STATE OF VERMONT
BOARD OF MEDICAL PRACTICE

In Re: JOHN B. COATES III, MD	)	Docket Nos. MPS 001-0119 and MPS 027-0121

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Board Members Considering the Case:
Dr. Gary Burgee
Dr. Richard Clattenburg
Gail Falk, Public Member
Dr. Marga Sproul, *Ad Hoc* Chair
Maureen Bogosian, Public Member

Presiding Officer:
George K. Belcher, Esq.

Representing the State:
Megan Campbell, Esq.

Representing the Respondent:
Peter B. Joslin, Esq. (Appeared on December 7, 2021, but did not appear on February 2, 2022); The Respondent did not participate.

Date of Hearing:
December 7, 2021 (Hearing before the Hearing Panel)
February 2, 2022 (Hearing before the Board to Consider the Hearing Panel Report)

Exhibits admitted:
State Exhibit 1: Letter of John B. Coates, MD to Vermont Board of Medical Practice dated April 12, 2019 and received on April 15, 2019
State Exhibit 2: Letter of John B. Coates, MD to Vermont Board of Medical Practice dated May 26, 2019 and received on June 7, 2019
State Exhibit 3: Letter of John B. Coates, MD to Vermont Board of Medical Practice dated June 25, 2019 and received on June 27, 2019
State Exhibit 4: Letter of John B. Coates, MD to Vermont Board of Medical Practice, dated November 17, 2020 and received on November 19, 2020
State Exhibit 5: Advertisement Searching for genetic siblings born through Dr. John Boyd Coates, III
State Exhibit 6: Letter from Counsel for Respondent signed by Respondent to Vermont Board of Medical Practice dated April 1, 2021
State Exhibit 7: Copy of Birth certificate of Daughter of Patient 2
State Exhibit 8: *Curriculum Vitae,* Arthur L. Caplan (163 Pages)

State Exhibit 9: Report of Arthur Caplan, PhD dated June 16, 2021
State Exhibit 13: Stipulated Facts for the Contested Hearing Scheduled for December 7 and 8, dated 22 November 2021
Respondent Exhibit A: Respondent's Response to Specification of Charges
Unlabeled Exhibit: Letter of Attorney Joslin to Board dated December 7, 2021

Additional Material Filed after the Hearing Panel Decision but before the Board Consideration:

(1) Respondent's Requests for Amendments to Findings of Fact, Conclusions of Law, and Proposed Order to the Board of Medical Practice dated January 18, 2022;
(2) Respondent's Memorandum of Law as to the Nature of Conduct Required to Support a Finding of Gross Violation of the Standard of Care under 26 VSA Sec 134(A)(22) dated January 18, 2022;
(3) Respondent's memorandum of Law Regarding Irrelevance of Impacts on Patients to and Charge Against Respondent dated January 18, 2022;
(4) State's Response to Respondent's Proposal for Amendments dated January 24, 2022;
(5) State's Response to Respondent's Memoranda Clarifying Why Patient Harm Has Relevance and Why Respondent's Conduct was a Gross Violation of the Standard of Care dated January 24, 2022;
(6) Letter from Attorney Joslin dated February 1, 2022 advising that neither he nor his client intended to participate in the Board hearing on February 2, 2022.

Specification of Charges were issued in this matter on July 20, 2021, alleging Six Counts of unprofessional conduct. Counts 1 and 2 relate to the Respondent's treatment of Patient 1. Counts 4 and 5 relate to the Respondent's treatment of Patient 2. Counts 3 and 6 relate to the Respondents representations to the Board and his participation in the Board's investigation. A Hearing Panel of the Vermont Board of Medical Practice was designated under Vermont Board of Medical Practice Rule 3.1 and 26 VSA Sec. 1372(a)(1). The Hearing Panel Members were Leo LeCours; Carol Blackwood, M.D. (*Ad Hoc* member of the Board); and Sarah McClain (Vice Chair of the Board)

The hearing was conducted on December 7, 2021, pursuant to the Administrative Rules for Remote Hearing for the Board of Medical Practice. The hearing was conducted on the record (electronically) with the Panel members, counsel, and witnesses participating by electronic means. Upon the evidence presented, the Hearing Panel made Findings of Fact, Conclusions of Law and a recommended order pursuant to Board Rule 3.1 and 26 VSA Sec. 1372(c).

