

repeated occasions in violation of Vermont Board of Medical Practice Rule 4.3. The Board's investigation also determined that Respondent failed to maintain appropriate patient medical records on all occasions when Patient A was in his care and he prescribed controlled substance to Patient A.

6. The Board was disturbed that during the course of the investigation of this matter that Respondent was not always forthcoming with the Board's investigator regarding his prescribing for Patient A. Such a lack of candor delayed the Board's investigation of Respondent's prescribing practices.

II. PUBLIC REPRIMAND

7. Respondent recognizing the responsibility of the Board in its investigation of this matter, does not contest the facts set forth above in paragraphs 4 through 6 above, and agrees that the Board of Medical Practice may adopt and enter paragraphs 4 through 6 as uncontested findings of fact in this matter.

8. Respondent agrees that Vermont Board of Medical Practice Rule 4.3, effective February 16, 2001, provides in pertinent part as follows:

4.3 SELF-PRESCRIBING AND PRESCRIBING FOR FAMILY MEMBERS

(It is unacceptable medical practice and unprofessional conduct for a licensee to prescribe controlled substances listed in DEA Schedules II, III, and IV for his or her own use. Such conduct constitutes a violation of 26 V.S.A. § 1398.) It also is unacceptable medical practice and unprofessional conduct for a licensee to prescribe Schedule II, III, and IV controlled substances to a member of his or her immediate family, except in a bona fide emergency, of short-term and unforeseeable character.

"Immediate family as referred to above, includes the following: a spouse (or spousal equivalent), parent, grandparent, child, sibling, parent-in-law, son/daughter-in-law, brother/sister-in-law, step-parent, step-child, step-sibling, or any other person who is permanently residing in the same residence as the licensee."

9. Respondent admits that Patient A, referred to above, meets the definition of Board Rule 4.3. Respondent expressly admits that such recurring prescribing over a protracted period of time, did not constitute “a bona fide emergency, of short-term and unforeseeable character”, although he believed at the time that he was acting appropriately.

10. Respondent admits that his actions, as generally set forth in paragraphs 4 through 6 above, constitute a violation of 26 V.S.A. §§ 1354 and 1398. Notwithstanding Respondent’s belief at the time that he was acting appropriately in prescribing controlled substances for his family member while caring for them, he expressly agrees here that his actions in that regard were unprofessional. Respondent agrees that the Board of Medical Practice may adopt and enter as its findings and conclusions this paragraph, paragraphs 4 through 6, and paragraph 9, above. Respondent agrees that by violating 26 V.S.A. 1354 and 1398 he has engaged in unprofessional conduct.

11. Respondent acknowledges that he is knowingly and voluntarily agreeing to this Stipulation and Consent Order. He acknowledges that he has had advice of counsel regarding the matter before the Board and advice of counsel in reviewing this Stipulation and Consent Order. He 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 these matters, to be presented with the evidence against him, to cross-examine adverse witnesses, and to offer evidence of his own to contest the State’s charges. 26 V.S.A. § 1356; 3 V.S.A. §§ 809, & 814.

12. The parties to this Stipulation and Consent Order agree that appropriate disciplinary action against Respondent shall consist of the following:

13. Respondent shall be publicly **REPRIMANDED** by the Vermont Board of Medical Practice for the conduct set forth above.

14. The Board of Medical Practice notes with approval that Respondent already has voluntarily pursued appropriate continuing medical education with regard to the prescribing of controlled substances for patients.

III. Other Terms and Conditions as to Implementation

15. Respondent acknowledges and agrees that engaging in unprofessional conduct, as set forth in 26 VSA §§1354 & 1398 may constitute prima facie evidence of a violation by him of this agreement sufficient to support findings by the Board that the present terms and conditions of this agreement are inadequate to protect the health, safety and welfare of the public, and thus, could result in a motion by the State for the immediate suspension of Respondent's medical license.

16. 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 and the Federation of State Medical Boards.

17. 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. However, should the terms and conditions of this Stipulation and Consent Order be deemed acceptable by the Board, the parties request that the Board enter an order that Respondent be publicly **REPRIMANDED** by the Vermont Board of Medical Practice for the unprofessional conduct set forth herein.

18. Respondent agrees that, if the State were to satisfy its burden at hearing as to the State's allegations, a finding adverse to him could be entered by the Board, pursuant to 26 V.S.A. § 1354. In the interest of resolving this matter expeditiously and continuing his full cooperation in this matter, Respondent agrees to enter into this Stipulation, in lieu of the State filing formal charges. Respondent acknowledges that his acceptance of this Stipulation is appropriate and in the best interest of all parties.

Dated at Montpelier, Vermont, this 29 day of October, 2007.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: Margaret O. Vincent
MARGARET O. VINCENT
Assistant Attorney General

Dated at Bennington, Vermont, this 24th day of October, 2007.

Joseph H. Kratzer, M.D.
JOSEPH H. KRATZER, M.D.
Respondent

Shireen T. Hart
SHIREEN T. HART
PAUL W. SHAW
Counsel for Respondent

FOREGOING, AS TO JOSEPH H. KRATZER, M.D.
APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE

Margaret Fink Martin
James B. Keenan
James L. Fical
James R. Cahill
Patricia A. Ky M.D.P.H.
Gary S. Sadtler M.D.
William R. Paul, M.D.

DATED: 11/7/2007

ENTERED AND EFFECTIVE: 11/7/2007.