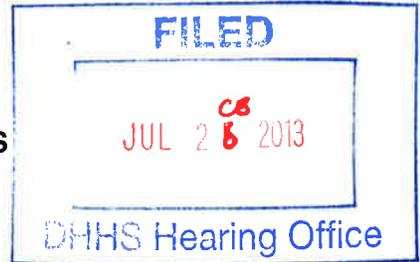


DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH
STATE OF NEBRASKA



STATE OF NEBRASKA ex rel., JON BRUNING, Attorney General,
Plaintiff,
vs.
DANIEL J. MCGOWAN, M.D.,
Defendant.

Case No.: 13-1872

ORDER ON
AGREED SETTLEMENT

A proposed Agreed Settlement was filed with the Department on July 17, 2013.

ORDER

- 1. The Agreed Settlement is adopted, attached hereto and incorporated by reference.
- 2. The facts as set out in the Petition are taken as true and adopted herein.
- 3. The parties shall comply with all of the terms of the Agreed Settlement.

DATED this 26 day of July, 2013.

Joseph M. Acierno, M.D., J.D.
Chief Medical Officer
Director, Division of Public Health
Dept. of Health & Human Services

CERTIFICATE OF SERVICE

COMES NOW the undersigned and certifies that on the 26th day of July, 2013 a copy of the foregoing **ORDER ON AGREED SETTLEMENT** was sent certified United States Mail, postage prepaid, return receipt requested to attorney for defendant, Daniel E. Klaus, Rembolt, Ludtke, 1201 Lincoln, Mall, Suite 102, Lincoln, NE 68508 and by e-mail to Julie Agena, Assistant Attorney General, at the e-mail address: ago.health@nebraska.gov.

DHHS Hearing Office
P.O. Box 98914
Lincoln, Nebraska 68509-8914
P. (402) 471-7237 F. (402) 742-2376

THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH
STATE OF NEBRASKA

RECEIVED

7/17/2013

In Camera Only

STATE OF NEBRASKA ex rel.
JON BRUNING, Attorney General,

Plaintiff,

v.

DANIEL J. MCGOWAN, M.D.,

Defendant.

AGREED SETTLEMENT

The Plaintiff and the Defendant, Daniel J. McGowan, MD, in consideration of the mutual covenants and agreements contained herein, agree as follows:

1. The Defendant, Daniel J. McGowan, MD, was issued a license (#19175) to practice as a physician by the Nebraska Department of Health and Human Services Division of Public Health ("Department").
2. Before disciplinary measures may be taken against the Defendant's license, the Defendant is entitled to a hearing as provided by law. The Defendant waives the right to a hearing. The Defendant waives any right to judicial review of an order by the Department's Chief Medical Officer which approves the terms of this Agreed Settlement.
3. No coercion, threats, or promises, other than those stated herein, were made to the Defendant to induce him to enter into this Agreed Settlement.
4. The Defendant acknowledges that he has read the Petition for Disciplinary Action filed by the Nebraska Attorney General's Office. The Defendant neither admits nor denies the allegations of the Petition for Disciplinary Action.

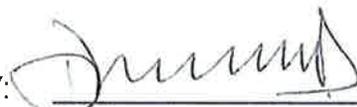
5. The Plaintiff and the Defendant consent to the Chief Medical Officer entering a final disciplinary order which finds the allegations of the Petition for Disciplinary Action are true and which places the Defendant's physician license on probation for a period of two (2) years, commencing ten (10) days from the entry of the order, with the following probationary conditions:
- a. The Defendant shall immediately deliver his original license to the Department upon the entry of the order on Agreed Settlement and the Department shall issue a license marked probationary in such manner as the Department shall determine.
 - b. The Defendant shall abstain from the personal use or possession of controlled substances and all other prescription drugs, unless prescribed for or administered to the Defendant by a licensed physician or authorized licensed practitioner for a diagnosed medical condition.
 - c. The Defendant shall be subject to random body fluid or chemical testing at his expense at such time and places as the Department may direct. The Defendant shall follow the instructions and directives of the Department for body fluid/chemical testing.
 - d. The Defendant shall provide a monthly listing of any and all prescriptions he has received from a physician or authorized licensed practitioner for a diagnosed medical condition. The Defendant shall report the use of any controlled substances and prescription drugs to the Department on a monthly basis.
 - e. The Defendant shall advise all personal treating physicians and other treating practitioners, prior to treatment, of his history of chemical abuse and of all medications he is taking at the time of treatment. The Defendant authorizes all treating physicians and other treating practitioners to inform the Department of all conditions for which the Defendant is treated, including any drugs or medications, prescribed or over-the-counter, included in any treatment.
 - f. The Defendant shall comply with all aftercare treatment recommendations of Defendant's chemical dependency evaluation and treatment.
 - g. The Defendant shall provide such written authorization which may be requested by the Department for all evaluation and treatment records to permit obtaining and use of records, information and such reports by the Department and the Nebraska Attorney General in conformity with 42 Code of Federal Regulations, Part 2.

