

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
BUREAU OF PROFESSIONAL LICENSING  
BOARD OF MEDICINE  
DISCIPLINARY SUBCOMMITTEE

In the Matter of

DAVID H. AVERBACH, M.D.  
License No. 43-01-075437

Complaint No. 43-17-145586

CONSENT ORDER AND STIPULATION

CONSENT ORDER

An administrative complaint was filed with the Disciplinary Subcommittee of the Board of Medicine on March 16, 2018, charging David H. Averbach, M.D. (Respondent), with having violated sections 16221(a), (b)(i), and (c)(iv) of the Public Health Code, MCL 333.1101 *et seq.*

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 (b)(i) of the Public Health Code.

Accordingly, for these violations, IT IS ORDERED:

Respondent is placed on PROBATION for a period of 1 year, not to exceed 3 years, commencing on the effective date of this order. Reduction of the period of probation shall occur only while Respondent is employed as a medical doctor. Respondent shall be automatically discharged from probation upon the

Department's receipt of satisfactory written evidence of Respondent's successful compliance with the terms and conditions as provided below, provided compliance occurs within 3 years. If Respondent fails to complete any term or condition of probation as set forth in this order within 3 years of the effective date of this order, Respondent will be in violation of Mich Admin Code, R 338.1632 and section 16221(h) of the Public Health Code. The terms and conditions of the probation are as follows:

- A. MEETING WITH DESIGNATED PHYSICIAN REVIEWER. Respondent shall meet quarterly with a physician assigned by Affiliated Monitors, Inc. or other board-approved monitoring entity, or a physician reviewer pre-approved by the Board Chairperson or the Chairperson's designee, to review Respondent's professional practice.

Within 30 days of the effective date of the order, Respondent shall contact the Department to obtain the contact information for Affiliated Monitors, Inc., or other board-approved monitoring entity, or request approval of a proposed physician reviewer. When requesting approval of a proposed physician reviewer, Respondent shall provide a copy of the proposed reviewer's curriculum vitae to the Department. Respondent shall provide a copy of this order and the complaint dated March 16, 2018, to the proposed reviewer before submitting a request for approval to the Department. Respondent shall not work in any capacity for which a medical license is required until Respondent receives written confirmation from the Department that an Affiliated Monitors physician, or other approved entity, has been designated or the proposed monitor was approved.

The initial meeting shall occur at the end of the third month of probation, and subsequent meetings shall occur every 3 months thereafter until the end of the probationary period. Respondent shall be responsible for scheduling the time and place of the meetings with the designated physician reviewer. Respondent shall submit all requests required by this subsection to the Department at the address listed below, or by fax to (517) 241-9280.

- B. DESIGNATED PHYSICIAN REVIEWER CHANGE. If, at any time during the period of probation, Affiliated Monitors, Inc. or other board-

approved monitoring entity is unable to designate a suitable physician to review, or other pre-approved physician is unable to review, Respondent's professional practice, Respondent shall report this information in writing to the Department within 15 days of such change and request approval of another physician reviewer. Respondent shall submit the request for approval of the proposed physician reviewer to the Department at the address listed below, or by fax to (517) 241-9280.

- C. DESIGNATED PHYSICIAN REVIEWER REPORTS. Respondent's designated physician reviewer shall file reports on the form prescribed by the Department, advising of Respondent's work performance. If, at any time, Respondent fails to comply with minimal standards of acceptable and prevailing practice or appears unable to practice with reasonable skill and safety, his designated physician reviewer shall immediately notify the Department.
- D. RESIDENCY AND PRACTICE OUTSIDE MICHIGAN. Periods of residency and practice outside Michigan shall not reduce the probationary period of this order. Respondent shall report any change of residency or practice outside Michigan to the Department within fifteen days after the change occurs. Compliance with this provision does not satisfy the requirements of section 16192(1) and 16171(f) of the Public Health Code regarding Respondent's duty to report name or mailing address changes to the Department.
- E. MONITORING AGREEMENT. Within 45 days of the effective date of this order, Respondent shall contact the Health Professional Recovery Program (HPRP) at (800) 453-3784, and shall undergo a chemical dependency/substance abuse evaluation as directed by HPRP.

The evaluation shall be conducted at Respondent's expense and Respondent shall ensure that a copy of the evaluation report is provided to HPRP.

If HPRP determines that Respondent does not require monitoring, HPRP shall immediately notify the Department in writing of this determination, and Respondent need not enter into a monitoring agreement.

If HPRP determines that Respondent is in need of monitoring, Respondent shall promptly enter into and shall comply with the terms of a disciplinary monitoring agreement with HPRP. The duration of the monitoring agreement may exceed the period of probation.

