

**BEFORE THE STATE BOARD OF REGISTRATION
FOR THE HEALING ARTS**

STATE BOARD OF REGISTRATION)
FOR THE HEALING ARTS,)
)
Board,)
)
)
v.)
)
ROSALIE POMPUSHKO, M.D.,)
)
Licensee.)

Case no. 2000-000643

SETTLEMENT AGREEMENT

Rosalie Pompushko, M.D., ("Licensee") and the State Board of Registration for the Healing Arts ("Board") enter into this Agreement for the purpose of resolving the question of whether Dr. Pompushko's license as a physician or surgeon will be subject to discipline. Licensee and the Board jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to §621.045, RSMo Supp. 1997.

1. Licensee acknowledges that she understands the various rights and privileges afforded by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against the Licensee; the right to present evidence on Licensee's own behalf; the right to a decision based upon the record by a fair and impartial administrative hearing commissioner concerning the

charges pending against Licensee; and subsequently, the right to a disciplinary hearing before the Board at which time evidence may be presented in mitigation of discipline. Having been advised of these rights provided Licensee by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Agreement and agrees to abide by the terms of this document as they pertain to Licensee.

2. Licensee acknowledges that she may, at the time this Agreement is effective or within fifteen days thereafter, submit this Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitutes grounds for discipline of Licensee's license.

3. Licensee acknowledges that she has been informed of her right to consult legal counsel in this matter.

4. Licensee hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to §536.087, RSMo 1994, or any claim arising under 42 U.S.C. 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case or this Agreement, or from the negotiation or execution of this Agreement. The parties acknowledge that this paragraph is severable from the

remaining portions of this Agreement in that it survives in perpetuity even in the event that any court of law deems this Agreement, or any portion thereof, void or unenforceable.

5. The parties stipulate and agree that the disciplinary order agreed to by the Board and Licensee in Part II herein is based only on the Agreement set out in Part I herein. Licensee understands that the Board may take further disciplinary action against Licensee based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

6. Licensee understands and agrees that the Missouri State Board of Registration for the Healing Arts will maintain this Agreement as an open record of the Board as required by Chapters 334, 610, 620 and 621, RSMo, as amended.

I.

Based upon the foregoing, the Board and Licensee herein jointly stipulate to the following:

JOINT PROPOSED FINDINGS OF FACT

1. The State Board of Registration for the Healing Arts (the "Board") is an agency of the State of Missouri created and established pursuant to § 334.120, for the purpose of executing and enforcing the provisions of Chapter 334, RSMo.

2. Rosalie Pompushko, M.D. ("Licensee") is licensed by the Board as a physician and surgeon, License Number MDR5E98, which license was first issued

February 1, 1985. Licensee's certificate of registration is current, and was current and active at all times mentioned herein.

3. At the time of the events alleged herein, Licensee was a psychiatrist in private practice.

4. Beginning in November 1990, Licensee provided psychiatric services to patient J.R.

5. Licensee diagnosed and treated J.R. for depression.

6. Just prior to beginning treatment with Licensee, J.R. had reportedly attempted suicide. Licensee was aware of J.R.'s report on this attempt.

7. Licensee treated J.R. with 15 mg. of Nardil and saw him in her office once every month to three months until May 1991.

8. After a short period of seeing him as a patient from August 1992 until February 1993, Licensee did not provide treatment to J.R. again until March 1997 when J.R. returned seeking help for depression and dealing with several stressors in his life, including final exams in law school and problems with his parents.

9. Licensee provided treatment to J.R. on at least three occasions in March and April 1997.

10. During his course of treatment, J.R. communicated to Licensee, both verbally and in writing, his concern that any referral for treatment to other health care

providers would jeopardize his professional future and asked that she not disclose her treatment of him to any third party.

11. Patient J.R. was prescribed 300 mg of Lithium, 15 mg of Nardil to be taken three times a day and Ambien when needed to aid with sleep.

12. Ambien is a brand name for Zolpidem which is a Schedule IV controlled substance. See § 195.017.8, RSMo Supp. 1997.

13. Lithium and Nardil are prescription medications.

14. On or about May 1, 1997, at approximately 4:30 p.m., patient J.R. was found by his mother to be clumsy and uncoordinated.

15. Patient J.R.'s parents called Licensee and reported to her J.R.'s symptoms. They also reported J.R.'s comment that he had only taken some additional sleeping medication to ensure adequate rest for a final beginning the next day.

16. Licensee decided to allow J.R. to be monitored by his parents at home and did not recommend that the patient be taken to an emergency room based on the following facts:

(a) First, Licensee spoke with J.R.'s mother and collected information regarding the amount of prescription medications which remained unused in the home. She also learned that there was no smell of alcohol on his breath.

(b) Second, Licensee contacted the family pharmacist to make sure that no additional refills of medications had been released by the pharmacy to J.R. other than those which had been identified by J.R.'s mother in the earlier call.

(c) Third, Licensee, based on the information from J.R.'s mother and the pharmacy, was able to conclude that J.R.'s supply of Nardil and Lithium were appropriate, based on the date of purchase and expected dosages. She was, however, unable to rule out that there might be as much as 100 mg (10 - 10 mg pills) of Ambien which could not be accounted for.

(d) Fourth, Licensee spoke with the Poison Control Center and learned that Ambien (Zolpidem) toxicity could not be achieved at any levels less than 400 mg, and that 100 mg could not result in a toxic event.

