

BOARD OF MEDICAL PRACTICE

In re: Francis P. Kalibat, M.D.)
) Docket Nos. MPS 100-0617, 164-1117,
) 110-1018, 091-0519

STIPULATION AND CONSENT ORDER

NOW COME Francis P. Kalibat, 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. Francis P. Kalibat M.D. (“Respondent”) holds Vermont medical license number 042.0008735 originally issued by the Vermont Board of Medical Practice (“the Board”) on June 2, 1993. Respondent is a physician.
- 2. Jurisdiction in this matter rests with the Board, pursuant to 26 V.S.A. §§ 1353-1357, 3 V.S.A. §§ 809-814, and other authority.

FINDINGS OF FACT

- 3. The Board opened Docket Numbers MPS 100-0617, MPS 164-1117, MPS 110-1018, and MPS 091-0519 in June of 2017, November of 2017, October of 2018, and May of 2019, respectively, upon receipt of information concerning Respondent’s prescribing practices. These matters were assigned to the South Investigative Committee of the Board (“the Committee”).
- 4. Respondent is a psychiatrist with a private practice in Montpelier, Vermont. He also treats patients at his home office in Johnson, Vermont, at Amici Associates in Moretown, Vermont, and at the Francis Foundation in Middlesex, Vermont.

5. The Committee's investigation into these matters included identification of a number of patients who received prescriptions for greater quantities of controlled substances than expected and thorough analysis of the medical records for those patients obtained from both Respondent's office practice and his practice at his home.
6. The Committee determined that Respondent's documented treatment of five patients, hereafter designated as Patients A-E, demonstrated a gross failure on repeated occasions to use and exercise the degree of care, skill and proficiency which is commonly exercised by the ordinary, skillful and careful prudent physician engaged in similar practice under similar circumstances. The Committee also determined that Respondent failed to practice competently by failing to conform to the essential standards of acceptable and prevailing practice.
7. Specifically, with regard to Patient A, the Committee found that Respondent failed to maintain an accurate medical record. Respondent wrote multiple prescriptions and/or refills for lorazepam, a controlled substance, for Patient A from July 2015 to January 2016. He also prescribed the antidepressant bupropion from mid-2015 through late 2017 to Patient A. Yet, the last medical record that Respondent had for Patient A was from 2011. Keeping an accurate medical record, particularly over an extended period of time, is an essential component of the acceptable and prevailing practice of patient care.
8. With regard to Patient B, Respondent prescribed methylphenidate (Ritalin), a controlled substance, for over two (2) years. Patient B had a documented

history of serious opioid use disorder. The daily dose of Ritalin prescribed to Patient B (100 mg) exceeded the typical maximum daily dose (60-72 mg). Additionally, Respondent routinely provided early refills or replacement Ritalin to Patient B for over one year. Despite providing early refills and replacement medications for this controlled substance, Respondent did not conduct the appropriate and required clinical monitoring. For example, he did not check the Vermont Prescription Monitoring System (“VPMS”), conduct pill counts or perform urine toxicology screens (or even obtain results performed by another provider). Given Patient B’s history of opioid use disorder and consistent early medication refills and replacement, the standards of acceptable and prevailing practice required close clinical monitoring.

9. Respondent was also the psychiatrist for Patient C and Patient D, a married couple. Respondent prescribed both Patient C and D Ritalin, and authorized early refills of this medication on numerous occasions. Patient C received early refills of Ritalin by three to five days at least five times from mid-2017 until late 2018. Patient D received early refills of Ritalin by 5-10 days at least five times from late 2016 until late 2018. Although at times Patient C and D picked up their prescriptions late, there was still a periodic accumulation of this controlled substance increasing the risk for diversion. Respondent’s prescribing for these patients was inconsistent with the degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent physician.

10. With regard to Patient E, Respondent failed to prescribe responsibly given this patient's complex medical history which includes a substance use disorder and prescription medication misuse. Respondent prescribed Patient E Ritalin based upon her self-report of ADHD symptoms. Over the course of treatment, Respondent learned that Patient E was using benzodiazepines without a prescription, and cocaine. She also has a history of insufflating stimulant medication. He continued to provide Patient E with Ritalin despite her active Stimulant Use Disorder. His treatment of this patient constituted unacceptable patient care and failed to conform to the essential standards of acceptable and prevailing practice.

CONCLUSIONS OF LAW

11. The Board may find, "that in the course of practice, gross failure to use and exercise on a particular occasion or the failure to use and exercise on repeated occasions, that degree of care, skill and proficiency which is commonly exercised by the ordinary skillful, careful and prudent physician engaged in similar practice under the same or similar conditions, whether or not actual injury to a patient has occurred" may constitute unprofessional conduct. 26 V.S.A. § 1354(a)(22).
12. 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).

