipt of information from the Vermont Department of Taxes alleging that Respondent was not (and had not been) in "good standing" with regard to the payment of his Vermont taxes.
4. The Vermont Board of Medical Practice in 2008 also opened Docket No. MPS 159-1208 following receipt of information alleging that Respondent had prescribed medications for himself and family members on more than one occasion.¹

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

1. None of the medications allegedly prescribed by Respondent for himself and family members were for DEA controlled substances.

II. Statement of Allegations.

A. Tax Matters.

5. In 2002, 2004, and 2006 Respondent filed applications for renewal of medical licensure in the State of Vermont and certified in each application that he was in "good standing" with respect to his tax obligations to the State of Vermont.

6. The Department of Taxes later alleged in communications to the Board of Medical practice that Respondent: (a) "fell out of good standing on April 15, 2002"; (b) "was in good standing [only] from May 17, 2005 to July 30, 2005"; and (c) "was then not in good standing from July 30, 2005 through September 17, 2008."²

7. Respondent's "good standing" certifications in 2002, 2004, and 2006 are inconsistent with documentation from the Vermont Department of Taxes stating that Respondent, in fact, was not in "good standing" during those years.

8. The Board of Medical Practice relies on the position of the Department of Taxes as set forth in Paragraph 6, above.

9. At the time of signing and filing each of the renewal applications in question, Respondent was not in "good standing" with the Vermont Department of Taxes. Respondent knew or should have known that his certifications of "good standing" were not accurate at the time he made them.

B. Prescribing for Self and Family Members.

10. Respondent prescribed non-scheduled medications for himself and family members but in most cases failed to prepare written medical records documenting that (a)

2. Respondent subsequently entered into a written payment agreement with the Department of Taxes. As of the date of signature of this agreement, Respondent has been deemed to be in "good standing" as to his Vermont tax obligations.

such prescribing had occurred; (b) setting forth the medical basis for each prescription ordered by him; and (c) documenting the results of any medical history or physical examination that may have been performed.

C. Respondent's Position.

11. Respondent states that he regarded himself as being in "good standing" with regard to his tax obligations because he had a plan or schedule to "catch up" with taxes due to the State of Vermont. Respondent concedes, however, that there were "lapses" by him in making payments and that he "wasn't always able to stay fully in compliance in a timely way with [his] agreements with the tax office". However, Respondent states that he is currently in "good standing" as to his tax obligations, as defined by 32 V.S.A. § 3113(g), and has received notice to this effect from the Department of Taxes.

12. With regard to the prescribing allegation, Respondent asserts that he merely "renewed" or "refilled" prescriptions for non-controlled drugs for himself and his family members that had originally been ordered by other physicians.

III. Agreement of the Parties.

13. Respondent has cooperated fully with the Board of Medical Practice during its investigation and review. Respondent wishes to resolve the matters now open before the Board.³ No specification of charges has been filed by the State in this matter. Respondent has not previously been the subject of disciplinary action by the Board.

14. Respondent acknowledges and agrees that he is knowingly and voluntarily agreeing to this Stipulation and Consent Order. He acknowledges that he has had the opportunity to have advice of counsel regarding this matter and in reviewing this

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

3. The parties expressly agree that this Stipulation and Consent Order addresses and is limited to any prescribing and treatment of family members by Respondent that may have occurred. The parties agree that this Stipulation and Consent Order does not address or include treatment or prescribing for other patients by Respondent.

Stipulation and Consent Order. Respondent agrees and understands that by executing this document he is waiving any right to be served with formal charges, to challenge the jurisdiction and continuing jurisdiction of the Board in this matter, to be presented with any evidence against him, to cross-examine witnesses, and to offer evidence of his own to contest the State's allegations.

A. Tax Matters.

15. With regard to the tax matters, Respondent acknowledges and agrees that his certifications of "good standing" in 2002, 2004, and 2006 were inconsistent with the position of the Department of Taxes and were not accurate at the time he signed each of these applications for renewal of his Vermont medical license. Respondent agrees that this paragraph and Paragraphs 5 through 9, herein, provide a factual and legal basis for the instant agreement.

