

**BOARD OF MEDICAL PRACTICE**

In re: Richard E. Kast, M.D.                                )  
  )     Docket Nos MPS 087-0818 & MPS 121-1018  
  )

**STIPULATION AND CONSENT ORDER**

NOW COME Richard E. Kast, M.D., and the State of Vermont, by and through Vermont Attorney General Thomas J. Donovan, Jr., and hereby stipulate and agree to the following in the above-captioned matter:

- 1. Richard E. Kast, M.D. (“Respondent”) holds Vermont medical license number 042.0008320 originally issued by the Vermont Board of Medical Practice (“the Board”) on May 1, 1991. Respondent is a psychiatrist.
- 2. Jurisdiction in this matter rests with the Board, pursuant to 26 V.S.A. §§ 1353-1354, 1370-74 and 3 V.S.A. §§ 809-814, and other authority.

**FINDINGS OF FACT**

- 3. Respondent is a psychiatrist with a private practice in Burlington, Vermont.
- 4. Respondent had a previous public action with the Board in the form of a Stipulation and Consent Order dated May 1, 2013 (“May 2013 Stipulation”). The May 2013 Stipulation provided that Respondent’s treatment of patients for chronic pain using opioids and his medical recordkeeping were not in accordance with the essential standards of acceptable and prevailing practice. The May 2013 Stipulation also included a requirement that Respondent have a practice monitor and limited his ability to treat patients for chronic pain or prescribe opioids. The May 2013 Stipulation permitted Respondent to petition for relief from such conditions no sooner than one year from the date that the Stipulation was

approved by the Board. In October of 2015, the Board granted Respondent's petition for relief.

**Docket Number MPS 087-0818**

5. The Board commenced an investigation of Docket Number MPS 087-0818 in August of 2018 as the result of a complaint from Patient A alleging that Dr. Kast made multiple inappropriate comments during two psychiatric office visits at his private psychiatric practice in Burlington, Vermont. This matter was assigned to the South Investigative Committee of the Board ("the Committee").
6. Patient A alleged that, during office visits on June 7, 2018 and July 18, 2018, Respondent made offensive and inappropriate statements to her. Those statements included Respondent's comment that Patient A's daughter had a screw loose like her mother. Patient A also reported that the Respondent made inappropriate sexual remarks during psychotherapy and comments that she found to be insensitive to bisexuality.
7. As a result of Respondent's statements, Patient A terminated her treatment relationship with Respondent.
8. Respondent admits he may have made a statement about Patient A having a screw loose in an attempt at humor. He regrets that his statement caused Patient A distress. He concedes, in retrospect, that this statement was not helpful or necessary in the course of the patient's treatment and did not further the Patient's treatment objectives.
9. Respondent disputes making the rest of the statements as recalled by Patient A but concedes he may have discussed matters having to do with sexuality in a way that Patient A found inappropriate. He regrets that his statements have caused Patient A distress. He concedes, in retrospect, that those statements were not necessary or helpful in fulfilling

Patient A's treatment objectives. He welcomes the opportunity to take further classes in meeting the needs of gay, bisexual, and transgender patients. Respondent wishes to be appropriately sensitive to his gay, bisexual and transgender patients.

**Docket Number MPS 121-1018**

10. The Board opened Docket Number MPS 121-1018 upon receipt of information concerning Respondent's prescribing practices. This matter was also assigned to the Committee.
11. The Committee conducted an extensive review of Respondent's documented treatment of Patient B and Patient C<sup>1</sup>. The Committee determined that Respondent failed to practice competently by failing to conform to the essential standards of acceptable and prevailing practice.

Failure to Follow Vermont Rule Governing the Prescription of Opioids for Pain  
and the Vermont Prescription Monitoring System ("VPMS") Rule

12. In January of 2018, Respondent began prescribing Hydrocodone to treat Patient B's chronic back pain. Respondent did not adhere to numerous VPMS Rules and the Vermont Rule Governing the Prescribing of Opioids for Chronic Pain in effect at the time of his prescribing and treatment of Patient B<sup>2</sup>.

<sup>1</sup> Patient B and Patient C's medical records were obtained by the Board via subpoena.

<sup>2</sup> The VPMS Rules and the Vermont Rule Governing the Prescribing of Opioids for Chronic Pain referenced in this paragraph both have effective dates of July 1, 2017.