On February 2, 2022 the Board considered the Report, the evidence, the record, and the other material which was filed with the Board. After due consideration, the Board decided: to Amend the Report by correcting two typographical orders; to grant the requested amendment of Finding Number 32 as requested by the Respondent; and (except as noted above) to accept and adopt the Findings of Fact and Conclusions of Law as submitted by the Hearing Panel and to Approve and Order the Recommended Order.

Findings of Fact

1. John B. Coates, III, MD ("Respondent") holds Vermont medical license number 042.0005278, first issued by the Vermont Board of Medical Practice on May 30, 1974. Respondent is a physician. (Admitted Specification of Charges #1[1])
2. Respondent was a practicing physician in Central Vermont in the 1970's specializing in obstetrics and gynecological care. (Stipulated Facts #1) Given the passage of time, the Respondent has not retained medical records of the treatment that he gave to Patient 1 or Patient 2. (Stipulated Facts #11)
3. Respondent retired from active practice in 2008 and has not practiced since, although he maintained an active license. (Stipulated Fact #2)

Patient 1

4. The Board opened this matter in January of 2019 upon learning of a lawsuit filed by Respondent's former patient (Cheryl Rousseau, hereinafter referred to a "Patient 1") alleging that in 1977 the Respondent used his own sperm without the Patient's knowledge or consent during her artificial insemination by donor procedure. The Board assigned the investigation of this incident to the South Investigative Committee of the Board. (SOC #3)
5. The Respondent performed artificial insemination by donor ("AID") procedures as part of his OB/GYN practice. He performed artificial insemination by donor for Patient 1 in 1977. (SOC #4(a) and Stipulated Facts #3)
6. Patient 1 contacted Dr. Coates because her sister was a neighbor of Dr. Coates. She began using him as her gynecologist in 1975 or 1976. Sometime during 1976 Patient 1 asked Dr. Coates generally about AID and he indicated that "We do that here." (Testimony of Patient 1)
7. At an office visit, Respondent explained to Patient 1 that he would perform the AID procedure with an anonymous sperm donation. He further explained that anonymous donation meant that the donor and the recipient of the sperm would be anonymous to one another to protect each party's privacy. Patient 1 gave consent to Respondent to perform AID after Respondent told her that the AID procedure would be anonymous. (Stipulated Facts #4)
8. Prior to the performance of the artificial insemination, the Respondent represented to Patient 1 that her donor was an unnamed medical student with similar characteristics to her husband. (Testimony of Patient 1) The Respondent asked the Patient to identify to him physical attributes of her husband including hair color, eye color and heritage. The Respondent took notes of the information on a clipboard. The patient requested that the donor have long legs if possible. Dr. Coates represented that the cost of the sperm donation would be $75.00 cash to be paid at the time of AID for the donor's semen. (Testimony of Patient 1)

[1] Specification of Charges are further cited as "SOC" where they were admitted or not denied in Respondent's answer.

