

Jurisdiction

4. On January 14, 2021, the OAG received a consumer complaint filed against Respondent, and an investigation was then conducted as authorized by Ind. Code § 25-1-7-5(b)(4).

5. After investigating, the OAG determined that the complaint had merit, and, accordingly, a copy of that consumer complaint is being submitted to the Board herewith as Exhibit A.

6. The OAG having tendered a meritorious complaint, the Board has jurisdiction to hear this matter under Ind. Code § 25-1-7-5(b)(1).

7. Further, at all times relevant, Respondent was a “practitioner” as that term is defined by Ind. Code § 25-1-9-2.

8. As such, the Board has authority to hear this case and to impose any of the sanctions enumerated under Ind. Code § 25-1-9-9.

Respondent’s Misconduct

9. Respondent practices as a gastroenterologist with Franciscan Physicians Network, seeing patients in both Michigan City and LaPorte.

10. For more than 10 years, Respondent treated V.T. for abdominal pain and chronic pancreatitis.

11. As part of this treatment, Respondent began prescribing V.T. both hydrocodone-acetaminophen tablets and fentanyl patches to manage her chronic pain.

12. More specifically, Respondent prescribed hydrocodone-acetaminophen 10-325 mg tablets to be taken every six hours and fentanyl 100 mcg/hour patches, one of which was to be applied every three days.

13. V.T. had been established on this regimen when the Board adopted new rules regulating the prescription of opioid medication by medical licensees in Indiana in November 2014.

14. Respondent's prescriptions for V.T. were sufficient to trigger the requirements of these new rules, as outlined by 844 Ind. Admin. Code 5-6-3(c).

15. Furthermore, none of the exemptions set out in 844 Ind. Admin. Code 5-6-3(b) applied to V.T.

Failure to Execute Treatment Agreement

16. At no point during the course of treatment from 2014 to August 2021 did Respondent and V.T. execute a treatment agreement, as required by 844 Ind. Admin. Code 5-6-5(8).

Failure to Run and Document INSPECT Analysis

17. From 2014 to August 2021, Respondent's records for V.T. contain only one reference to INSPECT.

18. In April 2014, Respondent noted, "We will check Inspect to make sure she is not getting medications from someone else."

19. However, there is no evidence from V.T.'s records that Respondent ever ran annual INSPECT reports during the course of treatment.

20. As a result, Respondent made no entries in V.T.'s chart concerning whether INSPECT report were consistent with Respondent's knowledge of V.T.'s controlled substance use history.

Failure to Conduct Drug Monitoring Testing

21. Respondent did not have V.T. take a drug monitoring test until October 2, 2018.

22. In October 2020, Respondent ordered another drug monitoring test, but after a November 2020 visit, Respondent noted that V.T. had not taken the test.

23. According to Respondent's records, V.T. apparently took a urine drug screen during an emergency room visit on February 1, 2021.

Referrals and Tapering

24. At a follow-up visit in June 2016, V.T. requested stronger medications to manage her abdominal pain, but Respondent refused and stated that she would have to go to a pain specialist if she wanted something stronger.

25. At another follow-up in January 2018, Respondent noted that, because a recent CT scan had come back normal, there was really nothing else he could do for V.T. other than prescribe pain medication.

26. At that same visit, Respondent noted that he had "repeatedly tried to refer [V.T.] to a pain specialist without success."

27. In June 2018, Respondent referred V.T. to a pain specialist, Dr. Quadri, but V.T. was not accepted as a patient.

28. In January 2019, V.T. presented again for abdominal pain, and Respondent noted that he “found it hard to believe that she could be in so much pain being on so much narcotics” before stating “I wonder whether that may not be playing a role in this.”

29. For the same visit, Respondent noted that he would be try prescribing a “prokinetic drug such as Reglan” and that “after that, consider weaning off narcotics be it really slowly.”

30. Soon thereafter, in April 2019, Respondent noted:

Patient continues to have abdominal pain despite having 100 mcg/h of fentanyl via patch, as well as 10 mg of hydrocodone 4 times a day via pills. She has had a CAT scan which was very normal including her pancreas. She had an upper endoscopy which was fairly normal except for a small esophageal papilloma that was removed. She continues to complain of pain. I do not believe there is anything organic causing this pain. I think the patient just has issues with pain. I will renew her medications. I did discuss with her the possibility of starting Reglan, but when I discussed side effects, she is unwilling to go down that route. I suggested perhaps seeing a pain specialist. She has done that previously and did not have a good experience.

