

**BEFORE THE BOARD OF MEDICAL PRACTICE
OF THE STATE OF DELAWARE**

| | | |
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| IN THE MATTER OF: |) | |
| |) | |
| GREGORY M. VILLABONA, M.D. |) | CASE NUMBER 10-61-02 |
| | | ORDER TERMINATING |
| | | PROBATION |

BACKGROUND

On September 22, 2003, the Delaware Board of Medical Practice found that Dr. Gregory M. Villabona had engaged in unprofessional conduct as defined in 24 Del. C. § 1731 (b)(3) arising out of his guilty plea to a third degree sex offense on a female minor (a felony) and his guilty plea to a fourth degree offense on a female minor (a misdemeanor involving moral turpitude) in the Circuit Court for Queen Anne's County, Maryland on November 25, 2002.¹

As the result of the guilty pleas, the Circuit Court for Queen Anne's County sentenced Dr. Villabona to probation before judgment and placed him on a five (5) year period of supervised probation; required that he be evaluated by the Sexual Disorder Unit of Johns Hopkins University (or another facility acceptable to the Maryland State's Attorney); ordered that Dr. Villabona have no unsupervised contact with minor children; and seek mental health counseling in conformity with the plea agreement.

On or about February, 22, 2005, the Maryland Circuit Court granted Dr. Villabona's petition for an early termination of his probation. By letter dated May 16, 2005, Dr. Villabona sought to have his probation in Delaware terminated. The Board

¹ The Board Decision and Order was affirmed on appeal. *See Villabona v. Board of Medical Practice*, 2004 WL 2827818 (Del. Super.), affirmed at 858 A.2d 961, 2004 WL 1965436 (Del. Supr.).

requested and received a copy of the Maryland Circuit Court transcript of the hearing at which the Court terminated the probation.

The disciplinary sanction imposed by the Board Order required the preparation of a form of notice for present and future patients and its approval by the prosecuting Deputy Attorney General. It also imposed probation on Dr. Villabona concurrent with the probation from the Circuit Court for Queen Anne's County, Maryland and required the designation of a supervising physician by the Board's Executive Director for the period of probation. In addition, the Board imposed sanction required adult supervision during the treatment of all patients under the age of eighteen (18). The Order provided that Counsel and the Executive Director should promptly attend to these requirements for the protection of the public.

PETITION

Dr. Villabona, through his attorney Victor Battaglia., has applied to the Board to have his probation in the State of Delaware terminated. In his petition, Dr. Villabona emphasizes that the Order entered by the Board provides that the probation in Delaware was to run concurrent with the probation from the Circuit Court for Queen Anne's County, Maryland. Because the Maryland probation has ended Dr. Villabona asks the Board to "formalize what it in fact has already ordered."

PROSECUTION POSITION

By letter dated September 20, 2005, Deputy Attorney General Greg Smith, on behalf of the State, takes the position that he has no good faith basis to oppose the termination of Dr. Villabona's probation.

ORDER

The Board of Medical Practice, having considered the petition of Dr. Gregory N. Villabona for termination of his probation and the position of the State relating thereto, hereby approves said Petition as it relates to the period of probation. The original Board Order in this matter did specify that the period of probation was to run concurrent with the five (5) year period of probation imposed by the Circuit Court for Queen Anne's County, Maryland. Although the Board anticipated that the Maryland period of probation would be five (5) years when it ordered the probation in Delaware to run concurrently, the Order did not specifically address what would happen to the Delaware probation upon early termination of the Maryland Order. The Board therefore orders that the period of probation of Gregory N. Villabona and the requirement for a supervising physician in Delaware are terminated.

However, in addition to the period of probation and supervision, the Board Order also required Dr. Villabona to provide a form of notice for present and future patients and to have adult supervision during the treatment of all patients under the age of eighteen (18). The Board's Order did not specify the period applicable to these restrictions but contemplated that they would be in place for five (5) years at a minimum. The Board, therefore, declines to lift these restrictions at this time. Dr. Villabona may apply in writing for the removal or revision of these remaining restrictions after the expiration of five (5) years from date of the original September 22, 2003 Board Order and the Board, by further Order, may then make such determinations as may be deemed to be in the public interest.


NOW THEREFORE, by a vote of eight (8) members to three (3),²
IT IS SO ORDERED this 1st day of November, 2005.


Garrett Colmorgen, M.D., President



Anthony M. Policastro, M.D



~~Francis Marro, M.D.~~
Francis Marro, M.D.


Mr. Vance Daniels


Mr. John Banks

Oluseyi N. Senu-Oke, M.D


Galicano Inguito, M.D.


James Salva, M.D.

Margaret Prouse


Ray A. Blackwell, M.D.


Nasreen Kahn, D.O.

Date Mailed: 9/02/2005

² Dr. Karl McIntosh and Mr. George Brown recused themselves from consideration of the petition filed by Dr. Villabona.

**BEFORE THE BOARD OF MEDICAL PRACTICE
OF THE STATE OF DELAWARE**

| | | |
|------------------------------------|---|----------------------------------|
| IN THE MATTER OF: |) | |
| |) | |
| THE COMPLAINT AGAINST |) | FINAL BOARD ORDER |
| GREGORY N. VILLABONA, M. D. |) | COMPLAINT NO. 10-61-02 AS |
| |) | AMENDED |

NATURE OF THE CASE

On January 6, 2003, a Complaint alleging violation of certain provisions of the Medical Practices Act, specifically, 24 *Del. C.* §1731(b)(3); §1731(b)(14) and §1731(c)(1), was presented to the Board of Medical Practice ("Board") by the Board's Executive Director together with a Motion for the Temporary Suspension of the medical license of Gregory N. Villabona, M.D.

