

**BEFORE THE MINNESOTA
BOARD OF MEDICAL PRACTICE**

In the Matter of the
Medical License of
Nancy A. Kermath, M.D.
Date of Birth: 1-25-50
License Number: 27,457

**STIPULATION
AND ORDER**

IT IS HEREBY STIPULATED AND AGREED, by and between Nancy A. Kermath, M.D. ("Respondent"), and the Minnesota Board of Medical Practice ("Board") as follows:

1. During all times herein, Respondent has been and now is subject to the jurisdiction of the Board from which she holds a license to practice medicine and surgery in the State of Minnesota.

FACTS

2. For the purpose of Board proceedings only, the Board may consider the following facts as true:

- a. Respondent has a history of bipolar disorder and chemical dependency.
- b. On July 7, 1990, the Board approved a Stipulation and Order conditioning and restricting Respondent's license to practice medicine and surgery based on her bipolar disorder and chemical dependency to alcohol. On November 14, 1992, the Board issued an Order for Unconditional License to Respondent.
- c. On June 3, 1994, the Board approved a Stipulation and Consent Order which included a suspension of Respondent's license which was stayed pending inpatient physical and mental evaluation to assess her ability to practice medicine and surgery in the state of Minnesota. The stipulation and order was based on a series of chemical dependency relapses and exacerbations of her bipolar disorder. Specifically, Respondent's chemical dependency relapsed in December 1992, October 1993, December 1993, and March 1994. On March 20, 1994, Respondent self-reported her October and December 1993 chemical

dependency relapses and several manic episodes to the Board. On May 5, 1994, when Respondent met with the Board's Complaint Review Committee, she reported the December 1992 relapse.

d. Respondent underwent inpatient physical and mental evaluation from June 19 to June 24, 1994. Among other things, the assessment team expressed concern about Respondent's past pattern of self-medication and her tendency to co-manage her care. The team recommended close observation of Respondent's medication and a reduction in her hours of work.

e. On September 17, 1994, the Board approved an Amended Stipulation and Order revising the limitations and conditions placed on Respondent's license on June 3, 1994, based on the outcome of the evaluation. The Amended Stipulation and Order, in part, ordered:

1) That Respondent obtain a treating physician to monitor all medical or other care provided to Respondent by all health care professionals;

2) That Respondent continue psychotherapy with an approved psychiatrist;

3) That Respondent abstain completely from all alcohol and all mood-altering chemicals unless they are prescribed by a physician or dentist who has been informed of Respondent's drug use history;

4) That Respondent not prescribe or administer any prescription drugs for Respondent's own use or Respondent's family members' use;

5) That Respondent attend self-help programs;

6) That Respondent be subject, without notice, to unannounced blood and urine tests at the request of Board staff or other Board designee at least twelve times per quarter.

f. Subsequently, the Board referred Respondent to the Health Professional Services Program ("HPSP") for monitoring under the Amended Stipulation and Order.

g. On July 6, 1995, pursuant to paragraph 4 of the Board's Amended Stipulation and Order, the Committee reduced the number of meetings of self-help programs in support of abstinence from four times per week to once per week. The remainder of the conditions and restrictions placed on Respondent's license and the provisions of the September 17, 1994 Amended Stipulation and Order remained in effect. Paragraph 6 sets out the consequences of violation of the order:

If Respondent shall fail, neglect, or refuse to fully comply with each of the terms, provisions, and conditions herein, the license of Respondent to practice medicine and surgery in the State of Minnesota shall be suspended immediately upon written notice by the Board to Respondent.

This Amended Stipulation and Order remains in effect.

h. On February 16, 1996, Respondent presented to the Abbott Northwestern Hospital emergency room following a fall from a horse. In the emergency room, Respondent disclosed her history of bipolar disease to the emergency room physician, but did not disclose her history of chemical dependency. During her emergency room stay, Respondent received Demerol 100 mg. IM, Ativan 1 mg., and an order for Morphine Sulfate as needed. Respondent was admitted to the hospital with a fractured pelvis and discharged on February 20, 1996. During her hospitalization:

1) On February 16, 1996, the on-call physician for the Internist Clinic ("I.C. physician") admitted Respondent by phone with orders which included Demerol 50 to 75 mg. IM every three hours as needed. The I.C. physician did not recall that he was notified by the emergency room physician that Respondent's diagnoses included chemical dependency.

