STATE OF VERMONT
BOARD OF MEDICAL PRACTICE

In re: Herbert H. Scherzer, M.D.	))))	Licensing Committee Matter

STIPULATION AND CONSENT ORDER

NOW COME Herbert H. Scherzer, M.D. (Applicant), and the State of Vermont, by and through Attorney General William H. Sorrell and the undersigned Assistant Attorney General, James S. Arisman, and agree and stipulate as follows:

1. Herbert H. Scherzer, M.D., has applied for reinstatement of his Vermont medical license, No. 042-0009400, first issued by the Board of Medical Practice on or about October 17, 1996.

2. Jurisdiction vests with the Vermont Board of Medical Practice (Board) by virtue of 26 V.S.A. §§ 1353, 1391, 1398 & 1400.

I. Background.

3. Applicant holds active licensure in the states of Connecticut, New York, Pennsylvania, and Maine. Applicant most recently has practiced at the Maine Medical Center. He expects to soon accept a position with the Rutland Regional Medical Center. Applicant's Vermont medical license lapsed on November 30, 2000. Dr. Scherzer in his application states that he is board certified in internal medicine, pulmonary disease, and critical care. Applicant also indicates that he is board certified in sleep medicine.

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4. Due to a medical condition, Applicant in 2005 began to receive care and treatment which has continued since that time. He is reported to have responded well to treatment and to have complied fully and responsibly with all aspects of treatment. The Vermont Board of Medical Practice is unaware any related concerns regarding quality of care of patients.

5. Applicant has provided the Board with documentation regarding his medical condition and treatment. His treating physicians have raised no concern regarding Applicant's ability to care for patients. Applicant has indicated his willingness to continue regular care of his medical needs and to cooperate fully with the Vermont Board of Medical Practice by executing this agreement and abiding by its terms.

6. Applicant expressly agrees to the conditions governing reinstatement of licensure, as set forth below. These conditions will be imposed concurrently with any reinstatement of his medical license.

7. Applicant understands and agrees that pursuant to this agreement his Vermont medical license will be reinstated with the designation "**conditioned**". Applicant agrees that these conditions of licensure shall require in the Board's sole discretion, (a) Board review of his medical treatment and physician(s), as well as monitoring of his medical condition; (b) Board monitoring of his practice activities.

II. Agreement and Purposes.

A. Acknowledgement.

8. Applicant has knowingly and voluntarily determined that he shall enter into this agreement regarding his medical condition and treatment. The parties agree here that

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Applicant's Vermont medical license may be reinstated subject to his agreement to full and continuing compliance with all the terms and conditions set forth below. Applicant expressly agrees that his full, good faith cooperation with his treating physician and recommendations regarding his medical care are required for his continued well-being, the sound care of his patients, and his general practice of medicine. Applicant recognizes the responsibility of the Vermont Board of Medical Practice to protect the health, safety, and welfare of patients.

9. Applicant acknowledges that he is aware that at all times he has had the right to be represented by counsel in this matter. Applicant has personally read and carefully reviewed this document. Applicant agrees to abide by the terms and conditions set forth below, while this agreement is in force.

B. Purpose.

10. Applicant accepts all terms and conditions herein in consideration of the Board's review of his application for reinstatement of Vermont medical licensure. He expressly agrees that this Stipulation and Consent Order, without more, does not create a right to an unconditioned Vermont medical license and does not constitute a promise by the Board regarding continued or future licensure status. Applicant agrees that with his consent, the Vermont Board of Medical Practice may adopt Paragraphs 1 through 9, above, and this paragraph as its findings of fact and/or conclusions of law in this matter. He agrees that these paragraphs do and shall provide a sufficient basis for entry and enforcement of this Stipulation and Consent Order by the Vermont Board of Medical Practice. He expressly agrees and consents that the Vermont Board of Medical Practice and/or its agents may

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enforce the terms of this agreement as may be required at any time, including by action pursuant to 3 V.S.A. §814(c).

III. Express Conditions of Licensure.

A. Applicant's Medical Care.

11. Applicant agrees that he shall remain in treatment with his current treating physician or another physician, subject to Board approval or disapproval, in its sole discretion, during the life of this agreement. Applicant agrees that he shall continue to provide his full, good faith cooperation with such care and treatment and with all reasonable recommendations of his physician(s). Applicant shall bear all costs of care and treatment, any assessment and/or evaluation, and monitoring and reporting but may share such costs with third parties, subject to Board review and approval.

12. Should Applicant fail to fully cooperate with and follow all treatment and advice reasonably recommended by his treating physician(s), he agrees that the treating physician(s) may and shall notify immediately the Board of Medical Practice regarding this circumstance. Applicant shall provide a complete copy of this agreement to all treating physicians and request and authorize such reporting. Respondent agrees that he shall not practice medicine in the State of Vermont without the continuing agreement of his treating physician(s) and the express approval of the Vermont Board of Medical Practice.

