

**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**

In re: Cheryl Swan Gagnon, PA-C)
) Docket No. MPC 129-0816
)

STIPULATION AND CONSENT ORDER

NOW COME Cheryl Swan Gagnon, PA-C, and the State of Vermont, by and through Vermont Attorney General Thomas J. Donovan, Jr., and hereby stipulate and agree to the following in the above-captioned matter:

1. Cheryl Swan Gagnon, PA-C (“Respondent”) holds Vermont medical license number 055.0031022 originally issued by the Vermont Board of Medical Practice on October 6, 2004. Respondent is a physician assistant.
2. Jurisdiction in this matter rests with the Vermont Board of Medical Practice (“the Board”), pursuant to 26 V.S.A. §§ 1353-1357, 3 V.S.A. §§ 809-814, and other authority.

FINDINGS OF FACT

3. The Board opened this matter in August of 2016 upon receipt of a complaint concerning Respondent’s prescribing practices. The matter was assigned to the Central Investigative Committee of the Board (“the Committee”).
4. Respondent practiced medicine at the University of Vermont Medical Center Pain Medicine Clinic from January of 2012 through March of 2017. At the Pain Medicine Clinic, Respondent provided pain management treatment to patients with chronic pain. Since May of 2017, she has been working at the Vermont Center for Integrative Therapy. Respondent represents that she is not

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managing or treating patients with chronic pain, and she is not prescribing opioids as part of her practice at the Vermont Center for Integrative Therapy.

5. The Committee conducted an investigation into Respondent's prescribing practices at the University of Vermont Medical Center Pain Medicine Clinic. The investigation led to the identification of three patients whose care was of particular concern; the Committee analyzed the voluminous records of Respondent's treatment and management of those three patients with chronic pain.
6. Respondent was being supervised by a primary supervising physician at all times relevant hereto. Such supervision included meetings to review her care of patients.
7. The Committee determined that Respondent's treatment of these three patients was not in conformance with the essential standards of acceptable and prevailing practice.
8. The specific instances of treatment that constitute unacceptable patient care and failure to conform to the essential standards of acceptable and prevailing practice, are as follows:
 - a. The records of Respondent's treatment of all three patients included multiple warning signs that the risks outweighed the benefits of Respondent's continued prescribing of high amounts of opioids to treat their chronic pain. Yet, Respondent continued to prescribe high dose opioids to these patients without documenting the required re-evaluations

of the risks and benefits of long-term opioid treatment for the patients' chronic pain.

- b. Respondent failed to consistently document that she considered, and discussed with her patients, the use of alternate non-narcotic treatment modalities and strategies (i.e. physical therapy, weight loss, exercise) to treat chronic pain.
 - c. Respondent prescribed high doses of opioids to patients with obstructive sleep apnea and chronic hypoxia, which can cause concerning side effects (i.e. sedation, daytime somnolence, confusion). Respondent did not document having discussions with these patients of the risks of taking high doses of opioids. She also did not document efforts to decrease the dosing of the opioids.
 - d. Despite evidence suggestive of possible active addiction, diversion, misuse and other red flags that should result in increased monitoring of patients, Respondent did not consistently investigate and address such troublesome behaviors with her patients, or consistently document her response to indicators of aberrant behavior in the medical records.
9. As a result of Respondent's substandard treatment as described in paragraph 8 above, the patients were exposed to increased risk of overdose, addiction or death; although there was no evidence gathered by the Committee that the three patients experienced the same during the period covered by the records obtained by the Board.

CONCLUSIONS OF LAW

10. The Board may find, “that failure to practice competently by reason of any cause on...multiple occasions constitutes unprofessional conduct.” 26 V.S.A. § 1354(b). And “[f]ailure to practice competently includes, as determined by the board... (1) performance of unsafe or unacceptable patient care; or (2) failure to conform to the essential standard of acceptable and prevailing practice.” 26 V.S.A. § 1354(b)(1) and (2).
11. Respondent’s unacceptable treatment of all three patients as described in paragraph eight above was not in conformance with the applicable standard of care for treating patients with chronic pain.
12. Respondent agrees that the Board may enter as its facts and/or conclusions paragraphs one through eleven above, and further agrees that this is an adequate basis for the Board’s actions set forth herein. Any representation by Respondent herein is made solely for the purposes set forth in this agreement.
13. Therefore, in the interest of Respondent’s desire to fully and finally resolve the matter presently before the Board, she has determined that she shall enter into this instant agreement with the Board. Respondent enters no further admission here, but to resolve this matter without further time, expense and uncertainty; she has concluded that this agreement is acceptable and in the best interest of the parties.
14. Respondent acknowledges that she is knowingly and voluntarily entering into this agreement with the Board. She acknowledges she has had the advice of counsel regarding this matter and in the review of this Stipulation and Consent

Order. Respondent is fully satisfied with the legal representation she has received in this matter.

