

STATE OF MICHIGAN  
DEPARTMENT OF COMMUNITY HEALTH  
BUREAU OF HEALTH PROFESSIONS

In the Matter of

Russell L Hibbard, Jr, M.D.  
License Number: 43-01-027773

FILE NO.: 43-05-98260

PROOF OF SERVICE

State of Michigan )  
                                  )  
County of Ingham )

I, Marcie Anderson, of Lansing, County of Ingham, State of Michigan, do hereby state that on May 21, 2009, I sent the following documents to each of the parties listed below, enclosed in an envelope bearing postage fully prepaid, plainly addressed as follows:

CONSENT ORDER AND STIPULATION dated May 20, 2009.

BY:        First Class Mail  
           Certified Mail, Return receipt requested

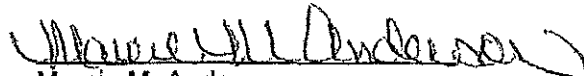
TO:    Russell L Hibbard, Jr., M.D.  
       218 West Walnut  
       Kalamazoo, MI 49007

       Thomas L. Sparks  
       Butzel Long  
       110 W. Michigan Avenue, Ste. 1100  
       Lansing, MI 48933

By Interdepartmental Mail to:

       Bill Hurth, Manager  
       Bureau of Health Professions  
       Enforcement Section

       Michele M. Wagner-Gutkowski  
       Department of Attorney General  
       Licensing & Regulation Division  
       Lansing, MI



Marcie M. Anderson  
Health Regulatory Division

STATE OF MICHIGAN  
DEPARTMENT OF COMMUNITY HEALTH  
BUREAU OF HEALTH PROFESSIONS  
BOARD OF MEDICINE  
DISCIPLINARY SUBCOMMITTEE

In the Matter of

RUSSELL L. HIBBARD, JR., M.D.  
License No. 43-01-02773

Complaint No. 43-05-98260

CONSENT ORDER AND STIPULATION

CONSENT ORDER

A first superseding administrative complaint (complaint) was filed with the Disciplinary Subcommittee of the Board of Medicine on March 27, 2009, charging Russell L. Hibbard, Jr., M.D. (Respondent) with having violated sections 16221(a) and (h) of the Public Health Code, 1978 PA 368, as amended, MCL 333.1101 *et seq.*, and 2005 AACS, R 338.2303(6).

The parties have stipulated that the Disciplinary Subcommittee may enter this consent order. The Disciplinary Subcommittee has reviewed the stipulation contained in this document and agrees that the public interest is best served by resolution of the outstanding complaint. Therefore, the Disciplinary Subcommittee finds that the allegations of fact contained in the complaint are true and that Respondent has violated sections 16221(a) and (h) of the Public Health Code and 2005 AACS, R 338.2303(6).

Accordingly, for these violations, IT IS ORDERED:

Respondent shall PERMANENTLY SURRENDER to the Department his controlled substance and drug control licenses, as well as his Drug Enforcement Administration (DEA)

registration. The Department shall transmit the DEA registration to the DEA. Respondent shall not seek reinstatement, renewal, reissuance or reactivation of these licenses and registration at any future date.

Respondent is FINED FIVE HUNDRED and 00/100 (\$500.00) to be paid by check, money order or cashier's check made payable to the State of Michigan (with complaint number 43-05-98260 clearly indicated on the check or money order) within ninety days from the effective date of this order. The timely payment of the fine shall be Respondent's responsibility.

Respondent shall mail the fine required by the terms of this order to: Sanction Monitoring, Bureau of Health Professions, Department of Community Health, P.O. Box 30185, Lansing, Michigan 48909.

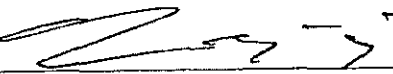
Respondent shall be responsible for the timely compliance with the terms of this consent order, including the timely filing of any documentation. Failure to comply within the time limitations provided will constitute a violation of this order.

