

STATE OF VERMONT  
BOARD OF MEDICAL PRACTICE

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

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 7<sup>th</sup>, 2008 as a result of a complaint filed with the Board regarding Respondent’s accessing of 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.

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

## **II. Allegations**

6. On or about October 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. On November 2 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 2009. Respondent on his own attended a course offered by Vanderbilt in Boundaries for Physicians.

10. Respondent attended and completed the Professional Renewal Center ("PRC") program in August of 2009. An aftercare agreement was designed by the PRC and a number of its recommendations are incorporated into this Agreement.

### **III. Respondent's Medical License is Suspended**

11. Respondent's license to practice medicine is suspended for six months. The Board and Respondent agree that the six month term of suspension was served from April 1, 2009 to October 1, 2009.

### **IV. Respondent's Medical License to Be Conditioned**

12. 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 10 above and agrees that the Board of Medical Practice may adopt and enter paragraphs 4 through 10 as uncontested findings of fact in this matter..

13. 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."

14. 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 unprofessional conduct as defined in 26 V.S. A. § 1354 (a) (27) above.

15. 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.

16. 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" for five years, retroactive to November 13, 2008. Respondent agrees to comply fully and in good faith with each of the terms and conditions of licensure set forth below, until such time as he has been relieved of all conditions herein by express written order of the Vermont Board of Medical Practice. The Respondent bears the burden of presenting a petition for the removal of or relief from conditions at the conclusion of the five year period. The Board, in its sole discretion, may consider and determine a petition from Respondent for relief from or modification of these conditions, no sooner than 36 months after the effective date of this Stipulation and Consent Order.

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.

17. 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. Respondent has cooperated with the Board of Medical Practice during its investigation of this matter.

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

18. 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.

#### **A. PRACTICE OF MEDICINE**

19. Respondent agrees that prior to accepting a position to practice medicine that the position shall be approved by the Board, and the Board agrees to make every reasonable effort to act on any such application by the Respondent within 30 days. Respondent agrees that he shall not be in a solo practice while under this Agreement. Respondent further agrees that his practice of medicine shall be in a structured environment in which he will have regular contact with and support from other physician(s) working within the same practice.

20. Respondent agrees to a professional monitor, with the duties set forth below, who works within the practice in which he is employed. Respondent agrees that the professional monitor must be approved by the Board, or the assigned Investigative Committee and the Board or Committee agrees to make every reasonable effort to act on any application by the Respondent within 30 days. Respondent further agrees that if there is a change in the professional monitor he shall receive approval from the Board or the assigned Investigative Committee prior to any change.

21. Respondent agrees that the professional monitor shall review Respondent's work and compliance with the requirements of this Section on a regular basis.

22. Respondent agrees that he will only access medical files of his patients. Respondent agrees that, if his employer utilizes electronic medical records or a clinical information system, he and his employer will utilize a system to track and allow auditing of his access to electronic medical records.<sup>1</sup> Respondent further agrees that such a system shall be approved by the Board and agrees

---

<sup>1</sup> Respondent agrees to provide a copy of the PRC agreement to his employer and professional monitor to ensure that the Employer follows all recommendations regarding computer use. Within 30 days of employment the Board of

to inform his professional monitor of his or her obligation to immediately report any violations to the Board.

### **B. PROFESSIONAL MENTOR**

23. Respondent agrees to develop a working relationship with a Professional Mentor and the Professional Mentor must be approved by the Board or the assigned Investigative Committee. Respondent agrees to notify the Board if there is to be a change in the Professional Mentor and prior to any change the new Professional Mentor must be approved by the Board or the assigned Investigative Committee.

24. Respondent shall meet with his Professional Mentor on a bi-monthly basis for six months. At the conclusion of the six months, Respondent may make a request to the South Investigative Committee that he see his Professional Mentor monthly.

