Commonwealth of Massachusetts
Board of Registration in Medicine
200 Harvard Mill Square, Suite 330
Wakefield, Massachusetts 01880
(781) 876-8200

CHARLES D. BAKER
Governor

KARYN E. POLITO
Lieutenant Governor

Enforcement Division Fax: (781) 876-8381
Legal Division Fax: (781) 876-8380
Licensing Division Fax: (781) 876-8383

REDACTED COPY

March 10, 2015

Zevidah Vickery, M.D.
C/o Diane C. Fernald, Esquire
Morrison, Mahoney & Miller, LLP
1500 Main Street, Suite 2400
Springfield, MA 01115

RE: Docket Number: 14-341

Dear Dr. Vickery:

The Complaint Committee of the Board of Registration in Medicine met on March 5, 2015, and considered the above-referenced matter. We have decided not to recommend disciplinary action and closed the complaint.

However, information concerning this matter will be kept on file at the Board. We reserve the right to reopen the complaint should you commit any violation of Board statutes or regulations in the future.

Sincerely,

Joseph P. Carrozza, Jr., M.D.
Complaint Committee Member

JPC/df

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March 10, 2015

RE: Zevidah Vickery, M.D.
Docket Number: 14-341

Dear

Thank you for the information that you provided to the Board of Registration in Medicine. A copy of your complaint, referenced above, was sent to the physician, who was required to respond in writing. Enclosed please find a copy of the physician's response.

After considering this matter on March 5, 2015, the Board's Complaint Committee did not recommend disciplinary action and closed the complaint. However, your complaint and the physician's response will be placed in the physician's file at the Board.

Thank you again for bringing this matter to the Board's attention.

Very truly yours,

Paula Hannon
Consumer Protection Coordinator

PH/dl

DEVAL L. PATRICK
GOVERNOR

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200 Harvard Mill Square, Suite 330
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September 3, 2014

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Zevidah Vickery, M.D.

7011 1150 0001 3796 3533

Re: Docket Number: 14-341

Dear Dr. Vickery:

The Board of Registration in Medicine has received a complaint regarding your conduct in the practice of medicine, a copy of which is enclosed. Please provide a written response to the issues raised in the enclosed material. As part of your response, you may include any materials you feel are relevant in connection with the investigation of this matter. Pursuant to Board regulations and statutes, the person filing the enclosed complaint may have access to your response and any attachments.

The Health Insurance Portability and Accountability Act (HIPAA) provides that otherwise protected health information may be disclosed to a health oversight agency for activities that include disciplinary actions. *See* 45 CFR section 164.512 (d). The Board clearly meets the definition of a health oversight agency. *See* 45 CFR section 164.501.

You are welcome to have an attorney represent you in this matter. Please note that if an attorney does represent you, either you or your attorney may write your response, but you must sign or co-sign it as the licensee.

Your response must be sent to me within thirty days of this letter. Upon receipt, your response will be reviewed to determine the course of action. You will be notified of this decision. Thank you for your attention to this request.

Very truly yours,

Paula Hannon
Consumer Protection Coordinator

PH/df
Enclosure

DEVAL L. PATRICK
GOVERNOR

Commonwealth of Massachusetts
Board of Registration in Medicine
200 Harvard Mill Square, Suite 330
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September 3, 2014

RE: Zevidah Vickery, M.D.
Docket Number: 14-341

Dear

The Board of Registration in Medicine has received your complaint regarding the above named physician. The physician has been asked to respond in writing to your complaint.

If you wish to bring additional information about your complaint to the attention of the Board, please provide it to me in writing at the address above. Any future correspondence regarding your complaint should include the name of the physician and the docket number as it appears in this letter.

Once our review of your complaint has been completed, you will receive a letter informing you of the outcome.

Thank you for bringing this matter to the attention of the Board.

