

**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**

In re: Heidi R. Newkirk, DPM

Docket No. MPC 137-0919

STIPULATION AND CONSENT ORDER

NOW COME Heidi R. Newkirk, DPM, and the State of Vermont, by and through Vermont Attorney General Thomas J. Donovan, Jr. and the undersigned Assistant Attorney General Megan Campbell, and agree and stipulate as follows:

1. Heidi R. Newkirk, DPM, (“Respondent”) of Brattleboro, Vermont holds Vermont medical license number 056.0000189 first issued by the Vermont Board of Medical Practice on January 20, 2016. Respondent is a podiatrist.
2. Jurisdiction in this matter vests with the Vermont Board of Medical Practice (“the Board”) pursuant to 26 V.S.A. §§ 321, 375-376, 1353-1354, 1370-74 and 3 V.S.A. §§ 809-814, and other authority.

FINDINGS OF FACT

3. Respondent is a practitioner in Brattleboro, Vermont practicing podiatry at Brattleboro Memorial Hospital.
4. The Board opened the above-captioned matter in September 2019, upon information that Respondent had practiced medicine outside the scope of practice of podiatry. The matter was assigned to the Central Investigative Committee of the Board (“the Committee”).

5. The Committee investigated medical treatment Respondent provided to a patient, hereafter "Patient 1," for conditions other than those of the foot and lower leg. This investigation included, but was not limited to, a review of Patient 1's medical records for the treatment in question.

6. The Committee's investigation concluded that Respondent had practiced beyond the scope of her podiatric practice on two occasions.

a. On February 14, 2018, Respondent prescribed antibiotics and steroids to treat Patient 1's pulmonary symptoms which included a low-grade fever and cough.

b. On November 28, 2018, Respondent treated Patient 1's complaint of low back pain by again prescribing steroids.

7. The Committee considered in mitigation that Respondent instructed Patient 1 during both the February 14th and the November 28th appointments to pursue follow up treatment with her primary care physician for her non-podiatric ailments.

CONCLUSIONS OF LAW

8. The Board may find that it is unprofessional conduct for a podiatrist to practice or offer to practice "beyond the scope permitted by law." 26 V.S.A. § 375(c)(4).

9. The practice of podiatry is defined by Vermont law as:

...any medical, mechanical, surgical, electrical, manipulation, strapping, or bandaging treatment of the ailments pertaining to the human foot and lower leg distal to the myotendinous junction of the triceps surae. If spinal or general anesthesia is required, it shall be administered by a health care professional regulated under this title who is authorized to administer anesthesia within the scope of his or her practice. In the case of amputations other than toe amputations

and in the case of surgical treatment at or above the ankle, the surgical treatment shall be performed only in a general hospital licensed under 18 V.S.A. chapter 43 or a certified ambulatory surgical center as defined in 18 V.S.A. § 9432. For purposes of this section, "ankle" means the joint between the tibia and fibula proximally and the talus distally.

26 V.S.A. § 321(3).

10. Respondent practiced beyond the scope permitted by law when she (1) prescribed antibiotics and steroids for Patient 1's pulmonary symptoms, and (2) on a separate occasion, prescribed steroids to treat Patient 1's low back pain. Respondent's professional license did not authorize her to treat or to prescribe for conditions other than for those of the foot and lower leg.¹

11. The Board may also 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). "Failure 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).

12. Respondent failed to conform to the essential standards of acceptable and prevailing practice in her care of Patient 1 by treating and prescribing for ailments of parts of the body other than the foot and lower leg. A competent podiatrist would only have treated and prescribed as authorized by her license.

¹ Respondent provided medical care to Patient 1 in New Hampshire. Consistent with the Vermont statute, New Hampshire's definition of podiatry is defined in pertinent part as "legal authority to diagnose and to treat by medical, mechanical, electrical and surgical means ailments of the human foot and lower leg." N.H. RSA § 215:6 (last amended 1992). The Vermont unprofessional conduct statute applies to conduct "committed within or outside the state" and thus applies to the New Hampshire conduct. 26 V.S.A. § 1354.

13. Consistent with Respondent's cooperation with the Board, she agrees that if the State were to file charges against her it could satisfy its burden at a hearing and a finding adverse to her could be entered by the Board, pursuant to 26 V.S.A. § 375(c)(4) and 26 V.S.A. § 1354(b)(1) and (2).

14. Respondent agrees that the Board will enter as its facts and conclusions in this matter Paragraphs 1 through 13 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.

15. Therefore, in the interest of Respondent's desire to fully and finally resolve the matter presently before the Board, she has determined that she 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; she has concluded that this agreement is acceptable and in the best interest of the parties.

16. Respondent agrees and understands that by executing this document she 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 her own to contest any allegations by the State.

17. 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 considered 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 document by Respondent.

18. 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, she 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.

19. Respondent acknowledges and understands that this Stipulation and Consent Order shall be a matter of public record, shall be entered in her 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.

20. 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 above.
2. Respondent's medical license shall be CONDITIONED as follows:
 - a. Respondent shall successfully complete an AMA PRA Category 1 continuing medical education ("CME") course on the topic of ethical boundaries. The CME course 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 the CME course. The course must be either a live in-person or live interactive course offered remotely. Upon successful completion of the CME course, she shall provide the Committee with proof of attendance. Respondent shall also provide the Committee with a brief written narrative of the CME course which will document to the Committee's satisfaction what she learned from the course, and how she will apply that knowledge to her practice. Respondent shall be solely responsible for all costs associated with meeting this CME requirement.
 - b. Respondent shall pay a \$2,000 administrative penalty consistent with 26 V.S.A. § 1374(b)(2)(A)(iii). 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,

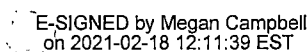
Executive Director, Vermont Board of Medical Practice, P.O. Box 70,
Burlington VT 05402-0070. Payment shall be due no later than one (1)
month after this Stipulation and Consent Order is approved by the Board.

SIGNATURES

Dated at Montpelier, Vermont, this ____ day of _____, 2021.

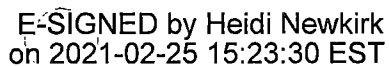
STATE OF VERMONT
THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

by:

E-SIGNED by Megan Campbell
on 2021-02-18 12:11:39 EST

Megan Campbell, Esquire
Assistant Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609-1001

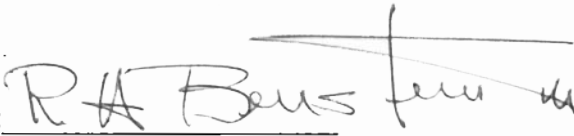
Dated at _____, Vermont, this ____ day of _____, 2021.

E-SIGNED by Heidi Newkirk
on 2021-02-25 15:23:30 EST

Heidi R. Newkirk, DPM
Respondent

**AS TO HEIDI R. NEWKIRK, DPM
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 March 3, 2021.

Dated: 03/04/2021