9. The promise of anonymity was "extremely important" to Patient 1 since she did not want someone to know or "follow" her child. It would be a "safety net" for her and for her child. (Testimony of Patient 1)
10. Patient 1 trusted Dr. Coates as someone who took care of her. (Testimony of Patient 1)
11. Sometime after the initial discussion of AID, the Respondent conducted the artificial insemination process at the local hospital. This involved partial dis-robing by the patient and private touching of the patient by the Respondent similar to a GYN examination. There were no persons present during the procedure except the Respondent and the patient. The Respondent exited the examination room and later entered with the semen specimen. (Testimony of Patient 1)
12. The Respondent used his own sperm to inseminate Patient 1 during the procedure in February 1977 without disclosing to Patient 1 that he used his own sperm.
13. In addition to performing the artificial insemination by donor procedure for Patient 1, Respondent was the attending physician who, on December 27, 1977, delivered the child conceived by Patient 1 as a result of the insemination. (SOC 4 (d) and Stipulated Facts #6)
14. In October of 2018, more or less, a grandson of Patient 1 encountered a genetic abnormality. His mother (the daughter of Patient 1) sought to learn genetic information to discern if there were other genetic abnormalities or information which would affect the health of her offspring. This process was not initiated by Patient 1. Because of this, Patient 1 learned through the results of a commercial genetic testing service that the Respondent is the biological father of her child and had inseminated her with his own sperm. He had also delivered the child she conceived as a result of that medical procedure. (SOC #4(e) and testimony of Patient 1)
15. Upon learning that Dr. Coates was the biological father of her daughter, Patient 1 was "dumbfounded". She would not have consented to the AID process had she known that Dr. Coates was the semen donor. Her children had played with her sister's children in the neighborhood in which Dr. Coates lived.
16. Patient 1 lost faith in doctors generally and has awakened at night re-living the insemination process with the new knowledge that it was not an anonymous medical student who resembled her husband, but rather it was Dr. Coates who was the donor. (Testimony of Patient 1)
17. Patient 1 had no reason to believe that Dr. Coates had sought information or contact with her daughter of his own initiative except recent contact related to pending litigation.

Patient 2

18. In January 2021 the Board received a complaint from a second patient (Patient 2 – Shirley Brown). It was reported to the Board that the Respondent had used his own sperm during an artificial insemination by donor procedure without her knowledge or consent.
19. Patient 2 became a patient of Dr. Coates in 1974 or 1975. She had some medical training and worked as a respiratory therapist at the same hospital as Dr. Coates. (Testimony of Patient 2)

20. The Respondent performed an AID procedure for Patient 2 in 1978. (Stipulated Facts # 9.)
21. At the initial office visit, Respondent explained to Patient 2 that he would perform the AID procedure using an anonymous sperm donation, and he explained that anonymous donation meant that both the donor and the recipient of the sperm would be anonymous to one another to protect each party's privacy. (Stipulated Facts #8) Patient 2 was told by the Respondent that the donor would be an unidentified medical student who had the same characteristics as Patient 2 and her husband. (Testimony of Patient 2)
22. Privacy of this matter was important to both Patient 2 and her spouse since it involved their fertility. (Testimony of Patient 2)
23. Patient 2 gave to consent to the procedure.
24. The process of the AID was similar to a gynecology exam. No one was present except the patient and Dr. Coates. The sperm sample was not present when Patient 2 entered the examination room but was later brought in by Dr. Coates. (Testimony of Patient 2)
25. Patient 2 conceived a child as a result of the AID procedure performed by the Respondent in 1978 and she gave birth to a child on February 14, 1979. The Respondent was the genetic sperm donor for that child and is the biological father of the child. (Stipulated facts #10)
26. Patient 2 did not initiate a search for the sperm donor. Rather, her daughter (here referred to as "Daughter of Patient 2") discovered that she was a half-sister to the daughter of Patient 1 and she told this information to her mother, Patient 2.
27. Upon learning that Dr. Coates was the sperm donor, Patient 2 felt "deceived, used and betrayed". She described her feeling as similar to "medical rape". She would not have agreed to the procedure if she had known that Dr. Coates would be the sperm donor. She would not have wanted the sperm donor to know her or to see private parts of her body or to have touched her. (Testimony of Patient 2)
28. Patient 2 has no reason to believe that Dr. Coates had sought information or contact with her daughter over the years (except contact related to pending litigation).

