

**IN AND BEFORE THE OKLAHOMA STATE BOARD
OF MEDICAL LICENSURE AND SUPERVISION
STATE OF OKLAHOMA**

STATE OF OKLAHOMA, *ex rel.*)
 THE OKLAHOMA STATE BOARD)
 OF MEDICAL LICENSURE AND)
 SUPERVISION,)
)
 Plaintiff,)
)
 vs.)
)
 GARY R. KINDELL, M.D.)
 LICENSE NO. MD 15655,)
)
 Defendant.)

FILED

JUL 01 2015

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Case No. 14-08-5027

VERIFIED COMPLAINT

The State of Oklahoma, *ex rel.* the Oklahoma State Board of Medical Licensure and Supervision (referred to herein as “State” or “Oklahoma Medical Board”), alleges and states as follows for its Complaint against Gary R. Kindell, M.D. (referred to herein as, “Defendant” or “Respondent”):

1. The Oklahoma Medical Board is a duly authorized agency of the State of Oklahoma empowered to license and oversee the activities of physicians and surgeons in the State of Oklahoma pursuant to 59 Okla. Stat. § 480 *et seq.*
2. Defendant, Gary R. Kindell, M.D., holds and has maintained Oklahoma medical license number 15655 since 1986. The acts and omissions complained of herein were made while Defendant was acting as a physician pursuant to his medical licenses conferred upon him by the State of Oklahoma and the State of Alaska. Such acts and omissions occurred within the physical territory of the State of Alaska.
3. Defendant is licensed as a physician in the State of Alaska, Department of Commerce, Community and Economic Development, Division of Corporations, Business and Professional Licensing, State Medical Board (referred to herein as, “Division” or “Alaska Medical Board”), and holds medical license number MED S 6365; this license was issued on July 28, 2008 and is currently inactive. Defendant is also licensed as a physician in the State of Texas, license number G6735 and is currently inactive.
4. Defendant moved to Fairbanks Alaska and, from June 2008 to January 2012, performed work as Medical Director at the Interior Community Health Center. From February 2012 to March 2014, Defendant performed work for the Laser Vein Center of Alaska, at a satellite clinic in Wasilla, Alaska; during which time, Defendant’s Explanatory Letter of events indicates, his practice did not require much in the way of pain medication

prescribing – less than ten instances where he needed to prescribe an opiate or opioid medication. On March 28, 2014, the satellite clinic closed.

5. On July 7, 2014, Defendant applied for renewal of his OBNDD Registration with the intention of returning to Oklahoma for a potential position with CareATC, Tulsa, Oklahoma, and to be near family. Defendant provided his Explanatory Letter of events dated July 2, 2014, along with his OBNDD Registration Application. Explanatory Letter attached hereto as “**Exhibit 1.**”
6. On Defendant’s license renewals dated February 17, 2013 and January 25, 2014, he properly notified the Oklahoma Medical Board of the Alaska Medical Board disciplinary action against him.
7. On August 13, 2014, Oklahoma Medical Board Investigator LC contacted Defendant regarding his intentions to return to Oklahoma. Applicant is currently living in Chandler, Oklahoma. In November 2014, Defendant accepted a position with Black Hawk Health Center, Stroud, Oklahoma, performing Clinical Quality Health Care Services to Native Americans.

Allegations of Unprofessional Conduct

1. In May 2010 Defendant was notified by the Alaska Medical Board that four Fairbanks’ pharmacists lodged complaints against him regarding the quantities of controlled dangerous substances (CDS) Defendant was prescribing to two patients, RH and DR. Specifically, Defendant was overprescribing medication, providing frequent and early refills, and duplicating written and faxed prescriptions that were resulting in double prescriptions. Both patients died of overdoses in 2010 from CDS written by Defendant.
2. The Alaska Medical Board had a medical expert review the patient files of RH and DR. It was concluded that in the case of patient RH, Defendant did not have a plan to deal with the cause of pathology of the patient’s back and shoulder pain. There is a possibility that RH committed suicide in early 2010 while severely depressed and grieving over the loss of his wife. In the case of patient DR, underlying pathology of the patient’s condition was not addressed and escalating dosages of opioids were being prescribed.
3. On July 26, 2012 by way of a Board Order “**Exhibit 2,**” the Division adopted and made effective a Consent Agreement and Proposed Decision and Order (“Consent Agreement”), reviewed and agreed to by Defendant and his counsel. The Consent Agreement is incorporated herein by reference and made a part hereof “**Exhibit 3.**” The following are the Admissions/Facts identified in the Consent Agreement:
 - a. In early 2010, the Division received four complaints against Respondent from four pharmacists in the Fairbanks area. All of the pharmacists were concerned about the excessive amount of medication that the Respondent was prescribing to patients.

