

**TRUE AND EXACT  
COPY OF ORIGINAL**

**BEFORE THE MINNESOTA  
BOARD OF MEDICAL PRACTICE**

In the Matter of the  
Medical License of  
Nancy Ann Johnson 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 Complaint Review Committee ("Committee") of 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.

2. Respondent has been advised by Board representatives that she may choose to be represented by legal counsel in this matter. Respondent has chosen to be represented by John W. Lundquist, Fredrikson & Byron, 4000 Pillsbury Center, 200 Sixth Street South, Minneapolis, Minnesota 55402-1425, telephone (612) 492-7000. The Committee was represented by Nathan W. Hart, Assistant Attorney General, 1400 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2131, telephone (651) 296-7575.

**FACTS**

3. For the purpose of this stipulation, the Board may consider the following facts as true:

a. Respondent is a 53-year-old physician who has been licensed by the Board since January 8, 1983. Respondent is Board-certified in psychiatry.

b. Respondent has a history of bipolar disorder and chemical dependency with relapses. 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 Order, which included a suspension of Respondent's license that was stayed pending inpatient physical and mental evaluations of Respondent. The Stipulation and Order was based on a series of chemical dependency relapses and exacerbations of Respondent's bipolar disorder in December 1992, December 1993, and March 1994.

d. Respondent underwent inpatient physical and mental evaluations in June 1994. The assessment team, among other things, expressed concern about Respondent's past pattern of self-medication. On September 17, 1994, the Board approved an Amended Stipulation and Order further restricting Respondent's license based on the evaluation results. On July 6, 1995, the Board reduced the number of required self-help program meetings per week but retained all other provisions of the September 1994 Amended Order.

e. On September 14, 1996, the Board issued a Stipulation and Order based on Respondent's violation of the September 1994 Amended Order with regard to chemical dependency relapses on controlled-substance medications and exacerbation of Respondent's bipolar disorder. The Board again suspended Respondent's license for six months. The suspension was stayed provided Respondent complied with the new terms and conditions established by the September 1996 Order.

f. On October 9, 2000, Respondent petitioned the Committee for reduced monitoring. On December 20, 2000, the Committee issued an Order Amending the September 1996 Order to reduce the minimum required number of biological fluid screens and the minimum frequency of meeting attendance.

g. In December 2001, the Board received information that Respondent was reducing her medications without the knowledge of her psychiatrist and had written two prescriptions for narcotics in the name of another individual for her own use. Respondent also self-prescribed Concerta™ using the name of one of her colleagues.

h. In December 2001, Respondent also self-reported to the Board a recent relapse of her bipolar disorder. Respondent stated she had a manic episode resulting from a total hysterectomy she underwent in November 2001. Respondent stated she had taken a medical leave and would not practice medicine until this matter was resolved. Respondent's attorney and treating psychiatrist informed the Board's investigator that Respondent was unable to submit to an interview at that time because of her active bipolar disorder symptoms.

i. On March 9, 2002, the Board approved a Stipulation and Order ("March 2002 Order") indefinitely suspending Respondent's license based upon impairment and reserving the allegations set forth in paragraph 2.g. above for later disposition after receiving notification from Respondent that her medical condition had improved sufficiently to allow her to appear before the Committee and respond to the allegations.

j. In May 2002, Respondent altered a prescription from her psychiatrist for Ambien from a 20-day to a 30-day supply without her psychiatrist's knowledge. On or about May 23, 2002, Respondent was hospitalized after experiencing a recurrence of symptoms of her bipolar disorder.

k. By letter to the Minnesota Attorney General's Office dated July 25, 2002, Respondent admitted to the conduct set forth in paragraph 2.g. above, which occurred during an acute manic episode following a total hysterectomy in November 2001. With respect to the altered prescription for Ambien set forth in paragraph 2.j. above, Respondent stated she had not been sleeping well for weeks and "impulsively" altered a prescription for 20 days' worth of Ambien so that she would receive 30 days' worth of the medication.

l. On February 13, 2003, Respondent met with the Committee to discuss her medical condition and her conduct described above. Respondent provided the Committee with information on the stabilization of her medical condition.

