

II.

6. Respondent has had the opportunity to review his prior written statement regarding this matter, filed with the Board, and to discuss its content with counsel. After conferring with counsel, Respondent Aitken now admits that while caring for Patient A he violated professional boundaries on one or more occasions. Respondent admits and agrees that a violation of professional boundaries establishes an evidentiary basis for entry by the Board of an emergency order summarily suspending his license to practice medicine, pursuant to 3 V.S.A. § 814 (c).

7. Respondent wishes to cooperate with the Board of Medical Practice with regard to the above-captioned matter and recognizes the Board's obligation in all cases to act expeditiously to protect the public health, safety, and welfare. No formal charges have been filed against Respondent by the Board. Thus, he enters here no further response to the allegations that have been or that may be raised regarding his care and treatment of Patient A. Respondent, however, acknowledges that he has determined, knowingly and voluntarily, that he wishes to agree, in lieu of possible summary suspension proceedings, to the terms and conditions set forth below in recognition of the responsibility of the Vermont Board of Medical Practice to protect the health, safety, and welfare of the public and to protect the integrity of the medical profession.

8. Respondent agrees that provisions of this document are intended at this time to arrange for the orderly continuation of his medical practice activities, pending further proceedings or order of the Board.

III.

9. Respondent acknowledges that he is voluntarily agreeing to this Stipulation and Consent Order. He acknowledges that he has had advice of counsel in this matter and is satisfied with such advice and related representation. Respondent agrees and understands that by executing this document he is waiving such rights as he may possess, at this time, to be served with formal charges, to challenge the jurisdiction and continuing jurisdiction of the Board in these matters, and to a public hearing on the State's motion for summary suspension. 26 V.S.A. § 1356; 3 V.S.A. §§ 809 & 814.

10. Respondent agrees that on the basis of the allegations against him by Patient A as set forth in Paragraphs 4 and 6, above, that the Vermont Board of Medical Practice may adopt and enter Paragraphs 3 through 7, above, as findings of fact in this matter and may enter a finding that such circumstances imperatively require emergency action to protect the public health, safety, and welfare.

11. Based on the above, Respondent now voluntarily agrees, pending further proceedings or order of the Board of Medical Practice, pursuant to 26 V.S.A. §§ 1354, 1360, 1361 & 1398; and 3 V.S.A. § 814(c) to:

- (a) cooperate fully with any further investigation of this matter by the Board of Medical Practice;
- (b) accede to entry of an order by the Board of Medical Practice conditioning Respondent's license to practice medicine, in lieu of entry of an order of summary suspension, pending further proceedings or order of the Board;
- (c) surrender promptly his Vermont medical license (both wall certificate and wallet card) to the Board, in exchange for issuance of an interim conditioned license to him, pending further proceedings or order of the Board;

- (d) treat or see all female patients ~~only~~ in the direct presence of a nurse, assistant, clerical notetaker, or other individual who shall be an adult and who shall be present to act as a chaperone during the care of such patients, ~~beginning no later than c.o.b. July 31, 2002~~; such chaperone shall not be a member of Respondent's family or related to him by birth or marriage; the name of such individual shall be promptly reported to the Board in writing; the Board in its sole discretion may approve or disapprove the individual proposed to carry out this role or at a later date withdraw such approval;
- (e) undergo promptly a comprehensive psychosexual evaluation, with any and all arrangements to be discussed with and approved by the Board at least 30 days in advance; the Board shall have the sole discretion to approve or disapprove any proposed evaluator or to require additional evaluation or assessment; ~~Respondent shall bear all costs~~;
- (f) carry out in good faith any and all reasonable recommendations or suggestions for further care, treatment, or assessment that may result from subsection (e), above;
- (g) accede to entry of a further order of the Board implementing as terms and conditions any and all reasonable recommendations or suggestions for further care, treatment, and assessment that may result from subsection (e), above;
- (h) accede to entry of any further order of the Board establishing continuing conditions of licensure to protect the public health, safety, and welfare and to ensure Respondent's compliance with any and all reasonable recommendations, suggestions, and/or plans for further care, treatment, and assessment that may result from subsection (e), above, or that may be deemed necessary by the Board, in its sole discretion; and
- (i) adhere to all terms and conditions set forth above and herein, regardless of where he may practice, until relieved of such obligation by further order of the Board; in lieu of such further order, Respondent may demand a hearing on the merits as provided for in Paragraph 14, below.

13. The parties agree that nothing contained herein shall limit the Board's authority to proceed in this matter, if deemed appropriate at a later date, pursuant to 26 V.S.A. §§ 1354, 1360, 1361 & 1398; 3 V.S.A. § 814(c); and other relevant authorities.

14. The parties agree that nothing contained herein shall limit Respondent's right to seek at a later date a formal specification of charges and to demand a hearing on the merits regarding these charges, pursuant to 26 V.S.A. §§ 1354, 1360, 1361 & 1398; 3 V.S.A. § 814(c); and other relevant authorities. Respondent agrees that no promises have been made to him as to final disposition of this matter.

IV.

15. The parties agree that this Stipulation and Interim Consent Order shall be a public document, shall be made part of Respondent's licensing file, and may be reported to other licensing authorities. The parties agree that an order conditioning Respondent's license to practice medicine, in lieu of an order of summary suspension, may be entered, as described herein, and pending further proceedings or order of the Board. Nothing herein is intended to limit Respondent's right at a later date to demand and receive a formal specification of charges, pursue discovery, to contest all charges against him, to present evidence or witnesses on his behalf, and to require proof as to the allegations against him in a hearing before the Board.

16. This Stipulation and Interim 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 to be bound by the terms and conditions of this Stipulation and Interim Consent Order pending further proceedings or order of the Board of Medical Practice. Respondent agrees that the Board of Medical Practice shall retain jurisdiction to enforce the terms and conditions of this Stipulation and Interim Consent Order until it is modified or he is relieved of its terms and

conditions. Respondent agrees that failure by him to abide by any of the terms and conditions of this Stipulation and Interim Consent Order 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, following evidentiary proceedings.

17. The parties therefore jointly agree that should the terms and conditions of this Stipulation and Interim Consent Order be deemed acceptable by the Board of Medical Practice, the Board may (a) enter an order conditioning Respondent Aitkin's license to practice medicine as described herein; and (b) continue such order until further proceedings or order of the Board.

Dated at Montpelier, Vermont, this 2nd day of August 2002.

WILLIAM H. SORRELL
ATTORNEY GENERAL

by:

James S. Arisman
JAMES S. ARISMAN
Assistant Attorney General

Dated at Burlington Vt, Vermont, this 31st day of July 2002.

Phil A. Aitken MD
PHIL A. AITKEN, M.D.
Respondent

Dated at BURLINGTON, Vermont, this 1st day of AUGUST 2002.

John W. O'Donnell
JOHN W. O'DONNELL, ESQ.
Counsel for Respondent

Office of the
ATTORNEY
GENERAL
09 State Street
Montpelier, VT
05609

FOREGOING, AS TO MEDICAL LICENSE OF
PHIL A. AITKEN, M.D., APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE

Philip J. [unclear] *James C. Blowers*
Katherine M. Ready *John E. Maguire*
Margaret [unclear]
[unclear]
[unclear]
[unclear]

DATED: August 7, 2002

ENTERED AND EFFECTIVE: August 7, 2002

JSA: AITKEN STIPULATION: 7/02 (NOT FULLY EFFECTIVE UNTIL APPROVED BY BOARD)