STATE OF VERMONT
BOARD OF OSTEOPATHIC PHYSICIANS AND SURGEONS

In re Evan Musman, DO } Docket No. OS02-1099

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Board of Osteopathic Physicians and Surgeons (Board) held a hearing in the above-referenced matter on June 13, 2002, at the Office of the Secretary of State, Montpelier, Vermont. Board Hearing Panel Members Howard Jonas, DO (Chair), Mary C. Mazzariello, and John Peterson, DO (ad hoc member), participated in the decision. Assistant Attorney General Michael McShane appeared for the State. Joshua L. Simonds, Esq., appeared for respondent. Respondent Evan Musman, DO, was also present for the hearing.

Findings of Fact

1. Dr. Musman is an osteopathic physician and board-certified anesthesiologist licensed by the Board. He holds Board license number 032-427.

2. On July 11, 2000, the Board accepted a stipulation and issued a consent order that placed conditions on Dr. Musman's Vermont license.

3. Dr. Musman is currently in compliance with the terms and conditions of the 2000 stipulation.

4. Dr. Musman practices non-surgical pain management in the office of another osteopathic physician. There are no controlled drugs in the office, injectable or otherwise.

5. Dr. Musman is seeking modification of the 2000 stipulation and consent order, to insert the word "surgical" before "anesthesiologist" in paragraph B(2) on the third page of the order. He is not requesting any other modification of the stipulation and consent order.

6. The requested modification will permit Dr. Musman and his employer to obtain third party reimbursement from certain insurance companies for health care provided in the office by Dr. Musman.

7. Dr. Musman was disciplined by the Board in 2000 for abuse of an injectable narcotic, available only in a hospital setting. He will not be exposed to the drug in his current place of employment, because he does not work in a hospital.

8. Based upon evidence presented at the June 13 hearing, the State does not oppose granting Dr. Musman's requested modification of the stipulation and consent order.

Conclusions of Law

The modification sought by Dr. Musman will facilitate third party reimbursement from certain insurers. Third party reimbursement will benefit not only Dr. Musman and his employer but also patients covered by those insurers. Based upon the evidence presented at the hearing and the State's concurrence with the requested modification, granting Dr. Musman's request for modification of the 2000 stipulation and consent order is appropriate.

Order

On the basis of the Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED by the Board of Osteopathic Physicians and Surgeons of the State of Vermont that:

1. Paragraph B(2) on the third page of the July 11, 2002 stipulation and consent order issued by the Board is hereby MODIFIED to read:

"During the period that Respondent's license is conditioned he shall not practice as ~~an~~ a surgical anesthesiologist."

(Overstruck language represents deleted wording. Underlined language represents added wording.)

2. Pursuant to 3 V.S.A. § 129(a)(7) and 131(c)(2)(C), this document is a public record and may be provided to other licensing authorities.

3. This order takes effect as of the date of entry shown below.

Appeal Rights

This is a final administrative determination. A party (the State or respondent) may appeal by filing a written notice of appeal with the Director of the Office of Professional Regulation, Office of the Secretary of State, within 30 days of the effective date (the date of entry shown below) of this order. The filing of a notice of appeal does not automatically stay the Board's order.

Dated: 6/24/02

BOARD OF OSTEOPATHIC PHYSICIANS AND SURGEONS

By: Howard Jonas, D.O.
Howard Jonas, DO
Chair

Date of entry: 6-25-02

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STATE OF VERMONT
BOARD OF OSTEOPATHIC PHYSICIANS AND SURGEONS

IN RE: Evan Musman D.O. License No. 032000427	)))	Docket No. OSO2-1099

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COMES the State of Vermont by and through its Attorney General and Evan Musman,D.O. and hereby agree and stipulate as follows:

1. Evan Musman (hereinafter Respondent) is an Osteopathic Physician licensed by the State of Vermont, who at all times relevant to this matter held license number 0320000427.

2. The Board of Osteopathic Physicians and Surgeons (hereinafter Board) has jurisdiction to investigate allegations of unprofessional conduct committed by Osteopathic Physicians and accept stipulations pursuant to 3 V.S.A. § 129a and 26 V.S.A. §§ 1842 and 1843.

3. Respondent recently has resided in Vermont and has practiced osteopathic medicine in Chittenden County.

4. Prior to his practice in Vermont, Respondent practiced in Connecticut.

5. Respondent admits that while practicing as an osteopathic physician in Connecticut he became involved in abuse of sufentanyl, a drug commonly used in the practice of anesthesiology.

6. Respondent admits that while in Connecticut he enrolled in a monitored substance abuse program with the State of Connecticut and continued to have a substance abuse support system in place after his move to Vermont.

7. Respondent admits that after moving to Vermont he began again to use and abuse sufentanyl and that he was unable to control his use of that drug and became addicted to said drug for a period of time.

8. Respondent admits that in October of 1999 he sought treatment at the emergency room of Fletcher Allen health Care in Burlington as a result of his use of sufentanyl.

9. Respondent admits that in October of 1999 he vountarily sought and received treatment in a residential substance abuse program.

10. Respondent admits the conclusions of unprofessional conduct as set forth below in the Board's Order

11. Respondent understands that the Board must review and accept the terms of the Consent Order. If the Board rejects any portion, the entire Stipulation and Consent Order shall be null and void.

12. Respondent specifically waives any claims that any disclosures made to the full Board during its review of this agreement have prejudiced his rights to a fair and impartial hearing in future hearings if this agreement is not accepted by the Board.

13. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.

14. Respondent is not under the influence of any drugs or alcohol at the time he signs this Stipulation and Consent Order.

15. Respondent voluntarily enters this agreement after the opportunity to consult with legal counsel and is not being coerced by anyone into signing this Stipulation and Consent Order.

