

**STATE OF VERMONT  
BOARD OF MEDICAL PRACTICE**

In re: Robert Mitchell, PA-C                    )  
  )       Docket Nos. MPC 059-0618 & 009-0219  
  )

**STIPULATION AND CONSENT ORDER**

NOW COME the State of Vermont, by and through Vermont Attorney General Thomas J. Donovan, Jr., and Robert Mitchell, PA-C, and agree and stipulate as follows:

1. Robert Mitchell, PA-C, (“Respondent”) of Pittsford, Vermont holds Vermont medical license number 055.0030659 first issued by the Vermont Board of Medical Practice on October 1, 2003. Respondent is a Physician Assistant.
2. Jurisdiction in these matters rests with the Vermont Board of Medical Practice (“the Board”), pursuant to 26 V.S.A. §§ 1353-1366, 26 V.S.A. §§ 1731-1744, and 3 V.S.A. §§ 809- 814, and other authority.

**FINDINGS OF FACT**

3. The Board opened case number MPC 059-0618 in June of 2018 upon receipt of a complaint from a patient regarding concerns with Respondent’s treatment of an injury to the patient’s hand. The Board opened case number MPC 009-0219 in February of 2019 upon receipt of a phone call from Respondent’s employer advising he had been practicing medicine prior to filing a delegation agreement with the Board. These matters were assigned to the Central Investigative Committee of the Board (“Committee”).
4. At the time of the complaint in case number MPC 059-0618, Respondent was a Physician Assistant in the Emergency Room at the Rutland Regional Medical Center in Rutland,

Vermont. His practice areas included emergency medicine including performing surgical procedures.

5. On April 24, 2018 Respondent treated the patient in the Emergency Room of the Rutland Regional Medical Center for a laceration to the volar surface of his left index finger from a circular saw. The evaluation included a brief sensory and exploratory examination by a nurse, a negative hand x-ray, wound repair by Respondent, a tetanus shot and prescriptions for an antibiotic and an analgesic. The medical record indicated "exploration of wound shows no deep structure involvement," "full flexion at all joints," and "no neurovascular deficit present." The final diagnosis in the medical record was "laceration of finger." There was no record of an examination of the patient's hand by the Respondent. The patient was not referred to a hand specialist. The patient was discharged with outpatient primary care follow-up for suture removal in 12 days.

6. During the time that the patient was being treated in the Emergency Room, the patient alleges that it was not made clear to him that Respondent was a physician assistant and not a physician. The patient reported that he and his wife addressed Respondent as "Doctor" or "Doc" numerous times and at no time did Respondent correct them as to Respondent's proper title of physician assistant. Respondent indicated that his name tag on his jacket identified him as a Physician Assistant and also that he did not recall being addressed as "Doctor" or "Doc" by the patient.

7. On follow-up 15 days after the injury, the patient was diagnosed by another medical professional with likely flexor tendon and digital nerve injury. He was urgently referred to an appropriate specialist and had urgent surgery on his hand within three days.

8. Respondent's treatment of the patient in this instance deviated from the professional standard of care and was inadequate. He failed to conduct and document a thorough examination of the patient's injured hand, including an assessment of passive and active flexor tendon function and a neurovascular exam, which would include assessing sensation of the radial and ulnar digital nerves. Respondent failed to diagnose the flexor tendon and digital nerve injury and failed to refer the patient to a hand specialist.

9. Case number MPC 009-0219 was opened in connection with Respondent's commencing employment as a Physician Assistant at Taconic Spine in Manchester Center, Vermont. Respondent practiced medicine by treating patients on January 10, 2019, without having a delegation agreement on file with the employer or the Board as required by State Statute and the Rules of the Board of Medical Practice.

#### **CONCLUSIONS OF LAW**

10. The Board may find, "that failure to practice competently by reason of any cause on a single occasion or on multiple occasions constitutes unprofessional conduct." 26 V.S.A. § 1354(b). And "[f]ailure to practice competently includes, as determined by the board... (1) performance of unsafe or unacceptable patient care; or (2) failure to conform to the essential standards of acceptable and prevailing practice." 26 V.S.A. § 1354(b)(1) and (2).

11. The Board may find that "failure to comply with provisions of ...state statutes or rules governing the practice of medicine or surgery" constitutes unprofessional conduct. 26 V.S.A. § 1354(a)(27) and 1736(a)(4).

