

IN THE MATTER OF	*	BEFORE THE
JAMES S. KEHLER, M.D.	*	STATE BOARD OF PHYSICIAN
Respondent	*	QUALITY ASSURANCE
License Number: D08616	*	Case Number: 98-0396

* * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

The State Board of Physician Quality Assurance (the "Board"), on August 26, 1998, voted to charge James S. Kehler, M.D. (the "Respondent") (D.O.B. 6/1/37), License Number D08616, with violating the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. ("H.O.") §14-404(a) (3) and (22) (1994).

Specifically, the Board charged that the Respondent:

- (3) Is guilty of immoral or unprofessional conduct in the practice of medicine; and
- (22) Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State.

On March 10, 1999, a conference with regard to this matter was held before the Case Resolution Conference (the "CRC"). As a result of negotiations entered into before the CRC, 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

1. At all times relevant to the charges herein, 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 September 17, 1970, having been issued License Number D08616.

2. The Respondent specializes in the practice of psychiatry and maintains an office at 99 Cathedral Street, Annapolis, Maryland.

3. In 1987, Patient A¹, a woman from the Central Maryland area, sought psychiatric care from the Respondent for family and interpersonal issues.

4. Patient A commenced receiving psychiatric care from the Respondent in April 1987 and concluded psychotherapy with the Respondent at the end of December 1987. Patient A generally saw the Respondent once per week or more frequently during this time period (approximately fifty-one (51) visits). During the course of psychotherapy, Patient A developed an intense transference toward the Respondent, which Patient A and the Respondent discussed during psychotherapy.

5. After the conclusion of psychotherapy, Patient A engaged in a series of contacts with the Respondent in which she attempted to address unresolved issues regarding the psychotherapy. These contacts included personal meetings with the Respondent, and a letter Patient A sent to the Respondent, dated February 1, 1990, in which Patient A expressed continuing difficulties she was having with regard to

¹For confidentiality purposes, the patient's name is not set forth in this Consent Order. The Respondent is aware of the identity of Patient A.

transference and therapy termination issues associated with her psychotherapy with the Respondent.

6. During the period 1988 through 1993, Patient A and the Respondent also encountered each other in social situations in the community in which they lived. From about 1991 onward, the Respondent and Patient A established a social relationship, which included their spouses, in which they socialized together and pursued common interests. During this time, Patient A continued to discuss interpersonal issues with the Respondent, and also discussed these issues with the Respondent's wife. In turn, the Respondent disclosed to Patient A information regarding his family and personal life.

7. In or about August 1993, the Respondent and Patient A became involved in a sexual relationship. The Respondent and Patient A engaged in sexual relations in the Respondent's office, as well as other locations in the community. Patient A often met the Respondent at his office for these encounters, frequently after the Respondent's office hours. At other times, Patient A met with the Respondent at his office during office hours; on at least one occasion, another patient was waiting in the waiting room during this encounter.

8. During this time, the Respondent disclosed further personal details about himself, and professed his emotional feelings for Patient A. In addition, the Respondent communicated with Patient A in other ways. For example, these included the Respondent's rental of a post office box, through which he and Patient A both exchanged letters and cards.

9. The Respondent also provided Patient A with the private access code to his

office answering machine, on which he left long verbal messages for Patient A. The Respondent's other patients left messages for him on this same office answering machine. When Patient A retrieved the Respondent's messages to her, she also heard confidential messages recorded by the Respondent's patients, who identified themselves by name on the answering machine.

10. During this relationship, which lasted for approximately one (1) year, the Respondent also gave gifts and other personal items, such as photographs of himself, to Patient A.

11. At one of the points at which Patient A was considering terminating her relationship with the Respondent (during the spring of 1994), Patient A requested that the Respondent speak to Patient A's sibling, who was then living in another state. The Respondent spoke to Patient A's sibling by telephone over the next few months, often several times a week for extended periods of time. During these telephone calls, the Respondent expressed his despondency and anger over the end of his relationship with Patient A. Patient A's sibling encouraged the Respondent to seek professional counseling with regard to this matter.

