

STATE OF VERMONT
BOARD OF MEDICAL PRACTICE

In re: Joshua Aaron Welch, M.D.)
) Docket No.
) MPS 110-1008
)

INTERIM STIPULATION AND CONSENT ORDER

NOW COME Joshua Welch, M.D. (“Respondent”) and the State of Vermont, by and through Attorney General William H. Sorrell and undersigned counsel, Assistant Attorney General Margaret O. Vincent, and agree and stipulate as follows:

1. Joshua Aaron Welch, M.D., Respondent, holds Vermont Medical License No. 042-0010925, issued by the Vermont Board of Medical Practice on 03/16/2005. Respondent was employed as a family physician for Fletcher Allen Health Care until he resigned in October of 2008.
2. Jurisdiction rests in the Vermont Board of Medical Practice (the “Board”) pursuant to 26 V.S.A. §§ 1353 and 1354.

I. Background

3. An investigation regarding Respondent was opened by the Board on or about October 7th, 2008 as a result of a complaint filed with the Board regarding Respondent’s accessing medical records in violation of the Health Insurance Portability and Accountability Act (herein referred to as “HIPAA”) and the Vermont Patient’s Rights Act.
4. The Board’s investigation included interviews with Respondent, complainant and officials from Fletcher Allen Health Care.

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5. The Board's investigation determined, and Respondent admitted, that Respondent over the course of two years accessed female patients' medical records while working for FAHC. The records that Respondent accessed were patients of FAHC but were not patients who were receiving care from Respondent.

II. Allegations

6. On or about September 7, 2008, the Board received a complaint from a patient at FAHC. Complainant advised that she had a personal relationship with Respondent and that she became aware that Respondent had accessed her medical records without her permission. Complainant was not a patient of Respondent's.

7. In October of 2008 Respondent resigned from FAHC. Respondent voluntarily has not practiced medicine since he resigned from FAHC. With the assistance of Respondent, the Board identified a total of 8 FAHC patient medical records that Respondent accessed without their permission or a proper medical purpose.

8. On November 13, 2008, Respondent wrote a letter to the South Investigative Committee of the Vermont Board of Medical Practice volunteering that until the investigation of this complaint was resolved that he would not practice medicine. Respondent has complied with his letter of assurance.

9. Respondent cooperated with the Board and completed the Vanderbilt Comprehensive Assessment Program in March of 2008. Respondent on his own attended a course offered by Vanderbilt in Boundaries for Physicians.

III. Respondent's Medical License to Be Conditioned

10. Consistent with his continuing cooperation with the Board in its investigation of this

matter, Respondent does not contest the facts set forth above in paragraphs 4 through 9 above, and agrees that the Board of Medical Practice may adopt and enter paragraphs 4 through 9 as uncontested findings of fact in this matter.

11. Respondent agrees that 26 V.S.A. § 1354 (a) reads: “The board shall find that any one of the following, or any combination of the following whether or not the conduct at issue was committed within or outside of the state, constitutes unprofessional conduct....(27) failure to comply with provisions of federal or state statutes or rules governing the practice of medicine or surgery.”

12. Respondent agrees that accessing the medical records of patients that he does not have the authority to access as referred to above, meets the definition of 26 V.S. A. § 1354 (a) (27).

13. Respondent acknowledges that he is knowingly and voluntarily agreeing to this Stipulation and Consent Order. He acknowledges that he has had advice of counsel regarding the matter before the Board and advice of counsel in reviewing this Stipulation and Consent Order. He 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. §§ 809, & 814.

14. The parties to this Stipulation and Consent Order agree that appropriate disciplinary action against Respondent shall consist of the following:

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

B. Substantial or repeated failure by Respondent to comply in the future with any of the terms and conditions herein may constitute unprofessional conduct and, if established by the State's evidence, shall result in such other disciplinary action as the Board may deem appropriate under the circumstances.

C. Respondent shall be publicly **REPRIMANDED** by the Vermont Board of Medical Practice for the conduct set forth above, in addition to the imposition of the disciplinary terms and conditions set forth herein and below.

15. No specification of charges has been filed by the State in this matter. Respondent has not previously been the subject of disciplinary action by the Vermont Board of Medical Practice.

IV. Terms and Conditions to be Imposed on Respondent's Medical License

16. 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 and to be bound by these until such time as he is expressly relieved of these conditions, in writing, by the Vermont Board of Medical Practice.

