

**STATE OF VERMONT  
BOARD OF MEDICAL PRACTICE**

In re: Jon Porter, M.D.

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Docket No.  
MPS 122-1109  
MPS 137-1209

**SPECIFICATION OF CHARGES**

NOW COME the State of Vermont, by and through Attorney General William H. Sorrell and undersigned counsel, Assistant Attorney General Terry Lovelace, and for the State's specification of charges against Jon Porter, M.D. (hereafter "Respondent") state the following:

1. Respondent holds Vermont Medical License No. 042-0008579, issued by the Vermont Board of Medical Practice on July 28, 1992. He is the Director for the University of Vermont Center for Health and Wellbeing.
2. Jurisdiction rests in the Vermont Board of Medical Practice (the "Board") pursuant to 26 V.S.A. §§ 1353, 1354, 1733, 1734(b), 1735, 1739 and Vermont Board of Medical Practice Rules 5, 6 and 7.

**I. MPS 122-1209**

**Physician Assistant known as/referred to as PA-N**

3. In matter MPS 122-1109, Respondent was the primary supervising physician of a Physician Assistant (hereafter "PA-N") accused of inappropriate and non-compliant prescribing opiate medication<sup>1</sup> at the University of Vermont Center for Health and Wellbeing (hereafter "CHW").
4. An investigation of Respondent as PA-N's supervising physician was opened by the Board on November 5, 2009, following a complaint by the Medical Practice Board Director alleging that Respondent failed to adequately supervise PA-N at CHW.

5. The South Committee's investigation of Respondent included a review of the complaint against PA-N as well as the medical records of patients seen by PA-N. The Committee also reviewed the Scope of Practice signed by PA-N and Respondent, and the Respondent's response to allegations dated November 24, 2009. Medical Board of Practice Investigator, Paula Nenninger conducted interviews with PA-N and Dr. Evan Eyler. The Respondent was interviewed by the South Investigative Committee, with counsel present, on two occasions

6. Respondent, as supervising physician of PA-N, failed to conduct meaningful and regular chart reviews of PA-N's work. It is alleged that Respondent failed to review PA-N's charts "unless a concern was brought." In reviewing PA-N's work, Respondent's methods were described as "supervision on an as needed basis<sup>2</sup>."

7. Respondent failed to follow CHW's peer review process which required random review of charts twice each year. In this instance, the peer review process failed because responsibility for organizing the activity was delegated to PA-N. PA-N chose which patient charts were to be excluded from review by Respondent. Charts that, if randomly selected and reviewed, would have likely disclosed PA-N's<sup>3</sup> prescribing practices. Over a period of some years, no questions were raised regarding PA-N's prescribing practices because none were identified by Respondent's review.

8. PA-N's prescribing practices came under scrutiny only after a group of UVM nursing students conducted a research project into drug diversion at CHW. Data collected for the project identified PA-N as a possible problem prescriber.

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<sup>1</sup> Prescribing which is contrary to the Vermont Board of Medical Practice Policy for the use of Controlled Substances for the Treatment of Pain, Approved December 7, 2005.

<sup>2</sup> October 27, 2009 Interview of A. Evan Eyler, M.D. by Investigator Nenninger.

## COUNT I

9. Contrary to Vermont law, 26 V.S.A. Sections 1739(a) and 1739a, while acting as Respondent's agent, PA-N prescribed opiates inappropriately and in a manner inconsistent with provisions of Vermont law and board policy. Vermont law at 26 V.S.A. 1739 (a), states:

"The supervising physician delegating activities to a physician's assistant shall be legally liable for such activities of the physician's assistant and the physician's assistant shall in this relationship be the physician's agent."

Respondent is legally liable for the inappropriate and non-compliant prescribing activities of PA-N, who acted as Respondent's agent. Respondent's actions are unprofessional conduct. Respondent is subject to disciplinary action, including public reprimand, by the Board of Medical Practice. The Vermont Board of Medical Practice possesses authority to suspend, revoke, or condition the license to practice medicine of a physician who has been found to have engaged in unprofessional conduct.