2) On February 17, 1996, the I.C. physician ordered, by telephone, Vicodin 1-2 tabs every four hours, by mouth, as needed; Morphine 1-2 mg. IV every two hours as needed and Vistaril 25 mg. every 3-4 hours by mouth, as needed. He visited Respondent and completed a history on her which included a review of her systems and a social history. Respondent and the I.C. physician talked about her psychiatric illness and its

associated medications. The I.C. physician did not recall that Respondent disclosed her history of chemical dependency to him or that she had been hospitalized for chemical dependency treatment. He would have noted prior hospitalizations in her medical record; none is mentioned.

3) On February 17, 1996, an orthopedic resident saw Respondent and increased her Vistaril from 25-50 mg. IM or PO every 4-6 hours to 25-50 mg. IM or PO every 3-6 hours and added Vicodin 1-2 tabs every 3-4 hours prn. Respondent failed to disclose her history of chemical dependency to him.

i. The emergency room physician and the orthopedic consultant state that they would have provided the same treatment to Respondent had they known of her history of chemical dependency.

j. On February 27, 1996, the orthopedic consultant evaluated Respondent on an out-patient basis and prescribed Percodan 40 tablets to Respondent for pain. Respondent failed to disclose her history of chemical dependency to him.

k. On February 29, 1996, Respondent presented to the emergency room with complaints of severe right-sided pelvic pain that was subsequent to her February 16, 1996 fracture and again saw the same the emergency room physician. Respondent complained that she was having nausea and vomiting with Percodan and that she was not getting pain relief from the Relafen. The emergency room prescribed the following to Respondent: Toradol 30 mg. IV and and a total of 6 mg. morphine IV; upon discharge, Naprosyn 500 mg. twice a day, Vicodin 1 to 2 tablets every six hours for pain and Lorcet tablets 4 times a day prn (14 total). Respondent told him she did not need a prescription for Vicodin because she had some at home. Respondent was sent home without hospital admission. Respondent again failed to disclose her history of chemical dependency to the emergency room physician.

l. On March 1, 1996, the orthopedic consultant reviewed Respondent's x-rays with the radiologist, who confirmed the diagnosis of pelvic fracture. The orthopedic

consultant prescribed Lorcet 20 tablets for her. Respondent again failed to disclose her history of chemical dependency to him.

m. Also on March 1, 1996, Respondent presented to the emergency room with continued pain and was admitted to the hospital. A CT scan showed an additional fracture, of the sacrum. That emergency room physician knew of Respondent's history of chemical dependency but did not chart that information.

n. The weekend following her second visit to the emergency room, Respondent contacted the same emergency room physician stating she was unable to reach her monitoring physician and requested that he order her a few Vicodin until she could see her monitoring physician. He complied with her request and ordered Respondent ten tablets of Vicodin. Respondent again failed to disclose her history of chemical dependency to him.

o. Respondent's treating physician requested consultation by a pain specialist. Respondent's treating physician saw Respondent on March 5 and followed her until discharge. The pain specialist discontinued the Vicodin and morphine sulfate and started Respondent on Oxycontin 20 mg. every twelve hours; Ultram 50 mg. one or two tablets every two to four hours as needed, up to ten per day; one administration of Keterolac 30 mg. IV/IM, then 15 mg. IV/IM every four to six hours as needed up to five days. On March 6, the pain specialist added Percocet one to two tablets every four hours as needed for breakthrough pain.

p. During Respondent's hospitalization, on March 9, a staff nurse found an empty box of Ambien under Respondent's pillow. Respondent told the nurse that it was an old sample box and denied that she ingested them. At the conference with the Complaint Review Committee, Respondent admitted that a friend wheeled her over to her office in the adjoining clinic after clinic hours the day before. Respondent opened a locked medication cabinet, removed a sample of two Ambien tablets and subsequently ingested them. One of Respondent's psychiatrists who saw her during this hospitalization now states that at the time she took the Ambien, Respondent continued to have symptoms of mania. However, she was discharged the same day as the package was found.

q. On March 9, 1996, Respondent was discharged from the hospital on pain medications prescribed by the pain specialist as follows: Oxycontin 30 mg. every eight hours by mouth; Ultram 50 mg one to two tablets by mouth every four hours, maximum eight per day; and Toradol 50 mg IV or IM every six hours for three days.

r. On March 11, 1996, Respondent telephoned the pain specialist and requested a refill of Oxycontin, after using up her prescription of Oxycontin thirty percent early. The pain specialist had a ten minute conversation with Respondent about controlling her use of opioids and his plan to taper her.

s. On March 14, 1996, Respondent telephoned the pain specialist requesting additional pain medications. The pain specialist refused to increase the opioids, but approved Ultram up to eight per day.

