

BOARD OF MEDICAL PRACTICE

In re: Michael E. Scovner, M.D.) Docket No. MPN 50-0510
)
)

STIPULATION AND CONSENT ORDER

NOW COME Michael E. Scovner, M.D., and the State of Vermont, by and through Vermont Attorney General William H. Sorrell, and hereby stipulate and agree to the following in the above-captioned matter:

1. Michael E. Scovner, M.D. (“Respondent”) holds Vermont medical license number 042.0007746 originally issued by the Vermont Board of Medical Practice on June 21, 1988.
2. Jurisdiction in this matter rests with the Vermont Board of Medical Practice (“the Board”), pursuant to 26 V.S.A. §§ 1353-1357, 3 V.S.A. §§ 809-814, and other authority.

FINDINGS OF FACT

3. The Board opened Docket No. MPN 50-0510 in April of 2010 upon receipt of a complaint by Green Mountain College President Paul Fonteyn that Respondent was rumored to engage in questionable prescribing practices as to Green Mountain College Students. The matter was assigned to the North Investigative Committee of the Board (“the Committee”).
4. The Committee’s investigation included, in part, a Subpoena Duces Tecum dated May 10, 2011 for five (5) individuals’ medical records; a Subpoena Duces Tecum, also dated May 10, 2011 for three (3) individuals’ medical records; a Subpoena Duces Tecum dated June 30, 2011 for fourteen (14) individuals’ medical records, a

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Subpoena Duces Tecum dated July 27, 2011 for one individual's medical record, a Subpoena Duces Tecum dated August 23, 2011 for two (2) individuals' medical records, a Subpoena Duces Tecum dated June 19, 2012 for nine (9) individuals' medical records, and a Subpoena Duces Tecum dated July 2, 2012 for any additional medical records that may have been generated for two of the individuals whose records were first subpoenaed on May 10, 2011. The bulk of the subpoenaed medical records were unrelated to Green Mountain College students.

5. Respondent maintains a solo practice in Poultney, Vermont. Respondent's treatment of his patients includes office visits and the prescribing of various medications. He developed and has used his own electronic medical record for five years.
6. Respondent ordered and dispensed a stock bottle of 500 Alprazolam (Xanax), a Schedule IV controlled substance, to an elderly patient who was married to a retired Vermont physician. Although Respondent had physical records to document this transaction, the prescription dosage, amount, refill availability and directions were not recorded in the patient's file.
7. Respondent demonstrated inadequate medical record documentation practices in ordering and failing to chart the stock bottle of Alprazolam.

CONCLUSIONS OF LAW

8. It is unacceptable medical practice for a licensee to order and dispense a stock bottle of a controlled substance to a patient without recording it in the patient's chart. Such conduct may constitute failure to comply with provisions of federal or

state statutes governing the practice of medicine in violation of 26 V.S.A.

§1354(a)(27), and may constitute the performance of unsafe or unacceptable patient care, and failure to conform to the essential standards of acceptable and prevailing practice in violation of 26 V.S.A. §§ 1354(b)(1) and) (2).

9. Respondent acknowledges that it is the Board's position that if the State were to file charges against him it could satisfy its burden at a hearing and a finding adverse to him could be entered by the Board, pursuant to 26 V.S.A. § 1354(b)(2).
10. Respondent agrees that the Board may enter as its facts and/or conclusions paragraphs 1 through 7 above, and further agrees that this is an adequate basis for the Board actions set forth herein. Any representation by Respondent herein is made solely for the purposes set forth in this agreement.
11. Therefore, in the interest of Respondent's and the Board's desire to fully and finally resolve the matter presently before the Board, the parties have determined that Respondent shall enter into the instant agreement with the Board. Respondent enters no further admission here, but to resolve this matter without further time, expense and uncertainty, both he and the Board have concluded that this agreement is acceptable and in the best interest of the parties.
12. Respondent acknowledges that he is knowingly and voluntarily entering into this Stipulation and Consent Order with the Board. He acknowledges and agrees that he has had the advice of counsel regarding this matter and in the review of this Stipulation and Consent Order. Respondent is fully satisfied with the legal representation he has received in this matter.

13. Respondent agrees and understands that by executing this document he is waiving any right to challenge the jurisdiction and continuing jurisdiction of the Board in this matter, to be presented with a specification of charges and evidence, to cross-examine witnesses, and to offer evidence of his own to contest any allegations by the State.
14. The parties agree that upon their execution of this Stipulation and Consent Order all matters involving Respondent that are currently open before the Board, including the above-captioned matter, shall be administratively closed by the Board. Thereafter, the Board will take no further action on these matters, absent non-compliance with the terms and conditions of this document by Respondent or the receipt of new information or evidence warranting further action by the Board.
15. This Stipulation and Consent Order is conditioned upon its acceptance by the Vermont Board of Medical Practice. If the Board rejects any part of this document, the entire agreement shall be considered void. Respondent agrees that if the Board does not accept this agreement in its current form, he shall not assert in any subsequent proceedings any claim of prejudice from any such prior consideration. If the Board rejects any part of this agreement, none of its terms shall bind Respondent or constitute an admission of any of the facts of the alleged misconduct, it shall not be used against Respondent in any way, it shall be kept in strict confidence, and it shall be without prejudice to any future disciplinary proceeding and the Board's final determination of any charge against Respondent.
16. Respondent acknowledges and understands that this Stipulation and Consent Order shall be a matter of public record, shall be entered in his permanent Board file, shall

