

4. Three complaints regarding Respondent are currently pending before the Vermont Board of Medical Practice. Two of these complaints (MPS 13-0200; MPS 10-0201) regard the manner in which he responded to and/or cared for patients.¹ The circumstances involved in these two complaints are set forth below.

II. Conduct by Respondent.

Patients A and B.

5. Docket Nos. MPS 13-0200 and MPS 10-0201 include allegations regarding Respondent's care of patients on December 25, 1997. On that date Respondent was responsible for making hospital rounds on three patients who were then being treated at Copley Hospital. He failed entirely to see two of the three patients. Respondent discussed the care of the two patients with the emergency room physician and nursing staff during the day and agreed by telephone to the discharge of both patients prior to arriving at the hospital. Nonetheless, Respondent prepared a written history and physical for these two patients (Patients A and B) and such records failed to state in any form that Respondent had not seen or cared in person for either patient on December 25, 1997. In each of these two cases the written history and physical as prepared by Respondent could create the impression to a reasonable reader that Respondent actually and directly had cared for the two patients on December 25, 1997. Thus, these written records were incomplete and could be misleading, if not considered with the complete medical record for each patient. Respondent saw neither of these patients prior to their discharge from the hospital.

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1. The third pending complaint, Docket No. MPS 46-0600, has been reviewed by the Board's South Investigative Committee. The Committee found no unprofessional conduct by Respondent. Thus, this matter will be closed based on the recommendation of the South Investigative Committee.

Patient C.

6. Respondent failed to promptly respond to and care for the needs of the third patient (Patient C) on December 25, 1997. The patient was then critically ill and his condition worsened throughout the day. The patient, suffering with pneumonia, had been admitted to Copley Hospital on December 23, 1997 by another doctor. That doctor arranged for Respondent to care for Patient C on December 25, 1997. Respondent was expected to make rounds and see the patient (as well as Patients A and B) on December 25, 1997. Respondent did not arrive at the hospital until 7:00 p.m. in the evening.

7. Earlier in the day, at 4:25 in the afternoon of December 25, 1997, Respondent by telephone ordered the administration of Ativan to Patient C although he had not yet examined the patient or come to the hospital. Throughout the day, on December 25, 1997, Respondent had been informed by hospital nursing staff of the patient's worsening condition and difficulty breathing. Hospital staff repeatedly told Patient C's family members throughout the day that Respondent soon would be coming to the hospital to care for the patient. When Respondent arrived at the hospital around 7:00 p.m. he examined the patient and then discussed with family members whether the patient should be transferred to Fletcher Allen Health Care. The family members of Patient C recall this conversation as being acrimonious and unpleasant.

II. Basis for Disciplinary Action.

8. Respondent has reviewed the above allegations as set forth in Paragraphs 5 through 7 and agrees with their content. On March 29, 2000 Respondent entered into a comprehensive agreement with Copley Hospital in a resolution related to these allegations.

His agreement with the hospital set forth terms and conditions providing for reinstatement of Respondent's clinical privileges (hereinafter referred to as the "March 29, 2000 agreement"). See Exhibit A. The March 29, 2000 agreement includes requirements to be followed by Respondent with regard to arranging coverage of the care of his patients, timely response to calls and paging, the preparation of a written "history and physical" for each admitted patient, and the making of rounds on patients. The agreement also includes provisions governing the monitoring of Respondent's compliance with these terms over time. Respondent warrants that the terms of the March 29, 2000 agreement have not been modified by the parties, and that the March 29, 2000 agreement is the sole document imposing conditions on his clinical privileges at Copley Hospital.

9. Now, here, Respondent, by executing this Stipulation and Consent Order, acknowledges and does not contest the conduct described in Paragraphs 5 through 8, above, in light of the desire of the parties to resolve these matters without a hearing and to establish conditions of licensure as to his practice of medicine. Respondent agrees that there exists a quantum of evidence from which the Board could make findings adverse to him, pursuant to 26 V.S.A. § 1354(2) and 3 V.S.A. § 129a(10).