12. On or about October 26, 1997, Patient A's husband submitted a complaint to the Board which alleged that the Respondent engaged in a sexual relationship with Patient A after having provided psychotherapy to her.

13. On or about April 17, 1998, the Board referred this matter for investigation

to the Peer Review Management Committee (the "PRMC") of the Medical and Chirurgical Faculty of Maryland. The PRMC assigned this investigation to the Maryland Psychiatric Society Peer Review Committee (the "PRC").

14. As part of its investigation, the PRC examined the Respondent's psychiatric records, and a letter from the Respondent's attorney which characterized the Respondent's actions and version of events with regard to his involvement with Patient A. The PRC also interviewed the Respondent, Patient A, and other individuals with knowledge of this matter.

15. In his original response from counsel, the Respondent admitted to having a sexual relationship with Patient A, characterizing it as a "blurring of boundaries" with a "former patient." In his interview with the PRC, the Respondent maintained that because of Patient A's agenda and "inability to see herself as a patient," he believed that she never was really a patient, and that because of the duration of therapy, a transference had not developed.

16. The PRC reported its findings to the Board on June 26, 1998. The PRC expressed great concern about the Respondent's perspective regarding his involvement in this case, and concluded that the Respondent clearly violated the standard of care.

17. In its report to the Board, the PRC stated that:

It is the opinion of the committee that Dr. Kehler did not meet the standard of care. He engaged in a sexual relationship with a former patient and was unable to appreciate the influence of transference in this woman's behavior. At no time did he seek formal or informal consultation with a colleague to discuss possible ways to deal with the blurring of boundaries that culminated in this sexual relationship. If he truly believes that this woman was never "really" a patient, he demonstrates no understanding of the therapeutic relationship and

the phenomenon of transference. In addition, he had made insufficient efforts to secure the confidentiality of his other patients.

18. The Respondent's conduct, as described above, constitutes unprofessional conduct in the practice of medicine, and a failure to meet appropriate standards for the delivery of quality medical and surgical care.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes that the Respondent committed prohibited acts under the Act, H.O. §14-404 (a) (3) and (22). Accordingly, the Board concludes as a matter of law that the Respondent is guilty of unprofessional conduct in the practice of medicine; and failed to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, hospital or any other locations in this State.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 14th day of APRIL, 1999, by a majority of the full authorized membership of the Board considering this case:

ORDERED that the Respondent's license to practice medicine in the State of Maryland be and is **SUSPENDED** for a period of **SIX (6) MONTHS**, effective May 1, 1999; and be it further

ORDERED that the Respondent shall pay to the Board a civil fine in the amount of Twenty Thousand Dollars (\$20,000.00), payable in full prior to the expiration of the **SIX (6) MONTH** suspension period referred to above. If the Respondent does not pay the fine in

full prior to the expiration of the suspension period referred to above, the Respondent's medical license shall remain suspended until such time as the Respondent pays the fine. The Respondent shall submit the fine to the Board by certified check, payable to the "Maryland Board of Physician Quality Assurance"; and be it further

ORDERED that the Respondent, during the period of active suspension imposed above, shall enroll in and successfully complete a Board-approved medical ethics course concentrating on patient-therapist boundary issues. The Respondent may not utilize this course to satisfy any continuing medical education credit requirements mandated for medical licensure in Maryland. The Respondent shall be responsible for all costs associated with enrollment in this medical ethics course; and be it further

ORDERED that within thirty (30) days of the execution of this Consent Order by the Board, that date being on which the Board signs this Consent Order, the Respondent shall be evaluated by a Board approved psychiatrist (the "evaluating psychiatrist"), subject to the following:

