

IN THE MATTER OF \* BEFORE THE  
ESTHER C. ESTWICK, M.D. \* STATE BOARD OF PHYSICIAN  
Respondent \* QUALITY ASSURANCE  
License Number: D18134 \* Case Number: 95-0666

\* \* \* \* \*

CONSENT ORDER  
BACKGROUND

The State of Maryland Board of Physician Quality Assurance (the "Board") charged Esther C. Estwick, M.D. (the "Respondent") (D.O.B. 11/17/41), License Number D18134, under the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. ("H.O.") §14-404 (1994) on November 20, 1996. The Board charged that the Respondent violated the following pertinent provisions of H.O. §14-404 which provide:

(a) Subject to the hearing provision of §14-405 of this subtitle, the Board, on the affirmative vote of a majority of its full authorized membership, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

(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;

(27) Sells, prescribes, gives away, or administers drugs for illegal or illegitimate medical purposes.

The Respondent received notice of the charges by certified mail service on February 3, 1997. Thereafter, on April 16, 1997, the Board held a Case Resolution Conference ("CRC"). As a result of the CRC and the negotiations entered into between the Office of the Attorney General, by Jean Baron, Assistant Attorney General, Administrative Prosecutor, and the Respondent, represented by Benjamin S. Vaughan, Esquire and Pamela Kincheloe, Esquire, the Respondent agreed to enter into the following Consent Order according to the terms set forth below.

**FINDINGS OF FACT**

1. At all times relevant to these charges, the Respondent was and is a physician licensed to practice medicine in the State of Maryland, engaging in the practice of psychiatry. She was initially licensed in Maryland on June 19, 1975.

2. On or about March 7, 1995, the Board received a complaint/report and drug survey from the State of Maryland's Division of Drug Control ("DDC") regarding the Respondent's prescribing practices with respect to Patient A.<sup>1</sup>

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<sup>1</sup>To ensure confidentiality, patient names are not set forth in this document.

1. Subsequently, the Board opened an investigation into this matter and on or about May 8, 1995 requested the DDC to perform an additional drug survey.

2. On or about July 11, 1995, the DDC forwarded the report of the second drug survey to the Board.

3. On July 28, 1995, the Board referred the matter for an investigation and review to the Medical and Chirurgical Faculty of Maryland ("Med-Chi") Peer Review Management Committee ("PRMC"). Subsequently, Med Chi PRMC referred the case to the Suburban Maryland Psychiatric Society ("SMPS").

4. The SMPS Peer Review Committee ("PRC") conducted the review, and then issued a report to the Board dated July 31, 1996, finding that the Respondent overprescribed or inappropriately prescribed controlled dangerous substance ("CDS") drugs; and with respect to Patient A, failed to meet the standard of care for the delivery of quality medical care, including prescribing of CDS to an addicted patient, lacking knowledge of CDS use, including methadone, lacking knowledge of pain management, and failing to utilize appropriate referrals and consultations. The SMPS PRC also noted that the Respondent had prescribed large amounts of benzodiazepines to several patients from the second drug survey (e.g. Patient B) and had maintained Patient C, according to the

Respondent a former heroin addict, on methadone for a one (1) year period.

**PATIENT A**

5. The Respondent treated Patient A, a forty year old female, from January 1994 to about March 1995. When Patient A first consulted the Respondent, she presented with a history of CDS drug use--narcotics, including methadone, and benzodiazepines--and with a complaint of chronic back pain. The Respondent's diagnoses of Patient A were major depression, substance abuse, panic disorder and chronic pain.

6. Specifically, when initially seen in January 1994, Patient A was on the following drugs:

- **methadone** ("on **methadone** maintenance"), Schedule II CDS, 60 mg. per day;
- **Duragesic Patch**, Schedule II CDS, 75 mg. every 3 days;
- **Klonopin**, Schedule IV CDS, 2 mg. per day, plus 1-2 mg. prn (when necessary) per day;
- **Elavil**, 150 mg. per day; and
- **Tagamet**, 400 mg. bid (two times per day).

7. During the course of, and by the end of Patient A's treatment in or around March 1995, the Respondent, in addition to

the above drugs, prescribed or, was also prescribing to Patient A the following:

- **Percocet**, Schedule II CDS;
- **Roxicet**, Schedule II CDS;
- **Codeine Sulfate**, Schedule II CDS;
- **Vicodin**, Schedule III CDS;
- **Xanax**, Schedule IV CDS; and
- **Prozac**.

In addition, the Respondent had increased the amount of **methadone** to 80 mg. per day.

