

STATE OF VERMONT
BOARD OF MEDICAL PRACTICE

In re: Joseph A. Abate, M.D.

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Docket No. MPS 98-0607

STIPULATION AND CONSENT ORDER

NOW COMES Joseph A. Abate, ("Respondent") and the State of Vermont, by and through Attorney General William H. Sorrell and undersigned counsel, Assistant Attorney General Margaret O. Vincent, and agree and stipulate as follows:

- 1. Joseph A. Abate, M.D. (Respondent) holds Vermont Medical License Number 042-0009529. Respondent is a board certified orthopaedic surgeon.
- 2. Jurisdiction vests with the Vermont Board of Medical Practice (Board) by virtue of 26 V.S.A. §§ 1353, 1354, & 1398 and 3 V.S.A. § 814(c).

I. Background.

- 3. Respondent is an orthopaedic surgeon specializing in Sports Medicine. His practice was with Sports and Orthopedic Rehabilitation Center at Fletcher Allen Health Care in Colchester, Vermont.
- 4. In 2007, the Board became aware of multiple female patients of Dr. Abate reporting the following facts regarding Dr. Abate's physical examinations.
- 5. The female patients were being treated for knee and/or hip problems. Dr. Abate would be the only one present in the examination room.
- 6. Without proper warning or explanation Dr. Abate would touch the female patient near, on or in their genitals without using gloves.

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7. In some of the female patient files, Dr. Abate failed to adequately chart the aforementioned exam. In some instances the patient's visit was not documented in her chart.

8. The patients complained that Dr. Abate performed the aforementioned exam without gaining explicit verbal consent from them.

II. Revocation of Medical License

9. Respondent does not contest the facts set forth above in paragraphs 3 through 8 above, and agrees that the Board of Medical Practice may adopt and enter paragraphs 3 through 8 as uncontested findings of fact in this matter.

10. Respondent agrees that, together, (a) performing a genital exam without the use of gloves, (b) not adequately documenting the examination in some instances, (c) not gaining explicit verbal consent, and (d) failing to provide proper warning or explanation that his examination would include touching the patient near or in their genitals meets the definitions of unprofessional conduct. 26 V.S.A. 1354.

11. Respondent makes no further admissions.

12. Respondent acknowledges that he knowingly and voluntarily agrees and enters in to the Stipulation and Consent Order. He acknowledges that he has had advice of counsel regarding the matter before the Board and advice of counsel in reviewing this Stipulation and Consent Order. Respondent agrees here that he is well satisfied with all counsel and representation he has received in this matter. He agrees and understands that, by executing this document, he is waiving any right to be served with formal charges, to challenge the jurisdiction and continuing jurisdiction of the Board in these matters, to be presented with the evidence against him, to cross-examine adverse witnesses, and to offer evidence of his own to

contest the State's charges. 26 V.S.A. § 1356; 3 V.S.A. §§ 809, & 814.

13. No specification of charges has been filed by the State in this matter. Respondent has not previously been the subject of disciplinary action by the Vermont Board of Medical Practice.

III. Terms and Conditions of Agreement.

14. Respondent acknowledges that he is voluntarily entering into this agreement with the Vermont Board of Medical Practice. Respondent wishes to resolve with finality all matters now pending before the Vermont Board of Medical Practice. Respondent agrees that one or more of the admissions set forth above provide a sufficient factual basis for the Board of Medical Practice to enter its conclusions and to order the action contemplated herein. 26 V.S.A. §§ 1354, 1361, and 1398.

15. Respondent knowingly and voluntarily agrees that in lieu of the time, expense, and uncertainty of a public hearing, he does not contest the Vermont Board of Medical Practice **REVOKING** his license to practice medicine in the State of Vermont. He understands and agrees that thereafter any prior rights of licensure in this State, or elsewhere shall be wholly void and without effect, and that he shall retain no residual rights of any kind as to medical licensure in the State of Vermont. Respondent understands and agrees that the **REVOCATION** of his medical license shall be final and non-appealable in any forum.

16. Respondent agrees and warrants that at no time hereafter shall he seek by any means licensure, reinstatement, relicensure, and/or continuation of licensure as a physician or medical doctor in the State of Vermont, or elsewhere regardless of circumstances or the

passage of time. Respondent expressly agrees that hereafter the Board may and shall return to him, without action or obligation of due process of any kind, any application, request, motion, petition, or other writing from him with regard to licensure, reinstatement, relicensure, or continuation of licensure. Finally, the Vermont Board of Medical Practice agrees that upon Respondent's execution of this Stipulation and Consent Order, pursuant to the terms herein, all matters involving him that are currently open before the Board shall be administratively closed by the Board. Thereafter, the Board will take no further action on these matters, absent non-compliance with the terms and conditions of this document by Respondent or the receipt of new information or evidence warranting further action by the Board. 26 V.S.A. §§ 1355, 1361, 1398.

17. This Stipulation and Consent Order is conditioned upon its acceptance by the Vermont Board of Medical Practice. Respondent expressly requests the Board's review and approval of this agreement. If the Board rejects any part of this document, the entire agreement shall be considered void. Respondent agrees that in such a case he shall not assert a claim or defense that his rights of due process have been prejudiced by such inchoate consideration. Respondent acknowledges and understands that this Stipulation and Consent Order, if approved, shall be a public document, shall be made part of Respondent's licensing file, and shall 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.

18. In exchange for the actions by the Board, as set forth herein, specifically including Paragraphs 15 through 17, above, Respondent expressly agrees to be bound by all terms and conditions of this Stipulation and Consent Order. Therefore, the parties jointly

agree that should the terms and conditions of this Stipulation and Consent Order be deemed acceptable by the Board of Medical Practice, the Board may enter an order implementing the terms and conditions herein, thereby **REVOKING** the Vermont medical license of Respondent, Joseph A. Abate, M.D.

Dated at Montpelier, Vermont this 29 day of January, 2010.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: Margaret O. Vincent
MARGARET O. VINCENT
Assistant Attorney General

Dated at Burlington, Vermont, this 28 day of January, 2010.

Joseph A. Abate
JOSEPH A. ABATE, M. D.
Respondent

Eric Miller
ERIC MILLER
Counsel for Respondent

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FOREGOING, AS TO JOSEPH A. ABATE, M.D.
APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE

<u>John R. Sackin MD</u>	<u>Peter Panoskas, MD</u>
<u>James E. Ryan MD</u>	<u>Wm. H. Stone, MD</u>
<u>John A. King MD PhD</u>	
<u>John J. [unclear]</u>	
<u>Paul A. Jenkins</u>	
<u>Thomas J. [unclear]</u>	
<u>Walter W. [unclear] MD</u>	

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