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| IN THE MATTER OF | * | BEFORE THE |
| H. MICHAEL MEAGHER, M.D. | * | MARYLAND STATE |
| Respondent | * | BOARD OF PHYSICIANS |
| License Number: D17839 | * | Case Number: 2009-0923 |
| * * * * * | * | * * * * * |

CONSENT ORDER

On November 22, 2011, the Maryland State Board of Physicians (the "Board") charged H. Michael Meagher, M.D. (the "Respondent") (D.O.B. 11/15/1942), License Number D17839, under the Maryland Medical Practice Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 14-101 *et seq.* (1994, 2000, 2005 and 2009 Repl. Vols. and 2011 Supp.) and Code of Maryland Regulations ("COMAR") tit. 10, § 32.17.01 *et seq.*

Specifically, the Board charged the Respondent with violating the following provisions of the Act under H.O. § 14-404, which provide the following:

- (a) Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on the affirmative vote of a majority of the quorum, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:
 - (3) Is guilty of: (i) immoral conduct in the practice of medicine; or (ii) unprofessional conduct in the practice of medicine[.]¹

The Board also charged the Respondent with violating the following provisions of COMAR 10.32.17, which provide the following:

¹ Pursuant to Chapter 539, Acts 2007, effective June 1, 2007, H.O. § 14-404(a)(3) was rewritten. Prior to June 1, 2007, H.O. § 14-404(a)(3) stated as follows: Is guilty of immoral or unprofessional conduct in the practice of medicine.

10.32.17.01

This chapter prohibits sexual misconduct against patients or key third parties by individuals licensed or certified under Health Occupations Article, Titles 14 and 15, Annotated Code of Maryland.

10.32.17.02

- A. In this chapter, the following terms have the meanings indicated.
- B. Terms Defined.
- (1) Key third party.
- (a) "Key third party" means an individual who participates in the health and welfare of the patient concurrent with the physician-patient relationship.
- (b) "Key third party" includes, but is not limited to the following individuals:
- (i) Spouse;
 - (ii) Partner;
 - (iii) Parent;
 - (iv) Guardian;
 - (v) Surrogate; or
 - (vi) Proxy designated by durable power of attorney.
- (2) Sexual Impropriety.
- (a) "Sexual impropriety" means behavior, gestures, or expressions that are seductive, sexually suggestive, or sexually demeaning to a patient or a key third party regardless of whether the sexual impropriety occurs inside or outside of a professional setting.
- (b) "Sexual impropriety" includes, but is not limited to:
- (i) Failure to provide privacy for disrobing;
 - (ii) Performing a pelvic or rectal examination without the use of gloves;
 - (iii) Using the health care practitioner-patient relationship to initiate a dating, romantic, or sexual relationship; and
 - (iv) Initiation by the health care practitioner of conversation regarding the health care practitioner's sexual problems, sexual likes or dislikes, or fantasies.

(3) "Sexual misconduct: means a health care practitioner's behavior toward a patient, former patient, or key third party, which includes:

- (a) Sexual impropriety;
- (b) Sexual violation; or
- (c) Engaging in a dating, romantic, or sexual relationship which violates the code of ethics of the American Medical Association, American Osteopathic Association, American Psychiatric Association, or other standard recognized professional code of ethics of the health care practitioner's discipline or specialty.

(4) Sexual Violation.

(a) "Sexual violation" means health care practitioner-patient or key third party sex, whether or not initiated by the patient or key third party, and engaging in any conduct with a patient or key third party that is sexual or may be reasonably interpreted as sexual, regardless of whether the sexual violation occurs inside or outside of a professional setting.

