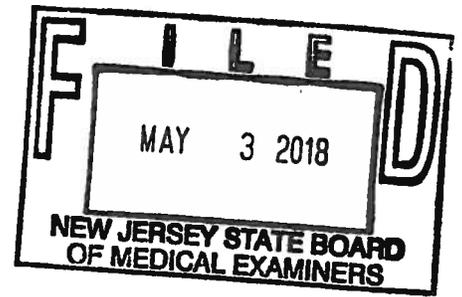


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ATTORNEY GENERAL OF NEW JERSEY
Division of Law
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Effective Date: October 31, 2016

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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

VIVIENNE MATALON, M.D.
LICENSE NO. 25MA05359600

TO PRACTICE MEDICINE AND SURGERY IN
THE STATE OF NEW JERSEY

Administrative Action

CONSENT ORDER

This matter was opened to the New Jersey State Board of Medical Examiners (the "Board") on October 13, 2016 by the Attorney General of New Jersey, upon the filing of a Verified Complaint. The Verified Complaint alleges that Vivienne Matalon, M.D., License No. 25MA05359600 ("Respondent"), indiscriminately prescribed controlled dangerous substances ("CDS") in reckless disregard of her patients' health, safety, and welfare. As discussed below, the Respondent's misconduct provides grounds for the Board to revoke her license pursuant to N.J.S.A. 45:1-21.

The Verified Complaint alleges, and the Board now finds, that the Respondent indiscriminately prescribed a highly-potent sublingual spray formulation of fentanyl -- an opioid

CERTIFIED TRUE COPY

approximately fifty times more powerful than heroin and one hundred times more powerful than morphine -- to three patients without a legitimate basis.¹ This drug, Subsys, is subject to a restricted distribution regulatory regime that governs all healthcare practitioners' access to it and the only five other drugs of its kind. Because of its risks, the Food and Drug Administration has approved Subsys only to treat cancer patients who are suffering from breakthrough cancer pain and who are already receiving, and are tolerant to, around-the-clock opioid therapy for their underlying persistent cancer pain. By prescribing Subsys to patients who did not have cancer, the Respondent jeopardized her patients' welfare in reckless or willful disregard of the drug's unequivocal and well-established risks, and also flouted the rules, requirements, and parameters pertaining to its appropriate use and prescribing which Respondent expressly acknowledged understanding and to which she agreed to abide. The prescribing contravenes the understanding and commitments that were made upon enrollment in the program.

The Verified Complaint alleges, and the Board now finds, that the manner in which Subsys was prescribed to patients for the conditions presented and at the doses initiated constitutes a deviation from the standard of care. The Board further finds that Respondent's conduct also constitutes gross negligence which endangered the life, health, welfare, safety or property of a person in violation of N.J.S.A. 45:1-21(c); repeated acts of negligence in violation of N.J.S.A. 45:1-21(d); professional or occupational misconduct in violation of N.J.S.A. 45:1-21(e); failure to comply with the provisions of an act or regulation administered by the Board in violation of N.J.S.A. 45:1-21(h); and the issuing of prescriptions of controlled dangerous substances indiscriminately or without good cause in violation of N.J.S.A. 45:1-21(m).

¹Respondent issued Subsys prescriptions to three patients, however, one patient did not fill the prescription as her insurance carrier denied coverage.

On October 20, 2016, Respondent filed an Answer to the Verified Complaint denying the allegations set forth therein. Respondent asserts that only two patients received Subsys and that she never made representation that her patients, for whom Subsys was prescribed, had active cancer. Of utmost importance, Respondent states that she was misled by Insys Therapeutics, Inc., the company that manufactures Subsys, that Subsys had been approved for off-label prescribing. She further asserts that she was informed by Insys that the lower doses she sought to prescribe were not available, and as such, was directed by Insys to prescribe the higher available doses.

In fact, on October 5, 2017, the former New Jersey Attorney General, Christopher S. Porrino, on behalf of the State of New Jersey, filed a consumer fraud and false claims complaint against Insys Therapeutics, Inc. (the complaint was later amended on November 17, 2017, to include defendant John N. Kapoor, billionaire founder of the company.) The State's complaint accuses Insys of endangering the public through a greed-driven, unlawful and dissipative marketing campaign designed to exponentially increase sales of Subsys by making fraudulent claims. The State's complaint charges that, despite Subsys only having Food and Drug Administration approval for the "narrow" purpose of treating breakthrough cancer pain in opioid-tolerant patients, Insys unlawfully directed its sales force to push Subsys for prescription to a broader patient population – patients suffering any type of chronic pain – and at higher doses.

