

**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**

In re: Pierre A. Delfausse, PA-C.

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Docket No. MPN 60-0609

STIPULATION AND CONSENT ORDER

The State of Vermont, by and through Attorney General William H. Sorrell and the undersigned, Assistant Attorney General James S. Arisman, with Respondent Pierre A. Delfausse, PA-C, agree and stipulate as follows:

1. Pierre A. Delfausse, PA-C, Respondent, holds Vermont certification as a physician assistant (PA-C), No. 055-003094, issued on December 3, 2008. This certification is currently inactive due to the termination of PA Delfausse from his practice position in June 2009. Subsequently, the Board of Medical Practice Licensing Committee has received and considered an application from Respondent for current, active certification as a physician assistant. This agreement reflects the recommendation of the licensing committee in this matter.

2. Jurisdiction vests with the Vermont Board of Medical Practice (Board) by virtue of 26 V.S.A. §§ 1353-1361, 1398, 1733 – 39, and 3 V.S.A. §§ 809 & 814(c).

I. Background.

A. National Certification.

3. Respondent holds certification from the National Commission on Certification of Physician Assistants (No. 1055070), with his initial certification granted on or about December 20, 2002.

4. Respondent completed study and training as a physician assistant at the University of New England from June 2000 to June 2002. Respondent's initial

employment as a physician assistant was in the State of Arkansas. He holds inactive PA certification in that State. In 2004, Respondent was first employed as a physician assistant in Vermont.

B. Vermont Practice.

5. Respondent was terminated from a position as a physician assistant in June 2009 due to (a) history of unexcused tardiness; and (b) personal medical needs that required treatment and necessitated Respondent's temporary separation from his practice responsibilities. Now, having received initial treatment, Respondent wishes to return to practice.

6. Medical Board Docket No. MPN 60-0609 was opened for investigation on June 18, 2009 following receipt of a complaint from the practice manager at Respondent's most recent position. The complaint and related documentation reported that Respondent had been terminated from duties as a physician assistant due to alleged tardiness, unauthorized absenteeism, failure to perform certain administrative tasks, and alleged alcohol abuse affecting his ability to care for patients. No actual harm to patients has been alleged.

C. Follow-Up Care and Treatment.

7. Since June 2009, Respondent has received in-patient care and diagnostic evaluation, as well as outpatient treatment for his medical needs. Respondent actively has pursued recovery efforts and now is the subject of a five-year written contract with the Vermont Practitioner Health Program (VPHP) for case management services, including coordination of care, abstinence, and monitoring. A recent VPHP evaluation reported in

writing that Respondent presently is in ongoing recovery and has been found by his treating professionals to be fit-for-duty as a medical provider.

D. Planned Practice Site.

8. Respondent has been offered and wishes to accept as soon as possible a position with Champlain Valley Urgent Care, located in South Burlington. Respondent's primary supervising physician would be Timothy Fitzgerald, D.O. His secondary supervising physician would be David N. Simcoe, D.O. Respondent's responsibilities are set forth in a scope of practice statement that has been filed with the Board of Medical Practice and which has been reviewed for sufficiency.

9. Respondent has cooperated fully with the Medical Board's review of this matter and has provided the Board with information needed for consideration of the appropriate disposition of this matter. The Board has carefully considered the pertinent documentation and information provided by Respondent.

10. Respondent has concluded that it is appropriate to agree here to conditions of licensure to provide for his own medical needs and to ensure protection of patients and the public.

11. Respondent has not previously been the subject of disciplinary action in the State of Vermont or elsewhere with regard to his professional certification.

II. Physician Assistant Certification to Be Conditioned.

12. Respondent does not contest the facts set forth above in paragraphs 1 through 11, above. Respondent agrees that were the State of Vermont to have filed a specification of charges in this matter and satisfied its evidentiary burden at hearing, the Board could have entered a finding adverse to him, pursuant to 26 V.S.A. §§ 1354, 1398, or

1736 in light of the facts set forth in paragraphs 1 through 11, above, and other facts related to these paragraphs. Respondent agrees here that the Board of Medical Practice may adopt and enter as its findings and/or conclusions this paragraph and those set forth in paragraphs 1 through 11, above, as a factual and legal basis for action in this matter.

13. Respondent acknowledges that he is knowingly and voluntarily agreeing to this Stipulation and Consent Order. He acknowledges that he has had opportunity to seek advice of counsel regarding this matter and in reviewing this Stipulation and Consent Order.