(b) "Sexual violation" includes, but is not limited to:

- (i) Sexual intercourse, genital to genital contact;
- (ii) Oral to genital contact;
- (iii) Oral to anal contact or genital to anal contact;
- (iv) Kissing in a romantic or sexual manner;
- (v) Touching the patient's breasts, genitals, or any sexualized body part;
- (vi) Actively causing the patient or key third party to touch the health care practitioner's breasts, genitals, or any sexualized body part;
- (vii) Encouraging the patient to masturbate in the presence of the health care practitioner or masturbation by the health care practitioner while the patient is present;
- (viii) Offering to provide practice-related services, such as drugs, in exchange for sexual favors; and
- (ix) Intentionally exposing the health care practitioner's breasts, genitals, or any sexualized body part.

10.32.17.03

- A. Individuals licensed or certified under Health Occupations Article, Titles 14 and 15, Annotated Code of Maryland, may not engage in sexual misconduct.
- B. Health Occupations Article, §§ 14-404(a)(3) and 15-314(3), Annotated Code of Maryland, includes, but is not limited to sexual misconduct.

On January 4, 2012, a Case Resolution Conference was convened in this matter.

Based on negotiations occurring as a result of this Case Resolution Conference, the Respondent agreed to enter into this Consent Order, consisting of Procedural Background, Findings of Fact, Conclusions of Law, Order, and Consent.

FINDINGS OF FACT

The Board finds the following:

BACKGROUND FINDINGS

1. At all times relevant, the Respondent was and is licensed to practice medicine in the State of Maryland. The Respondent was originally licensed to practice medicine in Maryland on February 20, 1975, under License Number D17839. The Respondent's license is scheduled to expire on September 30, 2013.

2. The Respondent is board-certified in adult psychiatry and child and adolescent psychiatry.

3. The Respondent maintains a professional office at 4405 East West Highway, Suite 407, Bethesda, Maryland 20814.

4. The Board initiated an investigation after receiving a report from a professional society that stated that it had sanctioned the Respondent for sexual misconduct with a patient (referred to *infra* as the "Patient")².

5. The Board's investigative findings are set forth *infra*.

BOARD'S INVESTIGATIVE FINDINGS

Adverse Action Report

6. The Board initiated its investigation of the Respondent after reviewing an Adverse Action Report (the "Report") that was filed by the Director of the Office of Ethics of the American Psychiatric Association (the "APA"), which stated that the APA, after conducting an investigation of the Respondent in conjunction with the Washington Psychiatric Society (the "WPS"), sanctioned the Respondent for sexual misconduct with the Patient.

7. The Report stated,

PHYSICIAN WAS FOUND TO HAVE VIOLATED SECTION 1, ANNOTATION 1; SECTION 2, ANNOTATION 1; AND SECTION 8 OF THE "PRINCIPLES OF MEDICAL ETHICS WITH ANNOTATIONS ESPECIALLY APPLICABLE TO PSYCHIATRY," BY THE ETHICS COMMITTEES OF THE WASHINGTON PSYCHIATRIC SOCIETY AND THE AMERICAN PSYCHIATRIC ASSOCIATION. HE WAS FOUND TO HAVE COMMITTED A BOUNDARY VIOLATION WITH A PATIENT.

8. Section 1, Annotation 1 of the *Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry* (2009) states,

Section 1, Annotation 1

A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights.

² To protect confidentiality, patient names will not be used in this Consent Order. The Respondent is aware of the identities of all individuals referenced in this Consent Order.

1. A psychiatrist shall not gratify his or her own needs by exploiting the patient. The psychiatrist shall be ever vigilant about the impact that his or her conduct has on the boundaries of the doctor-patient relationship, and thus upon the well-being of the patient. These requirements become particularly important because of the essentially private, highly personal, and sometimes intensely emotional nature of the relationship established with the psychiatrist.

9. Section 2, Annotation 1 of the *Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry* (2009) states,

Section 2, Annotation 1

A physician shall uphold the standards of professionalism, be honest in all professional interactions and strive to report all physicians deficient in character or competence, or engaging in fraud or deception to appropriate entities.