On October 21, 2016, following the filing of the Verified Complaint, Respondent agreed to the temporary suspension of her medical license pending a plenary hearing. She has been out of practice since the effective date of that order on October 31, 2016 and has sold her medical practice.

The Respondent, being desirous of resolving this matter without the need of a formal hearing, and it appearing that the Respondent has read the terms of the within Order and understands their meaning and effect and, on the advice of counsel, agrees to be bound by same, and the Board, finding the within disposition adequately protective of the public health, safety and welfare, and further finding that good cause exists for the entry of this Order:

IT IS, THEREFORE, ON THIS 3rd DAY OF May, 2018,

ORDERED AND AGREED THAT:

1. Effective immediately Respondent's license to practice medicine and surgery in the State of New Jersey shall be, and hereby is, revoked.
2. Respondent shall not be eligible to be granted a license to practice medicine and surgery for forty-two (42) months from the date that the temporary suspension of her license became effective, October 31, 2016.
3. The period of revocation will be tolled for any length of time that Respondent practices in another jurisdiction.
4. Respondent's New Jersey CDS Registration, with the consent of the Acting Director of the Division of Consumer Affairs ("Director"), and pursuant to his authority under N.J.S.A. 24:21-9 et seq., is revoked. This CDS Registration revocation is independent of any action taken by the Board, the United States Drug Enforcement Administration ("DEA") or any other licensing authority. Upon filing a reapplication for her medical license, Respondent may also reapply for her New Jersey CDS Registration.
5. Respondent shall return her original New Jersey license, current biennial registration and her CDS registration to William V. Roeder, Executive Director, New Jersey State Board of Medical Examiners, P.O. Box 183, Trenton, New Jersey 08625-0183.

6. Respondent shall continue to be barred from engaging in the practice of medicine and surgery in this State until such time as she seeks and is granted reinstatement. This means that the Respondent shall, among other things, refrain from all patient contact and shall not issue any prescriptions for, or dispense, medications of any kind, including but not limited to CDS.

7. Respondent shall comply with N.J.A.C. 13:35-6.5(h), the Board regulation for practice closure. Within ten (10) days of the filing of this Consent Order, Respondent is to notify William V. Roeder, Executive Director, State Board of Medical Examiners, 140 East Front Street, PO Box 183, Trenton, New Jersey 08625-0183 as to where her patient records are secured, and how patients may obtain them.

8. Respondent shall immediately advise the Drug Enforcement Administration of this Order, and, specifically, that her license to practice medicine and surgery in the State of New Jersey has been revoked.

9. Respondent shall be precluded from managing, overseeing, supervising or influencing the practice of medicine or the provision of health care services to patients in the State of New Jersey.

10. Respondent shall not charge, receive or share in any fee for professional services rendered by others. Respondent shall be permitted to collect accounts receivable with respect to professional services that she rendered prior to the effective date of the Interim Consent Order temporarily suspending her license.

11. Before reapplying for her license Respondent shall provide the Board with proof that she has taken and successfully completed courses in ethics and CDS prescribing (should Respondent wish to resume prescribing CDS upon her return to practice) which are approved in advance by the Board. Successful completion means that all sessions were attended, all

assignments were properly and appropriately completed and a passing grade was achieved which was unconditional and without reservation. Respondent shall bear the cost of the courses and shall not use any credits obtained through the courses towards the fulfillment of her biennial continuing medical education requirement.

12. Respondent is assessed a civil penalty of \$40,000 pursuant to N.J.S.A. 45:1-25, \$20,000 of which shall be stayed provided Respondent complies with the terms of this Consent Order.

13. Respondent is assessed \$19,500 in attorney's fees in this matter pursuant to N.J.S.A. 45:1-25.

14. Payment of civil penalties and costs pursuant to Paragraphs twelve (12) and thirteen (13) of this Consent Order, in the total amount of \$39,500, shall be made in twenty-four (24) equal monthly installments of \$1,645.83. Each payment shall be due on the first business day of each month, commencing on the first month following the Board's entry of this Consent Order. Failure to make any payment timely shall result in the entire balance being due and owing. Respondent may prepay at any time. Interest on all financial assessments shall accrue in accordance with Rule of Court 45:42-11. All payments shall be made by certified bank check, certified check, money order, wire transfer or credit card payable to the State of New Jersey and sent to the State Board of Medical Examiners, c/o Mr. William Roeder, Executive Director, New Jersey Board of Medical Examiners, P.O. Box 183, Trenton, New Jersey 08625. Any other form of payment will be rejected and will be returned to the party making payment. In the event that a monthly payment is not received within five days of its due date, the entire balance of the civil penalty and costs shall become due and owing. For any costs or penalty payments not paid in

full within 10 days of the entry of this Order, a Certificate of Debt shall be filed pursuant to N.J.S.A. 45:1-24 to protect the judgment.