If Respondent violates any term or condition set forth in this order, Respondent will be in violation of 1996 AACRS, R 338.1632, and section 16221(h) of the Public Health Code.

This order shall be effective thirty days from the date signed by the Chairperson of the Disciplinary Subcommittee or the Disciplinary Subcommittee's authorized representative, as set forth below.

Signed on 5/20, 2009.

MICHIGAN BOARD OF MEDICINE

By   
Chairperson, Disciplinary Subcommittee

STIPULATION

The parties stipulate as follows:

1. Respondent does not contest the allegations of fact and law in the complaint.

Respondent understands that, by pleading no contest, he does not admit the truth of the allegations but agrees that the Disciplinary Subcommittee may treat the allegations as true for resolution of the complaint and may enter an order treating the allegations as true.

2. Respondent understands and intends that, by signing this stipulation, he is waiving the right under the Public Health Code, rules promulgated under the Public Health Code, and the Administrative Procedures Act of 1969, 1969 PA 306, as amended, MCL 24.201 *et seq*, to require the Department to prove the charges set forth in the complaint by presentation of evidence and legal authority, and to present a defense to the charges before the Disciplinary Subcommittee or its authorized representative. Should the Disciplinary Subcommittee reject the proposed consent order, the parties reserve the right to proceed to hearing.

3. The Disciplinary Subcommittee may enter the above Consent Order, supported by Board conferee Busharat Ahmad, M.D. Dr. Ahmad or an attorney from the Licensing and

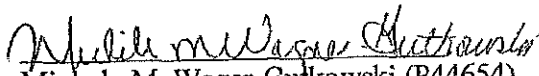
Regulation Division may discuss this matter with the Disciplinary Subcommittee in order to recommend acceptance of this resolution.

4. Dr. Ahmad and the parties considered the following factors in reaching this agreement:

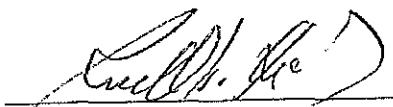
- A. Respondent has had no other disciplinary action taken against his license since it was first issued in 1969;
- B. Respondent has been fully cooperative in the resolution of this matter;
- C. Respondent is currently 72 years of age and has a limited psychiatry practice, having only grossed approximately \$10,000.00 in 2008;
- D. Respondent accepts full responsibility for the deficient prescribing practices alleged in this case and has no desire to prescribe pain medications to his patients in the future.

By signing this stipulation, the parties confirm that they have read, understand and agree with the terms of the consent order.

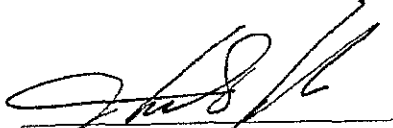
AGREED TO BY:

  
Michele M. Wager-Gutkowski (P44654)  
Assistant Attorney General  
Attorney for Complainant  
Dated: 4-2-09

AGREED TO BY:

  
Russell L. Hibbard, Jr., M.D.  
Respondent

Dated: 4-2-09

  
Thomas L. Sparks (P25144)  
Attorney for Respondent  
Dated: 4-3-09

STATE OF MICHIGAN  
DEPARTMENT OF COMMUNITY HEALTH  
BUREAU OF HEALTH PROFESSIONS  
BOARD OF MEDICINE  
DISCIPLINARY SUBCOMMITTEE

In the Matter of

RUSSELL L. HIBBARD, JR., M.D.,  
License No. 43-01-02773

Complaint No. 43-05-98260

FIRST SUPERSEDING ADMINISTRATIVE COMPLAINT

Attorney General Michael A. Cox, through Assistant Attorney General Michele M. Wagner-Gutkowski, on behalf of the Department of Community Health, Bureau of Health Professions (Complainant), files this first superseding administrative complaint against Russell L. Hibbard, Jr., M.D., (Respondent), alleging upon information and belief:

1. The Board of Medicine, (Board), an administrative agency established by the Public Health Code (Code), 1978 PA 368, as amended; MCL 333.1101 *et seq*, is empowered to discipline licensees under the Code through its Disciplinary Subcommittee (DSC).