All information and documentation acquired by HPRP in developing and implementing a monitoring agreement shall be made available to the Department upon request to establish Respondent's compliance or noncompliance with the monitoring agreement and this order.

If Respondent fails to comply with the terms of the monitoring agreement, HPRP shall immediately notify the Department in writing. Upon Respondent's successful completion of the monitoring agreement, HPRP shall promptly notify the Department in writing.

F. COMPLIANCE WITH THE PUBLIC HEALTH CODE. Respondent shall comply with all applicable provisions of the Public Health Code and rules promulgated under the Public Health Code.

G. REPORTING PROCEDURE. Unless otherwise provided above, all reports required by the terms of probation shall be filed on a quarterly basis, the first report to be filed at the end of the third month of probation, and subsequent reports every three months until Respondent is discharged from probation. In addition to receiving reports as required above, the Department or its authorized representative may periodically contact the reporting individuals or agencies to inquire of Respondent's progress. By accepting the terms of this consent order and stipulation, Respondent has authorized the release of all necessary records and information.

Any violation of the Public Health Code by Respondent during the period of probation shall be deemed a violation of probation and constitute grounds for further disciplinary action.

Respondent is FINED \$5,000.00 to be paid by check, money order, or cashier's check, made payable to the State of Michigan (with complaint number 43-17-145586 clearly indicated on the check or money order), and shall be payable within 6 months of the effective date of this order. The timely payment of the fine shall be Respondent's responsibility. Respondent shall mail the fine to:



Department of Licensing and Regulatory Affairs Bureau of Professional Licensing, Enforcement Division, Compliance Section, P.O. Box 30189, Lansing, Michigan 48909.

If Respondent fails to timely pay the fine, his license shall be suspended until payment is received. If Respondent's license remains suspended for longer than six months and one day, reinstatement is not automatic. If Respondent petitions for reinstatement of his license, the petition shall be in accordance with sections 16245 and 16247 of the Public Health Code and Mich Admin Code, R 792.10711. Under these provisions, Respondent must demonstrate the following by clear and convincing evidence: (1) good moral character; (2) the ability to practice the profession with reasonable skill and safety; (3) satisfaction of the guidelines on reinstatement adopted by the Department; and (4) that it is in the public interest for the license to be reinstated.

Count III of the complaint, alleging a violation of section 16221(c)(iv) of the Public Health Code, is DISMISSED.

Respondent shall direct any communications to the Department that are required by the terms of this order to: Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing, Enforcement Division, Compliance Section, P.O. Box 30670, Lansing, Michigan 48909.

Respondent shall be responsible for all costs and expenses incurred in complying with the terms and conditions of this consent order.

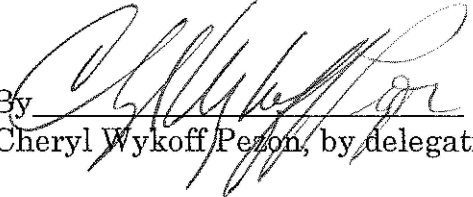
Respondent shall be responsible for the timely compliance with the terms of this consent order, including the timely filing of any documentation. Failure to comply within the time limitations provided will constitute a violation of this order.

If Respondent violates any term or condition set forth in this order, Respondent will be in violation of Mich Admin Code, 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 09/05/19

MICHIGAN BOARD OF MEDICINE

By   
Cheryl Wykoff Pezon, by delegation

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, 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 Michael Chaffy, M.D. Dr. Chaffy 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. Chaffy and the parties considered the following factors in reaching this agreement:

- A. Respondent indicated he now recognizes the importance of refraining from prescribing controlled substances to family members.
- B. Respondent submitted a letter from his treating provider indicating that in the provider's opinion, Respondent does not have an alcohol or substance use disorder.
- C. Respondent also submitted evidence of completing continuing education courses (totaling 9.5 credit hours) in the following areas: informed consent, confidentiality, workplace behaviors, ethics, patient goals, HIPAA, recordings, elderly drivers, patient requests, and professionalism.
- D. Respondent indicated he values the practice of medicine and has learned a great deal from this incident.

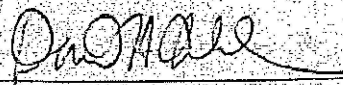
5. This consent order incorporates the conditions of a counteroffer made by the Disciplinary Subcommittee at its meeting held on January 16, 2019.


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

AGREED TO BY:

  
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Rose P. Kleff (P80185)  
Assistant Attorney General  
Attorney for Complainant  
Dated: 8/29/19

AGREED TO BY:

  
\_\_\_\_\_  
David H. Averbach, M.D.  
Respondent  
Dated: 8/28/19

  
\_\_\_\_\_  
Jesse Adam Markos (P72017)  
Attorney for Respondent  
Dated: 8/28/19

LE-2019-0243092-A/Averbach, David H./Consent Order and Stipulation/2019-08-26

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Respondent.