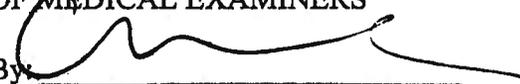
15. As part of her reapplication for licensure Respondent shall appear before a Committee of the Board to demonstrate her fitness to resume practice, at a minimum demonstrating her compliance with all of the terms contained herein or subsequently ordered as a condition of obtaining her license, successful completion of a Board approved course in medical ethics and CDS prescribing, and payment of all penalties and costs. Respondent shall be permitted to appear before a Committee of the Board six months prior to the conclusion of her bar to being granted a license. Respondent agrees that this allowance is merely to afford Respondent and the Board advance time to begin the process to address her reapplication but that a grant of her application for licensure cannot occur prior to the completion of the entire forty-two (42) month period detailed above. The Board expressly reserves the right to impose additional restrictions and/or limitations if licensure is granted including, but not limited to, whether or not and in what manner Respondent may prescribe CDS upon her return to practice.

16. The terms of the "Directives Applicable to Any Medical Board Licensee who is Disciplined or Whose Surrender of Licensure or Cessation of Practice has been Ordered or Agreed Upon," attached hereto as Exhibit 1, are expressly incorporated herein by reference.

17. The parties hereby stipulate that entry of this Consent Order is without prejudice to further action by this Board, the Attorney General, the Drug Control Unit, the Director of the Division of Consumer Affairs or any other law enforcement entities resulting from Respondent's conduct prior or subsequent to entry of this Order. The parties also stipulate that the entry of this Consent Order is without any admissions by Respondent.

18. This Consent Order shall be a final disposition of the Verified Administrative Complaint filed in this matter and docketed by the Office of Administrative Law as BDS 17563-2017 N. The Board shall retain jurisdiction to enforce the terms of this Order.

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

By: 

Paul Carniol, M.D.,
Board President

I have read the within Consent Order in its entirety and I agree to be bound by all of its terms. I understand the meaning and effect of this Order, and I understand that the entry of this Order carries serious legal consequences. Consent is hereby given to the Board to enter this Order.



Vivienne Matalon, M.D.

5/2/18

Date

Consent is hereby given as to
the form and entry of this Order.



Svetlana Ros, Esq.
Attorney for Respondent

5/3/18

Date

Jack Meyerson, Esq.
Attorney for Respondent

Date

I have read the within Consent Order in its entirety and I agree to be bound by all of its terms. I understand the meaning and effect of this Order, and I understand that the entry of this Order carries serious legal consequences. Consent is hereby given to the Board to enter this Order.

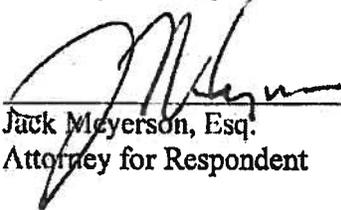
Vivienne Matalon, M.D.

Date

Consent is hereby given as to
the form and entry of this Order.

Svetlana Ros, Esq.
Attorney for Respondent

Date



Jack Meyerson, Esq.
Attorney for Respondent

5/1/2018

Date

Exhibit 1

**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE
OR CESSATION OF PRACTICE HAS BEEN ORDERED OR AGREED UPON**

APPROVED BY THE BOARD ON AUGUST 12, 2015

All licensees who are the subject of a disciplinary order or surrender or cessation order (herein after, "Order") of the Board shall provide the information required on the addendum to these directives. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq: Paragraphs 1 through 4 below shall apply when a licensee is suspended, revoked, has surrendered her or her license, or entered into an agreement to cease practice, with or without prejudice, whether on an interim or final basis. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains probationary terms or monitoring requirement.

1. Document Return and Agency Notification

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. Prior to the resumption of any prescribing of controlled dangerous substances, the licensee shall petition the Director of Consumer Affairs for a return of the CDS registration if the basis for discipline involved CDS misconduct. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon her/her DEA registration.)

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension, surrender or cessation, the licensee must truthfully disclose her/her licensure status in response to inquiry.) The licensee subject to the order is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The licensee subject to the order may contract for, accept payment from another licensee for rent

at fair market value for office premises and/or equipment. In no case may the licensee subject to the order authorize, allow or condone the use of her/her provider number by any health care practice or any other licensee or health care provider. In situations where the licensee has been subject to the order for less than one year, the licensee may accept payment from another professional who is using her/her office during the period that the licensee is (suspended), subject to the order for the payment of salaries for office staff employed at the time of the Board action.