2. Respondent is currently licensed to practice medicine pursuant to the Public Health Code. At all times relevant to this complaint, Respondent practiced psychiatry at Choices for Change, located at 218 W. Walnut Street, Kalamazoo, MI 49007. Respondent is not board certified in psychiatry, or any other specialty.

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**ARTICLE 15: OCCUPATIONAL PROVISIONS**

3. Section 16221(a) of the Code provides the DSC with authority to take disciplinary action against Respondent for a violation of general duty, consisting of negligence or failure to exercise due care, including negligent delegation to, or supervision of employees or other individuals, whether or not injury results, or any conduct, practice, or condition which impairs, or may impair, the ability to safely and skillfully practice medicine.

4. Section 16221(h) of the Code provides the DSC with authority to take disciplinary action against Respondent for a violation, or aiding or abetting in a violation, of article 15 or of a rule promulgated under article 15.

5. 2005 AACS, R 338.2303 (6) provides that a physician may prescribe amphetamine and its salts for treatment of adult forms of Attention Deficit Hyperactivity Disorder (ADHD) if the physician, prior to writing the prescription, takes a complete history, performs a complete physical examination, and verifies that the patient suffers from ADHD. A physician must indicate on the prescription order, in the physician's own handwriting, that the prescription is being ordered to treat adult ADHD.

6. Section 16226 of the Code authorizes the DSC to impose sanctions against persons licensed by the Board, if after opportunity for a hearing, the DSC determines that a licensee violated one or more of the subdivisions contained in section 16221 of the Code.

**ARTICLE 7: CONTROLLED SUBSTANCE PROVISIONS**

7. Section 7213 of the Public Health Code states that a substance is placed in schedule 2 if it has high potential for abuse and the abuse of the substance may lead to severe psychic and physical dependence. According to the 2008 Physician's Desk Reference (PDR):

- A. Actiq (fentanyl citrate) is a schedule 2 controlled substance opioid analgesic indicated only for management of breakthrough cancer pain in patients 16 and older with malignancies who are already receiving and who are tolerant to opioid therapy for their underlying persistent cancer pain.
- B. Adderall XR (Amphetamine-sulfate) is a schedule 2, controlled substance amphetamine salt combination central nervous system stimulant indicated for the treatment of Attention Deficit Hyperactivity Disorder (ADHD), Attention Deficit Disorder (ADD), and narcolepsy.
- C. Dilaudid (Hydromorphone hydrochloride) is a schedule 2 controlled substance opioid analgesic indicated for the management of moderate to severe pain.

8. Section 7215 of the Public Health Code states that a substance is placed in schedule 3 if it has potential for abuse less than the substance listed in schedules 1 and 2 and the abuse may lead to moderate or low physical dependence or high psychological dependence. According to the PDR:

- A. Norco (Hydrocodone bitartrate) is a scheduled 3 controlled substance opioid analgesic indicated for relief of moderate to moderately severe pain.
- B. Lortab (Hydrocodone bitartrate and acetaminophen) is a scheduled 3 controlled substance opioid analgesic indicated for the relief of moderate to moderately severe pain.
- C. Vicodin (Hydrocodone bitartrate) is a schedule 3 controlled substance semisynthetic narcotic analgesic indicated for the relief of moderate to moderately severe pain.



9. Section 7217 of the Public Health Code states that a substance is placed in schedule 4 if it has a low potential for abuse relative to substances in schedule 3, and the abuse may lead to limited physical dependence or psychological dependence relative to the substances in schedule

3. According to the PDR:

- A. Xanax (Alprazolam) is a schedule 4 controlled substance benzodiazepine indicated for the management of anxiety disorder or for the short-term relief of anxiety.
- B. Ambien (zolpidem tartrate) is a schedule 4 controlled substance non-benzodiazepine hypnotic indicated for the short term treatment of insomnia.
- C. Klonopin (Clonazepam) is a schedule 4 controlled substance benzodiazepine indicated for the treatment of panic disorder, with or without agoraphobia, as defined in the DSM-IV.
- D. Valium (Diazepam) is a schedule 4 controlled substance benzodiazepine derivative indicated for the management of anxiety disorders or for the short term relief of symptoms of anxiety.
- E. Darvocet N (propoxyphene hydrochloride) is a schedule 4 controlled substance centrally acting analgesic indicated for the relief of mild to moderate pain.

