

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Board of Registration in Medicine

Adjudicatory Case No. 2009-014

)
In the Matter of)
)
Joseph H. Kratzer, M.D.)
)

STATEMENT OF ALLEGATIONS

In the Board of Registration in Medicine (Board), docket number 07-714, the Board has reason to believe that Joseph H. Kratzer, M.D. (Respondent) was disciplined by the State of Vermont Board of Medical Practice (Vermont Board) for prescribing controlled substances to a family member without maintaining appropriate medical records and for failure to be forthcoming with the Vermont Board during its investigation.

BIOGRAPHICAL INFORMATION

1. The Respondent was born on November 29, 1956. He graduated from The Medical College of Wisconsin in June 1981, and has been licensed to practice medicine in Massachusetts since July 24, 1991, under license number 77053. The Respondent specializes in neurology, and he is certified by the American Board of Psychiatry and Neurology in that field. He is also licensed to practice medicine in New York and Vermont. He has offices in Bennington, Vermont, and Williamstown Massachusetts, and he has hospital privileges at Southwestern Vermont Medical Center, Bennington, Vermont and at North Adams Regional Medical Center, North Adams, Massachusetts.

Pursuant to G.L. c. 112 §5(h) and 243 CMR 1.03(5)(a)11, the Board may discipline a physician upon proof satisfactory to a majority of the Board that said physician has violated any rule or regulation of the Board.

The Board has jurisdiction over this matter pursuant to G.L. c. 112, §§5, 61, and 62. This adjudicatory proceeding will be conducted in accordance with the provisions of G.L. c. 30A and 801 CMR 1.01 et seq.

NATURE OF RELIEF SOUGHT

The Board is authorized and empowered to order appropriate disciplinary action, which may include revocation or suspension of the Respondent's license to practice medicine. The Board may also order, in addition to or instead of revocation or suspension, one or more of the following: admonishment, censure, reprimand, fine, the performance of uncompensated public service, a course of education or training or other restrictions upon the Respondent's practice of medicine.

ORDER

Wherefore, it is hereby ORDERED that the Respondent show cause why he should not be disciplined for the conduct described herein.

Dated: May 6, 2009

By the Board of Registration in Medicine,

John B. Herman, M.D.

John B. Herman, M.D.
Chairman

SENT CERTIFIED MAIL
5/6/09 KSD

Exhibit A

STATE OF VERMONT BOARD OF MEDICAL PRACTICE

RECEIVED

OCT 30 2007

Vermont Board of
Medical Practice

In re: Joseph H. Kratzer, M.D.)

) Docket No.

) MPC 84-0507

STIPULATION AND CONSENT ORDER

NOW COME Joseph H. Kratzer, M.D. ("Respondent") and the State of Vermont, by and through Attorney General William H. Sorrelli and undersigned counsel, Assistant Attorney General Margaret O. Vincent, and agree and stipulate as follows:

1. Joseph H. Kratzer, M.D., Respondent, a neurologist with offices in Bennington, Vermont, and Williamstown, Massachusetts, with privileges at the Southwestern Vermont Medical Center in Bennington, Vermont, and at the North Adams Regional Hospital, in North Adams, Massachusetts, holds Vermont Medical License No. 042-0008294, issued by the Vermont Board of Medical Practice on 02/06/1991.

2. Jurisdiction rests in the Vermont Board of Medical Practice (the "Board") pursuant to 26 V.S.A. §§ 1353 and 1354.

L. FACTUAL BASIS

3. An investigation against Respondent was opened by the Board on or about May 24, 2007, as a result of a communication to the Board regarding Respondent's prescriptive practices to a family member.

4. The Board's investigation included interviews with Respondent and a review of wholesale pharmacy records and a written statement by Respondent regarding this matter.