#### STATUTES

4. The Committee views Respondent's practices as inappropriate in such a way as to require Board action under Minn. Stat. § 147.091, subd. 1(l) and (r) (2000), and Respondent

agrees that the conduct cited above constitutes a reasonable basis in law and fact to justify action under these statutes.

### **REMEDY**

5. 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 an order conditioning and restricting Respondent's license to practice medicine and surgery in the State of Minnesota as follows:

a. The March 2002 Order, indefinitely suspending Respondent's license to practice medicine and surgery in the State of Minnesota, is rescinded.

b. Respondent shall obtain a primary treating physician, who shall be a psychiatrist knowledgeable in the areas of both bipolar disorder and chemical dependency, approved in advance by the 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, including her secondary treating physician, to communicate both orally and in writing with the primary treating physician pursuant to this paragraph. The primary treating physician shall provide quarterly reports to the Board or its designee, and to the work quality assessor, summarizing medical or other care provided to Respondent by each health care professional during the quarter and addressing Respondent's progress under any terms of this Stipulation and Order relating to Respondent's health status and recovery.

c. Respondent shall obtain a second treating physician, approved in advance by the Committee or its designee, who shall provide general (non-psychiatric) medical care to Respondent. The second treating physician will not be required to file regular reports with the Board but shall provide reports to the primary treating physician upon request.

d. Respondent shall provide a copy of this Stipulation and Order to all of her treating health care professionals, and each health care professional shall notify the Board in writing that (s)he has received and understands this Stipulation and Order.

e. Respondent shall abstain completely from alcohol and all mood-altering chemicals unless they are prescribed and/or approved by a physician or dentist who has first been informed of Respondent's mental health and chemical dependency history.

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

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

h. Respondent shall be subject, without notice, to unannounced blood and/or urine tests at the request of the Board or its 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; and

3) Paid for by Respondent.

i. The biological fluid collection and testing shall take place 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. The laboratory will provide test results directly to the Board or its designee and to Respondent's treating physician. Ingestion of poppy seeds will not be accepted as a reason for a positive drug screen.

j. Respondent shall continue in psychotherapy with a therapist approved in advance by the Committee or its designee. The therapist shall submit quarterly reports to the Board or its designee and to the primary treating physician regarding Respondent's diagnosis and

progress in therapy. Termination of therapy shall be at the written recommendation of the approved therapist, with the approval of the primary treating physician and the Committee.

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

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

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

n. Respondent shall provide to the Board and to the primary treating physician a copy of any treatment and/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/aftercare plan, and any modifications to it, shall be approved by the primary treating physician and shall include at least the following:

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

o. The terms of any such treatment/aftercare plan, or approved modifications thereto, to the extent not superseded by this Order, are herewith incorporated by reference. Failure to follow the plan shall constitute a violation of this Order.

p. Upon request by the Board or its designee, 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.

q. 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 and conditions of this Stipulation and Order.

r. Respondent shall identify a work quality assessor, approved in advance by the Committee or its designee, who shall provide quarterly reports to the Board or its designee and to the primary treating physician regarding Respondent's overall work performance. Respondent shall provide the work quality assessor a copy of this Stipulation and Order within 30 days of the date this Stipulation and Order is adopted by the Board. The work quality assessor shall notify the Board or its designee in writing in the first quarterly report that (s)he has reviewed and understands the Stipulation and Order. Respondent shall sign releases authorizing the primary 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.

s. Respondent shall not work more than 40 hours per week.

t. Respondent shall limit her practice to a group setting, approved in advance by the Committee or its designee.

u. Respondent shall not have access to sample medications.

v. After three years from the date this Stipulation and Order is adopted by the Board, Respondent may petition the Committee to modify the terms of paragraphs 5.b., 5.c., 5.h., and 5.l. Respondent shall provide the Committee or its designee with documentation of compliance with the Order. The Committee, at its discretion and in consultation with the primary treating physician and the work quality assessor, may at that time reduce the frequency of meetings, reports, and biological fluid screens required by the Order.