On January 7, 2003, a hearing was held by the Board on the Motion for Temporary Suspension. At this hearing, Deputy Attorney General Gregory E. Smith presented the Motion for Temporary Suspension. Dr. Villabona was represented by Victor F. Battaglia, Sr., Esquire.

After considering the presentations from the parties, the Board did not, at that time, find grounds to impose an immediate emergency suspension of Dr. Villabona's license to practice medicine and surgery. The Board accepted the Formal Complaint against Dr. Villabona and, pursuant to 24 *Del. C.* §1734, assigned the complaint to a hearing panel consisting of Janet Kramer, M.D., Galicano Inguito, M.D., and Francis Marro, M.D.

Pursuant to the requirements of the Medical Practices Act, the evidentiary hearing was scheduled and commenced before the designated hearing panel on March 5, 2003 in the second floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. At the hearing Dr. Villabona was present and represented by Victor F. Battaglia, Sr., Esquire, 921 Orange

Street, P.O. Box 1489, Wilmington, DE 19899. Gregory E. Smith, Esquire, the prosecuting Deputy Attorney General, presented the evidence in support of the allegations contained in the Amended Formal Complaint as provided in 24 *Del. C.* §1734(e). The Medical Practices Act [24 *Del. C.* §1734(b)], provides that the panel hearings are to be conducted in executive session unless the physician requests a public hearing. Dr. Villabona did not request a public hearing and, pursuant to 24 *Del. C.* §1734(b), by unanimous vote, the Hearing Panel entered into executive session to conduct the proceedings.

The Amended Formal Complaint against Dr. Villabona alleges that on September 20, 2002, in the Circuit Court for Queen Anne's County, Maryland, Dr. Villabona pled guilty to one count of Third Degree Sexual Offense (a felony), and one count Fourth Degree Sexual Offense (a misdemeanor). The Amended Complaint further alleges that on November 25, 2002, the Circuit Court for Queen Anne's County sentenced Dr. Villabona to Probation Before Judgment and placed him on five (5) years supervised probation. Additionally, the Amended Complaint asserts that the Court required Dr. Villabona be evaluated by the Sexual Disorder Unit of Johns Hopkins University (or another facility acceptable to the Maryland State's Attorney), and ordered that Dr. Villabona have no contact with persons under the age of eighteen (18). In the Amended Complaint it is also alleged that Dr. Villabona willfully failed to report to the Board within 30 days of any change in hospital privileges as a result of disciplinary action when the State of Delaware Division of Substance Abuse and Mental Health terminated his employment contract on September 2002.

The Amended Complaint further charges that Dr. Villabona has by his conduct violated the Medical Practices Act, specifically 24 *Del. C.* §1731(b)(3); 24 *Del. C.* §1731(b)(14) and 24 *Del. C.* §1731(c)(iii) as well as Sections 13.1.1 and 15.1.8 of the Rules and Regulations of the Board.

The Hearing Panel session on March 5, 2003 concluded with the completion of the presentation of the prosecution's case-in-chief. The hearing was continued and resumed on March 25, 2003. After the conclusion of the session on March 25, 2002, the parties submitted written closing arguments. Thereafter, the Hearing Panel met and conducted its deliberations concerning the evidence and arguments presented and, on June 19, 2003 submitted its Report to the Board and to the parties, which Report is hereby incorporated herein by this reference. On July 22, 2003, pursuant to 24 *Del. C.* §1734(f), the Board was scheduled to meet to consider the Hearing Panel Report and to review the Hearing Panel's conclusions and recommended disciplinary sanction. Upon the request of Dr. Villabona's counsel the public formal hearing was continued to the next Board meeting on September 9, 2003. At the Formal Hearing before the Board¹ the legal counsel for the State and for Dr. Villabona submitted oral and written arguments concerning the conclusions of law and the determination of an appropriate disciplinary sanction.² The findings of fact by the Hearing Panel were specifically adopted by the Board at the Formal Public Hearing as required by 24 *Del. C.* §1734(f). In its arguments, the State supported the adoption of all of the Hearing Panel's conclusions and also argued in support of the Hearing Panel's Recommended Sanction.

Dr. Villabona argued, among other things, that no conviction resulted from his entry of a Plea Bargain Agreement in the State of Maryland, and therefore there could not be a determination that

¹The twelve (12) Board members present and voting at the Formal Board Hearing were: Edward J. McConnell, M.D., Board President, Garrett Colmorgen M.D., Mr. John Banks, Mr. Vance Daniels, Stephen Fanto, M.D., Paul W. Ford, Jr., M.D., Vincent Lobo, D.O., Ms. Kathleen Haynes, Mr. Michael G. Green, Oluseyi N. Senu-Oke, M.D., Anthony Policastro, M.D. and Mr. Kishor Sheth.

