

MAINE STATE BOARD OF LICENSURE IN MEDICINE

IN RE: Licensure Disciplinary Action )
) DECISION AND ORDER
John C. Van Pelt, M.D. )

I. PROCEDURAL HISTORY

Pursuant to the authority found in 32 M.R.S.A. Sec. 3263, et seq., 5 M.R.S.A. Sec. 9051, et seq. and 10 M.R.S.A. Sec. 8001, et seq., the Board of Licensure in Medicine (Board) met in closed session (1 M.R.S.A. Sec. 405.6.F.) (5 M.R.S.A. Sec. 9057.6.b.) at the Board's offices located in Augusta, Maine on October 11, 18, and December 13, 2005. The purpose of the meetings was to conduct an adjudicatory hearing to determine whether Dr. John C. Van Pelt should be subject to disciplinary action for violation of the Board's statutes and/or Rules cited in the Notice of Hearing.

A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Edward David, M.D., J.D., Chairman, Bettsanne Holmes (public member), David Nyberg, Ph. D., (public member), Kimberly K. Gooch, M.D., Gary Hatfield, M.D., and Cheryl Clukey (public member). Dennis Smith, Ass't. Attorney General, presented the State's case. Dr. Van Pelt was present and represented by George Schelling, Esq. James E. Smith, Esq., served as Presiding Officer. There were no conflicts of interest found to disqualify any member of the Board from participating in this proceeding. The State's exhibits 1-30 and Respondent's exhibits 1-26 were admitted into the Record.

II. FINDINGS OF FACT

John Van Pelt, M.D., 69 years of age, graduated from medical school in 1962 and was first licensed to practice medicine in this State in 1964. He has specialized in pediatric medicine since 1965 when he moved to Ellsworth, Maine. His practice consists of himself and a female office manager/technician.

C is a female who was first examined by Dr. Van Pelt as a patient on March 24, 2004. C was 10 1/2 years old at the time and her foster mother, J, wanted her examined primarily to ascertain

whether a different drug regimen would be more effective in dealing with the youngster's problems. In that regard, C had initiated a sexual act with a brother, fondled herself at school, and displayed inappropriate affection for older men. She had reportedly been sexually abused in her early years and had been diagnosed with Attention-Deficit/Hyperactivity Disorder, Posttraumatic Stress Disorder, Conduct Disorder and Borderline Intellectual Functioning.

On March 24, Dr. Van Pelt performed a physical examination of C without first obtaining her medical records from other providers. Although J signed a "Consent Form" on that date, that document did not inform J of the specifics of the examination and neither did Dr. Van Pelt inform J or C of what would take place during that examination or subsequent examinations performed on C on July 13 and 15, 2004. On the latter two dates, the Respondent did not inform J that he would be examining C's genitalia. He also neglected to inform her on July 15 that he would show C pictures from "The Body Book," a sex education publication, or that he would be utilizing a Wood's Lamp to view C's genitals while attempting to determine if she had a genetic deficiency. Additionally, he did not discuss this technique or the need therefore with J.

Dr. Van Pelt did not offer J the opportunity to be present in the examining room at any time and neither did he offer as an alternative to have a chaperone present on any of the examinations. If anything, J was discouraged by the Respondent from attending C's physical examinations. The requirement for a chaperone was not only dictated by pediatric standards of care but equally necessitated by the history of the patient. Dr. Van Pelt knew that C had allegedly been sexually abused; was attracted to older men; had sexually acted out and masturbated; and had a history of lying. Despite this knowledge, the Respondent was alone with C on 3 occasions when he had her disrobe.

On July 13, 2004, Dr. Van Pelt conducted an examination of C's genitalia and inserted one or two fingers into her vagina, which was not necessary to achieve the stated purpose of his examination. On July 15, Dr. Van Pelt told C to touch herself to demonstrate how she masturbated, examined her genitalia to determine whether she had an intact hymen, inspected her genitalia with a Wood's Lamp, and asked the child to show him where she touched herself at night. Although he admitted to a detective on September 9, 2004 and at the October 11, 2005 hearing that he had made this request, he subsequently reversed his testimony on October 18 and denied that he had done so. His credibility was further damaged in this regard when C's aunt testified that on July 15, she overheard through the examining room door Dr. Van Pelt ask C to "show me where it feels good."

Dr. Van Pelt subsequently concluded that C had lost her virginity and informed J of this fact. However, a previous physical exam conducted by another health care professional only 3 months before revealed that C's hymen was intact and a subsequent examination by Dr. Lawrence Ricci also resulted in the same conclusion. It is apparent to the Board that Dr. Van Pelt did not know how to determine whether C's hymen was or was not intact even though he undertook this effort.