12. Title 26 V.S.A. § 1735a requires that a delegation agreement shall be signed by both the physician assistant and the supervising physician or physicians, shall be kept on file at each of the physician assistant's practice sites and the original filed with the Board.

13. Board Rule of Practice 26.1 mandates that when a physician assistant changes employment, supervision or practice site, all required notifications and any additional requested materials must be received and accepted by the Board prior to a physician assistant's practice in a new location or with a new primary supervisor. Physician assistants and supervising physicians shall verify that the documentation has been accepted by the Board as indicated in the Board's online system.

14. Respondent's violations of the above-referenced statute and Board Rules constitutes failure to comply with Vermont state statutes and rules governing the practice of medicine.

15. Consistent with Respondent's cooperation with the Board, he agrees that if the State were to file charges against him it could satisfy its burden at a hearing and a finding adverse to him could be entered by the Board, pursuant to 26 V.S.A. § 1354(a)(27) and § 1354(b)(1) and (2).

16. Respondent agrees that the Board may enter as its facts and/or conclusions in these matters any one or more of Paragraphs 1 through 15 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.

17. Therefore, in the interest of Respondent's desire to fully and finally resolve these matters 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 these matters without further time, expense and uncertainty; he has concluded that this agreement is acceptable and in the best interest of the parties.

18. 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 these matters and in the review of this Stipulation and Consent Order. Respondent is fully satisfied with the legal representation he has received in these matters.

19. 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 these matters, 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.

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

21. This Stipulation and Consent Order is conditioned upon its acceptance by the Board. 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.

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

23. 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.

### **ORDER**

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

1. Respondent shall be REPRIMANDED for the conduct set forth above.
2. Respondent's medical license shall be CONDITIONED as follows:
  - a. Respondent shall pay an administrative penalty of \$1,000.00 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 payable in monthly installments of \$100.00, starting no later than one (1) month after this Stipulation and Consent Order is approved by the Board and continuing on a monthly basis until the full amount has been paid. Nothing shall preclude prepayment of any or all monthly installments by the Respondent once the Stipulation and Consent Order is approved.
  - b. Respondent shall successfully complete one live, in-person AMA PRA Category

1 continuing medical education ("CME") course in each of the following topics: (1) treating hand injuries and (2) medical errors. Such CME courses must be completed no later than one (1) year after this Stipulation and Consent Order is approved by the Board and any limitation on in-person attendance at such courses because of the Corona Virus has been terminated. Respondent shall seek prior approval, in writing, for each CME course from the Central Committee, 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, which approval shall be promptly given in writing and shall not be unreasonably withheld. Upon successful completion of each CME course, he shall provide the Central Committee with proof of attendance and a brief written narrative of each CME course indicating what he learned and how he will apply it to his practice.


### SIGNATURES

Dated at Montpelier, Vermont, this \_\_\_\_ day of \_\_\_\_\_, 2020.

STATE OF VERMONT  
THOMAS J. DONOVAN, JR.  
ATTORNEY GENERAL

By: E-SIGNED by Bill Reynolds  
on 2020-05-11 16:54:39 GMT  
William B. Reynolds  
Assistant Attorney General  
Vermont Attorney General's Office  
109 State Street  
Montpelier, VT 05609-1001


Dated at \_\_\_\_\_, Vermont, this \_\_\_\_ day of \_\_\_\_\_, 2020.

E-SIGNED by Robert Mitchell  
on 2020-05-11 16:48:10 GMT

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Robert Mitchell, PA-C  
Respondent

Dated at \_\_\_\_\_, Vermont, this \_\_\_\_ day of \_\_\_\_\_, 2020.

E-SIGNED by John Zawistoski  
on 2020-05-11 14:28:11 GMT

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John J. Zawistoski, Esq.  
Ryan Smith & Carbine, Ltd.  
P.O. Box 310  
98 Merchants Row  
Rutland, VT 05702-0310

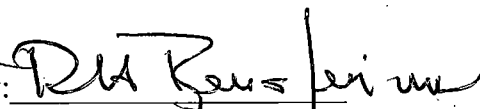


**AS TO ROBERT MITCHELL, PA-C**

**APPROVED AND ORDERED**

**VERMONT BOARD OF MEDICAL PRACTICE**

Signed on Behalf of the Vermont Board of Medical Practice

By:   
Richard Bernstein, MD  
Chair  
Vermont Board of Medical Practice

Vote documented in the Vermont Board of Medical Practice meeting minutes,  
dated June 3, 2020.

Dated: 6/19/20