² Dr. Villabona was also permitted by the Board to distribute a bound copy of the final version of the report of the evaluation of Dr. Villabona by the National Institute for the Study, Prevention and Treatment of Sexual Trauma after representing to the Board that it was consistent with the summary report which had been submitted to the Hearing Panel.

he had violated Board Regulation 15.1.8 because that section of the Board's Regulations requires there to have been a "conviction". Dr. Villabona's counsel also argued that Dr. Villabona could not be found to have committed any dishonorable or unethical conduct under 24 *Del. C.* §1731(b)(3) because there was no evidence or determination of harm to the public. He contended that the Hearing Panel's conclusion that the public was harmed in a general sense does not prove harm, and argued that therefore the charge alleging violation of 24 *Del. C.* §1731(b)(3) should be dismissed. Dr. Villabona's counsel also argued that the imposition of any disciplinary sanction against Dr. Villabona would harm his patients by impairing their ability to have insurance cover payment for medical services provided by Dr. Villabona.

RELEVANT SECTIONS OF THE MEDICAL PRACTICES ACT AND BOARD RULES CHARGED IN THE AMENDED COMPLAINT

The relevant portions of 24 *Del. C.* §1731(b) provide that Unprofessional Conduct is defined as any of the following acts:

- (3) Any dishonorable or unethical conduct likely to deceive, defraud or harm the public.
- (14) Willful failure to report to the Board as required by §1728(b) of this title.

Section 1728(b) of Title 24

It shall be the duty of every person to whom a certificate is issued to practice medicine and surgery to report within 30 days to the Board any changes in hospital privileges as a result of disciplinary action taken by hospitals or disciplinary action taken by medical societies against him or her.

Section 1731(c) of Title 24

The certificate to practice medicine and surgery issued to any person shall be subject to restriction, revocation or suspension, either permanently or temporarily in the case of inability of the person to practice medicine and surgery with reasonable skill or safety to patients by reason of 1 or more of the following:

- (1) Mental illness or mental incompetence;

- (2) Physical illness, including, but not limited to, deterioration through the aging process or loss of motor skill;

Board Regulation 13 provides in relevant part: The following disciplinary actions against physicians should be reported: 13.1 By hospitals:

13.1.1 Dismissal from staff.

Board Regulation 15 provides in relevant part:

15.1 The phrase 'dishonorable or unethical conduct likely to deceive, defraud, or harm the public as used in 24 Del C. §1731(b)(3) shall include, but not be limited to, the following specific acts:

15.1.8 Conviction of a misdemeanor involving moral turpitude.

FINDINGS OF FACT BY THE HEARING PANEL

The following findings of fact which were made by the Hearing Panel are required by statute (24 Del. C. §1734(f)) to be adopted by the Board of Medical Practice and, as noted above, were adopted by the Board formally on September 9, 2003.

1. Gregory N. Villabona, M.D., born in 1948, is a practicing psychiatrist in the State of Delaware and is duly licensed to practice medicine in this State. His current registration expiration date at the time of the hearing was March 31, 2003. His license number is C1-0004007 and he has an on-going psychiatric practice in Dover, Delaware.

2. The Hearing Panel finds that, on September 30, 2002, Gregory N. Villabona, M.D. entered a plea of guilty in the Circuit Court for Queen Anne's County, Maryland to two (2) of the counts in a multiple (30) count criminal information. The Board further finds that Count 1 of the criminal information to which Dr. Villabona entered his plea of guilty, alleged that he committed a third degree sex offense on a female minor some time between January 1, 1978 and December 31,

1978 (a felony). At the time of the commission of the offense, the victim, now 36, was a female child approximately 11 years of age and Dr. Villabona was approximately 30.

3. The Hearing Panel further finds that Count 13 of the criminal information to which Dr. Villabona also entered a plea of guilty, alleged that he committed a fourth degree sex offense on a female minor between January 1, 1983 and December 31, 1983 (a misdemeanor involving moral turpitude). At the time of the commission of the offense, the victim, now 31, was a female child approximately 11 years of age and Dr. Villabona was approximately 35.

4. The Hearing Panel further finds that under the plea agreement between the State of Maryland and Dr. Villabona the remaining 28 counts of the criminal information were not pursued through the entry of, or dismissal of all remaining charges in return for Dr. Villabona's guilty plea to Counts 1 and 13.

5. The Panel also finds that, as a part of the plea agreement in the State of Maryland, the State agreed not to request incarceration, and it was understood that the victims would not request incarceration at the sentencing. It was also a part of the plea agreement that while he was on probation Dr. Villabona was not to have any unsupervised contact with minor children, and that he would seek mental health counseling.

6. The Hearing Panel further finds that, on November 25, 2002, the Circuit Court for Queen Anne's County, Maryland, sentenced Dr. Villabona to probation before judgement and placed him on a five (5) year period of supervised probation; required that he be evaluated by the Sexual Disorder Unit of Johns Hopkins University (or another facility acceptable to the Maryland State's Attorney); ordered that Dr. Villabona have no unsupervised contact with minor children; and seek mental health counseling in conformity with the plea agreement.

7. The Hearing Panel finds that the plea of guilty entered by Dr. Villabona in the Circuit Court for Queen Anne's County, Maryland, on September 30, 2002 was entered in accordance with his admission to that Court, among other things, that he was pleading guilty to Count 1 and Count 13 because he was in fact guilty of having committed those offenses.

8. The Hearing Panel finds that there is no credible evidence that Dr. Villabona has committed any act of sexual misconduct involving a child or a patient, either child or adult, since his graduation from medical school and licensure as a physician in the State of Delaware and, further, that a significant number of his patients think very highly of him both as a person and as a physician.