13. Respondent’s unacceptable treatment of Patients A - E as described in paragraphs seven (7) and ten (10) above was not in conformance with the applicable standards of care for prescribing medications, monitoring the Patients’ medication use, and medical recordkeeping.
14. Respondent agrees that the Board may enter as its facts and/or conclusions paragraphs one (1) through eleven (13) above, and further agrees that this is an adequate basis for the Board’s actions set forth herein. Any representation by Respondent herein is made solely for the purposes set forth in this agreement.
15. 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 instant 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.
16. 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.
17. Respondent agrees and understands that by executing this document 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 by the State.

18. 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 administratively closed 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 document by Respondent.
19. This Stipulation and Consent Order is conditioned upon its acceptance by the Board. If the Board rejects any part of this document, 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.
20. 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.

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

ORDER

WHEREFORE, based on the foregoing, and the consent of Respondent, it is hereby ORDERED that:

1. Respondent shall be REPRIMANDED for the conduct set forth above.
2. Respondent's medical license is CONDITIONED as follows:
 - a. Respondent shall not prescribe opioids on a permanent basis as is in conformance with his current practice.
 - b. Respondent shall retain the services of a "practice monitor" for four (4) years, subject to the terms and conditions set forth in the attached Practice Monitoring Agreement ("Agreement"), which is incorporated by reference and attached hereto as Exhibit A.

The four (4)-year practice monitoring requirement will not begin until the official "start date" as defined in the attached Agreement. Respondent shall comply with the terms and obligations of the Agreement. Respondent shall provide a copy of this Stipulation and Consent Order to the practice monitor. Respondent shall be responsible for ensuring that the practice monitor complies with the terms and obligations of the Agreement. If after three years Respondent has received consistently positive reports from his practice monitor, he can submit a written request to the Committee to end the monitoring requirement. Such a request will not be considered by the Committee until Respondent has provided three (3) years of

favorable and timely monitoring reports. The decision whether to grant or deny the requested relief shall be solely within the discretion of the Committee. The practice monitoring requirement will not cease until the Committee has approved, in writing, Respondent's request to end the monitoring.

- c. Respondent shall pay an administrative penalty of \$5,000.00 consistent with 26 V.S.A. § 1361(b). Payment shall be made to the "State of Vermont Board of Medical Practice," and shall be sent to the Vermont 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. An initial payment of \$1,000.00 shall be due no later than one (1) month after this Stipulation and Consent Order is approved by the Board. The remaining balance of \$4,000.00 shall be due no later than eighteen (18) months after the Stipulation and Consent Order is approved by the Board.
- d. Respondent shall successfully complete the following AMA PRA Category 1 continuing medical education ("CME") courses: (1) Intensive Course on Controlled Substances Prescribing, at least 20 credit hours; (2) Intensive Course on Medical Documentation, at least 15 credit hours; and (3) a course on Attention Deficit Hyperactivity Disorder and safe prescribing. These courses must be in person or live interactive courses offered remotely. The

Committee will consider courses that Respondent completed while this case was under investigation, provided that all courses submitted for approval also meet the following criteria. He shall complete all three CME courses within eighteen (18) months, either prospectively or retrospectively, of the date that this Stipulation and Consent Order 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. For courses completed while this matter was under investigation, he shall supply proof of attendance and a written narrative within thirty (30) days of Board approval of this order. Respondent shall be solely responsible for all costs associated with meeting these CME requirements.

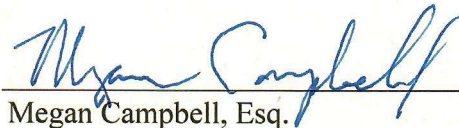
SIGNATURES

DATED at Montpelier, Vermont, this 22nd day of June, 2020.

STATE OF VERMONT

THOMAS J. DONOVAN, JR
ATTORNEY GENERAL

By:



Megan Campbell, Esq.
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001

DATED at _____, Vermont, this ____ day of _____, 2020.

Francis P. Kalibat, M.D.
Respondent

DATED at _____, Vermont, this ____ day of _____, 2020.

William T. Clark, Esq.
Downs Rachlin Martin PLLC
199 Main Street, PO Box 190
Burlington, VT 05402-0190
Counsel for Respondent

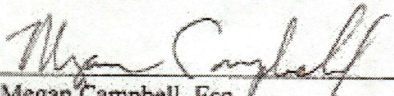
SIGNATURES

DATED at Montpelier, Vermont, this 22nd day of June, 2020.

