

BOARD OF MEDICAL PRACTICE

In re: Marcus J. Hampers, M.D.

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Docket No. MPS 080-0516

STIPULATION AND CONSENT ORDER

NOW COME Marcus J. Hampers, M.D., and the State of Vermont, by and through Vermont Attorney General Thomas J. Donovan, Jr., and hereby stipulate and agree to the following in the above-captioned matters:

1. Marcus J. Hampers, M.D. ("Respondent") holds Vermont medical license number 042.0009245 originally issued by the Vermont Board of Medical Practice on January 3, 1996.
2. Jurisdiction in this matter rests with the Vermont Board of Medical Practice ("the Board"), pursuant to 26 V.S.A. §§ 1353-1357, 3 V.S.A. §§ 809-814, and other authority.

FINDINGS OF FACT

3. Respondent is a primary supervising physician for several physician assistants employed by ClearChoiceMD.
4. On or about May 5, 2016, through his counsel, Respondent self-reported to the Board that two physician assistants employed by ClearChoiceMD began practicing medicine at ClearChoiceMD in April, 2016 without having signed, completed and properly filed delegation agreements. The Board opened Docket Number MPS 080-0516. The matter was assigned to the South Investigative Committee of the Board ("the Committee").

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5. Respondent was the primary supervising physician to both physician assistants who were practicing medicine at ClearChoiceMD practice locations without having signed, completed and properly filed delegation agreements.
6. As a primary supervising physician, Respondent delegated medical care of patients to both physician assistants. There were no allegations that either of the physician assistants provided unsafe or substandard care in the days they worked prior to the proper paperwork being received by the Board.
7. Respondent admits that both physician assistants were practicing medicine at ClearChoiceMD practice locations in April and early May 2016 without having completed and signed delegation agreements on file at each practice site location, and without providing original copies of the agreements to the Board.
8. Although the physician assistants did have valid and active Vermont physician assistant licenses, state law provides that they are not permitted to practice at the ClearChoiceMD sites until the delegation agreements have been filed. As such, their licenses were technically inoperable at ClearChoiceMD until the delegation agreements were on file with the State Board of Medical Practice.
9. In 2015, Respondent was the primary supervisor for two other physician assistants employed by ClearChoiceMD who also had technically inoperable licenses due to the failure to have completed, signed, and properly filed delegation agreements. As a primary supervisor, Respondent had delegated medical care of patients to these physician assistants. He supervised each physician assistant, and the Board does not allege that either of the physician assistants provided unsafe or substandard patient

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care in the days they worked prior to the proper paperwork being received by the Board.

10. Due to an administrative error by a newly hired HR director, the delegation paperwork was not completed and sent to the Board in a timely manner.

CONCLUSIONS OF LAW

11. "In order to practice, a licensed physician assistant shall have completed a delegation agreement...with a Vermont licensed physician signed by both the physician assistant and the supervising physician or physicians. The original shall be filed with the board and copies shall be kept on file at each of the physician assistant's practice sites." 26 V.S.A. § 1733(b).
12. "It is the obligation of each team of physician and physician assistant to ensure that the physician assistant's scope of practice is identified; that delegation of medical care is appropriate to the physician assistant's level of competence; and that the supervision, monitoring, documentation, and access to the supervising physician is defined; and that a process for evaluation of the physician assistant's performance is established." 26 V.S.A. § 1735a(a). This information "shall be included in a delegation agreement as required by the commissioner by rule. The delegation agreement shall be signed by both the physician assistant and the supervising physician or physicians, and a copy shall be kept on file at each of the physician assistant's practice sites and the original filed with the board." 26 V.S.A. § 1735a(b).

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13. It is unprofessional conduct for a licensed physician to fail to "...comply with provisions of federal or state statutes or rules governing the practice of medicine." 26 V.S.A. § 1354(a)(27).
14. It is unprofessional conduct for a licensee to use "...the services of a physician assistant in a manner which is inconsistent with the provisions of Chapter 31 ["Physician Assistants"] of this title." 26 V.S.A. § 1354(a)(39).
15. Respondent's admitted failure to ensure that the delegation agreements were completed, signed, and filed with the Board for each physician assistant at each practice site constitutes a failure to comply with 26 V.S.A. §§ 1733(b), 1735a(a), and 1735a(b).
16. Respondent's delegation of medical care to patients to physician assistants who had technically inoperable licenses to practice at the ClearChoiceMD sites constitutes the use of services of physician assistants in a manner which is inconsistent with 26 V.S.A. §§ 1733(b), and provisions of Chapter 31 of Title 26 governing the licensure and practice of physician assistants.
17. Respondent acknowledges it is the Board's position 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(b)(2).
18. Respondent agrees that the Board may enter as its facts and/or conclusions paragraphs 1 through 10 above, and further agrees that this is an adequate basis for the Board actions set forth herein. Any representation by Respondent herein is made solely for the purposes set forth in this agreement.

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19. 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 the instant 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.
20. Respondent acknowledges that he is knowingly and voluntarily entering into this Stipulation and Consent Order with the Board. He acknowledges and agrees that he has had the advice of counsel regarding this matter and in the review of this Stipulation and Consent Order. Respondent is fully satisfied with the legal representation he has received in this matter.
21. 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.
22. 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 administratively closed by the Board. Thereafter, the Board will take no further action as to these matters absent non-compliance with the terms and conditions of this document by Respondent.
23. 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

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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.

24. 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 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 actions by the Board, as set forth herein, Respondent expressly agrees to be bound by all terms and conditions of this Stipulation and Consent Order.
25. 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.

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ORDER

WHEREFORE, based on the foregoing, and the consent of Respondent, it is hereby ORDERED that:

- a. Respondent shall pay an administrative penalty of two thousand dollars (\$2,000.00) consistent with 26 V.S.A. § 1361(b). Payment shall be made to the "State of Vermont Board of Medical Practice," and shall be sent to the Vermont Board of Medical Practice at the following address: David Herlihy, Executive Director, Vermont Board of Medical Practice, P.O. Box 70, Burlington VT 05402. This payment will be due no more than fourteen days after this Stipulation and Consent Order is approved by the Board.

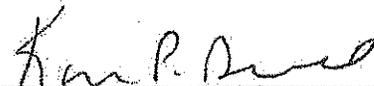
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SIGNATURES

DATED at Montpelier, Vermont, this 24th day of February, 2017.

STATE OF VERMONT

THOMAS J. DONOVAN, JR
ATTORNEY GENERAL

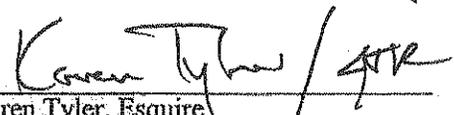
By: 
Kassandra P. Diederich
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001

DATED at New London, NH, Vermont, this 27th day of February, 2017.


Marcus J. Hampers, M.D.
Respondent

Approved as to form:

DATED at Burlington, Vermont, this 27th day of February, 2017.


Karen Tyler, Esquire
Dunkiel Saunders Elliott Raubvogel & Hand
91 College Street
PO Box 545
Burlington, VT 05401-0545
Counsel for Respondent

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AS TO MARCUS J. HAMPERS, M.D.
APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE

	
<u>John P. Ryan</u>	
<u>F. C. M. DeWitt</u>	
<u>Maryanne S. Sargent</u>	
<u>R. A. Brewer</u>	
<u>R. A. Brewer</u>	

DATED: March 1st 2017 ENTERED AND EFFECTIVE: March 1st 2017

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