

BOARD OF MEDICAL PRACTICE

In re: Kellie Michele Marlow, PA-C)
) Docket No. MPS 001-0115
)

STIPULATION AND CONSENT ORDER

NOW COME Kellie Michelle Marlow, PA-C, and the State of Vermont, by and through Vermont Attorney General Thomas J. Donovan, Jr., and hereby stipulate and agree to the following in the above-captioned matter:

- 1. Kellie Michelle Marlow, PA-C (“Respondent”) holds Vermont medical license number 055.0031161 originally issued by the Vermont Board of Medical Practice on February 6, 2013.
- 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 this matter in January of 2015 upon receipt of information concerning Respondent. The matter was assigned to the South Investigative Committee of the Board (“the Committee”).
- 4. At the time that the case was opened, Respondent was practicing medicine as a physician assistant at Lumina, Women’s Healthcare & Aesthetics in South Burlington, Vermont.
- 5. In January of 2015, Respondent attempted to self-prescribe a prescription for Lunesta (a Schedule IV controlled substance). Respondent called in the

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Lunesta prescription for herself while representing that she was another provider.

6. Between August 21, 2014 and January 1, 2015, Respondent wrote nineteen prescriptions for Tramadol 50 mg (Schedule IV controlled substance) in another person's name for her own use. Respondent filled all nineteen Tramadol prescriptions (a total of 1854 tablets).
7. Respondent was terminated from her employment at Lumina on January 5, 2015.
8. Respondent voluntarily entered into a Cessation of Practice Agreement, which was approved by the Board on April 1, 2015. On June 15, 2015, Respondent voluntarily surrendered her controlled substances privileges with the Drug Enforcement Administration ("DEA").
9. On November 17, 2016, Respondent signed a monitoring agreement with the Vermont Practitioner Health Program ("VPHP"). She has been closely monitored by VPHP since signing the monitoring agreement.

CONCLUSIONS OF LAW

10. It is unprofessional conduct for a licensee to prescribe or order any drug legally classified as a controlled substance for the licensee's own use. 26 V.S.A. § 1354(a)(37).
11. It is unacceptable medical practice for a licensee to improperly prescribe controlled substances. Such conduct may constitute unacceptable patient care and the failure to conform to the essential standards of acceptable and prevailing practice in violation of 26 V.S.A. § 1354(a)(37).

12. It is unprofessional conduct for a licensee to engage in conduct which evidences unfitness to practice medicine. 26 V.S.A. §1354(a)(7).
13. Respondent agrees that the Board may enter as its facts and/or conclusions paragraphs 1 through 9 above, and further agrees that this is an adequate basis for the Board's actions set forth herein. Any representation by Respondent herein is made solely for the purposes set forth in this agreement.
14. Therefore, in the interest of Respondent's desire to fully and finally resolve the matter presently before the Board, she has determined that she shall enter into this instant agreement with the Board. Respondent enters no further admission here, but to resolve this matter without further time, expense and uncertainty; she has concluded that this agreement is acceptable and in the best interest of the parties.
15. Respondent acknowledges that she is knowingly and voluntarily entering into this agreement with the Board. She acknowledges she 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 she has received in this matter.
16. Respondent agrees and understands that by executing this document she 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 her own to contest any allegations by the State.

17. The parties agree that upon their execution of this Stipulation and Consent Order, and pursuant to the terms herein, the above-captioned matter shall be administratively closed by the Board. Thereafter, the Board will take no further action as to this matter absent non-compliance with the terms and conditions of this document by Respondent.

18. 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, she shall not assert in any subsequent proceeding 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.

19. 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 and the National Practitioner 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.

20. 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.

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. Respondent's Vermont medical license shall be suspended for a minimum of three months commencing on the date that this Stipulation and Consent Order is approved by the Board. At the end of the three-month suspension period, Respondent may seek relief from the license suspension only if the Committee has received two consecutive positive monitoring reports from Vermont Practitioner Health Program ("VPHP") indicating that she has been fully compliant with the terms of her VPHP monitoring contract (see paragraph 4, below). In order to seek relief from the license suspension, Respondent must submit a written request to the Committee requesting that her license be reinstated. If Respondent's request for license reinstatement is granted, she will also be relieved from the terms and conditions of her Cessation of Practice Agreement.
3. Respondent shall participate fully and in good faith in care, treatment and monitoring under the auspices of the Vermont Practitioner Health Program ("VPHP") for a period of five (5) years from the date that this Stipulation and Agreement is approved by the Board. Respondent expressly agrees that she shall abide fully and in good faith with all provisions of her VPHP contract. Respondent shall not cease, terminate or interrupt her participation in VPHP without the advance written

