

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

PROFESSORIAL

2018 MAR 23 AM 10:45

Commonwealth of Pennsylvania
Bureau of Professional and
Occupational Affairs

Department of State

File No.: 16-49-08759

vs.

Elizabeth N. Kuh, M.D.,
Respondent

Docket No:

0643 -49-28

CONSENT AGREEMENT AND ORDER

PARTIES

The Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs ("Commonwealth") and **Elizabeth N. Kuh, M.D.** ("Respondent") stipulate as follows in settlement of the above-captioned case.

APPLICABLE LAW

1. This matter is before the State Board of Medicine ("Board") pursuant to the Medical Practice Act, Act of December 20, 1985, P.L. 457, No. 112, ("Act"), *as amended*, 63 P.S. §§ 422.1-422.53; the Medical Care Availability and Reduction of Error ("Mcare") Act, Act of March 20, 2002, P.L. 154, No. 13, *as amended*, 40 P.S. §§ 1303.101-1303.910; and/or the Act of July 2, 1993, P.L. 345, No. 48 ("ACT 48"), *as amended*, 63 P.S. §§ 2201-2207.

LICENSURE STATUS

2. At all relevant and material times, Respondent held the following license to practice as a medical physician and surgeon in the Commonwealth of Pennsylvania: license no. MD036447E, which was originally issued on August 6, 1986, and is active through December 31, 2018.

STIPULATED FACTS

3. The Respondent admits that the following allegations are true:

a. Absent further Board action, Respondent's license may be continually reactivated, renewed, or reinstated upon the filing of the appropriate documentation and payment of the necessary fees.

b. Respondent's last known office address, as on file with the Board is:
308 Wellelsey Road, Philadelphia, PA 19119.

4. Although Respondent denies that any violation of the Act has occurred and would dispute and/or deny such allegations, if a hearing were held in this matter, the Commonwealth would present the following evidence or testimony:

a. Respondent began treating Patient JW at her Plymouth Meeting, Pennsylvania office in the mid-1990s for major depression and anxiety with therapy and medical management.

b. Specifically, Respondent prescribed Cymbalta to Patient JW for depression and neuropathic pain, as well as, Ativan for anxiety and sleep issue.

c. Initial treatment was scheduled for once every two weeks; however, Respondent did not see Patient JW on this schedule following the start of her treatment.

d. After Patient JW was diagnosed with Reflex Sympathetic Dystrophy (RSD) in the early 2000s, Respondent was only conducting approximately 3 in-person visits per year with Patient JW, as well as, intermittent phone contact.

e. However, in the mid-2000s, after Patient JW's other treating physicians in New Jersey declined to prescribe pain medication to Patient JW,

Respondent began prescribing Patient JW pain medication, including but not limited to one-month supplies of Oxycontin 80 mg without refills.

f. February 12, 2015 was the last date that Respondent conducted an in-person treatment/visit with Patient JW, but despite the lack of in-person contact, Respondent continued to prescribe medications, including pain medications for Patient JW.

g. Respondent treated Patient GW for depression and anxiety through the prescription of Lexapro and Ativan.

h. In addition, beginning in 2015, Respondent began prescribing Patient GW Oxycontin 80 mg for back pain without performing a physical examination or diagnostic testing.

i. On or about June 11, 2015, Patient GW authored a letter to Respondent, which disclosed that Patient JW's health had declined. The letter went on to state that the decline in health had caused hallucinations and made her unable to care for herself. Patient GW further informed Respondent that Patient JW's treating physicians had recommended that she be hospitalized for detoxification from narcotics, so that an accurate mental health diagnosis could be obtained. At the conclusion of the letter, Patient GW requested the Respondent to provide another prescription for Oxycontin.

j. In December of 2015, Patient GW and Patient JW relocated from New Jersey to Virginia.¹

¹ For the purposes of clarity, it is being disclosed that GW and JW are husband and wife.

k. On January 10, 2016, Patient GW authored a note to his family that stated he was a drunk and pill addict before committing suicide with a 357 Magnum.

l. Patient JW contacted Respondent to inform her of Patient GW's suicide, and in response to this notification, Respondent mailed the following to Patient JW in Virginia:

(1) Oxycontin prescriptions for the diagnosis of severe and intractable pain:

(i) Dated 1/11/16: Oxycontin 80 mg, 120 tablets with instructions to take one tablet four times per day,

(ii) Dated 1/12/16: Oxycontin 80 mg, 8 tablets with instructions to take one tablet four times per day,

(iii) Dated 2/10/16: Oxycontin 80 mg, 120 tablets with instructions to take one tablet four times per day,

(iv) Dated 2/12/16: Oxycontin 80 mg, 120 tablets with instructions to take one tablet four times per day,

(v) Dated 3/13/16: Oxycontin 80 mg, 120 tablets with instructions to take one tablet four times per day, and

(vi) Dated 4/12/16: Oxycontin 80 mg, 120 tablets with instructions to take one tablet four times per day.