## COUNT II

10. Contrary to Vermont law, 26 V.S.A. Section 1354(31)(b)(2), Respondent failed to adequately follow the progress of patients treated by PA-N. As supervising physician, Vermont law holds Respondent legally liable for the medical services provided by PA-N. Respondent's supervision of PA-N failed to "conform to the essential standards of acceptable and prevailing practice" and is unprofessional conduct in regard to his supervision of PA-N. Respondent is subject to disciplinary action, including public reprimand, by the Board of Medical Practice. The Vermont Board of Medical Practice possesses authority to suspend, revoke, or condition the license to practice medicine of a physician who has been found to have engaged in unprofessional conduct.

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<sup>3</sup> As a result of inappropriate and non-compliant prescribing, PA-N received a public reprimand in a stipulation and

### COUNT III

11. Vermont Board of Medical Practice Rule 5.1 states that:

“... physician assistants shall be considered the agents of their supervising physicians<sup>4</sup> in the performance of all practice-related activities, including, but not limited to, the ordering of diagnostic, therapeutic and other medical services.”

As primary supervising physician, Respondent failed to monitor PA-N's practice performance during times when PA-N acted as Respondent's agent. PA-N prescribed controlled substances in a manner contrary to Vermont law and board policy. As supervising physician, Respondent is liable for the actions of PA-N by law. Respondent's actions are unprofessional conduct and Respondent is subject to disciplinary action, including public reprimand, by the Board of Medical Practice. The Vermont Board of Medical Practice possesses authority to suspend, revoke, or condition the license to practice medicine of a physician who has been found to have engaged in unprofessional conduct.

### COUNT IV

12. Vermont Board of Medical Practice Rule, Part 7 at 1(c) states:

“The supervising physician shall outline in detail how he or she will be available for consultation and review of work performed by the physician assistant.”

As primary supervising physician, Respondent was responsible to create and implement a policy and process for timely retrospective review of PA-N's practice-related performance. In failing to provide policy to provide a meaningful review of Respondent's practice, Respondent has acted contrary to the Rule and has engaged in unprofessional conduct. Respondent is subject

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consent order that settled his matter before the board.

to disciplinary action, including public reprimand, by the Board of Medical Practice. The Vermont Board of Medical Practice possesses authority to suspend, revoke, or condition the license to practice medicine of a physician who has been found to have engaged in unprofessional conduct.

#### COUNT V

13. Vermont Board of Medical Practice Rule, Part 7.5 states:

“Supervision shall include the regular, retrospective review of selected PA-generated charts by the supervising physician, with documentation of such review.”

As primary supervising physician, Respondent was responsible for the regular, retrospective review of PA-N’s charts. Respondent failed to identify non-compliant and potentially dangerous prescribing practice by PA-N. Respondent’s conduct is contrary to the Rule and is unprofessional conduct. Respondent is subject to disciplinary action, including public reprimand, by the Board of Medical Practice. The Vermont Board of Medical Practice possesses authority to suspend, revoke, or condition the license to practice medicine of a physician who has been found to have engaged in unprofessional conduct.

#### **II. MPS 137-1209, Physician Assistant known as/referred to as PA-K**

14. Paragraphs #1 through #13 above are incorporated by reference.

15. Docket No. MPS 137-1209 opened January 1, 2010, alleging that Respondent failed to properly vet a physician assistant at CHW for whom he was responsible as primary supervising physician.

16. This matter arose after licensing specialist Tracy Hays received a call from a physician assistant (hereafter “PA-K”) requesting recertification forms be sent to her new work

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<sup>4</sup> See Vermont Board of Medical Practice Rule 5.2(m)(n) “‘Supervision’ means the direction and review performed

address at CHW. Ms. Hayes questioned PA-K and asked when she began her new job at CHW. PA-K stated that she began work there on October 20, 2009.

17. An investigation by the Board of Medical Practice disclosed that PA-K had worked without certification at CHW for over a week.

18. Separate matters were opened against PA-K<sup>5</sup> and Respondent based on the allegations against PA-K.

19. The Board's investigation in this matter included interviews with licensing specialist Tracy Hayes, PA-K, and Respondent. It reviewed Respondent's replies dated December 1, 2009 and February 10, 2010. Respondent also addressed the South Investigative Committee personally on October 20, 2010, with counsel present.