14. 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 this matter, to be presented with any evidence against him, to cross-examine any adverse witnesses, and to offer evidence of his own to contest a specification of charges. 26 V.S.A. §§ 1356-1361, 1736-1737; 3 V.S.A. §§ 809 & 814.

15. The parties to this Stipulation and Consent Order agree that appropriate disposition of this matter shall consist in general terms of the following:

- A. Respondent's Vermont physician certification shall be designated as "conditioned". 26 V.S.A. § 1737(d). Respondent shall comply fully and in good faith with the additional terms and conditions of certification 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.
- B. Entry by the Board of Medical Practice of a stayed 12-month suspension of Respondent's Vermont license to practice medicine. This period of suspension shall remain stayed so long as Respondent maintains full compliance with the terms and conditions of certification set forth herein. Respondent accepts and agrees that any subsequent, material failure to

maintain compliance with this agreement shall result in imposition, in full, of the actual suspension of Respondent's license for at least the designated 12-month period. Any period of actual suspension shall terminate only upon written Board approval of a petition from Respondent so requesting.

III. Conditions of Certification.

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 authorized to practice medicine as a PA 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. The Board, in its sole discretion, will consider a petition from Respondent for modification of any of these conditions, no earlier than 12 months after the effective date of this Stipulation and Consent Order, unless a petition for modification at an earlier date is expressly provided for herein.

17. Respondent's physician certification in the State of Vermont shall be designated as CONDITIONED for a minimum period of five years from the date of the Board's approval of this agreement. Respondent's Vermont PA certification shall be so designated until such time as the Board of Medical Practice has removed all terms and conditions upon his certification.

18. Respondent agrees that he shall continue supervised care and treatment for a minimum five year period. Respondent agrees that he shall abide by and follow all treatment recommendations, plans, or contracts that are presented to him by evaluators, assessors, practitioners, care programs, and/or entities that may care for or treat him.

19. Respondent expressly agrees that he shall promptly sign any and all consents and/or waivers of confidentiality as to his history, medical records and

information, diagnosis, care and treatment, and any legal involvements so as to permit full and complete disclosure to the Board of Medical Practice for the purpose of permitting the Board to monitor and review his recovery, care, and treatment, as well as his ability to practice medicine safely.¹

A. Evaluation.

20. Respondent already has undertaken initial evaluation and care of his medical needs. Respondent agrees, if requested, that he shall promptly undergo such additional, comprehensive evaluation as the Board of Medical Practice might direct, the results of which shall be provided directly in writing to the Board. Such evaluation, if undertaken, shall include diagnosis, prognosis, identification of short- and long-term treatment needs, a plan for treatment and recovery, and such other components as the Board may designate, in its sole discretion.

21. Respondent agrees to cooperate fully and in good faith in any such evaluation, if requested by the Board. Respondent agrees to carry out in good faith all reasonable recommendations resulting from such evaluation or assessment. Respondent shall bear all costs and shall make all such payment arrangements as may be required for such evaluation or assessment.

B. VPHP Participation; Other Medical Care.

22. Respondent shall participate fully and in good faith in care and treatment

1. Respondent expressly agrees that he carefully has read and fully understands the entire contract between himself and the Vermont Practitioner Health Program. He specifically acknowledges and agrees that he shall abide fully with Sections VI, VII, VIII, IX, X, and XI of his contract with the Vermont Practitioner Health Program. He agrees he shall immediately report, orally and in writing, to the Vermont Board of Medical Practice, VPHP, and to others providing care and treatment to him any information, acts, or circumstances that might reasonably be deemed to be indicative of non-compliance with these provisions. The VPHP contract, as signed by Respondent shall be retained in the Board's files and is incorporated by reference herein. Should any of the terms of this agreement and the VPHP contract be deemed to be in conflict, the term most protective of the Vermont public shall be deemed to prevail.

under the auspices of the Vermont Practitioner Health Program (VPH) or a similar entity, subject to written approval or disapproval by the Vermont Board of Medical Practice. Respondent expressly agrees that he shall abide fully and in good faith with all provisions of his VPH contract. Respondent shall not cease, terminate, or interrupt his participation in VPH or similar program without the advance written approval of the Board of Medical Practice, following presentation of a written petition from him in this regard. The Medical Board shall retain sole discretion to approve or disapprove any such petition.