(2) Dated 1/13/16: Viibryd 10mg, 30 tablets, one tablet daily, with 3 refills.

(3) Dated 1/13/16: Cymbalta 60mg, 30 tablets, one tablet daily, with 3 refills.

m. Respondent's prescribing of controlled substances to Patient JW and GW without physical examinations, diagnostic testing, in-person visits, as well as, issuing prescription through the mail demonstrates a failure to meet the appropriate and prevailing standard of care in the profession.

ALLEGED VIOLATIONS

5. The Commonwealth alleges that the Board is authorized to suspend, revoke, or otherwise restrict Respondent's license under Sections 41 and 42 of the Act, 63 P.S. §§ 422.41 & 422.42; and/or impose a civil penalty upon Respondent under Sections 39 through 42 of the Act, 63 P.S. §§ 422.39-422.42, and /or Section 5(b)(4) of ACT 48, 63 P.S. § 2205(b)(4); and/or impose the costs of investigation upon Respondent under Section 5(b)(5) of ACT 48, 63 P.S. § 2205(b)(5), because Respondent violated the Act at Section 41(8), 63 P.S. § 422.41(8), and the Regulations at Section 16.92, 49 Pa. Code § 16.92, in that Respondent is guilty of immoral or unprofessional conduct, including departure from, or the failure to conform to the standards of acceptable and prevailing medical practice in regard to her general treatment, as well as, prescribing of controlled substances.

PROPOSED ORDER

6. The parties, intending to be legally bound, consent to the issuance of the following Order in settlement of this matter:

a. The Board finds that it is authorized to suspend, revoke, or otherwise restrict Respondent's license under Sections 41 and 42 of the Act, 63 P.S. §§ 422.41 & 422.42; and/or impose a civil penalty upon Respondent under Sections 39 through 42 of the Act, 63 P.S. §§ 422.39-422.42, and/or Section 5(b)(4) of

ACT 48, 63 P.S. § 2205(b)(4); and/or impose the costs of investigation upon Respondent under Section 5(b)(5) of ACT 48, 63 P.S. § 2205(b)(5), because Respondent violated the Act at Section 41(8), 63 P.S. § 422.41(8), and the Regulations at Section 16.92, 49 Pa. Code § 16.92, in that Respondent is guilty of immoral or unprofessional conduct, including departure from, or the failure to conform to the standards of acceptable and prevailing medical practice in regard to her general treatment, as well as, prescribing of controlled substances.

CIVIL PENALTY

b. A **CIVIL PENALTY** of (\$2,000.00) is levied upon Respondent.

Respondent shall tender the full sum of Two Thousand dollars (\$2,000.00) with this executed Consent Agreement and shall be paid by certified check, cashier's check, attorney's check, or money order issued by a usual, customary, and reputable issuer (e.g. U.S. Postal Money Order, Western Union Money Order, etc.). Payment shall be made payable to the "Commonwealth of Pennsylvania," and shall be valid for a period of at least one hundred eighty (180) days.

Respondent agrees that payment shall only be made by one of the methods indicated above and shall not be made by uncertified personal or corporate check.

SUSPENSION

c. Respondent's license to practice as a medical physician and surgeon in the Commonwealth of Pennsylvania, along with any other licenses, registrations, certificates, approvals, authorizations, or permits (hereinafter referred to collectively as "authorizations to practice the profession") issued by the Board to Respondent at the time this Consent Agreement is adopted by the Board are

hereby **SUSPENDED** for a period of three (3) years, which is immediately **STAYED** in favor of a three (3) years period of **PROBATION**.

PROBATION

d. Respondent's authorizations to practice the profession shall be subject to the following terms and conditions:

(1) Within ninety (90) days of the date this agreement is approved by the Board, Respondent shall develop and submit, to the Probation Compliance Officer and Prosecuting Attorney, a protocol for her office relating to adequate record keeping.