15. Respondent agrees and understands that by executing this document she is waiving any right to challenge the jurisdiction and continuing jurisdiction of the Board in this matter, to be presented with a specification of charges and evidence, to cross-examine witnesses, and to offer evidence of her own to contest any allegations by the State.
16. The parties agree that upon their execution of this Stipulation and Consent Order, and pursuant to the terms herein, the above-captioned matter shall be administratively closed by the Board. Thereafter, the Board will take no further action as to this matter absent non-compliance with the terms and conditions of this document by Respondent.
17. This Stipulation and Consent Order is conditioned upon its acceptance by the Vermont Board of Medical Practice. If the Board rejects any part of this document, the entire agreement shall be considered void. Respondent agrees that if the Board does not accept this agreement in its current form, she shall not assert in any subsequent proceeding any claim of prejudice from any such prior consideration. If the Board rejects any part of this agreement, none of its terms shall bind Respondent or constitute an admission of any of the facts of the alleged misconduct, it shall not be used against Respondent in any way, it shall be kept in strict confidence, and it shall be without prejudice to any future disciplinary proceeding and the Board's final determination of any charge against Respondent.

18. Respondent acknowledges and understands that this Stipulation and Consent Order shall be a matter of public record, shall be entered in her permanent Board file, shall constitute an enforceable legal agreement, and may and shall be reported to other licensing authorities either directly or through medical licensing information sharing centers, including but not limited to: the Federation of State Medical Boards Board Action Databank and the National Practitioner Data Bank. In exchange for the actions by the Board, as set forth herein, Respondent expressly agrees to be bound by all terms and conditions of this Stipulation and Consent Order.

19. The parties therefore jointly agree that should the terms and conditions of this Stipulation and Consent Order be deemed acceptable by the Board, it may enter an order implementing the terms and conditions herein.

ORDER

WHEREFORE, based on the foregoing, and the consent of Respondent, it is hereby ORDERED that:

1. Respondent shall be reprimanded for the conduct set forth above.
2. Respondent shall pay an administrative penalty of \$1,000.00 consistent with 26 V.S.A. § 1361(b). Payment shall be made to the “State of Vermont Board of Medical Practice,” and shall be sent to the Vermont Board of Medical Practice office, at the following address: David Herlihy, Executive Director, Vermont Board of Medical Practice, P.O. Box 70, Burlington VT 05402-0070. The payment shall be due no later than 18 months after this Stipulation and Consent Order is approved by the Board. Respondent may make monthly payments towards the administrative penalty over the 18-month time period.
3. Respondent shall not treat any patient for chronic pain in her current practice setting. For purposes of this paragraph of this Stipulation and Consent Order only, and only in her current practice setting, treatment of chronic pain shall be defined as prescribing any DEA Scheduled Controlled Substance for any single patient for 30 or more days during the year following the date on which such a prescription is written. This condition remains in effect as long as Respondent is employed and treating patients at the Vermont Center for Integrative Therapy.

4. In the event that Respondent returns to a practice that involves prescribing controlled substances to treat and manage patients with chronic pain, the following conditions shall apply:
 - a. Respondent shall successfully complete 20 hours of AMA PRA Category 1 continuing medical education (“CME”) credits on the topic of treating and managing patients with chronic pain. At least ten of the 20 hours shall be on the topic of prescribing opioids to treat chronic pain. The remaining hours shall be on the topic of non-opioid alternative treatments to managing patients with chronic pain. Such credits shall be completed by taking live CME courses. CME credits obtained through online CME courses are not acceptable and will not be approved by the Committee. Respondent shall seek prior approval, in writing, from the Committee for each CME course. Upon successful completion of each CME course, she shall provide the Committee with proof of attendance. Respondent shall also provide the Committee with a brief written narrative of each CME course which will document what she learned from each course, and how she will apply that knowledge to her practice. Respondent shall provide proof of attendance and the written narratives to the Committee within 30 days of completion of each course. Respondent shall be solely responsible for all costs associated with the CME courses.