Very truly yours,

Paula Hannon
Consumer Protection Coordinator

PH/df

MORRISON MAHONEY LLP

COUNSELLORS AT LAW

Diane C. Fernald, R.N., J.D.
Partner
Phone: 413-737-4373 Ext. 1261
dfernald@morrisonmahoney.com

TOWER SQUARE
1500 MAIN STREET
SUITE 2400, POST OFFICE BOX 15387
SPRINGFIELD, MASSACHUSETTS 01115-5387
413-737-4373
FACSIMILE: 413-739-3125

MASSACHUSETTS
Boston
Fall River
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Manchester
NEW JERSEY
Parsippany
NEW YORK
New York
RHODE ISLAND
Providence

October 22, 2014

Paula Hannon
Consumer Protection Coordinator
Board of Registration in Medicine
200 Harvard Mill Square, Suite 330
Wakefield MA 01880

Re: Zevidah Vickery, MD
Docket No.: 14-341

Please accept this response on behalf of Dr. Zevidah Vickery regarding the complaint filed against her by on or about August 6, 2014. At the outset, Dr. Vickery denies any allegations of wrongdoing by and states that she cared for with competence and compassion throughout her intra and post-partum period, and through this minor surgical procedure which forms the basis of 's complaint. At no time did Dr. Vickery fail to meet the standard of care for and she anticipates that the response provided below will assist the Board in understanding the basis for Dr. Vickery's care and treatment of and will convince the Board that has no foundation for her complaints based upon the care, compassion and consideration shown to her by Dr. Vickery.

Dr. Vickery states as follows:

A. Overview of Care to

has been a patient of mine for two years. She had seen me through a difficult time in early 2013 when she was in an abusive relationship with an alcoholic husband, and had sought shelter "in hiding" for some period of time with her two daughters, ages 10 and 7. She had a therapeutic abortion at this time because of this abusive relationship and we had worked with her in a supportive way to get her through this difficult time.

In 4, 2013 went to Baystate Medical Center claiming to have taken 15 Ativan, and continued to have concerns she was "going to hurt herself". There was concern at this time regarding her suicidal ideation; my notes indicate that had been on Zoloft for

depression, and stopped taking the medication suddenly, exacerbating her depression symptoms. As of , 2013, I was continuing to monitor her ongoing anxiety issues, noting any possible change in mood or demeanor.

In 2013, reported that her husband had become sober, and was in active treatment for his alcoholism. She and her two daughters returned to living with him. He also had three daughters from a previous relationship. When she became pregnant in , 2013, she was working full-time as a pharmacy technician at Walgreens, and caring for five girls.

I cared for throughout her pregnancy in 2013, delivering a healthy baby girl on , 2014. As the enclosed notes of that time period will show, began obstetrical care for this pregnancy on or about , , 2013. She was admitted by one of the office nurses [RN] and a full history was obtained, and appropriate lab work ordered. She was seen by a certified nurse midwife in 2013, and I began seeing for this pregnancy on or about , 2013. (See office notes, attached as Exhibit A).

At this visit, I reviewed her history, and she was noted to have had these significant issues as part of her active profile: migraine headaches with seizures, severe anemia, history of severe depression with suicidality, hypothyroidism, and a request for sterilization after this pregnancy. These issues were reviewed with , and a followup sonogram was ordered as routine for 20 weeks.

Through the middle and latter part of pregnancy, she frequently complained of sharp pain, fluid leaking, headaches, low pelvic cramping as well as being light-headed and feeling faint, and contractions off and on until her delivery date. We monitored to assess fetal health (see notes for /13) and she was assessed to be dealing with preterm contractions that required more intensive followup.

On , 2014, presented as tearful and "coping poorly with the discomforts of late pregnancy." (See note of /14). We discussed her history of depression / suicidality, and further discussed her high risk of post partum depression given her history of severe depression. We discussed the benefit / risk of starting antidepressive medication, and she agreed to start a course of treatment in anticipation of this problem.

She delivered a healthy baby girl on , 2014 via vaginal delivery with no complications.

In her fourth post-partum week, called the office complaining of painful bowel movements. She was given patient teaching regarding constipation, hemorrhoids, and the use of over the counter treatments to assist in returning to normal bowel health.

At her six week post-partum checkup o , 2014, appeared to be doing well. She was also presenting for a pre-op history and physical in preparation for an outpatient tubal ligation. I explained to her the surgical procedure, and provided her with an opportunity to ask questions about the proposed surgery. I reviewed potential complications, including infection, uterine perforation with damage to bowel and/or bladder, and the possibility of unpredictable complications due to anesthesia. (See note for 1, 2014) I gave her written patient

instructions on tubal ligation methods (Tubal Ligation: Before Your Surgery) and verbally pointed out the method I typically use, the banding or Falope rings.