(2) Within ninety (90) days of the date this agreement is approved by the Board, Respondent shall develop and submit, to the Probation Compliance Officer and Prosecuting Attorney, a protocol for her office relating to the prescription monitoring program she utilizes for patients to whom she prescribes controlled substances.

(3) Respondent shall maintain documentation in each patient's records of compliance with the above-referenced protocols.

(4) Within ninety (90) days of the date this agreement is approved by the Board, Respondent shall contract with a Board approved practice monitor, specifically, Lifeguard, to work with Respondent on the development of the protocols referenced above, and to

conduct quarterly records review monitoring of Respondent's practice throughout the period of probation to assure Respondent continues to apply said protocols and to assure Respondent's practice conforms to quality standards of the medical profession and to generate reports of the findings of said quarterly records review monitoring;

(5) Within ninety (90) days of the date this agreement is approved by the Board, Respondent shall contract with Lifeguard for opioid prescriber monitoring, and following Lifeguard's recommended period of opioid prescriber monitoring, Respondent shall complete Lifeguard's opioid prescriber course.

(6) Respondent's failure to fully cooperate with and successfully comply with the terms, conditions and/or recommendations of the practice monitor shall be deemed a violation of this Consent Agreement and Order

(7) Respondent shall abide by and obey all laws of the United States, the Commonwealth of Pennsylvania and its political subdivisions and all rules and regulations and laws pertaining to the practice as a medical physician and surgeon in this Commonwealth or any other state or jurisdiction in which Respondent holds an authorization to practice the profession. Provided, however, summary

traffic violations shall not constitute a violation of this Order;

(8) Respondent shall at all times cooperate with the Bureau of Professional and Occupational Affairs ("Bureau"), any of its agents or employees and the Bureau of Enforcement and Investigation ("BEI") and its agents and employees, in the monitoring, supervision and investigation of Respondent's compliance with the terms and conditions of this Order, including Respondent causing to be submitted at his own expense written reports, records and verifications of actions that may be required by the Bureau, BEI or any of its agents or employees;

(9) Respondent's failure to fully cooperate with and successfully comply with the terms and conditions of this probation shall be deemed a violation of this Consent Agreement and Order;

(10) Respondent shall not falsify, misrepresent or make material omission of any information submitted pursuant to this Order;

(11) Respondent shall notify BEI, in writing, within twenty (20) days of the filing of any criminal charges, the initiation of any other legal action (civil or administrative) pertaining to the Respondent's practice as a

medical physician and surgeon, and/or the initiation, action, restriction or limitation relating to Respondent by the professional licensing authority of any state or jurisdiction.

(12) Respondent shall notify BEI by telephone within seventy-two (72) hours, and shall notify both BEI and the Board in writing within ten (10) days of any change in the name(s) and address(es) of the place(s) at which Respondent will practice as a medical physician and surgeon and a description of Respondent's duties and responsibilities at such places of practice;

(13) Respondent shall notify BEI by telephone within seventy-two (72) hours, and shall notify both BEI and the Board in writing within ten (10) days of any change in the Respondent's home address and/or telephone number.

(14) During any period of Ordered Probation, Respondent shall supply any current professional employer with a copy of this Consent Agreement and Order.

(15) Within fifteen (15) days of the date of this Order, and within (15) days of the date of any change in professional employer Respondent shall have his professional employer submit to BEI written verification that the professional employer *a*) has received a copy of

this Consent Agreement and Order, *b*) understands the conditions of this probation, and *c*) agrees to report any suspected violation by Respondent of this probation. If Respondent is or becomes self-employed, Respondent shall submit a statement to that effect to BEI and shall produce any requisite documentation to BEI to substantiate such a statement,

(16) Respondent consents to the release by the Bureau or BEI of any information or data produced as a result of this probation to any professional employer or prospective professional employer,

(17) Unless otherwise directed, Respondent, his professional employer, and any other person needing or required to make reports under this Order concerning Respondent's practice and contact information shall cause those reports, data or other information to be filed with BEI at:

Probation Compliance Officer Bureau of Enforcement and Investigation Box 2649 Harrisburg, PA 17105-2649 717-783-7230
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e. Respondent shall bear the responsibility of all costs incurred by Respondent in complying with the terms of this Order, including production of records;