approval of the Committee or Board, following presentation of a written petition from her in this regard. Respondent and VPHP may agree to modifications of the provisions of her VPHP contract without Board approval, with the exception of the length of time of the contract, which shall not be less than five (5) years. Respondent agrees that she shall take reasonable steps to ensure that the Board and/or Committee may obtain on written request to VPHP, copies of all written reports, information or assessments related to her participation in VPHP with regard to her care, treatment, medical history, diagnosis, test results, or other matters. Respondent expressly agrees that VPHP may directly disclose such information to the Committee and/or the Board upon receipt of a written request so as to enable the Committee and/or Board to verify the accuracy and completeness of such reports. Respondent further agrees to promptly execute any and all waivers and/or releases that may be required for VPHP to provide such reports and documentation to the Committee and/or Board.

4. Respondent shall not re-apply for her Drug Enforcement Administration (“DEA”) license for one year from the date that this Stipulation and Consent Order is approved by the Board.
5. Respondent shall pay an administrative penalty of \$3,000.00 consistent with 26 V.S.A. § 1361(b). Payment shall be made to the “State of Vermont Board of Medical Practice,” and shall be sent to the Vermont Board of Medical Practice office, at the following address: David

Herlihy, Executive Director, Vermont Board of Medical Practice, P.O. Box 70, Burlington VT 05402-0070. The payment shall be due no later than 18 months after this Stipulation and Consent Order is approved by the Board.

6. In the event that Respondent's request for reinstatement of her license is granted by the Committee, Respondent must seek prior written approval from the Committee of any new employment/practice location.

Respondent shall be permitted to practice medicine only in a structured, group setting. Respondent shall petition the Committee in writing for written approval of the proposed employer/practice location. In her petition, Respondent shall inform the Committee of the name, location and type of practice that she is proposing. Any subsequent changes in Respondent's employment/practice location must also be approved by the Committee. Respondent shall petition the Committee in writing for written approval of any proposed change in the location and/or type of her practice. In her petition, Respondent shall inform the Committee of the name, location and type of practice that she is proposing. Respondent shall not change her employment/practice location unless she receives written approval from the Committee. This condition shall remain in effect until the Board issues an Order relieving Respondent from the terms and conditions of this Stipulation and Consent Order.

7. In the event that Respondent returns to the practice of medicine, Respondent shall retain the services of a "practice monitor" for a

minimum of three years, subject to the terms and conditions set forth in the attached "Practice Monitoring Agreement," which is incorporated by reference and attached hereto as Exhibit A. The three-year practice monitoring requirement will not begin until the first day that Respondent's practice is monitored by her approved Practice Monitor. Respondent shall comply with the terms and obligations of the Practice Monitoring Agreement. Respondent shall provide a copy of this Stipulation and Consent Order to the practice monitor. Respondent shall be responsible for ensuring that the practice monitor complies with the terms and obligations of the Practice Monitoring Agreement.

8. Respondent shall notify any future employers of the contents of this Order by providing a copy of said document to her employer and her supervising physician(s). This condition shall remain in effect until the Board issues an Order relieving Respondent from the terms and conditions of this Stipulation and Consent Order.

SIGNATURES

DATED at Montpelier, Vermont, this 1st day of March 2017.

STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

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

2017. DATED at _____, Vermont, this _____ day of _____,

Kellie M. Marlow
Kellie Michelle Marlow PA-C
Respondent

2017. DATED at *Feb Shelburne*, Vermont, this *27th* day of *February* *2017*

Matthew M. Shagam, *at Burlington, VT*
2/28/17
Matthew M. Shagam, Esquire
Counsel for Respondent
Rich Cassidy Law
PO Box 1124
Burlington, VT 05402

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109 State Street
Montpelier, VT
05609

AS TO KELLIE MICHELE MARLOW, PA-C
APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE

<u>[Signature]</u>	<u>[Signature]</u>
<u>[Signature]</u>	
<u>[Signature]</u>	
<u>[Signature]</u>	
<u>[Signature]</u>	
<u>[Signature]</u>	