9. The State of Delaware, Department of Health and Human Services, Division of Substance Abuse and Mental Health terminated its physician employment contract with Dr. Villabona on September 6, 2002. Dr. Villabona admits that his employment contract with the State of Delaware was canceled by the State after the publicity surrounding the charges against him in the State of Maryland. The employment contract with the State was for approximately 30 hours a week strictly for adult psychiatry. Dr. Villabona did not report the termination of his State employment contract to the Board of Medical Practice within thirty (30) days.

10. The Hearing Panel finds the prosecution has produced no credible evidence that Dr. Villabona currently suffers from either mental illness or mental incompetency.

11. The Hearing Panel finds that the prosecution has not sought license revocation or suspension in this matter and has recommended in its closing argument that the Board can most effectively carry out its obligation to protect the public by prohibiting Dr. Villabona from seeing

minor patients without the presence of an adult family member, and by requiring him to disclose his admitted sexual crimes to all present and future patients.

CONCLUSIONS OF THE HEARING PANEL

The Hearing Panel unanimously makes the following conclusions:

1. Dr. Gregory N. Villabona has not been shown by the evidence presented to be either mentally ill nor mentally incompetent as proscribed by 24 *Del. C.* §1731(c)(1).
2. The evidence presented does not establish that Dr. Gregory N. Villabona has violated 24 *Del. C.* §1731(b)(14) or 24 *Del. C.* §1728(c) or Board Regulation 13.1.1 as alleged in the Amended Complaint, by reason of his failure to report to the Board of Medical Practice the termination of his physician employment contract with the State of Delaware.
3. Dr. Gregory N. Villabona has judicially admitted that he committed acts of sexual misconduct against minor children prior to his licensure as a physician and, under the circumstances presented, this plea of guilty to a felony and to a misdemeanor of moral turpitude, constitutes dishonorable or unethical conduct. Although we conclude that it is unlikely that Dr. Villabona will commit transgressions in the future, in considering his specialty (psychiatry) and the nature of his transgressions, we conclude that his behavior has harmed the public in a general sense. It is therefore dishonorable and unethical conduct which violates both 24 *Del. C.* §1731(b)(3) and Board Regulation 15.1.8.

CONCLUSIONS OF THE BOARD

The Board, on September 9, 2003 upon due consideration, adopted Conclusion No. 1 and Conclusion No. 2 of the Hearing Panel.

The Board modified Hearing Panel Conclusion No. 3 by striking the words “in a general sense”, the word “both”, and the phrase “and Board Regulation 15.1.8”. The Conclusion 3 as determined by the Board reads as follows:

3. Dr. Gregory N. Villabona has judicially admitted that he committed acts of sexual misconduct against minor children prior to his licensure as a physician and, under the circumstances presented, this plea of guilty to a felony and to a misdemeanor of moral turpitude, constitutes dishonorable or unethical conduct. Although we conclude that it is unlikely that Dr. Villabona will commit transgressions in the future, in considering his specialty (psychiatry) and the nature of his transgressions, we conclude that his behavior has harmed the public. It is therefore dishonorable and unethical conduct which violates 24 *Del. C.* §1731(b)(3).

In making these modifications, the Board accepts Dr. Villabona’s argument that Board Regulation 15.1.8 by its terms requires a “conviction” and that the probation before judgment in the Maryland court may not be viewed by the Maryland courts as “conviction” of the offenses. The Board does not accept Dr. Villabona’s argument that his entry of a plea of guilty, under the circumstances described in the Hearing Panel Report, fails to constitute unprofessional and unethical conduct in violation of 24 *Del. C.* §1731(b)(3) which does not require a “conviction”. The Board unanimously concludes, as did the Hearing Panel, that under the circumstances presented, Dr. Villabona has been dishonorable and unethical. His public judicial admission of the commission of both felony and misdemeanor child abuse has clearly been established. It is harmful, dishonorable, and unethical conduct even without a technical “conviction” and mandates the intervention of the Board for the protection of the public with the disciplinary sanction set forth hereinafter.

HEARING PANEL DISCIPLINARY RECOMMENDATION

The Hearing Panel made the following recommendation to the Board:

“The prosecution has recommended that the Board prohibit Dr. Villabona from seeing minor patients without the presence of an adult family member, and that the Board should require him to disclose his admitted sexual crimes to all present and future patients so they may decide for themselves whether they can establish a relationship of trust with their psychiatrist (State’s Closing Argument, Page 10).

In the view of the Hearing Panel as well as the prosecution, Dr. Villabona does not need to be removed from the practice of medicine and the treatment of patients. Part of the public to be protected are Dr. Villabona’s present patients who are aware of his situation and who wish to continue as his patients. However, while in the view of the prosecution and the Hearing Panel Dr. Villabona may be permitted to continue to practice psychiatry, his practice should be permitted only with restrictions on his ability to treat individuals under the age of eighteen (18) without the actual physical presence of a parent or other adult who is not under the direction or control of Dr. Villabona. Additionally, Dr. Villabona should not be permitted to treat any adult patient until that patient has completed a notice form which is to be kept in the patient’s file. Such form, which should be prepared at Dr. Villabona’s expense by his attorney and approved by the prosecuting Deputy Attorney General, should be designed to advise the patient that Dr. Villabona has had his medical practice limited and restricted in the State of Delaware on the basis of dishonorable and unprofessional conduct reflected in his public admission of having sexually abused two young girls in accordance with his guilty plea in the Circuit Court of the State of Maryland on September 30, 2002. The notice form should also advise the patient of the limitation of Dr. Villabona’s ability to see patients who are minors and should further advise that Dr. Villabona’s ability to treat individuals who have been sexually abused or who have committed such abuse may be compromised.