Dr. Van Pelt also advised J to purchase a vibrator in order to relieve C of her sexual needs. This advice was admittedly ill conceived by Dr. Van Pelt, and was without any basis in medical literature or study. As an alternative, Dr. Van Pelt could have reached out to consult with medical experts who are available in Maine in order to obtain appropriate advice regarding C's problems.

The Board also found parts of Dr. Van Pelt's testimony to be vague and inconsistent, particularly regarding whether he offered to take C sailing which he both admitted and denied. Additionally, he preliminarily denied knowing where a person could purchase a vibrator but it later became obvious that he was aware that a store in Ellsworth sold such aids. Dr. Van Pelt's stationery letterhead was also misleading in that it stated that he was an "Associate Clinical Professor of Pediatrics at Tufts University School of Medicine" whereas he hadn't visited or taught there for many years.

Lawrence R. Ricci, M.D. has been a physician since 1981. He is an expert in the evaluation and treatment of child abuse and is Board Certified in pediatrics and emergency medical care. Dr. Ricci examined C on September 20, 2004 at the request of J. He testified that a parent, or a child if of age and competent, should be given the choice as to whether a chaperone should be present when performing a genital examination. A chaperone helps to prevent uncorroborated allegations of inappropriate touching or comments, allows for parent(s) to be educated regarding the child's health, and provides support for the child.<sup>1</sup> Dr. Ricci gave his opinion that Dr. Van Pelt failed to meet the standard of care concerning both informed consent and the need for a chaperone regarding his examination of C's genitals, since he did not clearly discuss the examinations with J and did not offer her the opportunity to be a chaperone or to have another chaperone in her stead.

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<sup>1</sup> State's Exhibits 14, 15, and 17 recited statements regarding when a chaperone should be present during a physical examination of a pediatric patient. Dr. Van Pelt neglected to follow those standards by not making clear the purpose and scope of the examinations to J and by not offering her the opportunity to be present during the examinations. There were no "clear and consistent office policies about the presence of a chaperone..."

Dr. Ricci also questioned the need for Dr. Van Pelt to insert his fingers into C's vagina and stated that the Respondent's technique for assessing the hymen was "absolutely not adequate." This technique led to Dr. Van Pelt's incorrect conclusion and statement to J that C was "no longer an intact virgin." That statement alone could be stigmatizing to mother and child, as might the Respondent's written comment that C was a possible nymphomaniac. Dr. Ricci also did not recognize the need for Dr. Van Pelt to have C demonstrate where she touched herself and to perform a second inspection of C's genitals 2 days after he performed an examination of those private parts.

### III.

### CONCLUSIONS OF LAW

The Board, based primarily on the above findings and applying its training and experience, and relying also on the expert testimony of Lawrence Ricci, M.D., concluded that John Van Pelt, M.D. violated the provisions of the following statutes:

1. 32 M.R.S.A. Sec. 3282-A(2)(F) – "Unprofessional Conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violates a standard of professional behavior that has been established in the practice for which the licensee is licensed."

a. John Van Pelt, M.D. failed to obtain the Informed Consent of C's foster parent or legal guardian prior to performing a genital examination of C on July 13 and 15, 2004. (6-0)

b. John Van Pelt, M.D. failed to have a chaperone in the room while performing a genital examination of C on March 24, 2004, July 13, 2004, and July 15, 2004. (6-0)

c. John Van Pelt, M.D.'s suggestion to C's foster mother that she could allow C to indulge her sexual energy without hurting anyone else by the use of a vibrator was made without any basis in medicine. (5-1. The dissenting member was of the opinion that this advice demonstrated incompetence rather than unprofessional conduct.)

d. John Van Pelt, M.D.'s conclusion that "one physical abnormality" of which he was sure was that C was "no longer an intact virgin" was made with no physical evidence to support such a diagnosis, opinion or conclusion. Moreover, the statement is discriminatory in nature. (4-2. The dissenting

members were of the opinion that this advice demonstrated incompetence rather than unprofessional conduct.)

e. John Van Pelt, M.D.'s communication to C's foster mother that he observed a "physical abnormality" that demonstrated that C was "no longer an intact virgin" was made with no physical evidence to support such a diagnosis, opinion or conclusion. (3-3. The dissenting members were of the opinion that this advice demonstrated incompetence rather than unprofessional conduct.)

f. John Van Pelt, M.D.'s examination of C's genitals on July 15, 2004 was made without any apparent reason, particularly after having examined them on July 13, 2004. (5-1. The dissenting member was of the opinion that this advice demonstrated incompetence rather than unprofessional conduct.)

g. John Van Pelt, M.D.'s request that C show him where on her genitals she touched herself at night was another example of unprofessional conduct. (3-3. The dissenting members were of the opinion that this advice demonstrated incompetence rather than unprofessional conduct.)

h. John Van Pelt, M.D.'s failure to obtain the Informed Consent of C's foster parent prior to asking C to show him where on her genitals that she touched herself at night was a further example of unprofessional conduct. (3-3. The dissenting members were of the opinion that this advice demonstrated incompetence rather than unprofessional conduct.)