20. PA-K sought employment at CHW. PA-K's certification as a physician assistant had terminated when she left her prior employer to work as a physician assistant at CHW. PA-K began work as a physician assistant for CHW on October 20, 2009, under the supervision of Respondent. PA-K worked as a physician assistant and saw patients from October 20, 2010 until October 27, 2010, despite the fact that she had not recertified as required by Vermont law.

21. Vermont law, 26 V.S.A. Section 1735 states "The authority of a physician assistant to practice shall terminate immediately upon dissolution of the physician assistant's employment contract ..." and "The physician assistant's authority to practice shall not resume until he or she provides proof of another employment contract and the protocol as approved under this chapter."

22. As supervising physician, Respondent was responsible for proper vetting and credentialing of PA-K.

## COUNT VI

23. Vermont Board of Medical Practice Rule 5.1 states:

“... physician’s assistants shall be considered the agents of their supervising physicians<sup>6</sup> in the performance of all practice-related activities ....”

Contrary to the Rule, Respondent failed as PA-K’s primary supervising physician to ensure compliance with Vermont law in regard to certification. Respondent’s actions and failures to act are unprofessional conduct. Respondent is subject to disciplinary action, including public reprimand, by the Board of Medical Practice. The Vermont Board of Medical Practice possesses authority to suspend, revoke, or condition the license to practice medicine of a physician who has been found to have engaged in unprofessional conduct.

#### COUNT VII

24. Vermont law, 26 V.S.A. 1739(a) provides:

“the supervising physician delegating activities to a physician assistant shall be legally liable for such activities of the physician assistant, and the physician’s assistant shall in this relationship be the physician’s agent.”

Contrary to Vermont law, PA-K worked as a physician’s assistant, treating patients at CHW after her certification had terminated with her previous employer and before she was recertified. Employing an uncertified physician assistant is unprofessional conduct by the primary supervising physician and Respondent is subject to disciplinary action, including public reprimand, by the Board of Medical Practice. The Vermont Board of Medical Practice possesses authority to suspend, revoke, or condition the license to practice medicine of a physician who has been found to have engaged in unprofessional conduct.

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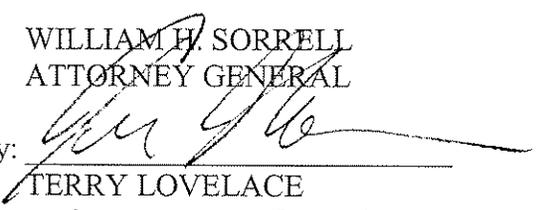
<sup>5</sup> See 26 V.S.A. Section 1737(b) “The board may initiate disciplinary action in any complaint against a physician’s assistant and may act without having received a complaint.”

Dated at Montpelier, Vermont, this 9 day of December, 2010.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

by:

  
TERRY LOVELACE  
Assistant Attorney General

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<sup>6</sup> See Vermont Board of Medical Practice Rule 5.2(m)(n) “‘Supervision’ means the direction and review performed by the supervising physician...”

**RETURN OF SERVICE**

On December 13, 2010 I served this subpoena upon Alexandra Bjerke by delivering a copy of same to Alexandra Bjerke personally and in-hand at the following address: one

Church St., Burl. VT 05401

[Signature]  
Signature

Investigator  
Title

\* \* \* \* \*

**ACCEPTANCE OF SERVICE**

State of Vermont  
County of Chitt

Board of Medical Practice  
Docket No. MPS 122-1109  
and MPS 137-1209

COMES NOW the undersigned, Alexandra Bjerke, and accepts service, on behalf of Dr. Jon Porter, the attached Specification of Charges, as issued and signed by Terry Lovelace, Assistant Attorney General, dated December 9, 2010 and hereby waiving claim as to any further manner and/or form of service as may be required by law.

Signed and Dated at Burlington, County of Chitt,  
and State of Vermont, this 13 day of December 2010.

By: [Signature]

Alexandra Bjerke  
(printed name and title)

1 Church St  
(address)

Burlington VT 05401  
(city and state)