

IN THE MATTER
OF
KENNETH SUN, M.D.

COMMISSIONER'S
ORDER OF
SUMMARY
ACTION

TO: KENNETH SUN, M.D.
PO Box 266- 382 Epps Road
Wind Gap, PA 18091

The undersigned, Howard A. Zucker, M.D., J.D., Commissioner of Health, pursuant to N.Y. Public Health Law §230, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that the duly authorized professional disciplinary agency of another jurisdiction, New Jersey Board of Medical Examiners, has made a finding substantially equivalent to a finding that the practice of medicine by Kenneth Sun, M.D. (the Respondent) in that jurisdiction constitutes an imminent danger to the health of its people, as is more fully set forth in the New Jersey State Board of Medical Examiners Consent Order (henceforth: "predicate action"), attached hereto as Appendix "A" and made a part hereof.

It is therefore:

ORDERED, pursuant to N.Y. Public Health Law §230(12)(b), that effective immediately, Respondent shall not practice medicine in the State of New York.

Any practice of medicine in the State of New York in violation of this (Commissioner's) Order shall constitute Professional Misconduct within the meaning of N.Y. Educ. Law §6530(29) and may constitute unauthorized medical practice, a Felony defined by N.Y. Educ. Law §6512.

This Order shall remain in effect until the final conclusion of a hearing which shall commence within thirty days after the final conclusion of the disciplinary proceeding

in the predicate action. The hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230, and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on a date and at a location to be set forth in a written Notice of Summary Hearing to be provided to the Respondent after the final conclusion of the proceeding in the predicate action. Said written Notice may be provided in person, by mail, or by other means. If Respondent wishes to be provided said written notice at an address other than that set forth above, Respondent shall so notify, in writing, both the attorney whose name is set forth in this Order, and the Director of the Office of Professional Medical Conduct, at the addresses set forth below.

**Respondent shall notify the Director of the
Office of Professional Medical Conduct, New
York State Department of Health, Riverview
Center, 150 Broadway, Suite 355, Albany,
New York 12204-2719 via Certified Mail,
Return Receipt Requested, of the final
conclusion of the proceeding in the predicate
action, immediately upon such conclusion.**

THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE BE REVOKED OR
SUSPENDED, AND/OR THAT YOU BE FINED OR
SUBJECT TO OTHER SANCTIONS SET FORTH IN NEW
YORK PUBLIC HEALTH LAW §230-a. YOU ARE URGED

TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN
THIS MATTER.

DATED: Albany, New York
June 26, 2017

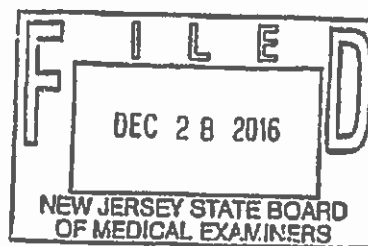


Howard A. Zucker M.D., J.D.
Commissioner of Health
New York State Health Department

Inquiries should be directed to:
Pooja A. Rawal
Senior Attorney
2512 Corning Tower
N.Y.S. Department of Health
Division of Legal Affairs
Albany, New York 12237

APPENDIX "A"

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101



By: Christopher Salloum
Deputy Attorney General

Tel. (973) 648-2779

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

KENNETH P. SUN, M.D.
LICENSE NO. 25MA06318400

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 ("Board") by Christopher S. Porrino, Attorney General of New Jersey, by and through Christopher Salloum, Deputy Attorney General, upon receipt of information allegedly evidencing, among other things, that the Respondent, Kenneth P. Sun, M.D., indiscriminately prescribed a highly-potent and near instantaneous-acting sublingual spray formulation of fentanyl—an opioid approximately fifty times more powerful than heroin and one hundred times more powerful than morphine—to several non-cancer patients for whom such a drug was contraindicated.

CERTIFIED TRUE COPY

In so prescribing this drug, called Subsys, the Respondent, the Attorney General alleges, jeopardized his 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 that he, as a medical professional licensed by this Board, expressly acknowledged understanding and by which he agreed to abide.

