



5. On November 4, 2020, Respondent entered into a Cessation of Practice Agreement with the Board. Pursuant to that agreement, he agreed to cease and desist immediately from the practice of medicine in Vermont and to surrender his DEA registration to prescribe controlled substances.

6. The Committee conducted an extensive investigation of this matter. This investigation included, but was not limited to, the review of medical records for eighty-six patients as well as interview testimony of medical staff at RRMC who observed behavior consistent with medication diversion. The Committee's findings include the following practice concerns.

7. Respondent admitted to diverting nitrous oxide for his own use during patient treatment at RRMC. He estimated that he did so approximately eight times from September 28, 2020 to October 7, 2020, and that, in two of those eight cases, he diverted nitrous oxide from patients under general anesthesia.

8. Respondent's use of nitrous oxide when he was responsible for patient safety was a gross violation of the standard of care. Nitrous oxide usage can impair a provider's cognition, attention, and ability to respond appropriately to patient-care needs. Respondent's patients were dependent upon him to identify and respond in a timely manner to any number of critical patient care events that might include arrhythmia, hypotension, sudden failure of the anesthesia machine, and lack of oxygen supply pressure, among many others. Respondent's patients who were under general anesthesia at the time of his diversion were especially vulnerable as they were unable to respond to conditions such as hypercarbia, hypoxemia or hypoventilation or communicate if they were experiencing ischemic chest pain or hypovolemic. Respondent chose to use a

substance which he was trained to know impairs cognition and can impair his responsiveness at a time when he was responsible for patient care. This is a violation of patient trust and is not competent medical care.

### **CONCLUSIONS OF LAW**

9. The Board may find that it is unprofessional conduct when there is a “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.” 26 V.S.A. § 1354(a)(22).

10. Respondent committed a gross violation of the standard of care when he inhaled nitrous oxide during patient procedures despite being aware of its psychoactive effects and that it impaired his cognition when he was responsible for patient care. The nitrous oxide he inhaled was diverted from the hospital and not prescribed for his use. Respondent’s conduct put his patients at risk at a time when they were vulnerable due to the administration of anesthesia and required his diligent attention to monitor for any emergent medical needs.

11. The Board may further 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). “Failure 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).

12. Respondent acknowledges that if this matter were to proceed to a contested hearing, the State could prove that he diverted medication from the hospital and used it despite being aware of its psychoactive effects while he was responsible for direct patient care. This conduct impaired his ability to be responsive to patient needs. It did not conform to the essential standards of acceptable and prevailing practice, and also constituted unsafe and unacceptable patient care.

13. Respondent acknowledges 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)(22) and § 1354(b)(1) and (2).

14. Respondent agrees that the Board will adopt and incorporate as its facts and conclusions in this matter paragraphs one (1) through twenty-one (21) herein and further agrees that this is an adequate basis for the Board’s actions in this agreement. Any representation by Respondent herein is made solely for the purposes set forth by this agreement.

15. 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 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.

16. Respondent acknowledges that he is knowingly and voluntarily entering into this agreement with the Board.

17. 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.

18. 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 resolved 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.

19. 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.

20. 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 action by the Board, as set forth herein, Respondent expressly agrees to be bound by all terms and conditions of this Stipulation and Consent Order.

21. 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, the Board hereby adopts as its facts and conclusions paragraphs one (1) through twenty-one (21) above. It is hereby ORDERED that:

1. Respondent is REPRIMANDED for the conduct set forth above.
2. Upon Board approval of this Stipulation, Respondent is hereby relieved from the Cessation of Practice Agreement that went into effect November 4, 2020, but his license will thereupon be subject to the following:
3. Respondent's Vermont medical license shall hereby be REVOKED on a PERMANENT basis.

**SIGNATURES**

Dated at \_\_\_\_\_, Vermont, this \_\_\_\_ day of \_\_\_\_\_, 2023.

DocuSigned by:  
*Leo LeCours* 6/30/2023  
E9B90868CEC84E3

Leo LeCours  
Chair, North Investigative Committee  
Vermont Board of Medical Practice

Dated at Montpelier, Vermont, this \_\_\_\_ day of \_\_\_\_\_, 2023.

DocuSigned by:  
*Megan Campbell* 6/30/2023  
7C40A403D7CC486

*Approval as to legal form*  
Megan Campbell, Esquire  
Assistant Attorney General  
Vermont Attorney General's Office  
109 State Street  
Montpelier, VT 05609-1001

DATED at \_\_\_\_\_, Vermont, this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Robert A. Micley MD  
Respondent

DATED at Burlington, Vermont, this 30th day of June, 2023.

*/s/ Shireen T. Hart*  
\_\_\_\_\_  
Shireen Hart, Esq.  
Primmer Piper Eggleston & Cramer PC  
30 Main St., Suite 500  
P.O. Box 1489  
Burlington, VT 05402-1489  
Counsel for Dr. Micley



**AS TO ROBERT A. MICLEY MD  
APPROVED AND ORDERED  
VERMONT BOARD OF MEDICAL PRACTICE**

Signed on Behalf of the Vermont Board of Medical Practice

By: 

Richard Hildebrant  
Chair, Vermont Board of Medical Practice

Vote documented in the Vermont Board of Medical Practice meeting  
minutes, dated 07/05/2023.

**Dated:** 07/05/2023

**SIGNATURES**

Dated at \_\_\_\_\_, Vermont, this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Leo LeCours  
Chair, North Investigative Committee  
Vermont Board of Medical Practice

Dated at Montpelier, Vermont, this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
*Approval as to legal form*  
Megan Campbell, Esquire  
Assistant Attorney General  
Vermont Attorney General's Office  
109 State Street  
Montpelier, VT 05609-1001

*Williamston, Massachusetts*

DATED at \_\_\_\_\_, Vermont; this 29 day of June, 2023.

*Robert A. Micley MD*  
\_\_\_\_\_  
Robert A. Micley MD  
Respondent

DATED at \_\_\_\_\_, Vermont, this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Shireen Hart, Esq.  
Primmer Piper Eggleston & Cramer PC  
30 Main St., Suite 500  
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Burlington, VT 05402-1489  
Counsel for Dr. Micley