8. The Respondent breached the standard of care as follows:
  - a. continued use of multiple CDS opioids, narcotics, and benzodiazepines in addicted patient;
  - b. failure to obtain chemical dependency consultation, and failure to enlist appropriate consultation regarding the addiction;
  - c. failure to obtain appropriate consultation for and to institute implementation of structured program of drug monitoring;
  - d. failure to enlist appropriate consultation regarding organized chemical dependency program certified and familiar with the monitoring and prescribing of high doses of methadone;
  - e. failure to understand and employ alternative strategies of pain management;

- f. failure to enlist appropriate consultation through a pain clinic, and failure to refer to pain management clinic;
- g. lack of knowledge about methadone treatment and prescription of methadone generally and to addict;
- h. lack of knowledge regarding the continued prescribing of CDS to known drug addict; and
- i. lack of knowledge regarding the prescribing of methadone and relevant laws controlling the prescriptions of narcotics to drug dependent persons.

#### CONCLUSIONS OF LAW

Based on the Findings of Fact, the Board concludes, as a matter of law, the following:

The Respondent failed to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical care in violation of MD. CODE ANN., HEALTH OCC. §14-404(a) (3) (1994); and

The Respondent prescribed drugs for illegitimate medical purposes in violation of MD. CODE ANN., HEALTH OCC. §14-404(a) (27) (1994).

ORDER

Based upon the foregoing Findings of Facts and Conclusions of Law, it is this 28th day of May, 1997 by the State of Maryland Board of Physician Quality Assurance:

**ORDERED** that the Respondent be and she is hereby **REPRIMANDED**; and it is further

**ORDERED** that within one (1) month of the effective date of this Consent Order, that date being the date on which the Board executes this Consent Order, the Respondent shall obtain a Board-approved physician supervisor, whose practice is in the same speciality as the Respondent's, to monitor and review the Respondent's prescribing of controlled dangerous substances ("CDS"), and that the Respondent shall be prohibited from prescribing any CDS narcotics<sup>2</sup> without the approval of the supervising physician.

1. The Board and the Respondent both acknowledge that the supervising physician shall be participating in and contributing to the Board's function as a medical review committee, and, as such, both parties acknowledge that the

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<sup>2</sup>The term "narcotics" refers to and applies to drugs of opium, opium derivatives and their semisynthetic or totally synthetic substitutes, and includes, but is not limited to, CDS drugs of Morphine, Hydrocodone, Hydromorphone, Levo-alpha-acetyl methadol (LAAM), Meperidine, Oxycodone, Oxymorphone, Codeine, Methadone, and Fentanyl.

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supervising physician shall be immune from liability in accordance with H.O. §14-501, or any successor provision, when performing the function of a medical review committee.

2. The terms of the supervision shall be as follows:

- (a) Within four (4) weeks of the effective date of this Consent Order, the supervision shall begin, shall occur on at least a weekly basis, and shall continue for a six (6) month period.
- (b) After the expiration of six (6) months of supervision, the Respondent may submit a written petition to the Board for termination of the supervisory requirement, subject to written approval by the supervising physician.
- (c) The Respondent shall meet with the supervising physician to review and evaluate the Respondent's CDS prescribing. The supervising physician will determine how much time is needed for each session to review the Respondent.
- (d) The Respondent shall not prescribe any CDS narcotic without approval of the supervising physician.

- (e) The Respondent shall make arrangements for the supervising physician to notify the Board in writing of the supervisor's acceptance of the responsibilities described in this Consent Order.
- (f) The Respondent shall make arrangements for the supervising physician to submit bi-monthly reports to the Board addressing the Respondent's attendance, participation, and medical practice, including evaluation and monitoring of CDS prescribing. In the bi-monthly reports, the supervising physician will also relate whether the Respondent is paying the costs of the supervision as required by subsection (h) below.
- (g) The Board must approve and ratify any changes in supervision based upon the supervising physician's reports.
- (h) The Respondent shall pay any and all costs associated with the supervisory arrangement described in this Consent Order. If the Respondent fails to pay the costs pursuant to the arrangement, then the supervising physician will notify the Board. Failure to pay all costs pursuant to the

arrangement shall be deemed a breach of and violation of this Consent Order.

- (i) If the Respondent fails to attend the supervisory sessions, then the supervising physician shall immediately notify the Board, with the exception that in the instances of medical or other true emergencies, the Respondent shall be permitted to reschedule a session (or sessions) subject to the approval of the supervising physician with the six (6) month period of supervision as described above to be adjusted and extended accordingly. The Respondent's failure to attend shall be deemed a breach of and violation of this Consent Order.
- (j) If the supervising physician believes that the Respondent is a danger to her patients, or is not competent to practice medicine, or has violated this Order, then the supervising physician shall immediately notify the Board.