COUNT I

10. Between July 14, 2003, and May 31, 2005, Respondent treated V.B., (initials used to protect patient confidentiality), a 34 year old female, for pain management, anxiety, and ADHD.

11. From January 1, 2004, until May 31, 2005, a report generated from the Michigan Automated Prescription System (MAPS) Program reflects that Respondent wrote V.B. prescriptions as follows:

Medication Prescribed	Number of Tablets Prescribed	Average Tablets Per Day
Dilaudid 4 mg.	7,650	14.82
Xanax	1,620	3.1
Adderall XR 20 mg.	2,490	4.83
Lortab	2,040	3.95

12. Respondent did not document in V.B.'s patient chart any physical exams, clinical findings, or information received from other health care providers to justify his prescribing of controlled substances to V.B.

13. V.B.'s patient chart is devoid of physical exams or clinical findings to support a diagnosis of ADHD, nor do the chart entries justify Respondent's long-term prescribing of Adderall to V.B.

14. On May 31, 2005, Respondent terminated V.B. from his practice because she failed to show up for regularly scheduled appointments and she stole prescribed pain medication from her spouse, R.B. In fact, Respondent admitted to Investigator Wiggins that "he could not defend his prescribing of narcotics to V.B."

15. Respondent's conduct as described above constitutes negligence, in violation of section 16221(a) of the Code.

16. Respondent's conduct as described above constitutes the improper prescribing of an amphetamine salt combination controlled substance, contrary to 2005 AACR, R 338.2303(6), in violation of sections 16221 (a) and (h) of the Code.

### COUNT II

17. Between April 28, 2003, and August 15, 2005, Respondent treated R.B. (V.B.'s spouse), a 41 year old male, for anxiety and pain management secondary to neck, bowel, and back pain, and colon cancer.

18. From January 7, 2004, until July 30, 2005, a report generated by MAPS reflects that Respondent wrote R.B. prescriptions as follows:

Medication Prescribed	Number of Tablets Prescribed	Average Tablets Per Day
Dilaudid 4 mg.	10,730	18.82
Vicodin 10/500 mg.	2,280	4
Xanax 1 mg.*	540	.95
Xanax 2 mg.	1800	3.16
Klonopin 1 mg.**	480	.84
Klonopin 2mg.	1020	1.79
Actiq .8 mg.***	660	8.68

\*Respondent switched from Xanax, 1 mg to Xanax 2 mg on April 7, 2004.

\*\*Respondent began to alternate between prescriptions of Klonopin 1mg. and Klonopin 2 mg. on March 1, 2004.

\*\*\* Between May 9, 2005, and July 25, 2005, Respondent prescribed R.B. Actiq. in addition to prescribing Dilaudid for pain management.

19. According to R.B.'s patient chart, Respondent did not properly monitor R.B.'s use of controlled substances for drug dependency or diversion. The above-referenced MAPS report reflects that R.B. was receiving and filling prescriptions for valium from another provider during the same period of treatment.

20. Respondent failed to document physical exams or clinical findings in R.B.'s chart to justify his narcotic controlled substance prescriptions to R.B. During his interview with Investigator Wiggins, Respondent admitted that his prescribing practices for R.B. fell below the minimum standard of care for the profession.

21. A MAPS report generated on October 27, 2008, reflects that Respondent continues to prescribe R.B. large doses of opioid analgesics. Beginning on May 8, 2006 and through October 13, 2008, Respondent prescribed R.B. 100 tablets of Methadone Hydrochloride 10 mg., 180 tablets of Dilaudid 4 mg., and 120 tablets of Xanax 2mg., approximately every two weeks.