31. In December 2019, Respondent similarly noted:

Chronic abdominal pain. History of chronic pancreatitis. On high doses of narcotics. Patient seems to[o] healthy to have some serious going on, and I think this is all just a manifestation of her chronic narcotic usage over the past few years. I think she needs to see a pain specialist to see about some type of nerve block and perhaps weaning her off her narcotics. This will probably need to be done slowly over the course of the year.

32. In December 2019, Respondent referred V.T. to another pain specialist, this time Dr. Haider.

33. Respondent first began to taper V.T.’s pain medications in January 2020, reducing her fentanyl patches from 100 mcg/hour to 75 mcg/hour.

34. Respondent continued to taper the fentanyl doses in 25 mcg increments during 2020.

35. At a November 2020 visit, Respondent noted:

Patient here for follow-up evaluation of her "chronic pancreatitis". She has been on pain medications for 15 years. I been in the process of slowly weaning her off the fentanyl. I advised her that if she wishes to continue on two pain drugs, she needs to get a pain specialist. She was seen by Dr. Haider who referred her back to us after the patient refused any type of intervention. I have advised the patient I will continue to lower her Duragesic dose down by 25 mcg/h every 3 months but continue on the hydrocodone. She is not happy with this and feels that she needs big doses of the fentanyl as well as big doses of hydrocodone to control her pancreas pain. Her pancreas has been normal on CT scans.

36. Eventually, V.T. became upset with this tapering regimen and filed a consumer complaint against Respondent on January 14, 2021.

37. However, V.T. continued to see Respondent during 2021, and Respondent maintained that the tapering was necessary and that V.T. needed to see a pain specialist for further treatment.

CHARGES

38. Paragraphs one (1) through thirty-seven (37) are incorporated by reference.

Count 1

Failure to Keep Abreast of Current Professional Theory or Practice

39. Respondent's conduct constitutes a violation of Ind. Code § 25-1-9-4(a)(4)(B) in that he continued to practice despite having become unfit to practice due to failure to keep abreast of current professional theory or practice. More specifically, Respondent violated Ind. Code § 25-1-9-4(a)(4)(B) in that he failed to

treat V.T. according to the current professional theory or practice regarding pain management.

Counts 2 – 4
Violation of State Statute or Rule Regulating the Profession

40. Respondent’s conduct constitutes THREE (3) violations of Ind. Code § 25-1-9-4(a)(3) in that he knowingly violated state statutes or rules regulating the profession. More specifically, Respondent violated the following state administrative rules:

- i. 844 Ind. Admin. Code 5-6-5(8) by failing to execute a treatment agreement with V.T. and by failing to keep a copy of such agreement in V.T.’s chart;
- ii. 844 Ind. Admin. Code 5-6-7 by failing to run annual INSPECT reports for V.T. and by failing to document analysis of the same in V.T.’s chart; and,
- iii. 844 Ind. Admin. Code 5-6-8(a) by only ordering two drug monitoring tests during the course of his treatment of V.T., where such tests were medically necessary under 844 Ind. Admin. Code 5-6-8(b).

REQUESTED RELIEF


ACCORDINGLY, Petitioner asks the Board to enter an order against Respondent that:

- I. Imposes one or more of the disciplinary sanctions set out in Ind. Code § 25-1-9-9;

- II. Directs Respondent to pay all of the costs incurred in the prosecution of this case, as provided by Ind. Code § 25-1-9-15;
- III. Directs Respondent to pay a fee of Five Dollars (\$5.00) to be deposited into the Health Records and Personal Identifying Information Protection Trust Fund pursuant to Ind. Code § 4-6-14-10(b); and,
- IV. Provides any other relief the Board deems just and proper.