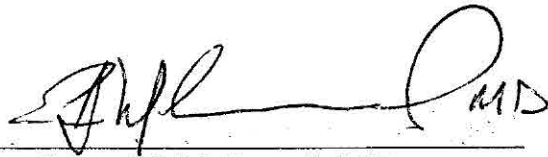
Furthermore, the Hearing Panel recommends that Dr. Villabona be placed on probation for a period to run concurrently with his probation from the Circuit Court for Queen Anne’s County, Maryland. A part of that probation should include monitoring of his behavior and practice by a licensed Delaware physician to be selected by the Board’s Executive Director who shall report to the Board quarterly concerning Dr. Villabona during the period of probation.”

DISCIPLINARY SANCTION OF THE BOARD

The Board unanimously adopts the sanction proposed by the Hearing Panel with the exception of the requirement that the supervision for the treatment of persons under the age of eighteen (18) to be by a person who is not under the direction or control of Dr. Villabona.

The sanction approved by the Board contemplates the preparation of a form of notice for present and future patients and its approval by the prosecuting Deputy Attorney General. It also imposes probation on Dr. Villabona concurrent with the probation from the Circuit Court for Queen Anne's County, Maryland. It also requires the designation of a supervising physician by the Board's Executive Director for the period of probation. In addition the Board imposed sanction contemplates adult supervision during the treatment of all patients under the age of eighteen (18). Counsel and the Executive Director should promptly attend to these requirements for the protection of the public.

IT IS SO ORDERED THIS 22ND DAY OF SEPTEMBER, 2003.

A handwritten signature in black ink, appearing to read 'Ed J. McConnell, M.D.', written over a horizontal line.

Edward J. McConnell, M.D.
Board President
[24 Del. C §1734(a)(3)]

Mailing date: 9/22/2003

**BEFORE THE BOARD OF MEDICAL PRACTICE
OF THE STATE OF DELAWARE**

| | | |
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| IN THE MATTER OF: |) | |
| COMPLAINT AGAINST |) | FINAL BOARD ORDER |
| GREGORY N. VILLABONA, M.D. |) | Complaint No. 10-61-02 |
| (License No. C1-0004007) | | |

PUBLIC ORDER

NATURE OF THE CASE

Complaint No. 10-61-02 alleging a violation of 24 *Del. C.* § 1731(b)(17) of the Medical Practice Act was presented to the Board of Medical Practice during consideration of a Motion for a Temporary Suspension and accepted as a formal complaint against Gregory N. Villabona, M.D.¹

A three board member Hearing Panel consisting of Anthony Policastro, M.D., Vincent Lobo, D.O., and John Banks, Public Member, was appointed to consider the evidence to be presented at the hearing concerning the formal complaint.

Pursuant to the requirements of the Medical Practice Act (24 *Del. C.* § 1734), the evidentiary hearing was scheduled upon due notice to Dr. Villabona and conducted before the designated Hearing Panel on June 30, 2006. Dr. Villabona was present and represented by Gilbert F. Shelsby, Jr., Esquire. James J. Hanley, Deputy Attorney General, presented the evidence in support of the allegations contained in the formal complaint as provided in 24 *Del. C.* § 1734(3).

The Medical Practice Act [24 *Del. C.* § 1734(b)], provides that the Panel Hearing is to be conducted in Executive Session unless the physician requests a public hearing. Dr. Villabona did not request a public hearing and, pursuant to 24 *Del. C.* § 1734(b), by unanimous vote, the Hearing Panel

¹ On May 2, 2006, the Board denied the State's Motion for Temporary Suspension following oral argument but directed that the Complaint be scheduled for a hearing before a three board member Hearing Panel.

entered into Executive Session for the hearing. The Hearing Panel met and conducted its deliberations concerning the evidence and arguments presented and submitted its Report to the Board and to the parties. The Hearing Panel Report dated October 23, 2006 is incorporated herein by reference.

The formal complaint against Dr. Villabona alleged that Dr. Villabona engaged in unprofessional conduct in violation of 24 *Del. C.* § 1731(b)(17) in that he violated a prior Board order dated September 22, 2003, modified by the Board on November 2, 2005, which restricted Dr. Villabona's treatment of patients under the age of eighteen (18). Specifically, Dr. Villabona was directed not to treat patients under the age of eighteen (18) without adult supervision.

Pursuant to 24 *Del. C.* §1734(f), the Board initially met on December 5, 2006 to consider the Hearing Panel Report and to review the Hearing Panel's conclusions and recommended disciplinary sanction. The Board at that time voted to accept the Hearing Panel's findings of fact and conclusions of law. In order to reach the seven member consensus required by 24 *Del. C.* §1734(a)(3) the participating Board voted to modify the recommended penalty accepting the panel recommendation that Dr. Villabona be placed back on probation until September 22, 2008 but rejecting the recommendation that Dr. Villabona be restricted from treating patients under eighteen (18). Instead, the Board recommended continued adult supervision in conformity with this Board's prior order of June 2006 which requires the physical presence of an adult, preferably a parent, in the same room as any patient under the age of eighteen (18). The Board members also voted to continue the requirement for Dr. Villabona to provide the previously approved form of notice to his patients that he is on probation.

Unfortunately, after the hearing but before the entry of a written order, it was determined that the Board's action was void due to that fact that the Board did not have the required minimum nine (9) members to constitute the necessary quorum in order to act. As a result, on the advice of counsel, the matter was scheduled for a re-hearing on January 9, 2007.