B. Prescribing.

16. Respondent agrees that on one or more occasions in ordering, renewing, or refilling prescriptions for himself and his family members, he did not document in writing in that he had ordered the filling of such medications and, moreover, did not document in writing his medical basis and medical reasoning for these prescriptions.

17. Respondent agrees that he has reviewed Section 8.19 of the Code of Ethics of the American Medical Society and agrees that the Code strongly disfavors treatment by physicians of their own family members, as well as self-treatment by physicians. Respondent understands and agrees that the act of prescribing medication constitutes medical treatment or care and that such action establishes a physician-patient relationship with the recipient of the prescription. Respondent agrees that all medical care and treatment of patients, expressly including any care of self or family members, must be

consistent in all regards with the prevailing professional standards of care, specifically including medical documentation requirements.

18. Respondent acknowledges and agrees that the better practice is for medical management of a physician or the physician's family members to be carried out by another medical practitioner, except where *bona fide* emergency circumstances would require such care. Respondent acknowledges and agrees that a physician should not "renew" or "refill" prescriptions for himself/herself or family members on a continuing basis. Respondent acknowledges and agrees that a physician and his/her family members (a) should receive appropriate and thorough care, including appropriate written medical record keeping, in the same manner as care is provided to other patients; and (b) such care should include the provision of prescriptions by another physician, founded on an objective review of the medical needs and medication needs of the patient. Respondent agrees that this paragraph and Paragraphs 10 and 16-17, above, provide a factual and legal basis for the instant agreement.

19. Respondent enters no other admissions here. Respondent acknowledges that had the State of Vermont filed a specification of charges in this matter and satisfied its evidentiary burden as to its allegations at a public hearing, the Board of Medical Practice could have entered one or more findings adverse to him, under 26 V.S.A. § 1354 and/or § 1398, based on the allegations set forth above. Respondent agrees that the Vermont Board of Medical Practice may enter as its findings and/or conclusions Paragraphs 1 through 10 and 13 through 19 of this agreement, providing the factual and legal basis for the actions agreed to herein by the parties.

20. The parties to this Stipulation and Consent Order agree that appropriate conditions of licensure shall consist of the following:

A. Respondent's Vermont license to practice medicine shall be designated as "conditioned"; Respondent shall comply fully and in good faith with each of the terms and conditions of licensure expressly set forth below, wherever he may practice, until such time as he has been relieved of these conditions by express written order of the Vermont Board of Medical Practice.

B. **Stayed Suspension:** For the conduct described herein, Respondent's medical license shall be suspended for 30 days. However, the entire period of this suspension shall be immediately stayed. Respondent agrees that a subsequent failure by him to comply with any of the terms and conditions herein, expressly including those pertaining to compliance with agreements with and timely payment of obligations to the Vermont Department of Taxes, shall constitute unprofessional conduct and, at a minimum, shall immediately result in the actual imposition, without the necessity of hearing, of the entire stayed 30-day period of suspension of medical licensure. Respondent further acknowledges that failure by him to comply with other terms and conditions herein, could result in other, additional disciplinary action by the Board, should the facts so warrant.

C. Respondent shall be publicly **REPRIMANDED** by the Vermont Board of Medical Practice for one or more acts, as set forth above, in Paragraphs 1 through 10 and Paragraphs 13-19, in addition to the imposition of the terms and conditions set forth herein and below.

IV. Conditions of Licensure.

A. Treatment of Self and Family Members.

21. Respondent agrees that he shall not treat, care for, or prescribe for himself or his family members (with the sole exception of a *bona fide* emergency, of short-term and unforeseeable character, clearly documented in writing). In no case

shall Respondent "renew" or "refill" prescriptions for himself or family members on a continuing or protracted basis.