10. Respondent agrees that the Board of Medical Practice may adopt and enter Paragraphs 5 through 9, as uncontested findings of fact and/or conclusions of law in this matter.

11. Respondent acknowledges that he is knowingly and voluntarily agreeing to this Stipulation and Consent Order. He acknowledges that he has had the opportunity to obtain advice of counsel regarding the matters before the Board and in reviewing this

Stipulation and Consent Order. Respondent agrees and understands that by executing this document he is waiving any right to be served with formal charges, to challenge the jurisdiction and continuing jurisdiction of the Board in these matters, to be presented with the evidence against him, to cross-examine adverse witnesses, and to offer evidence of his own to contest the State's charges. 26 V.S.A. § 1356; 3 V.S.A. §§ 129, 809 & 814.

12. Respondent has **not** previously been the subject of disciplinary action by the Vermont Board of Medical Practice. Respondent has cooperated fully with the Board during its investigation of these matters.

III. Disciplinary Action; Conditions on Respondent's Medical License.

13. The parties to this Stipulation and Consent Order agree that appropriate disciplinary action regarding these matters shall consist of: (a) **public reprimand** of Respondent based on the above-described conduct by him; see 26 V.S.A. § 1354(22); and (b) **imposition of conditions** on his license to practice medicine for a period of two years from the effective date of this agreement. Respondent understands and agrees that substantial or repeated failure by him to comply with any of the terms and conditions herein may constitute unprofessional conduct and may subject him to possible further discipline by the Board.

14. Respondent's license to practice medicine hereafter shall be designated as "**CONDITIONED**", and Respondent shall comply fully and in good faith with each of the terms and conditions of licensure set forth below, wherever he may practice, until such time as he has been relieved of all conditions herein by express written order of the Vermont Board of Medical Practice.

15. The parties agree that the terms and conditions of Respondent's March 29, 2000 agreement with Copley Hospital, Inc., ~~see~~ Exhibit A, shall be incorporated by reference herein and made integral terms and conditions of this Stipulation and Consent Order, with such additional terms as are set forth below.

16. Respondent agrees to abide continuously and in good faith with all terms of his March 29, 2000 agreement with Copley Hospital for a period of two years from the effective date of this Stipulation and Consent Order and agrees that Copley Hospital may continue to monitor his compliance with the terms and conditions of the March 29, 2000 agreement during that period. Respondent agrees that any action by Respondent and/or Copley Hospital purporting to set aside or terminate the provisions of the March 29, 2000 agreement shall have no force or effect on the terms and conditions of this Stipulation and Consent Order. Respondent agrees that Copley Hospital may provide quarterly monitoring reports to the Vermont Board of Medical Practice assessing his compliance with the terms and conditions of the March 29, 2000 agreement. Respondent agrees to request that Copley Hospital provide such monitoring and reporting to the Board during the life of this agreement.²

17. Respondent agrees that Copley Hospital may promptly report any failure or allegation of failure by Respondent to comply with the terms and conditions of the March 29, 2000 agreement to the Vermont Board of Medical Practice. Further, Respondent agrees that he shall personally and promptly report to the Vermont Board of Medical Practice,

2. Should Respondent hereafter become employed or associated with another hospital he agrees that he shall promptly provide such hospital(s) a complete written copy of this Stipulation and Consent Order and shall petition the Board of Medical Practice for modification of the terms of this agreement so as to permit its purposes to be effected at such new or additional location.

orally and in writing, any failure or any allegation known to him of failure by him to comply with the terms and conditions of the March 29, 2000 agreement, as soon as such information is made known to him.

18. Respondent agrees to provide all waivers of confidentiality as may be required by Copley Hospital or the Vermont Board of Medical Practice with regard to all reporting which is required by this Stipulation and Consent Order.

19. Respondent agrees that that any and all acts taken in compliance with the terms of this Stipulation and Consent Order, by himself or Copley Hospital, Inc. shall not be deemed to be contrary to the terms and conditions of Paragraph 4 of the March 29, 2000 agreement.

