

**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**

In re: James Scott Stone, M.D.

Docket No.: MPS 55-0509

STIPULATION AND CONSENT ORDER

The State of Vermont, by and through Attorney General William H. Sorrell, and the undersigned Assistant Attorney General, Terry Lovelace, and Respondent James Scott Stone, M.D., stipulate and agree as follows.

1. James Scott Stone, M.D. (hereafter "Respondent"), holds Vermont medical license No. 042-0008776, issued by the Board of Medical Practice (hereafter "Board") on July 7, 1993. Respondent is a psychiatrist who is certified to treat patients suffering from opiate addiction.
2. Respondent is registered with the Drug Enforcement Agency as holder of an "X-License" and authorized to dispense Suboxone, a controlled substance used to treat patients with opiate addiction.
3. This matter began with a complaint from a former patient/employee of Respondent. Complainant was employed by Respondent at his clinic, Treatment Associates, LLC in Montpelier, Vermont between 2007 and 2009.
4. The Vermont Board of Medical Practice has jurisdiction in this matter pursuant to 26 V.S.A. §§ 1353-1361, 1398, and other authority.

I. Background

5. On May 28, 2009, the Board opened a complaint (Docket No. MPS 55-0509) and

Office of the
ATTORNEY
GENERAL
Montpelier,
Vermont 05609

investigation based on the allegations made by the complainant.

6. The complainant alleged improper hiring practices, patient/employee boundary issues and that Respondent improperly managed and dispensed Suboxone from his clinic.

7. Board Investigator, Philip Ciotti, conducted an investigation of complainant's allegations. The investigation by Mr. Ciottis disclosed that:

a) Respondent's policy was to hire employees to work in his Suboxone clinic without conducting background checks and, as a result, Respondent hired at least one and possibly two employees with prior drug-related felony convictions.

b) Respondent hired a patient to work in his Suboxone clinic without terminating the patient/physician relationship. Respondent continued to treat the patient/employee, supplying her with prescription medication for two years without charting her treatment.

c) Respondent, contrary to federal law, maintained a "medication bank" for "leftover" Suboxone tablets.

d) Respondent improperly disposed of Suboxone tablets at his clinic.

II. Admissions by Respondent James Scott Stone, M.D.

8. Board Investigator Ciotti interviewed Respondent¹, the complainant and witnesses regarding the allegations and facts disclosed in the course of his investigation. In his interview with Investigator Ciotti, and in his testimony before the South Investigative Committee on October 21, 2009, Respondent admitted:

a) That he hired the complainant, who was then his patient, for employment, and employing her without terminating the physician/patient relationship. Respondent admits that he continued to treat the complainant and to provide her with prescription medication. Respondent admitted that he made no entries to the complainant's medical record to document the termination of the physician/patient relationship or her subsequent receipt of medication².

¹ See Report by Investigator Philip J. Ciotti dated May 13, 2009.

² Investigator Ciotti's reviewed the complainant's medical record after obtaining complainant's signed release.

When Respondent was asked by Investigator Ciotti if he thought supplying the complainant with prescription medication was "treatment," he replied "no." He asserted it was not treatment because "he was not tracking her mental status or life status and they only spoke of work related matters."³ He later reversed his opinion and admitted to Investigator Ciotti that his actions were "treatment."

b) That contrary to federal law⁴, Respondent hired a custodian that he knew had "legal issues in the past" and a "drug history,"⁵ but he "believed in giving second chances." Respondent admitted he did not do "background checks" before hiring employees. Respondent admitted that this employee had direct patient contact, although that practice had been discontinued by the time of Investigator Ciotti's Report on May 13, 2009.

That contrary to federal law Respondent hired a receptionist who he knew⁶ had "a remote drug history." The receptionist admitted to Investigator Philip Ciotti that she had a prior felony conviction for prescription drug fraud. Respondent admits that he did not inquire into her criminal record.

c) That Respondent's clinic maintained a "medication bank" of "extra medications" at the Montpelier location. According to Respondent, when he discontinued the medication bank, he "thinks there might have been 15 [tablets of Suboxone] destroyed but he doesn't know for sure. He said he did not know the specifics on the destruction⁷. He said [an employee] handled that."⁸ According to the employee, "two people would destroy the leftover meds and document it on a sheet. This destructions sheet is kept in individual patient files and not centrally located." Disposal of Suboxone is regulated by federal law⁹ which requires following a very precise protocol, including completion of a DEA form 41 and prior notification of the local DEA agent. Respondent admits that that procedure was not observed.

d) That Respondent admitted to investigator Philip Ciotti and to the Investigative Committee that he never initiated or maintained a written inventory or log to document the medication

Investigator Ciotti notes "I saw nothing to indicate a transfer of care to PCP. The chart simply ends with a note that seems to indicate she was 'enjoying her new job' (presumably at Treatment Associates) with subsequent follow-up for a later time that seems to not have taken place. This might be consistent with [complainant's] claim that she continued to see Dr. Stone albeit informally and got her medication in the form of free samples."