22. Respondent's conduct as described above constitutes negligence, in violation of section 16221(a) of the Code.

COUNT III

23. Respondent treated K.G-B., a 40 year old female, between April 16, 2003, and August 10, 2005, for psychic pain and distress. During his interview, Respondent informed Investigator that K.G-B. suffers from "adjustment disorder of adulthood" and that she has a history of a suicide attempt.

24. From January 6, 2004, until July 25, 2005, a MAPS report reflects that Respondent wrote K.G-B. prescriptions as follows:

Medication Prescribed	Number of Tablets Prescribed	Average Tablets Per Day
Norco 7.5/325 mg.	6459	11.43
Xanax 2 mg.*	3387	7.12
Xanax 1 mg.**	140	3.26
Xanax .5 mg.***	430	14.83
Ambien 10 mg.	275	.49
Darvocet 650 mg./10 mg.****	755	5.68

\* Between January 6, 2004, and April 18, 2005, Respondent prescribed K.G-B. Xanax 2 mg.

\*\* Between April 18, 2005, and May 31, 2005, Respondent prescribed K.G-B. Xanax 1 mg.

\*\*\* Between May 31, 2005, and June 28, 2005, Respondent prescribed K.G-B. Xanax .5 mg.

\*\*\*\* Between March 10, 2004 and July 21, 2004, Respondent prescribed K.G-B.

APAP/Darvocet in addition to prescribing Norco for pain management.

25. According to K.G-B.'s patient chart, Respondent did not properly monitor K.G-B.'s use of controlled substances for drug dependency or diversion. The above referenced MAPS report reflects that K.G-B received additional Norco prescriptions from multiple other health care providers during the same time period.

26. A MAPS report generated on October 27, 2008, reflects that Respondent continued to prescribe K.G-B. large doses of schedule 3 controlled substance opioid analgesics until January 15, 2008, and sporadic doses through the present date.

27. Respondent's conduct as described above constitutes negligence, in violation of section 16221(a) of the Code.

FURTHER, the administrative complaint previously filed against Respondent on October 31, 2008 is hereby WITHDRAWN and replaced in full by this superseding complaint.

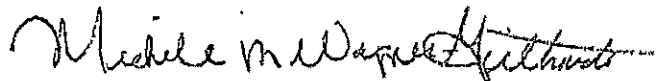
WHEREFORE, Complainant requests that a hearing be scheduled pursuant to the Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCL 24.201 *et seq*, the Public Health Code, and rules promulgated thereunder, to determine whether disciplinary action should be taken against Respondent for the reasons set forth above.

RESPONDENT IS HEREBY NOTIFIED that, pursuant to section 16231(7) of the Public Health Code, Respondent has 30 days from receipt of this complaint to submit a written response to the allegations contained in it. The written response shall be submitted to the Bureau of

Health Services, Department of Community Health, P.O. Box 30670, Lansing, Michigan, 48909, with a copy to the undersigned assistant attorney general. Further, pursuant to section 16231(8), failure to submit a written response within 30 days shall be treated as an admission of the allegations contained in the complaint and shall result in transmittal of the complaint directly to the Board's Disciplinary Subcommittee for imposition of an appropriate sanction.

Respectfully submitted,

MICHAEL A. COX  
Attorney General



Michele M. Wagner-Gutkowski (P44654)  
Assistant Attorney General  
Licensing & Regulation Division  
P.O. Box 30754  
Lansing, Michigan 48909  
(517) 373-1146

Dated: March 27, 2009

**PROOF OF SERVICE**

The undersigned certifies that on the date indicated above a copy of the foregoing document was served upon Thomas L. Sparks, Attorney for Respondent, by mailing the same enclosed in an envelope bearing first class postage fully prepaid and plainly addressed as follows: Thomas L. Sparks, BUTZEL LONG, 110 W. Michigan Avenue, Ste. 1100, Lansing, MI 48933

  
Susan Macias

sem.casesmmw09.hibbard p fsac