23. Respondent agrees he shall to take reasonable steps see that copies of all written reports, information, or assessments related to his participation in the VPH program or similar entity, with regard to his care, treatment, medical history, diagnosis, test results, or other matters, are promptly provided to the Board of Medical Practice, its staff, or its agents. Respondent expressly agrees here that VPH or similar entity may directly disclose such information to the Board of Medical Practice, so as to enable the Board to verify the accuracy and completeness of such reports.

24. Respondent agrees to promptly execute all releases, authorizations, or waivers necessary for the disclosure of all such information as above to the Board. Respondent agrees he shall communicate as necessary with VPH or similar entity so as to facilitate the prompt disclosure of all such information to the Vermont Board of Medical Practice for purposes of monitoring his care and protection of patients and the public.

25. Respondent acknowledges that his good faith participation in VPH or a similar program, subject to Board approval or disapproval in its sole discretion, is a material term of this agreement. Respondent acknowledges and agrees that all terms herein, as well as the reasonable requests or directives of the Board of Medical Practice

relating to monitoring and treatment, shall be deemed to prevail over any conflicting provisions (should any such exist) of his contract with the Vermont Practitioner Health Program (and shall prevail over any related policies, procedures, or recommendations of that program) or similar entity. And see Footnote one, herein.

26. Respondent agrees that he shall fully and in good faith participate in regular, ongoing counseling with a licensed practitioner so long as this agreement remains in effect or until such time as he is relieved of this condition. Respondent expressly agrees that he shall not cease such participation without the express, prior written approval of the Board, following a written petition from him to the Board. Respondent agrees that he shall not present, and the Board shall not consider, any such petition prior to the passage of at least two years from the effective date of this Stipulation and Consent Order. Respondent understands and agrees that the Board may communicate freely and without limitation with such counselor. Respondent agrees that he shall execute such waivers or authorizations as may be required for the Board to obtain information and records regarding his care.

27. Respondent agrees that the Board of Medical Practice, in its sole discretion, may approve or disapprove any current or proposed providers, contractors, or individuals involved in care of Respondent and monitoring related to his recovery. Any approval by the Board in this regard may be withdrawn at any time, in the Board's sole discretion. Respondent agrees to accept reasonable modifications of the terms set forth herein that may be deemed necessary by the Board to ensure continuity of care and treatment for Respondent.

28. Respondent agrees to follow all treatment recommended or prescribed by his treatment providers. Respondent agrees that in the event he fails to follow the recommended or prescribed treatment, his treatment provider(s) may and shall notify the Board of this circumstance immediately.

29. Respondent agrees that he shall cease the practice of medicine should a treatment provider reasonably so recommend. Respondent's treatment provider shall notify the Board immediately both of any such recommendation to cease practice and of Respondent's compliance or noncompliance with such recommendation. Respondent agrees that noncompliance with a treatment provider's good faith recommendation to cease practice shall be ground for summary suspension by the Board. Should Respondent be required to cease practice, Respondent agrees not to resume the practice of medicine until resumption of practice is: (a) recommended by the treatment provider whose recommendation preceded the cessation of practice; and (b) approved by the Board.

30. Respondent expressly agrees that should his participation in VPHP end for any reason, the Vermont Board of Medical Practice shall retain sole discretion to amend this agreement to revise or add provisions, if any, pertaining to recovery efforts, care, treatment, monitoring, supervision, and involvement with other appropriate modalities. Respondent agrees that the Board may seek to amend this agreement at any time, in its sole discretion, so as to ensure protection of patients, the public, and Respondent's own medical care and treatment.

C. Collection and Testing.

31. Respondent expressly reiterates his understanding and agrees that he shall abide fully with Sections VI, VII, VIII, X, and XI of his contract with the Vermont

Practitioner Health Program. In addition, Respondent agrees, if requested by the Board, to promptly provide biological samples if and when directed to do so, in the Board's sole discretion. The Board in its sole discretion may specify the manner and frequency of any and all collection and testing. The Board in its sole discretion may approve or disapprove the use of any entity providing collection and/or testing services.

