

**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**

In re: Anne M. Johnston, M.D.

Docket No.: MPS 61-0710

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STIPULATION AND CONSENT ORDER

The State of Vermont, by and through Attorney General William H. Sorrell, and the undersigned Assistant Attorney General, Terry Lovelace, and Respondent Anne M. Johnston, M.D., stipulate and agree as follows.

1. Anne M. Johnston, M.D. (hereafter "Respondent"), holds Vermont medical license No. 042-0007569, issued by the Board of Medical Practice (hereafter "board"). Respondent is a neonatologist treating newborn infants suffering from opiate addiction.

2. Respondent is registered with the Drug Enforcement Agency and holds an unrestricted DEA registration to prescribe medication on schedules II, III, IV and V.

3. This matter came to the attention of the board as a self-referral to Vermont Practitioners Health Program (hereafter "VPHP") on June 21, 2010.

4. The Vermont Board of Medical Practice has jurisdiction in this matter pursuant to 26 V.S.A. §§ 1353-1361, 1398, and other authority.

Relevant Background

5. On July 12, 2010, the Board opened a complaint, Docket No. MPS 67-0710, and began an investigation following receipt of a letter from the Vermont Practitioner's Health Program (hereafter "VPHP") to the board to report that Respondent had entered a five year contract. The

contract. The Board was contacted at the Respondent's request and may be characterized as a self-disclosure.

6. The complainant alleges Respondent self-prescribed controlled substances.

7. Board Investigator, Philip Ciotti, conducted an investigation into the facts as self-reported by Respondent through VPHP. The investigation by Mr. Ciotti disclosed that:

A) Respondent entered into a stipulation with the Vermont Board of Medical Practice in 1998 which included a monitoring agreement to manage Respondent's addiction to pain medications. As part of that Stipulation, Respondent admitted that she wrote prescriptions for controlled substances for her own use. Dr. Suzy Parker, a specialist in the treatment of such conditions, provided care for Respondent in 1998, and in the present matter as VPHP Medical Director.

B) Respondent petitioned the Board in 2002 for relief from the conditions of her 1998 stipulation. Her petition was granted and Respondent was released from monitoring by the Board and conditions on her medical license were removed.

C) Respondent and others who had answered "yes" to certain questions on their license renewal applications were "screened" in 2004 by telephone. Respondent was contacted by Dr. William Stouch and a Board investigator. That inquiry disclosed that Respondent, although not enrolled in VPHP, remained drug-free and continued to see Dr. Parker, for treatment/maintenance.

D) Respondent's current Board complaint alleges that she self-prescribed controlled substances, constituting unprofessional conduct and contrary to Vermont law; that Respondent wrote prescriptions for herself and for others which were filled by pharmacies in the Williston area; that Respondent paid for those prescriptions; and that Respondent kept the medication for her personal use contrary to Rules¹ promulgated by the Vermont Board of Medical Practice and Vermont law².

¹ See Rules of the Board of Medical Practice, Rule 4.3.

² See Title 18, Chapter 83, 26 V.S.A. Section 1354 and others.

8. On August 20, 2010, Investigator Ciotti interviewed Respondent and reported that Respondent admitted that she wrote the prescriptions in question and that the medication was intended for her personal use.

Agreement

9. Respondent knowingly and voluntarily agrees that in lieu of the time, expense, and uncertainty of a public hearing and the possibility of Board disciplinary action, she shall voluntarily accept a public reprimand and the placement of certain conditions upon her Vermont medical licensure. Respondent enters no admission here, but concludes that this agreement is appropriate and in the best interest of all parties. All parties agree that the fair and appropriate disciplinary action in this matter shall consist of the following:

A. Respondent shall continue her VPHP contract according to its terms and conditions until the contract term is fully satisfied or until release by VPHP.

B. Respondent's license to practice medicine shall be designated as "conditioned" for a period of five years beginning June 21, 2010. Respondent may petition the Board for relief from conditions after June 21, 2013. Respondent shall comply fully and in good faith with each of the terms and conditions of licensure set forth herein, wherever she may practice, until such time as she is relieved of all conditions by express written order of the Vermont Board of Medical Practice.

C. Respondent accepts a public reprimand by the Board for the conduct set forth above, in addition to the imposition of the terms and conditions set forth herein and below.

D. Respondent agrees to partially and voluntarily surrender her controlled substance privileges with the DEA, specifically schedules II and III, until relieved from this condition by express written order by the Board. Respondent retains the unrestricted right to prescribe medication from schedules IV and V.

E. Respondent agrees to sign all releases necessary to consent to the release of quarterly progress reports by VPHP directly to the South Investigative Committee. It is Respondent's responsibility to ensure that quarterly reports are

received timely by the committee. If Respondent's contract with VPHP concludes for any reason before release from this stipulation, Respondent shall continue to provide quarterly reports through her private physician, therapist, A.A. Counselor or other entity as approved by the committee, until she is released from that condition.

F. Respondent agrees to voluntarily continue to provide quarterly progress reports to the South Investigative Committee after she is released from all conditions of the Stip and her VPHP contract. Respondent shall continue to provide the committee with quarterly reports until it is medically determined that she no longer needs to participate in an ongoing recovery program or has retired from the practice of medicine.

10. Respondent agrees that she has read and carefully considered all terms and conditions in Paragraph's #9 (A-F) above with assistance of counsel and agrees to accept and be bound by these while licensed to practice medicine in the State of Vermont or elsewhere. Respondent is satisfied with all counsel and representation she has received. She agrees and understands that by executing this document she is waiving any right to challenge the jurisdiction and continuing jurisdiction of the Board in this matter, to be presented with any evidence adverse to her, to cross-examine witnesses, and to offer evidence of her own to contest the State's allegations. 26 V.S.A. § 1356; 3 V.S.A. §§ 809, & 814.