16. Respondent voluntarily waives his right to a contested hearing in this matter.

17. Respondent agrees that the order set forth below may be entered by the Board.

ORDER

Based on the stipulation above, it is **ORDERED AND ADJUDJED** as follows:

A. By engaging in the conduct described in paragraphs 5 through 7 above, Respondent has engaged in unprofessional conduct pursuant to 26 V.S.A. § 1842(b)(1), inability to practice osteopathic medicine with reasonable skill and safety to patients by reason of the use of drugs, narcotics, chemicals or any other type of material.

B. The Board hereby **CONDITIONS** Respondents license as follows:

1. Respondent shall comply with all of the requirements contained in Exhibit A. attached hereto and incorporated by reference herein.

2. During the period that Respondent's license is conditioned he shall not practice as an anesthesiologist.

C. This Stipulation and Consent Order is a matter of public record and may be reported to licensing authorities in other states.

D. 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:

BY: Evan Musman D.O.
RESPONDENT

Date: 7/10/2000

Evan Musman D.O.

AND BY: WILLIAM H. SORRELL
ATTORNEY GENERAL

Date: 7-5-00

Michael McShane
Assistant Attorney General

APPROVED AS TO FORM:

Date:

Richard W. Affolter, Esq.

ACCEPTED AND SO ORDERED:

Date: 7/11/2000

Board of Osteopathic Physician and Surgeons
Acting Chairperson

Date of Entry: 7-11-00

EXHIBIT A

STANDARD CONDITIONS RELATED TO CHEMICAL DEPENDENCY

1. Respondent acknowledges having had the opportunity to consult with and have the benefit of counsel with regard to entering into this Stipulation and Consent Order.

2. Respondent is not under the influence of any drugs or alcohol at the time of signing this document.

3. The parties stipulate and agree to the **Definitions of Terms** used in ***Appendix A*** of this document.

4. The parties stipulate and agree to the **Violation Procedure: Notice and Cessation of Practice** contained in ***Appendix B*** of this document.

A. CONDITIONS

5. The parties agree that Respondent shall be subject to the conditions of this agreement for a minimum of five years (from the effective date of this Stipulation and Consent Order) and Respondent's medical license shall be carried as a conditioned license on the rolls of the Vermont Board of Osteopathic Physician and Surgeons, subject to Respondent's rights to petition the Board pursuant to Section B of this Agreement.

6. **Abstention:** Respondent shall not obtain, possess or take into his/her body any **Prohibited Substance** as defined in *Appendix A,* with the exception of medications prescribed to the Respondent pursuant to this agreement. Respondent agrees and consents to abstain from and not knowingly consume poppy seeds (genus *papaver*) or products made with poppy seeds, so as to ensure accuracy of testing results. Respondent shall immediately report to the Board and the **Board Approved Collection Entity** by telephone and in writing any possible inadvertent consumption of poppy seeds and shall describe the circumstances.

7. **Testing:** Respondent consents to the taking at any time of urine, breath, blood, saliva, and hair samples by a **Board Approved Collection Entity** (*see Appendix A*), by an Investigator employed, or by an agent of the Board, and to the testing of those samples by a **Board Approved Testing Laboratory** (*see Appendix A*).

(a) **Initial Registration with Collector:** Within 72 business hours of Respondent's execution of this Stipulation and Consent Order, the Respondent shall contact a **Board Approved Collection Entity** (*Collector*) in order to register for a Board-approved collection and testing program. Respondent shall notify the board in writing that registration has been completed by the close of that 72-hour period.

(b) **Costs Borne by Respondent:** The Respondent is responsible for all costs associated with the collection and testing of samples and shall make arrangements for direct billing of Respondent by the **Board Approved Collection Entity.**

(c) **Collection Schedule:** Upon notification that the Respondent has registered with the Collector, the Board will confirm the details of the collection schedule and method directly with the Collector.

(d) **Type of Collection:** All collections may be Direct Observed Collections. (*See Appendix A).*

(e) **Random Collections:** Collections will be random (*See Appendix A).*

(f) **Frequency: The frequency of collection shall be at least once a month.** The Board in its sole discretion may require more frequent collection or collection at such times and places as it may designate. Respondent understands and agrees that collection requests may occur on weekdays, weekends, evenings and holidays. At the end of a 48 month period (dated from July 11, 2000), Respondent may petition the Board for a reduction in the frequency of testing. Such petition shall be in a form and content to be determined at the discretion of the Board.

8. **Work Schedule, Addresses and Contact Telephone Numbers:** The Respondent shall keep both the Board and the Collector fully apprised of his/her weekly work schedule, work addresses and telephone numbers, home address and telephone number, and pager or cellular phone number. If the Collector is unable, after due diligence, to contact the Respondent within six hours of the initial attempt because of Respondent's unavailability or failure to accept or return a call to any of the numbers given, such circumstance shall constitute *prima facie* evidence of a violation of the terms of this Stipulation and Consent Order and may subject the Respondent to further disciplinary action by the Board under the terms of *Appendix B.*

9. **Collection Site:** The Collector shall notify the Respondent to appear for a collection at a site mutually agreed upon at the time of registration or otherwise. However, the Board at its sole discretion may require collection at such times, other places, and frequency as it may designate. See Paragraph 7, above.

10. **Sample Request:** Upon actual notification that a sample is requested, the Respondent will have a reasonable period of time to report to the testing site and provide a sample. In no case shall such period of time to report exceed more than three hours. In no case may the time between of the first attempted contact and the time of Respondent's actual reporting to the collection site exceed a total of nine hours. Failure to report within the required time frames or failure to report shall constitute *prima facie* evidence of a violation of the terms of this Stipulation and Consent Order and may subject the Respondent to further disciplinary action by the Board under the terms of *Appendix B.*

11. **Urine Sample:** If the Respondent does not provide a suitable or usable urine sample, e.g., of the required volume, density, specific gravity, or creatinine level, Respondent shall remain at the testing site until a suitable specimen can be provided. The Collector shall have the option of giving Respondent fluids. Failure of Respondent to give a satisfactory sample shall constitute *prima facie* evidence of a violation of the terms of this Stipulation and Consent Order and may subject the Respondent to further disciplinary action by the Board under the terms of *Appendix B.*

12. **Results of Tests:** Respondent agrees that the results of tests performed by a **Board Approved Testing Laboratory**, and/or the results of breath tests taken by the Collector may be admitted as evidence in any proceeding of the Board involving the Respondent, notwithstanding any other provision of law.