- b. Later in 2010, the Division obtained Respondent's prescription records from all of the pharmacies in the Fairbanks, Alaska area. The Division also obtained the medical records from two of Respondent's patients, RH and DR, who were specifically identified by the pharmacists as being of particular concern.
 - c. After an investigation, and a review by an Expert in Anesthesiology and Pain Management, it was determined that Respondent was improperly prescribing medication to his patients. Specifically, Respondent was overprescribing medication, providing frequent and early refills, and duplicating written and faxed prescriptions that were resulting in double prescriptions.
 - d. Patient DR passed away shortly after seeing Respondent as a patient; however, the Division did not make a causal connection between the medication Respondent prescribed to DR and his subsequent death.
 - e. Respondent has fully cooperated with the investigation, providing all requested records and agreeing to, and cooperating with, a recorded interview.
 - f. Respondent admits that as a result of the above facts, grounds exist for possible suspension, revocation, or other disciplinary sanctions of his license, pursuant to AS 08.01.075, 08.64.326(a)(5), 08.64.326(a)(8)(A), and 12 AAC 40.970.
4. The Consent Agreement ORDERS that the Alaska license issued to Respondent be subject to certain terms and conditions including, but not limited to: (1) serving a five year probationary period, (2) attending yearly CME for pain management practice for five years, (3), agree to have his medical practice reviewed by a Practice Monitor, and (4) reimbursing the Alaska Medical Board for the cost of the investigation.
 5. Within the scope and knowledge of the State, as of the date of this filing, Defendant has complied with the terms and conditions of the Consent Agreement. The following terms and conditions of the Consent Agreement remain active, in progress and/or have not been satisfied:

- a. Paragraph A – Duration of Probation

Respondent's license shall be on probation for five (5) years from the effective date of this Order. If Respondent fully complies with all of the terms and conditions of this license probation, the probationary period will end as conditioned under this Order. The five (5) year probationary period will not be reduced by the following periods:

- (1) any absence from the state in excess of thirty (30) days.
- (2) any absence from the state in excess of sixty (60) aggregate days in a single year.
- (3) any period during which Respondent is not a resident of the State of Alaska.
- (4) any period in which Respondent does not hold an active license in Alaska.

It will be Respondent's duty to inform the Board's agent in writing in advance of any absence from Alaska and/or move from Alaska to another licensing jurisdiction.

b. Paragraph B – Violation of Agreement

If Respondent fails to comply with any term or condition of this Consent Agreement, the Division may enforce this agreement by immediately suspending Respondent's license, without an additional order from the Board or without a prior hearing, for a violation of this agreement. In addition, any suspended portion of the civil fine will be immediately due.

If Respondent's license is suspended under this paragraph, as provided above, he will be entitled to hearing, and he may request the hearing on an expedited basis, regarding the issue of the suspension. If Respondent's license is suspended, he will continue to be responsible for all license requirements pursuant to AS 08.64.

c. Paragraph C – Respondent Address

It is the responsibility of Respondent to keep the Board's agent advised in writing at all times of his current mailing address, physical address, telephone number, current employment, and any change in employment. Failure to do so will constitute grounds for suspension of his license in accordance with paragraph "B" above.

d. Paragraph D – Compliance with Laws

Respondent shall obey all federal, state and local laws, all statutes and regulations governing the licensee.

e. Paragraph H – Address of the Board

All required reports or other communication concerning compliance with this Consent Agreement shall be addressed to:

Jeffery Townsend, Investigator
Division of Corporations, Business and Professional
Licensing
550 West 7th Avenue, Suite 1500
Anchorage, Alaska 99501-3567
Phone 907-269-8133 / Fax 907-269-8195

f. Paragraph J – Continued Education

In addition to yearly CME requirements under Alaska statutes, Respondent shall attend and satisfactorily complete no less than forty (40) hours of pain management education each year while on probation effective as soon as the Order is signed by the Board.

The program course curriculum and/or senior training physician must be approved by the Board's agent prior to the Respondent participating in the education. After completion of academic courses and hands-on training, a certificate of satisfactory completion or detailed letter is to be provided to the Board's agent with specifics on the educational material covered.

g. Paragraph M – Hospital Privileges

Within ten (10) calendar days of the effective date of this Consent Agreement, Respondent shall notify the chief of Staff and Administrator of any hospital in which Respondent has privileges of the terms of his probation, provide them a copy of this Consent Agreement, and shall cause reports of Respondent's progress and performance to be submitted to the Board on a quarterly basis, unless ordered to do otherwise by the Board.

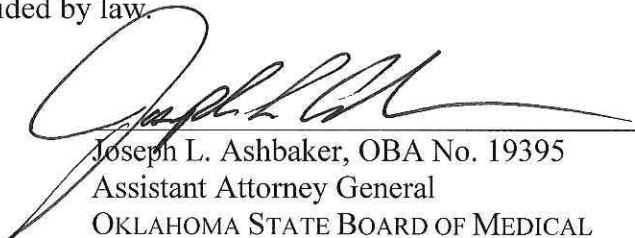
h. Paragraph O – Periodic Review with the Board

While under license probation and upon the request of the Board or its agent, Respondent shall report in person to the Board or its agent to allow a review of his compliance with this probation. Respondent shall be excused from attending any interview only at the discretion of the person requesting the interview.