2. 32 M.R.S.A. §3282-A(2)(E)(1) defines incompetence to be conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public.

a. John Van Pelt, M.D. was incompetent in his failure to diagnose C's hymen as intact. (6-0)

b. John Van Pelt, M.D.'s examination of C's genitals on July 15, 2004 was made without any apparent reason, particularly after having examined them on July 13, 2004. (6-0)

c. John Van Pelt, M.D.'s examination of C by use of a Wood's Lamp was incompetently performed since the room was not totally dark. (6-0)

d. John Van Pelt, M.D. was incompetent in his failure to consult with other experts regarding the diagnosis, examination, and treatment of C's multiple problems. (4-2)

3. 32 M.R.S.A. §3282-A(2)(H), violation of Board Rules:

Chapter 10, Section 1, Definitions, sub-section 3(A). "Sexual violation" is any conduct by a physician/physician assistant with a patient that is sexual or may be reasonably interpreted as sexual, even when initiated by or consented to by a patient, including but not limited to:

5. "any touching of a body part for any purpose other than appropriate examination, treatment, or comfort, or where the patient has refused or has withdrawn consent." (4-2)

Chapter 10, Section 1, Definitions; sub-section 3(B). "Sexual impropriety" is behavior, gestures, or expressions by the physician/physician assistant that are seductive, sexually suggestive, or sexually demeaning to a patient, including but not limited to:

8. "examining the patient without verbal or written consent." (6-0)

#### IV.

#### SANCTIONS

The Board, by a vote of 6-0, as the result of the above violations, orders that:

1. John Van Pelt, M.D. shall receive a **REPRIMAND**. (6-0)
2. John Van Pelt, M.D.'s **license to practice medicine shall be suspended for a period of 90 days** beginning January 27, 2006 by which time he shall have closed his practice. (5-1. The dissenting member would vote for a longer suspension or revocation of licensure.)
3. John Van Pelt, M.D.'s **license to practice medicine will not be renewed** after it expires on March 31, 2006. (6-0)<sup>2</sup>
4. Prior to January 27, 2006, John Van Pelt, M.D. **shall not examine any female child under the age of 21 years without the written informed consent of the child (if competent) or guardian as evidenced by his/her signature on a form approved by the Board**. (6-0)
5. Prior to January 27, 2006, John Van Pelt, M.D. **shall not examine any female without the physical presence of a chaperone in the examining room**. (6-0)
6. John Van Pelt, M.D. **shall pay \$6,000 for a portion of the Board's costs of this hearing which exceed \$14,000 by March 15, 2006**. Hearing officer-(18 hours and 40 mins. pre-and post-hearing; 28.20 hours presiding at the hearings; 9 hours and 45 mins writing and rewriting the Decision @ \$100= \$5,675); expert witness costs: -(Dr. Ricci-\$1690.00); and copying costs, publication, binders

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<sup>2</sup> In the event that Dr. Van Pelt were to renew his license, the Board would require, in addition to paragraphs 4 and 5, that he attend a Board approved ethics course with components focusing on the appropriate examination of vulnerable/traumatized children, children's genitalia, and when to refer patients to other professionals.

(\$2091.84). Payment shall be by **certified check or money order made payable to: "Maine Board of Licensure in Medicine"** and remitted to Randal L. Manning, Executive Director, 137 State House Station, Augusta, Maine 04333-0137. The costs are ordered in accordance with past Board practice and because licensees who do not violate Board Rules and statutes should not have to bear the costs of those who do. (5-1. The dissenting member would support payment of a larger portion of the costs.)

7. John Van Pelt, M.D. **shall pay the costs of the court reporter and transcription fees by March 15, 2006.**

**SO ORDERED.**

Dated: January 10, 2006



Edward David, J.D., M.D., Chairman  
Maine Board of Licensure in Medicine

V.

**RIGHTS OF APPEAL**

Pursuant to the provisions of 5 M.R.S.A. Sec. 10051.3 and 10 M.R.S.A. Sec. 8003, any party that appeals this Decision and Order must file a Petition for Review in the Superior Court within 30 days of receipt of this Order. The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested upon the Maine State Board of Licensure in Medicine, all parties to the agency proceedings and the Attorney General.