VIOLATION(S) OF TERMS OF PROBATION

f. Notification of a violation of the terms or conditions of this Consent Agreement and Order for reasons other than failure to timely complete Ordered Remedial Education shall result in the **IMMEDIATE VACATING** of the stay order, **TERMINATION** of the period of probation, and **ACTIVATION** of the entire period of suspension of Respondent's authorizations to practice the profession in the Commonwealth of Pennsylvania as follows:

(1) The prosecuting attorney for the Commonwealth shall file with the Board a Petition which alleges that Respondent has violated any terms or conditions of this Consent Agreement and Order other than failure to complete the Ordered remedial education in a timely manner;

(2) Upon a probable cause determination that Respondent has violated any of the terms or conditions of this Consent Agreement and Order, the Board shall, without holding a formal hearing, issue a preliminary order vacating the stay of the suspension in this matter, terminating the period of probation and activating the entire period of suspension of Respondent's authorizations to practice the profession, without credit for any period of suspension stayed in favor of probation;

(3) Notification of the Board's Preliminary Order shall be mailed to Respondent within three (3) days of its

issuance by certified mail and first class mail postage prepaid, sent to the last registered address on file with the Board. If service by mail is unsuccessful, the Commonwealth is authorized to attempt service by personal service and/or publication of legal notice in a newspaper of general circulation in the county of Respondent's last known address.

(4) Within twenty (20) days of mailing of the notification of the Board's action, Respondent may answer the Commonwealth's Petition and request that a formal hearing be convened concerning Respondent's alleged violation of probation, in which Respondent may seek relief from the Preliminary Order activating the suspension.

The answer shall be set forth in numbered paragraphs corresponding to the numbered paragraphs of the Petition. Respondent shall admit or deny each of the allegations set forth in the paragraphs in the Petition.

Respondent shall mail the original answer and request for hearing, and all other pleadings to

Office of Prothonotary
Bureau of Professional and Occupational Affairs
2601 N. 3rd Street
P.O. Box 2649
Harrisburg, PA 17105-2649

(5) Respondent shall send a copy of the answer, request for hearing, and all subsequent filings in the matter to the prosecuting attorney for the Commonwealth;

(6) If a request for a formal hearing is received from Respondent, the Board shall convene a formal hearing within forty-five (45) days from the date of the Board's receipt of Respondent's request for a formal hearing;

(7) If Respondent files an answer and request for a hearing within the twenty (20) day period, the Preliminary Order activating the suspension shall remain in effect unless and until the Board issues a determination favorable to Respondent after holding the formal hearing;

(8) The facts and averments in this Consent Agreement and Order shall be deemed admitted and uncontested for purposes of the hearing;

(9) If the Board after such hearing makes a determination adverse to Respondent, the Board will issue a Final Order activating the suspension of Respondent's license and imposing any additional disciplinary measures it deems appropriate;

(10) If a request for a formal hearing is not received from Respondent within the prescribed twenty (20) day period, the Board's Preliminary Order shall become a Final Order twenty (20) days after the date of its mailing;

(11) If the stay is terminated, Respondent shall still comply with all terms and conditions of probation during the active suspension, other than those terms and conditions pertaining to the active practice of the profession. Continued failure by Respondent to comply with the unaffected terms and conditions of probation shall result in further disciplinary action against Respondent;

g. Respondent's failure to fully comply with any terms of this Order may also constitute grounds for additional disciplinary action.

h. Respondent shall make written application to the Board at the end of the total period of probation requesting that Respondent's authorizations to practice the profession be reinstated to unrestricted status.

i. This Order constitutes disciplinary action by the Board and shall be reported to other licensing authorities and any applicable national licensing databank as a disciplinary action by the Board.

j. This case shall be deemed settled and discontinued upon the Board issuing an Order adopting this Consent Agreement.

ADMISSIBILITY OF CONSENT AGREEMENT IN FUTURE PROCEEDINGS

7. Respondent agrees that if Respondent is charged with a violation of an Act enforced by this Board in the future, this Consent Agreement and Order shall be admitted into evidence without objection in that proceeding.

ACKNOWLEDGMENT OF NOTICE AND WAIVER OF HEARING

8. Respondent acknowledges receipt of an Order to Show Cause in this matter. Respondent knowingly and voluntarily waives the right to an administrative hearing in this matter, and knowingly and voluntarily waives the following rights related to that hearing: to be represented by counsel at the hearing; to present witnesses and testimony in defense or in mitigation of any sanction that may be imposed for a violation; to cross-examine witnesses and to challenge evidence presented by the Commonwealth; to present legal arguments by means of a brief; and to take an appeal from any final adverse decision.