On , 2014, I performed a bilateral tubal ligation for . (See Notes, Ex. B) As noted, it was an uneventful procedure, and both fallopian tubes were ligated with Falope rings, and I closed the skin incisions with Dermabond. I chose this method because was still a young, slim woman and I felt Dermabond would provide a better cosmetic result than suture. recovered uneventfully, and was given discharge instructions by the nurse at Baystate Medical Center. (A copy of these instructions is provided in Ex. B).

On , 2014, called the office and asked for clarification of the discharge instructions. She was under the impression she could not hold her baby; she was advised she could care for her child, but that she could not drive while taking Percocet and only take Motrin during the day. (Ex. C)

On , 2014, my office received a telephone call from at approximate 7:45 am, stating that she had noted a "trickle of bleeding" from the lower incision after she got out of the shower. (See note, Ex. D). She was advised to go to the Emergency Room at Baystate Medical Center; however, after determining that I was on call and present at Mercy Hospital, she was directed to present to Mercy Hospital instead for examination of the wound.

was triaged by Mercy Hospital's ED department (Ex. E) and it was 10:30 am before I was notified by the emergency room that she was ready to be seen. I had by then returned to the office to see patients who needed my attention, and she was therefore seen by one of my colleagues, Dr. of the OB/GYN service (see Ex. E). She initially examined the umbilical incision, but was redirected by to the suprapubic wound. She opened the wound at the bedside and packed it with iodoform. She did a full exam to determine that no infection or worsening wound was present, and she explained the situation to her. She was discharged home with visiting nurse follow-up due to her anxiety, inability to perform the packing, and her mother's inability to care for the wound.

On , 2014, we received a request from Mercy Home Care services for orders for wound care. Orders were provided. (See Ex. F)

At her post-operative visit of , 2014, (see Ex. G), I examined wound, following her th visit to the ER where the presenting seroma had been drained.

Her physical exam revealed no infection: had no fever, and her exam was essentially negative. She was complaining of right sided pelvic pain at the office visit. I probed the open wound with a sterile swab and determined the fascia to be intact, with healthy granulation tissue visible. There was no odor, and the surrounding skin was not red or swollen. I packed the wound with sterile saline gauze, and applied a telfa with a sterile gauze to cover. did not seem able to comprehend how to care for this seroma (wet to dry dressings, changed daily), and I tried to explain this to mother, who was present during the examination. In assessing her mother's ability to carry through with the dressing changes, I determined she was not comprehending my directions, and therefore believed it was best to continue with VNA services to help with the dressings, which might also address her heightened anxiety.

Ms. expressed concern that she was bleeding into her abdomen. I tried to explain to her that I had seen nothing unusual or concerning during the procedure (when I was using the scope), and that the tubal ligation did not involve a "cutting" of the tubes, but a "tying off" of the tube using a ring that caused a necrosis of the tube, which was a painful process, and reminded her of the banding picture in the pre-op instructions I had given her earlier. I also explained how wounds heal from the inside out, and reassured her that her wound looked healthy and healing. She remained anxious. Ms. wanted an ultrasound. I briefly considered that perhaps there had been a bladder injury of some sort during the procedure, not really believing that to be true, but attempting to reconcile the complaints of pain by Ms. with any other objective signs of injury. I ordered a urinalysis, wound culture, ultrasound of the pelvis and urine culture. (See Ex. G).

I also ordered VNA services, and asked Ms. to return in one week for a recheck of the wound. I also ordered pain medication, and provided Ms with information regarding the care of her wound. (Ex. G).

On , 2013, I called Ms. to inform her of normal ultrasound, wound and urine culture results. She stated her pain was about the same, and I encouraged the use of Tylenol #3, heating pad and rest. I reminded her again of the necrosing process as the tubes necrose and detach, often causing pain. (Ex. H)

On 2014, our office received a call that the homecare nurses needed further orders about wound care since the wound was no longer large enough to pack. (Ex. I)

On , 2014, VNA services discharged as the wound was now healed. (Ex. I)

On , 2014 Ms. sought care from Women's Health Associates and had an ultrasound of the pelvis and kidneys. Both diagnostic procedures were essentially normal, with a non-shadowing 3 mm stone in the lower pole of the right kidney. (Ex. I).