³ See Report by Investigator Philip J. Ciotti dated July 15, 2009.

⁴ See 21 C.F.R. Section 1301.76 "... shall not employ ... who has access to controlled substances any person convicted of a felony related to a controlled substance."

⁵ See Investigator Philip Ciotti's Report, page 7, dated May 13, 2009.

⁶ See Investigator Philip Ciotti's Report, page 1, dated June 24, 2009.

⁷ See Investigator Philip Ciotti's Report, page 3, dated May 13, 2009.

⁸ See Investigator Philip Ciotti's Report, page 7, dated May 13, 2009.

⁹ See 21 C.F.R. Section 1307.21

dispensed at his clinic. He admitted that he was unaware of any state or federal requirements¹⁰ to do so.

III. Agreement

9. Respondent knowingly and voluntarily agrees that in lieu of the time, expense, and uncertainty of a public hearing and the possibility of Board disciplinary action, he shall voluntarily accept a public reprimand and the placement of certain conditions upon his Vermont medical licensure. Respondent enters no admission here, but concludes that this agreement is appropriate and in the best interest of all parties. All parties agree that the fair and appropriate disciplinary action in this matter shall consist of the following:

A. Respondent agrees that an assessor or consultant familiar with an addictionologist's practice and approved by the Board, shall be allowed full and unrestricted access to enter all of Respondent's practice locations to conduct a "practice assessment" as more fully described below.

B. Respondent's license to practice medicine shall be designated as "conditioned" for a period of three years, and Respondent shall comply fully and in good faith with each of the terms and conditions of licensure set forth herein, wherever he may practice, until such time as he has been relieved of all conditions herein by express written order of the Vermont Board of Medical Practice.

C. Respondent shall be publicly reprimanded by the Vermont Board of Medical Practice for the conduct set forth above, in addition to the imposition of the disciplinary terms and conditions set forth herein and below.

D. Respondent agrees to attend and successfully complete a practice management course at Case Western or equivalent, subject to the Committee's prior approval, within one year of the effective date of this agreement. Respondent also agrees to complete 25 hours of Continuing Medical Education as set forth below for each year that this agreement is in force. All costs associate therein shall be the responsibility of the Respondent.

¹⁰ Persons required to keep records and file reports, 21 CFR 1301.28(d)(3), 1304.03(c), 1304.03(d), 1304.22(c), and 1306.05(a)

10. Respondent agrees that he has read and carefully considered all terms and conditions in Paragraph's #9 (A-D) above with assistance of counsel and agrees to accept and be bound by these while licensed to practice medicine in the State of Vermont or elsewhere. Respondent is satisfied with all counsel and representation he has received. He agrees and understands that by executing this document he is waiving any right to challenge the jurisdiction and continuing jurisdiction of the Board in this matter, to be presented with any evidence adverse to him, to cross-examine witnesses, and to offer evidence of his own to contest the State's allegations. 26 V.S.A. § 1356; 3 V.S.A. §§ 809, & 814.

11. Respondent's license to practice medicine in the State of Vermont shall be designated as CONDITIONED until such time as Respondent can demonstrate to the Board's satisfaction, full compliance with the conditions in Paragraph #9(A-D) above. Respondent's Vermont license to practice medicine shall remain designated as "Conditioned" until such time as the Board of Medical Practice has removed all terms and conditions upon his medical license. Respondent acknowledges that it is his duty to petition the Board to close this matter after demonstrating full compliance with Paragraph #9(A-D) above. Respondent agrees that he shall not present such a petition for relief from conditions prior to the passage of three years from the date of Board approval of this agreement.

IV. Confidentiality of Information

12. The parties agree that all records or materials prepared pursuant to this agreement for the purposes of evaluation or assessment, as described above and pursuant to this agreement shall be treated as confidential, absent an evidentiary hearing on the merits under 26 V.S.A. §§ 1355-1361. See 26 V.S.A. § 1317 (accessibility and confidentiality of disciplinary matters).

V. Practice Assessments

13. The Board shall designate an "assessor," a physician experienced in both (a) the treatment of persons suffering from opiate addiction with Suboxone, and; (b) in the management of a medical practice devoted to addiction treatment with Suboxone. Respondent may suggest any qualified candidate for consideration by the South Investigative Committee. Candidates shall be selected and recommended by the South Investigative Committee and must be approved by the Board.