The Attorney General alleges that such conduct, if proven, would palpably demonstrate that the Respondent's continued practice of medicine poses a clear and imminent danger to the public health, safety, and welfare within the meaning of N.J.S.A. 45:1-22. The Respondent's alleged misconduct, if proven, would also constitute (a) the use or employment of fraud, deception, and misrepresentation; (b) professional misconduct; (c) gross negligence that endangered the lives, health, safety, and welfare of his patients; (d) repeated acts of negligence, malpractice, or incompetence; (e) the indiscriminate prescribing of controlled dangerous substances ("CDS"); and (f) violations of the statutes and regulations administered by the Board, including, but not limited to, N.J.A.C. 13:35-7.1A and N.J.A.C. 13:35-7.6. Such conduct would, therefore, provide the Board with grounds to suspend or revoke the Respondent's license to practice medicine and surgery in this State pursuant to N.J.S.A. 45:1-21(b), (c), (d), (e), (h), and (m).

The parties, being desirous of resolving this matter on an interim basis, and it appearing that the Respondent, without

admitting to the Attorney General's allegations, has read the terms of the within Order and understands their meaning and effect and, on the advice of counsel, consents to be bound by same, and the Board, finding the within interim 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 28th day of December 2016

ORDERED and AGREED as follows:

1. Effective December 30, 2016 ("Effective Suspension Date"), the Respondent's license to practice medicine and surgery in the State of New Jersey shall be, and hereby is, suspended pending further Order of the Board.
2. On the Effective Suspension Date, the Respondent shall immediately cease and desist from the practice of medicine and surgery in this State. This means, among other things, that the Respondent shall not issue prescriptions of any kind, including, without limitation, prescriptions for controlled dangerous substances, and that the Respondent shall not engage in patient contact of any kind at any location where medical services are offered and/or rendered.
3. On the Effective Suspension Date, the Respondent shall not (a) enter the premises of his medical practices during business hours; and (b) charge, receive, or share in any fee for professional services rendered by him or others while barred from engaging in the professional practice of medicine, though he may

collect account receivables with respect to professional services rendered prior to the filing of this Order.

4. With the consent of the Director of the Division of Consumer Affairs ("Director"), Respondent's CDS Registration, No. D06831900, shall be, and hereby is, temporarily suspended, effective December 30, 2016. On the Effective Suspension Date, the Respondent shall immediately notify the Drug Enforcement Administration of this Order, and, within five days, provide the Director and the Attorney General with proof of said notification.

5. On the Effective Suspension Date, the Respondent shall immediately return his original New Jersey medical license, current biennial registration, and his controlled dangerous substances registration to William Roeder, Executive Director, State Board of Medical Examiners, P.O. Box 183, Trenton, New Jersey 08625-0183.

6. On the Effective Suspension Date, the Respondent shall immediately place under seal all prescription pads and any and all CDS in his possession, except for any CDS Respondent possesses for personal use pursuant to a duly issued prescription. Respondent's prescription pads and CDS shall remain under seal until such time as a final order that includes the disposition of these sealed items is entered by the Director and/or Board in this matter.

7. The Attorney General and the Respondent shall endeavor in good faith to reach a mutually agreeable resolution to the Attorney General's allegations that is acceptable to the Board within sixty (60) days from the Effective Suspension Date. If no such resolution can be reached, the Attorney General shall file a

Complaint on his allegations no later than forty-five (45) days after the Attorney General and the Respondent confirm in writing that the parties are unable to reach a mutually agreeable resolution to the Attorney General's allegations. If good faith settlement discussions fail and the Attorney General is compelled to file a Complaint, the Respondent's license shall remain temporarily suspended pending the conclusion of plenary proceedings in this matter.

8. The terms of the Board's "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, shall be expressly incorporated herein by reference.

9. The entry of this Order shall not (a) be deemed to be an admission by the Respondent of any of the Attorney General's allegations; or (b) restrict or limit the Board, the Director, the Attorney General, or any other law enforcement entity or government agency from further investigation and prosecution of this matter.

10. The Board shall retain jurisdiction to enforce the terms of this Order. Upon receipt of any reliable information indicating that the Respondent has violated any term of this Order, the Board shall initiate further disciplinary action.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

By: 


George V. Scott, D.O.
Board President

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


Kenneth P. Sun, M.D.

12/27/16
Date

I hereby consent as to the form and entry of this Order.


SAND N. QURAYSHI, Esq.
Attorney for the Respondent

12/27/16
Date

**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 his 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 his/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 his/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 his/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 his/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 his/her eligibility to practice is represented. The licensee must also take steps to remove his/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.¹ The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements

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.

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). 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 his/her 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 his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her 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 his or her payment plans.

NOTICE OF REPORTING PRACTICES OF BOARD
REGARDING DISCIPLINARY ACTIONS

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

- (1) Which revokes or suspends (or otherwise restricts) a license,
- (2) Which censures, reprimands or places on probation,
- (3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A. 45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated 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 are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

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