ACKNOWLEDGMENT OF RIGHT TO ATTORNEY

9. Respondent acknowledges that he is aware that he has the right to consult with, and/or be represented by, private legal counsel of Respondent's choosing and at Respondent's expense when reviewing, considering and accepting the terms of this Consent Agreement.

WAIVER OF CLAIM OF COMMINGLING AND OTHER CONSTITUTIONAL CLAIMS

10. Respondent expressly waives any constitutional rights and issues, such as commingling of prosecutorial and adjudicative functions by the Board or its counsel, which may arise or have arisen during the negotiation, preparation and/or presentation of this Consent Agreement. Respondent specifically agrees that if the Board rejects this agreement, it may assume that the facts and averments as alleged in this Consent Agreement are true and correct for the limited purpose of recommending a sanction, based on those assumed facts, that would be acceptable to the Board before hearing the case. In the event that the Board does assume the

facts and averments as alleged in this Consent Agreement are true for purposes of making a recommendation as to an acceptable sanction, such action shall not constitute commingling of prosecutorial and adjudicative functions by the Board or its counsel, and the Respondent expressly waives any constitutional rights and issues related to alleged commingling, bias, or violation of due process rights to have an unbiased and impartial adjudicator in any subsequent hearing. If a hearing is subsequently held, neither this Consent Agreement nor the proposed terms of settlement may be admitted into evidence and any facts, averments, and allegations contained in the Consent Agreement must be proven at hearing unless otherwise separately stipulated. This paragraph is binding on the participants even if the Board does not approve this Consent Agreement.

NO MODIFICATION OF ORDER

11. Respondent agrees, as a condition of entering into this Consent Agreement, not to seek modification at a later date of the Stipulated Order adopting and implementing this Consent Agreement without first obtaining the express written concurrence of the Prosecution Division.

AGREEMENT NOT BINDING ON OTHER PARTIES

12. The Office of General Counsel has approved this Consent Agreement as to form and legality; however, this Consent Agreement shall have no legal effect unless and until the Board issues the stipulated Order.

EFFECT OF BOARD'S REJECTION OF CONSENT AGREEMENT

13. Should the Board not approve this Consent Agreement, presentation to and consideration of this Consent Agreement and other documents and matters by the Board shall not prejudice the Board or any of its members from further participation in the adjudication of this matter. This paragraph is binding on the participants even if the Board does not approve this Consent Agreement.

ENTIRE AGREEMENT

14. This agreement contains the whole agreement between the participants; provided however, that the captions printed in the various provisions of this agreement are for ease of reading only and are not to be interpreted as forming any part of this agreement. There are no other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever concerning this agreement.

AGREEMENT DOES NOT PREVENT ADDITIONAL DISCIPLINE BASED ON OTHER COMPLAINTS

15. Nothing in this Order shall preclude the Prosecution Division for the Commonwealth from filing charges or the Board from imposing disciplinary or corrective measures for violations or facts not contained in this Consent Agreement;

VERIFICATION OF FACTS AND STATEMENTS

16. Respondent verifies that the facts and statements set forth in this Consent Agreement are true and correct to the best of Respondent's knowledge, information and belief. Respondent understands that statements in this Consent Agreement are made subject to the criminal penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.


Jason Anderson
Prosecuting Attorney

DATED: 2/22/18


Elizabeth N. Kuh, M.D.
Respondent

DATED: 2/15/18

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

Commonwealth of Pennsylvania
Bureau of Professional and
Occupational Affairs

File No.: 16-49-08759

vs.

Elizabeth N. Kuh, M.D.,
Respondent

Docket No: -49-18

23/0
March
ORDER
AND NOW, this day of 2018, the STATE BOARD OF MEDICINE

("Board") adopts and approves the foregoing Consent Agreement and incorporates the terms of paragraph 6, which shall constitute the Board's Order and is now issued in resolution of this matter.

This Order shall take effect immediately.

BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS

BY ORDER:
STATE BOARD OF MEDICINE


Ian J. Harlow
Commissioner


Bruce Brod, M.D.
Chair

For the Commonwealth:

Jason Anderson, Esquire
2601 North Third Street
P. O. Box 69521
Harrisburg, PA 17106-9521

For the Respondent:

Tricia S. Lontz, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101

Date of mailing:

03/23/18