6. Based on the foregoing, the Defendant is guilty of unprofessional conduct as follows:
- a. Prescribing, dispensing or administering of controlled substances or narcotic drugs in excess of the amount considered good medical practice, or prescribing, dispensing or administering controlled substances or narcotic drugs without medical need in accordance with published standards, in violation of 59 O.S. § 509(16) and Okla. Admin Code §§ 435:10-7-4(2), (24), (27).
 - b. Failure to maintain an office record for each patient which accurately reflects the evaluation, treatment, and medical necessity of treatment of the patient, in violation of 59 O.S. § 509(18) and Okla. Admin Code § 435:10-7-4(36).
 - c. Engaging in the indiscriminate or excessive prescribing, dispensing or administering of Controlled or Narcotic drugs, in violation of Okla. Admin. Code § 435:10-7-4(1).
 - d. Disciplinary action of another state or jurisdiction against a license or other authorization to practice medicine and surgery based upon acts of conduct by the licensee similar to acts or conduct that would constitute grounds for action as defined in this section, a certified copy of the record of the action taken by the other state or jurisdiction being conclusive evidence thereof, in violation of Okla. Admin Code § 435:10-7-4(31).

CONCLUSION

Given the foregoing, the undersigned requests the Oklahoma Medical Board conduct a hearing, and, upon proof of the allegations contained herein, impose a term of probation with standard and specific terms of probation and include the same requirements and conditions contained in the Consent Agreement that was adopted by the Alaska Medical Board on July 26, 2012, until such time as the five (5) year probation has expired. Or such disciplinary action as authorized by law, up to and including suspension or revocation and any other appropriate action with respect to the Defendant's professional license, including an assessment of costs and attorney's fees incurred in this action as provided by law.

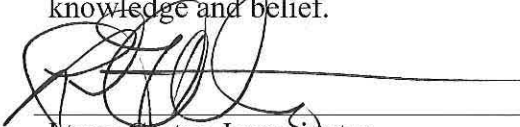


Joseph L. Ashbaker, OBA No. 19395
Assistant Attorney General
OKLAHOMA STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION
101 N.E. 51st Street
Oklahoma City, Oklahoma 73105
405/962.1400
405/962.1499 – Facsimile

VERIFICATION

I, Larry Carter, under penalty of perjury, under the laws of the State of Oklahoma, state as follows:

1. I have read the above Complaint regarding the Defendant, Gary R. Kindell, M.D.;
and
2. The factual statements contained therein are true and correct to the best of my knowledge and belief.



Larry Carter, Investigator
OKLAHOMA STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION

Date: July 1, 2015
Oklahoma County, OK
Place of Execution

Exhibit 1



Oklahoma BNDD Registration Application

**Gary R. Kindell, M.D. (Expired OBND No. - 17580)
July 2, 2014**

Explanatory Letter

Re: Physical Business Address

The address I have listed on my application is my home address in Alaska and is the same address that is on my DEA certificate. The clinic where I was working in Wasilla, Alaska closed on March 28, 2014, so I changed my DEA certificate address to that of my home. The potential clinic where I will be working will be in Oklahoma City, but its location has not yet been determined. It will either be a new structure or a leased space. My potential employer is CareATC out of Tulsa, and I am due to have an interview with them in about two weeks. (I spoke with an OBND employee in Registration who suggested that in this instance, I use my Alaska address. I will certainly notify OBND of the address change once I know the physical address of the practice.)

Re: Non-renewal of OBND Registration

My OBND Registration has been expired for more than 6 months as my full-time medical practice has been in the State of Alaska since 2008. I have not prescribed, administered, or dispensed CDS in Oklahoma since my registration expired.

Re: Alaska State Medical Board Action of July 2012

Below, I have outlined the timeline of events leading up to the Alaska State Medical Board Action and my current status. I would add that I have never been involved in a circumstance similar to this since beginning a solo practice in Oklahoma in 1986 and that I have never been involved in a lawsuit. Please note that I was not involved in patient care during the year 2007 as I was waiting for a 'non-compete clause' to expire with my former employer such that I could open a practice in Stillwater, Oklahoma. Due to economic changes, this plan never came to fruition. Additionally, I would like to state that I am not a chronic pain patient myself and only rarely in the past ever used a legal controlled substance for acute pain relief.

In May 2008, my wife and I moved from Stillwater, Oklahoma to Fairbanks, Alaska where I had been hired to work in a community health center, and I began practice there in late

June of that year. At the time I began, there had been a recent, major turnover of providers at the institution, and the clinic had a continually high turnover of nursing staff throughout my time there. On my arrival, there was only one provider remaining who had worked at the clinic for over two years, and she was there only two days per week. This led to a group of nurses and providers who had very little long-term knowledge of the patients who utilized the clinic which had a primary goal of serving the uninsured and underinsured. Additionally, the clinic was using paper records at that time and transitioned to electronic records about four months after I started. This transition, which was still in process when I left the clinic at the end of January 2012, also posed problems with respect to a more complete understanding of the patient by the provider. When I left the clinic after having worked there for a little over three and one-half years, I was the senior-most of six medical providers. I also dealt with the greatest number of chronic pain patients, many of whom additionally suffered significant mental health disorders.