5. The Board's investigation determined, and Respondent admitted, that Respondent had ordered and dispensed DEA controlled substances for a family member on

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 24 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

<u>Margaret Fink Martin</u>	<u>John D. Keenan</u>
<u>James Cahill</u>	<u>Thomas R. Fical</u>
<u>[Signature]</u>	
<u>Patricia A. Ky M.D./Ph.D.</u>	
<u>[Signature]</u>	
<u>Lyons R. Sackin MD</u>	
<u>[Signature]</u>	

DATED: 11/7/2007

ENTERED AND EFFECTIVE: 11/7/2007

Department of Health
Board of Medical Practice
108 Cherry Street - P.O. Box 70
Burlington, VT 05402-0070
healthvermont.gov

(phone) 802-657-4220
(toll free) 800-745-7371
(tty) 802-657-4227

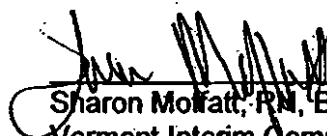
Agency of Human Services

05/06/09 SS 10

In re: Joseph H. Kratzer, M.D.

CERTIFICATION

I hereby certify, in accordance with Vermont Rules of Civil Procedure 44(a)(1), that the attached Stipulation and Consent Order dated November 7, 2007, is a true and accurate copy of the record kept by the Vermont Board of Medical Practice, which Board is part of the Vermont Department of Health.



Sharon Moffatt, RN, BSN, MSN
Vermont Interim Commissioner of Health and
Custodian of Board of Medical Practice records

State of Vermont
County of Chittenden, ss

I hereby certify that on the 17th day of January, 2008, Sharon Moffatt, RN, BSN, MSN, personally appeared before me at Burlington in said county of Chittenden and took and subscribed and signed before me.



Notary Public

Commission Expires Feb. 10, 2011



COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Board of Registration in Medicine

Adjudicatory Case No. 2009-014

05/05/09 83

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In the Matter of Joseph H. Kratzer, M.D.)))))
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CONSENT ORDER

Joseph H. Kratzer, M.D. (Respondent) and the Complaint Counsel agree that the Board of Registration in Medicine (Board) may issue this Consent Order, in lieu of convening an adjudicatory proceeding, with all the force and effect of a Final Decision within the meaning of 801 CMR 1.01(11)(d). The Respondent admits to the findings of fact described below and agrees the Board may make conclusions of law and impose a sanction in resolution of Board of Registration in Medicine docket number 07-714 as set forth below.

BIOGRAPHICAL INFORMATION

1. The Respondent was born on November 29, 1956. He graduated from The Medical College of Wisconsin in June 1981, and has been licensed to practice medicine in Massachusetts since July 24, 1991, under license number 77053. The Respondent specializes in neurology, and he is certified by the American Board of Psychiatry and Neurology in that field. He is also licensed to practice medicine in New York and Vermont. He has offices in Bennington, Vermont, and Williamstown Massachusetts, and he has hospital privileges at Southwestern Vermont Medical Center, Bennington, Vermont and at North Adams Regional Medical Center, North Adams, Massachusetts.

FINDINGS OF FACT

2. The Respondent entered into a Stipulation and Consent Order with the State of Vermont Board of Medical Practice (Vermont Board), which was “entered and effective” on November 7, 2007. In the Stipulation and Consent Order, the Vermont Board found that the Respondent did not maintain appropriate patient medical records on all occasions when he treated and prescribed controlled substances to a family member. The Vermont Board also found that the Respondent was “not always forthcoming” during its investigation and that this “lack of candor” delayed its investigation into his prescribing practices. The Respondent admitted that, by his actions, he had engaged in unprofessional conduct. A copy of the Stipulation and Consent Order is attached hereto as Exhibit A and incorporated herein by reference.

3. The Vermont Board publicly reprimanded the Respondent.

CONCLUSIONS OF LAW

A. The Respondent has violated 243 CMR 1.03(5)(a)12 in that he has been disciplined by another jurisdiction for reasons substantially the same as those found in G.L. c. 112 §5 and 243 CMR1.03(5), specifically 243 CMR 2.07(13) for failure to keep appropriate medical records, and 243 CMR 1.03(5)(a)16 for failure to furnish the Board, its investigators or representatives with information to which it was legally entitled.

B. The Respondent has violated G.L. c. 112 §5(h) and 243 CMR 1.03(5)(a)11 in that he has violated the rules and regulations of the Board.

SANCTION AND ORDER

The Respondent is hereby reprimanded. This sanction is imposed for Docket No.

07-714.

EXECUTION OF THIS CONSENT ORDER

The parties agree that the approval of this Consent Order is left to the discretion of the Board. The signature of Complaint Counsel, the Respondent and the Respondent's counsel are expressly conditioned on the Board accepting this Consent Order. If the Board rejects this Consent Order in whole or in part, then the entire document shall be null and void; thereafter, neither Complaint Counsel, Respondent, Respondent's Counsel, nor anyone else may rely on these stipulations in this proceeding.

