



IN THE MATTER OF \* BEFORE THE STATE BOARD OF  
ANTHONY GAROFANO, M.D. \* PHYSICIAN QUALITY  
Respondent \* ASSURANCE  
License Number D01143 \* Case Number 90-0455

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CONSENT ORDER

BACKGROUND

On December 11, 1991, the State Board of Physician Quality Assurance (the "Board"), pursuant to its authority under Md. Health Occ. Code Ann., §14-404, charged Anthony Garofano, M.D. (the "Respondent"), (D.O.B. 5/26/29), License Number D01143, under the Maryland Medical Practice Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §14-404. The pertinent provisions of §14-404 provide:

(a) Subject to the hearing provisions 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:

(3) Is guilty of immoral ... conduct in the practice of medicine;<sup>1</sup>

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<sup>1</sup>The basis of the allegations against Respondent was conduct that occurred between 1983 and 1988. The applicable statute in effect at that time was Md. Health Occ. Code Ann. §14-504(3) which provided:

Subject to the hearing provisions of §14-505 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:

Is guilty of immoral conduct in the practice of medicine;

(continued...)

(4) Is professionally, physically, or mentally incompetent;

(22) Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical facility, office, hospital, or any other location in this State.<sup>2</sup>

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<sup>1</sup>(continued...)

Section 1, Chapter 109, Acts 1988, effective July 1, 1988, recodified former §14-504(3) as §14-404(a)(3), and inserted the following underlined words in the existing statute:

Is guilty of immoral or unprofessional conduct in the practice of medicine.

Section 11, Chapter 6, Acts 1990, effective January 1, 1991, renumbered §14-504(a)(3) as §14-404(a)(3).

<sup>2</sup>The basis of the allegations against Respondent was conduct that occurred between 1983 and 1988. The applicable statute in effect from 1983 through June 30, 1987 was Md. Health Occ. Code Ann. §14-504(23) which provided:

Subject to the hearing provisions of §14-505 of this subtitle, the Board, on the affirmative vote of the majority of its full authorized membership, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State.

Chapter 593, Acts 1987, effective July 1, 1987, amended §14-504(23) by adding the below-underlined words to the existing statute:

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.

Section 1, Chapter 109, Acts 1988, effective July 1, 1988, recodified former §14-504(23) as §14-504(a)(22).

On January 22, 1992, a Case Resolution Conference (the "Conference") was held. Present were John F. Strahan, M.D., Chief Case Resolution Conference Officer; Frank A. Gunther, Jr., Peter E. Dans, M.D., and J. Andrew Sumner, M.D., Board Members; C. Frederick Ryland, Board Counsel; Steven J. Poliakoff, Staff Attorney; Debra G. Woodruff, Assistant Attorney General; Sylvia J. Anderson, Legal Assistant; Patient A<sup>3</sup>; Anthony Garofano, M.D., Respondent; and Judith Catterton, Esquire, Counsel for Respondent. As a result of discussions at the Conference, Respondent agreed to enter into a Consent Order and the Conference recommended that the Board accept a Consent Order as a resolution of this case.

On April 15, 1992, another Case Resolution Conference was held to discuss the results of a psychological evaluation performed by David L. Shapiro, Ph.D. (dated 3/5/92) and a psychiatric evaluation performed by Irvin H. Cohen, M.D. (dated 3/21/92). Present were J. Andrew Sumner, M.D., Harvey B. Kalin, M.D., and Ira N. Brecher, M.D., Board Members; C. Frederick Ryland, Board Counsel; Debra G. Woodruff, Assistant Attorney General; Sylvia J. Anderson, Legal Assistant; Patient A; Anthony Garofano, M.D., Respondent; and Judith Catterton, Esquire, Counsel for Respondent. At the Board meeting on 23, June, 1993, by an affirmative vote of a majority of the full

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<sup>3</sup>To insure confidentiality, the patient's name is not used in the Consent Order. Respondent is aware of the identity of Patient A.

authorized Board who considered this case, the Board voted to enter into the following Consent Order.

FINDINGS OF FACT

1. At all times relevant to these charges, Respondent was and is licensed to practice medicine in the State of Maryland.

2. Patient A began therapy with Respondent, a psychiatrist, in January, 1984 for the treatment of insomnia and stress. Patient A saw Respondent for weekly psychotherapy sessions until November, 1985, when the psychiatrist-patient relationship terminated.

3. Despite termination of the psychotherapy sessions, Respondent continued to prescribe Diazepam, a hypnotic drug for Patient A from December, 1986 until August, 1987. Respondent failed to meet the appropriate standard of care by writing prescriptions for Diazepam for a patient without properly monitoring the patient.

4. Prescribing drugs for a patient after the psychiatrist-patient relationship is terminated is below the standard of care.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board concludes, as a matter of law, that the Respondent failed to meet the appropriate standards as determined by peer review for the delivery of quality medical care performed in an office in this State. (See, Md. Health Occ. Code Ann. §14-404(a)(22) (1991 Repl. Vol.)).