[Four asides: 1) A particular frustration for me as a practitioner at this clinic was that even with evidence of significant need, I was not allowed to establish a Suboxone Program, for which I have certification. Prior to moving to Fairbanks, I managed opioid-dependent patients through a Suboxone Program in Oklahoma with fairly good success. 2) At the clinic in Fairbanks, I served as Medical Director and established the clinic's Narcotic Review Board such that any provider could bring a case forward to discuss with others prior to addressing a particular patient issue. This was to allow the provider a chance at maintaining a good relationship with that patient, continue to work with them, and not hinder that relationship by having to be unnecessarily confrontational over a pain management issue. The provider could defer to the Narcotic Review Board, and the patients seemed to accept this quite well. (As a Community Health Center, we dealt with many patients who had very few, if any other, options for care. Too 'heavy a hand' would have pushed many of them out to no medical management except through the Emergency Room.) 3) I was a certified Medical Review Officer (MRO) for eight years and dealt with many urine drug screening issues. I developed the Urine Drug Screen Protocol at the clinic in Fairbanks as, on my arrival, they were 1) not checking urine temperatures and 2) not sending 'positive' screens for confirmation. 4) As I managed a fair number of chronic pain/opioid dependent patients, other community providers referred patients to me for ongoing care. This led to a "no more pain patients" dictum from the clinic administration which resulted in a whole host of problems which I won't detail.]

check for rec

In May of 2010, I received the first of two letters from the Alaska State Medical Board relating that a complaint had been filed regarding my management of a particular patient. The letter did not relate who filed the complaint, and I heard nothing further regarding it. The clinic Executive Director suggested that I contact an attorney for potential need of legal advice. I discussed the case with a Fairbanks attorney and told him that I did not feel that it had any merit. He advised me to not contact the Medical Board investigator as "They are not your friends.". In July 2010, I received a second letter relating that another complaint had been received regarding my prescribing for a different patient and, again, I spoke with the attorney and had no further communication from the State Medical Board until 2011

when they requested a phone interview. This interview was done at the attorney's office and done under oath. (It was at the time of this interview that I learned that both complaints had been sent in by local pharmacists and that two additional letters had been sent on the second case. The attorney asked why I had not been notified of the other two letters, and we were told that since they involved the same patient, the investigator opted to not to send me notification.) The interview went well, and I was comfortable with both the questions asked and my answers. Again, no further communication was received from the State Medical Board or investigator.

In the fall of 2011, I was approached by a Dr. Donald Ives regarding the possibility of working with him in his Laser Vein Centers and gave notice in October 2011 to the community health center that I would be leaving to join Dr. Ives' practice. My last patient contact at the health center in Fairbanks was at the end of January 2012. I began work at the Laser Vein Centers on February 1, 2012 and moved from Fairbanks to Palmer, Alaska in May of 2012 to work in the Wasilla clinic. I did discuss the two filed complaints that I had received from the State Medical Board with Dr. Ives prior to hire and related to him that I had heard nothing since the phone interview.

In May of 2012, three months after I started work at the Laser Vein Centers (and two years after the initial complaint was filed), I received notification from the State Medical Board relating that they felt that there was reason to pursue the complaints regarding my management of the previously mentioned two patients. I discussed the letter and its implications with my attorney who later contacted the Medical Board investigator. I had a meeting later in May with the attorney who related that the investigator had outlined a Consent Agreement between the State Medical Board and me which would consist of:

- My agreeing that I wrongly prescribed.
- There would be no restriction of either my medical license or DEA license.
- That I would serve a five-year state medical license probation.
- That I would agree on having a Practice Monitor and Supervising Physician for oversight of my pain management for six months.
- That I would attend yearly pain management CME for five years.
- That I would pay a fine to the State of Alaska.

Prior to this Consent Agreement being implemented, it was going to need to be approved by the Alaska State Medical Board.

I discussed the two cases with my attorney and related that they both were not out of line with standard, or at least usual, practice and asked if it would be best to decline accepting the Consent Agreement.

**[Please note that I fully realize that on Page 2 in Section 'c' of the Consent Agreement it states that there was "a review by an Expert in Anesthesiology and Pain Management", but these two patients were not managed in an extraordinary manner. (My attorney had the two cases reviewed by a Dr. Helman, and I have included a letter dated December 15, 2010 relating his assessment for your review.) The first complaint filed was on patient DR (a long-standing clinic patient) with whom I had worked very hard after the passing of his significant other in January 2009. He was quite depressed, and I tried to get him into counselling to no avail. As time passed, he began to do better, and he did not feel that he

needed help with his mental state. While following his depression, I did continue to treat him for chronic low back pain which had been managed through the clinic far prior to my arrival. While I do not know the immediate circumstances, he committed suicide in early 2010. It was very shortly after his obituary was included in the local paper that I received the first letter from the State of Alaska relating that a complaint had been filed against me which, unbeknownst to me at the time, had been filed by a pharmacist. This pharmacist had previously related to me that she had some legal issues with this patient in the past. While I did not confirm this, it is my belief that the pharmacist thought that he had died as a result of his use of pain medication.])**

The attorney related that while I could probably win the two presented cases, according to state law, it would allow the investigator to access all clinic records at the community health center for review of any other patient management case deemed appropriate. Given that this could potentially involve defending my management of hundreds of patients, I felt it best to accept the Consent Agreement as I had already moved on to a different employer and significantly different type of practice. My practice with the Laser Vein Centers did not require much in the way of pain medication prescribing, and accepting the Consent Agreement would end that process.

