

**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**

In re: Mark S. Harris, M.D.

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Docket No. MPN 142-0817

STIPULATION AND CONSENT ORDER

NOW COME and the State of Vermont, by and through Vermont Attorney General Thomas J. Donovan, Jr., and Mark S. Harris, M.D., and agree and stipulate as follows:

1. Mark S. Harris, M.D., of Bradford, Vermont holds Vermont medical license number 042.0006039 first issued by the Vermont Board of Medical Practice on September 2, 1977. Dr. Harris is a Physician.
2. Jurisdiction in these matters rests with the Vermont Board of Medical Practice ("the Board"), pursuant to 26 V.S.A. §§ 1353-1361, 3 V.S.A. §§ 809-814, and other authority.

Findings of Fact

3. The Board opened the above-captioned matter in August of 2016 upon receipt of information from a pharmacy regarding concerns with Dr. Harris's ("Respondent") prescribing of Suboxone to Patient S.I. The matter was assigned to the North Investigative Committee of the Board ("Committee").
4. Respondent has worked as a pediatrician in Bradford at Upper Valley Pediatrics since 1977, more than 40 years. He has no prior history of disciplinary action by the Board.

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5. In 2015, Respondent obtained a physician waiver from the Drug Enforcement Administration under the Drug Addiction Treatment Act of 2000 ("DATA 2000") which authorized him to prescribe buprenorphine product prescriptions for opioid addiction therapy for up to 30 patients. Even though his practice has been almost entirely pediatrics, he obtained the authorization to prescribe buprenorphine therapy in order to provide coverage for a colleague who planned a Suboxone clinic, which never opened.
6. Respondent treated only one patient with Suboxone¹. He had a friend, S.I., now aged 70, who became addicted to opiates after a back and two hip surgeries in 2015. Respondent has known S.I. for 30 years. Respondent directed S.I. for in-patient treatment at the Brattleboro Retreat and after seven to ten days he was discharged with only a short supply of Suboxone to help maintain his sobriety.
7. Respondent consulted with colleagues at a Narcotic Rehab Center in Napier, Illinois and decided to prescribe a 30-day dose script for 2 mg film tabs (9/29/15) with a plan for S.I. to wean to a dose lower than .5 mg before trying to discontinue.
8. S.I. had been living in Mexico before his surgeries and returned there in the fall of 2015. Respondent had regular telephone conversations with S.I. in Mexico and learned that he had not been able to wean off the Suboxone.
9. S.I. returned to Vermont for an extended visit in the summer of 2016. They discussed his sobriety and Respondent decided that S.I., like others, needed Suboxone to maintain his sobriety. Respondent next prescribed Suboxone to S.I. in September of 2016 and then on a monthly/every other month basis through

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¹ Suboxone is the brand name for buprenorphine.

August of 2017. Respondent wrote the Suboxone prescriptions on his prescription pad for Upper Valley Pediatrics.

10. Respondent visited S.I. in Mexico in March 2017 and spoke to him almost weekly about his Suboxone treatment.
11. Respondent acknowledges that he was treating a friend and that he failed to open a medical record and properly document his treatment.
12. Respondent is no longer engaged in the active practice of medicine. He retired from his pediatric practice in the fall of 2016.
13. Based on the evidence gathered by the Committee, the Committee determined that Respondent's treatment of Patient S.I. over a two year period exhibited a gross failure to use and exercise the degree of care, skill and proficiency which is commonly exercised by ordinary, skillful, careful and prudent physician engaged in similar practice, as well as a failure to practice competently including the performance of unacceptable patient care and failure to conform to the essential standards of acceptable and prevailing practice. Findings supporting such failures by Respondent are as follows:
 - a. Respondent did not properly establish a doctor-patient relationship with Patient S.I. prior to and/or during the prescribing of Suboxone.
 - b. Respondent did not obtain a voluntary, written, informed consent to treatment from Patient S.I. prior to prescribing Suboxone.
 - c. Respondent did not obtain a treatment agreement outlining the responsibilities and expectations of the treatment/prescribing that he was providing to Patient S.I.

