

IN THE MATTER OF	*	BEFORE THE MARYLAND
JAYARATHNE KOTTAGE, M.D.	*	STATE BOARD OF
Respondent	*	PHYSICIANS
License Number: D69729	*	Case Number: 2221-0029

* * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

The Maryland Board of Physicians (the “Maryland Board”) received information that Jayarathne Kottage, M.D., (the “Respondent”) License Number D69729, was disciplined by the Virginia Board of Medicine (the “Virginia Board”). In an Order dated August 13, 2020, the Virginia Board reprimanded the Respondent.

Based on the above referenced Virginia Board sanction, the Maryland Board has grounds to charge the Respondent with violating the following provisions of the Maryland Medical Practice Act (the “Act”), under H. O. § 14-404(a):

- (a) Subject to the hearing provisions of § 14-405 of this subtitle, a disciplinary panel, on the affirmative vote of a majority of the quorum of the disciplinary panel, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:
 - (21) Is disciplined by a licensing or disciplinary authority or convicted or disciplined by a court of any state or country or disciplined by any branch of the United States uniformed services or the Veteran’s Administration for an act that would be grounds for disciplinary action under this section,

The Maryland Board has determined that the acts for which the Respondent was disciplined in Virginia would be grounds for disciplinary action under H.O. § 14-404(a).

The grounds for disciplinary action under H.O. § 14-404(a) are as follows:

- (22) Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this state;
- (40) Fails to keep adequate medical records as determined by appropriate peer review.

Based on the action taken by the Virginia Board, the Respondent agrees to enter into this Consent Order with the Maryland Board of Physicians, consisting of Procedural Background, Findings of Fact, Conclusions of Law, and Order of reciprocal action.

I. FINDINGS OF FACT

The Board finds the following:

1. At all times relevant hereto, the Respondent was a physician licensed to practice medicine in the State of Maryland. The Respondent was initially licensed in Maryland on or about August 28, 2009.
2. The Virginia Board found the following, among other things, with regard to the Respondent's care and treatment of a patient:

Prior to initiating management of the patient's chronic pain with tramadol, the Respondent failed to obtain and document in the medical record a medical history and complete physical examination, including a mental status examination, current and past treatment for pain; underlying or coexisting diseases or conditions; psychiatric, addiction, and substance misuse history of the patient and family history of addiction or substance misuse; a drug screen or serum medication level; a query of the Prescription Monitoring Program; an assessment of the patient's history and risk of substance misuse, or a request for prior applicable records.
3. By Consent Order dated August 13, 2020, the Virginia Board reprimanded the Respondent, subject to terms and conditions.

A copy of the Virginia Board Order is attached hereto.

II. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Maryland Board concludes as a matter of law that the disciplinary action taken by the Virginia Board against the Respondent was for an act or acts that would be grounds for disciplinary action under Health Occ. § 14-404(a)(22) and (40) had those offenses been committed in this state, and would thus subject him to discipline under Health Occ. §14-404(a)(21).

III. ORDER

It is hereby:

ORDERED that the Respondent be and is hereby **REPRIMANDED**, subject to the following terms and conditions:

a. The Respondent shall comply with the terms and conditions of the August 13, 2020 Virginia Board Consent Order;

b. If the Respondent fails to comply with any term or condition of this Consent Order, a Board panel, after notice and an opportunity to be heard, may take any action prescribed under Section 14-404(a) of the Maryland Medical Practice Act which includes a reprimand, probation, or the suspension or revocation of the Respondent's medical license; and be it further

ORDERED that this **CONSENT ORDER** is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Prov. §§4-101 through 4-601 (2014).

10/05/2020
Date

Signature on File

Christine A. Farrelly
Executive Director
Maryland Board of Physicians

CONSENT

I, Jayarathne Kottage, MD, assert that I am aware of my right to consult with and be represented by counsel in considering this Consent Order and in any proceedings that would otherwise result from the charges currently pending. I have chosen to proceed without counsel and I acknowledge that the decision to proceed without counsel is freely and voluntarily made.

By this Consent, I agree to be bound by this Consent Order and all its terms and conditions and understand that the disciplinary panel will not entertain any request for amendments or modifications to any condition.

I assert that I am aware of my right to a formal evidentiary hearing, pursuant to Md. Code Ann., Health Occ. § 14-405 and Md. Code Ann., State Gov't §§ 10-201 et seq. concerning the pending charges. I waive this right and have elected to sign this Consent Order instead.

I acknowledge the validity and enforceability of this Consent Order as if entered after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my behalf, and to all other substantive and procedural protections as provided by law. I waive those procedural and substantive protections. I acknowledge the legal authority and the jurisdiction of the disciplinary panel to initiate these proceedings and to issue and enforce this Consent Order.