13. **Prescribing Restrictions:** Respondent shall not write prescriptions for self, family members, relatives, or residents of the household regardless of family affiliation.

14. **Required Disclosures:** Respondent shall fully disclose his/her history of chemical dependency and the terms of this Stipulation and Consent Order to any health care provider from whom Respondent seeks services. Respondent shall provide a copy of this Stipulation and Consent Order to every institution , practice group, or site at which Respondent is affiliated or holds privileges.

15. **Medications Lawfully Prescribed:** Respondent may take medications lawfully prescribed by Respondent's Primary Care Physician, dentist or other health care professional for a bona fide illness or condition, provided that the identity, address and telephone number of the prescribing practitioner shall have been disclosed to the Board in writing by the Respondent within 48 hours of the establishment of the practitioner/patient relationship. The Respondent shall ensure that the Primary Care Physician, dentist or other health care professional informs the Board verbally within 24 hours and in writing within 48 hours of all medications prescribed, including type and quantity, and the medical reason for the prescription. It is Respondent's responsibility to ensure that all appropriate waivers of confidentiality or other authorizations have been provided to such practitioners so that information required here may be reported to the Board.

(a) Respondent agrees to independently inform the Board of all medications prescribed for Respondent, including the name of the prescribing practitioner, the type of drug, the quantity of drug, the pharmacy which filled the prescription, and the medical reason for the prescription. Verbal notification shall be given to the Board within 24 hours of the issuance of the prescription, and written notification shall be sent within 48 hours of issuance.

(b) Respondent also shall keep a written record of all medications taken, including over-the-counter drugs, and produce such record upon the request of the Board or its designee.

(c) The Board or its designee may request at any time that the Respondent document the need for prescribed medications or over the counter drugs.

16. **Approval of Primary Care Physician:** Within five days of Respondent's execution of this Stipulation and Consent Order, Respondent shall file a written petition with the Board requesting approval of a Vermont licensed Primary Care Physician who shall be responsible for Respondent's routine health care needs. The petition seeking approval shall include the Curriculum Vitae of the proposed Primary Care Physician and shall be in a manner and form to be determined at the discretion of the Board. It is the responsibility of Respondent to promptly seek written Board approval of the proposed Primary Care Physician and to maintain communication with the Board until such written approval has been provided by the Board.

(a) The proposed Primary Care Physician shall be considered provisionally approved for the period of time between the filing of the petition and the time of actual approval or denial by the Board. It is the responsibility of the Respondent that the provisionally approved Primary Care Physician comply with the reporting requirements.

(b). The Primary Care Physician shall be fully informed of the terms of this Stipulation and Consent Order and of Respondent's history of chemical dependency and shall attest to such in writing at the time the petition is submitted to the Board. Respondent shall provide the Primary Care Physician a copy of this Stipulation and Consent Order.

(c) The Primary Physician may prescribe medications for Respondent's legitimate illnesses, but such physician shall notify the Board verbally within 24 hours of issuance and shall notify the Board in writing within 48 hours of issuance of prescriptions. Notification shall include the type and quantity of drug prescribed and the medical reason(s) for the prescription.

(d) Prior to Board approval, the Primary Care Physician shall execute a document acknowledging his/her responsibilities under the terms of this agreement. Such document shall acknowledge and consent to the requirement for disclosure of all information relating to Respondent's substance abuse condition and treatment to the Board, its staff and investigators, and the Office of the Attorney General. Such document shall be in a manner and form to be determined at the discretion of the Board. Failure by the Primary Care Physician to provide information and notices as required herein shall be a sufficient basis for withdrawal by the Board of its approval of the Primary Care Physician. See Paragraphs 19 and 20, below.

(e) The responsibilities of the Primary Care Physician under this agreement shall remain in effect until the Primary Care Physician ceases to act in this capacity. The Primary Care Physician agrees to notify the Board immediately, in writing, if there is an expectation, need, or plan as to the transfer of care of Respondent to another physician. The reason(s) for such possible change shall be clearly stated in this notification.

(f) Respondent agrees to notify the Board immediately, in writing, if there is an expectation, need, or plan as to transfer of care of Respondent to another physician. The reason(s) for such possible change shall be clearly stated in this notification.

17. **Approval of Therapist:** Within five days of Respondent's execution of this Stipulation and Consent Order, Respondent shall file a written petition with the Board requesting approval of a Vermont licensed Therapist who shall be responsible for Respondent's ongoing treatment for chemical dependency. The petition shall include the Curriculum Vitae of the proposed Therapist and shall be in a manner and form to be determined at the discretion of the Board. It is the responsibility of Respondent to promptly seek written Board approval of the proposed Therapist and to maintain communication with the Board until such written approval has been provided by the Board.

(a) The proposed Therapist shall be considered provisionally approved for the time between the filing of the petition and actual approval or denial by the Board. It is the responsibility of the Respondent that the provisionally approved Therapist comply with all reporting requirements.

(b) The Therapist shall be fully informed of the terms of this agreement and of Respondent's history of chemical dependency and shall attest to such in writing at the time the petition is submitted to the Board. Respondent shall provide the Therapist a copy of this Stipulation and Consent Order.