14. Respondent and his staff shall fully and completely cooperate with the Board's designated assessor.

15. The Board's designated assessor shall review patient charts, files, logs, records and other documents at his or her discretion, to determine that Respondent's Suboxone practice complies fully with state and federal law.

16. The assessor shall prepare a written report or assessment of his or her findings for the Board. Respondent consents to allow the assessor to prepare and submit to the Board a practice assessment to identify compliance failures.

17. Failures identified in the assessment shall be corrected by Respondent immediately upon receipt of recommendations by the assessor.

18. Practice assessments shall be conducted semi-annually or more often at the discretion of the South Investigative Committee or the Board.

19. Respondent shall bear all costs associated with the assessor's services.

20. Respondent acknowledges that substantial or repeated failures to comply with the terms and conditions herein or recommendations made by the assessor may constitute unprofessional conduct and may result in such further disciplinary action as the Board may deem

appropriate under the circumstances and in light of this agreement. Respondent expressly agrees that he shall abide by and follow all reasonable recommendations that are presented to him by any designated assessor under the terms of this agreement. The Board or its investigators also may communicate directly with any and all assessors regarding their observations, opinions and recommendations.

21. Respondent expressly agrees that he shall promptly sign any and all needed consents and/or waivers of confidentiality, so as to permit full and complete disclosure to the Board of assessment results and any related follow-up review of Respondent's ongoing practice activities.

VI. May Conditionally Continue to Practice,

22. Respondent understands and agrees that despite his licensure being conditional upon compliance with this Stipulation and Consent Order, he may continue to practice medicine as an "X-License" prescriber and manager of other X-Licensed physicians and clinics treating opiate addiction. Respondent shall petition the Board in advance for formal, written approval of any proposed new clinics or sites in addition to those in place at the time of the entry of this Stipulation and Consent Order. Respondent agrees that he shall not practice medicine or see patients at any other site or location without the prior written approval of the Board.

23. Respondent agrees that he shall provide a complete copy of this Stipulation and Consent Order to any and all licensed practitioners with whom he is associated in practice, to any prospective employer or site with which he may be affiliated, and to any state medical board or other licensing authority in any location or jurisdiction where he may seek to practice or where he may make application, so long as this agreement remains in effect.

24. Respondent agrees to ongoing Board monitoring of his Suboxone practices and

agrees that the Board or its designated assessor or agents may review patient charts and prescribing records at any time to examine the basis for prescribing for patients, the adequacy of his record keeping and compliance with state and federal law. Respondent agrees he shall comply promptly with any Board subpoenas for patient and prescribing records and shall immediately produce such records upon request by the Board.

VII. Medical Practice Procedures and Policy

25. Respondent agrees to incorporate the knowledge and skills gained by his attendance and participation in a Practice Management course at Case Western into each of his practice locations.

26. During the life of this agreement Respondent agrees that each and every employee at any of Respondent's practice locations shall complete and sign a written application for employment. By their signature, each employee will attest to the facts disclosed therein regarding prior or pending convictions for crimes involving controlled substances.

27. Respondent shall seek to conduct a reasonable background investigation on each current and prospective employee and demonstrate due diligence to ensure compliance with federal law¹¹ and special hiring requirements for Suboxone clinics.

28. Respondent shall prepare a written office policy/procedure for recruiting and screening candidates for employment. Respondent shall maintain a file for each employee containing a signed application for employment with disclosure of past convictions and/or pending criminal charges. Each employee file shall also contain a pre-employment background check from an independent source to identify convictions that the employee may have failed to voluntarily

¹¹ See 21 C.F.R. Section 1301.76(a) "The registrant shall not employ, as an agent or employee ... any person who has been convicted of a felony offense relating to controlled substances."

disclose.

29. Respondent shall observe and maintain appropriate boundaries¹² with all employees. The observance of appropriate boundaries implicitly includes arms-length hiring and recruitment practices, fair and impartial treatment of all employees and special care regarding medical treatment of employees.

30. Respondent shall designate an office manager to oversee the day to day operations of each practice location.

VIII. Continuing Medical Education

31. Respondent agrees that during the life of this agreement he shall satisfactorily complete each year, at his own expense, at least 25 hours of continuing medical education coursework or programs qualifying for credit in Category I of the Physician's Recognition Award of the American Medical Association, in subjects relating to addiction practice and the purposes of this agreement, i.e., including but not limited to medical ethics, patient boundaries and medical practice record keeping. The Board may require Respondent to complete such specific coursework as may be recommended by the assessor, the South Investigative Committee or by the Board. Proposed coursework selected by Respondent shall be subject to advance review and approval by the South Investigative Committee or the Board. Review and approval or rejection of coursework proposed by Respondent shall timely provided by the South Investigative Committee or the Board.