I voluntarily enter into and agree to comply with the terms and conditions set forth in the Consent Order as a resolution of the charges. I waive any right to contest the Findings of Fact and Conclusions of Law and Order set out in the Consent Order. I waive all rights to appeal this Consent Order.

I sign this Consent Order, without reservation, and fully understand the language and meaning of its terms.

Signature on File

Date 9/28/2020

Jayarathne Kottage, MD
Respondent

NOTARY

STATE OF VIRGINIA

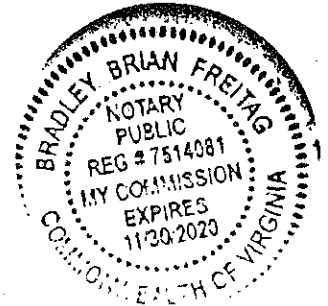
CITY/COUNTY OF SPOTSYLVANIA

I HEREBY CERTIFY that on this 28th day of SEPTEMBER 2020, before me, a Notary Public of the State and City/County aforesaid, personally appeared Jayarathne Kottage, MD, and made oath in due form of law that the foregoing Consent Order was her voluntary act and deed.

AS WITNESS my hand and notarial seal.

Bradley B. Freitag
Notary Public

My Commission expires: NOVEMBER 30, 2020



BEFORE THE VIRGINIA BOARD OF MEDICINE

IN RE: JAYARATHNE KOTTAGE, M.D.
License Number: 0101-254569
Case Number: 198354

CONSENT ORDER

JURISDICTION AND PROCEDURAL HISTORY

The Virginia Board of Medicine ("Board") and Jayarathne Kottage, M.D., as evidenced by their signatures hereto, in lieu of proceeding to an informal conference, enter into the following Consent Order affecting Dr. Kottage's license to practice medicine and surgery in the Commonwealth of Virginia.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Jayarathne Kottage, M.D., was issued License Number 0101-254569 to practice medicine and surgery on July 18, 2013, which is scheduled to expire on February 28, 2022.

2. Dr. Kottage violated Virginia Code §§ 54.1-2915(A)(3), (13), (16), and (18), 54.1-3303, and 54.1-3408 and The Regulations Governing Prescribing of Opioids and Buprenorphine ("Regulations") during his care and treatment of Patient A between December 2018 and November 2019 for chronic lower back pain. Specifically:

a. Prior to initiating management of Patient A's chronic pain with tramadol (C-IV), Dr. Kottage failed to obtain and document in the medical record a medical history and complete physical examination, including a mental status examination; current and past treatments for pain; underlying or coexisting diseases or conditions; psychiatric, addiction, and substance misuse history of the patient and family history of addiction or substance misuse; a urine drug screen or serum medication level; a query of the Prescription Monitoring Program ("PMP"); an assessment of the patient's history and risk of substance misuse; or a request for prior applicable records, all in violation of 18 VAC 85-21-60(A) of the Regulations. A query of the PMP would have shown potential indicators of misuse, including the fact that

Patient A had received 35 prescriptions for tramadol from 13 different prescribers, many of them overlapping, between August 29, 2017 and October 4, 2018, and the fact that Patient A had filled these prescriptions at 13 different pharmacies. The PMP also would have shown that although Patient A told Dr. Kottage that she did not have medical insurance and paid cash for her visits, Patient A paid for her prescriptions with both commercial insurance and cash.

b. At the initial visit and thereafter, Dr. Kottage documented Patient A's diagnosis as "pain in the lower back," "mechanical low back pain," or similar terms; however, lower back pain was the subjective symptom that Patient A reported, not the objective identification of a disease or condition based on signs or symptoms. Dr. Kottage failed to order testing to determine the etiology of the pain.

c. Prior to initiating management of Patient A's chronic pain with tramadol, Dr. Kottage failed to discuss with the patient the responsibilities of the patient or an exit strategy for discontinuation of the opioids in the event they were not effective, in violation of 18 VAC 85-21-60(B) of the Regulations.

d. Dr. Kottage failed to give consideration to nonpharmacologic and non-opioid treatment for Patient A's pain prior to treatment with opioids, in violation of 18 VAC 85-21-70(A) of the Regulations.

e. Dr. Kottage failed to regularly evaluate Patient A for opioid use disorder, in violation of 18 VAC 85-21-70(E) and 18 VAC 85-21-100(E) of the Regulations.

f. Dr. Kottage failed to provide a treatment plan that stated measures to be used to determine progress in treatment and included further diagnostic evaluations and other treatment modalities or rehabilitation that might be necessary depending on the etiology of the pain and the extent to which the pain was associated with psychosocial impairment, in violation of 18 VAC 85-21-80(A) and (B) of the Regulations.

g. Dr. Kottage failed to document in Patient A's medical record the patient's informed consent, including alternative approaches prior to the initiation of opioids for chronic pain, in violation of 18 VAC 85-21-90(A) of the Regulations.

