

5. It is the belief of Respondent that the welfare of children at risk of abuse and/or neglect requires communication between and among the medical and social service communities that are working with these children and their families.
6. The child was the patient of Respondent from the time of her birth through the September 13, 2010. Her weight recorded at that visit was 15 lbs. 8 oz. Her weight had been recorded six days earlier (September 7, 2010) by a nurse at Vermont Department of Health at 15 lbs. 4 oz. On January 8, 2010, her recorded weight was 19 lbs. Until her visit with Respondent on June 28, 2010, her weight had fluctuated: on January 14, 2010, 18 lbs.; on February 1, 2010, 17 lbs. 8 oz.; on March 13, 2010, 18 lbs. 12 oz.; on April 5, 2010, 17 lbs.; and on May 7, 2010, 18 lbs. 8 oz.
7. Respondent's position is that the above data, coupled with the child's change in height data was most consistent with constitution growth delay.
8. On June 28, 2010, the child's weight was recorded at 16 lbs. 2 oz. and she was referred by Respondent to the Child Development Center ("CDC") to rule out her mother's concerns about autism – there was a positive family history of autism and cerebral palsy – and other developmental problems associated with weight loss in a dysfunctional family environment.
9. On July 20, 2010, the child's weight was recorded at 15 lbs. 8 oz. and she was referred by Dr. Johnson to the Pediatric Gastrointestinal Department at Albany Medical Center to rule out medical causes for her weight loss. The child did not keep that appointment at Albany Medical Center (her mother gave birth on August 2, 2010) and on August 25, 2010, she was referred to the Pediatric Gastroenterology Department at

Dartmouth-Hitchcock Medical Center for testing and an appointment was made for September 21 2010.

10. Upon her hospital admission on September 14, 2010, the child's recorded weighed was 6.73 kg (14 pounds, 13 oz.).

11. The hospital intake report (9/14/10) noted the following:

- the child was “a chronic severe failure to thrive with symmetric losses”;
- the child's weight over a 15 month period had been below the 5th percentile and, at the time of intake, was severely below;
- the child's weight at intake was where it was at 7 months of age;
- the child had “essentially . . . very minimal height gain since 12 months of age” and was “well below the 3rd percentile”;
- the child's head circumference at 12 months had been below the 3rd percentile and at the time of intake was “severely below the 3rd percentile”;
- “She has no evidence of hepatitis. Other infectious diseases to consider would be HIV, though many times these children will have chronic diarrhea which she does not, tuberculosis, and we are in a low risk area and there is no history in the family known, or parasitic infection”;
- “Lead and mercury poisoning needs to be ruled out”;
- “She does not have any evidence of being fetal alcohol syndrome, although fetal alcohol effect cannot [be] entirely excluded”;
- “Celiac disease needs to be considered”; and
- “Cystic fibrosis cannot entirely be excluded but her neonatal screen was negative. The same holds true for other metabolic disorders which were

negative on the newborn screening and she does not have anything other than the failure to thrive that would suggest such a disorder.”

12. Laboratory and diagnostic studies during the child’s hospital stay did not reveal a medical cause for her condition, although “the child was a little bit resistant to drinking milk or PediaSure . . .” The child ate without difficulty during her stay.
13. The child gained 3 pounds during her hospital stay (1 lb. 8 oz. since her last visit with Dr. Johnson) and weighed 7.96 kg (17 pounds) at the time of her hospital discharge on September 20, 2010.
14. The child was placed in foster care after her discharge. Care of the child was transferred from Respondent to another medical provider. The child’s grandmother was criminally charged with child cruelty. The charges were dismissed on January 31, 2012 without prejudice, and the child’s grandmother agreed to participate in parenting classes.
15. During the time that the child was under the care of Respondent, the child was diagnosed as suffering from failure to thrive syndrome. Respondent’s records also noted the child’s abnormal loss of weight and his efforts to identify its cause(s).
16. Respondent’s records contain no entry indicating the possibility that the child was being starved, neglected or abused by her family caregivers.
17. It is the position of Respondent that he was concerned about the child (he saw the child seven times from June 28, 2010, to September 13, 2010 - nearly weekly) and believed (based in part by their keeping their appointments) the family was trying to be supportive - he was acquainted with the child’s grandmother who took over the

care of the child after the large weight loss noted on June 28, 2010, and had reason to believe she was an experienced and capable child care provider.

18. Pursuant to Vermont law, as a physician, Respondent was mandated to make a report to the Commissioner of Social and Rehabilitation Services or his designee (in this case DCF) if he “[had] reasonable cause to believe that [the child had] been abused or neglected.”
19. Respondent did not report potential abuse and neglect of the child to DCF.
20. Respondent appeared with counsel before the Committee on November 10, 2011 and has fully cooperated with this investigation.
21. This Stipulation and Consent Order is in full satisfaction and settlement of all charges that might have been brought arising from the complaint which precipitated this investigation.

Conclusions of Law

22. The Board may find that “failure to practice competently by reason of any cause on a single occasion or multiple occasions constitutes unprofessional conduct.” 26 V.S.A. § 1354(b). Failure to practice competently includes “performance of unsafe or unacceptable patient care” or “failure to conform to the essential standards of acceptable and prevailing practice.”
23. The Board may find that the “failure to comply with provisions of federal or state statutes or rules governing the practice of medicine or surgery” constitutes unprofessional conduct. 26 V.S.A. § 1354(a)(27).
24. Vermont law requires that “[a]ny physician . . . who has reasonable cause to believe that any child has been abused or neglected shall report or cause a report to be made . . .