1. The Board will select the practitioner who will conduct this psychiatric evaluation in conjunction with the Maryland Psychiatric Society Peer Review Committee;
2. The evaluating psychiatrist shall receive a copy of this Consent Order, the original Complaint and charging document, and may receive any other materials in the Board's possession at the discretion of the Board;
3. The evaluating psychiatrist shall submit a written report to the Board

regarding his/her findings. In his/her report, the evaluating psychiatrist shall make specific recommendations regarding whether the Respondent should undergo psychotherapy with a Board-approved psychiatrist, and participate in any other psychotherapeutic treatment;

4. The Respondent shall request that the evaluating psychiatrist submit his/her written report to the Board within fifteen (15) business days after the Respondent's evaluation; and

5. The Respondent shall be responsible for all costs associated with this evaluation; and be it further

ORDERED that if recommended by the evaluating psychiatrist, the Respondent shall enter into psychotherapy, subject to the following terms and conditions:

1. The treating psychiatrist shall submit written reports to the Board Compliance division on a quarterly basis indicating whether the Respondent: (a) is attending the psychotherapy sessions as ordered; and (b) is paying for these sessions pursuant to the agreement reached between the Respondent and the treating psychiatrist;

2. The treating psychiatrist shall receive this Consent Order, the original Complaint and charging document, and may receive other materials in the Board's possession at the discretion of the Board;

3. The Respondent shall be responsible for all costs associated with psychotherapy with the treating psychiatrist; and be it further

ORDERED that at the end of the **SIX (6) MONTH** period of active suspension of the Respondent's medical license imposed above, the Respondent may petition the Board for a **STAY** of the suspension imposed and for reinstatement of his medical license. Upon the

Respondent's submission of a petition for reinstatement to the Board, a CRC shall be granted to consider this petition. The Respondent understands and agrees that in the event that he does not fulfill the conditions referred to above, he may not petition the Board for reinstatement of his medical license until he fulfills such conditions. The Respondent further agrees that if he does not fulfill any of the above conditions, the Board reserves the right to extend the period of suspension of his license until he fulfills such conditions; and be it further

ORDERED that prior to petitioning the Board for reinstatement, and within one (1) month of the conclusion of the six (6) month period of suspension, the Respondent shall be re-evaluated by the original evaluating psychiatrist, who will evaluate the Respondent to determine the Respondent's current fitness to return to the practice of medicine and psychiatry. The evaluating psychiatrist shall address in his/her report whether any additional conditions shall be placed on the Respondent's license upon the Board's reinstatement of the Respondent's license. In the event that the evaluating psychiatrist recommends that additional conditions be placed on the Respondent's license, the CRC will address whether the recommendations of the evaluating psychiatrist should be adopted by the Board. The Respondent agrees to comply with the conditions approved by the Board as a condition of reinstatement of his license by the Board. The evaluating psychiatrist shall submit a written final evaluation to the Board which addresses these issues within fifteen (15) business days of the evaluation. The Respondent shall be responsible for all costs associated with this re-evaluation by the evaluating psychiatrist; and be it further

ORDERED that if the Board reinstates the Respondent's medical license, the Respondent shall be placed on **PROBATION** for a period of **THREE (3) YEARS**, subject to the following terms and conditions:

1. The Respondent's psychiatric and medical practice shall be supervised by a psychiatric supervisor during the period of probation referred to above, subject to the following: (a) the Respondent shall submit the name of this proposed psychiatric supervisor to the Board, through the Board Compliance division, no later than thirty (30) days prior to petitioning the Board for reinstatement of his license; (b) the Respondent understands and agrees that the Board will consult with the Maryland Psychiatric Society Peer Review Committee to determine whether to approve the candidate the Respondent proposes to fulfill this condition, and the Board may withdraw consent of a psychiatric supervisor at any time and order the appointment of a new psychiatric supervisor; (c) the Respondent shall arrange for and be subject to supervision of his practice by the psychiatric supervisor prior to applying for reinstatement; (d) the period of supervision shall be determined by the Board based on the recommendation of the CRC, which shall consider the reports of the psychiatric supervisor; (e) the Respondent shall meet with the psychiatric supervisor at least once per month; (f) the psychiatric supervisor shall supervise the Respondent's professional work with patients, with special attention to psychiatrist-patient boundary issues; (g) the Respondent shall comply with all recommendations made by the psychiatric supervisor with respect to his practice of psychiatry and medicine; (h) the psychiatric supervisor shall submit quarterly written reports to the Board's Compliance division regarding the content of the psychiatric supervision including, but not limited to, the