h. Dr. Kottage failed to include in Patient A's medical record a written treatment agreement signed by the patient, in violation of 18 VAC 85-21-90(C) and (D) of the Regulations.

i. Dr. Kottage failed to order and review a drug screen or serum medication level at the initiation of chronic pain management or thereafter randomly, in violation of 18 VAC 85-21-100(D) of the Regulations. In the record of Patient A's first visit, Dr. Kottage noted "urine drug screening" as part of the treatment plan, but there is no evidence that a drug screen was conducted.

j. On April 16, 2019, Dr. Kottage increased Patient A's tramadol prescription from 50mg TID to 100mg QID without documenting any rationale for the increase.

k. On three occasions, when Patient A informed Dr. Kottage that she had lost or been parted from her medication, Dr. Kottage overlooked this indicator of possible misuse and wrote prescriptions to replace the medication.

l. On several occasions between December 2018 and August 2019, Dr. Kottage provided Patient A with early prescriptions for Tramadol, as set forth in the following chart:

Date Written	Quantity	Number of Days
12/17/18	90	30
12/28/18	90	30
1/9/19	90	30
1/24/19	90	30
2/11/19	90	30
2/25/19	90	12
3/9/19	90	30
3/16/19	90	30
4/2/19	120	30
4/6/19	90	30
4/16/19	240	30
5/2/19	90	30
5/14/19	120	30

5/31/19	120	30
6/10/19	120	15
6/28/19	120	30
7/1/19	60	15
7/31/19	120	30
8/9/19	120	30

m. On five occasions, Dr. Kottage failed to document in Patient A's medical record that he had prescribed tramadol to the patient. On two other occasions, Dr. Kottage prescribed tramadol to Patient A without documenting a visit or any other information in the patient's record.

CONSENT

Jayarathne Kottage, M.D., by affixing her signature to this Consent Order, agrees to the following:

1. I have been advised to seek advice of counsel prior to signing this document;
2. I am fully aware that without my consent, no legal action can be taken against me or my license except pursuant to the Virginia Administrative Process Act, Virginia Code § 2.2-4000 *et seq.*;
3. I acknowledge that I have the following rights, among others: the right to an informal fact-finding conference before the Board; and the right to representation by counsel;
4. I waive my right to an informal conference;
5. I admit to the Findings of Fact and Conclusions of Law contained herein and waive my right to contest such Findings of Fact and Conclusions of Law and any sanction imposed hereunder in any future judicial or administrative proceeding in which the Board is a party;
6. I consent to the entry of the following Order affecting my license to practice medicine and surgery in the Commonwealth of Virginia.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Virginia Board of Medicine hereby ORDERS as follows:


1. Jayarathne Kottage, M.D., is REPRIMANDED.

2. Within six months from the date of entry of this Order, Dr. Kottage shall provide written proof satisfactory to the Board of successful completion of at least 20 credit hours of continuing education in the subject of prescribing narcotic medication for the treatment of chronic pain. The course(s) shall be approved in advance of registration by the Executive Director of the Board. Requests for approval must be received at least 15 business days prior to the course date. All continuing education hours/courses shall be completed through face-to-face, interactive sessions (i.e., no home study, journal, or Internet courses). Continuing education obtained through compliance with this term shall not be used toward licensure renewal.

3. Any violation of the foregoing terms and conditions of this Order or any statute or regulation governing the practice of medicine and surgery shall constitute grounds for further disciplinary action.

Pursuant to Virginia Code §§ 2.2-4023 and 54.1-2400.2, the signed original of this Order shall remain in the custody of the Department of Health Professions as a public record, and shall be made available for public inspection and copying upon request.

FOR THE BOARD


Jennifer Deschenes, J.D., M.S.
Deputy Executive Director
Virginia Board of Medicine

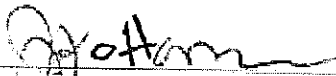
ENTERED: 8/13/2020

Jayarathne Kottage, M.D.

CONSENT ORDER

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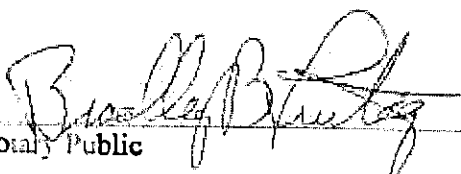
SEEN AND AGREED TO:



Jayarathne Kottage, M.D.

COMMONWEALTH OF VIRGINIA
COUNTY CITY OF FREDERICKS BURG TO WIT:

Subscribed and sworn to before me, a notary public in and for the Commonwealth of Virginia at large, on
this 7th day of AUGUST, 2020.


Notary Public

My commission expires: NOVEMBER 30, 2020

Registration No.: 7514081

