

**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**

In re: Paul V. Bertocci, M.D.

Docket No. MPS 109-0615

STIPULATION AND CONSENT ORDER

NOW COME the State of Vermont, by and through Vermont Attorney General Thomas J. Donovan, Jr., and Paul V. Bertocci, M.D., and agree and stipulate as follows:

1. Paul V. Bertocci, M.D., ("Respondent") of Cambridge, Vermont holds Vermont medical license number 042.0005481 first issued by the Vermont Board of Medical Practice on June 2, 1975. Respondent is a Physician.
2. Jurisdiction in these matters rests with the Vermont Board of Medical Practice ("the Board"), pursuant to 26 V.S.A. §§ 1353-1361, 3 V.S.A. §§ 809-814, and other authority.

Findings of Fact

3. The Board opened the above-captioned matter in June of 2015 upon receipt of information from a pharmacy regarding concerns with Respondent's prescribing practices. The matter was assigned to the South Investigative Committee of the Board ("Committee").
4. Respondent provided substance abuse treatment to patients at Maple Leaf Treatment Center in Underhill, Vermont for over 30 years. In February of 2017, Respondent began providing substance abuse treatment to patients at Treatment Associates, Inc. in Morrisville, Vermont. Respondent's treatment of his patients at Maple Leaf Treatment Center and Treatment Associates, Inc. included the prescribing of buprenorphine and other controlled substances for opioid addiction.

5. The Committee conducted an extensive investigation into Respondent's substance abuse treatment practice. Such investigation included, but was not limited to, the review of a voluminous amount of Respondent's patient records and prescribing history.
6. The Committee's investigation revealed that Respondent's substance abuse treatment practice deviated from the standard of care and was inadequate.
7. A review of Respondent's prescribing history showed that Respondent did not register to enable his access to the Vermont Prescription Monitoring System ("VPMS") system until December of 2015. All Vermont health care providers who prescribe Schedule II, III or IV controlled substances have been required by Vermont law to register with VPMS since November 15, 2013. Respondent regularly prescribed Schedule II- IV controlled substances during the period from November 15, 2013 to December 2015.
8. According to data received from the VPMS system, from November of 2016 through April of 2017 Respondent or his delegates queried VPMS under Respondent's VPMS account for his patients a total of 27 times.
9. With the exception of the time period from November of 2016 through April of 2017, VPMS records indicate that, from December of 2015 through October 30, 2017, neither Respondent nor his registered delegates were querying the VPMS system for his patients as required by the applicable VPMS Rules. It is Respondent's position that, although VPMS records show that Respondent did not query the VPMS system during this time period, his delegates were querying VPMS for his patients as required by the applicable VPMS Rules. Respondent maintains that his delegates were querying VPMS for his patients as a delegate under another authorizing prescriber's VPMS account.

10. Data obtained from the VPMS system shows that one of Respondent's delegates was querying some of Respondent's patients under another authorizing prescriber's VPMS account. Some of these queries did occur during the time period when the VPMS data indicates that there were no queries of any of Respondent's patients under his VPMS account. However, with regard to the patient records reviewed by the Board, none of the VPMS searches performed by Respondent's delegate under another authorizing prescriber's VPMS account were documented in the patient charts despite the fact that Respondent was prescribing Schedule II, III and/or IV controlled substances to these patients. Standard of care requires that documentation of all VPMS queries be included in the patient medical record. Additionally, the patients queried by Respondent's delegate were not bona fide current patients of the other authorizing prescriber as required by the applicable VPMS Rules.

11. On October 30, 2017, Respondent voluntarily surrendered his Vermont Medical License.

Conclusions of Law

12. The Board may find, "that failure to practice competently by reason of any cause on...multiple occasions constitutes unprofessional conduct." 26 V.S.A. § 1354(b). And "[f]ailure to practice competently includes, as determined by the board...(1) performance of unacceptable patient care; or (2) failure to conform to the essential standards of acceptable and prevailing practice." 26 V.S.A. § 1354(b)(1) and (2).

13. The Board may find that "failure to comply with provisions of ...state statutes or rules governing the practice of medicine" constitutes unprofessional conduct. 26 V.S.A. § 1354(a)(27).