Respectfully submitted,

THEODORE E. ROKITA
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By: 

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CERTIFICATE OF SERVICE

I certify that a copy of this Administrative Complaint has been duly served upon the below-listed party or parties:

Dr. Mark Nelson
8865 West 400 North, Suite 155
Michigan City, Indiana 46360
By U.S. Mail

Heather T. Gilbert
CASSIDAY SCHADE LLP
233 East 84th Drive, Suite 305
Merrillville, Indiana 46410
hgilbert@cassiday.com
Counsel for Respondent
By U.S. Mail and E-mail



Ian Mathew
Deputy Attorney General
Attorney No.: 36392-49



CONSUMER COMPLAINT
Office of the Indiana Attorney General
(R4 / 11-16)

INSTRUCTIONS: To prevent delay, please be sure to complete both sides of this form in full. Please print clearly or type. *Do not include your Social Security Number* on this form or in any accompanying documents. *Please note:* If you have already obtained a judgment, or there is pending litigation, we may be limited or unable to take further action on your complaint.

Case No: 11612214

Section 1: Your Information			
Salutation <input type="checkbox"/> Det. <input type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input checked="" type="checkbox"/> Ms. <input type="checkbox"/> Dr. <input type="checkbox"/> Miss. <input type="checkbox"/> Rev.		Street Address [REDACTED]	
Full Name/Organization/Agency V [REDACTED] [REDACTED]		City [REDACTED]	State [REDACTED]
If an Organization/Agency provide a Primary Contact Name		County LaPorte	Daytime Phone [REDACTED]
Age Group <input type="checkbox"/> 18-24 <input type="checkbox"/> 25-34 <input type="checkbox"/> 35-44 <input type="checkbox"/> 45-54 <input checked="" type="checkbox"/> 55-59 <input type="checkbox"/> 60+		Email Address [REDACTED]	
May we contact you by email? If yes, we will not contact you by regular mail		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Are you or your spouse active military?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Section 2: Who is the Complaint Against?			
Individual/Business Franciscan Health Dr. Mark Nelson		Name of Individual/Representative you dealt with Dr. Mark Nelson	
Street Address 8865 W 400 N #155		City Mich. City	State IN
County LaPorte	Daytime Phone [REDACTED]	Zip Code 46360	
County LaPorte		Email Address	
Section 3: Transaction/Incident Details			
3-A: Date of Transaction/Incident see letter attached		3-B: If a Transaction, what was the Transaction for? <input type="checkbox"/> My business <input type="checkbox"/> My family/household <input type="checkbox"/> My farm <input type="checkbox"/> Non-Profit/Church	
3-C: Where did the Transaction/Incident occur? (check box where applicable)			
<input type="checkbox"/> My home <input checked="" type="checkbox"/> At the location of the business <input type="checkbox"/> Away from the location of the business <input type="checkbox"/> By mail		<input type="checkbox"/> By Internet/email <input type="checkbox"/> By telephone <input type="checkbox"/> By social media <input type="checkbox"/> Other	
3-D: What was the very first contact between you and the Individual/Business?			
<input type="checkbox"/> I telephoned the individual/business <input type="checkbox"/> I responded to a TV/radio ad <input type="checkbox"/> A person came to my home <input type="checkbox"/> I received information by email		<input type="checkbox"/> I received information in the mail <input type="checkbox"/> I went to the location of the business <input type="checkbox"/> I received a phone call from the business <input type="checkbox"/> I responded to an offer on the Internet	
		<input type="checkbox"/> I responded to a printed advertisement <input checked="" type="checkbox"/> Other, describe below Hospital	
3-E: How did you Pay?			
<input type="checkbox"/> Cash <input type="checkbox"/> Check		<input type="checkbox"/> Credit card/pre-pay <input type="checkbox"/> Installment Loan	
<input checked="" type="checkbox"/> Medicaid <input type="checkbox"/> Medicare		<input type="checkbox"/> Pay-Pal <input type="checkbox"/> Private Insurance	
		<input type="checkbox"/> Wire transfer <input type="checkbox"/> Other	
3-F: What, if any, is the Dollar amount associated with your loss?		\$	

Section 4 Actions Taken by Consumer

- Yes No 4-A: Did you sign a written agreement or contract? If yes, please attach a copy of the documentation.
- Yes No 4-B: Have you hired a private attorney?
- Yes No 4-C: Have you started a court action? If yes, please attach a copy of all court papers.
- Yes No 4-D: Have you sued, or have you been sued, over this incident/transaction? If yes, please attach a copy of all court papers.