As to any matter this Consent Order leaves to the discretion of the Board, neither the Respondent, nor anyone acting on his behalf, has received any promises or representations regarding the same.

The Respondent waives any right of appeal that he may have resulting from the Board's acceptance of this Consent Order.

The Respondent shall provide a complete copy of this Consent Order with all exhibits and attachments, within ten (10) days by certified mail, return receipt requested, or by hand delivery to the following designated entities: any in- or out-of-state hospital, nursing home, clinic, other licensed facility, or municipal, state, or federal facility at which he practices medicine; any in- or out-of-state health maintenance organization with whom he has privileges or any other kind of association; any state agency, in- or out-of-state, with which he has a provider contract; any in- or out-of-state medical employer, whether or not he practices medicine there; the state licensing boards of all states in which he has any kind of license; the Drug Enforcement Administration Boston Diversion Group; and the

Massachusetts Department of Public Health, Drug Control Program. The Respondent shall also provide this notification to any such designated entities with which he becomes associated in the year following the date of imposition of this reprimand. The Respondent is further directed to certify to the Board within ten (10) days that he has complied with this directive.

The Board expressly reserves the authority to independently notify, at any time, any of the entities designated above, or any other affected entity, of any action it has taken.

Joseph H. Kratzer
Joseph H. Kratzer M.D.
Respondent

4/1/09
Date

Paul W. Shaw
Paul W. Shaw, Esq.
Respondent's Counsel

4/6/09
Date

Alice Cole Oliff
Alice Cole Oliff, Esq.
Complaint Counsel

4/17/09
Date

Accepted by the Board of Registration in Medicine on this 6th day of May 2009.

John B. Herman, M.D.
John B. Herman, M.D.
Chairman

Exhibit A

STATE OF VERMONT BOARD OF MEDICAL PRACTICE

RECEIVED

OCT 30 2007

Vermont Board of
Medical Practice

In re: Joseph H. Kratzer, M.D.)
)
)
)

Docket No.

MPC 84-0507

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1. Joseph H. Kratzer, M.D., Respondent, a neurologist with offices in Bennington, Vermont, and Williamstown, Massachusetts, with privileges at the Southwestern Vermont Medical Center in Bennington, Vermont, and at the North Adams Regional Hospital, in North Adams, Massachusetts, holds Vermont Medical License No. 042-0008294, issued by the Vermont Board of Medical Practice on 02/06/1991.

2. Jurisdiction rests in the Vermont Board of Medical Practice (the "Board") pursuant to 26 V.S.A. §§ 1353 and 1354.

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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:

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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.

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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.

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Office of the
ATTORNEY GENERAL
99 State Street
Montpelier, VT
05609

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
 [Signature]
 Patricia A. Ky, M.D.
 [Signature]
 Gary R. Dackin, M.D.
 [Signature]

DATED: 11/7/2007

ENTERED AND EFFECTIVE: 11/7/2007

Department of Health
Board of Medical Practice
108 Cherry Street - P.O. Box 70
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healthvermont.gov

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[toll free] 800-745-7371
[tty] 802-657-4227


Agency of Human Services

05/06/08 33
22

In re: Joseph H. Kratzer, M.D.

CERTIFICATION

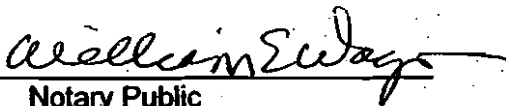
I hereby certify, in accordance with Vermont Rules of Civil Procedure 44(a)(1), that the attached Stipulation and Consent Order dated November 7, 2007, is a true and accurate copy of the record kept by the Vermont Board of Medical Practice, which Board is part of the Vermont Department of Health.



Sharon Moffatt, RN, BSN, MSN
Vermont Interim Commissioner of Health and
Custodian of Board of Medical Practice records

State of Vermont
County of Chittenden, ss

I hereby certify that on the 17th day of January, 2008, Sharon Moffatt, RN, BSN, MSN, personally appeared before me at Burlington in said county of Chittenden and took and subscribed and signed before me.



Notary Public

Commission Expires Feb. 10, 2011