B. Medical Care of Self and Family Members.

22. Respondent shall clearly direct each of his family members to establish and/or maintain a current relationship with another primary care physician and receive all regular examination, care, and treatment, including any necessary prescribing, from such primary care physician.

C. Medical Records.

23. Without exception, for each patient or individual for whom he provides care or prescribing, Respondent agrees he shall maintain an appropriate written medical record, prepared consistent with generally accepted professional standards, documenting all care and prescribing by him. Chart entries shall be prepared in writing for each patient office visit or encounter and shall follow the SOAP format (or other recognized and generally accepted format for medical record keeping). Each chart entry shall be clearly signed by Respondent and dated.

24. Respondent shall maintain in each patient's medical record a chronological narcotics/medication flow chart for the purpose of aiding in monitoring refills, symptoms and time course, and chronicity of prescribing. Respondent agrees that any individual for whom he prescribes or orders a medication shall be deemed a "patient" and that he shall prepare and maintain an appropriate written medical record for each such patient.

25. Respondent agrees that written patient medical records shall be legible, chronologically ordered, and maintained in a professional, properly organized fashion. All patient records shall be prepared consistent with generally accepted professional standards. In this regard, Respondent expressly acknowledges and agrees that the use or

insertion in patient medical records of unsigned or undated content is **not** acceptable and is not permitted under the terms of this agreement.

26. Respondent agrees that each patient for whom he prescribes medications shall have a current diagnostic assessment and treatment plan within the patient's chart, which shall be available for review by the Board at any time while conditions remain upon Respondent's license to practice medicine. Each such treatment plan shall include specific entries regarding the patient's diagnosis or condition and the rationale for any prescribing for the patient. Respondent and/or his agent(s) shall immediately make available patient charts for review and/or copying by the Board, upon request.

27. All prescribing by Respondent for patients shall be clearly documented in writing in the patient's medical record, with the date of prescribing clearly indicated, as well as dosages, quantities, and patient instructions. Respondent agrees that all medical records of patients cared for or prescribed for by Respondent may be reviewed forthwith and at any time by the Board or its agents, pursuant to 18 V.S.A. § 4218(c), other applicable authorities, and the terms and conditions herein to determine compliance with this agreement. Respondent expressly agrees that no prior notice to Respondent or any other intermediary regarding request(s) for review of patient records shall be required of the Board. Requests for records by the Board may be made orally or in writing. Respondent agrees that upon Board request, subject patient medical records shall be immediately produced to the Board.

28. The provisions of Paragraphs 23-27, above, are not intended to apply to circumstances in which Respondent is providing call coverage for the regular patients of other physicians, but in each such circumstance, Respondent shall keep copies of all records and notes relating to his care of or prescribing for such other patients.

D. Tax Matters.

29. Respondent agrees that he shall take all such actions as may be necessary to maintain continuous "good standing" status, without interruption or lapse, as to his State of Vermont tax obligations, as defined under 32 V.S.A. § 3113(g). Respondent agrees that he shall provide immediate written notice to the Board of Medical Practice if he is (or may be) no longer in "good standing", has failed to tender in full a required payment to the Department of Taxes when due, or is (or may be) no longer "in compliance" with a tax payment plan approved by the Commissioner of the Department of Taxes. Further, Respondent shall immediately provide to the Board of Medical Practice copies of all communications and notices to him from the Department of Taxes relating to his "standing" or "compliance" status.

30. Respondent further agrees that he shall communicate in writing with the Vermont Department of Taxes and expressly state in writing his willingness to enter into a binding agreement with the Department of Taxes providing for regular payments by Respondent to the Tax Department by means of electronic funds transfer (or similar mechanism), to facilitate Respondent's full, continuing "compliance with [a Tax] payment plan approved by the commissioner".

