

**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**

In re: Kenneth A. Johnson MD)
)
) Docket No. MPN 090-1020

STIPULATION AND CONSENT ORDER

NOW COME Kenneth A. Johnson MD, and the State of Vermont, by and through Vermont Attorney General Thomas J. Donovan, Jr. and the undersigned Assistant Attorney General Megan Campbell, and agree and stipulate as follows:

1. Kenneth A. Johnson MD (“Respondent”) holds Vermont medical license number 042.0014155 originally issued by the Vermont Board of Medical Practice on September 5, 2018.
2. Jurisdiction in this matter vests with the Vermont Board of Medical Practice (“the Board”), pursuant to 26 V.S.A. §§ 1353-1354, 1370-74, 3 V.S.A. §§ 809-814, and other authority.

FINDINGS OF FACT

3. Respondent is a physician specializing in orthopedics.
4. Respondent submitted a licensing application for a Vermont medical license to the Vermont Board of Medical Practice (“Board”) on April 1, 2018.
5. Respondent signed his 2018 Vermont medical license application certifying that all information therein was true and accurate to the best of his knowledge.

By signing the application, he also asserted his understanding that providing false information or omission on the application was unlawful and would jeopardize his license certification.

6. On Respondent's 2018 licensing application to the Board he reported no information for Question 47 titled "Resignation or Nonrenewal of Medical Staff Membership, or Restriction of Privileges Information." That question reads:

Provide information about each instance in which you resigned or did not renew medical staff membership, or you had hospital privileges restricted, after having been notified of an investigation or peer review that was not yet resolved, or in lieu of in settlement of a pending disciplinary case related to competence or character? Provide documentation that shows the date, the hospital, the basis for and nature of the case, and the terms of settlement, if any.

7. Eight months prior, Respondent had in fact been the subject of an investigation into his medical competence by his former employer, the Mayo Clinic in Austin, Minnesota. The Mayo Clinic placed Respondent on administrative leave in August of 2017 pending the conclusion of their review. A hearing on the matter was scheduled later that month at which time Respondent chose to resign. Respondent's resignation occurred prior to his 2018 Vermont licensure application.

8. Respondent also responded "No" to Question 90 of his Vermont licensure application, which read as follows:

Are you currently the subject of an investigation or peer review of any licensing authority, hospital, medical staff group, health care facility, professional association, or other body that has authority to take actions regarding: your right to practice medicine or any other health art; your employment practicing medicine or any other healing art; or your professional qualifications (e.g., specialty board certification)? If yes, provide the name of the entity conducting the investigation, its location,

the date you learned about the investigation, and the circumstances that triggered the investigation in the following questions and upload any relevant documentation you have such as a letter notifying you of the investigation where indicated.

9. On September 28, 2017, Respondent was notified by letter by the Minnesota Board of Medical Practice that it had a pending investigation regarding his medical practice. Respondent provided a responsive letter to the Minnesota Board about the investigation on October 8, 2017, six months before completing his Vermont medical licensing application. Minnesota's investigation continued from 2017 until its conclusion in 2020. At the time of Respondent's 2018 Vermont licensure application, the Minnesota Board of Medical Practice's investigation was currently pending.

10. The Board has considered in mitigation that Respondent disclosed both his 2017 resignation under investigation in Austin, Minnesota and the Minnesota Medical Board's investigation on his application for Vermont medical license renewal in 2020.

CONCLUSIONS OF LAW

11. The Board may find that fraud or misrepresentation in applying for or procuring a medical license constitutes unprofessional conduct. 26 V.S.A. § 1354(a)(1).

12. Respondent made a material misrepresentation when he failed to report either the investigation by the Mayo Clinic or the Minnesota Board of Medical Practice's investigation on his 2018 Vermont medical license application.

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)(1).

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. Respondent shall pay a \$1,000 administrative penalty consistent with 26 V.S.A. § 1374(b)(1)(A)(iii). 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 Vermont 05402-0070. Payment shall be due no later than one (1) month after this Stipulation and Consent Order is approved by the Board.

SIGNATURES

DATED at Chelsea, Vermont, this _____ day of _____, 2021.

STATE OF VERMONT

THOMAS J. DONOVAN, JR
ATTORNEY GENERAL

DocuSigned by:
 12/10/2021
7E40A403D7EE486

 Megan Campbell
 Assistant Attorney General
 Office of the Attorney General
 109 State Street
 Montpelier, VT 05609-1001

DATED at _____, Vermont, this _____ day of _____, 2021.

 Kenneth A. Johnson MD
 Respondent

SIGNATURES

DATED at Chelsea, Vermont, this _____ day of _____, 2021.

EXCERPT FROM VERMONT STATE BAR RECORDS

STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

VERMONT STATE BAR RECORDS
RECORDS SECTION
MONTPELIER, VT 05609-1001

Megan Campbell
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001

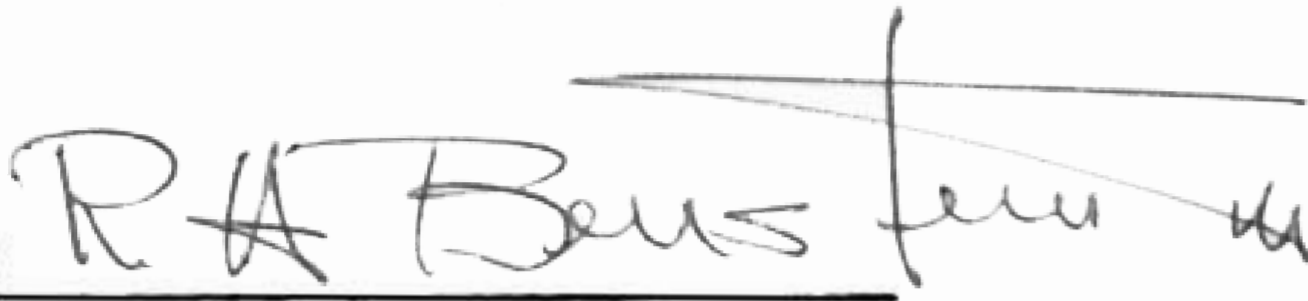
DATED at Manchester, Vermont, this 10 day of Dec., 2021.
NH

EXCERPT FROM VERMONT STATE BAR RECORDS

Kenneth A. Johnson
Kenneth A. Johnson MD
Respondent

AS TO KENNETH A. JOHNSON MD
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 January 5, 2022

Dated: January 5, 2022