- b. Respondent shall seek prior written approval from the Committee of any new employment/practice location where she will or may be prescribing controlled substances to treat and manage patients with chronic pain. “Chronic pain” is defined as “pain caused by various diseases or abnormal conditions and that continues longer than 90 days¹.” Respondent shall be permitted to practice medicine only in a structured, group setting. Respondent shall petition the Committee in writing for written approval of the proposed employer/practice location wherein she will be treating and managing patients with chronic pain. In her petition, Respondent shall inform the Committee of the name, location and type of practice that she is proposing. Respondent shall not change her employment/practice location unless and until she receives written approval from the Committee. Any subsequent changes in Respondent’s employment/practice location must also be approved by the Committee in the same fashion as described above in this subparagraph.
- c. Respondent shall retain the services of a “practice monitor” for a minimum of three years, subject to the terms and conditions set forth in the attached “Practice Monitoring Agreement,” which is incorporated by reference and attached hereto as Exhibit A. The three-year practice monitoring requirement will not begin until

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¹ The definition of “chronic pain” was taken from the Vermont Department of Health Rule Governing the Prescribing of Opioids for Pain, effective date July 1, 2017.

the official “start date” as defined in the attached Practice Monitoring Agreement. Respondent shall comply with the terms and obligations of the Practice Monitoring Agreement.

Respondent shall provide a copy of this Stipulation and Consent Order to the practice monitor. Respondent shall be responsible for ensuring that the practice monitor complies with the terms and obligations of the Practice Monitoring Agreement.

- d. In the event that Respondent returns a practice that involves prescribing controlled substances to treat and manage patients with chronic pain, Respondent shall have no more than 10 patients for whom she prescribes opioids for chronic pain. The 10-patient limit will remain in place for one full year from the date that she returns to treating and managing patients with chronic pain. Patients shall be considered to be treated for chronic pain using opioids until such time as the period covered by a prescription written by Respondent for opioids has lapsed. One year after reaching the 10-patient limit and submission of satisfactory practice monitor reports for the period, Respondent may petition the Committee to request to be permitted to prescribe opioids for the treatment of chronic pain to no more than 20 patients. Upon submission of satisfactory practice monitor reports on Respondent’s treatment of up to 20 chronic pain patients for the second year, Respondent may petition the

Committee to request to be permitted to prescribe opioids for the treatment of chronic pain to no more than 30 patients. Upon submission of satisfactory practice monitor reports on Respondent's treatment of up to 30 chronic pain patients for the third year, Respondent may petition the Committee for relief from conditions placed on the number of patients she may treat for chronic pain.

- e. The conditions set forth hereinabove in paragraph 5 shall remain in effect until the Board issues an Order relieving Respondent from the terms and conditions of this Stipulation and Consent Order.

- 5. Respondent shall notify any future employers of the contents of this Stipulation and Consent Order by providing a copy of said document to her employer and her supervising physician(s). This condition shall remain in effect for five years from the date of approval of this Stipulation and Consent Order.

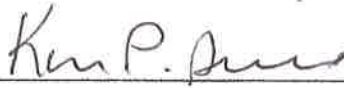
SIGNATURES

DATED at Montpelier, Vermont, this 28th day of September, 2018.

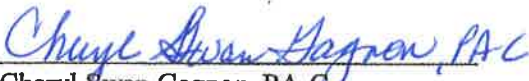
STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

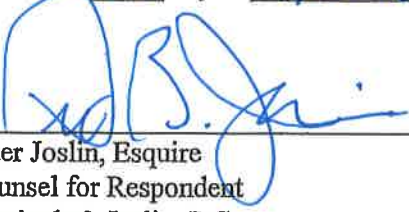
By:


Kassandra P. Diederich
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001

DATED at So. Burlington, Vermont, this 27 day of Sept, 2018.


Cheryl Swan Gagnon, PA-C
Respondent.

DATED at Montpelier, Vermont, this 28th day of September, 2018.


Peter Joslin, Esquire
Counsel for Respondent
Theriault & Joslin, P.C.
141 Main Street, Suite 4
Montpelier, Vermont 05602

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AS TO CHERYL SWAN GAGNON, PA-C
APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE

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DATED: October 3rd, 2018
ENTERED AND EFFECTIVE: October 3rd, 2018

EXHIBIT A

PRACTICE MONITORING AGREEMENT

Vermont Board of Medical Practice

Cheryl Swan Gagnon, PA-C

Docket No. MPC 129-0816

1. Pursuant to a Stipulation and Consent Order entered into by Cheryl Swan Gagnon, PA-C and the Vermont Board of Medical Practice (“the Board”), Ms. Gagnon has retained a practice monitor to monitor her medical practice. The purpose of this Practice Monitoring Agreement is to set forth the terms of the practice monitoring component of Ms. Gagnon’s Stipulation and Consent Order (attached and incorporated hereto by reference). This Agreement will be signed by Ms. Gagnon and the practice monitor approved by the Central Investigative Committee (“the Committee”).
2. Ms. Gagnon is responsible for selecting a practice monitor.
 - a. The practice monitor chosen by Respondent must be a Vermont licensed physician with an unconditioned license.
 - b. Respondent shall seek the Committee’s approval of a practice monitor. Respondent shall provide the Committee, in writing, with the name and curriculum vitae of the proposed practice monitor.
3. The practice monitoring shall start during the first week that Ms. Gagnon begins practicing medicine at a new employment/practice location where she is prescribing controlled substances for the treatment and management of patients with chronic pain (hereinafter referred to as the “start date”).