On , 2014, Ms requested her medical records for transfer of care to another PCP. (Ex. I).

B. In specific response to 's complaints:

1. "Do[sic] to the mishap with my surgery...."

There was no mishap with Ms. surgery. It was an uncomplicated tubal ligation that presented no issues during the procedure.

2. "Now I'm facing another surgery to try and right the wrong thats [sic] left me in constant pain This was all avoidable had Dr. Vickery not assumed that no problems would come with using glue instead of sutures...."

Dermabond is a topical skin adhesive commonly used to bond cuts, wounds and incisions together, not only in surgery but in emergency rooms as well. It is a surgically accepted standard of care and commonly used in OB/GYN procedures where strong closure with a good cosmetic

result is preferred. It was not "wrong" to use Dermabond instead of sutures in this surgical procedure.

3. "Also had I been given information on side effects and long term effects I wouldn't have done this surgery".

Ms. was given full informed consent for this surgery by me, and I explained the benefits and risks that might occur, including the risk of infection and sterilization failure.

4. "If I was given detailed discharge instructions I may have known something was wrong right away".

Ms. was given discharge instructions by the nurse who discharged her from the Chestnut Surgery Center (See Exhibit B). She was instructed to call me if she experienced "unusual or severe pain, excessive bleeding or drainage, persistent nausea and vomiting, excessive swelling or redness, foul odor from incision site or fever over 100.6F." (See #5 on Discharge Instructions) It is noted she was given the specific instruction sheet, and medication reconciliation sheet. Ms. seroma was noted by her on 2014 – six days post-op and responded to quickly and appropriately by my office, both in the ER as well as in my office on 2014. Her frequent calls regarding what to do with the wound were responded to promptly, either in a return call, or with an in-person office visit. was repeatedly assured there was nothing seriously wrong, and was instructed how to deal with the seroma.

5. "Being prepped for the wrong surgery".

During her pregnancy, Ms. had expressed an interest in using Essure as the method of sterilization, a procedure whereby coils are placed inside the Fallopian tubes by way of a hysteroscopy. At her post-partum / pre-op visit for sterilization, Ms. then voiced a preference for a traditional tubal ligation. This resulted in some of the paperwork citing an "Essure sterilization procedure" and others citing the traditional tubal ligation procedure. Ms. was asked to re-sign some of the paperwork to be sure that the proper procedure – the one she actually wanted – was to be done. Several operative staff asked Ms. to verify the procedure, as is part of the routine pre-op preparation for any procedure, prior to any preoperative preparation to be done that day.

was never prepped for the wrong procedure. At most, she was asked to sign additional forms to clarify the procedure she wanted performed.

6. "given no discharge instruction besides not to lift anything for two weeks including baby or drive" [sic]

was given discharge instructions and told not to lift anything *heavy* for two weeks; furthermore, she was told not to drive if she was taking the Tylenol #3 as this is a narcotic medication. As is commonly advised, patients are instructed not to drive if they take narcotic medications.

7. "called office to verify discharge instructions".

She did call the office on June 9th, and the discharge instructions were clarified. (See June 9th entry, *supra*).

8. "Because no one ever explained what to expect for pain or healing. I thought it was all normal".

was provided with explanations by me as well as by the nursing staff regarding the pain of a tubal ligation and what to expect post-operatively. She was further provided with information and suggestions on how to cope with the pain, including ibuprofen, Tylenol #3, use of heating pad and rest.

9. "...told to go to Mercy where Dr. Vickery was..."

I had explained to that I didn't get called to the ER to care for her until 10:30 am, by which time I had returned to the office to attend to my office patients. Such calls are routinely handled by whichever physician is on call. My "on-call" status ended at 8:00 am that morning; therefore her emergency room visit was handled by the next on-call physician, Dr. . was explained the ultrasound results and told not to do heavy lifting. Certainly, neither I nor anyone that I am aware of told her not to care for her baby; however, she was advised to "take it easy" when picking up the baby in order not to aggravate the healing of the open wound.

10. th -- original follow up appointment post surgery

I did indeed apologize to Ms explaining that this seroma was not her fault. I told her that I'd used Dermabond because it had better cosmetic results than suturing, and, indeed, I had not expected the seroma "to happen". I expressed empathy with her, stating she certainly had a right to be angry with the outcome. I did not apologize for "vague discharge instructions" since I believe they are valid and adequate discharge instructions. I did advise her there were no restrictions with her activity, but to keep in mind that she had an open wound and to act carefully to be sure it healed.