constitute an enforceable legal agreement, and may and shall be reported to other licensing authorities, including but not limited to: the Federation of State Medical Boards Board Action Databank, the National Practitioner Data Bank, and the Healthcare Integrity and Protection Data Bank. In exchange for the actions by the Board, as set forth herein, Respondent expressly agrees to be bound by all terms and conditions of this Stipulation and Consent Order.

17. The parties therefore jointly agree that should the terms and conditions of this Stipulation and Consent Order be deemed acceptable by the Board, it may enter an order implementing the terms and conditions herein.
18. The parties further agree that Respondent's Vermont medical license is not conditioned, except as set forth in this Stipulation and Agreement, and is a full license to practice medicine in the State of Vermont.

ORDER

WHEREFORE, based on the foregoing, and the consent of Respondent, it is hereby ORDERED that:

1. Respondent shall be reprimanded for the conduct set forth above.
2. No later than one (1) year from the date of approval of this Stipulation and Consent Order, Respondent shall attend and successfully complete one (1) in-person continuing medical education ("CME") course on medical record keeping, and one (1) in-person CME on safe and effective narcotic prescribing. Respondent shall seek the Committee's approval of each proposed CME course no later than sixty (60) days prior to the start date of each course. Upon Respondent's successful completion of the CME courses, he shall provide the Committee with written proof of attendance for each course. Respondent shall also provide a brief typed narrative of each CME course to the Committee which will document what he learned from the courses, and how he will apply that knowledge to his future practice. Respondent shall provide the proof of attendance and the typed narrative to the Committee within thirty (30) days of completion of each CME course. Respondent shall be solely responsible for all costs associated with the CME courses.
3. Respondent shall retain the services of a "practice monitor" of his choosing, subject to preapproval by the North Investigative Committee. Respondent shall provide the Committee with the name and curriculum vitae of the proposed practice monitor within thirty (30) days after the date that this Stipulation and Consent Order is approved by the Board.

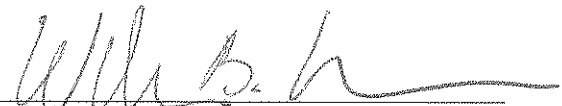
- a. Respondent shall be responsible for ensuring that the practice monitor complies with the terms and obligations of the Practice Monitoring Agreement that shall be signed by both Respondent and the Committee-approved practice monitor. The Practice Monitoring Agreement is attached hereto as "Exhibit A."
- b. Respondent shall comply with the terms and obligations of the Practice Monitoring Agreement.
- c. The practice monitor shall report his/her findings in writing to the Committee on a quarterly basis. The practice monitor's first report shall be submitted to the Committee no later than sixty (60) days after the Committee provides written approval of Respondent's proposed practice monitor.
- d. The practice monitoring shall continue for two (2) years from the date of approval of this Stipulation and Consent Order. At the end of the two (2) year monitoring period, Respondent shall submit a written request to the Committee to end the requirement for monitoring. Such a request shall not be considered by the Committee until Respondent has provided favorable and timely monitoring reports for two (2) complete years. The practice monitoring requirement will not cease until the Committee has approved, in writing, Respondent's request to end the monitoring.
- e. Respondent shall provide a copy of this Stipulation and Consent Order to the practice monitor.
- f. Respondent shall be solely responsible for all costs associated with the practice monitor. Respondent shall be responsible for ensuring that the practice monitor's reports are timely submitted to the Committee.

SIGNATURES

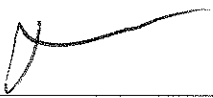
DATED at Montpelier, Vermont, this 20~~th~~ day of October, 2015.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: 
William B. Reynolds
Kassandra P. Diederich
Assistant Attorneys General
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001

2015. DATED at 236 Paltz Dr 05701, Vermont, this 26 day of October,


Michael E. Scovner, M.D.
Respondent

Approved as to form:

2015. DATED at Burlington, Vermont, this 28 day of October,

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Eileen Elliott, Esq.
Dunkiel Saunders Elliott Raubvogel & Hand
91 College Street
P.O. Box 545
Burlington, VT 05401-0545
Counsel for Respondent