20. Respondent agrees that he shall write and send a letter of apology to the family of Patient C, described in Paragraphs 6 and 7, with regard to Respondent's failure to respond and come promptly at Copley Hospital so as to provide medical care to the patient. Respondent agrees that such written apology shall be presented to the Executive Director of the Vermont Board of Medical Practice for her review prior to being sent. Respondent agrees that the Executive Director may offer reasonable suggestions for revision. Respondent agrees that he shall consider all reasonable suggestions for revision prior to forwarding such letter to the patient's family.

IV. Other Terms and Conditions.

21. Respondent agrees that he has read and carefully considered all terms and conditions herein and agrees to accept and be bound by these while licensed to practice medicine in the State of Vermont or elsewhere, whether employed by Copley Hospital or

another entity, and to be bound by these until such time in the future as he may be expressly relieved of these conditions, in writing, by the Vermont Board of Medical Practice. The Board, in its sole discretion, may consider a petition from Respondent for relief from or modification of discrete, individual conditions of this agreement, no sooner than 12 months after the effective date of this Stipulation and Consent Order, unless a petition for modification at any earlier date has otherwise been expressly provided for.

22. Respondent's license to practice medicine in the State of Vermont shall be conditioned for two years, following the effective date of the Board's approval of this agreement. Respondent's Vermont license to practice medicine shall include the designation "Conditioned" until such time as **all** terms and conditions upon his medical license have been removed. During the period that Respondent's license is conditioned he shall comply fully with all the requirements set forth herein, unless modified, and in the March 29, 2000 agreement, which is incorporated by reference.

23. Respondent agrees that he shall provide a complete copy of this Stipulation and Consent Order and its attachment, Exhibit A, to any employer for whom he works or associates himself, to any prospective employer, any State medical board or other licensing authority in any location or jurisdiction where he may seek to practice or where he may make application, so long as this agreement remains in effect.

24. The parties agree that this Stipulation and Consent Order shall be a public document, shall be made part of Respondent's licensing file, and may be reported to other licensing authorities and/or entities including, but not limited to, the National Practitioner Data Bank and the Federation of State Medical Boards.

25. This Stipulation and Consent Order is subject to review and acceptance by the Vermont Board of Medical Practice and shall not become effective until presented to and approved by the Board. If the Board rejects any part of this Stipulation and Consent Order, the entire agreement shall be considered void. However, should the terms and conditions of this Stipulation and Consent Order and Exhibit A, attached hereto, be deemed acceptable by the Board, the parties request that the Board enter an order of **reprimand**, with such order imposing conditions on Respondent's license to practice medicine, as set forth above, and that such license thereafter be subject to each of the terms and conditions as set forth herein and in Exhibit A, attached.

26. Respondent agrees to be bound by all terms and conditions of this Stipulation and Consent Order and Exhibit A, attached. Respondent agrees that the Board of Medical Practice shall retain jurisdiction to enforce all terms and conditions of this Stipulation and Consent Order. Respondent expressly agrees that failure by him to comply with the terms of this Stipulation and Consent Order and the provisions of Exhibit A, attached, may constitute unprofessional conduct under 26 V.S.A. §1354(25) and may subject Respondent to such disciplinary action as the Board may deem appropriate.

Dated at Montpelier, Vermont, this 28th day of December, 2001.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: [Signature]
JAMES S. ARISMAN
Assistant Attorney General

Dated at Burlington, Vermont this 27th day of December, 2001.

[Signature]
GARY L. WARING, M.D.
Respondent

[Signature]
THOMAS M. HIGGINS, ESQ.
Counsel for Respondent

**FOREGOING, AS TO GARY L. WARING, M.D.,
APPROVED AND ORDERED, VERMONT BOARD
OF MEDICAL PRACTICE:**

[Signature] _____
[Signature] _____
[Signature] _____
[Signature] _____
[Signature] _____

DATED: Jan. 2, 2002

ENTERED AND EFFECTIVE: JANUARY 3, 2002

REV. 12-18-01, JSA; Not Approved or Effective Until Executed Above by Parties and Board

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