D. Practice Site and Employment; Monitoring Physician.

32. Respondent agrees that he shall practice medicine only in a structured group practice setting in which he shall have frequent and regular contact and interaction with licensed physicians. Respondent agrees that while so employed he shall maintain regular communication with a monitoring physician and agrees that others within his practice setting also may communicate with his monitoring physician and with the Board regarding his care of patients, any problems arising with respect to patient care, and Respondent's ability to practice medicine safely. The monitoring physician shall regularly meet with Respondent to discuss his practice, care of patients, and personal well-being. Respondent agrees that he shall petition the Board for approval of his proposed practice site and his monitoring physician.

33. Champlain Valley Urgent Care shall be considered provisionally approved for the purposes set forth above, upon acceptance of this Stipulation and Consent Order by the Board, subject to any subsequent, actual approval or disapproval, in the sole discretion of the Board. In the event that Respondent may seek to practice at another site or location, he agrees to present to the Board a written petition formally identifying the location where he proposes to practice and identifying his proposed employer or association in practice.

Such petition shall request Board approval of the new or additional site or location. This petition shall be subject to actual approval or disapproval, in the Board's sole discretion.

34. Respondent's "Practice Monitor" shall be identified to the Board in writing by Respondent. The licensed physician identified for this purpose will be considered provisionally approved on an interim basis for this purpose, subject to actual approval or disapproval by the Board at a later date, to be determined in the sole discretion of the Board. Respondent agrees to promptly present to the Board a petition identifying any practitioner proposed to act as his monitoring physician.

35. The parties expressly agree that Respondent's continuing employment at or in association with Champlain Valley Urgent Health Care is a material term of this agreement. However, the parties agree that Respondent may petition the Board for consideration and possible approval of a different employer or practice site in the future. Respondent agrees that the Board in its sole discretion may approve or disapprove such a petition.

36. Respondent agrees that he shall provide a complete copy of this Stipulation and Consent Order to any employer, supervisor, clinic, or institutional setting in which he seeks to work and to any prospective employer, any State medical board, or other licensing, certifying, or privileging 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.

37. In the unlikely event that circumstances require such action, Respondent expressly agrees and reiterates here that upon any written or oral request to him by the

Vermont Board of Medical Practice or its agents, he shall immediately cease and desist from any and all practice of medicine, as well as any and all prescribing. A request for cessation of practice may be made by the Board or any of its agents at any time and for such well-founded reason(s) as the Board may deem sufficient, in its sole discretion.

38. In lieu of any such cessation of practice, Respondent may be offered the opportunity to agree to the imposition of other terms and conditions upon his license to practice, to protect patients and the public, in the Board's sole discretion. Notwithstanding, Respondent shall retain all rights of due process regarding the status of his PA certification, his own medical condition(s), and any Board determination of his ability to practice medicine safely. Unless otherwise provided herein, the parties agree that Respondent may petition the Board for modification of or relief from the terms and conditions of this agreement or Board orders based upon it, only if and when he and his treating practitioners agree that such modification or relief would be appropriate and consistent with patient safety and Respondent's own well-being.

Other Terms and Conditions as to Implementation.

39. 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 certifying or licensing authorities and/or privileging entities including, but not limited to, the National Practitioner Data Bank and the Federation of State Medical Boards.

40. 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. Respondent waives any and all claims by him that consideration of this agreement by the Board may have prejudiced any right to a fair and impartial hearing at a later date, in the event that the Board does not accept this agreement as written. 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 and restricting Respondent's physician certification as set forth above and that such certification be subject to each of the terms and conditions as set forth herein.

41. 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. 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, cooperation, and pre-approval requirements may constitute unprofessional conduct and may subject Respondent to suspension and such disciplinary action at a later date as the Board may deem appropriate.

Dated at Montpelier, Vermont, this 25 day of November, 2009.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: James S. Arisman
JAMES S. ARISMAN
Assistant Attorney General

Dated at Montpelier, Vermont, this 25 day of November, 2009.

Pierre A. DelFausse
PIERRE A. DELFAUSSE, PA-C
Respondent, *pro se*

* * *

**FOREGOING, AS TO PIERRE A. DELFAUSSE, PA-C
APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE**

<u>Allen B. Weber</u>	<u>David W. Cannon</u>
<u>Margaret Fink Martin</u>	<u>Greg Cabot</u>
<u>Michael A. ...</u>	
<u>Peter Pharisakos, MD</u>	
<u>...</u>	
<u>W. H. ...</u>	
<u>David Jenks</u>	

DATED: December 2, 2009

ENTERED AND EFFECTIVE December 2, 2009

Office of the
ATTORNEY
GENERAL
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Montpelier, VT
05609