

H. 350

State of Vermont

Jon Porter, MD

Director, University of Vermont Center for Health and Wellbeing

January 14, 2014

Why I'm here

- Three years before the Board of Medical Practice and subsequently the Vermont Supreme Court. All charges dismissed.
- \$150,000 in defense costs for the University of Vermont
- Emotional anguish, damage to my professional reputation, limited opportunities



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State's Response to Respondent's Petition for Relief from ... October 6, 2010

Revocation Order In Re: Robert S. Baska, M.D. October 14, 2002



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Jan 4, 2012 - In Re: Jon Porter, M. D. . Docket No. MPS 122-1109. MPS' i37-1209.

Final Order Dismissing All Charges. The Hearing Committee (Committee) ...

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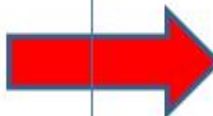
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Nov 7, 2013 - Jon Porter, MD. Jon is a physician in primary care and the director of the Center for Health and Wellbeing. He earned his B.S. and M.D. from the ...



[2012 VT 97 - Vermont.gov](#)

info.libraries.vermont.gov/supct/current/op2012-045.html

In re Jon Porter, M.D. (2012-045). 2012 VT 97. [Filed 9-Nov-2012]. NOTICE: This opinion is subject to motions for reargument under V.R.A.P. 40 as well as formal ...

Circumstances leading to charges against me

- Reported a Physician Assistant in my practice for the unprofessional prescription of opiates and benzodiazepines.
 - Physician Assistants must work under the license of a physician
 - Professional boundary versus foundation of knowledge
- Terminated my supervisory relationship with the PA, terminated the employment of the PA
- Filed a report with the Board regarding the Physician Assistant's unprofessional behavior.

The Board's Response to My Report

- Form letter acknowledging receipt of complaint.
- No further request for information about my concerns.
- Eventually, concern about my supervision of the physician assistant.

Specification of Seven Counts of Unprofessional Behavior

- Count One – Physicians are *strictly liable* for the behavior of the physician assistants they supervise.
 - Novel and never prosecuted in this state or any other
 - Tort liability vs. professional liability
 - Implication: Refusal of physicians to supervise PAs and Residents in Training

Remaining Counts

- Adequacy of Supervision of the PA

Subsequently

- Three day panel hearing
- Expert testimony about the adverse impact of strict liability
- Expert testimony about the high quality of supervision provided to the PA
- State – no expert testimony on either issue

Ruling of the Full Board

- All counts dismissed.
- *“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 “scheduled drugs” based solely on the fact that 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 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 [sic] the physician guilty of unprofessional conduct for the acts of his PA “agent”.***

Subsequently...

- Vermont AG appeals the finding with regard to Count One to the Vermont Supreme Court.
 - Fletcher Allen Health Care, Community Health Center Amicus Curae
 - Appeal unanimously rejected 6/12.

1(c)(2) Removal of a clinician's name from the public register when charges are dismissed

- Support, with questions
 - Why has this not arisen as an issue in the BMP's decades of existence?
 - What considerations ought to be given for the repair of a physician's reputation?

Section 3. 20 V.S.A 2359

- Regarding special training regarding the methods of conducting investigations of alleged unprofessional conduct...
 - Support special training in appropriate methods of investigation of unprofessional medical conduct
 - *Also*, support a requirement that investigators have a medical background.

The Board's Current Approach to Investigation is Careless

- Investigator never made contact with me after I filed a complaint against PA Nobes.
- Investigator never spoke to me prior to charges being filed against me.
- Investigator never spoke to physicians or physician assistants in my practice about the nature of supervision.
- The subject line of the investigation summary leading to formal charges against me: "PA Termination".

Thank You!