31. If the Department of Taxes accepts Respondent's offer as described immediately above, Respondent agrees to promptly make any and all such arrangements as may be required and shall execute such documentations as may be necessary to effect such electronic fund transfers. Respondent shall not subsequently terminate such arrangements without prior written notice to and the written approval of the Board of Medical Practice, to be determined in the Board's sole discretion. Respondent promptly shall provide to the Board copies of all communications and

documentation relating to the requirements of this paragraph and Paragraph 30, above.

V. Other Matters Related to Implementation.

32. Respondent agrees that he has read and carefully considered all terms and conditions herein and agrees to accept and be bound by these while licensed to practice medicine in the State of Vermont or elsewhere. He agrees to be bound by these terms and conditions until such time in the future as he may be expressly relieved of these, in writing, by the Vermont Board of Medical Practice. The Board may consider a petition from Respondent for relief from or modification of these conditions, no sooner than 24 months after the effective date of this Stipulation and Consent Order. The Board in its sole discretion may approve or disapprove such a petition following review of Respondent's compliance with this agreement and his tax obligations. Respondent agrees that the Board of Medical Practice need not consider a petition for relief or modification of these conditions without the affirmative recommendation of the Medical Board's South Investigative Committee.

33. Respondent's license to practice medicine in the State of Vermont shall be conditioned for a minimum of three years, following entry of the Board's order approving the terms of this agreement. Respondent's Vermont medical license shall bear the designation "Conditioned" until such time as **all** terms and conditions upon his license have been removed by order of the Board. Thereafter, Respondent agrees that he voluntarily shall continue to act consistent with the commitments he has made within this agreement as to (a) his tax obligations; (b) care, treatment, and prescribing for himself and his family members; and (c) medical record keeping.

34. The parties agree that this Stipulation and Consent Order shall be a public document, shall be made part of Respondent's licensing file, and shall be reported to other

licensing authorities and/or entities including, but not limited to, the National Practitioner Data Bank, the Federation of State Medical Boards, and the Vermont Department of Taxes.

35. During the period that Respondent's license is conditioned under this agreement, he shall comply fully with all the requirements set forth herein. Respondent expressly agrees that any failure by him to comply with the terms of this Stipulation and Consent Order, specifically including but not limited to its review and/or submission requirements, may constitute unprofessional conduct under 26 V.S.A. §1354(25) and may subject Respondent to further disciplinary action.

36. This Stipulation and Consent Order is subject to review and acceptance by the Vermont Board of Medical Practice and shall not become effective until presented to and approved by the Board. If the Board rejects any part of this Stipulation and Consent Order, the entire agreement shall be considered void. Respondent further agrees that if the Board does not accept this agreement in its current form, he shall not assert in any subsequent proceeding that his rights have been prejudiced by any such prior consideration by the Board of Medical Practice. However, the parties agree, that should the terms and conditions of this Stipulation and Consent Order be deemed acceptable, the Board may enter an order conditioning Respondent's license to practice medicine, as set forth above, and that such license thereafter shall be subject to the terms and conditions set forth above. Further, such Board order shall provide that **Frederick Fries, M.D., Respondent, shall be and hereby is publicly REPRIMANDED** by the Vermont Board of Medical Practice for the reasons set forth above.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Dated at Montpelier, Vermont, this 26th day of March, 2009.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: James S Arisman
JAMES S. ARISMAN
Assistant Attorney General

Dated at Montpelier Vermont, this 26th day of March 2009.

Frederick Fries MD
FREDERICK FRIES, M.D.
Respondent, *pro se*

* * *

FOREGOING, AS TO FREDERICK FRIES, M.D.
APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE

William H. Howard, MD John J. Murray, MD
Dorcas A. King, MD PhD
Walter R. Sullivan, MD
Thomas K. Neal
Jamie E. Ryan, Esq
David W. O'Connell, MD
David A. Jenkins

DATED: April 1, 2009

ENTERED AND EFFECTIVE: April 1, 2009

Stip/Consent: FRIES; JSA; Not Approved by BMP Until Executed and Entered Above

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609