- a. Respondent did not query VPMS prior to writing the initial Hydrocodone prescription as required by Section 6.2.1 of the VPMS Rule<sup>3</sup>.
- b. Respondent's medical records for Patient B did not include a signed informed consent form related to his initial prescribing of Hydrocodone in January of 2018 for this patient. He was required by Section 4.0 of the Vermont Rule Governing the Prescribing of Opioids for Pain to receive a signed informed consent from the patient when he prescribed this medication.
- c. Rule 6.1 of the Vermont Rule Governing the Prescribing of Opioids for Pain contains requirements regarding screening, evaluation and risk assessment for patients who are receiving opioids for the treatment of chronic pain. Respondent's treatment of Patient B related to the continued prescribing of Hydrocodone for pain lasting longer than 90 days was not in compliance with some of the requirements of Rule 6.1. He did not document a thorough non-psychiatric medical evaluation and physical examination, and he did not document an evaluation of benefits and relative risks of use of opioids.
- d. Rule 6.2 of the Vermont Rule Governing the Prescribing of Opioids for Pain contains requirements regarding what a prescriber must consider and document in the patient's medical records prior to prescribing an opioid for the treatment of chronic pain. Prior to prescribing Hydrocodone to Patient B to treat his chronic back pain, Respondent did not document, as required by Rule 6.2, consideration of non-opioid alternatives to opioids including non-pharmacological treatments, or asking

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<sup>3</sup> Section 6.2.1 of the VPMS Rule provides that VPMS must be queried "The first time the provider prescribed an opioid Schedule II, III, or IV controlled substances written to treat pain when such a prescription exceeds 10 pills or the equivalent."

Patient B whether the patient is currently, or had recently been, dispensed methadone or buprenorphine or prescribed and taken any other controlled substances. Respondent's documentation also does not include a signed Controlled Substance Treatment Agreement, as required by the Rule.

- e. Section 7.2 of the Vermont Rule Governing the Prescribing of Opioids for Pain requires the prescriber to co-prescribe naloxone for all patients receiving an opioid prescription if there is a concurrent prescription for benzodiazepines. Respondent prescribed a benzodiazepine to Patient B concurrently with the Hydrocodone prescription in early 2018. There is no documentation in Patient B's medical records that Respondent prescribed naloxone during the relevant time period.

13. Respondent prescribed Tramadol to Patient C in June of 2018, but his documentation does not include a rationale or justification for prescribing this medication. Additionally, Respondent did not document a signed informed consent form in this patient's record. He was required by Section 4.0 of the Vermont Rule Governing the Prescribing of Opioids for Pain to receive a signed informed consent form from the patient prior to prescribing Tramadol.

Absence of Documentation of Medical Treatment

14. The records of Respondent's treatment of Patient B and Patient C have gaps in treatment from mid-2014 to early 2016. However, other records indicate that Respondent provided treatment to both patients during this timeframe.
15. There are also no records of Respondent's treatment of Patient B from May of 2014 through March of 2016. However, the records reference Tramadol and Clonazepam prescriptions between December of 2014 and April of 2015.

16. With regard to Patient C, there are no records of Respondent's treatment from May 2014 to January 2016. Yet, the records reference prescriptions written by Respondent to Patient C in December of 2014.

#### CONCLUSIONS OF LAW

17. The Board may find "that failure to practice competently by reason of any cause on a single occasion or multiple occasions constitutes unprofessional conduct." 26 V.S.A. § 1354(b). "[F]ailure to practice competently includes, as determined by the board... (2) failure to conform to the essential standard of acceptable and prevailing practice." 26 V.S.A. § 1354(b)(2).
18. Respondent concedes that the Board could find his statements made to Patient A during psychiatric office visits as described in paragraphs five through nine above did not conform to the essential standard of acceptable and prevailing practice in psychiatry as defined in 26 V.S.A. § 1354(b)(2).
19. Respondent's treatment of Patients B and C, as described in paragraphs ten through sixteen above, was not in conformance with the applicable standards of care for prescribing medications, monitoring the Patient's medication use, and medical recordkeeping and thus did not conform to the essential standard of acceptable and prevailing practice.
20. Respondent agrees that the Board will enter as its facts and conclusions paragraphs one through twenty-seven herein, and further agrees that this is an adequate basis for the

Board's actions in this agreement. Any representation by Respondent herein is made solely for the purposes set forth in this agreement.