1. The requirement that a physician conduct himself/herself with propriety in his or her profession and in all the actions of his or her life is especially important in the case of the psychiatrist because the patient tends to model his or her behavior after that of his or her psychiatrist by identification. Further, the necessary intensity of the treatment relationship may tend to activate sexual and other needs and fantasies on the part of both patient and psychiatrist, while weakening the objectivity necessary for control. Additionally, the inherent inequality in the doctor-patient relationship may lead to exploitation of the patient. Sexual activity with a current or former patient is unethical.

10. Section 8 of the *Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry* (2009) states,

Section 8

A physician shall, while caring for a patient, regard responsibility to the patient as paramount.

11. The APA sanctioned the Respondent for having a ten-year sexual involvement with the Patient, to whom he had provided long-term psychoanalysis and other psychiatric services. The APA sanctioned the Respondent by suspending him

from the APA and the WPS for a period of five (5) years, commencing on June 1, 2009; requiring that he obtain practice supervision provided by a senior WPS psychiatrist; and requiring that he enroll in the Maryland Physician Health Program, administered by the Maryland Medical Society (also known as "Med-Chi").

12. As part of its investigation, the Board requested that the Respondent provide a response to this Report and allegations of boundary violations.

The Respondent's admission to the Board

13. By letter to the Board, dated November 18, 2009, the Respondent stated that during the course of providing psychoanalysis to the Patient, he developed sexual feelings for her, which culminated in his violation of "proper boundaries." The Respondent admitted to engaging in a ten year sexual relationship with the Patient that commenced in 1994 and ended in 2004. The Respondent stated that after the Patient terminated her involvement with him, he continued to contact her, which led her to file a complaint against him with the WPS. The Respondent acknowledged that the APA sanctioned him for his misconduct.

Further Board investigation

14. The Board's investigation determined that the Respondent engaged in immoral and unprofessional conduct in the practice of medicine and violated the Board's sexual misconduct regulations by entering into and engaging in an impermissible sexual relationship with the Patient for approximately ten years, from 1994 to 2004. As the Patient's treating psychiatrist, the Respondent had a professional duty to erect and maintain professional boundaries with her. Instead, the Respondent abdicated his professional role and exploited the Patient for his own self-gratification, despite knowing

that his actions were ethically impermissible. After the Patient extricated herself from the Respondent, he continued to pursue and harass her, which frightened her and caused her deep emotional distress.

15. The Patient, then in her mid-30s, began seeing the Respondent for twice-weekly psychotherapy in or around April 1989, according to the Respondent's records. In or around September 1989, the Respondent began psychoanalysis with the Patient, seeing her four times weekly. The Respondent also prescribed psychotropic medications for the Patient.

16. During the course of psychoanalysis, the Respondent sometimes offered to see the Patient for additional time after the conclusion of her sessions. He then offered to see the Patient five times weekly.

17. During a session in or around May 1994, the Respondent engaged in an inappropriate boundary violation with the Patient, initially by touching her, purportedly under the guise of a therapeutic maneuver. The Respondent did so despite knowing that the Patient had expressed intensely transference feelings towards him. The Respondent proceeded to engage in other forms of inappropriate physical contact with the Patient during the session.

18. After the conclusion of the session, the Respondent terminated providing psychoanalysis to the Patient. Instead, he arranged for the Patient to come to his office on scheduled occasions during his office hours, at which time he engaged in extensive self-disclosure to her about his personal life. The Respondent then started having sexual relations with the Patient in the same room where he previously provided

psychotherapy and psychoanalysis to her. Occasionally, the Respondent took the Patient out of the office to run errands or for other social purposes.

19. The Respondent did not refer the Patient to another psychiatrist or other mental health professional or document in his records his reasons for terminating the Patient's psychoanalysis.

