

STATE OF VERMONT
BOARD OF MEDICAL PRACTICE

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In re: Melanie Mary Canon, M.D.) Docket No. MPC 014-0116

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STIPULATION AND CONSENT ORDER

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

1. Melanie M. Canon, M.D. (“Respondent”) holds Vermont medical license No. 042.0012705, first issued on July 3, 2013.
2. Jurisdiction in these matters vests with the Vermont Board of Medical Practice (“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 January of 2016 upon receipt of information from the Vermont State Police concerning Respondent. The matter was assigned to the Central Investigative Committee of the Board (“Committee”).
4. The information provided to the Board by the Vermont State Police included allegations that Respondent was writing and filling oxycodone prescriptions for two patients, and keeping them for her own use. The evidence provided by the Vermont State Police included an interview with one patient, an interview with a patient’s caregiver, and a sworn Affidavit from Sergeant Thomas Mozzer.

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5. Respondent started working as a physician at Mountain Valley Medical Clinic (“Mountain Valley”) on July 29, 2013. The Committee conducted a review of a number of Respondent’s patient records from Mountain Valley. The Committee found that Respondent did not consistently document her prescribing of controlled substances to multiple patients. Specifically, she did not consistently document that she prescribed controlled substances, the dosage of the medication, and the amount of medication prescribed.

6. The Committee’s investigation revealed that Respondent was terminated from Mountain Valley on July 16, 2015.

7. After Respondent’s termination from Mountain Valley, she continued to treat some of her former patients from Mountain Valley. Such treatment included the prescribing of controlled and non-controlled substances. Although Respondent no longer worked at Mountain Valley, she continued to write prescriptions for her former patients on Mountain Valley prescriptions pads. Respondent visited some of these patients in their homes, and often picked up their prescription medications from the pharmacy and delivered the medications to the patients at their homes.

8. A review of the evidence revealed allegations that, after she was terminated from Mountain Valley, Respondent wrote and retrieved from the pharmacy six oxycodone prescriptions for a patient (“Patient A”), and did not provide the medication to Patient A. It was alleged that she did, however, bring three tablets of oxycodone to Patient A’s home. The tablets were not in a marked prescription container. Patient A allegedly did not ask for or need the oxycodone. There was no documentation in Patient A’s medical record of the rationale for the prescription, or that the prescription was written.

9. The evidence also revealed allegations that Respondent wrote and retrieved two prescriptions for oxycodone for another patient (“Patient B”), and did not provide the medication to Patient B. It was further alleged that on one occasion Respondent brought eleven oxycodone tablets wrapped in tissue to Patient B’s home, and on another occasion she brought six or seven oxycodone tablets in an unlabeled prescription bottle to Patient B’s home. It is alleged that Patient B did not need or

request the oxycodone prescription. There was no documentation in Patient B's medical record of the rationale for the prescription, or that the prescription was written. Respondent allegedly instructed Patient B's caregiver to give Patient B an oxycodone tablet if Patient B was experiencing pain. The caregiver allegedly gave Patient B one oxycodone tablet as instructed by Respondent, and Patient B had an adverse reaction to the medication.

10. Respondent communicated with at least four former Mountain Valley patients via email. In these email communications, Respondent answered medical questions, provided medical treatment and advice, and communicated about her own personal matters. The patients made requests for new prescriptions and prescription refills via email. Respondent provided medical treatment, including calling in new prescriptions and prescription refills, without conducting in-person examinations, without having access to the patients' medical records (i.e. medical history, medication list, allergies), and without maintaining any type of medical record. The prescription medications consisted of controlled and non-controlled substances. After leaving Mountain Valley Respondent prescribed both controlled and non-controlled substances to this group of patients.

11. During an interview with a Board Investigator, Respondent admitted that she did not keep any medical records of her treatment of her former Mountain Valley patients. Such treatment included in-home visits, email communications, and prescribing of controlled and non-controlled substances.

12. The Committee's investigation revealed that, after Respondent left Mountain Valley, she wrote approximately 29 prescriptions for controlled substances for approximately 17 patients that were not documented in any type of medical record. The controlled substances included oxycodone, lorazepam, zolpidem, eszopiclone, and dextroamphetamine.

13. On February 12, 2016, Respondent voluntarily surrendered her controlled substances privileges with the Drug Enforcement Administration ("DEA").

14. Respondent voluntarily entered into a Cessation of Practice Agreement, which was approved by the Board on April 6, 2016.

15. On January 3, 2017, in the matter of *State of Vermont v. Melanie M. Canon*, Respondent pled guilty to two counts of prescription fraud, and was convicted of unlawful possession of depressant, stimulant or narcotic drugs. She was sentenced to a four-year deferred sentence, during which time she is required to perform 100 hours of community service and adhere to standard and special conditions of probation.

