

VIRGINIA:

BEFORE THE BOARD OF MEDICINE

IN RE: RICHARD LAWRENCE MERKEL, JR., M.D.
License No.: 0101-045614

CONSENT ORDER

The Virginia Board of Medicine and Richard Lawrence Merkel, Jr., M.D., as evidenced by their signatures affixed below, agree to enter into this Consent Order affecting the license of Dr. Merkel to practice medicine and surgery in the Commonwealth of Virginia.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board adopts the following findings and conclusions in this matter:

1. Richard Lawrence Merkel, Jr., M.D., was issued license number 0101-045614 by the Board to practice medicine and surgery in the Commonwealth of Virginia on August 1, 1990. Said license is currently active and will expire on February 28, 2010, unless renewed or otherwise acted upon.
2. Dr. Merkel violated Sections 54.1-2915.A(3)¹ and (17) and Section 54.1-3303.A of the Code, in that during his course of treatment of Patient A from 1995 to 2003:
 - a. He failed to document a complete medical history prior to initiating a medication regimen for Patient A's attention deficit disorder and depression;
 - b. On occasion, he prescribed controlled substances, including Ritalin (C-II) and Xanax (C-IV), at times when he did not examine her;

¹ Prior to July 1, 2003, Section 54.1-2915.A(3) was codified as Section 54.1-2915.A(4) as written to include gross ignorance or carelessness in the practice, or gross malpractice. After July 1, 2003, it was rewritten to include intentional negligent conduct in the practice that causes or is likely to cause injury to the patients.

- c. He repeatedly authorized renewals of medications for Patient A without any medical indication other than information provided to him by Patient A via telephone;
 - d. He provided early refills of medications, replacement prescriptions for lost medications, and increases in medication dosages upon Patient A's request without conducting an examination.;
 - e. He failed to appropriately monitor and manage Patient A's usage of controlled substances and failed to evaluate her on a periodic basis to determine her ability to function and participate in the activities of daily living;
 - f. He failed to make appropriate referrals when Patient A moved to Maryland in 1998, and instead continued to treat her by mailing prescriptions to her; and
 - g. He failed to consistently document Patient A's medical record with information showing that he addressed signs and symptoms of escalation and/or abuse of her medication regimen.
3. As noted in Patient A's medical records, Dr. Merkel has not provided Patient A with prescriptions for any medications since September, 2003. Dr. Merkel stated to an investigator for the Department of Health Professions that Patient A contacted him in July, 2005 to request an appointment and refill medications. Dr. Merkel scheduled an appointment to meet with Patient A for July 21, 2005, but did not provide her with any prescriptions. Patient A did not come to the appointment, and Dr. Merkel stated that he has not heard from her since that date.

4. Dr. Merkel maintains that his lapse of judgment in continuing to prescribe medications for Patient A without appropriate clinical oversight was an isolated variance of his usual practice.

CONSENT

I, Richard Lawrence Merkel, Jr., M.D., by affixing my signature hereto, acknowledge that:

1. I have been advised specifically to seek the advice of counsel prior to signing this document;
2. I am fully aware that without my consent, no legal action can be taken against me, except pursuant to the Virginia Administrative Process Act, § 2.2-4000.A et seq. of the Code of Virginia;
3. I have the following rights, among others:
 - a. the right to an informal conference before the Board; and
 - b. the right to appear in person or by counsel, or other qualified representative before the agency.
4. I waive all rights to an informal conference;
5. I admit the truth of the above Findings of Fact; and
6. I consent to the following Order affecting my license to practice medicine and surgery in the Commonwealth of Virginia.

ORDER

WHEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, and with the consent of the licensee, it is hereby ORDERED that the license of Richard Lawrence

Merkel, Jr., M.D., be, and hereby is, placed on INDEFINITE PROBATION and subject to the following terms and conditions.

1. Within nine (9) months of entry of this Consent Order, Dr. Merkel shall successfully complete ten (10) hours of Board-approved continuing medical education (“CME”) in the subject of medical record-keeping. Said CME shall be approved in advance of registration by the Executive Director of the Board. The CME shall be completed through face-to-face, interactive sessions (i.e., no home study, journal, or Internet courses that do not allow for interaction with the lecturer). Any CME hours obtained through compliance with this term shall not be used towards licensure renewal.