4. The practice monitor shall report his/her findings in a detailed written report to the Committee on a quarterly basis for three full years. Each report shall be submitted within 30 days of completion of the quarter that is the subject of the report.
5. Ms. Gagnon shall be responsible for ensuring that the practice monitor's reports are timely submitted to the Committee. In the event that any report is submitted more than 45 days after the end of the quarter that is the subject of the report, the number of days by which the report is late shall be added to the three-year monitoring period, unless the Respondent petitions for an exception and such exception is granted for good and reasonable cause.
6. The practice monitoring shall continue for a total of three years from the start date. At the end of the three-year monitoring period, Respondent shall submit a written request to the Committee to end the requirement for monitoring. Such a request shall not be considered by the Committee until Respondent has provided favorable and timely monitoring reports for three complete years. The practice monitoring requirement will not cease until the Committee has approved, in writing, Respondent's request to end the monitoring.
7. In the event that the practice monitor can no longer monitor Ms. Gagnon's practice, Ms. Gagnon shall notify the Committee in writing within five days of receiving notice that the practice monitor can no longer monitor her practice. Ms. Gagnon shall retain the services of a new practice monitor, subject to preapproval by the Committee. Within thirty days of providing written notice to the Committee that the practice monitor can no longer monitor her practice, Ms. Gagnon shall provide the Committee with the name and curriculum vitae of the proposed new practice monitor. The

Committee will provide written notification to Ms. Gagnon indicating whether it approves or disapproves of the new proposed practice monitor.

8. Ms. Gagnon shall provide the practice monitor with a copy of the fully executed Stipulation and Consent Order.
9. As part of each quarterly review, the practice monitor shall review the medical records of 10 patients to whom Ms. Gagnon is prescribing opioids for chronic pain.
10. Ms. Gagnon shall be responsible for ensuring that the following is reviewed by the practice monitor and discussed in the practice monitoring reports:
 - i. The number of patients to whom Ms. Gagnon is prescribing opioids for chronic pain;
 - ii. Whether Ms. Gagnon's prescribing of opioids for chronic pain is in accordance with the standard of care and the Vermont Department of Health Rule Governing the Prescribing of Opioids for Chronic Pain;
 - iii. The appropriateness of the monitoring of patients who are being prescribed opioids for chronic pain;
 - iv. Whether Ms. Gagnon's medical record keeping is in accordance with the standard of care;
 - v. Whether Ms. Gagnon's prescribing, documentation and general patient care practices meet the applicable standard of care; and
 - vi. Recommended improvements to Ms. Gagnon's practice.
- b. Prior to the submission of each monitoring report to the Committee, the practice monitor shall meet with Ms. Gagnon to discuss the findings of his/her practice monitoring report. Respondent shall be responsible for ensuring that

the occurrence of such meetings, as well as what was discussed, is appropriately documented in writing and provided to the Committee upon request.

- c. Each monitoring report shall include the dates and the length of time that he/she observed Ms. Gagnon. Each monitoring report shall also include the dates and length of time that he/she met with Ms. Gagnon to review the findings of his/her monitoring report.
- d. The practice monitor shall review any other documents, records, files, logs, etc. that will provide the requisite information needed to prepare written monitoring reports.
- e. The practice monitor shall speak with Ms. Gagnon's co-workers to obtain the requisite information needed to prepare the written monitoring reports.

- 11. Ms. Gagnon agrees that the Board shall not be responsible for any costs associated with the practice monitor.
- 12. Ms. Gagnon and the practice monitor agree that they have both read this Agreement in its entirety, and agree to all of the terms and obligations set forth herein.
- 13. Ms. Gagnon and the practice monitor agree that the terms of this Agreement cannot be amended or modified in any way without written approval of the Committee.

Signatures

DATED at _____, Vermont, this _____ day of _____, 20__.

Cheryl Swan Gagnon, PA-C
Respondent

DATED at _____, Vermont, this _____ day of _____, 20__.

Practice Monitor