The Board, pursuant to its authority under Md. Health Occ. Code Ann., §14-406, dismisses the charges brought against the Respondent under Md. Health Code Ann. §§14-404(a)(3) and (4).

**ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 29 day of June, 1993, by an affirmative vote of the majority of the full authorized membership of those members of the Board of Physician Quality Assurance of Maryland, who considered this case, hereby

**ORDERED** that Respondent shall be **SUSPENDED** for three (3) months. This suspension is **IMMEDIATELY** stayed and the Respondent is placed on **PROBATION** subject to the following conditions for a period of two (2) years beginning July 1, 1993:

1. Respondent shall earn 75 credit hours of continuing medical education (CME) annually<sup>4</sup>, of which a minimum of 45 credit hours shall be in activities with AMA accredited sponsorship (Category I) and a minimum of 25 credit hours shall be in the field of psychiatry. Within seven (7) days of receipt of continuing medical education credit hours, Respondent shall send a copy of the certificate of attendance to the Board, 4201 Patterson Avenue, Baltimore, Maryland 21215, attention: Chief of Compliance. Ten of the 75 credits shall be derived from a course in medical ethics.

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<sup>4</sup>COMAR 10.32.01.08 requires physicians to earn at least 50 hours of continuing medical education (minimum of 20 hours in Category I) per year.

2. On or before July 1, 1994, Respondent shall be re-evaluated by Irvin Cohen, M.D., 7600 Osler Drive, Suite 400, Towson, Maryland 21204 (410) 296-0464. In addition, unless probation is terminated earlier, Respondent shall be re-evaluated by Dr. Cohen on or before July 1, 1995. Respondent shall pay all reasonable costs associated with the evaluations. Respondent shall sign a release, attached hereto and incorporated herein as Exhibit A, authorizing Dr. Cohen to send copies of his reports to the Board. Respondent shall sign a release, attached hereto and incorporated herein as Exhibit B, authorizing the Board to release Dr. Cohen's reports to Respondent's supervisory physician, the peer reviewers, and Respondent's therapist. The Respondent shall receive a copy of each of these reports.

3. Respondent shall participate in psychotherapy with Edward Ohaneson, M.D., a psychiatrist.

a. After the first Case Resolution Conference and in contemplation of the implementation of this agreement, Respondent began therapy with Dr. Ohaneson in January of 1992. Sessions were weekly until September of 1992 when Dr. Ohaneson determined that they should be reduced to one session every other week. Sessions shall continue on that basis until such time as Dr. Ohaneson believes that therapy should be terminated, at which time, he shall notify Dr. Cohen. Dr. Cohen will then re-evaluate the Respondent and make a recommendation concerning continued therapy to the Board. The Board must approve the termination of therapy before the change becomes effective.

b. Respondent shall be responsible for all costs and expenses incurred in therapy.

c. Dr. Ohaneson shall submit monthly reports to the Chairman of Maryland Psychiatric Society Peer Review Committee ("MPS PRC"), 1101 St. Paul Street, Baltimore, Maryland 21202 and the Board, 4201 Patterson Avenue, Baltimore, Maryland 21215, attention: Chief of Compliance, indicating only that Respondent is attending the therapy sessions as recommended.

d. In the event that Respondent terminates therapy prior to discharge by Dr. Ohaneson, Dr. Ohaneson shall immediately notify the MPS PRC that Respondent has terminated therapy.

e. In the event that Dr. Ohaneson has reason to believe that Respondent is a danger to himself or others, Dr. Ohaneson will immediately notify the Chairman of the MPS PRC at (410) 625-0232.

f. In the event that Dr. Ohaneson is unable to continue treatment, through no fault of Respondent's, Dr. Ohaneson or Respondent must immediately notify the Board. Within ten (10) days of receipt of the notice, the Respondent shall provide the Board with the name of another therapist with whom Respondent proposes to engage in therapy. The new therapist must inform the Board in writing that he/she agrees to perform all duties required under this Order.

4. Respondent's practice shall be supervised by Edward T. Schnoor, M.D. Respondent shall meet with Dr. Schnoor once a week



for approximately one (1) hour for three (3) months from the effective date of this Order and thereafter, on a regular basis to be determined by Dr. Schnoor, after the Board reviews Dr. Schnoor's report indicating why supervision should be decreased or terminated.

5. On or before July 1, 1993, Respondent shall meet with Dr. Schnoor. Dr. Schnoor shall notify the Board, in writing, that he understands the terms of this Order and has reviewed all previous peer review reports and psychiatric evaluations of Respondent.

