

STATE OF VERMONT
SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
BOARD OF OSTEOPATHIC PHYSICIANS AND SURGEONS

IN RE:)
EVAN MUSMAN) Docket No.: 2011-204
License No. 032.0000427)

STIPULATION AND CONSENT ORDER

NOW COMES the State of Vermont and Respondent Evan Musman who hereby stipulate and agree as follows:

Board Authority

1. The Vermont Board of Osteopathic Physicians and Surgeons (the Board) has jurisdiction to investigate and adjudicate complaints of unprofessional conduct against osteopathic physicians and surgeons pursuant to 3 V.S.A. §§ 129 and 129a; 26 V.S.A. §§ 1791, 1792, 1842 and 1843; the Rules of the Board; and the Rules of the Office of Professional Regulation.

Facts

2. Evan Musman ("Respondent") of South Burlington, Vermont is licensed by the State of Vermont as an Osteopathic Physician under license number 032.0000427. This license was originally issued on or about September 27, 1994 and expires on September 30, 2012.
3. On or about July 11, 2000, Respondent entered into a Stipulation and Consent Order with the State of Vermont which conditioned his license for a minimum of 5 years. The Stipulation and Consent Order resulted in part from Respondent's abuse of sufentanyl.
4. On or about September 15, 2006, Respondent entered into a Stipulation and Consent Order with the State of Vermont which resulted in a warning on his license and an administrative penalty. The Stipulation and Consent Order resulted in part from Respondent's prescribing Hydrocodone/APAP 10-325 to a patient before he evaluated the patient and Respondent's failure to document prescriptions.
5. The Respondent satisfied all conditions in the above referenced Orders.
6. On or about January 11, 2011, in an initial consultation with Respondent, J.R. told Respondent she had a reaction to IV lidocaine and was advised not to have it again.
7. Respondent conducted independent research on J.R.'s past experience with IV Lidocaine and determined that there was not medical risk for its use in her procedure.

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8. On or about February 17, 2011, Respondent performed a fluoroscopically guided transforaminal ESI on J.R.
9. When J.R. was told by Respondent's nurse that she was ready to administer IV lidocaine, J.R. told the nurse that she could not have lidocaine.
10. Respondent told J.R. that IV lidocaine was needed for numbing the vein as the propofol being used burns.
11. On February 17, 2011, J.R. informed the Respondent she could not have IV lidocaine. Respondent told his assistant that he knew what he was doing and could handle it.
12. Respondent used the IV lidocaine on J.R. despite J.R. telling him that she could not have IV lidocaine.
13. Respondent admits that he might have been short-tempered on the day of the incident but that he did not intend to be demeaning toward J.R.
14. Respondent described the procedure as a "successful failure" because he was "sorry she had to go through that because obviously if she was feeling the way she felt whether real or imagined... no one should be going through that when they're in a vulnerable situation." J.R. reported having good results from injections by the Respondent
15. By administering the lidocaine; despite the fact that the Respondent had noted past troubles with lidocaine in his own record; thereby overriding and ignoring the wishes of J.R. that it not be administered, the Respondent was providing a professional service not authorized by J.R.

Violations

16. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because the Respondent has committed unprofessional conduct in violation of:
 - a. The State incorporates paragraphs 6 through 16; 26 V.S.A. §1842(b)(7) (Performing professional services which have not been authorized by the patient or his or her legal representative).

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Understandings

- i. The parties understand that the terms of this Stipulation and Consent Order are contingent upon review and acceptance by the Board and that if the Board rejects any portion the entire Stipulation and Consent Order shall be null and void.
- ii. The Respondent has read and reviewed this document fully and agrees that it contains the entire agreement between the parties.
- iii. This Stipulation and Consent Order is entered into voluntarily by the Respondent after the opportunity to consult with legal counsel. The Respondent has not been coerced by anyone into signing this Stipulation and Consent Order.
- iv. The Respondent is voluntarily waiving his right to a contested hearing before the Board and waives any right to appeal from this Stipulation and Consent Order.
- v. The Respondent is of sound mind and is not under the influence of drugs or alcohol at the time he signs this stipulation and consent order.
- vi. Respondent agrees that the Order set forth below may be entered by the Board.
- vii. The Respondent agrees to pay any and all costs associated with this Stipulation and Consent Order.

WHEREFORE, the parties agree that the following constitutes a reasonable resolution given the above violations:

CONSENT ORDER

Based upon the above stipulation, it is **ORDERED AND ADJUDGED** as follows:

- A. Between November 14-16, 2012 the Respondent successfully completed an interactive course given by Case Western Reserve University School of Medicine entitled "Managing Difficult Communications in Medical Practice." The syllabus for this 20.75 hour course is being provided to the Board under separate cover. By virtue of accepting this Stipulation and Consent Order, the Board accepts this course work as an appropriate resolution to remedy the unprofessional conduct as set forth above.
- B. The Board hereby **REPRIMANDS** the Respondent's license.
- C. The Respondent shall bear all costs of complying with this Consent Order.
- D. Notwithstanding any provision above, the Respondent must continue to meet all Board requirements for maintaining a license, license renewal and license reinstatement.
- E. This Stipulation and Consent Order is a matter of public record and may be reported to other licensing authorities as provided in 3 V.S.A. §129(a).

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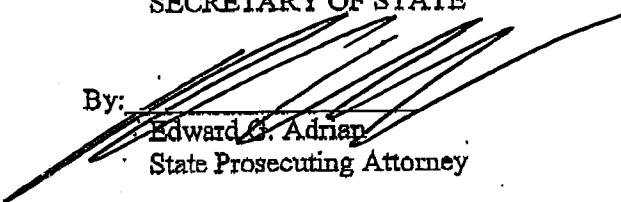
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F. This Stipulation and Consent Order will remain part of Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

AGREED TO:

STATE OF VERMONT
SECRETARY OF STATE

Dated: 11/26/12

By: 

Edward G. Adrian
State Prosecuting Attorney

EVAN MUSMAN
RESPONDENT

Dated: 11/26/2012

By: Evan Musman

Evan Musman

APPROVED AS TO FORM:

ATTORNEY FOR RESPONDENT

Dated: 10/20/2012

By: Joshua L. Simonds, Esq.

Joshua L. Simonds, Esq.

APPROVED AND SO ORDERED:

BOARD OF OSTEOPATHIC
PHYSICIANS AND SURGEONS

Dated: 11/28/12

By: Michelle D.

Chairperson

Date of Entry: 12/4/12

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Prosecuting Attorney
Office of
Professional Regulation
National Life Building
Second Floor North
Montpelier, VT
05620-3602

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