(c) The Therapist shall perform a complete assessment of the Respondent, including a review of records and recommendations from other treating or evaluating professionals, and shall submit, within 30 days of Respondent's execution of this Stipulation and Consent Order, a preliminary treatment plan to the Board for approval, including possible prescribing of medications or recommendations for such prescribed medications. The Board may, in its sole discretion, approve or reject a treatment plan or request clarifications or modifications prior to approval. The treatment plan shall not be inconsistent with the terms of this agreement.

(d) The Therapist shall submit updated treatment plans on the first day of every calendar quarter beginning three (3) months from the date of the Board's approval of this Stipulation and Consent Order for so long as this agreement remains in effect or until the therapist ceases to provide services. The Board may, in its sole discretion, approve or reject an updated treatment plan or request clarifications or modifications prior to approval. The treatment plan shall not be inconsistent with the terms of this agreement.

(e) The Therapist will report to the Board in quarterly reports whether Respondent is attending all treatment sessions pursuant to the treatment plan; arrives on time for appointments; consistently take any prescribed medications; participates actively, consistently, and in good faith in treatment; is in full compliance with all aspects of the treatment plan, including verified attendance at 12-step meetings; has not suffered any relapse events or occurrences; and is, to a reasonable medical certainty, able to practice medicine with care, skill and safety.

(f) The Therapist agrees to inform the Board verbally within 12 hours and in writing within 24 hours if Respondent misses any appointment(s) without due notice, suffers a relapse event or occurrence of any duration or magnitude, fails to comply with the treatment plan, fails to take any prescribed medication, or if there is an expectation, need, or plan as to transfer of care of Respondent to another Therapist or other practitioner. The responsibilities of the Therapist under this agreement shall remain in effect until the Therapist ceases to act in this capacity. The reason(s) for any such possible change shall be clearly stated in notification to the Board.

(g) Respondent agrees to notify the Board immediately, in writing, if there is an expectation, need, or plan as to possible transfer of care of Respondent to another Therapist. The reason(s) for any such possible change shall be clearly stated in this notification.

(h) The Respondent agrees that the results of any chemical testing performed under the terms of this agreement may be transmitted by the Board to the Therapist.

(i) Prior to Board approval, the Therapist shall execute a document formally acknowledging his/her responsibilities under the terms of this agreement. Such document shall be in a manner and form to be determined at the discretion of the Board. Such document shall acknowledge and consent to the requirement for disclosure of all information relating to Respondent's substance abuse condition and treatment to the Board, its staff and investigators, and the Office of the Attorney General. Such document shall be in a manner and form to be determined at the discretion of the Board. Failure by the Therapist to provide information and notices as required herein shall be a sufficient basis for withdrawal by the Board of its approval of the Therapist. See Paragraphs 19 and 20, below.

18. **Approval of Supervising Physician:** Within five days of Respondent's execution of this Stipulation and Consent Order, Respondent shall file a written petition with the Board requesting approval of a Vermont licensed Supervising Physician for every practice location at which the Respondent works. The petition shall include the Curriculum Vitae of the proposed Supervising Physician(s) and shall be in a manner and form to be determined at the discretion of the Board. It is the responsibility of Respondent to promptly seek written Board approval of the proposed Supervising Physician(s) to maintain communication with the Board until such written approval has been provided by the Board.

(a) The proposed Supervising Physician(s) shall be considered provisionally approved for the period of time between the filing of the petition and the Board's actual approval or denial of the Motion. It is the responsibility of the Respondent that the provisionally approved Supervising Physician(s) comply with reporting requirements.

(b) The Supervising Physician(s) shall be fully informed of the terms of this agreement and of Respondent's history of chemical dependency and shall attest to such in writing at the time the petition is submitted to the Board. The Respondent shall provide the Supervising Physician(s) a copy of this Stipulation and Consent Order.

(c) The Supervising Physician(s) shall act as peer monitor(s) at Respondent's practice site(s). The Supervising Physician(s) must be able to physically observe the Respondent at work with patients and co-workers, and to interact with the Respondent during the course of the duty shift.

(d) The Supervising Physician(s) shall submit quarterly reports to the Board, regarding Respondent's demeanor and conduct in the practice setting, clinical competence, and whether Respondent is, to a reasonable medical certainty, able to practice medicine with reasonable care, skill and safety. Such reports shall commence three (3) months from the date of the Board's approval of this Stipulation and Consent Order and continue for so long as this agreement remains in effect or until the Supervising Physician ceases to provide the services described herein.

(e) The Supervising Physician(s) agrees to inform the Board verbally within twelve (12) hours and in writing within 24 hours if Respondent fails to appear for any work, misses patient appointments, or exhibits behaviors which are unusual or which might indicate that Respondent is suffering a relapse event or occurrence of any duration or magnitude.

(f) Prior to Board approval, each Supervising Physician must execute a document formally acknowledging his/her responsibilities under the terms of this agreement. Such document shall be in a manner and form as to be determined at the discretion of the Board. Such document shall acknowledge and consent to the requirement for disclosure of all information relating to Respondent's substance abuse condition, treatment, and ability to practice medicine to the Board, its staff and investigators, and the Office of the Attorney General. Failure by the Supervising Physician(s) to provide information and notices as required herein shall be a sufficient basis for withdrawal by the Board of its approval of the Supervising Physician. See Paragraphs 19 and 20, below.

(g) The responsibilities of each Supervising Physician under this agreement remain in effect until the Supervising Physician ceases to act in this capacity. Each Supervising Physician agrees to notify the Board immediately, in writing, if there is an expectation, need, or plan as to transfer of supervision of Respondent to another physician or practitioner. The reason(s) for such possible change shall be clearly stated in such notification.

(h) Respondent agrees to notify the Board immediately, in writing, if there is an expectation, need, or plan as to transfer of care of Respondent to another Supervising Physician or practitioner. The reason(s) for such possible change shall be clearly stated in this notification.