I did not agree with some of the wording and some of the determinations as listed in the Consent Agreement and asked that they be changed. Some of the requests were allowed and others were not. On Page 2, Section 'c' of the Consent Agreement, it is stated that I had been "duplicating written and faxed prescriptions that were resulting in double prescriptions". While I accepted a determination of overprescribing and understand the need for avoidance of patient unintentional self-harm and prescription drug diversion, I would like for this reviewer to know that I did not supply patients with "double prescriptions". We were not able to fax controlled substance prescriptions as e-prescribing was not in place at that time, so I am not clear regarding this allegation.

The State Medical Board met in late July 2012 and approved the Consent Agreement as it stood, and I have been compliant with its requirements. To fulfill the requirements of my license probation, all that remains is three years of practice in Alaska and 40 hours of approved pain management CME each of those three years.

[I feel the overall outcome of this Consent Agreement would have been different had I attended the Medical Board meeting when my case was reviewed. When I learned of the meeting date and location, I had already scheduled a guided fishing trip and airline flights for my sister and brother-in-law who were going to be visiting from Texas. I asked my attorney if I was required to be at the meeting, and he related that it was not necessary. I asked if he was planning on attending, and he stated that he would attend either in person or through a teleconference arrangement. I later learned that he had not attended, so I had no representation.])

**[A few years prior to my arrival in Fairbanks, a local physician was convicted of taking advantage of four or five disadvantaged women with part of the activity involving opioid prescriptions. With this as a backdrop, I surmise that this is why the investigation

was seemingly (to me) prolonged. I feel that they were concerned that I was involved in some illegal activity and spent the time to rule this out. Had I been an imminent threat to public health, I would have expected them to contact me much more quickly. I spent a great deal of time and effort with my patients and actually had the privilege of caring for one of the women who had been sexually and mentally abused by the Fairbanks physician. When I first gained her as a patient, it was very difficult to address her physical health as she kept relating her anger at the physician and brought photographs and newspaper clippings of the discovery and trial for my review. Over some time, I gained enough trust from her that she took my recommendation to seek mental health assistance to help her move on from this horrible ordeal. When I related to her that I was moving to a different practice, she wrote me two very kind letters of thanks, and I have kept those letters as cherished gifts from a woman who, hopefully, will proceed down a much different path.]**

I would like to mention that during the time I worked at the Laser Vein Centers of Alaska (February 2012 through March 2014), I had very few (less than ten) instances where I needed to prescribe an opiate or opioid medication in the management of the patients I served. The clinic in which I worked was closed on March 28, 2014 due to financial issues, and the owner related that he no longer needed my services.

In closing, I would like to add that my application for renewal of my OBNDD Registration is due to my application for a practice opportunity in Oklahoma. As the clinic in Wasilla was closed and no local opportunities were available, we were going to have to move, and my wife is very interested in returning to Oklahoma to be closer to family and six grandkids. The potential Oklahoma employer is aware of my Alaska medical license probationary status.

Respectfully submitted,



Gary R. Kindell, M.D.

Exhibit 2

State of Alaska
Department of Commerce, Community and Economic Development
Division of Corporations, Business and Professional Licensing
550 West 7th Avenue, Suite 1500
Anchorage, Alaska 99501-3567
Telephone 907-269-8160 Fax 907-269-8195

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STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC
DEVELOPMENT
DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING
BEFORE THE STATE MEDICAL BOARD

In the Matter of:)
)
GARY KINDELL, M.D.)
)
Respondent)

Case No. 2010-000495
Case No. 2011-000187
Case No. 2011-000188
Case No. 2011-000189

BOARD ORDER

The State Medical Board (Board) for the State of Alaska, having examined the Consent Agreement and Proposed Decision and Order, Case Nos. 2010-000495, 2011-000187, 2011-000188, and 2011-000189, Respondent, license number MED S 6365, adopted the Consent Agreement and Decision and Order in this matter.

This Consent Agreement takes effect immediately upon signature of this Order in accordance with the approval of the Board.

The Division may enforce the Consent Agreement by immediately suspending Respondent's license, without an additional order from the Board or without a prior hearing, for a violation of the Consent Agreement.

DATED this 26th day of July, 2012, at
Soldotna, Alaska.

STATE MEDICAL BOARD

By: Ed Hall PA-C
President

Exhibit 3

State of Alaska
Department of Commerce, Community and Economic Development
Division of Corporations, Business and Professional Licensing
550 West 7th Avenue, Suite 1500
Anchorage, Alaska 99501-3567
Telephone 907-269-8160 Fax 907-269-8195

1 STATE OF ALASKA
2 DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC
3 DEVELOPMENT
4 DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING
5 BEFORE THE STATE MEDICAL BOARD
6

7
8 In the Matter of:)
9)
10 GARY KINDELL, M.D.)
11)
12 Respondent)

13 Case No. 2010-000495
14 Case No. 2011-000187
15 Case No. 2011-000188
16 Case No. 2011-000189

17
18 CONSENT AGREEMENT
19

20
21 IT IS HEREBY AGREED by the Department of Commerce, Community and
22 Economic Development, Division of Corporations, Business and Professional Licensing
23 (Division) and Gary Kindell, M.D. (Respondent) as follows:

24 1. Licensure. Respondent is currently licensed as a physician in the State of Alaska,
25 and holds license number MED S 6365. This license was first issued on July 28, 2008 and
26 will expire unless renewed by December 31, 2012.