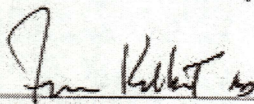
STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

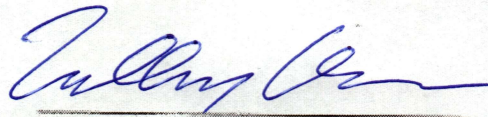
By:


Megan Campbell, Esq.
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001

DATED at Stimban, Vermont, this 28 day of June, 2020.

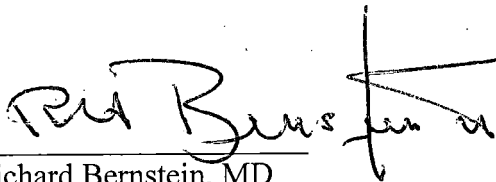

Francis P. Kalibat, M.D.
Respondent

DATED at Burlington, Vermont, this 29 day of June, 2020.


William T. Clark, Esq.
Downs Rachlin Martin PLLC
199 Main Street, PO Box 190
Burlington, VT 05402-0190
Counsel for Respondent

AS TO FRANCIS P. KALIBAT, 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 July 1, 2020.

Dated: 7/5/20



PRACTICE MONITORING AGREEMENT

Vermont Board of Medical Practice

Francis P. Kalibat, M.D.

Docket Nos. MPS 100-0617, 164-1117, 110-1018, and 091-0519

1. Pursuant to a Stipulation and Consent Order entered into by Francis P. Kalibat, M.D. ("Dr. Kalibat") and the Vermont Board of Medical Practice ("the Board") in Docket Nos. MPS 100-0617, MPS 164-1117, MPS 110-1018, and MPS 091-0519, Dr. Kalibat has agreed to retain a practice monitor to monitor his medical practice. The purpose of this Practice Monitoring Agreement ("Agreement") is to set forth the terms of the practice monitoring component of Dr. Kalibat's Stipulation and Consent Order (attached and incorporated hereto by reference). This Agreement will be signed by Dr. Kalibat and the practice monitor approved by the South Investigative Committee ("the Committee").
2. Dr. Kalibat is responsible for selecting a practice monitor.
3. The practice monitor chosen by Dr. Kalibat shall be a Vermont licensed physician with an unconditioned license who has experience in the areas of psychiatry and stimulant medication prescribing.
4. Dr. Kalibat shall seek the Committee's approval of a practice monitor. He shall provide the Committee, in writing, with the name and curriculum vitae of the proposed practice monitor. The Committee will provide a written response to Dr. Kalibat. If the Committee rejects Dr. Kalibat's proposed practice monitor, he shall provide the Committee with the name and curriculum vitae of another proposed practice monitor.

5. Dr. Kalibat shall provide the practice monitor with a copy of the fully executed Stipulation and Consent Order.
6. The practice monitoring shall start within sixty (60) days of the date that the Board approves the Stipulation and Consent Order (hereinafter referred to as the “start date”).
7. The practice monitor shall perform a record review every sixty (60) days of ten (10) of Dr. Kalibat’s patients. The review will consist of ten (10) of Dr. Kalibat’s patients who receive stimulant medications, unless there are fewer than ten, in which case it shall be a total of ten including other patients prescribed other controlled substances. The patient records shall be randomly selected by the practice monitor. The practice monitor shall meet with Dr. Kalibat every sixty (60) days to discuss the findings of his/her record review. Dr. Kalibat is responsible for ensuring that there is appropriate documentation of each sixty (60) day record review and discussion. Such documentation shall include the date of each record review, and the date and length of time of each discussion between the practice monitor and Dr. Kalibat regarding the findings of each chart review. This documentation shall be submitted with each sixty (60) day practice monitoring report.
8. After the Committee has received consecutive, favorable and timely sixty (60) day practice monitoring reports for one (1) full year, Dr. Kalibat may submit a written request to the Committee to reduce the record reviews and discussions and submission of practice monitoring reports to occur on a quarterly basis.
9. The practice monitor shall report his/her findings in a detailed written report to the Committee for four (4) full years unless the Committee grants Dr. Kalibat’s request

for relief from this condition after three (3) years of favorable reports. The first report shall be submitted no later than sixty (60) days after the start date.