On January 9, 2007 a quorum nine (9) members of the Board met to consider the Hearing Panel Report and to review the Hearing Panel's conclusions and recommended disciplinary sanction. The Board members were advised by counsel that the parties were resting on the arguments and record created on December 5, 2006 and that the parties had stipulated that they were satisfied with the outcome of the previous deliberations. The Board members were further advised that but for the fact that the statute required at least nine (9) members to have considered the matter, it would not be back before them for re-consideration. Neither Mr. Hanley nor Mr. Shelsby was present at the hearing. The Board was also advised that Mr. Shelby was not present due to the fact the he had a conflicting trial schedule and that no negative inference should be drawn from his absence.

The Board at that time again voted to accept the Hearing Panel's findings of fact and conclusions of law. The Board re-deliberated on whether to accept, reject or modify the Hearing Panel's recommended discipline. The deliberations among all nine (9) members resulted in the Board voting to accept the panel recommendation in its entirety. The Board voted to reinstate Dr. Villabona's probation until September 22, 2008, require notice to his patients and to prohibit him from treating any patients under the age of eighteen (18).

By letter dated January 17, 2007, Mr. Shelby requested a rehearing indicating that he only intended to rely on the arguments made on December 5, 2006 to the extent that the nine (9) Board members were simply going to ratify the action taken by the seven (7) Board members on December

5, 2006. To the extent that the Board determined to re-deliberate the matter, Mr. Shelsby stated that he wanted the opportunity to submit further argument on behalf of his client. The Board voted to allow Mr. Shelsby further argument and agreed to reconsider the matter one last time.

On April 3, 2007, the Board convened with the same nine (9) Board members to re-hear the matter. The State was represented by Kimberly Wilson, Deputy Attorney General. Gilbert F. Shelsby, Esquire, appeared on behalf of Dr. Villabona.

FINDINGS OF FACT BY THE HEARING PANEL

The following findings of fact which were made by the Hearing Panel are adopted by the Board of Medical Practice as required by statute (24 *Del. C.* §1734 (f)):

1. Gregory N. Villabona, M.D. is a Delaware licensed physician holding License No. C1-0004007. Dr. Villabona has held such license at all relevant times hereto and is subject to the jurisdiction of the Board. Dr. Villabona has a psychiatric practice in Dover, Delaware.
2. On September 22, 2003, the Delaware Board of Medical Practice found that Dr. Gregory N. Villabona had engaged in unprofessional conduct as defined in 24 *Del. C.* § 1731 (b)(3) arising out of his guilty plea to a third degree sex offense on a female minor (a felony) and his guilty plea to a fourth degree offense on a female minor (a misdemeanor involving moral turpitude) in the Circuit Court for Queen Anne's County, Maryland on November 25, 2002. ²
3. As the result of the guilty pleas, the Circuit Court for Queen Anne's County sentenced Dr. Villabona to probation before judgment and placed him on a five (5) year period of supervised probation; required that he be evaluated by the Sexual Disorder Unit of Johns Hopkins University (or

² The Board Decision and Order was affirmed on appeal. *See Villabona v. Board of Medical Practice*, 2004 WL 2827818 (Del. Super.), affirmed at 858 A.2d 961, 2004 WL 1965436 (Del. Supr.).

another facility acceptable to the Maryland State's Attorney); ordered that Dr. Villabona have no unsupervised contact with minor children; and seek mental health counseling in conformity with the plea agreement.

4. The September 22, 2003 Delaware Board Order imposed probation on Dr. Villabona concurrent with the probation from the Circuit Court for Queen Anne's County, Maryland and required the designation of a supervising physician by the Board's Executive Director for the period of probation. In addition, the Board imposed sanction required adult supervision during the treatment of all patients under the age of eighteen (18).

5. On February 22, 2005, the Maryland Circuit Court for Queen Anne's County granted Dr. Villabona's petition for an early termination of Dr. Villabona's probation in Maryland.

6. Based on the Maryland action, the Delaware Board by Order dated November 2, 2005, granted Dr. Villabona's request to be released from probation in Delaware and terminated the requirement for a supervising physician. The Board declined to lift its additional restrictions on Dr. Villabona's practice and ordered as follows:

However, in addition to the period of probation and supervision, the Board Order also required Dr. Villabona to provide a form of notice for present and future patients and to have adult supervision during the treatment of all patients under the age of eighteen (18). The Board's Order did not specify the period applicable to these restrictions but contemplated that they would be in place for five (5) years at a minimum. The Board, therefore, declines to lift these restrictions at this time.

7. On May 2, 2006, the Board considered an Emergency Motion for Temporary Suspension filed by the State in regard to the allegations in Complaint No. 10-61-02. By Order dated June 6, 2006, the Board denied the request for a temporary suspension but clarified the restriction imposed

by its November 2, 2005 Order. Specifically the Board's June 6, 2006 Order provided:

That pending the full resolution of Complaint No. 10-61-02 by the Hearing Panel and the Board, "adult supervision during the treatment of all patients under the age of eighteen (18)" as set forth in the restrictions placed on Respondent's practice by Orders dated September 22, 2003 and November 2, 2005 is hereby clarified to require the physical presence of an adult, preferably a parent, in the same room as the patient under the age of eighteen (18).

8. On September 13, 2005, Dr. Villabona's office received a call from the mother of a minor female psychiatric patient stating that the patient was in crisis. The mother was unable to attend the session with her daughter. Dr. Villabona agreed to see the patient.