t. On March 15, 1996, the orthopedic consultant evaluated Respondent on an out-patient basis. The orthopedic consultant noted that Respondent was improving, walking with and without the aid of a walker. At Respondent's request, the orthopedic consultant ordered Percodan 40 tablets for her. Respondent again failed to disclose her history of chemical dependency to the orthopedic consultant and failed to disclose that the pain specialist was tapering her opioids and had refused them the day before.

u. On March 18, 1996, Respondent saw the pain specialist as an outpatient. Respondent told the pain specialist that she had run out of Ultram but did not fill his prescription. The pain specialist recommended that Respondent continue the tapering doses of Oxycontin but did agree to provide one-week supply of two doses of Tylenol #3 per day (#14) and Flexaril 10 mg (#15) for evening use. Respondent did not tell the pain specialist she had received 40 Percodan from the orthopedic consultant on March 15.

v. On April 8, 1996, Respondent telephoned the pain specialist and told him that over the weekend she called in a prescription of Ultram 50 mg. for herself. The pain specialist agreed to approve the prescription and added one additional refill to it.

w. In September 1994, Respondent was taking Synthroid 0.2 mg. Respondent's treating physician reduced the Synthroid dosage in October 1994 to 0.175 mg. and in January 1995 to 0.15 mg. Upon Respondent's hospital admission in February 1996, Respondent was taking Synthroid 0.2 mg. At the conference Respondent told the Committee that her psychiatrist had approved this increase. However, Respondent's psychiatrist did not prescribe Synthroid for Respondent or change the treating physician's dosage, and did not know that Respondent was taking a dosage of Synthroid greater than that recommended or prescribed by the treating physician.

x. In February 1995, Respondent adjusted a dose of Effexor without consulting her psychiatrist. She informed him subsequently.

y. In June 1996, Respondent met with her psychiatrist. Respondent reported that she had restarted herself on a dose of Wellbutrin without contacting him first. Respondent recalls discussing with the psychiatrist restarting the Wellbutrin at the previous appointment with him.

z. Respondent violated the September 17, 1994 Amended Stipulation and Order in that:

- 1) Respondent failed to inform physicians who were providing medical care and prescribing mood-altering chemicals of her history of chemical dependency.
- 2) Respondent inappropriately self-prescribed with the usage of Ambien.
- 3) Respondent inappropriately self-prescribed when she increased her dosage of Oxycontin without a prescription.
- 4) Respondent inappropriately self-prescribed when she independently discontinued Ultram by not filling the prescription.
- 5) Respondent inappropriately self-prescribed when she increased her Synthroid from .15 mg. to .2 mg. without a prescription.

6) Respondent inappropriately self-prescribed when she resumed use of a dose of Wellbutrin without first consulting with her psychiatrist.

7) Respondent inappropriately self-prescribed when she adjusted a dose of Effexor without first consulting her psychiatrist.

STATUTES

3. The Board views Respondent's practices as inappropriate in such a way as to require Board action under Minn. Stat. § 147.091, subd. 1(f) and (l) (1994) and Respondent agrees that the conduct cited above constitutes a reasonable basis in law and fact to justify the disciplinary action.

REMEDY

4. Upon this stipulation and all of the files, records, and proceedings herein, and without any further notice or hearing herein, Respondent does hereby consent that until further order of the Board, made after notice and hearing upon application by Respondent or upon the Board's own motion, the Board may make and enter order suspending Respondent's license to practice medicine and surgery in the State of Minnesota. Such suspension shall be stayed pending Respondent's compliance with the following terms and conditions:

a) Respondent shall obtain a treating physician, who shall be a psychiatrist knowledgeable in the areas of both bipolar disorder and chemical dependency, approved in advance by the Complaint Review Committee or its designee, to monitor and/or manage all medical or other care provided to Respondent by all health care professionals. Respondent shall provide all necessary records releases to enable Respondent's health care professionals to communicate both orally and in writing with each other and with the treating physician pursuant to this paragraph. The treating physician shall provide quarterly reports to the Board and to the work quality assessor summarizing medical or other care provided to Respondent by each health professional during the quarter and addressing Respondent's progress under any terms of this Second Amended Stipulation and Order relating to Respondent's health status and recovery.

b) Respondent shall provide a copy of this Second Amended Stipulation and Order to all treating health professionals and each health professional shall notify the Board in writing that he/she has received and understands the Second Amended Stipulation and Order.

c) Respondent shall abstain completely from alcohol and all mood-altering chemicals unless they are prescribed by a physician or dentist who has been informed of Respondent's drug use history.

d) Respondent shall abstain completely from over-the-counter medications unless they are approved in advance by her treating physician.