DATED: March 1st, 2017
ENTERED AND EFFECTIVE: March 1st, 2017

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EXHIBIT A

PRACTICE MONITORING AGREEMENT

Vermont Board of Medical Practice

Kellie Michele Marlow PA-C-- MPS 001-0115

1. Pursuant to a Stipulation and Consent Order entered into by Kellie Michele Marlow, PA-C and the Vermont Board of Medical Practice ("the Board"), Ms. Marlow has retained a practice monitor to monitor her medical practice. The purpose of this Practice Monitoring Agreement is to set forth the terms of the practice monitoring component of Ms. Marlow's Stipulation and Consent Order (attached and incorporated hereto by reference). This Agreement will be signed by the practice monitor approved by the South Investigative Committee ("the Committee") and Ms. Marlow.
2. Ms. Marlow is responsible for selecting a practice monitor.
 - a. The practice monitor chosen by Respondent must be a Vermont licensed physician with an unconditioned license, and must be able to observe Respondent in her practice at least twice per week.
 - b. Respondent shall seek the Committee's approval of a practice monitor. Respondent shall provide the Committee, in writing, with the name and curriculum vitae of the proposed practice monitor.
3. The practice monitoring shall start during the first week that Ms. Marlow resumes the practice of medicine.
4. The practice monitor shall report his/her findings in writing to the Committee on a monthly basis for one full year. After one year of favorable and timely monthly practice monitoring reports, Respondent may submit a written petition to the

Committee requesting that the practice monitor report his/her findings to the Committee on a quarterly basis. If the Committee grants the Respondent's request for quarterly practice monitoring reports, the quarterly reports shall be provided to the Committee for two complete years. The practice monitor's first report shall be submitted to the Committee no later than thirty (30) days after Ms. Marlow begins practicing medicine.

5. Ms. Marlow shall be responsible for ensuring that the practice monitor's reports are timely submitted to the Committee.
6. The practice monitoring shall continue for a total of three years from the date that Ms. Marlow resumes the practice of medicine. At the end of the three-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 three complete years. The practice monitoring requirement will not cease until the Committee has approved, in writing, Respondent's request to end the monitoring.
7. In the event that the practice monitor can no longer monitor Ms. Marlow's practice, Ms. Marlow shall immediately notify the Committee in writing. Ms. Marlow 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 her practice, Ms. Marlow shall provide the Committee with the name and curriculum vitae of the proposed new practice monitor. The Committee will provide written notification to Ms. Marlow indicating whether it approves of the new proposed practice monitor.

8. Ms. Marlow shall provide the practice monitor with a copy of the fully executed Stipulation and Consent Order.
9. Ms. Marlow shall be responsible for ensuring that the practice monitor does the following:
 - a. The following shall be reviewed by the practice monitor and discussed in the practice monitoring reports:
 - i. Whether Ms. Marlow's behavior towards her patients and co-workers is appropriate and professional;
 - ii. Ms. Marlow's work attendance record (including tardiness);
 - iii. Whether Ms. Marlow's prescribing and documentation practices meet the applicable standard of care; and
 - iv. Recommended improvements to Ms. Marlow's practice.
 - b. Prior to the submission of each monitoring report to the Committee, the practice monitor shall meet with Ms. Marlow to discuss the findings of his/her practice monitoring report.
 - c. Each monitoring report shall include the dates and the length of time that he/she observed Ms. Marlow. Each monitoring report shall also include the dates and length of time that he/she met with Ms. Marlow to review the findings of his/her monitoring report.
 - d. The practice monitor shall review any other documents, records, files, logs, etc. that will provide the requisite information needed to prepare written monitoring reports.

- e. The practice monitor shall speak with Ms. Marlow's supervising physician(s) and co-workers to obtain the requisite information needed to prepare the written monitoring reports.
10. Ms. Marlow shall not begin to practice medicine until: (a) a practice monitor is approved by the Committee; (2) the practice monitor is ready to begin monitoring Ms. Marlow's practice; and (3) this Agreement has been fully executed.
 11. Ms. Marlow shall be solely responsible for all costs associated with the practice monitor.
 12. Ms. Marlow 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.
 13. Ms. Marlow 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 _____, 2017.

Kellie Michele Marlow, PA-C
Respondent

DATED at _____, Vermont, this _____ day of _____, 2017.

Practice Monitor