- h. The Defendant shall provide notification of his disciplinary action to all employers and to the licensing authority in any state where he has or obtains an active physician license within five (5) days of the entry of the Order on Agreed Settlement by the Chief Medical Officer and within five (5) days of any changes in employment or subsequent out-of-state licensure. Such notification shall include providing copies of the Petition for Disciplinary Action, this Agreed Settlement, and the Order on Agreed Settlement entered by the Chief Medical Officer. Written confirmation of this notification shall be provided by the Defendant to the Department within thirty (30) days of the entry of the Order on Agreed Settlement by the Chief Medical Officer and within thirty (30) days of any changes in employment or any subsequent out-of-state licensure.
- i. If not self-employed, the Defendant shall only be employed as a physician by an employer who provides employer quarterly reports to the Department. Employer quarterly reports shall be submitted to the Department by the Defendant's supervisor. Reports shall include a description of the Defendant's work habits and compliance with the limitation. Reports shall be due no later than the 10th day of the month following the end of each quarter. An initial employer report shall be submitted as directed by the Department. A final employer report shall be due not less than thirty (30) days before the expiration of the probationary period.
- j. The Defendant shall submit written notification to the Department within seven (7) days of any changes in employment, employment status, residence or telephone number.
- k. All reports, notices and other documentation requested by the Department shall be provided using report forms provided by the Department.
- l. The Defendant shall promptly respond to all requests and inquiries by the Department concerning the Defendant's compliance with the terms of probation.
- m. The Defendant shall obey all state and federal laws and rules and regulations regarding the practice of medicine and surgery.
- n. The Defendant shall pay any costs associated with assuring compliance with this agreed settlement.
- o. The Defendant shall appear at any meetings of the Board of Medicine and Surgery when requested.
- p. Any period the Defendant may hold an inactive Nebraska credential or is not employed in the practice of medicine and surgery shall not reduce the probationary period or satisfy the terms and conditions of probation. Practice in another jurisdiction that adopts the Nebraska probationary

terms and conditions of licensure will serve to reduce the Nebraska probationary period.

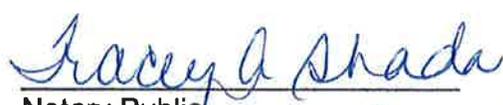
6. In the event the Defendant violates any of the above terms of probation, the Chief Medical Officer, after motion by the Attorney General and a hearing, may take further disciplinary action against the Defendant's medical license, including revocation of his license.
7. The Attorney General's Office has given notice of this Agreed Settlement to the Board of Medicine and Surgery and has received their input in accordance with Neb. Rev. Stat. § 38-190 (Reissue 2008).
8. If this Agreed Settlement is not approved by the Chief Medical Officer, this Agreed Settlement shall become null and void and will not be admissible for any purpose at any hearing that may be held on this matter.

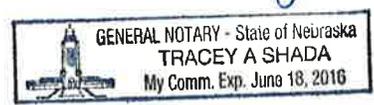
AGREED TO:

BY: 
Daniel J. McGowan, MD
Defendant

State of Nebraska)
) ss.
County of Buffalo)

Acknowledged before me by Daniel J. McGowan, MD, on this 1 day of July, 2013.


Notary Public
My Commission Expires: June 18, 2016



THE STATE OF NEBRASKA, ex rel.
JON BRUNING, Attorney General,
Plaintiff,

BY: JON BRUNING, #20351
Attorney General

BY: 
Julie L. Agena, #23137
Assistant Attorney General
2115 State Capitol
Lincoln, NE 68509
(402) 471-1815

Attorneys for the Plaintiff.

44-2599a.2-3



THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH
STATE OF NEBRASKA

STATE OF NEBRASKA ex rel. JON)
BRUNING, Attorney General,)
)
Plaintiff,)
)
vs.)
)
DANIEL J. MCGOWAN, M.D.,)
)
Defendant.)