Expert Opinion

29. Athur Caplan, PhD is a professor of Medical Ethics at NYU School of Medicine. Previously he has taught at the University of Pennsylvania Perlman School of Medicine, the University of Minnesota, the University of Pittsburgh and Columbia University. Professor Caplan has worked in, or taught in, the field of medical ethics for at least 35 years. He is not a medical doctor.
30. Professor Caplan testified regarding his opinion as to the standard of care and medical ethics which applied to Dr. Coates at the relevant times (1977-1978) using, in part, the relevant literature and legal caselaw in effect at that time.
31. It was the opinion of Professor Caplan that Dr. Coates owed a duty to both Patient 1 and Patient 2 "… to disclose the use of his own semen as the source of the semen donation in both procedures." (State Exhibit 9) It was further his opinion that, "…using his own semen in two patients without consent or disclosure is in my opinion a gross failure to use and exercise on at least one particular occasion that

degree of care, skill and proficiency that was and ought to have commonly been exercised by the ordinary skillful and prudent physician engaged in similar practice under the same or similar conditions." (State Exhibit 9) His opinions were not reliant on statutory or regulatory standards for artificial insemination, but rather were based upon general concepts of informed consent, patient autonomy, sexual boundaries and the fiduciary responsibility of physicians to their patients. (Exhibit 9 and testimony of Witness)

Respondent's Representations to the Vermont Board of Medical Practice

32. As indicated, the Vermont Board of Medical Practice received a complaint from Patient 1 in January of 2019 and from Patient 2 in January of 2021. As part of the Board's investigation, the Board Investigative Committee asked Dr. Coates to respond to Patient 1's allegations. In a letter received on April 15, 2019, Dr. Coates stated he did not remember Patient 1 or the specifics of her medical treatment and that all medical records had been purged and were unavailable. He later stated in the letter concerning his practice of AID, "The donors were not medical students, nor did I state they would be. Since I knew the donors personally I would choose only those who had healthy children. I deny being the donor. The patient was informed that donor and recipient would remain anonymous to protect both from later intrusive and unwanted contact." (State Exhibit 1)
33. When asked by the Investigative Committee to participate in genetic testing concerning the complaint of Patient 1, Dr. Coates refused on May 26, 2019. (State Exhibits 2 and 3).
34. The Investigative Committee later learned that Dr. Coates had participated in genetic testing relative to this complaint in another forum. The Committee asked him to provide information about his paternity of the child of Patient 1 in light of that testing. Dr. Coates responded on November 17, 2020 and acknowledged that genetic testing had confirmed that he was the sperm donor for the pregnancy of Patient 1. He then stated, "While I have no present memory of ever having used my own genetic material to artificially inseminate a female patient, genetic testing has confirmed that I was the sperm donor for the pregnancy that resulted in the birth of [the daughter of Patient 1]. I have no knowledge of, or reason to suspect the existence of any other occasion where I used my own sperm in the performance of an artificial insemination procedure." (State Exhibit 4.)
35. After receiving a complaint from Patient 2 in January of 2021, the Investigative Committee asked Dr. Coates to comment on his alleged use of his semen in the AID of Patient 2. On April 1, 2021, he responded that, on the basis of DNA testing information he had used his own semen in the artificial insemination of Patient 2. (State Exhibit 6) In that letter Dr. Coates claimed no memory of Patient 2, her course of treatment, or using his own sperm during the procedure.
36. In light of the testimony from his patients and his later admissions, Dr. Coates made material misrepresentations to the Investigative Committee of the Board when he claimed in November of 2020 (State Exhibit 4) that he had no knowledge of, or reason to suspect the existence of, the use of his sperm in artificial insemination procedures other that the procedure he performed on Patient 1. Likewise, he misled

the Investigative Committee when he denied being the donor to Patient 1 in his letter of April 12, 2019, and in his statement in that letter, "The donors were not medical students, nor did I state they would be." (State Exhibit 1)