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

6. Within ten days of the date of this Order, Respondent shall provide the Board with a list of all hospitals and skilled nursing facilities at which Respondent currently has medical privileges, a list of all states in which Respondent is licensed or has applied for licensure, and the addresses and telephone numbers of Respondent's residences. Within seven (7) days of any change, Respondent shall provide the Board with the new address and telephone information. The information shall be sent to Robert A. Leach, Minnesota Board of Medical Practice, University Park Plaza, 2829 University Avenue S.E., Suite 400, Minneapolis, Minnesota 55414-3246.

7. In the event Respondent resides or practices outside the State of Minnesota, Respondent shall promptly notify the Board in writing of the location of her residence. Periods of residency or practice outside of Minnesota will not be credited toward any period of Respondent's suspended license in Minnesota.

8. If Respondent shall fail, neglect, or refuse to fully comply with each of the terms, provisions, and conditions herein, the Committee shall schedule a hearing before the Board. The Committee shall mail Respondent a notice of the violation alleged by the Committee and of the time and place of the hearing. Respondent shall submit a response to the allegations at least three days prior to the hearing. If Respondent does not submit a timely response to the Board, the allegations may be deemed admitted.

At the hearing before the Board, the Committee and Respondent may submit affidavits made on personal knowledge and argument based on the record in support of their



positions. The evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Order. Respondent waives a hearing before an administrative law judge and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

At the hearing, the Board will determine whether to impose additional disciplinary action, including additional conditions or limitations on Respondent's practice, or suspension or revocation of Respondent's license.

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.

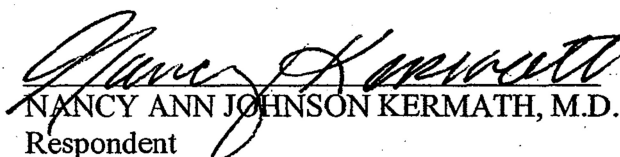
10. Respondent waives any further hearings on this matter before the Board to which Respondent may be entitled by Minnesota or United States constitutions, statutes, or rules and agrees that the order to be entered pursuant to the stipulation shall be the final order herein.

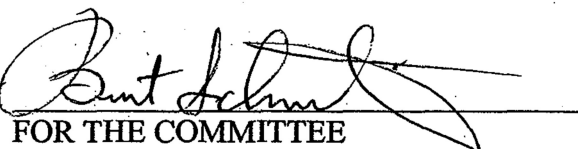
11. Respondent hereby acknowledges that she has read and understands this stipulation and has voluntarily entered into the stipulation without threat or promise by the Board or any of its members, employees, or agents. This stipulation contains the entire agreement between the parties, there being no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

12. This Stipulation and Order is a public document.

Dated: March 4, 2003

Dated: March 8, 2003

  
NANCY ANN JOHNSON KERMAITH, M.D.  
Respondent

  
FOR THE COMMITTEE

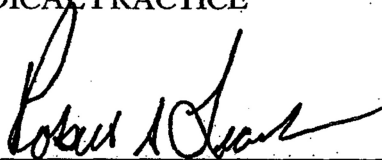
**ORDER**

Upon consideration of this stipulation and all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the terms of this stipulation are adopted and implemented by the Board this 8th day of March, 2003.

MINNESOTA BOARD OF  
MEDICAL PRACTICE

By: \_\_\_\_\_



ROBERT A. LEACH  
Executive Director

AG: #811699-v1

**AFFIDAVIT OF SERVICE BY U.S. 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 )

TAMMIE L. REEVES, being first duly sworn, deposes and says:

That at the City of St. Paul, County of Ramsey and State of Minnesota, on March 10, 2003, s/he caused to be served the STIPULATION AND ORDER, by depositing the same in the United States mail at said city and state, true and correct copy(ies) thereof, properly enveloped with prepaid first-class postage, and addressed to:

JOHN W LUNDQUIST  
FREDRIKSON & BYRON  
4000 PILLSBURY CTR  
200 SIXTH ST S  
MINNEAPOLIS MN 55402-1425

*Tammie L. Reeves*  
TAMMIE L. REEVES

Subscribed and sworn to before me

this 10 day of March, 2003.

*Peter J. Krieser*  
NOTARY PUBLIC

AG: #818388-v1