25. Respondent agrees to discuss and follow the advice of his Professional Mentor regarding his work schedule. Respondent will accept any feedback the Professional Mentor has as well as work with the Professional Mentor to identify any behavioral concerns. Respondent agrees that his Professional Mentor may check with his Professional Monitor to identify any areas of concern.

26. Respondent agrees to ensure that his Professional Mentor sends a monthly report to the Board stating that he has met with Respondent on a bi-monthly basis and if there are any concerns or conflicts that he states them in the monthly report. Respondent agrees that the Board through its investigator and/or counsel may speak with his Professional Mentor to ensure that

---

Medical Practice Investigator will contact the Employer to ensure that the document was provided to the employer and professional monitor and that the recommendations regarding computer use were implemented.

Respondent is working on any areas of concern and/or conflict and that there are no concerns regarding Respondent's work schedule.

### C. TREATMENT

27. Respondent agrees to adopt and follow the PRC recommendations regarding therapy. Respondent agrees that any changes to his therapy (s) must first be approved by the Board or the assigned Investigative Committee.

28. Respondent agrees to adopt and follow the PRC aftercare amended agreement dated February 2, 1010, the requirements of which are expressly incorporated herein, and to follow any additional PRC aftercare recommendations that result from subsequent evaluation by PRC. Respondent agrees to provide the Board a copy of any and all subsequent evaluations and reports from PRC. Respondent agrees that he will sign all releases consistent with paragraph 34 of this Agreement. Respondent understands that the language or requirements of this Stipulation may, at times, conflict with the language or requirements of the PRC. It is agreed that if any conflict arises between this Stipulation and a recommendation made by the PRC, in all such instances the Stipulation shall be controlling.

*[Handwritten signature]*  
*[Handwritten initials]*

29. Respondent shall ensure that all therapists seen by Respondent will send reports to the Board on a quarterly basis, meaning, March 5, June 5, September 5 and December 5 of every year that this Agreement is in effect. The reports shall inform the Board on Respondent's attendance and participation and any behaviors that are indicative of Respondent not abiding by the PRC recommendations and/or treatment plan.

30. Respondent agrees to refrain from the use of all recreational substances until November 1, 2010.

31. Respondent completed a course in Medical Ethics.

32. Respondent shall bear all costs to the above conditions. Respondent's Vermont license to practice medicine shall include the designation "Conditioned" for 5 years starting from November 13, 2008. The Respondent bears the burden of presenting a petition for the removal of or relief from conditions at the conclusion of the five year period. The Board, in its sole discretion, may consider and determine a petition from Respondent for relief from or modification of these conditions, no sooner than 36 months after the effective date of this Stipulation and Consent Order.

33. Respondent 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 PRC, his Professional Monitor and his personal healthcare providers to share information among them and for full and complete disclosure of information 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.<sup>2</sup>

35. 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, any therapist, as well as his mentoring and monitoring physicians, and to any

---

<sup>2</sup> Parties agree that as to Respondent's individual therapist the consent will be limited to attendance and participation and any behaviors that are indicative of Respondent not abiding by the PRC recommendations and/or treatment plan.

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.

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

#### **VI. Other Terms and Conditions as to Implementation.**

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

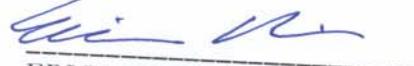
Dated at Montpelier, Vermont, this 5 day of February, 2010.

STATE OF VERMONT  
WILLIAM H. SORRELL  
ATTORNEY GENERAL

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

Dated at Burlington, Vermont, this 2<sup>nd</sup> day of February, 2010.

  
\_\_\_\_\_  
JOSHUA AARON WELCH  
Respondent

  
\_\_\_\_\_  
ERIC MILLER  
Counsel for Respondent

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

Will Hood, D Jane E Ryan MD  
Peter Manaster, MD. Jonny R. Sedlak MD  
David W. Clauson MD  
Nancy A. Jenkins  
Harriet Young  
Frank  
Patricia A. King M.D.

DATED: 2/3/2010

ENTERED AND EFFECTIVE: 2/3/2010