**AND BE IT FURTHER ORDERED** that within one (1) month of the effective date of this Consent Order, the Respondent shall enroll in, and within six (6) months of the effective date of this Consent Order, the Respondent shall attend and successfully complete, a

Board-approved intensive educational course on the proper prescribing of controlled dangerous substances, including narcotics addition, narcotic treatment programs and mandatory registration, and use and prescription of methadone. The Respondent shall take and successfully complete the aforementioned course in addition to her yearly required continued medical education (CME) licensure requirements.

1. The Respondent shall submit a certificate of attendance to the Probation Office of the Board, within thirty (30) days of completion of the aforementioned course. The Respondent further acknowledges and understands that failure to abide by these enrollment, attendance, completion and submission terms shall be deemed a breach of and violation of this Consent Order.

2. The Respondent acknowledges, understands and agrees that the enrolling in, attending and completing the requisite course and submitting proof of same to the Board is the sole responsibility of the Respondent. The Respondent further acknowledges and understands that failure to abide by these enrollment, attendance, completion and submission terms shall be deemed a breach of and violation of this Consent Order.

**AND BE IT FURTHER ORDERED** that the Respondent shall undergo peer review, to include a review of prescription of CDS, including narcotics, approximately one (1) year after the effective date of this Consent Order; thereafter, peer reviews will be conducted at the discretion of the Board.

**AND BE IT FURTHER ORDERED** that if the Respondent fails to comply with any of the terms or conditions set forth herein or fails to obtain a non-deficient peer review, then her failure shall be deemed a violation of this Consent Order; and be it further

**ORDERED** that if the Respondent violates any of the terms or conditions of this Consent Order as set forth herein, including a non-deficient peer review, then the Board, after determination of violation and notice and an opportunity for a hearing, may impose any other disciplinary sanctions it deems appropriate, including suspension or revocation, said violation being proved by a preponderance of evidence; and be it further

**ORDERED** that if the Board has probable cause to believe that the Respondent presents a danger to the public health, safety and welfare, the Board, without prior notice and an opportunity for a hearing, may impose any other disciplinary sanctions it deems appropriate, including suspension or revocation, provided that the Respondent is given notice of the Board's action and an opportunity

for a hearing within thirty (30) days after requesting same in accordance with MD. CODE ANN., STATE GOV'T §10-226 (1995); and be it further


**ORDERED** that after successful completion of all terms and conditions set forth in this Consent Order, the Respondent may submit a petition to the Board for termination of conditions and restrictions, and reinstatement of her license without any conditions or restrictions provided that she has been peer reviewed at least once, was not deficient in the peer review, has fulfilled all of the terms and conditions set forth herein, is not in violation of this Consent Order, and that there are no outstanding complaints against the Respondent; 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. (1995).

5-28 '97

Date

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

CONSENT

I, Esther C. Estwick, M.D., acknowledge that I am represented by legal counsel and have had an opportunity to consult with counsel before entering into and signing this document. By this Consent, and in order to resolve these matters, I agree to accept the Findings of Fact and Conclusions of Law contained herein. Accordingly, I accept and submit to the foregoing Consent Order, consisting of fifteen (15) pages.

I acknowledge the validity of this Consent Order and I acknowledge that I am waiving my right to 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 the laws of the State of Maryland. 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 acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order.

I sign this Consent Order, after having read and reviewed it and after having had an opportunity to consult with counsel, without reservation, as my voluntary act and deed, and I

acknowledge that I fully understand and comprehend the language,  
meaning, terms and effect of this Consent Order.

May 8 1997  
Date

Esther C. Estwick  
Esther C. Estwick, M.D.  
Respondent

Read and approved:

5-9-97  
Date  
5/8/97  
Date

Benjamin S. Vaughan  
Benjamin S. Vaughan, Esquire  
Pamela Kincheloe  
Pamela Kincheloe, Esquire  
Attorneys for the Respondent

**NOTARY**

STATE OF Maryland

CITY /COUNTY OF Montgomery

I HEREBY CERTIFY that on this 8th day of May,  
1997, before me, a Notary Public of the State and City/County  
aforesaid, personally appeared Esther C. Estwick, M.D. and made  
oath in due form of law that the foregoing Consent Order was his  
voluntary act and deed.

AS WITNESS my hand and notarial seal.

Jacalyn M. Toft  
Notary Public

My Commission expires: 9/1/99

C:\JB2\ESTWCK#8.CO  
April 29, 1997