e) Respondent shall not prescribe or administer any prescription drug or drug sample for Respondent's own use or for Respondent's family members' use.

f) Respondent shall be subject, without notice, to unannounced blood and urine tests at the request of Board staff or other Board designee at least 12 times per quarter. Blood and urine screens may be requested at any time. Respondent shall provide the requested sample within the time frame directed. The blood and urine screens shall be:

1) Collected and tested consistent with protocols established by a Board-designated laboratory;

2) Handled through legal chain of custody methods;

3) Paid for by Respondent.

g) The biological fluid collection and testing shall take place at a Board-designated laboratory as directed by the Board or its designee. Testing shall screen for opiates, cocaine, barbiturates, amphetamines, benzodiazepines, marijuana, and other drugs of abuse, including alcohol and Ambien. The laboratory will provide test results directly to the Board and Respondent's treating physician. Ingestion of poppyseeds will not be accepted as a reason for a positive drug screen.

h) Respondent shall continue in psychotherapy, with a therapist approved in advance by the Complaint Review Committee or its designee. The therapist shall

submit quarterly reports to the Board and to the treating physician regarding Respondent's progress.

i) Respondent shall attend meetings of a self-help program such as AA or NA in support of abstinence at least once per week. Quarterly reports shall be submitted to the Board from Respondent's designated sponsor(s) regarding attendance and participation.

j) Respondent shall attend meetings sponsored by the Minnesota Depressive and Manic-Depressive Association at least four times per month. Quarterly reports shall be submitted to the Board from Respondent's designated sponsor(s) regarding attendance and participation.

k) Respondent shall attend monthly meetings of a professional support group such as PSP, approved in advance by the Complaint Review Committee or its designee. Quarterly reports shall be submitted to the Board from Respondent's designated sponsor(s) regarding Respondent's attendance and participation.

l) Respondent shall provide to the Board and the treating physician a copy of any treatment or aftercare plan which is in effect at the time of execution of this Stipulation and Order or which is modified or becomes effective during the time Respondent is subject to this Stipulation and Order. The treatment or aftercare plan and any modifications to it shall be approved by the treating physician and shall include at least the following:

- 1) The treatment or aftercare plan activities;
- 2) The name, address, and telephone number for each provider of treatment or aftercare services.

m) The terms of any such treatment or aftercare plan or approved modification thereto, to the extent not superseded by this order, are herewith incorporated by reference. Failure to follow the plan or approved modification shall constitute violation of this order.

n) Upon request by the Board, Respondent shall sign releases authorizing the Board to obtain Respondent's medical, mental health or chemical abuse/dependency records from any treating professional or facility.

o) Respondent and a designated Board member or designee shall meet on a quarterly basis. It shall be Respondent's obligation to contact the designated Board member to arrange each of the meetings. The purpose of such meetings shall be to review Respondent's progress under the terms of this Stipulation and Order.

p) Respondent shall identify a work quality assessor, approved in advance by the Committee, who shall provide quarterly reports to the Board and to the treating physician regarding Respondent's overall work performance. Respondent shall provide the work quality assessor a copy of this Second Amended Stipulation and Order within 30 days of approval by the Committee. The work quality assessor shall notify the Board in writing in the first quarterly report that s/he has reviewed and understands the Second Amended Stipulation and Order. Respondent shall sign releases authorizing the treating physician and the work quality assessor to communicate both orally and in writing with each other. Communication shall include periodic assessment of Respondent's workload and hours of work, and their effect on her overall health status and recovery.

q) Respondent shall not work more than forty hours per week.

r) Respondent shall limit her practice to a group setting, approved in advance by the Complaint Review Committee.

s) Respondent shall not have access to sample medications.

t) After three years from the date of this Order, Respondent may petition the Complaint Review Committee to modify the terms of subparagraphs a, f, and h-k of this paragraph 4. Respondent shall provide the Committee with documentation of compliance with the Order. The Committee, at its discretion and in consultation with the treating physician and the work quality assessor, may at that time reduce the frequency of meetings, reports and biological fluid screens required by this Order.

u) Respondent shall pay to the Board a civil penalty of \$4,000.00.

v) This Second Amended Stipulation and Order will remain in effect for a minimum of five years from the date of this Order. At the end of this period, Respondent may petition for reinstatement of an unrestricted license upon recommendation by Respondent's treating physician and psychotherapist, and upon proof, satisfactory to the Board, of five years of documented, uninterrupted recovery. Upon hearing the petition, the Board may continue, modify or remove the conditions set out herein.