20. The Respondent continued having a sexual and social relationship with the Patient for about the next ten years. During this time, the Patient experienced extreme anxiety about the relationship, going so far as to drink alcohol before coming to the Respondent's office. The Respondent continued to prescribe benzodiazepines and anti-depressant medications for the Patient despite previously terminating her as a patient. The Patient informed the Respondent of her desire to terminate the relationship but he made it impossible for her to do so.

21. The Respondent also engaged in other inappropriate and unprofessional acts while involved with the Patient. The Respondent prescribed a benzodiazepine for one of the Patient's friends, without establishing a treatment relationship or otherwise evaluating this individual.

22. The Patient began experiencing extreme anxiety about her involvement with the Respondent and consulted other mental health professionals in an attempt to disengage from the Respondent. During the latter period of the Patient's involvement with the Respondent, she regularly implored him to seek counseling for his mental health and alcohol-related issues.

23. In or around 2004, the Patient began treatment with a psychiatrist and disclosed the Respondent's sexual involvement with her and her inability to extricate

herself from him. During one therapy session, the Patient, in the psychiatrist's presence, telephoned the Respondent and instructed him not to have any further contact with her.

24. The Respondent refused to respect the Patient's instructions and repeatedly harassed her through various means. Against the Patient's wishes and her specific instructions, the Respondent frequently telephoned her, sent her letters, and appeared at her workplace and her residence. In these letters and other communications, the Respondent attempted to discourage the Patient from reporting him to any disciplinary authorities. The Respondent stated that he would do bodily harm to himself if she reported him to any authorities.

25. On several occasions, the Respondent showed up at the Patient's residence late at night, without invitation, in an intoxicated state, demanding to see her. The Respondent also appeared at the Patient's residence in the early morning, threatening to do harm to himself if she did not see him. The Patient experienced great emotional distress as a result of the Respondent's continual harassment of her.

26. The Patient was forced to take legal measures against the Respondent due to her fear of him. For example, on one occasion, on or about November 24, 2004, the Respondent appeared at the Patient's residence in the morning, demanding to see her. The Patient contacted the Rockville City Police Department, which sent police officers to the scene. The Patient took out a "Letter of Trespass Notification," in which the Respondent was instructed that he was no longer welcome at the Patient's residence. The Respondent was informed that if he violated the directive, he would be

subject to immediate arrest. The Respondent continued to violate the order, though, by purposefully driving past the Patient's residence.

27. The Patient also contacted an attorney, who sent the Respondent a letter, dated December 16, 2004, in which he advised him that the Patient wanted "no further contact with or from you," and that he was not to contact her in any manner. The letter stated, "...you have seriously damaged ... [the Patient] ... in a myriad number of ways. It should be sufficient for you to understand that any further contact by you increases the destruction that you have already wrought."

28. The Respondent continued to violate these warnings, at one point coming to the Patient's house at about midnight on or about March 12, 2005, in an intoxicated and irrational state, demanding to see her, which greatly frightened her.

29. After this incident, the Patient sent the Respondent a letter in which she informed him that if he continued to contact her, she would report him to the Board.

30. The Respondent stopped contacting the Patient for approximately two years. But on or about April 6, 2007, at about midnight, the Respondent came to the Patient's home, wanting to talk to her and hoping that he could be "just friends" with her. The Patient was shocked and frightened and did not open the door. She did not engage him in any conversation but repeatedly told him to leave. The Patient reported being "paralyzed" with fear as a result of the Respondent's intrusive behavior.

31. After this incident, the Patient filed a complaint with the WPS, which resulted in the disciplinary action referred to above.

32. The Respondent's actions, as described above, constitute: Is guilty of immoral conduct in the practice of medicine, in violation of H.O. § 14-404(a)(3)(i); and Is

guilty of unprofessional conduct in the practice of medicine, in violation of H.O. § 14-404(a)(3)(ii).