27 2. Admission/Jurisdiction. Respondent admits and agrees that the State Medical
28 Board (Board) has jurisdiction over the subject matter of his license in Alaska and over this
29 Consent Agreement.

30 3. Admission/Facts. Respondent admits to the following facts:

31 a) In early 2010, the Division received four complaints against Respondent from
32 four pharmacists in the Fairbanks area. All of the pharmacists were concerned about the
33 excessive amount of medication that Respondent was prescribing to patients.

34 b) Later in 2010, the Division obtained Respondent's prescription records from all
35 of the pharmacies in the Fairbanks area. The Division also obtained the medical records
36 from two of Respondent's patients, RH and DR, who were specifically identified by the
37 pharmacists as being of particular concern.

CONSENT AGREEMENT
Gary Kindell, M.D.
Page 1 of 10

State of Alaska
Department of Commerce, Community and Economic Development
Division of Corporations, Business and Professional Licensing
550 West 7th Avenue, Suite 1500
Anchorage, Alaska 99501-3567
Telephone 907-269-8160 Fax 907-269-8195

1 c). After an investigation, and a review by an Expert in Anesthesiology and Pain
2 Management, it was determined that Respondent was improperly prescribing medication to
3 his patients. Specifically, Respondent was overprescribing medication, providing frequent
4 and early refills, and duplicating written and faxed prescriptions that were resulting in
5 double prescriptions.

6 d) Patient DR passed away shortly after seeing Respondent as a patient; however,
7 the Division did not make a causal connection between the medication Respondent
8 prescribed to DR and his subsequent death.

9 e) Respondent has fully cooperated with this investigation, providing all requested
10 records and agreeing to, and cooperating with, a recorded interview.

11 f) Respondent admits that as a result of the above facts, grounds exist for possible
12 suspension, revocation, or other disciplinary sanctions of his license pursuant to
13 AS 08.01.075, 08.64.326(a)(5), 08.64.326(a)(8)(A), and 12 AAC 40.970.

14 4. Formal Hearing Process. It is the intent of the parties to this Consent Agreement
15 to provide for the compromise and settlement of all issues which could be raised by an
16 Accusation to revoke, suspend, or impose disciplinary sanctions against Respondent's
17 license through a formal hearing process.

18 5. Waiver of Rights. Respondent consulted with an attorney of his own choosing
19 and he has a right to an administrative hearing on the facts in this case. Respondent
20 understands and agrees that by signing this Consent Agreement, Respondent is waiving his
21 right to a hearing. Further, Respondent understands and agrees that he is relieving the
22 Division of any burden it has of proving the facts admitted above. Respondent further
23 understands and agrees that by signing this Consent Agreement he is voluntarily and
24 knowingly giving up his right to present oral and documentary evidence, to present rebuttal
25 evidence, to cross-examine witnesses against Respondent, and to appeal the Board's
26 decision to Superior Court.

27 6. Effect of Nonacceptance of Consent Agreement. Respondent and the Division
28 agree that this Consent Agreement is subject to the approval of the Board. They agree that,
29 if the Board rejects this Consent Agreement, it will be void, and an Accusation may be
30 filed. If this Consent Agreement is rejected by the Board, it will not constitute a waiver of

1 Respondent's right to a hearing on the matters alleged in an Accusation and the admissions
2 contained herein will have no effect. Respondent agrees that, if the Board rejects this
3 Consent Agreement, the Board may decide the matter after a hearing, and its consideration
4 of this Consent Agreement shall not alone be grounds for claiming that the Board is biased
5 against Respondent, that it cannot fairly decide the case, or that it has received ex parte
6 communication.

7 7. Consent Agreement, Decision and Order. Respondent agrees that the Board has
8 the authority to enter into this Consent Agreement and to issue the following Decision and
9 Order.

10
11 **PROPOSED DECISION AND ORDER**

12
13 IT IS HEREBY ORDERED that the license issued to Respondent is under
14 probation. This license shall be subject to the following terms and conditions of license
15 probation.

16
17 A. Duration of Probation

18 Respondent's license shall be on probation for five (5) years from the effective
19 date of this Order. If Respondent fully complies with all of the terms and conditions of this
20 license probation, the probationary period will end as conditioned under this Order. The
21 five (5) year probationary period will not be reduced by the following periods:

- 22 (1) any absence from the state in excess of thirty (30) continuous days.
23 (2) any absence from the state in excess of sixty (60) aggregate days in a single
24 year.
25 (3) any period during which Respondent is not a resident of the State of Alaska.
26 (4) any period in which Respondent does not hold an active license in Alaska.