19. **Disapproval by Board:** If the Board does not approve or withdraws its approval of the Primary Care Physician, Therapist, or Supervising Physician(s) submitted by the Respondent, or the Board does not approve the treatment plan presented to the Board, Respondent must confer with the Board and thereafter submit another treating professional or treatment plan to the Board's Investigative Committee within 30 days of the notice of disapproval or withdrawal of approval. If Respondent fails to comply with this paragraph, or the Board again rejects the proposed Primary Care Physician, Therapist, Supervising Physician(s) and/or treatment plan, it shall constitute *prima facie* lack of compliance with the terms of this Stipulation and Consent Order by Respondent and may subject the Respondent to further disciplinary action by the Board under the terms of *Appendix B.* The Board Approved Collection and Testing program shall not be delayed or stayed pending Board approval of the Primary Care Physician, Therapist, Supervising Physician or Treatment Plan.

20. **Releases:** Respondent shall execute, within 72 hours of his signing of this Stipulation and Consent Order and at any other times required by the Board, all *Release of Information* forms or other written consents or authorizations necessary to effectuate each and every part of this Stipulation and Consent Order. Respondent shall specifically execute and provide to the Board a consent to disclosure form which meets the requirements of 42 C.F.R., Part 2 to permit disclosure of all information regarding Respondent's substance abuse treatment to the Board, its investigators, and the Office of the Attorney General. Failure to timely execute appropriate release or consent forms as required under this subparagraph, or any revocation by Respondent of such releases or consents during the term of this Stipulation and Consent Order, shall constitute prima facie evidence of a violation of the terms of this Stipulation and Consent Order and may subject the Respondent to further disciplinary action by the Board under the terms of *Appendix B.*

21. **Respondent Bears All Costs:** Respondent shall bear all costs of complying with this Stipulation and Consent Order.

22. **Notices Regarding Residence and Employment, Etc.:** Respondent agrees to inform the Board, in writing, immediately of any change of work or residence address or telephone numbers, a change of employer, or an intention to seek licensure in another state or jurisdiction.

23. **Enrollment in 12-Step Program:** Respondent shall enroll and participate in one or more substance abuse support group programs, approved by the Board, such as Alcoholics Anonymous, Narcotics Anonymous, and/or Caduceus, and will attend such mutual group help meetings consistent with the Board Approved Treatment Plan. The Board Approved Therapist shall be responsible for monitoring Respondent's attendance. Respondent shall keep a record of all meetings attended, the dates and locations in question, and must be prepared to submit such record and the name Respondent's sponsor or other responsible individual for each such program or activity to the Board upon request. Respondent agrees that the Board may contact and verify Respondent's participation in all such programs or activities referred to in this paragraph. Respondent shall ensure that the sponsor or other responsible individual for each such program or activity shall be available and agreeable to communicate with the Board or its designee regarding Respondent's participation and attendance in such programs or activities.

24. **Respondent's Compliance with Pharmaceutical Controls at Hospitals, Practice Groups, and/or Other Sites:** Respondent agrees to comply with pharmaceutical control procedures established by the administration of any hospital(s), practice group(s), or other sites at which he or she holds membership or privileges. Respondent shall not have access to any pharmaceuticals maintained by the hospital, group, or other site except those required in the exercise of Respondent's specialty and to ensure compliance with the system of accountability established. The Board may request and review documentation required by such procedures. Respondent's failure to comply with these procedures shall constitute *prima facie* evidence of a violation of the terms of this Stipulation and Consent Order and may subject the Respondent to further disciplinary action by the Board under the terms of *Appendix B.*

25. **Vacations or Absences:** Respondent agrees to give a minimum of 30 days advance written notice to the Board of any anticipated absences from supervised practice settings, including vacations, and provide details and the reasons therefore. For good cause shown, relief from the obligations imposed under this paragraph may be granted, at the Board's sole discretion, when requested in advance, for periods not to exceed 15 days. For good cause shown, at the Board's sole discretion, a period of absence in excess of 15 days may be granted approval for purposes of education or training when documented to the Board's satisfaction. A request for such relief shall contain, at a minimum, the date of commencement and the date of termination of the period of absence, and the reasons why relief is requested. Upon receipt of the request, the Board may grant the relief requested and/or may require alternative methods of compliance with this Stipulation and Consent Order, or may impose such other requirements as the Board deems necessary for the relief period requested.

26. **Board Requested Independent Evaluation:** The Board reserves the right, in its sole discretion, to request an independent inpatient or outpatient chemical dependency evaluation of Respondent at any time during the term of this Stipulation and Consent Order, and Respondent agrees to undergo any such evaluation or any psychiatric, physical, and/or neuropsychological testing and practice skills evaluations as may be required by the Board, at a facility or by a practitioner pre-approved by the Board. Respondent agrees to bear the costs of any testing and evaluations that may be required by the Board.

27. **Compliance with Aftercare Agreements and Treatment Plans:** Respondent shall immediately disclose to the Board and comply with all terms, provisions and conditions of any contracts, aftercare agreements, or treatment plans between Respondent and the residential treatment facility (if any), therapist, 12-step program, and any hospital, practice or institution with which Respondent is affiliated. Respondent shall provide the Board with copies of any correspondence to or from such entities.

28. **Relapse Notification:** Respondent has the duty and obligation under this Stipulation and Consent Order to report any relapse event or occurrence, regardless of duration or character, immediately to the Board, the Board Approved Therapist, and the 12-step sponsor.

29. **Notification of Involvement in Other Legal Actions:** Respondent shall immediately notify the Board of any administrative, institutional, civil or criminal legal actions or investigations pending or concluded, including traffic offenses which carry the potential for incarceration (e.g. driving under the influence, driving while intoxicated, or careless and negligent driving) and any investigation, action, restriction or limitation relating to or affecting Respondent's privileges or practice status at any health care facility or with any Federal or state agency. Respondent shall abide by and obey all laws of the United States, the State of Vermont and its political subdivisions, and all rules and regulations and laws pertaining to the practice of medicine in this or any other State or jurisdiction in which the Respondent holds a license to practice medicine.