9. The distraught minor patient arrived at the office while Dr. Villabona was treating previously scheduled patients and waited for Dr. Villabona in what was referred to by the witnesses as the TV/ toy room.

10. When Dr. Villabona had a break in his patient schedule, he asked his receptionist where the minor was and was told that she was in the TV/ toy room. Dr. Villabona went into the TV/Toy room and closed the door. No adult was physically present in the room with Dr. Villabona and the minor patient.

11. Dr. Villabona's receptionist went to the TV/Toy room regarding a delivery for the doctor.³ She knocked and entered the room and her perception was that Dr. Villabona's position, seated on an ottoman pushed against the sofa on which the minor was laying, was inappropriate.

The position of the minor enabled her underwear to be visible to the receptionist standing in the doorway.

³ Conflicting testimony was given as to whether the delivery was a flower delivery or a package. The Board finds the

12. Dr. Villabona's receptionist discussed what she observed with another employee and investigations were subsequently conducted into the alleged incident by the Dover police and the Division of Professional Regulation.

13. Detective Jeffrey Melvin conducted the criminal investigation along with Detective Kober of the Dover Police Department. The minor told the police that she was alone in the room with Dr. Villabona for 20 to 30 minutes. Dr. Villabona told Detective Melvin he was only in the room for 15 seconds. Detective Melvin did not notice a camera in the toy room during his investigation and Dr. Villabona did not point it out to him. Dr. Villabona did point out other cameras. The minor denied any inappropriate contact. No criminal charges were filed against Dr. Villabona regarding the allegation.

14. Dr. Villabona does have a monitoring system with 4 cameras capable of monitoring him while he is in various rooms in his office. The monitor and cameras were in place and on when Dr. Marro conducted an inspection of the office in 2004. No evidence was introduced to show what rooms could be seen on the monitor in 2004 when viewed by Dr. Marro. No pictures were introduced to demonstrate the views from the cameras in September or October of 2005. Pictures taken in April of 2006 show views taken from cameras of Dr. Villabona's office, the waiting area, the kitchen area and the TV/ Toy room.

15. On March 9, 2006, investigator Bud Mowday interviewed Dr. Villabona. Dr. Villabona initiated the meeting. It was not unannounced. The monitoring system was on and there was a camera in the TV/Toy room.

16. A considerable amount of conflicting testimony was offered regarding whether the monitoring system was actually used and what rooms were covered. The witnesses for the State are

adamant that it was not used and that no camera was in the toy room. The witnesses for Dr. Villabona are equally adamant that the monitor was on all of the time and had a camera in the TV/Toy room since its installation. There are issues of credibility and bias on both sides. There was no corroborating evidence beyond the conflicting testimony to enable the Panel to determine if the monitoring system was on and in use on September 13, 2005 or whether a camera was installed in the TV/Toy room on that date. There were no tapes from the system or photographs introduced from the date in question.

17. The witnesses for the State and Dr. Villabona disagreed as to whether the monitoring policy was ever discussed; however, the witnesses for both sides were consistent that there were no written policies or procedures in place in the office with regard to the monitoring system. No testimony was offered on what specific instructions were given to the employees to enable them to know what to do, how to use the monitor and what its purposes were, other than to protect Dr. Villabona. The evidence supports a finding that insufficient direction was given in regard to the use of the monitor.

18. Dr. Villabona challenged the credibility of his former employees who testified for the State. All three of the witnesses were former psychiatric patients treated by Dr. Villabona before they became his employees. If the challenge to credibility is accepted, the individuals Dr. Villabona engaged to do his monitoring were not the optimal choices to provide the monitoring based on their lack of credibility and Dr. Villabona, therefore, failed to provide for adequate supervision.

19. Dr. Villabona had advance knowledge that the minor patient was coming into the office. He was not caught off guard. Dr. Villabona continued to treat other patients even after the distraught minor arrived. He did not immediately attend to her. The Board does not find credible his statement that his first reflex was to attend to the minor patient who was in crisis. Dr. Villabona's own

testimony was that the minor appeared to be sleeping when he went into the room. Dr. Villabona had ample time to have his receptionist go with him into the TV/Toy room or to bring the minor to his office where it is undisputed that his interaction with the patient could have been viewed through a glass window in the door.

20. According to Dr. Villabona, the receptionist was on the telephone when he went into the TV/Toy room. The evidence established that the monitor was located behind the receptionist who would have to turn around to view it. Dr. Villabona offered no testimony that he told his receptionist to turn and watch the monitor.

21. The Panel finds that Dr. Villabona was alone in the TV/Toy room without adequate adult supervision. The panel finds it irrelevant whether Dr. Villabona was in the room for 15 seconds or fifteen minutes but finds most credible the minor's affidavit that they were alone in the room for 20 to 30 minutes.

22. There is no evidence to support a finding of any improper conduct while Dr. Villabona was alone with the minor in the TV/Toy room.

CONCLUSIONS OF LAW

The following conclusions of law were made by the Hearing Panel and are unanimously adopted by the Board of Medical Practice:

By Orders dated September 22, 2003 and November 2, 2005, Dr. Villabona is required to have adult supervision during the treatment of all patients under the age of 18. The issue before the Panel is whether there was adequate supervision under the terms of the September 22, 2003 Order

subsequently modified on November 2, 2005 .⁴

The Hearing Panel has found as a matter of fact that Dr. Villabona was alone with a minor patient on September 13, 2005 for 20-30 minutes without adequate adult supervision. Based on the findings of fact, the Hearing Panel concludes as a matter of law that Dr. Villabona did engage in unprofessional conduct in violation of 24 *Del. C.* § 1731(b)(17) which provides that:

(17) The violation of a provision of this chapter or the violation of an order or regulation of the Board related to medical procedures or to the procedures of other professions or occupations regulated under this chapter, the violation of which more probably than not will harm or injure the public or an individual.