Respondent's: clinical practice; boundary issues; ability to identify and address problems; ability to practice independently; cooperation with the supervisor; and attendance; (i) after the mandatory psychiatric supervision, the psychiatric supervisor shall submit to the Board's Compliance division a written report which addresses whether any further professional supervision is necessary; (j) the Respondent agrees to comply with the recommendations of the psychiatric supervisor with regard to further psychiatric supervision; (k) the Respondent shall be responsible for all costs associated with this psychiatric supervision;

3. The Respondent may be subject to annual peer reviews in the discretion of the Board. The peer review committee, if assigned, shall receive a copy of this Consent Order, the original Complaint and charging document, and may receive any other materials in the Board's possession at the discretion of the Board. The Respondent will receive a copy of the peer review report and shall follow any recommendations made in the report that are endorsed by the Board. If the peer review report indicates to the Board that the Respondent's practice fails to conform to the Act, the Board reserves the right to modify the terms and conditions of this Consent Order and may impose any additional sanctions it deems appropriate; and be it further

ORDERED that the Respondent shall practice in accordance with the Act; and be it further

ORDERED that after conclusion of the probationary period imposed under this Consent Order, the Respondent may petition the Board for termination of his probationary status without further conditions or restrictions. If the Respondent has satisfactorily

complied with all conditions of probation, and there are no outstanding complaints regarding the Respondent's practice, the Respondent may petition the Board for termination of probation without further conditions or restrictions after the **THREE (3) YEAR** period of probation imposed under this Consent Order; and be it further

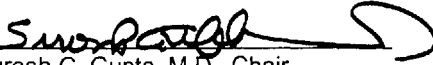
ORDERED that pursuant to Md. Code Ann., State Gov't §10-226(c) and COMAR 10.32.05, the Respondent is subject to summary suspension if an investigation or peer review indicates to the Board that there is a substantial likelihood of a risk of serious harm to public health, safety or welfare by the Respondent; and be it further

ORDERED that if the Respondent violates any of the terms of the Respondent's probation, the Board, after notice and a hearing, and a determination of violation, may lift the stay of suspension and may impose any other disciplinary sanctions it deems appropriate, said violation of probation being proved by a preponderance of evidence; and be it further

ORDERED that the Respondent shall be responsible for all costs incurred under this Consent Order; and be it further

ORDERED that this Consent Order is considered a public document pursuant to Md. Code Ann., State Gov't §10-611 et seq.

4.14.99
Date


Suresh C. Gupta, M.D., Chair
Maryland State Board of
Physician Quality Assurance

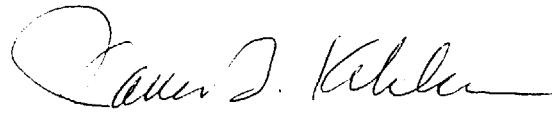
CONSENT

I, James S. Kehler, M.D., acknowledge that I am represented by legal counsel, and I have had the opportunity to consult with counsel before signing this document. By this consent, I hereby admit the Findings of Fact and Conclusions of Law, and submit to the foregoing Consent Order consisting of 14 pages.

I acknowledge the validity of this Consent Order as if entered 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 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 an opportunity to consult with counsel, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

4/13/99
Date


James S. Kehler, M.D.

STATE OF MARYLAND

CITY/COUNTY OF Anne Arundel

I HEREBY CERTIFY that on this 13 day of April, 1999, before me, Notary Public of the State and City/County aforesaid, personally appeared James S. Kehler, M.D., and made oath in due form of law that the foregoing Consent was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.

Lachlan Stevens
Notary Public

My Commission Expires: My Commission Expires August 31, 2002