

**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**


In re: David S. Gawlik, PA-C) Docket No. MPC 049-0518
)
)

STIPULATION AND CONSENT ORDER

NOW COME the State of Vermont, by and through Vermont Attorney General Thomas J. Donovan, Jr., and David S. Gawlik, PA-C, and agree and stipulate as follows:

1. David S. Gawlik, PA-C, (“Respondent”) of Colchester, Vermont holds Vermont medical license number 055.0030787 first issued by the Vermont Board of Medical Practice on July 5, 2006. Respondent is a Physician Assistant.
2. Jurisdiction in this matter rests with the Vermont Board of Medical Practice (“the Board”), pursuant to 26 V.S.A. §§ 1353-1357, 1731-1744, and 3 V.S.A. §§ 809- 814, and other authority.

FINDINGS OF FACT

3. The Board opened the above-captioned matter in May of 2018 upon receipt of a complaint from a patient alleging concerns with Respondent’s lack of adequate responsiveness to post-operative complications she experienced. The matter was assigned to the Central Investigative Committee of the Board (“Committee”).
4. Respondent is a practitioner at Four Seasons Dermatology in Colchester, Vermont. His practice areas include performing surgical procedures in addition to general medical dermatology. ^{WDF}  ₂₀₁₈
5. On January 29, [REDACTED], Respondent treated the patient for the removal of atypical cells on the patient’s left thigh. Respondent performed the excision without

complications. He provided the patient with information both orally and in writing about what to expect after the surgery and how to care for the wound. The patient was instructed to call his office if the pain worsened or a fever developed.

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6. On January 30, [REDACTED], the patient called Respondent's office complaining of worsening pain, redness at the site of the excision, and feeling feverish. The call was answered by an employee of Four Seasons Dermatology who relayed the information to Respondent. As a result of that phone communication, Respondent prescribed Tylenol with Codeine for the patient in an amount exceeding ten pills or the equivalent.

7. Respondent's treatment of the patient in this instance deviated from the professional standard of care and was inadequate. He failed to review her chart to determine whether she had an allergy to the medication, discuss with her the risks and potential side effects of taking an opioid, provide her with a patient education sheet about opioids, or obtain her written informed consent prior to prescribing the opioid.

8. Codeine is a controlled substance pursuant to Vermont Department of Health Rules adopting the scheduling classifications in the federal Controlled Substances Act. All Vermont health care providers who prescribe Schedule II, III or IV controlled substances have been required by Vermont law to register with the Vermont Prescription Monitoring System ("VPMS") since November 15, 2013. Respondent was not a registered prescriber in VPMS at the time he wrote the patient's prescription.

9. Furthermore, neither Respondent nor a delegate on his behalf queried VPMS to monitor the prescription or to check the dispensing history of this patient as required by the applicable VPMS Rules.

10. Respondent wrote prescriptions for controlled substances on thirty-two other occasions between July 25, 2016 and October 11, 2018 while unregistered in VPMS.

11. Four of these prescriptions, issued on August 30, 2017, September 6, 2017, April 30, 2018, and October 11, 2018 respectively, exceeded ten pills apiece and were prescriptions for opioids that are listed Schedule II, III, or IV controlled substances. Respondent wrote these prescriptions to patients to whom he had never prescribed opioids before. Thus, Respondent had an obligation under the VPMS Rules to ensure that he or his delegate queried VPMS prior to issuing these prescriptions. He failed to ensure the required query occurred in these four instances.

CONCLUSIONS OF LAW

12. The Board may find, “that failure to practice competently by reason of any cause on a single occasion or on multiple occasions constitutes unprofessional conduct.” 26 V.S.A. § 1354(b). And “[f]ailure to practice competently includes, as determined by the board... (1) performance of unsafe or unacceptable patient care; or (2) failure to conform to the essential standards of acceptable and prevailing practice.” 26 V.S.A. § 1354(b)(1) and (2).

13. The Board may find that “failure to comply with provisions of ...state statutes or rules governing the practice of medicine or surgery” constitutes unprofessional conduct. 26 V.S.A. § 1354(a)(27).

14. Section 4.0 of the Vermont Department of Health’s Rule Governing the Prescribing of Opioids for Pain applies to prescribers writing prescriptions for controlled substances for the first time during the course of treatment for any patient, unless otherwise exempt by the rule.

15. Pursuant to Section 4.2 of the Rule prescribers shall, “[q]uery the Vermont Prescription Monitoring System according to the Vermont Prescription Monitoring System Rule.”

16. Section 4.3 of the Rule mandates that the provider shall have an in-person discussion with the patient about the risks associated with the opioid prior to issuing the prescription. That discussion should include: “potential side effects, risks of dependence and overdose, alternative treatments, appropriate tapering and safe storage and disposal...” Opioid Prescription Rule § 4.3.1.

17. Providers are also required to provide patients with either the Vermont Department of Health’s patient education sheet prior to prescribing an opioid, or a written alternative which meets the Department of Health’s criteria. Opioid Prescription Rule § 4.3.2.