. within 24 hours.” 33 V.S.A. § 4913(a). An “abused or neglected child” means “a child whose physical health, psychological growth and development or welfare is

harméd or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child’s welfare.” 33 V.S.A. § 4912(2). “‘Harm’ can occur by . . . [f]ailure to supply the child with adequate **food**, clothing, shelter or health care.” 33 V.S.A. § 4912(3)(B) (emphasis added).

25. Respondent acknowledges that it is the Board’s position that if the State were to file charges against him, it could satisfy its burden at a hearing and a finding adverse to him could be entered by the Board, pursuant to 26 V.S.A. § 1354(a)(27) and (b).

Respondent does not admit any violation of 26 V.S.A. § 1354(a)(27) and (b).

However, in the interest of Respondent’s desire to fully and finally resolve the matter presently before the Board, he has determined that he shall enter into the instant agreement with the Board.

26. In this matter, Respondent admits all facts set forth in paragraphs 1 through 21, above, and agrees that the Board may enter as its facts and/or conclusions paragraphs 1 through 21 and further agrees that this is an adequate basis for the Board actions set forth herein. Any representation by Respondent herein is made solely for the purposes set forth in this agreement.

27. 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 this matter and in the review of this Stipulation and Consent Order.

Respondent is fully satisfied with the legal representation he has received in this matter.

28. Respondent agrees and understands that by executing this document he is waiving any right to challenge the jurisdiction and continuing jurisdiction of the Board in this matter, to be presented with a specification of charges and evidence, to cross-examine witnesses, and to offer evidence of his own to contest any allegations by the State.
29. The parties agree that upon their execution of this Stipulation and Consent Order, and pursuant to the terms herein, the above-captioned matter shall be administratively closed by the Board. Thereafter, the Board will take no further action as to this matter absent non-compliance with the terms and conditions of this document by Respondent.
30. This Stipulation and Consent Order is conditioned upon its acceptance by the Vermont Board of Medical Practice. If the Board rejects any part of this document, the entire agreement shall be considered void. Respondent agrees that if the Board does not accept this agreement in its current form, he shall not assert in any subsequent proceeding any claim of prejudice from any such prior consideration. If the Board rejects any part of this agreement, none of its terms shall bind Respondent or constitute an admission of any of the facts of the alleged misconduct, it shall not be used against Respondent in any way, it shall be kept in strict confidence, and it shall be without prejudice to any future disciplinary proceeding and the Board's final determination of any charge against Respondent.
31. Respondent acknowledges and understands that this Stipulation and Consent Order shall be a matter of public record, shall be entered in his permanent Board file, shall constitute an enforceable legal agreement, and may and shall be reported to other licensing authorities, including but not limited to, the Federation of State Medical Boards Board Action Databank, the National Practitioner Data Bank, and the

Healthcare Integrity and Protection Data Bank. In exchange for the actions by the Board, as set forth herein, Respondent expressly agrees to be bound by all terms and conditions of this Stipulation and Consent Order.

32. The parties therefore jointly agree that should the terms and conditions of this Stipulation and Consent Order be deemed acceptable by the Vermont Board of Medical Practice, the Board may enter an order implementing the terms and conditions herein.

ORDER

WHEREFORE, based on the foregoing, and the consent of Respondent, it is hereby ORDERED that:

- a. Respondent shall attend and successfully complete a continuing medical education ("CME") class within one year from the date that this Stipulation is approved by the Board. The subject of the CME class shall be the reporting of cases when a physician has reasonable cause to believe that a child has been abused or neglected. The CME that Respondent proposes to attend should be approved in advance by the Board. Respondent shall provide written proof of attendance after the CME class is complete.

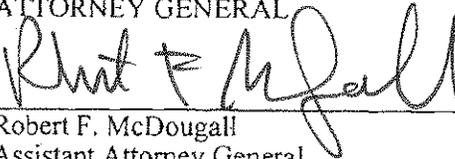
SIGNATURES

DATED at Montpelier, Vermont, this 30th day of October, 2012.

STATE OF VERMONT

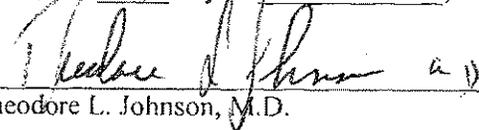
WILLIAM H. SORRELL
ATTORNEY GENERAL

By:



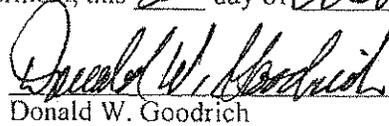
Robert F. McDougall
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609

DATED at BENNINGTON, Vermont, this 29 day of October, 2012.


Theodore L. Johnson, M.D.

Respondent

DATED at Bennington, Vermont, this 30th day of October, 2012.


Donald W. Goodrich

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AS TO THEODORE L. JOHNSON, M.D.

APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE

W. J. Katz

W. J. Katz

Paul A. Johnson

Paul A. Johnson

Paul A. Johnson

Dated: November 7, 2012

ENTERED AND EFFECTIVE: November 7, 2012

Office of the
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