30. **Appearance on Demand:** Respondent agrees to appear before the Board, any of its committees or subcommittees, or its designees upon notice of not less than 48 hours.

31. **Notification of Licensing Entities After Leaving Vermont:** Respondent agrees that should he or she leave the State of Vermont to practice in another jurisdiction, the Board is authorized to contact the state Medical Licensing Board or comparable entity in that jurisdiction and/or the comparable physicians' recovery program in the State or jurisdiction to which he is moving to inform them of the conditions of this Stipulation and Consent Order and to provide them with a copy of this document. Respondent further authorizes the Board to so provide all materials and monitoring data collected under the terms of this agreement. Respondent will execute any releases, waivers, or consents as may be necessary to effectuate the terms of this paragraph. Respondent also agrees to promptly inform licensing, regulatory, and/or recovery entities in States where he/she may seek licensure of this Stipulation and Consent Order and to provide copies of this document to such entities.

32. **Prohibition as to Falsifying/Misrepresenting Information:** Respondent shall not falsify, misrepresent or make or permit material omission of any information which is to be submitted pursuant to this Stipulation and Consent Order or falsify, misrepresent, or make or permit material omission of the terms of this Stipulation and Consent Order in communicating with any party or individual.

33. **Other Violations:** Notwithstanding the provisions of Appendix B, Number 2, failure to comply with any of the terms of this Stipulation and Consent Order or any violation of 26 V.S.A. § 1842 shall constitute grounds for the imposition of further sanctions, terms or conditions, including license suspension or revocation, as the Board deems appropriate. Additionally, such act, omission, or failure shall constitute unprofessional conduct as defined in 26 V.S.A. § 1842, and thus be grounds for taking further disciplinary action as the Board deems appropriate. See 3 V.S.A. §§ 129, 129a & 814(c).

34. **Surrender of License and Reissuance of Conditioned License:** Respondent agrees to physically surrender his or her license certificate to the Board within 48 business hours of the Board's approval of this agreement. A new certificate will be issued to Respondent indicating that his or her license status is "Conditioned". In the event Respondent's license is suspended or revoked subsequent to the execution of this agreement, Respondent agrees to physically surrender his or her license certificate to the Board within 48 business hours of the Board's Order of revocation or suspension.

B. REMOVAL OF CONDITIONS

1. The Board will not consider, and the Respondent shall not file, within 6 months of the date of this Stipulation and Consent Order, any petition for the removal or modification of any conditions or agreements contained in this Stipulation and Consent Order, which is inconsistent with the terms of the Stipulation and Consent Order to which this Exhibit is attached. Petitions must be in writing and must state, with particularity, the nature of the modifications requested and the reasons therefore. Such petition shall be in a manner and form to be determined at the discretion of the Board. Respondent may thereafter petition the Board every 6 months until Respondent is discharged from these conditions.

2. Respondent may petition the Board to be discharged from the terms of this agreement consistent with the terms above. If Respondent's petitions are denied, Respondent must petition the Board at the end of the full five year period in order to be discharged from the terms of this agreement. The Board shall review Respondent's history of compliance with the terms of this agreement and may order such further evaluations, testing and investigation as it, in its sole discretion, deems necessary prior to rendering a decision on Respondent's petition. Such petition shall be in a manner and form to be determined at the discretion of the Board.

APPENDIX A: DEFINITION OF TERMS

1. **Prohibited Substances:**

(a) **Psychoactive Substance**

Any substance which has the potential to cause a change in mental status or mood (sedation, stimulation, euphoria, amnesia, dysphoria, hallucinations, etc.) when delivered into the body in any manner (including, but not limited to, ingestion, subcutaneous, intramuscular, or intravenous injection, inhalation, or transdermal assimilation), whether or not a change in mental status actually occurs. A Psychoactive Substance may be natural or synthetic, produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis.

The term Psychoactive Substance includes the substance itself, its derivatives, analogues, extracts, resins, salts, metabolites, or compounds, and any preparation prescription or non-prescription and regardless of trade name) which contains such substance or a substance neither chemically nor physically distinguishable from it. A Psychoactive Substance may be regulated or unregulated, legal or illegal, prescription, or over-the-counter. The term Psychoactive Substance includes, but is not limited to, opiates (i.e. hydromorphone, diphenoxylate, meperidine, oxycodone, fentanyl, hydrocodone, etc), anesthetic agents (i.e. nitrous oxide, ketamine etc.), alcohol, barbiturates, benzodiazepines, stimulants, depressants, hallucinogens, opiate agonist-antagonists (i.e. Stadol), marijuana, cocaine, heroin, and any DEA scheduled drug. The term also includes antihistamines, ephedrine, pseudoephedrine, phenylpropanolamine, volatile solvents, diet preparations, inhalers and any preparations containing alcohol, including over-the-counter preparations such as cough syrup. **ALL PSYCHOACTIVE SUBSTANCES ARE 'PROHIBITED SUBSTANCES' UNDER THE TERMS OF THIS AGREEMENT.**

(b) **Adulterants**

Any organic, inorganic or synthetic substance, taken into the body, and/or added or applied to the sample, which would have a real or speculative tendency to alter or invalidate the laboratory results of bodily fluid or hair testing. Adulterants typically attempt to mask or "wash out" prohibited substances [Masking Agents]; alter body metabolism [Metabolic Agents]; or generate false-positive, false-negative or invalid tests [Interference Agents]. Adulterants include, but are not limited to, commercial preparations such as "UrinAid", "Clear Choice", "Goldenseal", "Quick Flush", "TestClean", "UltraClean" shampoo, and "Whizzies", and drugs like glutaraldehyde. Some natural organic substances, like poppy seeds, may act as an adulterant when ingested. Water or other liquids may be used as a diluents, thereby altering or invalidating test results, and thus, may be an adulterant in such circumstances. **The knowing ingestion of any foods or substances containing poppy seeds is prohibited and will not be accepted as a valid explanation for a positive test. ALL Adulterants ARE 'PROHIBITED SUBSTANCES' UNDER THIS AGREEMENT.**

2. **Sample**

A specimen of urine, blood, saliva, hair or breath obtained by the Collector (see Paragraph B3, below) from the Respondent. The sample is analyzed by a Board Approved Laboratory and tested for the presence of prohibited substances.

