

BOARD OF MEDICAL PRACTICE

In re: Diane Marlene Roston, M.D.)
) Docket No. MPN 098-0515
)

STIPULATION AND CONSENT ORDER

NOW COME Diane Marlene Roston, M.D. and the State of Vermont, by and through Vermont Attorney General William H. Sorrell, and hereby stipulate and agree to the following in the above-captioned matter:

1. Diane Marlene Roston, M.D. ("Respondent") holds Vermont medical license number 042.0008369 originally issued by the Vermont Board of Medical Practice on June 5, 1991.
2. Jurisdiction in this matter rests with the Vermont Board of Medical Practice ("the Board"), pursuant to 26 V.S.A. §§ 1353-1357, 3 V.S.A. §§ 809-814, and other authority.

FINDINGS OF FACT

3. The Board opened the above-captioned matter in May 2015 upon notification from Respondent that her Vermont medical license had lapsed and that she had been practicing in Vermont without a Vermont medical license since November 30, 2014. Respondent's New Hampshire medical license remained active during this period. The matter was assigned to the North Investigative Committee of the Board ("the Committee").
4. On May 18, 2015, the Board received a phone call from Respondent notifying the Board that she was unaware that her license had expired on November 30,

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2014, and that she had been practicing in Vermont without a license since that date.

5. Respondent fully cooperated with the Board's investigation, halting her medical practice from May 18, 2015 until her lapsed license was reinstated the following day and providing a written response concerning the lapse.
6. Respondent first learned that her Vermont medical license had expired when she received a letter from Medicare on Friday May 15, 2015, stating that her participation was being discontinued due to her not having a Vermont medical license. The following Monday, Respondent completed the online application to renew her license and notified the Board of her lapse. When a Board employee informed Respondent on May 18, 2015 that the notification of license renewal was sent by email, she did not recall the many notices sent by both mail and email in 2012 that preceded the first license renewal conducted electronically. She recalled that she had renewed online in a prior year, but had not realized that the notification of her deadline for renewing her license would be sent only by email. Those notices in 2012 had advised licensees that future notices would be sent only by email and that licensees are required to keep a current email address on file with the Board. Before 2012, renewal applications and notices about renewal had been sent by U.S. mail. At the time the Board emailed the 2014 notice of the deadline for renewing Respondent's license, the email address Respondent had on file with the Board was an address that she was no longer able to use for external incoming and outgoing email. This resulted in Respondent not receiving the renewal notice emailed

by the Board. It was Respondent's responsibility to notify the Board of the change in her email address.

7. Respondent promptly provided the Board with her current email address. She has also taken steps to establish a prompting system to remind her of future license renewals.
8. Respondent takes full responsibility for her failure to timely renew her license. She has no prior history of disciplinary action by the Board.
9. This Stipulation and Consent Order is in full satisfaction and settlement of the Board's investigation into the lapse of Respondent's Vermont medical license and into her practice of medicine in Vermont without a license from December 1, 2014 to May 18, 2015.

CONCLUSIONS OF LAW

10. The Board shall find that "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).
11. Board Rule 3.2 states: "If a license has not been renewed by the required date, it has lapsed. A physician may not legally practice in Vermont after a license has lapsed. The physician must halt the practice of medicine until the license has been reinstated." Vt. Admin. Code 12-5-200:3.2.
12. Section 1314(a) of Title 26 prohibits the practice of medicine without a license. 26 V.S.A. § 1314(a).

13. Therefore, the practice of medicine without a license constitutes a violation of Respondent's professional responsibilities to maintain an active Vermont medical license during all times that she is practicing medicine in Vermont.
14. Respondent acknowledges that it is the Board's position that if the State were to file charges against her, it could satisfy its burden at a hearing and a finding adverse to her could be entered by the Board, pursuant to 26 V.S.A. § 1354(a)(27).
15. Respondent agrees that the Board may enter as its facts and/or conclusions paragraphs 1 through 9 above, 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.
16. Therefore, in the interest of Respondent's desire to fully and finally resolve the matter presently before the Board, she has determined that she shall enter into the instant agreement with the Board. Respondent enters no further admission here, but to resolve this matter without further time, expense, and uncertainty; she has concluded that this agreement is acceptable and in the best interest of the parties.
17. Respondent acknowledges that she is knowingly and voluntarily agreeing to this Stipulation and Consent Order. She acknowledges that she has had the advice of counsel regarding this matter and in the review of this Stipulation and Consent Order. Respondent is fully satisfied with the legal representation she has received in this matter.

18. Respondent 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 a specification of charges and evidence, to cross-examine witnesses, and to offer evidence of her own to contest any allegations by the State.
19. 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.
20. 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, she 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.
21. Respondent acknowledges and understands that this Stipulation and Consent Order shall be a matter of public record, shall be entered in her permanent

Board file, shall constitute an enforceable legal agreement, and may be reported to other licensing authorities and the Federation of State Medical Boards Board Action Databank. 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.

22. 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:

1. Respondent shall pay an administrative penalty of five hundred dollars (\$500.00) consistent with 26 V.S.A. § 1361(b). Payment shall be made to the "State of Vermont Board of Medical Practice," and shall be sent to the Vermont Attorney General's Office at the following address:
Elizabeth M. Tisher, Special Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT 05609-1001. The payment shall be due no later than 14 days after this Stipulation and Consent Order is approved by the Board.

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SIGNATURES

DATED at Montpelier, Vermont, this 4th day of April, 2016.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL


By: 

Elizabeth M. Tisher
Special Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001

DATED at White River Junction Vermont, this 4th day of MARCH, 2016.


Diane Marlene Roston, M.D.
Respondent

DATED at Wartford, Vermont, this 4th day of March, 2016.


P. Scott McGee, Esquire
Hershenson, Carter, Scott & McGee
P.O. Box 909
Norwich, Vermont 05055
Counsel for Respondent

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AS TO DIANE MARLENE ROSTON, M.D.
APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE

Mr. Papp

Mr. [unclear]

Mr. Hill

Mr. [unclear]

Mr. Buzzel

Mr. [unclear]

Mr. [unclear]

Mr. [unclear]

Mr. [unclear]

Dated: *April 6th, 2016*

ENTERED AND EFFECTIVE: *April 6th, 2016*

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