27 It will be Respondent's duty to inform the Board's agent in writing in advance of
28 any absence from Alaska and/or any move from Alaska to another licensing jurisdiction.
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1 B. Violation of Agreement

2 If Respondent fails to comply with any term or condition of this Consent
3 Agreement, the Division may enforce this agreement by immediately suspending
4 Respondent's license, without an additional order from the Board or without a prior hearing,
5 for a violation of this agreement. In addition, any suspended portion of the civil fine will be
6 immediately due.

7 If Respondent's license is suspended under this paragraph, as provided above, he
8 will be entitled to hearing, and he may request the hearing on an expedited basis, regarding
9 the issue of the suspension. If Respondent's license is suspended, he will continue to be
10 responsible for all license requirements pursuant to AS 08.64.

11
12 C. Respondent Address

13 It is the responsibility of Respondent to keep the Board's agent advised in writing
14 at all times of his current mailing address, physical address, telephone number, current
15 employment, and any change in employment. Failure to do so will constitute grounds for
16 suspension of his license in accordance with paragraph 'B' above.

17
18 D. Compliance with Laws

19 Respondent shall obey all federal, state and local laws, all statutes and regulations
20 governing the licensee.

21
22 E. Authorization

23 Within ten (10) calendar days of a request by the Board's agent, Respondent will
24 sign all authorizations necessary for the release of information required by this Consent
25 Agreement.

26
27 F. Noncooperation by Reporting Persons

28 If any of the persons required by this Order to report to the Board, fails or refuses
29 to do so, and after adequate notice to Respondent to correct the problem, the Board may
30 terminate probation and invoke other sanctions as it determines appropriate.

1 All costs are the responsibility of the Respondent.

2

3 G. Good Faith.

4 All parties agree to act in good faith in carrying out the stated intentions of this
5 Consent Agreement.

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7 H. Address of the Board

8 All required reports or other communication concerning compliance with this
9 Consent Agreement shall be addressed to:

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Jeffery Townsend, Investigator
Division of Corporations, Business and Professional Licensing
550 West 7th Avenue, Suite 1500
Anchorage, Alaska 99501-3567
Phone 907-269-8133 / Fax 907-269-8195

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It is the responsibility of Respondent to keep the Board's agent advised in writing at all times of his current mailing address, physical address, telephone number, current employment, and any change in employment.

Failure to provide notice of any changes within 10 calendar days will constitute grounds for suspension of his license in accordance with paragraph 'B' above.

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I. Re-Education

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Respondent shall physically attend and complete the University of Wisconsin Medical School's 10th Annual Comprehensive Pain Board Review Symposium (www.ocpd.wisc.edu) located in Madison, Wisconsin. Respondent shall provide a certificate of satisfactory completion to the Board's agent. Completion of an on-line course will not meet the Board's requirement under this paragraph.

This re-education course will not be used to satisfy continuing medical education (CME) requirements nor will it be used to satisfy continued education requirements imposed by the Board.

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All costs are the responsibility of the Respondent.

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J. Continued Education

In addition to yearly CME requirements under Alaska statutes, Respondent shall attend and satisfactorily complete no less than forty (40) hours of pain management education each year while on probation effective as soon as the Order is signed by the Board.

The program course curriculum and/or senior training physician must be approved by the Board's agent prior to the Respondent participating in the education. After completion of academic courses and hands-on training, a certificate of satisfactory completion or detailed letter is to be provided to the Board's agent with specifics on the educational material covered.

All costs are the responsibility of the Respondent.

K. Practice Monitor and Supervising Physician

Within thirty (30) days of approval of this Consent Agreement by the Board, Respondent shall contract with a physician practice monitor who is licensed in Alaska with no prior disciplinary action by the Board, and with a minimum of five (5) years of practice in family medicine, to monitor the Respondent's medical practice for a six (6) month period.

Within thirty (30) days of adoption of this Consent Agreement by the Board, the Respondent shall contract with a fellowship trained supervising physician certified by the American Board of Anesthesiology with special certification in Pain Medicine or certified in pain management by the American Academy of Pain Medicine. This specialist must be licensed in Alaska, with a minimum of five (5) years of practice in their specialty. This specialist will review pain management charts for a six (6) month period.

Before entering an agreement with a physician practice monitor and a supervising physician, the Respondent shall provide the Board's agent with the names and contact information as well as a copy of the Curriculum Vitae (CV) for each physician for approval.

1 The practice monitor will meet monthly with the Respondent, in person, to review
2 and oversee patient care provided by the Respondent, including the administration,
3 dispensing and prescribing of all Federal Schedule II and III controlled substance
4 medication under Federal Law.

5 For purposes of this Consent Agreement, the term "oversee patient care" is intended
6 to mean the practice monitor will review patient charts; it does not require or contemplate
7 that the practice monitor will supervise direct patient care.

8 The practice monitor may randomly review a minimum of ten (10) pain
9 management charts for patients that were seen in the Respondent's office the previous
10 month. The practice monitor shall be allowed access to all of the Respondent's charts or
11 files, as necessary, to make a valid determination of the treatment provided.

12 The practice monitor may provide a minimum of five (5) pain management charts to
13 be reviewed by the supervising physician. The supervising physician shall be allowed
14 access to all of the Respondent's charts or files, as necessary, to make a valid determination
15 of the treatment provided.

