

BEFORE THE MINNESOTA
BOARD OF MEDICAL PRACTICE

**TRUE AND EXACT
COPY OF ORIGINAL**

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

**AMENDED STIPULATION AND ORDER
FOR INDEFINITE SUSPENSION**

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 David P. Bunde, Fredrikson and Byron, P.A., 4000 Pillsbury Center, 200 South Sixth Street, Minneapolis, Minnesota 55402-1425, telephone (612) 492-7048. 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 54-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. She has been under several Board orders, including an order dated March 9, 2002 ("March 2002 Order"). The March 2002 Order indefinitely suspended Respondent's license based upon a recurrence of symptoms of her bipolar disorder.

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

d. On March 8, 2003, the Board approved a Stipulation and Order ("March 2003 Order") reinstating Respondent's license and allowing Respondent to return to practice, subject to certain conditions and restrictions, including the following:

1) 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.

2) 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:

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

b) Handled through legal chain-of-custody methods; and

c) Paid for by Respondent.

3) 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.

4) Respondent shall attend meetings sponsored by the Minnesota Depressive and Manic-Depressive Association ("MDMDA") 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.

5) Respondent shall attend monthly meetings of a professional support group such as Physicians Supporting Physicians ("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.

e. On July 24, 2003, Respondent met with the Committee to discuss two urine screens, one that tested positive for Ephedrine on April 7, 2003, and one that contained a low creatinine level on July 3, 2003.

f. Following the meeting, the Board learned that Respondent failed to attend PSP meetings in May, June, and July 2003, in violation of the March 2003 Order.

g. In June and July 2003, three of Respondent's urine screens contained low creatinine levels, which suggested that they were diluted.

h. In November 2003, Respondent was interviewed by an investigator with the Minnesota Attorney General's Office. Respondent stated that she was not at the May 2003 PSP meeting because she was with her son at Urgent Care. When asked to provide records to support the visit, she stated she would do so. Later in the interview with the investigator,

Respondent stated that she did not take her son to Urgent Care in May; rather, she did not attend the meeting because she was at home with her son, who was ill. Respondent stated that she did not attend the June 2003 PSP meeting because she was attending a continuing education course in Boston. Respondent stated that she did not attend the July 2003 PSP meeting because she was distraught over an upcoming meeting with the Committee. Respondent also admitted her MDMDA sponsor falsified her meeting attendance logs at her request.

i. On November 24, 2003, Respondent was admitted to Fairview University Medical Center with deepening depression in the midst of bipolar depression. Documentation indicated, "This was triggered by a very difficult meeting with a representative of the attorney general's office in the midst of her ongoing negotiation with the medical board." Respondent was discharged on November 26, 2003.

j. Respondent failed to attend the January 2004 PSP meeting. Respondent reported that she had every intention of attending the meeting, but her schedule became confused and she forgot to attend.

k. On May 27, 2004, Respondent met with the Committee to discuss the above information. The Committee offered Respondent an Amended Stipulation and Order, in which she was reprimanded for violating her March 2003 Order and required to pay a \$2000 civil penalty. All of the other remedy provisions contained in paragraph 5 of her March 2003 Order remained in place.

l. In connection with her May 27, 2004, conference, Respondent provided a letter of support from her treating psychiatrist dated May 13, 2004. Prior to the conference, Respondent altered the letter without informing the psychiatrist or the Committee. Respondent's purpose was to mislead the Committee and present herself in a more favorable light.

m. On June 16, 2004, an investigator with the Minnesota Attorney General's Office interviewed Respondent to discuss her forgery of the May 13, 2004, letter. Respondent admitted to altering the letter before submitting it to the Committee. Respondent also admitted to consuming three drinks of alcohol on June 5, 2004, while attending a conference in Boston.

n. On June 24, 2004, a urine screen was obtained from Respondent and suspected of being diluted.

o. On July 15, 2004, Respondent met with the Committee to discuss the above allegations.

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(f), (g), (k), (l), (r), and (u) (2002), and Respondent agrees that the conduct cited above constitutes a reasonable basis in law and fact to justify the disciplinary 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 suspending Respondent's license to practice medicine and surgery in the State of Minnesota as follows:

a. Respondent is **REPRIMANDED** for the conduct cited above in paragraph 3.

b. Respondent shall pay to the Board a civil penalty in the amount of \$2500 for its investigative costs.

c. Respondent's license is **INDEFINITELY SUSPENDED**.

d. During the period of suspension, Respondent shall not in any manner practice medicine in Minnesota.

e. Respondent may petition for reinstatement of her license upon payment of the civil penalty referenced in paragraph 5.b. above and submission of satisfactory evidence that she is fit and competent to resume practice with reasonable skill and safety to patients. Satisfactory evidence shall include, but shall not be limited to, evidence of a minimum of one year of documented, uninterrupted sobriety, stipulated, in compliance with her treatment/aftercare program and documented stability of her bipolar disorder.

f. Upon petitioning for reinstatement, Respondent shall appear before the Committee to discuss her petition and progress in recovery. Upon hearing the petition, the Committee may continue, modify, or remove the suspension of her registration, or impose conditions or restrictions as deemed necessary.

g. Respondent shall sign all necessary releases allowing the Board access to all medical, mental health, therapy, evaluation, chemical dependency, and other records from any treating health professional or evaluator. Respondent shall allow the Board or its designee to communicate with all treating health care professionals.

6. 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.

7. 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.

8. 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: 10/28/, 2004

Dated: 13 November 2004

Nancy A. Kermath
NANCY A. KERMAITH, M.D.
Respondent

S. J. A. Uchir MD
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 13th day of November, 2004.

MINNESOTA BOARD OF
MEDICAL PRACTICE

By: *Robert D. [Signature]*

