STATE OF VERMONT
BOARD OF MEDICAL PRACTICE

In re: Joseph A. Abate, M.D.	))))	Docket No. MPS-89-0607

INTRODUCTION

On June 6, 2007, the Vermont Board of Medical Practice (Board) met to consider the State's Motion for Summary Suspension and Motion to Conduct Proceedings Pursuant to Statutory Provisions. Respondent, in response to the Summary Suspension Motion, submitted a letter dated June 6, 2007, and an email correspondence dated June 5, 2007, regarding Respondent's status at Fletcher Allen Health Care (FAHC). The Board Hearing Panel included: David W. Clauss, M.D., Chair; Patricia A. King, M.D., Ph.D., Vice Chair; Ezekiel S. Cross, Public Member; Russell P. Davignon, M.D., Montpelier; Denis J. Lamontagne, DPM; John J. Murray, M.D.; Alexander Northern, Public Member; William H. Stouch, M.D.; Peter Thomashow, M.D.; and Florence Young, Public Member. James S. Arisman, Esq.; Assistant Attorney General, appeared on behalf of the State. Joseph A. Abate, M.D., Respondent, appeared and was represented by Eric S. Miller, Esq. Phillip J. Cykon, Esq. served as Presiding Officer.

FINDINGS AND CONCLUSIONS

1. Respondent holds Vermont Medical License Number 042-0009529.

2. Based on the Affidavit of Probable Cause from Detective Edward Soychak of the Chittenden Unit for Special Investigations, the Vermont Attorney General's Office has filed a motion for summary suspension of Respondent's license to practice medicine in Vermont. The State alleges that Respondent has acted unprofessionally and dishonorably toward a patient.

3. The State maintains that the totality of circumstances set forth in the Affidavit of Probable Cause demonstrates that Respondent abused his patient's trust, acted improperly toward her, ignored proper boundaries and good practice, and acted unprofessionally and dishonestly toward her. The State maintains further that Respondent's conduct is threatening and dangerous to patients and the public and undermines the confidence in the profession of medicine.

4. Based on these alleged circumstances, the State maintains that Respondent's continuing possession of an unsuspended Vermont medical license represents an immediate and continuing danger to patients and to the health, safety, and welfare of patients and the public. For these reasons, the State requests that the Board order a summary suspension of Respondent's license.

5. Respondent, in the letter submitted by his attorney, strongly disputes that Respondent has engaged in any inappropriate or unprofessional contact with his patient. He expects that the Board's investigation, when complete, will conclude that Respondent's examinations of his patient were medically appropriate and were designed solely to allow him to diagnose and treat her medical conditions.

6. Even though he disagrees with the allegations contained in the State's motions, Respondent maintains that he recognizes the seriousness of the allegations, and is cognizant of

the Board's duty to protect the public from the imminent risk of harm. Respondent represents that he agrees to a voluntary cessation of practice and that the Board should enter an order accepting and enforcing his voluntary cessation of practice. In addition, it appears that FAHC has placed Respondent on administrative leave, and Respondent has agreed to that action. Respondent has represented that he is both unwilling and unable to practice medicine at the current time.

7. 3 V.S.A. § 814(c) reads in relevant part:

> ... If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order; summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

8. The allegations set forth in detail in the Affidavit of Probable Cause are serious. Respondent agrees they are serious. The Board is gravely concerned that these allegations, if true, present an immediate threat to the health, safety, and welfare of the public should Respondent continue in the practice of medicine at the present time. However, if Respondent is not practicing medicine, the Board does not feel that the circumstances constitute an imperative threat that requires the emergency action of a summary suspension.

ORDER

After considering all of the material presented by the parties and their oral presentations at the hearing, the Board issues the following **ORDER**:

1. The State's Motion to Conduct Proceedings Pursuant to Statutory Provisions is **GRANTED**;
2. In lieu of the State's Motion for Summary Suspension, Respondent's voluntary cessation of practice is accepted and **ORDERED**;
3. Respondent or the State may petition the Board for additional or different relief if circumstances warrant;
4. This **ORDER** shall remain in effect so long as the Medical Board investigation or criminal charges are pending;
5. Failure to comply with this **ORDER** shall constitute unprofessional conduct under 26 V.S.A. § 1354(25);
6. This **ORDER** shall be a public record under 26 V.S.A. § 1318(c).

ON BEHALF OF THE BOARD:

David W. Clauss, M.D., Physician Member — Date: 6/7/07

Filed with Board Office: — Date: 6/7/07

Date of Entry: 6/7/07