10. Dr. Kalibat shall be responsible for ensuring that the practice monitor's reports are timely submitted to the Committee.
11. The practice monitoring shall continue for a total of four (4) years from the start date unless the Committee grants Dr. Kalibat's request for relief from this condition after three (3) years of favorable reports. At the end of the monitoring period, Dr. Kalibat shall submit a written request to the Committee to end the requirement for monitoring. Such a request shall not be considered by the Committee until Dr. Kalibat has provided favorable and timely monitoring reports for four (4) complete years, or unless and until early relief from this condition is granted by the Committee after three (3) years of favorable reports. The practice monitoring requirement will not cease until the Committee has approved, in writing, Dr. Kalibat's request to end the monitoring.
12. In the event that the practice monitor can no longer monitor Dr. Kalibat's practice, Dr. Kalibat shall notify the Committee in writing within five (5) days of receiving notice that the practice monitor can no longer monitor his practice. Dr. Kalibat shall retain the services of a new practice monitor, subject to preapproval by the Committee. Within thirty (30) days of providing written notice to the Committee that the practice monitor can no longer monitor his practice, Dr. Kalibat shall provide the Committee with the name and curriculum vitae of the proposed new practice monitor. The Committee will provide written notification to Dr. Kalibat indicating whether it approves or disapproves of the new proposed practice monitor.

13. In the event that the practice monitor can no longer monitor Dr. Kalibat's practice and ceases to perform his/her obligations under this Agreement and if a new practice monitor is not approved by the Committee within sixty (60) days of receiving notice that the practice monitor can no longer monitor his practice, Dr. Kalibat shall not prescribe any controlled substances unless and until he has a Committee-approved practice monitor who is actively monitoring his practice in full compliance with the terms and conditions of this Agreement. The Committee will endeavor to communicate their decision regarding the approval of a new proposed practice monitor to Dr. Kalibat within thirty (30) days of when he submits a name to the Committee. In the event that the Committee response is delayed beyond thirty (30) days, that additional response time will not count toward the 60-day limit that Respondent has to find a new practice monitor or cease prescribing controlled substances.
14. The Committee retains the unfettered discretion to disapprove Dr. Kalibat's practice monitor at any time. If the Committee disapproves of Dr. Kalibat's practice monitor, it will provide Dr. Kalibat with written notice of the disapproval and a brief explanation of reasons for the disapproval. Once Dr. Kalibat receives this written notice from the Committee, Dr. Kalibat shall immediately notify his practice monitor that he/she is no longer approved to monitor his practice, and the practice monitor shall immediately cease from monitoring Dr. Kalibat's practice. Consistent with paragraph thirteen (13) above, if a new practice monitor is not approved by the Committee within sixty (60) days of receiving notice that the practice monitor can no longer monitor his practice, Dr. Kalibat shall not prescribe any controlled substances.

Dr. Kalibat shall not resume prescribing any controlled substances until the first day that the new practice monitor can begin monitoring his practice. Dr. Kalibat shall follow the procedures for proposing a new practice monitor as set forth in paragraph twelve (12) above.

15. Dr. Kalibat shall be responsible for ensuring that the following is reviewed by the practice monitor and discussed and documented in the practice monitoring reports:
 - a. Documentation of each chart review performed by the practice monitor and discussions of the findings of the chart review as described in paragraph seven (7) above that occurred during the time period that covers each sixty (60)-day or quarterly review;
 - b. Whether Dr. Kalibat's general psychiatric care practice meet the applicable standard of care;
 - c. Whether Dr. Kalibat's prescribing practices meet the standard of care;
 - d. Whether Dr. Kalibat's prescribing of stimulant medications meets the standard of care;
 - e. Whether Dr. Kalibat's clinical monitoring of patients to whom he is prescribing stimulant medication meets the standard of care;
 - f. Whether Dr. Kalibat's medical record keeping is in accordance with the standard of care; and
 - g. Recommended improvements to Dr. Kalibat's practice. Although the practice monitor will need to review patient charts to become familiar with patient medical history, the focus of the practice monitoring will be improving Dr. Kalibat's practice prospectively.

16. Prior to the submission of each monitoring report to the Committee, the practice monitor shall meet with Dr. Kalibat to discuss the findings of his/her practice monitoring report. Dr. Kalibat shall be responsible for ensuring that the occurrence of such meetings, as well as what was discussed, is appropriately documented in writing and provided to the Committee upon request.
17. Each monitoring report shall include the dates and length of time that he/she met with Dr. Kalibat to review the findings of his/her monitoring report.
18. The practice monitor shall review any other documents, records, files, logs, etc. that will provide the requisite information needed to prepare written monitoring reports.
19. The practice monitor shall speak with Dr. Kalibat's co-workers to obtain the requisite information needed to prepare the written monitoring reports.
20. The Board will not bear any of the costs associated with the practice monitor.
21. Dr. Kalibat and the practice monitor agree that they have both read this Agreement in its entirety and agree to all of the terms and obligations set forth herein.
22. Dr. Kalibat and the practice monitor agree that the terms of this Agreement cannot be amended or modified in any way without written approval of the Committee.

Signatures

DATED at _____, Vermont, this _____ day of _____, 2020.

Francis P. Kalibat, M.D.

DATED at _____, Vermont, this _____ day of _____, 2020.

Practice Monitor