B. Evaluation and Treatment.

13. If directed by the Board or its agents at any time, Applicant agrees that he shall undergo such assessment or evaluation of his condition and health as may be required by the Board at any time, in its sole discretion.

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14. Applicant agrees to cooperate fully and in good faith with any Board-required evaluation or assessment of his medical needs. In this regard, Applicant agrees that no hearing or similar proceeding shall be required prior issuance of any such request or order by the Board, any of its operating committees, or its agents. However, should time permit, the Board will attempt to provide reasonable notice to Applicant and seek his voluntary cooperation in this regard. Applicant agrees that noncompliance with any such request or order from the Board shall be grounds for action by the Board under 3 V.S.A. §814(c) regarding his Vermont medical license.

15. Applicant agrees that he shall execute any and all waivers and/or authorizations that may be required for the Board, its staff, or agents to receive copies of any and all assessments, evaluations, diagnoses, records, or reports regarding his medical care and condition.

16. Concurrent with any approval of this agreement, Applicant agrees he shall sign as required a general authorization for the release of his medical records and information to the Board. Applicant agrees not to terminate such authorization and to execute such further authorizations for the release of his medical records and information as may be required by the Board. Consistent with this authorization Applicant also agrees that the Board or its agents may communicate orally to obtain information from any and all practitioners involved in his care and treatment. Applicant understands and agrees that his compliance with the terms and conditions herein and with the recommendations of those providing care and treatment to him may be considered in any proceeding before the Board regarding his license.

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17. Should Applicant's treatment involve more than one physician, he agrees that each such physician may communicate freely with any other physician or individual providing care and treatment to Applicant. Applicant agrees to execute any authorizations for release of his medical records that may be required for this purpose. Applicant agrees that the Board may (a) communicate freely and without limitation with each physician; and (b) obtain and review Applicant's treatment records in their entirety, upon request.

18. The Board in its sole discretion may approve or disapprove any professional treating and caring for Applicant, as well as the frequency of such care. Applicant shall provide each treating professional with a copy of this Stipulation and Consent Order and such other documentation or information as may be requested by the treating professional.

C. Reporting and Modification of Terms.

19. Applicant agrees that the principal treating professional, who shall be specifically approved for this purpose by the Board, shall provide on a quarterly basis written reports to the Board regarding Applicant's involvement in treatment, health, and well being. At least quarterly and upon request, the principal treating professional shall provide a written assessment expressly addressing: (a) whether Applicant appears to be able to practice medicine with reasonable care, skill, and safety; (b) affirming that Applicant's practice of medicine is not inconsistent with his own medical needs; and (c) summarizing Applicant's medical condition and treatment needs.

20. Such reporting shall normally be by letter, but the Board may designate the manner and form of all such reporting. The Board also may designate other treating practitioner(s) who shall provide reporting to the Board. Applicant shall bear the

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responsibility for personally making reasonable efforts to ensure that all such reporting takes place as required.

21. The Board shall be notified in writing by both the principal treating professional and by Applicant if the treating professional has concluded that the frequency of or duration of treatment can be reduced. The treating professional must set forth in writing the observations that are deemed to support this conclusion. Applicant shall be required to present a written petition seeking Board approval of any such proposal. The frequency or duration of treatment shall not be reduced without the written approval of the Board.

22. Applicant agrees that all reasonable recommendations from his treating professional(s), evaluations, and/or assessments as to his course of treatment shall be incorporated as additional terms and conditions of this Stipulation and Consent Order. Applicant expressly agrees that he shall fully and in good faith comply with all such reasonable recommendations. The Board in its sole discretion shall determine Applicant's compliance in this regard.

23. If deemed appropriate, the Board, in its sole discretion and at any time, may limit the average number of hours per week that Applicant may work or care for patients. Such limitation may be effected by written notice to Applicant from the Board or any of its operating committees. However, the Board in its sole discretion at a later date may approve or disapprove a petition from Applicant to increase the average number of hours per week that he may care for patients.

24. Evaluative reports and/or assessments, physician reports, or medical records as referred to above, which are supplied to the Board pursuant to this Stipulation and

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Consent Order, shall be treated as protected by the patient-physician privilege, held confidential, and shall not be subject to disclosure to anyone other than the Board, its employees, and agents, other than through disclosure as evidence in a Board proceeding pursuant to 26 V.S.A. §§ 1356-1357 and 3 V.S.A. § 814.

D. Communication and Monitoring.

25. Applicant's practice of medicine shall be monitored by the Board. On-site monitoring, consultation, and review of Applicant's practice and other professional involvements shall be provided by a specifically identified practitioner (i.e., "supervising peer physician"), who shall be subject to the written approval or disapproval of the Board. Applicant agrees that he shall promptly provide copies of this Stipulation and Consent Order to any practitioner proposed for this purpose.

