

**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**

In re: Victor J. Pisanelli, Jr., M.D.)
) Docket No. MPN 165-0613
)

STIPULATION AND CONSENT ORDER

NOW COME Victor J. Pisanelli, Jr., 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. Victor J. Pisanelli, Jr. ("Respondent") holds Vermont medical license number 042-0005978, originally issued on July 11, 1977.
2. Jurisdiction in this matter 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 MPN 165-0613 matter in June 2013 based upon information it received concerning Respondent. The matter was assigned to the North Investigative Committee ("the Committee") of the Board.
4. The Committee's investigation revealed that In January 2011, Respondent was the surgeon in a case involving a patient who had been referred to him following a sonogram that identified two breast nodules.
5. The patient was referred to Respondent for excisional biopsy of the two nodules identified in her right breast.
6. On January 18, 2011, Respondent performed an excisional biopsy without wire-guided localization.

7. Respondent removed a mass of questionable tissue that was initially diagnosed as ductal carcinoma in situ.
8. Upon further review by two referral laboratories, the initial diagnosis of ductal carcinoma in situ was determined to not be present. The two initial nodules were determined to have not been removed by Respondent as intended.
9. Two months later, the patient underwent a second excisional biopsy for the removal of two benign fibroadenomas.

CONCLUSIONS OF LAW

10. The Board may find that “[f]ailure to practice competently includes, as determined by the board ... (2) failure to conform to the essential standards of acceptable and prevailing practice.” *Id.* § 1354(b)(2).
11. Respondent failed to meet the essential standards of acceptable and prevailing practice in failing to properly perform the excisional biopsy of his patient’s right breast.
12. Respondent acknowledges that it is the Board’s position 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 (b)(2).
13. In this matter, Respondent admits all facts set forth in paragraphs 1 through 9, above, and agrees that the Board may enter as its facts and/or conclusions paragraphs 1 through 9 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.
14. Respondent acknowledges that he is knowingly and voluntarily agreeing to this Stipulation and Consent Order with the Board. He acknowledges and agrees that at all

times and in all communications and proceedings related to this matter before the Board he has had the right to be represented and advised by counsel. Respondent has carefully reviewed and considered this Stipulation and Consent Order. Respondent has had the opportunity to consult with an attorney.

15. 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.
16. 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.
17. 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.

18. 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.

19. 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 herby ORDERED that:

- a. Respondent shall no longer serve as the primary surgeon on any surgical procedure, including but not limited to: the performance of any elective surgeries and breast biopsies. Respondent may serve in a capacity as a surgical assistant. The prohibition on Respondent acting as a primary surgeon includes a ban on his serving as a primary surgeon in an emergency situation.

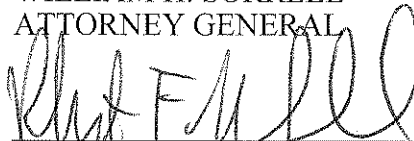
SIGNATURES

DATED at Montpelier, Vermont, this 25th day of March, 2014.

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 _____, Vermont, this ____ day of _____, 2014.

Victor J. Pisanelli, Jr., M.D.

Respondent

Approved as to form:

DATED at _____, Vermont, this ____ day of _____, 2014.

Matthew D. Gilmond, Esq.

Ryan Smith & Carbine, Ltd.
98 Merchants Row
P.O. Box 310
Rutland, Vermont 05702-0310

Attorney for Respondent

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

ORDER

WHEREFORE, based on the foregoing, and the consent of Respondent, it is hereby ORDERED that:

- a. Respondent shall no longer serve as the primary surgeon on any surgical procedure, including but not limited to: the performance of any elective surgeries and breast biopsies. Respondent may serve in a capacity as a surgical assistant. The prohibition on Respondent acting as a primary surgeon includes a ban on his serving as a primary surgeon in an emergency situation.

SIGNATURES

DATED at Montpelier, Vermont, this ____ day of _____, 2014.

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 Rutland, Vermont, this 25th day of March, 2014.


Victor J. Pisanelli Jr. MD.
 Victor J. Pisanelli, Jr., M.D.

Respondent

Approved as to form:

DATED at Rutland, Vermont, this 25th day of March, 2014.

Office of the
 ATTORNEY
 GENERAL
 109 State Street
 Montpelier, VT
 05609



Matthew D. Gilmore, Esq.

Ryan Smith & Carbine, Ltd.
98 Merchants Row
P.O. Box 310
Rutland, Vermont 05702-0310

Attorney for Respondent

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

AS TO VICTOR J. PISANELLI, Jr., M.D.

APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE

Janice Gallant, M.D.

David Jenks

Brent Burge MD/ID

Passenger

W. Holt

Michael

Ed Sulow

John

Dated: April 2, 2014

ENTERED AND EFFECTIVE: April 2, 2014