3. **Board Approved Collection Entity ("Collector")**

An agency, corporation, individual, or organization, approved by the Board, which collects samples of bodily fluids, breath, and hair from the Respondent, as may be required by the Board, and sends those samples to a Board-approved testing laboratory for analysis to detect the presence of Prohibited Substances. The Collector assists and instructs the Respondent at the collection site; receives, processes, may undertake preliminary tests or screening, and makes an initial examination of the sample provided by the Respondent; and sends the sample for analysis to a Board-approved testing laboratory (See B4 below), all with appropriate chain-of-custody protections. If the Respondent so requests before a sample is taken, the Collector may, for an additional fee payable by Respondent, ask that a portion of the collected sample be maintained by the laboratory for independent analysis. The Collector typically performs collections at the job site of the Respondent, but it may also have the capacity to perform collections at its own facility or facilities or at other locations where appropriate controls can be implemented. Collections are accomplished according to standards established by Federal agencies and the Board. The written results of the laboratory analysis of the sample are reported to the Collector which, in turn, forwards those reports immediately to the Board. The Collector may be approved to collect, analyze, and report directly to the Board, the hard-copy printout results of breath samples taken from the Respondent. As of the date of this document, the following Collectors have been approved by the Board:

(1) ParaMed Plus, Inc.
RR 2, Box 2000
342 River Street
Montpelier, Vermont 05602 Telephone: 802-229-1407

(2) Day One/Substance Abuse Services
200 Twin Oaks Terrace
So. Burlington, VT 05403 Telephone 802-847-3333

Other Collectors may be identified and required by the Board at its sole discretion. The Board will consider, upon written petition of the Respondent, the approval of other Collectors requested by the Respondent, but the implementation of a collection and testing program shall not be delayed pending approval of a new Collector. Where approval of another Collector has been requested, such request may be regarded as conditionally granted after the passage of 30 days from the date of request, subject to the Board's sole discretion and subsequent notice to the contrary.

4. **Board Approved Testing Laboratory ("Laboratory")**

A laboratory, approved by the Board, which analyzes samples of bodily fluid, breath and hair to determine the presence or absence of prohibited substances, including alcohol and adulterants. Board-approved testing laboratories must implement chain-of-custody protections for samples processed in the laboratory; be certified by the Federal Department of Health and Human Services; participate in the National Laboratory Certification Program; be able to process the sample using GC-MS (gas chromatography-mass spectrometry) or other Board-approved technology, without prescreening if requested; and provide forensic services to the Board if needed. The laboratory shall, additionally, be capable of verifying the color, temperature (at time of collection), pH level, specific gravity, and creatinine levels of urine samples submitted for testing. The Board Approved Testing Laboratory reports its written findings to the Collector which, in turn, forwards those written findings to the Board. The laboratory may report its written findings directly to the Board.

As of the date of this document, the following testing laboratory has been approved by the Board:

(1) Clinical Reference Laboratory
8433 Quivira
Lenexa, Kansas 66215 Telephone: 913-492-3652

The Board will consider, upon written motion of the Respondent, the approval of other Testing Laboratories requested by the Respondent, but the implementation of a collection and testing program shall not be delayed pending approval of a new testing laboratory. The Board will approve any laboratory that has been approved by the State of Connecticut for the same or similar uses. Where approval of another Testing Laboratory has been requested, such request may be regarded as conditionally granted after the passage of 30 days from the date of request, subject to the Board's sole discretion and subsequent notice to the contrary.

5. **Direct Observed and Unobserved** Collections

An observed collection is the collection of the sample which is observed directly by a witness ("Observer") and shall occur with such frequency and such manner as the Board in its sole discretion may require. The Observer shall be the same gender as the Respondent. The Observer may be the same person as the Collector. If the Observer is not the Collector and the Observer physically handles the sample, the Observer shall be included in the chain-of-custody documentation. Any unobserved collections will be obtained according to federal standards by testing laboratories certified by the Federal Department of Health and Human Services. Respondent shall be deemed to have complied with the requirements herein if he/she provides a sample which is deemed acceptable to the Observer and/or Collector. Failure of the Collector or Observer to follow the requirements herein or applicable Federal standards shall be a basis, at the Board's sole discretion, to require that Respondent shall provide samples to a different Collector and/or Observer.

6. **Random**

For purposes of this document, the term random means that the Collector shall vary the days of the week and hours of collection so that the Respondent may not reasonably be able to anticipate when a sample request will be made. Collections will not be deemed to be random which occur or recur solely in conjunction or association with regular, recurring, or advance-scheduled meetings, office visits, treatment sessions, or other occurrences.

7. **Frequency of Collection**

Number of times per week or per month that a random sample will be requested from the Respondent.

8. **Positive Test**

A quantitative analysis by gas chromatography-mass spectrometry performed by a Board-Approved Testing Laboratory, and verified by the Board-designated Medical Review Officer, which indicates the presence of a prohibited substance or substances, or their metabolites, in the sample provided by the Respondent.