18. The Rule further mandates that prior to prescribing an opioid the prescriber must receive a signed informed consent from the patient explaining the risks of the drug. Opioid Prescription Rule § 4.3.3.

19. Respondent violated Sections 4.3.1-4.3.3 of the Opioid Prescription Rule when, prior to issuing the prescription for the opioid, he failed to have an in-person discussion with the patient about the risks of the prescribed drug, provide the patient with the Vermont Department of Health’s Patient Education Sheet or an approved equivalent, or obtain a signed informed consent from the patient regarding the opioid’s side effects and potential for misuse. He also failed to conform to the standard of care by reviewing the patient’s medical records to determine whether she was allergic to the prescribed medication.

20. Section 6.1.1 of the VPMS Rules¹ requires that all Vermont prescribers of controlled substances and their delegates be registered with VPMS.

21. Pursuant to 18 V.S.A. § 4289(b)(1), all health care providers who prescribe Schedule II, III or IV controlled substances shall register with VPMS by November 15, 2013.

22. A Vermont licensed prescriber must query VPMS “[t]he first time the provider prescribes an opioid Schedule II, III, or IV controlled substance written to treat pain when such a prescription exceeds 10 pills or the equivalent.” VPMS Rule § 6.2.1.

23. Respondent violated Sections 6.1.1 and 6.2.1 of the VPMS Rules, Section 4.2 of the Opioid Prescription Rule, and 18 V.S.A. § 4289(b)(1) by not registering with VPMS or making the required query of the database prior to prescribing to the patient. He also was in violation of Section 6.1.1 of the VPMS Rules on thirty-two other occasions between July 25, 2016 and October 11, 2018 when he prescribed controlled substances while unregistered in VPMS. Four of these prescriptions required VPMS queries that were not performed per VPMS Rule § 6.2.1.

24. Respondent’s violations of the above-referenced Opioid Prescription Rules, VPMS Rules and 18 V.S.A. § 4289(b)(1) constitutes failure to comply with Vermont state statutes and rules governing the practice of medicine.

25. Consistent with Respondent’s cooperation with the Board, he agrees that if the State were to file charges against him it could satisfy its burden at a hearing and a finding

¹ All references to the VPMS Rules in this Agreement refer to the VPMS Rules with the effective date of July 1, 2017.

adverse to him could be entered by the Board, pursuant to 26 V.S.A. § 1354(a)(27) and § 1354(b)(1) and (2).

26. Respondent agrees that the Board may enter as its facts and/or conclusions in this matter any one or more of Paragraphs 1 through 25 above, and further agrees that this is an adequate basis for the Board actions set forth herein. Any representation by Respondent herein is made solely for the purposes set forth in this agreement.

27. 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.

28. Respondent acknowledges that he is knowingly and voluntarily entering into this agreement with the Board. He acknowledges he has had the advice of counsel regarding this matter and in the review of this Stipulation and Consent Order. Respondent is fully satisfied with the legal representation he has received in this matter.

29. 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.

30. 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.

31. This Stipulation and Consent Order is conditioned upon its acceptance by the Vermont Board of Medical Practice. 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.

32. 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, 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.

33. 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 shall be CONDITIONED as follows:
 - a. Respondent shall successfully complete live, in-person AMA PRA Category 1 continuing medical education ("CME") courses on the following topics: post-operative complications, and opiate prescription requirements. Such CME courses must be completed no later than one (1) year after this Stipulation is approved by the Board. Respondent shall seek prior approval, in writing, from the Committee for each CME course. Upon successful completion of each CME course, he shall provide the Committee with proof of attendance. Respondent shall also provide the Committee with a brief written narrative of each CME course which 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.
 - b. Respondent shall register with the Vermont Prescription Monitoring System within thirty (30) days of the approval of this Stipulation by the Board. Respondent will not prescribe Schedule II, III, or IV controlled substances as defined in 21 C.F.R. § 1308 to any patient prior to his successful enrollment in the VPMS system.

SIGNATURES

Dated at Montpelier, Vermont, this ____ day of ____ . 2020.

STATE OF VERMONT
THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

by:

E-SIGNED by Bill Reynolds
on 2020-04-29 13:35:44 GMT

William B. Reynolds
Assistant Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609-1001

Dated at ____ . Vermont, this ____ day of ____ . 2020.

E-SIGNED by David Gawlik
on 2020-04-29 13:56:19 GMT

David S. Gawlik, PA-C
Respondent

Dated at Burlington, Vermont, this ____ day of ____ . 2020.

E-SIGNED by Ian Carleton
on 2020-04-30 13:20:17 GMT

Ian P. Carleton, Esquire
SHEEHEY FURLONG & BEHM
30 Main Street, 6th Floor
P.O. Box 66
Burlington, VT 05402-0066
Counsel for Respondent

AS TO DAVID S. GAWLIK, PA-C
APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE

Signed on Behalf of the Vermont Board of Medical Practice

By: 
Sarah McClain
Vice-Chair
Vermont Board of Medical Practice

Vote documented in the Vermont Board of Medical Practice meeting minutes,
dated May 6, 2020.

Dated: May 8, 2020