17. Respondent agrees to continue to refrain from practicing medicine. Respondent agrees that he shall attend and successfully participate in the Professional Renewal Center. Respondent agrees that he will cooperate with and truthfully provide information regarding his accessing of patients records without their permission to the professionals of the Professional Renewal Center. Respondent agrees that he will sign all releases consistent with paragraph 18 of this Agreement. Respondent agrees that this Stipulation shall be supplemented after he

successfully completes the Professional Renewal Center so that the Agreement may be modified to incorporate any and all treatment, return-to-practice, or other recommendations made by the Professional Renewal Center as well as any further reasonable conditions of the Board. Respondent shall bear all costs. 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. Respondent may petition for relief from or modification of this Stipulation and Consent Order upon completing all the terms and conditions of the Agreement.

18. During the period that Respondent's license is conditioned he shall comply fully with all the requirements set forth herein. Respondent also agrees that he shall abide by and follow all recommendations that are presented to him by any and all treatment programs and /or therapist, as he is required to participate in under the terms of this agreement. He expressly agrees that he shall promptly sign any and all necessary consents and/or waivers of confidentiality as to his participation in such treatment programs and counseling sessions so as to permit full and complete disclosure to the Board for the purpose of permitting the Board to monitor his participation. Further, the Respondent expressly agrees that he shall promptly sign any and all necessary consents and/or waivers of confidentiality allowing a Board investigator or an Assistant Attorney General to speak with any treatment provider that he is receiving treatment from for the purpose of gaining information to aid the Board's oversight responsibilities.

19. Respondent agrees that he shall provide a complete copy of this Stipulation and Consent Order to any and all licensed practitioners with whom he is associated in practice, to any prospective employer, and to 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.

20. Respondent agrees he shall abide by the Health Insurance Portability and Accountability Act and the Vermont Patient's Rights Bill.

V. Other Terms and Conditions as to Implementation.

21. Respondent acknowledges and agrees that engaging in unprofessional conduct, as set forth in 26 VSA §§1354 & 1398 may constitute prima facie evidence of a violation by him of this agreement sufficient to support findings by the Board that the present terms and conditions of this agreement are inadequate to protect the health, safety and welfare of the public, and thus, could result in further action by this Board.

22. The parties agree that this Stipulation and Consent Order shall be a public document, shall be made part of Respondent's licensing file, and shall 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.

23. 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 be deemed acceptable by the Board, the parties request that the Board enter an order conditioning Respondent's license to practice medicine as set forth above, that such license be subject to each of the terms and conditions as set forth herein, and that Respondent be publicly **REPRIMANDED** by the Vermont Board of Medical Practice for the unprofessional conduct set forth herein.

24. Respondent agrees to be bound by all terms and conditions of this Stipulation and Consent Order. Respondent agrees that the Board of Medical Practice shall retain jurisdiction to

enforce all terms and conditions of this Stipulation and Consent Order during its lifetime. Respondent expressly agrees that any failure by him to comply with the terms of this Stipulation and Consent Order, specifically including but not limited to its reporting requirements, shall constitute unprofessional conduct under 26 V.S.A. §1354 (a)(25) and may subject Respondent to such further disciplinary action as the Board may deem appropriate.

25. Consistent with his continuing cooperation with the Board, Respondent agrees that, if the State were to satisfy its burden at hearing as to the allegations, a finding adverse to him could be entered by the Board, pursuant to 26 V.S.A. § 1354. In the interest of resolving this matter expeditiously and continuing his full cooperation in this matter, Respondent agrees to enter into this Stipulation, in lieu of the State filing formal charges. Respondent acknowledges that his acceptance of this Stipulation is appropriate and in the best interest of all parties.

Dated at Burlington, Vermont, this 30 day of June, 2009.

STATE OF VERMONT
WILLIAM H. SORRELL
ATTORNEY GENERAL

by: Margaret O. Vincent
MARGARET O. VINCENT
Assistant Attorney General

Dated at Burlington, Vermont, this 30 day of June, 2009.

Joshua Aaron Welch
JOSHUA AARON WELCH
Respondent

Eric Miller
ERIC MILLER
Counsel for Respondent

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FOREGOING, AS TO JOSHUA AARON WELCH, M.D.
APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE

Robert J. ... M.D.
John J. ... M.D.
Patricia A. King, M.D.
Shirley ...
James ...

DATED: 7/1/09
ENTERED AND EFFECTIVE: 7/1/09

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