33. The Respondent's actions, as described above, constitute a violation of the Board's sexual misconduct regulations, COMAR 10.32.17 *et seq.* The Board's sexual misconduct regulations prohibit sexual misconduct against patients or key third parties by individuals licensed or certified under Health Occupations Article, Titles 14 and 15, Annotated Code of Maryland. COMAR 10.32.17.01. The Respondent engaged in sexual improprieties with the Patient, as defined in COMAR 10.32.17.02B(2); sexual misconduct with the Patient, as defined in COMAR 10.32.17.02B(2), and sexual violations with the Patient, as defined in COMAR 10.32.17.02B(4). The Respondent violated COMAR 10.32.17.03A when he engaged in sexual misconduct with the Patient, which according to COMAR 10.32.17.03B, also constitutes immoral and unprofessional conduct in the practice of medicine under H.O. § 14-404(a)(3).

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated the following provisions of the Act: Is guilty of immoral conduct in the practice of medicine, in violation of H.O. § 14-404(a)(3)(i); and is guilty of unprofessional conduct in the practice of medicine, in violation of H.O. § 14-404(a)(3)(ii).

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated its sexual misconduct regulations, found at COMAR 10.32.17 *et seq.*: The Board's sexual misconduct regulations prohibit sexual misconduct against patients or key third parties by individuals licensed or certified under Health Occupations Article, Titles 14 and 15, Annotated Code of Maryland. COMAR

10.32.17.01. The Respondent engaged in sexual improprieties with the Patient, as defined in COMAR 10.32.17.02B(2); sexual misconduct with the Patient, as defined in COMAR 10.32.17.02B(2), and sexual violations with the Patient, as defined in COMAR 10.32.17.02B(4). The Respondent violated COMAR 10.32.17.03A when he engaged in sexual misconduct with the Patient, which according to COMAR 10.32.17.03B, also constitutes immoral and unprofessional conduct in the practice of medicine under H.O. § 14-404(a)(3).

ORDER

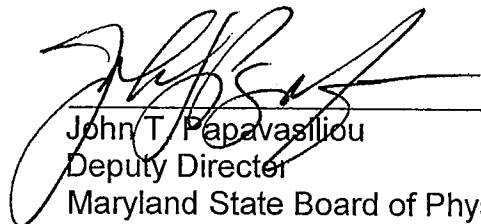
Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 23rd day of February, 2012, by an affirmative vote of a majority of a quorum of the Board considering this case:

ORDERED that the Respondent's medical license in the State of Maryland is hereby **REVOKED**, to commence on the date the Board executes this Consent Order; and it is further

ORDERED that the Respondent shall not apply for reinstatement of his medical license for a period of not less than **FIVE (5) YEARS** from the date the Board executes this Consent Order; and it is further

ORDERED that this Consent Order is a **PUBLIC DOCUMENT** pursuant to Md. State Gov't. Code Ann. §§ 10-611 *et seq.* (2009 Repl. Vol. and 2011 Supp.).

2/23/2012
Date



John T. Papavasiliou
Deputy Director
Maryland State Board of Physicians


CONSENT

I, H. Michael Meagher, M.D., acknowledge that I have had the opportunity to consult with counsel before signing this document. By this Consent, I agree and accept to be bound by this Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact and Conclusions of Law.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections as provided by law. I acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I also affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing.

I sign this Consent Order after having had an opportunity to consult with counsel, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order. I voluntarily sign this Order, and understand its meaning and effect.

1/26/2012
Date



H. Michael Meagher, M.D.
Respondent

Read and approved:

1/26/12
Date

Rose M. Matricciani
Rose M. Matricciani, Esquire
Counsel for Dr. Meagher

NOTARY

STATE OF Maryland
~~CITY/COUNTY OF:~~ Baltimore

I HEREBY CERTIFY that on this 26th day of January, 2012, before me, a Notary Public of the State and County aforesaid, personally appeared H. Michael Meagher, M.D., and gave oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

AS WITNESS, my hand and Notary Seal.

Linda S. Lee
Notary Public

My commission expires: 8/29/2013