Dr. Villabona's conduct in failing to abide by the terms of the Board's prior orders regarding adult supervision when treating patients under the age of 18 constitutes a violation of 24 *Del. C.* § 1731(b)(17). Although the Panel found that there was no evidence to support a finding of improper conduct toward the minor patient, the panel is concerned with Dr. Villabona's treatment of a minor patient without ensuring that all safeguards were in place to comply with the practice restriction on his license. As the physician, Dr. Villabona has the ultimate responsibility for compliance. It is not sufficient defense to argue that his employees knew they were supposed to watch him. Moreover, in this case, Dr. Villabona has challenged the credibility of the very persons he says were supposed to do the monitoring. He cannot then claim in good faith that they were providing adequate adult supervision.

⁴ The Order requiring an adult to be physically in the room was not in place at the time of the incident and arose as the temporary suspension hearing in this matter and is not applicable to the facts in September of 2005.

The Panel also disagrees with Dr. Villabona's suggestion that he did not treat the minor patient in the TV/Toy room when he was alone with her. The treatment of a psychiatric patient begins when the doctor starts talking to the patient.

ADDITIONAL BOARD CONCLUSIONS OF LAW

After giving full consideration to Hearing Panel Report and the arguments of the parties the Board concludes, as did the Hearing Panel, that State has sustained its burden of establishing by a preponderance of the evidence that Dr. Villabona violated 24 *Del. C.* § 1731(b)(17).

Pursuant the 24 *Del. C.* § 1731(b)(17) unprofessional conduct includes:

(17) The violation of a provision of this chapter or the violation of an order or regulation of the Board related to medical procedures or to the procedures of other professions or occupations regulated under this chapter, the violation of which more probably than not will harm or injure the public or an individual.

The Board is bound by the Hearing Panel's finding of fact that no improper conduct occurred while Dr. Villabona was alone with the minor female patient. Mr. Shelsby stressed on behalf of Dr. Villabona that there was no improper conduct or harm to support the finding of a violation of 24 *Del. C.* § 1731(b)(17). The Board disagrees that no harm occurred.

Dr. Villabona's conduct in failing to abide by the terms of the Board's prior orders regarding adult supervision when treating patients under the age of eighteen (18) is clearly the type of behavior anticipated by the language in 24 *Del. C.* § 1731(b)(17). The required element of harm results from Dr. Villabona's willingness to disregard the Board's restrictions concerning his practice. The Board's orders regarding the treatment of minor patients were put in place for the protection of the public. We conclude that the violation of a Board order designed for the protection of the public

does harm the public and mandates disciplinary action. To conclude otherwise would render Board orders placing restrictions on a physician's practice meaningless.

BOARD DISCIPLINARY SANCTION

In imposing the disciplinary sanction in this case the Board has considered the Hearing Panel finding that there was no improper conduct as a mitigating factor. However, in this case the Hearing Panel's factual findings also clearly establish that Dr. Villabona had ample time to comply with the Board's restrictions and chose not to do so. The Board is not willing to allow Dr. Villabona to make a similar choice with regard to minor patients in the future.

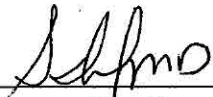
In addition, the Board finds that some period of prohibition against treating minor patients is warranted. Dr. Villabona's violation of the adult supervision restriction is the very basis of the complaint against him. The Board finds that it would achieve no disciplinary effect to simply continue that restriction, nor would it enhance public protection.

The Board therefore finds that the appropriate sanction for Dr. Villabona's violation of 24 *Del. C.* § 1731(b)(17) is as follows:


1. Dr. Villabona is placed on probation for a period of three (3) years from the effective date of this order;
2. Dr. Villabona shall provide the previously approved form of notice to his patients advising them that he is on probation;
3. During the period of probation Dr. Villabona is prohibited from treating any patients under the age of eighteen (18) years of age;

4. At the expiration of the probationary period Dr. Villabona may make written application to the Board to have his probationary status terminated and to modify the prohibitions against treating minors to enable him to treat patients under the age of (18) eighteen with adult supervision. Adult supervision is defined to require the physical presence of an adult, preferably a parent, in the same room as the patient under the age of eighteen (18).
5. The Board reserves jurisdiction, in connection with any further hearing, to determine whether any additional conditions or restrictions on Dr. Villabona's certificate to practice medicine are necessary to protect the public.

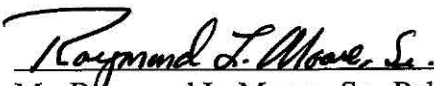
IT IS SO ORDERED THIS 6th DAY OF June, 2007.

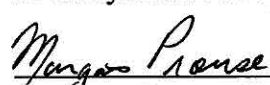

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Presiding


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Mr. Vance Daniels, Public Member


Nasreen Khan, D.O.


Mr. Raymond L. Moore, Sr., Public Member


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James Salva, M.D.

Lindsey M Slater M.D.
Lindsey Slater, M.D.

Roberto Villaseñor M.D.
Roberto Villaseñor, M.D.

Date Mailed: 6/07/07