26. The supervising physician referred to above shall provide written quarterly reports to the Board. Such reports shall address the nature and status of Applicant's duties and practice, including hours and workload, practice activities, functioning, and how monitoring of Applicant's re-training and professional activities was carried out during the prior three-month period. Such reports normally shall be provided by letter. Applicant shall be responsible making reasonable efforts to ensure that such reports are promptly provided to the Board.

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E. Practice Activities.

27. Pursuant to this agreement, Applicant agrees to practice medicine only in a

structured group practice setting,[1] subject to the express written approval or disapproval of the Board of Medical Practice. Applicant agrees that he shall promptly provide copies of this Stipulation and Consent Order to any employer, partnership, or institution involved in Applicant's re-training and practice of medicine.

F. Additional Terms.

28. In the unlikely event that such a circumstance might occur, Applicant agrees that he shall promptly cease the practice of medicine should a treating physician so recommend to him. Applicant agrees that his treating physician(s) shall be required to notify the Board immediately of any such recommendation made to Applicant.

29. Applicant agrees that upon any such recommendation, as described in Paragraph 28, above, he shall promptly and voluntarily cease and desist from any and all practice of medicine, including prescribing, in the State of Vermont until: (a) it is deemed safe for him to return to the practice of medicine, such determination to be made by the Board, in its sole discretion; and/or (b) the Board approves any additional or revised conditions and requirements that shall regulate future practice activities, care and additional treatment, and/or monitoring by the Board; and/or (c) other order of the Board. Applicant agrees that the Board may seek such evaluation, assessment, records, and reporting as it may deem necessary to effect the purposes of this paragraph.

30. The Board agrees to promptly decide any petition from Applicant for: a)

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1. A structured group practice shall include, at a minimum, regular substantive interaction with peers and colleagues involved in the care of patients. The Board in its sole discretion shall determine whether a proposed practice site shall be deemed a structured group practice setting.

review of any recommendation by a practitioner that he temporarily cease the practice of medicine; or b) for Board approval of his return to practice after a temporary interruption.

G. Other Matters.

31. Applicant agrees to accept and be bound by the terms and conditions of this agreement until such time as he may be expressly relieved of these or they are modified, in writing, by the Board. The parties agree that Applicant may apply for modification or relief from the terms and conditions of this agreement by written petition that includes as content: (a) copies of all assessments, evaluations, and commentaries regarding Applicant's practice activities; and (b) a current assessment and statement from Applicant's treating physician opining that Applicant's medical condition, in conjunction with any needed care and treatment, will permit him to practice medicine safely and without risk to patients or his own well-being.

32. The Board agrees that this agreement may be modified at a later date, provided that the Board is satisfied, in its sole discretion, that amendment of this agreement is consistent with protection of the public health, safety, and welfare and Applicant's own treatment and health. Applicant agrees that the Board may consider any such petition no sooner than one year from the Board's approval of this agreement.

33. Applicant agrees that all terms and conditions herein as to this matter may be adopted as an enforceable order of the Board, pursuant to 3 V.S.A. §§ 809(d) & 814; and 26 V.S.A. § 1353(4) and other applicable authorities, and agrees to be bound by these until such time as he may be expressly relieved of these terms and conditions or they are modified, in writing, by the Board. Applicant understands and agrees that his failure to abide by any of

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the terms and conditions herein may result in Board action that may affect his Vermont medical license.

34. The parties agree that this Stipulation and Consent Order is non-disciplinary. This agreement, however, imposes enforceable terms and conditions upon Applicant's medical license. This agreement shall be a public document, shall be made part of Applicant's licensing file, and may 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.

35. 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 agreement, the entire agreement shall be considered void. Respondent expressly requests Board review and approval of this agreement. If the Board rejects any part of this document, Respondent agrees that he shall not assert as a claim or defense that his right of due process has been prejudiced by such inchoate consideration. However, if this agreement is deemed acceptable, the parties request that the Board enter an order adopting the facts and/or conclusions herein and all terms and conditions of licensure as set forth herein. Applicant agrees that the Board of Medical Practice shall retain jurisdiction in this matter and may enforce as necessary the terms and conditions herein, subject to the terms of this agreement and 26 V.S.A. §1354(25) or other statutory authority.

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Dated at Montpelier, Vermont, this 27th day of November, 2006.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

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

Dated at FARMINGTON, CONNECTICUT, Vermont, this 24 day of NOVEMBER, 2006.

Herbert H. Scherzer MD
HERBERT H. SCHERZER, M.D., *pro se*
Applicant

* * *

FOREGOING, AS TO HERBERT H. SCHERZER, M.D.

APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE

Tony R. Sadeiman — Margaret Fink Martin

David W. Clauss MD — [illegible] Cahill MD

Russ [illegible] MD — Peter Thanaplan MD

[illegible] — [illegible]

[illegible] — [illegible]

[illegible] — Patricia A. Kay MD PhD

Richard L. Guerrero M.D. — [illegible]

[illegible] MD — [illegible] MD

DATED: 12/6/06

ENTERED AND EFFECTIVE: December 6, 2006

Scherzer; Stip; JSA/AAG 11/06

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