Ms was extremely anxious and seemed unable to cognitively understand how her surgery had been done. She was imagining bleeding and infection, and was very upset about the open wound on her abdomen. I had ordered VNA services mostly to help with proper wound care, realizing that Ms simply couldn't understand what to do because she was so anxious. Knowing her past history with depression, I was attempting to be sympathetic and supportive of her during this difficult time.

11. th

Ms did indeed continue to complain of pain, and I had no explanation for the amount of pain she was experiencing given the well-healing seroma on her abdomen. I believed that it was anxiety, and I was attempting to deal with this anxious patient in as supportive a fashion as I could; however, it was clear to me that I had become the source of her anxiety, and my assurances were less than effective.

Again Ms. asked for another ultrasound, continuing to believe she was somehow bleeding into her abdomen. Her pain seemed out of proportion to what I was seeing; yet, I did what I could to reassure her. I did agree to order an ultrasound for "her peace of mind".

With regards to the concern about Ms s bladder, please see notes regarding the care-visit for th, above. I ordered the ultrasound following my normal and routine abdominal exam (pursuant to her complaints of severe pain), yet could find no physical cause for her pain. Although I did not believe it necessary, I ordered an ultrasound at her insistence, and to be sure nothing else was causing her pain. I did not order an ultrasound of her bladder because a pelvic ultrasound would provide information regarding any issue with the bladder; however, my focus was on the pelvic area, specifically the surgical area of the tubal ligation, and that was my focus of consideration at the time. Given her recent urinary lab work, lack of incontinence, and no signs of infection, I had a low suspicion of bladder involvement at the time.

12. Calling in ultrasound results

Although I did not call Ms as soon as the results came in, I did call her by the end of my business day to relay that the results were normal.

13. Dr. Vickery's CV is attached hereto as Exhibit J.

Conclusion:

Dr. Vickery deeply regrets 's negative experience following the birth of her child, pursuant to her tubal ligation and the seroma that formed post operatively. Due to her anxiety, this experience proved very problematic for Ms . and Dr. Vickery is most sorry this was such a difficult process for her. That said, Dr. Vickery has reviewed her care and treatment of Ms. and observed nothing that she could have done differently that would have changed the outcome for Ms. . The complainant had a hyper-experience of pain, outside the scope of expected pain for such an outpatient procedure. Dr. Vickery, recognizing her anxiety, did what she could to explain the procedure, provide suggestions to deal with the pain, and follow-up with Ms. 's care as best she could. She ordered VNA services to care for the wound (although it wasn't entirely necessary), realizing that Ms. needed a higher level of intervention to calm her fears and anxieties.

Unfortunately, it appears that her efforts to deal effectively with Ms. s pain and anxiety were unsuccessful. Dr. Vickery regrets that, but does not believe anything she did or failed to do caused or contributed to her patient's anxiety and pain. Her care and treatment of Ms was always well within the standard of care, and appropriate to the situation and circumstances.

Therefore, we respectfully request that this complaint against Dr. Vickery be dismissed as unfounded and without merit. We thank you for your attention to this matter.

Respectfully submitted,

Respondent
Zevida Vickery, M.D.

Attorney for the Respondent
Diane C. Fernald

Commonwealth of Massachusetts
Board of Registration in Medicine

COMPLAINT FORM

Return this form to: Consumer Protection Coordinator
Board of Registration in Medicine
200 Harvard Mill Square, Suite 330
Wakefield, MA 01880
Fax: (781) 876-8381

Please type or print legibly in ink. You may use the attached lined page to explain your complaint or attach your own paper to this form. Any additional information you would like to submit with your complaint must be in paper or electronic form and will not be returned. Do not send objects, tapes, or X-rays. If you have any questions, please call our Consumer Protection Unit at (781) 876-8200.