9. **Board Approved Primary Care Physician**

A Vermont licensed physician, approved by the Board, who has agreed to provide the routine and ongoing health care needs of the Respondent. The Primary Care Physician will be fully apprised of the terms of this agreement and receive a copy of it.

10. **Board Approved Supervising Physician**

A Vermont licensed physician or physicians, approved by the Board and physically located at each of Respondent's practice locations, who will serve as a peer monitor of Respondent's demeanor, conduct, and clinical competence at the practice site. The Supervising Physician(s) will be fully apprised of the terms of this agreement and receive a copy of it.

11. Board Approved Therapist

A Vermont licensed physician or licensed psychologist approved by the Board who shall, by demonstrable training and experience, be qualified to treat matters of chemical addiction and dependence. The Board Approved Therapist shall be fully apprised of the terms of this agreement and receive a copy of it.

12. **Board Designated Medical Review Officer (MRO):**

A member of the Board or a designated agent of the Board who is responsible for reviewing laboratory test results, treatment plans, reports filed by Respondent's Primary Care Physician, Supervising Physician, and Therapist and other materials or reports generated as a result of this agreement, and advising the Board regarding these matters. The MRO may make recommendations to the Board, as necessary, which it may consider in its sole discretion, regarding any matter involving the Respondent, including compliance with this agreement and relapse prevention.

13. **Board Approved Collection and Testing Program**

A program consisting of the random collection and testing of samples, with a frequency of collection to be determined by the Board. This program is implemented by the Board-Approved Collection Entity.

14. **Pronouns**

The pronouns "he" and "she" may be used interchangeably herein and are not intended to affect meaning or required responsibilities as set forth herein.

APPENDIX B: VIOLATION PROCEDURE: NOTICE AND CESSATION OF PRACTICE:

1. **Notice**

Respondent agrees that the following constitutes full and adequate notice where notice is required by the terms of this Stipulation and Consent Order, and Respondent waives any other manner of service:

(a) Direct verbal notice, in person or by telephone, by a member of the Board or Board staff, to Respondent or to Respondent's counsel of record or to Respondent's spouse or other responsible person living in his/her household, with confirmation by first class mail; if Respondent is represented by Counsel, then Counsel will be notified; or

(b) Certified Letter, return receipt requested addressed to Respondent at Respondent's address of record, or to Respondents counsel of record; or

(c) Personal Service by an authorized representative of the Board or other person duly authorized.

2. Cessation of Practice

On Motion from the Office of the Attorney General, the Board may issue, ex parte, a Cessation of Practice Order to Respondent based on a violation of this agreement. Respondent will be given notice of the Cessation of Practice Order. The Cessation of Practice Order shall remain in effect until further Order of the Board. Bases for such motion are as included elsewhere in this agreement and also include the following:

(a) A positive test result reported by a Board Approved Testing Laboratory of a sample collected from the Respondent indicating the presence of a prohibited substance or substances, and verified by the Board Designated Medical Review Officer or other Board-designated Review Officer, shall constitute prima facie evidence of a violation of this Stipulation and Consent Order sufficient to support immediate findings by the Board that the circumstances of Respondent's rehabilitation and recovery have substantially changed; that the present conditions herein are not adequate to protect the public; and that the health, safety or welfare of the public imperatively requires emergency action.

(b) Any of the following additional individual violations shall also constitute prima facie evidence of a violation of the terms of this Stipulation and Consent Order sufficient to support immediate findings by the Board in a Cessation of Practice Order that the circumstances of Respondent's rehabilitation and recovery have substantially changed; that the present conditions of probation are inadequate to protect the public; and/or that the health, safety or welfare of the public imperatively requires emergency action:

(i) The report of any relapse event or occurrence, regardless or duration or character;

(ii) Respondent's failure to appear for or provide a sample requested by a Board-Approved Collection Entity, or the Respondent's unavailability or failure to accept or timely return a telephone call to the Collector or evidence of an attempt by Respondent to improperly alter or affect, misrepresent, or invalidate the results of testing or of samples collected for testing;

(iii) Respondent s failure to appear for an appointment with the Board Approved Therapist and/or failure to comply with the Board-Approved Treatment Plan;

(iv) Failure to comply with any Board Order, including Board orders for testing or evaluation, and Cessation of Practice orders;

(v) Possession or diversion of any prohibited substance not excepted by this agreement, or any attempt, successful or unsuccessful, to circumvent the prescription limitations imposed herein;

(vi) Refusal to timely execute releases or revocation of any releases required by this Stipulation and Consent Order.

(c) The Cessation of Practice Order shall direct Respondent to immediately cease and desist the practice of medicine. Further proceedings, including hearing, shall be promptly instituted and determined.

(d) At hearing on the Cessation of Practice Order, the State may proceed by affidavit(s) and/or printed test result(s) in establishing a basis for the Order. Such evidence shall be rebuttably presumed to be valid and reliable, and if satisfying the terms of subsection 2(a) or 2(b), above, shall constitute prima facie evidence establishing a basis for imposition of a Cessation of Practice Order. Respondent shall then have the burden of producing evidence to establish that at the time of the alleged violation(s) he or she was in compliance with the requirements of this Stipulation and Consent Order, that the issuance of the Cessation of Practice Order was in error, and/or that the Cessation Order should not remain in effect until further proceedings before the Board. At Hearing, the Respondent will have the right to be accompanied by counsel, present evidence, and to examine and cross-examine witnesses.

(e) Upon notice of a Cessation of Practice Order, Respondent shall make arrangements for coverage of patient appointments and obligations, including the prompt transfer of patient records and appropriate patient referrals. Respondent shall not perform any act which could be construed as the practice of medicine.

(f) Nothing herein shall be construed to limit the ability of the Board to take action against the Respondent under 3 V S.A. 814(c) regarding either matters covered by this Stipulation and Consent Order or other acts or violations which may require emergency relief.