EXHIBIT A

PRACTICE MONITORING AGREEMENT

Vermont Board of Medical Practice

Michael E. Scovner, M.D. – MPN 50-0510

1. Pursuant to a Stipulation and Consent Order entered into by Dr. Michael E. Scovner and the Vermont Board of Medical Practice (“the Board”), Dr. Scovner has retained a practice monitor to monitor his medical practice. The purpose of this Practice Monitoring Agreement is to set forth the terms of the practice monitoring component of Dr. Scovner’s Stipulation and Consent Order. This Agreement will be signed by the practice monitor approved by the North Investigative Committee (“the Committee”) and Dr. Scovner.
2. The practice monitoring shall continue for two (2) years from the date of approval of the Stipulation and Consent Order. At the end of the two (2) year monitoring period, Dr. Scovner shall submit a written request to the Committee to end the requirement for monitoring. Such a request shall not be considered by the Committee until Dr. Scovner has provided two (2) complete years of favorable and timely monitoring reports. The practice monitoring requirement will not cease until the Committee has approved, in writing, Dr. Scovner’s request to end the monitoring.
3. In the event that the practice monitor can no longer monitor Dr. Scovner’s practice, Dr. Scovner shall immediately notify the Committee in writing. Dr. Scovner shall retain the services of a new practice monitor, subject to preapproval by the Committee. Within thirty (30) days of providing written notice to the Committee that the practice monitor can no longer monitor his practice, Dr. Scovner shall provide the Committee with the name and curriculum vitae of the proposed new practice monitor.

The Committee will provide written notification to Dr. Scovner indicating whether it approves of the new proposed practice monitor.

4. Dr. Scovner shall provide the practice monitor with a copy of the fully executed Stipulation and Consent Order.
5. Dr. Scovner shall be responsible for ensuring that the practice monitor does the following:
 - a. The practice monitor shall report his/her findings in writing to the Committee on a quarterly basis. The practice monitor's first report shall be submitted to the Committee no later than sixty (60) days after the Committee provides written approval of the proposed practice monitor.
 - b. On a quarterly basis, the practice monitor shall review the treatment records of ten (10) randomly selected patients of Dr. Scovner to determine whether Dr. Scovner's treatment meets the applicable standard of care. The practice monitor shall select the ten (10) patients' records to be reviewed from a list prepared by Dr. Scovner that identifies all patients for whom Dr. Scovner is prescribing opioid medications on a consistent basis (i.e. for more than three (3) months). In the event that Dr. Scovner does not treat sufficient numbers of patients with opioids to meet this threshold, the practice monitor shall review other patient records in order to make the ten (10) patient requirement. The practice monitor shall not insist that Dr. Scovner change his custom charting software except to improve patient care.
 - c. The following shall be reviewed by the practice monitor and discussed in the practice monitoring reports to determine whether Dr. Scovner's treatment and

documentation meets the applicable standard of care: (1) Whether Dr. Scovner's office notes and patient charts are understandable and contain all necessary components. (2) Whether Dr. Scovner's office notes contain or refer to an adequate and comprehensive patient history and physical examination, as well as clear and appropriate treatment plans and objectives, for each office visit. (3) Whether Dr. Scovner has an appropriate, up-to-date, and signed opioid agreement for all opioids prescribed for over three (3) months, as well as a written informed consent prior to continuously prescribing opioids to his patients. (4) Whether random pill counts and/or urine toxicology specimens are being conducted regularly and in accordance with Dr. Scovner's written opioid agreements with his patients. (5) Whether Dr. Scovner's prescribing and documentation practices meet the applicable standard of care. (6) Whether Dr. Scovner's office notes document referrals to appropriate specialists when warranted. The practice monitor is expected to review any other documents, records, files, logs, etc. that will provide the requisite information needed to prepare written monitoring reports.

- d. After each quarterly review, Dr. Scovner shall meet with the practice monitor to discuss the quality of his treatment and medical records.
- e. The quarterly monitoring reports shall include: (1) Specific findings identifying the documents that were reviewed, as well as the practices observed. (2) Whether Dr. Scovner's treatment, medical records and prescribing practices meet the applicable standards of care, and a comprehensive explanation for such opinion. (3) Copies of examples of

records that correspond to the practice monitor's opinions and findings. (4) If applicable, recommended improvements to be made to Dr. Scovner's practice. (5) Confirmation of the date and the length of time that he/she met with Dr. Scovner to discuss the quality of his treatment and medical records that were reviewed for each quarterly review.

6. Dr. Scovner and the practice monitor agree that they have both read this Agreement in its entirety, and agree to all of the terms and obligations set forth herein.
7. Dr. Scovner and the practice monitor agree that the terms of this Agreement cannot be amended or modified in any way without written approval of the Committee.

DATED at _____, Vermont, this _____ day of _____, 2015.

Michael E. Scovner, M.D.
Respondent

DATED at _____, Vermont, this _____ day of _____, 2015.

Practice Monitor

AS TO MICHAEL E. SCOVNER M.D.

APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE

See also 75

Paul Paul

Pat Hunter

Mr. Roy

Ernest Bunge

Al Green

Dr. Dubois

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Dated: November 4th, 2015

ENTERED AND EFFECTIVE: November 4th, 2015