2. Within nine (9) months of entry of this Consent Order, Dr. Merkel shall successfully complete ten (10) hours of Board-approved CME in the subject of proper prescribing of controlled substances. Said CME shall be approved in advance of registration by the Executive Director of the Board. The CME shall be completed through face-to-face, interactive sessions (i.e., no home study, journal, or Internet courses that do not allow for interaction with the lecturer). Any CME hours obtained through compliance with this term shall not be used towards licensure renewal.

3. Within twenty-one (21) days of completion of the requirements in Terms 1 and 2 above, Dr. Merkel shall submit certificates or other evidence, satisfactory to the Board, of completion of all CME required by this Consent Order.

4. Within thirty (30) days of entry of this Consent Order, Dr. Merkel shall provide the Board with a written statement certifying that he has read and will comply with: (i) the laws governing the practice of medicine (Title 54.1, Chapter 29 of the Code); and (ii) Section

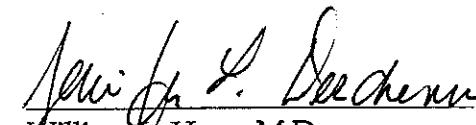
54.1-3303, (Title 54.1, Chapter 33, Section 3303 of the Code).

5. Upon evidence that Dr. Merkel has complied with the requirements in this Consent Order, the Board authorizes the Executive Director of the Board to terminate the probation imposed on Dr. Merkel's license or refer the matter to a Special Conference Committee for a final determination.

Violation of this Consent Order shall constitute grounds for the revocation of the license of Dr. Merkel. In the event Dr. Merkel violates any of the terms and conditions of this Consent Order, a formal administrative hearing shall be convened to determine whether his license shall be revoked.

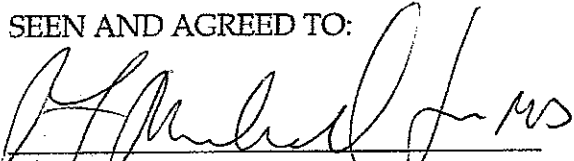
Pursuant to Section 54.1-2400.2 of the Code, the signed original of this Consent Order shall remain in the custody of the Department of Health Professions as a public record and shall be made available for public inspection and copying upon request.

FOR THE BOARD:

For 
William L. Harp, M.D.
Executive Director
Virginia Board of Medicine

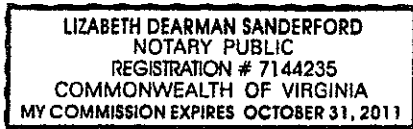
ENTERED: 10/3/2008

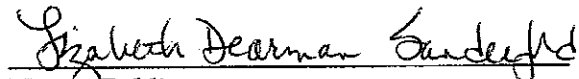
SEEN AND AGREED TO:


Richard Lawrence Merkel, Jr., M.D.

COMMONWEALTH OF VIRGINIA
COUNTY CITY OF Albemarle TO WIT:

Subscribed and sworn to before me, the undersigned Notary Public, in and for the Commonwealth of Virginia, at large, this 1st day of October, 2008, by Richard Lawrence Merkel, Jr., M.D.




Notary Public

Registration Number: 7144235

My commission expires: October 31, 2011



COMMONWEALTH of VIRGINIA

Sandra Whitley Ryals
Director

Department of Health Professions

Perimeter Center
9960 Mayland Drive, Suite 300
Richmond, Virginia 23233-1463

www.dhp.virginia.gov
TEL (804) 367- 4400
FAX (804) 527- 4475

January 28, 2009

Richard L. Merkel, Jr., M.D.
Box 800623, HSC
Charlottesville, Virginia 22908

CERTIFIED MAIL

7160 3901 9845 3426 6112

RE: License No.: 0101-045614

Dear Dr. Merkel:

The Virginia Board of Medicine ("Board") has received verification of your compliance with Terms #1 through #4 of the Consent Order entered October 3, 2008.

Therefore, pursuant to the authority granted by Term #5, I have determined that the indefinite probation and terms placed on your license should be **TERMINATED** effective this date. The record of the Board currently reflects that you have a full and unrestricted license in the Commonwealth of Virginia.

Pursuant to §54.1-2400.2 (F) of the *Code of Virginia*, a signed copy of this letter shall remain in the custody of the Department of Health Professions as a public record, and shall be made available for public inspection and copying upon request.

The Board wishes you well in your future endeavors.

Sincerely,

William L. Harp, M.D.
Executive Director
Virginia Board of Medicine

cc: Renée S. Dixon, Discipline Case Manager [102983]
Jennie Wood, Administrative Assistant
Susan Brooks, Office Manager, APD