Additional Information and Discussion

37. Dr. Coates did not personally participate in the hearing before the panel. On the morning of the hearing, Dr. Coates' attorney submitted a letter to the Board stating that Dr. Coates was surrendering his medical license permanently and that he waived the right to attend the hearing. The letter concluded, "Dr. Coates retired from medical practice in 2008. He is now 80 years old. He is giving up his medical license permanently. The events that are at issue occurred more than forty years ago. Dr. Coates regrets the circumstances giving rise to the charges."
38. At the close of the hearing, counsel for the Respondent argued that revocation of his license was unnecessary because of the Respondent's voluntary and permanent relinquishment of his license. Likewise, he argued that a reprimand would be unnecessary and that a financial penalty should not be ordered in light of his lack of malpractice insurance. (State Exhibit 2).
39. The State argued that the violations were gross, that the impacts upon the patients and the public were significant, that the misrepresentations were intentional, and that the breaches of trust were obvious. The State argued that the Respondent's denials and lack of candor in the investigation were also significant and that the concept of general deterrence should be considered when fashioning a remedy.
40. Unilateral surrender of a license during disciplinary proceedings may be significant, but such surrender would not necessarily impact the ability of the Board to proceed with discipline.[2] Moreover, the surrender was not pursuant to a formal settlement stipulation. The surrender was filed at the tail-end of a lengthy investigative process and following the process of litigation-preparation in which the Respondent had denied portions of the Specification of Charges.
41. It is worthwhile to note that the investigative process of the Board involves an obligation on the part of licensed professionals to cooperate with the Board throughout an investigation.[3]

Conclusions of Law

42. Count 1 of the Specification has been proven by a preponderance of the evidence. The Respondent engaged in a gross violation of the standard of care in his treatment of Patient 1. The Respondent failed to disclose to Patient 1 that he would be performing artificial insemination by donor procedure using his own sperm. This conduct violates the trust inherent in the physician/patient relationship which was a

[2] See Perry v. Medical Practice Board, 169 Vt. 399, 737 A.2d 900 (1999) where withdrawal of license application was held to not bar discipline of applicant. Likewise, settlements which are negotiated are required to include a concession of wrongdoing. Rules of the Board of Medical Practice 38.1.2.1. There was no concession of wrongdoing in the December 7, 2021, letter.

[3] Board of Medical Practice Rule 36.2.1

required component of the standard of care at the time these artificial insemination by donor procedures were performed. It was a material nondisclosure that resulted in the Respondent becoming a partner to reproductive activity with the Patient without the patient's informed consent. It also breached the Patient's reasonable expectation and expressed agreement that the artificial insemination by donor would involve sperm donation that was anonymous: meaning that the identities of the donor and the recipient would not be known to either party. This conduct was unprofessional conduct as it constitutes a gross violation of 26 VSA Sec. 1354(a)(22)[4]

43. The term "gross" is considered to address the magnitude of the breach. For example, "gross negligence" is more than a simple mistake.[5]
44. Count 2 of the Specification of Charges has been proven by a preponderance of the evidence. The Respondent represented to Patient 1 that her artificial insemination by donor procedure would be anonymous for both the donor and the recipient of the sperm to protect both from later intrusive and unwanted contact. However, Patient 1's identity was known to Respondent as he was her treating physician and performed the artificial insemination by donor with his own sperm; thus, Patient 1 – the recipient- was not anonymous to the donor as Respondent had represented to Patient 1. Respondent's conduct here constitutes a willful misrepresentation in medical treatments in violation of 26 VSA Sec. 1354(a)(14)[6].
45. Count 4 of the Specification of Charges has been proven by a preponderance of the evidence. The Respondent engaged in a gross violation of the standard of care in his treatment of Patient 2. The Respondent failed to disclose to Patient 2 that he would be performing artificial insemination by donor procedure using his own sperm. This conduct violates the trust inherent in the physician/patient relationship which was a required component of the standard of care at the time in which these artificial insemination by donor procedures were performed. It was a material nondisclosure that resulted in the Respondent becoming a partner to reproductive activity with the patient without the patient's informed consent. It also breached the Patient's reasonable expectation and expressed agreement that the artificial insemination by

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[4] VT Stat. Tit. 26 Sec. 1354 Unprofessional conduct (Vermont Statutes (2021 Edition))
§ 1354. Unprofessional conduct
(a) The Board shall find that any one of the following, or any combination of the following, whether the conduct at issue was committed within or outside the State, constitutes unprofessional conduct:
(22) in the course of practice, gross failure to use and exercise on a particular occasion or the failure to use and exercise on repeated occasions, that degree of care, skill, and proficiency that is commonly exercised by the ordinary skillful, careful, and prudent physician engaged in similar practice under the same or similar conditions, whether or not actual injury to a patient has occurred.

