

**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**

In re: Daniel Jay Weiss, M.D.

)
) Docket No. MPN 148-1110
)

STIPULATION AND CONSENT ORDER

NOW COME Daniel Jay Weiss, 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. Daniel Jay Weiss, M.D. ("Respondent") holds Vermont medical license number 042-0010286, issued on August 1, 2001.
2. Jurisdiction in these matters 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 December 2010 based upon Respondent's disclosure in his 2010 Physician's Renewal Application that he had been convicted of careless or negligent operation of a vehicle in violation of 23 V.S.A. § 1091(a) on January 29, 2010. *State v. Daniel Jay Weiss*, Docket No. 27-1-10 Wncr.
4. The investigation revealed that on December 19, 2009, Respondent was operating a motor vehicle after consuming alcohol at a bar in Barre, Vermont, and was stopped by a Washington County Deputy Sheriff. A preliminary breath test administered to Respondent produced a result of a .128% blood alcohol concentration (BAC) and a subsequent evidentiary test produced a result of a .122% BAC.

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5. In November 2011, during the pendency of the Board's investigation, Respondent reported to the Board that he had recently been cited for driving under the influence "DUI" #1 in violation of 23 V.S.A. § 1201(a)(1).
6. The investigation revealed that on November 19, 2011, Respondent was operating a motor vehicle after consuming alcohol at a bar in Colchester, Vermont, and was stopped by a Winooski Police Department Sergeant. A preliminary breath test administered to Respondent produced a result of a .145% blood alcohol concentration (BAC) and a subsequent evidentiary test produced a result of a .133% BAC.
7. Respondent was convicted of DUI #1 on April 11, 2012. *State v. Daniel J. Weiss*, Docket No. 4719-12-11 CnCr.
8. Respondent cooperated fully with the Board's investigation, inter alia, appearing with counsel before the Board's North Investigative Committee on December 22, 2011.
9. Respondent began care and treatment in the Vermont Practitioner Health Program ("VPHP") on January 17, 2012.
10. This Stipulation and Consent Order is in full satisfaction and settlement of all charges arising from "conduct which evidences unfitness to practice medicine."

Conclusions of Law

11. The Board may find "conduct which evidences unfitness to practice medicine" constitutes unprofessional conduct. 26 V.S.A. § 1354(a)(7).
12. The criminal convictions listed above are conduct which evidences unfitness to practice medicine.

13. Consistent with Respondent's cooperation with the Board, he concedes that if the State were to file charges against him, it could satisfy its burden at a hearing and a finding adverse to him could be entered by the Board, pursuant to 26 V.S.A. § 1354(a)(7).
14. In this matter, Respondent admits all facts set forth in paragraphs 1 through 7, above, and agrees that the Board may enter as its facts and/or conclusions paragraphs 1 through 7 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.
15. Therefore, in the interest of Respondent's desire to fully and finally resolve the matter presently before the Board, he has determined that he shall enter into the instant agreement with the Board.
16. Respondent acknowledges that he is knowingly and voluntarily agreeing to this Stipulation and Consent Order. He acknowledges that he has had advice of counsel regarding this matter and in the review of this Stipulation and Consent Order. Respondent is fully satisfied with the legal representation he has received in this matter.
17. Respondent agrees and understands that by executing this document he 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 his own to contest any allegations by the State.
18. 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.

19. 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, he 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.
20. Respondent acknowledges and understands that this Stipulation and Consent Order shall be a matter of public record, shall be entered in his permanent Board file, shall constitute an enforceable legal agreement, and may and shall be reported to other licensing authorities, including but not limited to, the Federation of State Medical Boards Board Action Databank, the National Practitioner Data Bank, and the Healthcare Integrity and Protection Data Bank. 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.
21. 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:

- a. Respondent shall be publically REPRIMANDED for the conduct set forth above;
- b. Respondent's physician's license in the State of Vermont shall be designated as **CONDITIONED** for a minimum period of **five years** from the date of the Board's approval of this agreement. Respondent's Vermont physician's license shall be so designated until such time as the Board has removed all terms and conditions upon his certification;
- c. Respondent may appeal to the Board for removal of the **CONDITIONED** designation no sooner than five years from the date of the Board's approval of this agreement;
- d. Respondent shall participate fully and in good faith in care and treatment under the auspices of VPHP or a similar entity, subject to written approval or disapproval by the Board for a minimum period of **five years**. Time spent in the VPHP program since January 17, 2012 shall be applied to this five year requirement, provided that Respondent participates fully and in good faith with the program. Respondent expressly agrees that he shall abide fully and in good faith with all provisions of his contract with VPHP or similar entity. Respondent shall not cease, terminate, or interrupt his participation in VPHP or similar program without the advance written approval of the Board, following presentation of a written

petition from him in this regard. The Board shall retain sole discretion to approve or disapprove any such petition. Respondent is responsible for any and all costs associated with his participation in VPHP or similar entity;

- e. Respondent agrees he shall ensure that copies of all written reports, information, or assessments related to his participation in the VPHP program or similar entity, with regard to his care, treatment, medical history, diagnosis, test results, or other matters, are promptly provided to the Board, its staff, or its agents. Respondent expressly agrees here that VPHP or similar entity may directly disclose such information to the Board, so as to enable the Board to verify the accuracy and completeness of such reports;
- f. Respondent agrees to promptly execute all releases, authorizations, or waivers necessary for the disclosure of all such information as above to the Board. Respondent agrees he shall communicate as necessary with VPHP or similar entity so as to facilitate the prompt disclosure of all such information to the Board for purposes of monitoring his care and protection of patients and the public;
- g. Respondent acknowledges that his good faith participation in VPHP or a similar program, subject to Board approval or disapproval in its sole discretion, is a material term of this agreement. Respondent acknowledges and agrees that all terms herein, as well as the reasonable requests or directives of the Board relating to monitoring and treatment, shall be deemed to prevail over any conflicting provisions (should any such exist) of his contract with the VPHP or similar program (and shall prevail over any related policies, procedures, or recommendations of that program);

- h. Respondent shall appear before the Board's North Investigative Committee upon its request, during the terms of this Stipulation and Consent Order and the duration of his participation in the VPHP program or similar entity; AND
- i. In the event of any subsequent violation of or failure to comply with the terms and conditions of this Stipulation and Consent Order, Respondent's Vermont physician's license shall be SUSPENDED for at least three years and he shall pay an administrative penalty of one thousand dollars (\$1,000.00) for each act that constitutes a violation of or failure to comply with the terms and conditions of this Stipulation and Consent Order.

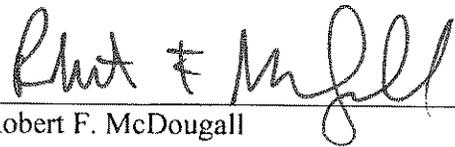
SIGNATURES

DATED at Montpelier, Vermont, this 8th day of June, 2012.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:


Robert F. McDougall
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609

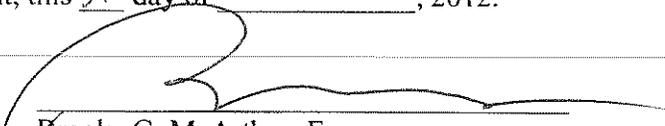
DATED at Burlington, Vermont, this 31 day of May, 2012.


DANIEL JAY WEISS, M.D.

Respondent

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109 State Street
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DATED at Burlington, Vermont, this 31ST day of MAY, 2012.


Brooks G. McArthur, Esq.
Jarvis McArthur & Williams
95 St. Paul Street, Ste 2E
PO Box 902
Burlington, VT 05402-0902
Counsel for Respondent

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AS TO DANIEL JAY WEISS, M.D.

APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE

W. H. R. A. C. _____
Lorance Young _____
David J. ... _____
Robert ... MD _____
... MD _____
... _____

DATED: July 11th, 2012

ENTERED AND EFFECTIVE: July 11th, 2012