21. Therefore, in the interest of Respondent's desire to fully and finally resolve the matter presently before the Board, he has determined that he shall enter into this agreement with the Board. Respondent enters no further admission here, but to resolve this matter without further time, expense and uncertainty; he has concluded that this agreement is acceptable and in the best interest of the parties.
22. Respondent acknowledges that he is knowingly and voluntarily entering into this agreement with the Board. He acknowledges and agrees that at all times and in all communications and proceedings related to this matter before the Board he has had the right to be represented by counsel. Respondent has carefully reviewed and considered this Stipulation and Consent Order.
23. Respondent agrees and understands that by executing this agreement he is waiving any right to challenge the jurisdiction and continuing jurisdiction of the Board in this matter, to be presented with a specification of charges and evidence, to cross-examine witnesses, and to offer evidence of his own to contest any allegations made by the State.
24. The parties agree that upon their execution of this Stipulation and Consent Order, and pursuant to the terms herein, the above-captioned matter shall be resolved by the Board. Thereafter, the Board will take no further action as to this matter absent non-compliance with the terms and conditions of this agreement by Respondent.
25. This Stipulation and Consent Order is conditioned upon its acceptance by the Board. If the Board rejects any part of this agreement, the entire agreement shall be considered void. Respondent agrees that if the Board does not accept this agreement in its current

form, he shall not assert in any subsequent proceeding any claim of prejudice from any such prior consideration. If the Board rejects any part of this agreement, none of its terms shall bind Respondent or constitute an admission of any of the facts of the alleged misconduct, it shall not be used against Respondent in any way, it shall be kept in strict confidence, and it shall be without prejudice to any future disciplinary proceeding and the Board's final determination of any charge against Respondent.

26. Respondent acknowledges and understands that this Stipulation and Consent Order shall be a matter of public record, shall be entered in his permanent Board file, shall constitute an enforceable legal agreement, and may and shall be reported to other licensing authorities either directly or through medical licensing information sharing centers, including but not limited to: The Federation of State Medical Boards Board Action Databank and the National Practitioner Data Bank. In exchange for the actions by the Board, as set forth herein, Respondent expressly agrees to be bound by all terms and conditions of this Stipulation and Consent Order.

27. The parties therefore jointly agree that should the terms and conditions of this Stipulation and Consent Order be deemed acceptable by the Board, it will enter an order implementing the terms and conditions herein.



## ORDER

WHEREFORE, based on the foregoing and the consent of Respondent, the Board enters as its facts and conclusions in this matter Paragraphs 1 through 27 above, it is hereby ORDERED that:

1. Respondent shall be REPRIMANDED for the conduct stipulated to above.
2. Respondent's medical license is CONDITIONED as follows:
  - a. Respondent shall be prohibited from prescribing opioids for any reason under any circumstances.
  - b. Respondent shall pay a \$1,000.00 administrative penalty consistent with 26 V.S.A. § 1374(b)(1)(A)(iii). Payment shall be made to the "Vermont State Board of Medical Practice," and shall be sent to the Vermont State Board of Medical Practice office at the following address: David Herlihy, Executive Director, Vermont Board of Medical Practice, P.O. Box 70, Burlington VT 05402-0070. A payment of \$1,000.00 shall be due no later than one (1) month after the Stipulation and Consent Order is approved by the Board.
  - c. Respondent shall successfully complete the following AMA PRA Category 1 continuing medical education ("CME") courses on the topics of medical documentation/recordkeeping and medical ethics, boundaries and professionalism. Respondent shall complete both CME courses within one (1) year of the date that this Stipulation is approved by the Board. Upon successful completion of the CME courses, he shall provide the Committee with proof of attendance. Respondent shall also provide the Committee with a brief written narrative of each CME course that will document what he

learned from each course, and how he will apply that knowledge to his practice. Respondent shall provide proof of attendance and the written narrative to the Committee within thirty (30) days of completion of each course. Respondent shall be solely responsible for all costs associated with meeting these CME requirements.

**SIGNATURES**

DATED at Montpelier, Vermont, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

STATE OF VERMONT

THOMAS J. DONOVAN, JR.  
ATTORNEY GENERAL

By: DocuSigned by:  
*Megan Campbell*  
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Megan Campbell, Esq.  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609-1001

DATED at 11 Arlington Ct. Burlington, Vermont, this 11<sup>th</sup> day of November, 2021.



\_\_\_\_\_  
Richard E. Kast, M.D.  
Respondent


DATED at Burlington, Vermont, this 11<sup>th</sup> day of November, 2021.

*for* 

Pietro Lynn, Esq.  
LYNN, LYNN, BLACKMAN & MANITSKY, P.C.  
76 St. Paul Street, Suite 400  
Burlington, VT 05401  
Counsel for Respondent

**AS TO RICHARD KAST, MD APPROVED AND  
ORDERED VERMONT BOARD OF MEDICAL  
PRACTICE**

Signed on Behalf of the Vermont Board of Medical Practice

By:   
Richard Bernstein MD  
Chair  
Vermont Board of Medical Practice

Vote documented in the Vermont Board of Medical Practice meeting minutes,  
dated December 1, 2021.

**Dated:** December 1, 2021