PHYSICIAN INFORMATION (*one physician for each Complaint Form*)

Vickery — last name
Zevidan — first name
middle initial

230 Main St. — street address
Agawam — city
Ma — state
01001 — zip code

physician's medical specialty: Obstetrics & Gynecology
telephone number: 413-789-6800

PATIENT INFORMATION

☐ male
☑ female

last name — first name — middle initial

street address — city — state — zip code

date of birth: — daytime telephone number:

location of treatment: ☑ Office ☑ Hospital ☐ Nursing Home ☐ Clinic ☑ Other Home

date(s) the incident(s) described in the complaint happened: 2014- m 2014

length of time the patient has been under the physician's care:

COMPLAINANT INFORMATION (Complete ONLY if different than the patient information)

NOTE: *The Board will not communicate the patient's confidential medical information to you without legal proof that you are authorized to receive the information.*

☐ male
☐ female

last name — first name — middle initial

street address — city — state — zip code

your relationship to the patient: — daytime telephone number:

ACKNOWLEDGEMENT

I acknowledge that, by submitting this complaint and signing this form, the Board of Registration in Medicine may (1) obtain medical records and other information relating to this complaint, and/or (2) refer my complaint to other appropriate regulatory or law enforcement authorities. I understand that the Board may provide a copy of my complaint and all attachments to the physician.

Complainant's signature — Date: 8/6/2014

Physician's Name Dr. Zeridan Nickery Complainant's Name

Briefly describe your complaint

Do to the mishap with My surgery I've lost My job I was stuck on home care from ..th 2014- ..th 2014 I couldn care for my 6 children ages 4months 13 years. My husband lost time at work Now I'm facing another Surgery to try and right this wrong that's left Me in constant pain This was all avoidable had Dr Vickery not assumed that no problems would arise with using glue instead of sutures. Nurse had been given information on Side effects and long term effects I wouldnt have done this Surgery If I was given detailed discharge instruction I May have known Something was wrong right away

th - Surgery

- being preped for wrong surgery
- She apologized her office put it in wrong
- given no discharge instruction besides including baby not to lift anything for 2 weeks or drive

th - Called office to verify discharge instructions

- told I had no restrictions
- I continued to have round the clock help with baby, other kids, and driving

th - incision started bleeding

- first time since surgery that I played with my baby
- went to shower and noticed blood running from my lower incision

Because no one ever explained what to expect for pain or healing I thought it was all normal.

- Called Riverbend told me to apply pressure and to not go back to hospital surgery was done at but go to Mercy where Dr. Vickery was (She never showed

up)

- Ultra sound down no one ever explained anything to me
- Lady who performed the ~~opening~~ draining of the wound was going to open the wrong incision!
- Again told no lifting or caring for the baby

Jan - home care begins

" - packing changed for 1st time
- told it was 1CM x .4CM x 1.8 CM

1. ~~Fe~~ Original follow up appt post surgery
- Dr. Vickery apologized telling me this wasnt my fault She chose to not suture me but glue me She didnt expect this to happen because it usually is a side effect in "bigger" women told me I had every right to be angry. Apologized that there was vague discharge instructions and said She will be sure She makes some up. Told no restrictions again keep in mind I have an open wound on my pubic line.

Home Care Continues every other day

Follow up with Dr Vickery

- Still having tons of pain Mainly to right side and behind incision especially when urinating (no uti detected) Also pain that shoots down left side making walking extremely painful.
- I asked for another ultra sound to be sure there was no More blood pooling any where the pain was almost too much for Me to handle. Dr Vickery tried to convince Me it is unnecessary and impossible to have More blood anywhere. After My exam and repacking I said order the ultra sound for my peace of Mind She started to push on My stomach then stepped back said I'M going to order the ultra sound because I don't think I did but I May have damaged your bladder.

At this point it is still painful to drive the seatbelt rubs My incision and using My clutch is very painful.

Husband brings Me to Ultra Sound

- get to Ultra Sound ask the Tech how she plans on seeing My bladder with My incision being packed and bandaged. She said she didn't have an order to look at the bladder just the tubes
- So now I'm worried about My bladder because of what Dr. Vickery had said.

Since this has happened My anxiety over My incision and pain has taken over I refused to look at the open wound, I cried all the time. My BP would rise just going into see Dr. Vickery who after the th visit decided she didn't need to follow up with My progress My visiting nurses would inform her when they were done packing. The packing continued every other day until July 14th when the determined it fully healed. Still Dr Vickery didn't ask for a follow up. After the Ultra Sound on July th and having to track down the results even though she promised a call first thing in the Morning on the th I decided to seek a second opinion.