(e) Fifth, later in the evening an additional symptom was reported and Licensee called the emergency room at a local hospital where she had privileges. After communicating all information to the ER physician, her earlier conclusion to have the patient monitored at home was reaffirmed by the ER physician.

17. Licensee specifically explained to the parents that the patient's arousability, breathing and color should be monitored for any changes. Further, they were to wake him every hour. If anything changed they were to call immediately.

18. Licensee stayed in close telephone communication with J.R.'s parents until about midnight, when she explained that monitoring should continue and that they should call her if any changes were noticed.

19. That night, J.R.'s father volunteered to stay up and monitor J.R. Unfortunately, he fell asleep. At approximately 7:00 a.m. on May 2, 1997, J.R.'s father awoke to find J.R. lying face down in a pool of coffee ground emesis. J.R. was not breathing.

20. Paramedics were called and arrived a few minutes later. Despite repeated attempts to revive J.R. by the paramedics and subsequently, the emergency room physicians, J.R. was pronounced dead at 7:54 a.m. on May 2, 1997.

21. An autopsy revealed that J.R. had died from Diphenhydramine toxicity. The report also found a therapeutic level of Ambien (Zolpidem) and no traceable level of Lithium, Nardil or alcohol.

22. Diphenhydramine is an over-the-counter medication.

23. Licensee's failure to recommend that J.R. be taken immediately to the emergency room was or might have been conduct harmful or dangerous to the physical health of patient J.R.

JOINT PROPOSED CONCLUSIONS OF LAW

24. Cause exists for Petitioner to take disciplinary action against Respondent's license pursuant to §334.100.2 (5), RSMo Supp. 1997, which reads:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate or registration or authority, permit or license for any one or any combination of the following causes:

. . . .

(5) Any conduct or practice which is or might be harmful or dangerous to the mental or physical health of a patient or the public

25. Licensee's conduct, as established by the foregoing facts, falls within the intendment of §334.100.2(5), RSMo Supp. 1997.

26. Cause exists for the Board to take disciplinary action against Licensee's license under §334.100.2(5), RSMo Supp. 1997.

II.

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the State Board of Registration for the Healing Arts in this matter under the authority of §621.110, RSMo 1994. This Agreement will be effective immediately on the date entered and finalized by the Board.

A. Effective the date the Board enters into the Agreement:

1. The medical license, No. MDR5E98, issued to Licensee is hereby
PUBLICLY REPRIMANDED.

2. Further, Licensee shall complete twenty-five (25) additional hours of Category I/II continuing medical education on the topic of suicide management in

addition to the hours required for renewal by the State Board of Registration for the Healing Arts within twelve months (12) of the effective date of this Agreement. Licensee shall provide proof of attendance at the required course or program for the required period within thirty (30) days of completing this course or program. After six (6) months, Licensee may petition the Board to extend the period for obtaining the suicide prevention hours. If an extension is sought, Licensee shall, at that time, demonstrate her attempts to locate and attend appropriate courses, and shall submit a plan for completion of the hours.

3. In the event the State Board of Registration for the Healing Arts determines that Licensee has violated any term or condition of this Agreement, the Board may in its discretion, vacate this Agreement and impose such further discipline as the Board shall deem appropriate.

4. This Agreement does not bind the Board or restrict the remedies available to it concerning any other violations of Chapter 334, RSMo, by Licensee not specifically mentioned in this document.

B. Upon the expiration of the twelve (12) month period to complete the additional twenty-five (25) hours of continuing medical education, Licensee's license shall be fully restored if all requirements of law have been satisfied; provided however, that in the event the State Board of Registration for the Healing Arts determines that Licensee has violated any term or condition of this Agreement, the Board may in its

discretion, vacate this Agreement and impose such further discipline as the Board shall deem appropriate.

C. No additional order shall be entered by this Board pursuant to the preceding paragraph of this Agreement without notice and an opportunity for hearing before this Board as a contested case in accordance with the provisions of Chapter 536, RSMo. If any alleged violation of this Agreement occurred during the twelve (12) month period, the parties agree that the Board may choose to conduct a hearing before it either during the twelve (12) month period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Licensee agrees and stipulates that the Board has continuing jurisdiction to hold a hearing to determine if a violation of this Agreement has occurred.

D. If the Board determines that the Licensee has violated a term or condition of the disciplinary period which violation would also be actionable in a proceeding before the Administrative Hearing Commission or in the circuit court, the Board may elect to pursue any lawful remedies afforded it and is not bound by this Agreement in its election of remedies concerning that violation.

E. Licensee hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, or attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs, and expenses, and compensation, including, but not limited to any claims for attorneys

fees and expenses, including any claims pursuant to §536.087, RSMo, or any claim arising under 42 U.S.C. 1983, which may be based upon, arise out of, or relate to any of the matters raised in this Agreement, or from the negotiation or execution of this Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Agreement in that it survives in perpetuity even in the event that any court of law deems this Agreement or any portion thereof void or unenforceable.

F. Licensee asserts that this Agreement is entered for the sole purpose of settling this dispute, and not as an admission of liability or guilt.

G. In consideration of the foregoing, the parties consent to the termination of any further proceedings based upon the facts set forth herein.

LICENSEE

BOARD

R. Pompushko 2-25-02
Rosalie Pompushko, M.D. Date

Tina Steinman 3/12/02
Tina Steinman Date
Executive Director

JEREMIAH W. (JAY) NIXON
Attorney General

Daryl Hylton _____
Daryl Hylton Date
Assistant Attorney General
Missouri Bar No. 35605

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Attorneys for Board

EFFECTIVE THIS 12 DAY OF March, 2002.