A licensee whose license has been revoked, suspended or subject to a surrender or cessation order for one (1) year or more must immediately take steps to remove signs and take affirmative action to stop advertisements by which her/her eligibility to practice is represented. The licensee must also take steps to remove her/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies

A licensee subject to the order shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice.² The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board order.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended or who is ordered to cease practice for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11).

² This bar on the receipt of any fee for professional services is not applicable to cease and desist orders where there are no findings that would be a basis for Board action, such as those entered adjourning a hearing.

A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A disqualified licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall also divest him/herself of all financial interest. Such divestiture of the licensee's interest in the Limited Liability Company or professional service corporation shall occur within 90 days following the entry of the order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Division of Revenue and Enterprise Services demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation or sole member of the limited liability company, the corporation must be dissolved within 90 days of the licensee's disqualification unless it is lawfully transferred to another licensee and documentation of the valuation process and consideration paid is also provided to the Board.

4. Medical Records

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that (during the three (3) month period) immediately following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or her/his attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of general circulation in the geographic vicinity in which the practice was conducted. If the licensee has a website, a notice shall be posted on the website as well.

At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or her/his telephone number shall be promptly reported to the Board. When a patient or her/his representative requests a copy of her/his medical record or asks that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

5. Probation/Monitoring Conditions

With respect to any licensee who is the subject of any order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and Inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

6. Payment of Civil and Criminal Penalties and Costs.

With respect to any licensee who is the subject of any order imposing a civil penalty and/or costs, the licensee shall satisfy the payment obligations within the time period ordered by the Board or be subject to collection efforts or the filing of a certificate of debt. The Board shall not consider any application for reinstatement nor shall any appearance before a committee of the Board seeking reinstatement be scheduled until such time as the Board ordered payments are satisfied in full. (The Board at its discretion may grant installment payments for not more than a 24 months period.)

As to the satisfaction of criminal penalties and civil forfeitures, the Board will consider a reinstatement application so long as the licensee is current in her or her payment plans.

NOTICE OF REPORTING PRACTICES OF BOARD
REGARDING DISCIPLINARY ORDERS/ACTIONS

All Orders filed by the New Jersey State Board of Medical Examiners are "government records" as defined under the Open Public Records Act and are available for public inspection, copying or examination. See N.J.S.A. 47:1A-1, et seq., N.J.S.A. 52:14B-3(3). Should any inquiry be made to the Board concerning the status of a licensee who has been the subject of a Board Order, the inquirer will be informed of the existence of the Order and a copy will be provided on request. Unless sealed or otherwise confidential, all documents filed in public actions taken against licensees, to include documents filed or introduced into evidence in evidentiary hearings, proceedings on motions or other applications conducted as public hearings, and the transcripts of any such proceedings, are "government records" available for public inspection, copying or examination.

Pursuant to N.J.S.A. 45:9-22, a description of any final board disciplinary action taken within the most recent ten years is included on the New Jersey Health Care Profile maintained by the Division of Consumer Affairs for all licensed physicians. Links to copies of Orders described thereon are also available on the Profile website. See <http://www.njdoctorlist.com>.

Copies of disciplinary Orders entered by the Board are additionally posted and available for inspection or download on the Board of Medical Examiners' website. See <http://www.njconsumeraffairs.gov/bme>.

Pursuant to federal law, the Board is required to report to the National Practitioner Data Bank (the "NPDB") certain adverse licensure actions taken against licensees related to professional competence or conduct, generally including the revocation or suspension of a license; reprimand; censure; and/or probation. Additionally, any negative action or finding by the Board that, under New Jersey law, is publicly available information is reportable to the NPDB, to include, without limitation, limitations on scope of practice and final adverse actions that occur in conjunction with settlements in which no finding of liability has been made. Additional information regarding the specific actions which the Board is required to report to the National Practitioner Data Bank can be found in the NPDB Guidebook issued by the U.S. Department of Health and Human Services in April 2015. See <http://www.npdb.hrsa.gov/resources/npdbguidebook.pdf>.

Pursuant to N.J.S.A. 45:9-19.13, in any case in which the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, the Board is required to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders entered by the Board is provided to the Federation on a monthly basis.

From time to time, the Press Office of the Division of Consumer Affairs may issue press releases including information regarding public actions taken by the Board.

Nothing herein is intended in any way to limit the Board, the Division of Consumer Affairs or the Attorney General from disclosing any public document.