14. Section 6.1.1 of the VPMS Rules¹ requires that all Vermont prescribers of controlled substances be registered with VPMS.
15. Pursuant to 18 V.S.A. § 4289(b)(1), all health care providers who prescribe Schedule II, III or IV controlled substances shall register with VPMS by November 15, 2013.
16. Respondent violated Section 6.1.1 of the VPMS Rules and 18 V.S.A. § 4289(b)(1) by not registering with VPMS until December of 2015.
17. A Vermont licensed prescriber must query VPMS “[p]rior to prescribing buprenorphine or a drug containing buprenorphine to a Vermont patient for the first time and at regular intervals thereafter.” After prescribing buprenorphine to a Vermont patient for the first time, VPMS must be queried no less than two times annually, and prior to writing a replacement prescription. VPMS Rules §§ 6.2.7, 6.2.7.1, and 6.2.7.2.
18. The VPMS Rules provide that prescribers registered with VPMS may designate a delegate to access and query the VPMS system, and are responsible for the delegate’s appropriate use of the VPMS system. VPMS Rules §§ 6.3 and 7.2.2.
19. Section 7.2.3 of the VPMS Rules provides, “Any and all information requested by the delegate is for the purpose of providing treatment to a bona fide current patient of the authorizing...prescriber...”
20. As a registered authorizing prescriber with VPMS, Respondent was responsible for his delegate’s inappropriate use of the VPMS system; namely, querying Respondent’s patients under another authorizing prescriber’s VPMS account when the patients queried by Respondent’s delegate were not bona fide current patients of the other authorizing prescriber.

¹ All references to the VPMS Rules in this Agreement refer to the VPMS Rules with the effective date of August 1, 2015.

21. Respondent's violations of the above-referenced VPMS Rules and 18 V.S.A. § 4289(b)(1) constitutes failure to comply with Vermont state statutes and rules governing the practice of medicine.
22. Consistent with Respondent's cooperation with the Board, he agrees 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(a)(27) and § 1354(b)(1) and (2).
23. Respondent agrees that the Board may enter as its facts and/or conclusions in this matter any one or more of Paragraphs 1 through 20, 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.
24. Therefore, in the interest of Respondent's desire to fully and finally resolve the matter presently before the Board, he has determined that he 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; he has concluded that this agreement is acceptable and in the best interest of the parties.
25. Respondent acknowledges that he is knowingly and voluntarily entering into this agreement with the Board. He acknowledges 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.
26. 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.

27. 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.
28. 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 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.
29. 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.

30. 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 Findings of Fact, Conclusions of Law, and the consent of Respondent, it is hereby ORDERED that:

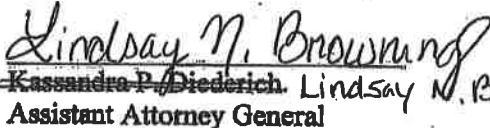
1. Respondent shall be REPRIMANDED for the conduct set forth above.
2. Respondent shall pay an administrative penalty of \$500.00 to the Board consistent with 26 V.S.A. § 1361(b). The payment shall be due no later than two years from the date that this Stipulation is approved by the Board. Payment shall 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 two years after this Stipulation and Consent Order is approved by the Board.

SIGNATURES


Dated at Montpelier, Vermont, this 29th day of November, 2018.

STATE OF VERMONT
THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

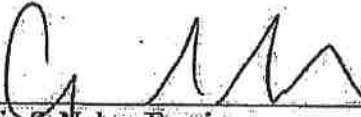
by:


~~Kassandra P. Diederich~~ Lindsay N. Browning
Assistant Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609-1001

Dated at Cambridge Vermont, this 1st day of September, 2018.


Paul Vincent Bertocci, M.D.
Respondent

Dated at Burlington, Vermont, this 26th day of November, 2018.


Craig S. Nolan, Esquire
SHEEHY FURLONG & BEHM
30 Main Street, 6th Floor
P.O. Box 66
Burlington, VT 05402-0066
Counsel for Respondent

AS TO PAUL V. BERTOCCHI, M.D.

APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE

~~SEP 2018~~

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Dated: December 5th, 2018

Entered and Effective: December 5th, 2018