- d. Respondent did not make reasonable efforts to obtain releases of information from any health care providers for the coordination of care of Patient S.I.
- e. Respondent did not perform an evaluation of Patient S.I.'s physical and/or mental health status, and did not establish a diagnosis of opioid use disorder before or during his prescribing of Suboxone.
- f. Respondent did not obtain or verify Patient S.I.'s relevant medical and personal history prior to prescribing Suboxone.
- g. Respondent did not perform clinical monitoring of Patient S.I. to minimize risk of diversion, verify adherence to the prescribed treatment and assess for non-prescribed illicit substances. Examples of clinical monitoring include, but are not limited to, routine toxicological screens and requests for random pill counts.
- h. Respondent did not refer Patient S.I. for substance use counseling.
- i. Respondent did not maintain appropriate and adequate records of his treatment of Patient S.I.
- j. Respondent did not query the Vermont Prescription Monitoring System ("VPMS") at any time prior to or during his prescribing of Suboxone to Patient S.I.

Conclusions of Law

1. The Board may find, "in the course of practice, gross 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 injury to the patient has occurred" is unprofessional conduct. 26 V.S.A. §1354(a)(22).
2. The Board may find, "that failure to practice competently by reason of any cause on...multiple occasions constitutes unprofessional conduct." 26 V.S.A. § 1354(b). And "[f]ailure to practice competently includes, as determined by the board...failure to conform to the essential standard of acceptable and prevailing practice." 26 V.S.A. § 1354(b)(2).
3. A Vermont licensed prescriber must query VPMS "[p]rior to prescribing buprenorphine or a drug containing buprenorphine to a Vermont patient for the first time and at regular intervals thereafter." After prescribing buprenorphine to a Vermont patient for the first time, VPMS must be queried no less than two times annually. VPMS Rules §§ 6.2.7 and 6.2.7.1.
4. Respondent's violations of the above-referenced VPMS Rules constitute a failure to comply with Vermont state statutes and rules governing the practice of medicine and constitute unprofessional conduct. 26 V.S.A §1354(a)(27).
5. 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

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

6. Respondent agrees that the Board may enter as its facts and/or conclusions in this matter any one or more of Paragraphs 1 through 13, above, and further agrees that this is an adequate basis for the Board actions set forth herein.
7. 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.
8. 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.
9. 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.
10. 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

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action as to this matter absent non-compliance with the terms and conditions of this document by Respondent.

11. 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.
12. 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.
13. 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.

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Order

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

1. Respondent shall be REPRIMANDED for the conduct set forth above.
2. Within 15 days after this Stipulation and Consent Order is approved by the Board, Respondent will voluntarily surrender his Drug Addiction Treatment Act (DATA) waiver.
3. Respondent shall pay an administrative penalty of \$1,000 to the Board consistent with 26 V.S.A. § 1361(b). The payment shall be due no later than 30 days from the date that this Stipulation is approved by the Board. 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.
4. In the event that Respondent comes out of retirement and intends to resume the active practice of medicine in the State of Vermont, Respondent must immediately notify the Board that he is no longer retired and will be resuming the active practice of medicine. In the event that Respondent is no longer retired and intends to resume the active practice of medicine, Respondent shall successfully complete an AMA PRA Category I continuing medical education ("CME") course on the topic of Medical Ethics, Boundaries and Professionalism. Completion of the CME must occur within six months of the date that Respondent notified the Board that he was no longer retired and intended to resume the practice of medicine. Respondent shall

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seek prior approval, in writing, from the Committee for the proposed CME course. The CME course must be a live course. CME credits obtained through an online CME course are not acceptable and will not be approved by the Committee. Upon successful completion of the CME course, he 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 what he learned from the 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 30 days of completion of the course. Respondent shall be solely responsible for all costs associated with the CME course.

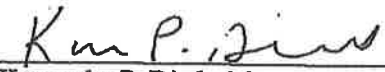
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SIGNATURES

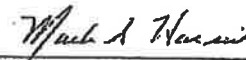
Dated at Montpelier, Vermont, this 16th day of April, 2018.

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

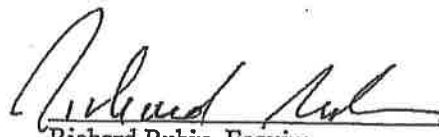
by:


Kassandra P. Diederich
Assistant Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609-1001

Dated at Brattleford, Vermont, this 25th day of April, 2018.


Mark S. Harris, M.D.

Dated at Barre, Vermont, this 25 day of April, 2018.


Richard Rubin, Esquire
Counsel for Respondent
Rubin, Kidney, Myer & Vincent
237 N Main St #3
Barre, VT 05641

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AS TO MARK S. HARRIS, M.D.
APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE

David A. [unclear]

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D. Edulow

[unclear] M.D.

W. [unclear]

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Dated: May 2, 2018

ENTERED AND EFFECTIVE: May 2, 2018