11. Respondent's license to practice medicine in the State of Vermont shall be designated as conditioned until such time as Respondent can demonstrate to the Board's satisfaction, full compliance with the conditions in Paragraphs #9(A-F) above. Respondent's Vermont license to practice medicine shall remain designated as conditioned until such time as the Board has removed all terms and conditions from her medical license. Respondent acknowledges that it is her duty to petition the Board to close this matter after demonstrating full

compliance with Paragraph #9(A-F) above. Respondent agrees that she shall not petition for relief from conditions prior to June 21, 2013.

Confidentiality of Information

12. The parties agree that all records or materials prepared pursuant to this agreement for the purposes of evaluation or assessment, as described above and pursuant to this agreement shall be treated as confidential, absent Respondent's signed release or pursuant to an evidentiary hearing on the merits under 26 V.S.A. §§ 1355-1361. See 26 V.S.A. § 1317 (accessibility and confidentiality of disciplinary matters).

13. Respondent shall bear all costs associated with this agreement.

14. Respondent acknowledges that substantial or repeated failures to comply with the terms and conditions of this agreement or the VPHP contract may constitute unprofessional conduct and may result in such further disciplinary action as the Board may deem appropriate under the circumstances and in light of those agreements. Respondent expressly agrees that she shall abide by and follow all reasonable recommendations that are presented to her by any treating physician, counselor or therapist. The South Investigative Committee or its investigators also may communicate directly, with appropriate release forms, with any and all treatment providers regarding their observations, opinions and recommendations.

15. In lieu of the Board requiring random drug screening for Respondent, the Board will defer to VPHP's drug screening process. Respondent expressly agrees that she shall promptly sign any and all needed consents, releases and/or waivers of confidentiality, so as to permit full and complete disclosure of test results to the South Investigative Committee.

Likewise, Respondent expressly agrees to provide a prompt urinalysis drug screen for narcotics if requested by the South Investigative Committee or the Board for any reason at any time.

May Conditionally Continue to Practice

16. Respondent understands and agrees that despite her licensure being conditional upon compliance with this Stipulation and Consent Order, she may continue to practice medicine. Respondent shall petition the Board in advance for formal, written approval of any proposed change of employment. Respondent agrees that she shall not practice medicine or see patients at any other site or location without the prior written approval of the South Investigative Committee.

17. Respondent agrees that she shall provide a complete copy of this Stipulation and Consent Order to her supervising physician/Department Chair, any prospective employer with which she may seek affiliation, and any state medical board or other licensing authority in any location or jurisdiction where she may seek to practice or where she may make application, so long as this agreement remains in effect.

Meetings with Board or Investigative Committee

18. Respondent agrees that she shall meet with the Board or the South Investigative Committee, if requested, following reasonable notice, for the purpose of discussing her compliance with this agreement. Respondent shall have the right to be accompanied by and assisted by legal counsel of her choosing during any such meeting.

Other Terms and Conditions.

19. Consistent with Respondent's continuing desire to cooperate with the Board in its public responsibilities, Respondent agrees that if the State were to satisfy its burden at hearing as

to certain of the facts alleged in the complaint and by admissions made by Respondent, a finding adverse to her could be entered by the Board, pursuant to 26 V.S.A. § 1354. The resulting possible sanctions could include revocation of her Vermont medical license.

20. Respondent understands that failure by her to abide by any of the terms and conditions of this Stipulation and Consent Order may be deemed to constitute unprofessional conduct under 26 V.S.A. § 1354(a)(25) and other authorities and could subject Respondent to such further disciplinary action as the South Committee may recommend and the Board deems appropriate.

21. Respondent expressly acknowledges and agrees that engaging in unprofessional conduct, as set forth in 26 VSA §§ 1354 & 1398 may constitute evidence of a violation by her of this agreement and may be 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 a motion by the State for the immediate suspension of Respondent's Vermont medical license.

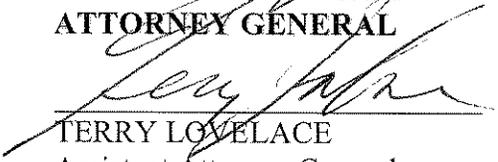
22. The parties agree that if the Board does not accept this agreement in its current form, Respondent and the State shall retain the option of proceeding to an evidentiary hearing on the merits of the State's Specification of Charges in this matter. At any evidentiary hearing following the Board's rejection of this agreement, no reference to this document or negotiations between the parties shall be admissible. 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 by the Board

for the unprofessional conduct set forth herein.

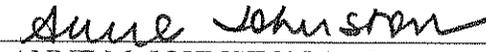
Dated at Montpelier, Vermont, this 3 day of March, 2011.

STATE OF VERMONT
WILLIAM H. SORRELL
ATTORNEY GENERAL

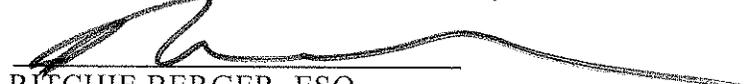
by:


TERRY LOVELACE
Assistant Attorney General

Dated at Burlington, Vermont, this 28 day of February, 2011.


ANNE M. JOHNSTON, M.D.
Respondent

Dated at Burlington, Vermont, this 28th day of February, 2011.


RITCHIE BERGER, ESQ.
Counsel for Respondent

ACKNOWLEDGED AND ACCEPTED AS TO REPORTING REQUIREMENTS:

Dated at _____, Vermont, this ____ day of _____, 2011.

Vermont Practitioner Health Program