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ADMINISTRATIVE COMPLAINT

The Michigan Department of Licensing and Regulatory Affairs by Cheryl Wykoff Pezon, Acting Director, Bureau of Professional Licensing, complains against Respondent David H. Averbach, as follows:

1. The Michigan Board of Medicine is an administrative agency established by the Public Health Code, MCL 333.1101 *et seq.* Pursuant to MCL 333.16226, the Board's Disciplinary Subcommittee (DSC) is empowered to discipline licensees for Code violations.
2. Respondent holds a Michigan license to practice medicine and an active controlled substance license.
3. At all relevant times, Respondent was employed as a physician at Henry Ford Health System in Novi, Michigan. Respondent was also engaged in private practice.
4. Amphetamine salts (e.g., Adderall) are schedule 2 controlled substances.

5. Alprazolam, a schedule 4 controlled substance, is a benzodiazepine used to treat anxiety disorders and panic disorder. Alprazolam is a commonly abused and diverted drug, particularly in its 1 mg and 2 mg dosages.

6. From January 26, 2012 through March 4, 2017, Respondent treated patient N.A.<sup>1</sup>. Patient N.A. is a minor and a relative of Respondent.

7. As part of an investigation of Respondent's prescribing practices, the Department received and analyzed patient N.A.'s medical record. Respondent, along with 2 other doctors, prescribed patient N.A. Adderall XR 20 mg (quantity: #90), and Adderall 20 mg (quantity: #90). Respondent prescribed patient N.A. alprazolam 2.0 mg on 4 occasions (360 tablets).

8. Respondent had contacted a psychiatrist about treating N.A., and the psychiatrist examined N.A. on January 23, 2017. As part of this examination and consultation, the psychiatrist made the following observations:

- (a) A review of the MAPS<sup>2</sup> report on patient N.A. showed a difference between what was dispensed and what Respondent had said N.A. was taking.
- (b) The psychiatrist was concerned about the high doses of Adderall, the use of alprazolam in that dosage, and the prescribing of a controlled substance to a family member.
- (c) During the interview with Respondent, Respondent's wife had stated that Respondent was taking the alprazolam prescribed to N.A. for his personal use.
- (d) Respondent appeared "overly relaxed" during the appointment with the psychiatrist.

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<sup>1</sup> Initials are used to protect the patient's identity.

<sup>2</sup> Michigan Automated Prescription System, the state of Michigan's prescription monitoring program, which gathers data regarding controlled substances prescribed and dispensed in Michigan.

9. The Bureau's expert discovered the following deficiencies in the following individual encounters in patient N.A.'s medical record:

- (a) The dosage of Adderall that Respondent prescribed for N.A. was excessive, and his prescribing of alprazolam was excessive in both dosage and duration for N.A.
- (b) The expert stated that it is was not the standard of care to treat a family member or prescribe a controlled substance to a family member.
- (c) The expert also noted that the MAPS report showed that 19% of Respondent's controlled substance prescriptions appeared to be written for family members.

10. The expert concluded that, based on his review of the medical records Respondent provided, Respondent's treatment of patient N.A. was negligent and that he did not exercise due care.

#### COUNT I

Respondent's conduct constitutes a violation of a general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, or a condition, conduct, or practice that impairs, or may impair, the ability safely and skillfully to engage in the practice of the health profession in violation of MCL 333.16221(a).

#### COUNT II

Respondent's conduct fails to conform to minimal standards of acceptable, prevailing practice for the health profession in violation of MCL 333.16221(b)(i).

COUNT III


Respondent's conduct constitutes obtaining, possessing, or attempting to obtain or possess a controlled substance or drug without lawful authority, and/or selling, prescribing, giving away, or administering drugs for other than lawful diagnostic or therapeutic purposes, in violation of MCL 333.16221(c)(iv).

RESPONDENT IS NOTIFIED that, pursuant to MCL 333.16231(8), Respondent has 30 days from the date of receipt of this Complaint to answer it in writing and to show compliance with all lawful requirements for retention of the license. Respondent shall submit the written answer to the Bureau of Professional Licensing, Department of Licensing and Regulatory Affairs, P.O. Box 30670, Lansing, MI 48909.

Respondent's failure to submit an answer within 30 days is an admission of the allegations in this complaint. If Respondent fails to answer, the Department shall transmit this complaint directly to the Board's Disciplinary Subcommittee to impose a sanction pursuant to MCL 333.16231(9).

MICHIGAN DEPARTMENT OF  
LICENSING AND REGULATORY AFFAIRS

Dated: 3-16-, 2018

  
By: Cheryl Wykoff Pezon, Acting Director  
Bureau of Professional Licensing

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