Section 4 Actions Taken by Consumer - continued

- Yes No 4-E: Have you complained to the Individual/Business?
- Yes No 4-F: Have you filed a complaint with any other agency? If yes, list other agency:

Section 5 Transaction/Incident Details – attach additional pages if necessary

Please remember to attach a copy of all documentation involved (order blank, warranty, credit card receipt and statement, invoice, contract or written agreement, advertisement, cancelled check, correspondence etc). Please print clearly or type. **Do Not include your Social Security Number.**

If you answered "Yes" to 4-E or 4-F above please include in the transaction/incident details below when you complained and what action was taken.

Section 6 How would you like your Complaint resolved?

approve medication I need

Section 7 WHAT HAPPENS NEXT?

The Consumer Protection Division will send a copy of your complaint to the respondent individual/business or licensed professional. This office cannot disclose your complaint against a licensed professional to the public unless this office files a disciplinary action against the licensed professional. This office represents the State of Indiana and is limited in the remedies it can pursue. You may be entitled to compensation or other rights that we cannot pursue for you. In addition to filing this complaint, you may want to consider contacting a private attorney or your local small claims court.

Section 8 Mail Completed Forms to:

Office of Attorney General
Consumer Protection Division
Government Center South, 5th Floor
302 W. Washington Street
Indianapolis, IN 46204
317-232-6330 (phone) • 317-233-4393 (fax)
www.IndianaConsumer.com

Section 9 Consent and Verification

- Do you consent to disclosing the following information to the public?
- Yes No The nature of the complaint and the individual/business name
 - Yes No Your name
 - Yes No Your phone number

I affirm, under penalties for perjury, that the foregoing representations are true. I consent to the Consumer Protection Division obtaining or releasing any information in furtherance of the disposition of this complaint. I consent to the release of information included in this complaint to other public agencies attempting to discover ongoing fraudulent patterns or practices and for the purpose of law enforcement. I understand that I should not include my Social Security Number in any information submitted to the Consumer Protection Division. If I do provide my Social Security Number, I expressly consent to the disclosure of my Social Security Number in accordance with Indiana Code § 4-1-10-5(2).

[Signature] _____ *1-14-2021*
 Your signature Date

My name is [REDACTED], I am a 56 year old grandmother of 6.

I have had Chronic Pancreatitis for 17 yrs. now due to being a carrier of the Cystic fibrosis gene.

I have been under the care of Dr. Mark Nelson since the beginning.

As there is no cure for pancreatitis all that can be done is to control the pain.

I did at one time have stents put in but it did not help. Also Dr. Nelson in the beginning put me on pancreas medication but it didn't help so he discontinued it.

Dr. Nelson has had me on Fentanyl patches 100mcg every 3 days and Norco 10/325mg 2 every 6 hrs. for the past 16 yrs.

I have had such a severe case of pancreatitis that it has caused nerve damage which is even more painful. Dr. Nelson has said he seen the nerve damage on a scope.

A few months ago Dr. Nelson said he wanted me to go to a pain specialist.

He refered me to several which turned

me down stating there is nothing they could do for me. He finally got me into Dr. Hoeler. When I went to see Dr. Hoeler he told me there is no long term Alternative as to what has been done for the past 17 yrs.

Dr. Nelson was wanting a specialist to do a nerve block in which he had no idea what so ever how this procedure is done.

Dr. Hoeler said he could do the nerve block but he would have to put me under and having a heart condition puts me at high risk and it would only last about 2 weeks if it even worked at all. He then refered me back to Dr. Nelson.

This upset Dr. Nelson so he decided to take me off the fentanyl all together and just let me suffer. He said if I wanted help I should have stayed with the specialist.

He did say he would leave me on the Norco but I only get a 19 day supply in a 30 day period, also it is not enough for chronic pain like I have.

I wake up between 3 and 4 every morning in severe pain and nauseated. also every time I take just one bite of food puts me in pain. My pancreas feels

like its on fire! I have to sleep sitting up.

I understand there is a serious drug problem, I actually lost my daughter to an addiction but I don't and never have abused my medications in anyway and Dr. Nelson says he knows this.

On top of all of this I am raising my 12 yr. old grandson, laying in bed all the time is not an option for me.

All I ask is that the medications I need be approved so I can have quality of life and be able to function on a daily basis without being in constant pain.

I feel making me live like this is unfair and cruel to say the least.

I also fear that when Dr. Nelson finds I have contacted you he will also take me off the Norco. I have already had to go to the ER because the pain was so severe.

Thank you for your time and understanding.