[5] See, Colorado State Bd. of Dental Examiners v. Savelle, 8 P.2d 693 (1932) where it was stated, "As to the meaning of the words, 'gross violation of professional duty,' a definition of the word 'gross' contained in Webster's New International Dictionary is as follows: ' Out of all measure; beyond allowance; not to be excused; flagrant; shameful; as a gross dereliction of duty; a gross injustice; gross carelessness.'"

[6] VT Stat. Tit. 26 Sec. 1354 Unprofessional conduct (Vermont Statutes (2021 Edition))
§ 1354. Unprofessional conduct (a) The Board shall find that any one of the following, or any combination of the following, whether the conduct at issue was committed within or outside the State, constitutes unprofessional conduct: (14) willful misrepresentation in treatments.

donor would involve sperm donation that was anonymous: meaning that the identities of the donor and the recipient would not be known to either party. This conduct was unprofessional conduct as it constitutes a gross violation of 26 VSA Sec. 1354(a)(22).

46. Count 5 of the Specification of Charges has been proven by a preponderance of the evidence. The Respondent represented to Patient 2 that her artificial insemination by donor procedure would be anonymous for both the donor and the recipient of the sperm to protect both from later intrusive and unwanted contact. However, Patient 2's identity was known to Respondent as he was her treating physician and performed the artificial insemination by donor with his own sperm; thus, Patient 2 – the recipient- was not anonymous to the donor as Respondent had represented to Patient 2. Respondent's conduct here constitutes a willful misrepresentation in medical treatments in violation of 26 VSA Sec. 1354(a)(14).
47. Counts 3 and 6 have been proven by a preponderance of the evidence. The Respondent made a material misrepresentation to the Board during the course of its investigation into the allegations of unprofessional conduct involving the treatments that he provided to Patient 1 and Patient 2. The material misrepresentations occurred in his April 2019 letter to the Board where he denied his paternity of the child of Patient 1 (State Exhibit 1) and in his letter to the Board in November of 2020 confirming his parentage of the child of Patient 1, but denying knowledge of or reason to suspect the existence of any other occasion where he used his own sperm in artificial insemination (State Exhibit 4). Respondent's lack of candor and his misrepresentations to the Board constitute conduct evidencing an unfitness to practice medicine pursuant to 26 VSA Sec. 1354(a)(7)[7].

At the hearing before the Panel the State requested that the medical license of the Respondent be disciplined as follows as set forth in the Specification of Charges:

(1) Respondent shall be reprimanded for the conduct above;
(2) Respondent's Vermont medical license shall be revoked on a permanent basis;
(3) Respondent shall pay an administrative penalty of a minimum amount of $4,000 in accordance with 26 VSA Sec. 1374(b) and 1398 as it deems proper.

ORDER

1. The Respondent is REPRIMANDED for the conduct above;
2. The Respondent's medical license is permanently REVOKED;
3. Respondent shall pay a $4,000 administrative penalty in accordance with 26 VSA Sec. 1374(b)(1)(A)(iii). Payment shall be made to the "Vermont State Board of Medical Practice," and shall be sent to the Board at the following address: David Herlihy,

[7] VT Stat. Tit. 26 Sec. 1354 Unprofessional conduct (Vermont Statutes (2021 Edition))
§ 1354. Unprofessional conduct
(a) The Board shall find that any one of the following, or any combination of the following, whether the conduct at issue was committed within or outside the State, constitutes unprofessional conduct: (7) conduct that evidences unfitness to practice medicine.

Executive Director, Vermont Board of Medical Practice, P.O. Box 70, Burlington, Vermont, 05402-0070. The payment shall be due no later than six (6) months from the date this order becomes final.

Vermont Board of Medical Practice

Marga Sproul, MD, *Ad Hoc* Chair

Dated this 4th day of Feb., 2022

February 2, 2022
Effective Date