PETITION FOR
DISCIPLINARY ACTION

The Plaintiff alleges as follows:

ALLEGATIONS COMMON TO ALL CAUSES OF ACTIONS:

1. Jurisdiction is based on NEB. REV. STAT. §§ 38-176 and 38-186 (Reissue 2008).
2. At all times relevant herein, the Defendant, Daniel J. McGowan, M.D., has been the holder of a license (#19175) to practice as a physician issued by the Nebraska Department of Health and Human Services Division of Public Health ("Department").
3. The Department is the agency of the State of Nebraska authorized to enforce the provisions of the Uniform Credentialing Act regulating the practice of medicine and surgery.
4. The Nebraska Board of Medicine and Surgery considered the investigation of this matter and made a disciplinary recommendation to the Attorney General, which recommendation has been considered. Such matters are privileged pursuant to NEB. REV. STAT. §§ 38-1,105 and 38-1,106 (Reissue 2008).

5. In 1999, the Defendant joined P.V. Medical Group.
6. Between October 2010 and July 2012, the Defendant prescribed controlled substances for five (5) separate patients, all friends or work associates, and failed to keep any medical record of examinations or the prescriptions provided.
7. In November 2010, the Defendant requested a personal prescription for a controlled substance from a co-worker, L.W., M.D., for treatment of a medical condition that the Defendant identified.
8. Between November 2010 and July 2012, the Defendant was prescribed a controlled substance by L.W., M.D.
9. Co-workers at P.V. Medical Center expressed concerns regarding the Defendant's behavior at work which caused an uncomfortable work environment and staff retention issues.
10. On August 11, 2012, a meeting was held with the Defendant regarding his use of a controlled substance.
11. On August 11, 2012, the Defendant went to H. for evaluation.
12. The Defendant admitted to destroying controlled substances at the airport before leaving for H. on August 11, 2012.
13. Between August 11, 2012, and August 22, 2012, the Defendant participated in residential treatment at H.
14. Upon discharge from H., after evaluation, the Defendant was diagnosed with a condition that adversely affects his ability to practice. The Defendant was referred to M. for further treatment.

15. Between August 23, 2012, and September 9, 2012, the Defendant participated in treatment M., at their Physician in Crisis Program.

16. Upon discharge from M., after evaluation, the Defendant was diagnosed with a condition that adversely affects his ability to practice. Recommendations included:

- a. stay in treatment for six weeks;
- b. get involved with his PHP for case management, advocacy and monitoring;
- c. continue to explore his propensity to lie and live a double life;
- d. attend career and identity group.

17. On September 19, 2012, the Defendant attended one counseling session with J.M., Ph.D., P.C., but failed to attend or schedule further appointments. J.M., Ph.D., P.C., opined that the Defendant's "lack of follow through in coming to other appointments suggested that he is not yet at a commitment point in terms of changing his behavior".

18. On September 28, 2012, the Defendant was terminated from P.V. Medical Group.

19. On October 16, 2012, December 11, 2012, January 8, 2013, February 6, 2013, March 5, 2013, and April 16, 2013, the Defendant attended counseling sessions with D.H., Ed.D., LIMHP. At the conclusion of the last session, counseling was changed to an "as needed" basis.

FIRST CAUSE OF ACTION

20. Paragraphs 1 through 19 are incorporated herein by reference.

21. NEB. REV. STAT. § 38-178(3) (Reissue 2008) provides that a professional license may be disciplined for the abuse of alcohol, any controlled substance, or any mind-altering substance.

22. The Defendant's diagnosis is grounds for discipline.

SECOND CAUSE OF ACTION

23. Paragraphs 1 through 22 are incorporated herein by reference.

24. NEB. REV. STAT. § 38-178(23) (Reissue 2008) provides that a professional license may be disciplined for unprofessional conduct.

25. NEB. REV. STAT. § 38-179(10) defines unprofessional conduct as the failure to keep and maintain adequate records of treatment or service.

26. The Defendant's failure to keep medical records regarding controlled substance prescriptions to five (5) separate individuals as stated above is grounds for discipline.

THIRD CAUSE OF ACTION

27. Paragraphs 1 through 26 are incorporated herein by reference.

28. NEB. REV. STAT. § 38-178(23) (Reissue 2008) provides that a professional license may be disciplined for unprofessional conduct.

29. NEB. REV. STAT. § 38-179(14) defines unprofessional conduct as disruptive behavior, whether verbal or physical, which interferes with consumer care or could reasonably be expected to interfere with such care.

30. The Defendant's behavior is grounds for discipline.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that the Chief Medical Officer set this matter for hearing, order appropriate disciplinary action concerning the Defendant's license to practice as a physician in the State of Nebraska pursuant to NEB. REV. STAT. §§ 38-188, 38-195 and 38-196 (Reissue 2008), and tax the costs of this action to the Defendant.

STATE OF NEBRASKA ex rel. JON
BRUNING, Attorney General,
Plaintiff,

BY: JON BRUNING, #20351
Attorney General



BY: _____
Julie L. Agena, #23137
Assistant Attorney General
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Attorneys for the Plaintiff