STATE OF VERMONT
BOARD OF MEDICAL PRACTICE

In re: Joseph A. Abate, M.D.	))))	Docket No. MPS-89-0607

INTRODUCTION

On July 11, 2007, the Vermont Board of Medical Practice (Board) met to consider the Respondent's Motion to Amend Cessation of Practice Order, which the Respondent filed June 22, 2007, and the State's Response to Respondent's Motion, which the State filed June 26, 2007. The Board Hearing Panel included: David W. Clauss, M.D., Chair; Patricia A. King, M.D., Ph.D., Vice Chair; Ezekiel S. Cross, Public Member; Russell P. Davignon, M.D., John J. Murray, M.D.; William H. Stouch, M.D.; Toby Sadkin, M.D.; and Florence Young, Public Member. James S. Arisman, Esq.; Assistant Attorney General, appeared on behalf of the State. Eric S. Miller, Esq., appeared via telephone on behalf of Respondent. Phillip J. Cykon, Esq. served as Presiding Officer.

FINDINGS AND CONCLUSIONS

1. Respondent has moved the Board, at Fletcher Allen Health Care's (FAHC) request, to amend the Board's June 7, 2007 Order to allow Respondent to (1) consult with his colleagues regarding continuity of care for Respondent's former patients; (2) engage in administrative tasks necessary for FAHC to bill and collect payment for professional services previously rendered by Respondent; and (3) to testify at an upcoming workers' compensation hearing.

2. In support of his motion, Respondent maintains that his colleagues require his specialized expertise regarding hip, pelvis, and groin surgery; FAHC may need Respondent to engage in certain administrative tasks in order to collect payment for his past services; and he has been subpoenaed to testify in the workers' compensation matter.

3. The State opposes the motion on the grounds that Respondent's return to the practice of medicine, even on the limited basis that he requests, creates an immediate threat to the health, safety, and welfare of the public. The State maintains that allowing the Respondent to provide any level of patient care would be a violation of the public's trust.

4. At the June 6, 2007 Hearing, Respondent, through his counsel's written and oral representations, voluntarily consented to cease practicing medicine during the Board's investigation of pending allegations. In addition, it was represented to the Board that Respondent had agreed to take administrative leave from all medical duties at FAHC and UVM, and that FAHC had placed him on such administrative leave. As a result, Respondent represented to the Board that he was unwilling and unable to practice medicine at the current time.

5. In the June 7, 2007 Order, the Board found that if the allegations detailed in the Affidavit of Probable Cause of Detective Soychak were proved to be true, they would present an immediate threat to the health, safety, and welfare of the public should Respondent continue in the practice of medicine at the present time. However, based upon Respondent's representations as set forth above in Finding # 4, the Board found that if Respondent was not practicing medicine, the circumstances did not constitute an imperative threat that required the emergency action of a summary suspension of his license to practice medicine. Rather than impose the summary suspension as requested by the State, the Board accepted and ordered Respondent's voluntary cessation of practice.

6. The Board concludes that its previous decision to accept and order Respondent's voluntary cessation of practice, instead of ordering a summary suspension, was based solely on Respondent's representation that he voluntarily agreed to cease practicing any and all medicine during the Board's investigation of the allegations. Simply stated, the Board took Respondent and his counsel at their word. The Board further concludes that no change in circumstances has been demonstrated that warrants any change in the Board's June 7, 2007 Order, and that any practice of medicine by Respondent while the Board's investigation or criminal charges are pending would present an imminent and imperative threat to the public.

ORDER

After considering all of the material presented by the parties and their oral presentations at the hearing, the Board issues the following **ORDER**:

1. The Respondent's Motion to Amend Cessation of Practice Order is **DENIED**.
2. The Board's June 7, 2007 Order remains in full force and effect.
3. Failure to comply with an order of the Board shall constitute unprofessional conduct under 26 V.S.A. § 1354(25).
4. This Order shall be a public record under 26 V.S.A. § 1318(c).

ON BEHALF OF THE BOARD:

David W. Clauss MD

David W. Clauss, M.D., Physician Member

Date 7/13/07

Filed with Board Office:

Date 7/13/07

Date of Entry: 7/13/07