16. Respondent acknowledges that her Vermont medical license lapsed on November 30, 2016 as a result of her failure to renew it by that date, and that as of November 30, 2017 she no longer had a right to renew her license. Respondent further acknowledges that if she wanted to seek a Vermont medical license in the future she would have to submit an application for reinstatement, and that during the reinstatement process the Board would consider her entire history and qualifications in determining whether to grant a license, including the conduct that is the subject of this case

Conclusions of Law

17. It is unprofessional conduct for a licensee to be convicted of a crime related to the practice of the medical profession. 26 V.S.A. § 1354(a)(30).

18. It is unprofessional conduct for a licensee to be convicted of a felony, whether or not related to the practice of the profession. 26 V.S.A. § 1354(a)(30).

19. The Board shall find that “failure to comply with provisions of federal or state statutes or rules governing the practice of medicine or surgery” constitutes unprofessional conduct. 26 V.S.A. § 1354(a)(27).

20. It is unacceptable medical practice for a licensee to fail to document treatment of patients, including the prescribing of controlled and non-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(b)(1) and (2).

21. It is unacceptable medical practice for a licensee to improperly prescribe controlled and non-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(b)(1) and (2).

22. It is unprofessional conduct for a licensee to provide, prescribe, dispense, or furnish medical services or prescription medication ... to a person in response to any communication transmitted or received by computer or other electronic means, when the licensee fails to take the following actions to establish and maintain a proper physician-patient relationship: ... (ii) establishment of documented diagnosis through the use of accepted medical practices; and (iii) maintenance of a current medical record. 26 V.S.A. § 1354(a)(33)(A).

23. Consistent with Respondent's cooperation with the Board, she agrees that if the State were to file charges against her it could satisfy its burden at a hearing and a finding adverse to her could be entered by the Board, pursuant to 26 V.S.A. §§ 1354(a)(8), (30), (34) and (37), and 26 V.S.A. §§ 1354(b)(1) and (2).

24. Respondent agrees that the Board may enter as its facts and/or conclusions in this matter Paragraphs 1 through 16, 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.

25. 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.

26. 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.

27. 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.

28. Respondent acknowledges that the underlying unprofessional conduct, as described hereinabove in paragraph four through 12 of this Stipulation and Consent Order, is more than sufficient to support and justify this Stipulation and Consent Order without the criminal convictions that constitute unprofessional conduct under 26 V.S.A. § 1354(a)(30). Respondent further acknowledges that, in the event that she receives any kind of relief with regard to the criminal action referenced in paragraph 15, such relief will not provide a basis to seek any type of modification of, or relief from, this Stipulation and Consent Order.

29. 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.

30. 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.

31. 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.

32. 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 \$3,000.00 to the Board consistent with 26 V.S.A. § 1361(b). The payment shall be due no later than one year 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. Respondent may petition the Committee or Board in writing to be partially relieved of this obligation based upon undue hardship or inability to pay. Such petition shall include a financial affidavit. The Committee and Board shall retain sole discretion to approve or disapprove any such petition.

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Signatures

Dated at Montpelier, Vermont, this 8th day of December, 2017.

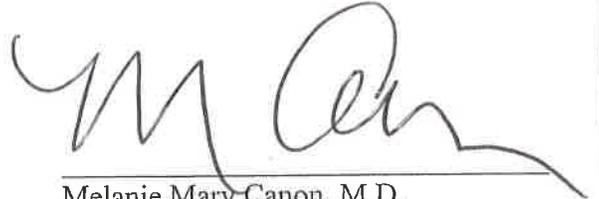
STATE OF VERMONT
THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

by:



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

Dated at New York, New York, this 11 day of Dec., 2017.



Melanie Mary Canon, M.D.
Respondent

Dated at Burlington, Vermont, this 17th day of December, 2017.

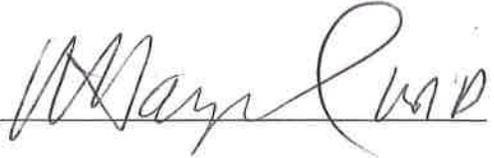
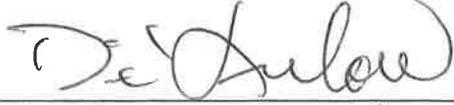
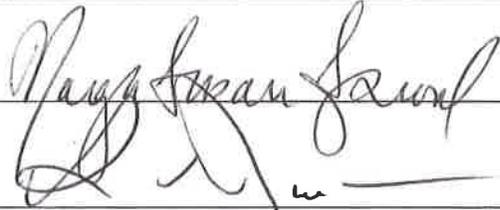
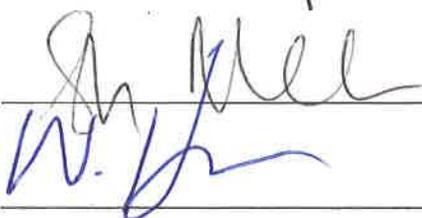


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Counsel for Respondent

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AS TO MELANIE MARY CANON, M.D.

APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE

Dated: January 3rd, 2018

ENTERED AND EFFECTIVE: January 3rd, 2018

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