

**BOARD OF MEDICAL PRACTICE**

In re: Richard W. Graham, M.D.        )  
  ) Docket No. MPN 089-0914  
  )

**STIPULATION AND CONSENT ORDER**

NOW COME Richard W. Graham, M.D., and the State of Vermont, by and through Vermont Attorney General William H. Sorrell, and hereby stipulate and agree to the following in the above-captioned matter:

1. Richard W. Graham, M.D. ("Respondent") holds Vermont medical license number 042.0012170 originally issued by the Vermont Board of Medical Practice on April 20, 2011.
2. Jurisdiction in this matter rests with the Vermont Board of Medical Practice ("the Board"), pursuant to 26 V.S.A. §§ 1353-1357, 3 V.S.A. §§ 809-814, and other authority.

**FINDINGS OF FACT**

3. The Board opened this matter in September of 2014 upon receipt of information concerning Respondent. The matter was assigned to the North Investigative Committee of the Board ("the Committee").
4. Respondent has been a urologist at Gifford Medical Center since May of 2011.
5. The Committee's thorough investigation revealed that there were instances where Respondent's patient records failed to meet the applicable standard of care.

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- a Some of Respondent's operative notes were missing certain components and were lacking in specificity. For example, in an operative note documenting an incontinence repair procedure performed by Respondent, it is difficult to ascertain the exact procedure that Respondent had performed.
- b Respondent failed to adequately document the obtaining of written informed consent from a patient prior to performing a surgical procedure. Additionally, there were no clinical notes documenting a discussion with the patient about the procedure, the risks and benefits of the procedure, or alternative therapies/treatment.

#### CONCLUSIONS OF LAW

6. It is unacceptable medical practice for a licensee to inadequately document his treatment of patients. Such conduct may constitute the performance of unsafe or unacceptable patient care and the failure to conform to the essential standards of acceptable and prevailing practice in violation of 26 V.S.A. §§ 1354(b)(1) and (2).
7. It is unacceptable medical practice for a licensee to fail to document obtaining informed consent from a patient prior to performing a surgical procedure. Such conduct may constitute the performance of unsafe or unacceptable patient care and the failure to conform to the essential standards of acceptable and prevailing practice in violation of 26 V.S.A. §§ 1354(b)(1) and (2).
8. Respondent acknowledges that it is the Board's position that if the State were to file charges against him it could satisfy its burden at a hearing and a finding

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adverse to him could be entered by the Board, pursuant to 26 V.S.A. § 1354(b)(2).

9. Respondent agrees that the Board may enter as its facts and/or conclusions paragraphs 1 through 5 above, and further agrees that this is an adequate basis for the Board's actions set forth herein. Any representation by Respondent herein is made solely for the purposes set forth in this agreement.
10. Therefore, in the interest of Respondent's desire to fully and finally resolve the matter presently before the Board, he has determined that he shall enter into this instant agreement with the Board. Respondent enters no further admission here, but to resolve this matter without further time, expense and uncertainty; he has concluded that this agreement is acceptable and in the best interest of the parties.
11. Respondent acknowledges that he is knowingly and voluntarily entering into this agreement with the Board. He acknowledges he has had the advice of counsel regarding this matter and in the review of this Stipulation and Consent Order. Respondent is fully satisfied with the legal representation he has received in this matter.
12. Respondent agrees and understands that by executing this document he is waiving any right to challenge the jurisdiction and continuing jurisdiction of the Board in this matter, to be presented with a specification of charges and evidence, to cross-examine witnesses, and to offer evidence of his own to contest any allegations by the State.

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13. The parties agree that upon their execution of this Stipulation and Consent Order, and pursuant to the terms herein, the above-captioned matter shall be administratively closed by the Board. Thereafter, the Board will take no further action as to this matter absent non-compliance with the terms and conditions of this document by Respondent.

14. This Stipulation and Consent Order is conditioned upon its acceptance by the Vermont Board of Medical Practice. If the Board rejects any part of this document, the entire agreement shall be considered void. Respondent agrees that if the Board does not accept this agreement in its current form, he shall not assert in any subsequent proceeding any claim of prejudice from any such prior consideration. If the Board rejects any part of this agreement, none of its terms shall bind Respondent or constitute an admission of any of the facts of the alleged misconduct, it shall not be used against Respondent in any way, it shall be kept in strict confidence, and it shall be without prejudice to any future disciplinary proceeding and the Board's final determination of any charge against Respondent.

15. Respondent acknowledges and understands that this Stipulation and Consent Order shall be a matter of public record, shall be entered in his permanent Board file, shall constitute an enforceable legal agreement, and may and shall be reported to other licensing authorities, including but not limited to: the Federation of State Medical Boards Board Action Databank and the National Practitioner Data Bank. In exchange for the actions by the Board, as set forth

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herein, Respondent expressly agrees to be bound by all terms and conditions of this Stipulation and Consent Order.

16. The parties therefore jointly agree that should the terms and conditions of this Stipulation and Consent Order be deemed acceptable by the Board, it may enter an order implementing the terms and conditions herein.

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**ORDER**

WHEREFORE, based on the foregoing, and the consent of Respondent, it is hereby ORDERED that:

1. Respondent shall pay an administrative penalty of two thousand dollars (\$2,000.00) consistent with 26 V.S.A. § 1361(b). Payment shall be made to the "State of Vermont Board of Medical Practice," and shall be sent to the Vermont Board of Medical Practice office, at the following address: David Herlihy, Executive Director, Vermont Board of Medical Practice, P.O. Box 70, Burlington VT 05402-0070. The payment shall be due no later than 60 days after this Stipulation and Consent Order is approved by the Board.
2. No later than one year from the date of approval of this Stipulation and Consent Order, Respondent shall successfully complete the following continuing medical education ("CME") courses: (a) "Medical Ethics, Boundaries & Professionalism" by Case Western University School of Medicine; and (b) "Medical Documentation" by Case Western University School of Medicine. Upon successful completion of each CME course, he shall provide the Committee with proof of attendance. Respondent shall also provide the Committee with a brief written narrative of each CME course which will document what he learned from each course, and how he will apply that knowledge to his practice. Respondent shall provide proof of attendance and the written narratives to the Committee within 30 days of completion of each course.

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Respondent shall be solely responsible for all costs associated with the  
CME courses.

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SIGNATURES

DATED at Montpelier, Vermont, this 14<sup>th</sup> day of January 2016.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

By: Kassandra P. Diederich  
Kassandra P. Diederich  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609-1001

DATED at Randolph, Vermont, this 20 day of December,  
2016.

Richard W. Graham  
Richard W. Graham, M.D.  
Respondent

DATED at Rutland, Vermont, this 21<sup>st</sup> day of December,  
2016.

Karen Heald  
Karen Heald, Esquire  
Cleary Shahi & Aicher, P.C.  
110 Merchants Row  
Rutland, VT 05701  
Counsel for Respondent

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AS TO RICHARD W. GRAHAM, M.D.  
APPROVED AND ORDERED  
VERMONT BOARD OF MEDICAL PRACTICE

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Dated:

January 4<sup>th</sup>, 2017

ENTERED AND EFFECTIVE:

January 4<sup>th</sup>, 2017