

STATE OF VERMONT
BOARD OF MEDICAL PRACTICE

In Re: Jon Porter, M. D.

Docket No. MPS 122-1109
MPS 137-1209

Final Order Dismissing All Charges

The Hearing Committee (Committee) issued its Proposed Findings and Conclusions (Conclusions) in this matter on, or about, December 12, 2011. On December 23, 2011, the State filed objections to the Conclusions. Dr. Porter filed his objections to the Conclusions on December 29, 2011. The parties filed memoranda in support of their positions.

The State alleged seven counts of unprofessional conduct against Dr. Porter. In its Conclusions, the Committee recommended the Board find that the State had met its burden of proof on Count One and that it had failed to meet its burden on Counts 2 through 7.

The Vermont Board of Medical Practice (Board) held a hearing in this matter on January 4, 2012 in Randolph, Vermont to consider whether to “accept, reject or modify the findings and conclusions of the committee.” 26 VSA § § 13555(b), 1360 (a) Dr. Porter was present and represented by Atty. Crocker Bennett. The State was represented by Assistant Attorney General David Groff.

The Board heard more than one hour of oral argument. In their arguments, the parties limited their challenges to the Conclusions on Counts I and V. Dr. Porter argued that the Board should reverse the Committee’s recommended conclusion as to Count One and affirm the conclusion of the Committee majority as to Count V. The State argued that the Board should affirm as to Count 1 and issue a reprimand. The State argued that the Board should reverse the Committee majority as to Count V.

The Board deliberated in executive session for more than an hour. It considered the Committee’s Proposed Findings and Conclusions, the memoranda submitted by the parties and the oral arguments before the majority of the Board decided as follows:

- (1) The Board ACCEPTS and ADOPTS the recommended Findings and Conclusions of the Committee as to Counts Two through Seven.

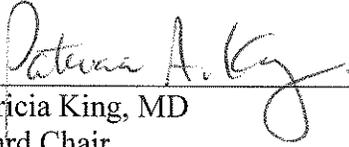
With respect to Count V, the Board rejects the State’s renewed claim that Dr. Porter violated Board rule 7.5 by failing to conduct regular retrospective review of charts generated by Physician’s Assistant (PA) Peter Nobes.

More specifically, the Board agreed with the Committee majority¹¹ that Dr. Porter had met the standard of care for regular retrospective review of PA-generated charts. It concluded that Dr. Porter had investigated allegations that PA Nobes had engaged in improper prescribing of “schedule drugs” as soon as he learned of these allegations and that once he had confirmed the truth of these allegations, he had reported this improper conduct to the Board. It concluded that to find he had engaged in unprofessional conduct under these circumstances could well have the effect of discouraging appropriate supervision of PAs,

- (2) The Board REJECTS and REVERSES the Committee’s Conclusion that the State met its burden with respect to Count One.

More specifically, the Board rejects the legal conclusion adopted in the Committee’s recommendation as to Count One. The Board finds that it is not required by law to find that Dr. Porter is guilty of unprofessional conduct for improperly prescribing “schedule drugs” based solely on the fact the PA Nobes, who Dr. Porter was supervising, engaged in this conduct. The Board finds that where, as here, the supervising physician did not engage in the improper conduct, was not aware of this improper conduct and could not reasonably be expected to be aware of this improper conduct, the law does not require the Board find to the physician guilty of unprofessional conduct for the acts of his PA “agent.”

Accordingly, for the reasons stated above, the Board DISMISSES all charges of unprofessional conduct against Dr. Jon Porter.


Patricia King, MD
Board Chair
January 4, 2012

¹¹ Sister Janice Ryan dissented as to Count V. Because the Board adopted the conclusion of the Committee majority as to Count V, the Board has not included her dissent in its Final Order.