32. Respondent shall be responsible for ensuring that documentation of and evaluations of Respondent's participation in and satisfactory completion of such coursework are

¹² See American Psychiatric Association, *The Principles of Medical Ethics*, 2009 Ed. Rvsd.

promptly forwarded to the Board for its review. Such documentation must be provided in a manner and form satisfactory to the Board and in no case later than 30 days after Respondent's completion of any individual course. Respondent shall bear all costs.

IX. Meetings with Board or Investigative Committee

33. Respondent agrees that he shall meet with the Board or the South Investigative Committee, if requested, following reasonable notice, for the purpose of discussing his compliance with this agreement and aspects of his medical practice. Respondent shall have the right to be accompanied by and assisted by legal counsel of his choosing during any such meeting.

X. Public Reprimand

34. The parties to this Stipulation and Consent Order agree that other appropriate disciplinary action in this matter, as to the circumstances set forth above with regard to Respondent's Suboxone practice, shall consist of the following:

Respondent James Scott Stone, M.D.
Shall Be Publicly Reprimanded by Order
of the Vermont Board of Medical Practice

The parties agree that this Stipulation and Consent Order shall be a public document, shall be made part of Respondent's licensing file, and shall be reported to other licensing authorities and/or entities including, but not limited to, the National Practitioner Data Bank, the Federation of State Medical Boards, and other licensing, certifying, or privileging entities. The Board's public reprimand of Respondent shall be in addition to the express disciplinary terms and conditions set forth above.

XI. Other Terms and Conditions.

35. Consistent with Respondent's continuing desire to cooperate with the Board of

Medical Practice in its public responsibilities, Respondent agrees that if the State were to satisfy its burden at hearing as to certain of the facts alleged in the complaint and by admissions made by Respondent, a finding adverse to him could be entered by the Board, pursuant to 26 V.S.A. § 1354. The resulting possible sanctions could include revocation of his Vermont medical license.

36. Respondent understands that failure by him to abide by any of the terms and conditions of this Stipulation and Consent Order may be deemed to constitute unprofessional conduct under 26 V.S.A. § 1354(a)(25) and other authorities and could subject Respondent to such further disciplinary action as the Board may deem appropriate.

37. Respondent expressly acknowledges and agrees that engaging in unprofessional conduct, as set forth in 26 VSA §§ 1354 & 1398 may constitute evidence of a violation by him of this agreement and may be sufficient to support findings by the Board that the present terms and conditions of this agreement are inadequate to protect the health, safety and welfare of the public, and thus, could result in a motion by the State for the immediate suspension of Respondent's Vermont medical license.

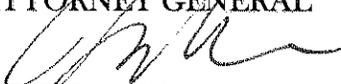
38. The parties agree that if the Board does not accept this agreement in its current form, Respondent and the State shall retain the option of proceeding to an evidentiary hearing on the merits of the State's Specification of Charges in this matter. At any evidentiary hearing following the Board's rejection of this agreement, no reference to this document or negotiations between the parties shall be admissible. However, should the terms and conditions of this Stipulation and Consent Order be deemed acceptable by the Board, the parties request that the Board enter an order conditioning Respondent's license to practice medicine as set forth above, that such license be subject to each of the terms and conditions as set forth herein, and that Respondent be publicly **REPRIMANDED** by the Board for the unprofessional conduct set forth

herein.

Dated at Montpelier, Vermont, this 1 day of Jan, 2010.

STATE OF VERMONT
WILLIAM H. SORRELL
ATTORNEY GENERAL

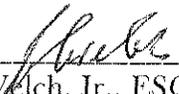
by:


TERRY LOVELACE
Assistant Attorney General

Dated at Montpelier, Vermont, this 19th day of April, 2010.


JAMES SCOTT STONE, M.D.
Respondent

Dated at Rutland, Vermont, this 11th day of April, 2010.


John J. Welch, Jr., ESQ.
Counsel for Respondent

FOREGOING, AS TO JAMES SCOTT STONE, M.D.
APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE

Janice E. Ryan MD David W. Chase MD
David DeWorms MD Gary Sadtler MD
[Signature]
Thomas Young
Peter A. King MD PhD
William H. Stone MD
[Signature] MD

DATED: June 2, 2010

ENTERED AND EFFECTIVE: June 2, 2010