6. Dr. Schnoor will make quarterly written reports about Respondent's practice of psychiatry to the Board, attention of the Chief of Compliance and to the Chairman of the MPS PRC. The reports are due on October 1, 1993; January 1, 1994; April 1, 1994 and July 1, 1994. If, in between quarterly reports, Dr. Schnoor believes the frequency of supervisory sessions should be decreased, he shall file a written report to that effect to the Board, attention of the Chief of Compliance and to the Chairman of the MPS PRC.

7. In all quarterly reports, and any interim reports, Dr. Schnoor will discuss the necessity for continued sessions and any recommendations concerning their frequency.

8. In the event that Dr. Schnoor believes that Respondent is a danger to his patients or himself, is not competent to practice psychiatry, or is in violation of this Order, Dr. Schnoor will immediately notify the Board.

9. Respondent shall pay all reasonable costs associated with the weekly supervisory sessions and the quarterly reports. Dr. Schnoor will submit a bill to Respondent on a monthly basis. If Respondent fails to pay the bill in a timely fashion, Dr. Schnoor will notify the Board.

10. Respondent will be subject to two (2) annual peer reviews of his practice by the MPS PRC. The MPS PRC will submit a report, to the Board, each year of the peer review of Respondent's practice, the first report due on or before July 1, 1994 and the second report due on or before July 1, 1995. The Respondent will receive a copy of the report.

11. Respondent shall not engage in the type of conduct that led to the charges brought against him by the Board on December 11, 1991.

12. Respondent shall practice in accordance with the laws governing the practice of medicine in Maryland.

13. Respondent shall be responsible for all costs for the additional training, supervision, and psychiatric therapy that he is to obtain during this probation.

ORDERED that if Respondent violates any of the foregoing conditions of probation, the Board, after notification, a hearing, and a determination of violation, may vacate the stay of suspension and reinstate the suspension; and be it further

ORDERED that if Respondent presents a danger to the public health, safety or welfare, the Board, **WITHOUT PRIOR NOTICE AND AN OPPORTUNITY FOR A HEARING, MAY VACATE THE STAY OF SUSPENSION AND**

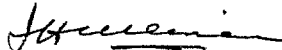
REINSTATE THE SUSPENSION, provided that Respondent is given notice of the Board's action and an opportunity for a hearing within thirty (30) days after Respondent requests a hearing; and be it further

ORDERED that, one (1) year after the effective date of the Order, that being the date on which the Board signs the Order, Respondent may petition the Board for termination of probation and reinstatement of his license without any conditions or restrictions to the Board. Prior to submitting petition for termination of probation, Respondent must be evaluated by Dr. Irvin Cohen. Respondent shall bear the burden of proving, to the Board's satisfaction, that he has complied with all the conditions of this Order. **NOTHING IN THIS ORDER SHALL BE CONSTRUED AS A PROMISE BY THE BOARD TO REINSTATE RESPONDENT'S LICENSE WITHOUT CONDITIONS BEFORE THE EXPIRATION OF THE TWO YEAR PROBATIONARY PERIOD;** and be it further

ORDERED that this Consent Order is considered a public document pursuant to Md. State Gov't Code Ann. §10-611, et seq. (1984).

6/29/93

\_\_\_\_\_  
Date



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Israel H. Weiner, M.D., Chair  
Maryland State Board of  
Physician Quality Assurance

CONSENT

By signing this Consent, I hereby accept and agree to be bound by the foregoing Consent Order and its conditions and restrictions, consisting of 12 pages.

1. By signing this Consent, I do not admit to the truth of many of the Findings of Fact or agree with the Conclusions of Law. Indeed, I dispute and deny any liability or wrongdoing. However, I submit to the foregoing Order as a resolution of this case.

2. I acknowledge the validity of this Order as if made after a 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.

3. I also recognize that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing. By this Consent I waive all such rights.

4. I understand that if I fail to comply with any of the conditions of probation enumerated above, I may suffer disciplinary action against my license to practice medicine in the State of Maryland.

5. I understand that if I present a danger to the public health, safety or welfare, the Board may, **WITHOUT NOTICE PRIOR TO AN OPPORTUNITY TO BE HEARD**, vacate the stay of suspension, reinstate the suspension and reinstitute formal proceedings against my license to practice medicine in Maryland.

6. I have had an opportunity to review this Order, with an attorney. I voluntarily sign this Order understanding its meaning and effect.

6/22/93  
Date

Anthony Garofano M.D.  
Anthony Garofano, M.D.

STATE OF MARYLAND

CITY/COUNTY OF MONTGOMERY

I HEREBY CERTIFY this 22nd day of JUNE, 1993,  
before me, a Notary Public of the State and City/County  
aforesaid, personally appeared Anthony Garofano, M.D., and made  
oath in due form of law that the foregoing Consent Order was his  
voluntary act and deed.

AS WITNESSETH my hand and notarial seal.

Beth Ann Smyk  
Notary Public

My Commission Expires: 7/12/94