5. Upon Board approval of this Second Amended Stipulation and Order, Respondent shall provide the Board with the addresses and telephone numbers of Respondent's residence and all work sites. Within seven (7) days of any change, Respondent shall provide the Board with new address and telephone number information.

6. If Respondent shall fail, neglect, or refuse to fully comply with each of the terms, provisions, and conditions herein, the license of Respondent to practice medicine and surgery in the State of Minnesota shall be suspended immediately upon written notice by the Committee to Respondent, such a suspension to remain in full force and effect until Respondent demonstrates to the Committee that she has come into full compliance with each term of this order. If Respondent's failure to comply involves violation of paragraph 4, subparagraphs c-e, the suspension shall remain in effect for a minimum of three months. At the end of three months, Respondent may petition for reinstatement of the stayed suspension upon recommendation of her treating physician and proof satisfactory to the Committee of at least three months of documented, uninterrupted sobriety and abstention from all unprescribed medications. The Committee may continue, modify or remove the conditions upon hearing the petition.

7. Should Respondent dispute the factual basis for any suspension, she may appear before the Committee and present affidavits and documents. The Committee may find a violation based on a preponderance of the evidence. The Committee may continue, modify or remove the suspension based on the evidence before them. Respondent may not dispute the

remedy imposed. Should Respondent continue to dispute the factual basis for a suspension, she may appear before the Board and present affidavits and documents. The Board may find a violation based on a preponderance of the evidence. The Board's decision shall be final and not subject to appeal or additional procedures under Minnesota Statutes chapters 14 or 214.

8. Within ten days of the date of this order, Respondent shall provide the Board with a list of all hospitals at which Respondent currently has medical privileges and a list of all states in which Respondent is licensed or has applied for licensure. The information shall be sent to the Board of Medical Practice, Suite 106, 2700 University Avenue West, St. Paul, Minnesota 55114.

9. In the event the Board in its discretion does not approve this settlement, this stipulation is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced in any disciplinary action by either party hereto except that Respondent agrees that should the Board reject this stipulation and if this case proceeds to hearing, Respondent will assert no claim that the Board was prejudiced by its review and discussion of this stipulation or of any records relating hereto.

10. In the event Respondent should leave Minnesota to reside or practice outside the state, Respondent shall promptly notify the Board in writing of the new location as well as the dates of departure and return. Periods of residency or practice outside of Minnesota will not apply to the reduction of any period of Respondent's suspended, limited, or conditioned license in Minnesota unless Respondent demonstrates that practice in another state conforms completely with Respondent's Minnesota license to practice medicine.

11. Respondent has been advised by Board representatives that she may choose to be represented by legal counsel in this matter and has been represented by Rebecca Egge Moos.

12. Respondent waives any further hearings on this matter before the Board to which Respondent may be entitled by Minnesota or United States constitutions, statutes, or rules and agrees that the order to be entered pursuant to the stipulation shall be the final order herein.


13. Respondent hereby acknowledges that she has read and understands this stipulation and has voluntarily entered into the stipulation without threat or promise by the Board or any of its members, employees, or agents. This stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this stipulation.


Dated: 9/11, 1996


NANCY A. KERMAITH, M.D.
Respondent


FOR THE COMPLAINT REVIEW
COMMITTEE

Dated: September 11, 1996


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ORDER

Upon consideration of this stipulation and all the files, records, and proceedings herein,
IT IS HEREBY ORDERED that Respondent's license to practice medicine and surgery in the State of Minnesota is SUSPENDED, such suspension to be stayed upon compliance with the terms and conditions set out in the stipulation hereinabove.

IT IS FURTHER ORDERED that all terms of this Stipulation and Order are adopted and implemented by the Board this 14th day of September, 1996.

MINNESOTA BOARD OF
MEDICAL PRACTICE

By: Robert J. [Signature]

AFFIDAVIT OF SERVICE BY MAIL

**Re: In the Matter of the Medical License of Nancy A. Kermath, M.D.
License No. 27,457**

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Cynthia O. Ransom, being first duly sworn, deposes and says:


That at the City of St. Paul, County of Ramsey and State of Minnesota, on September 24, 1996, she served the attached STIPULATION AND ORDER, by depositing in the United States mail at said city and state, a true and correct copy thereof, properly enveloped, with first class postage prepaid, and addressed to:

Rebecca Egge Moos
Bassford, Lockhart, Truesdell & Briggs
3550 Multifoods Tower
33 South Sixth Street
Minneapolis, MN 55402



CYNTHIA O. RANSOM

Subscribed and sworn to before me
September 24, 1996.



Notary Public