16 The practice monitor and supervising physician shall be provided a copy of this
17 agreement. Within fifteen (15) calendar days of receipt of this Consent Agreement, the
18 practice monitor and supervising physician shall submit a signed statement that the monitor
19 has read the Consent Agreement, fully understands the role of a practice monitor and
20 supervising physician, and agrees or disagrees with the proposed monitoring plan.

21 Failure to maintain all records, or to make all appropriate records available for
22 immediate inspection and copying on the premises, or to comply with this condition as
23 outlined above is a violation of probation.

24 If the practice monitor and supervising physician resigns or is no longer available,
25 Respondent shall, within five (5) calendar days of such resignation or unavailability, submit
26 to the Board or its agent, for prior approval, the name and qualifications of a replacement
27 practice monitor or supervising physician who will be assuming that responsibility within
28 fifteen (15) calendar days. If Respondent fails to obtain approval of a replacement practice
29 monitor or supervising physician within thirty (30) days of the resignation or unavailability

1 of the monitor, Respondent may be suspended from the practice of medicine until a
2 replacement practice monitor or supervising physician is approved and prepared to assume
3 immediate monitoring responsibility.

4 All costs are the responsibility of the Respondent.

5
6 L. Monthly Reports

7 Both the practice monitor and the supervising physician shall submit an independent
8 written report on a monthly basis to the Board's agent for six (6) consecutive months while
9 monitoring is in progress. Each report shall include an evaluation of Respondent's
10 performance, indicating whether Respondent's charts and prescribing and tracking
11 prescription medications meet the standard of care for the practice of medicine, and whether
12 respondent is practicing medicine safely and in compliance with this Consent Agreement.

13 It shall be the sole responsibility of Respondent to ensure that the practice monitor
14 and supervising physician submits the monthly written reports to the Board's agent within
15 five (5) calendar days after the end of each of the six (6) consecutive months while
16 monitoring is in progress. Failure to submit complete and timely reports shall constitute a
17 violation of probation.

18 All costs are the responsibility of the Respondent.

19
20 M. Hospital Privileges

21 Within ten (10) calendar days of the effective date of this Consent Agreement,
22 Respondent shall notify the Chief of Staff and Administrator of any hospital in which
23 Respondent has privileges of the terms of his probation, provide them a copy of this
24 Consent Agreement, and shall cause reports of Respondent's progress and performance to
25 be submitted to the Board on a quarterly basis, unless ordered to do otherwise by the Board.

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1 N. Civil Fine

2 Respondent shall pay a fine of fourteen thousand dollars (\$14,000) by cash, certified
3 check, or money order payable to the "State of Alaska" within ninety (90) days after this
4 Consent Agreement is accepted by the Board.

5 All payments required by this Consent Agreement shall be addressed to:

6
7 Quinten Warren, Chief Investigator
8 Division of Corporations, Business and Professional Licensing
9 550 West 7th Avenue, Suite 1500
10 Anchorage, Alaska 99501-3567
11

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13 O. Periodic Interview with the Board

14 While under license probation and upon the request of the Board or its agent,
15 Respondent shall report in person to the Board or its agent to allow a review of his
16 compliance with this probation. Respondent shall be excused from attending any interview
17 only at the discretion of the person requesting the interview.
18

19 P. Reprimand

20 Gary Kindell, M.D. is hereby reprimanded for improperly prescribing medication to
21 patients.
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26 IT IS HEREBY FURTHER ORDERED that this Decision and Order shall take
27 effect immediately upon its adoption by the Board and is a public record of the Board and
28 the State of Alaska. The State may provide a copy of it to any person or entity, professional
29 licensing board, federal, state, or local government, or other entity making a relevant
30 inquiry.

State of Alaska
Department of Commerce, Community and Economic Development
Division of Corporations, Business and Professional Licensing
550 West 7th Avenue, Suite 1500
Anchorage, Alaska 99501-3567
Telephone 907-269-8160 Fax 907-269-8195

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The action taken by the Board in this Consent Agreement will be reported to the Federation of State Medical Boards, the National Practitioner Data Bank, and other entities as required by law.

DATED this 12th day of JULY, 2012 at ANCHORAGE, Alaska.

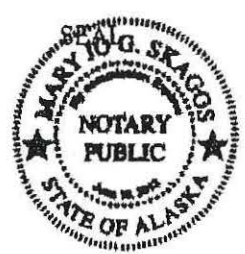
SUSAN BELL, COMMISSIONER

By: [Signature]
Quinten Warren, Chief Investigator for
Don Mabege, Director
Division of Corporations, Business and
Professional Licensing

I, Gary Kindell, M.D. have read the Consent Agreement, understand it, and agree to be bound by its terms and conditions.

DATED: JULY 9, 2012
[Signature]
Gary Kindell, M.D.

SUBSCRIBED AND SWORN TO before me this 9th day of July, 2012, at Fairbanks, Alaska.



[Signature]
Notary Public in and for Alaska.
Mary Jo G. Skaggs
Notary Printed Name
My commission expires: June 10, 2013