

IN THE MATTER OF	*	BEFORE THE
NICHOLAS G. SCOTTO, M.D.	*	STATE BOARD OF PHYSICIAN
Respondent	*	QUALITY ASSURANCE
License Number: D43246	*	Case Number: 98-0703

* * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

The State Board of Physician Quality Assurance (the "Board"), on September 23, 1998 voted to charge Nicholas G. Scotto, M.D. (the "Respondent") (D.O.B. 2/5/62), License Number D43246, under the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. §14-101 et seq. (1994).

The pertinent provisions of §14-404 of the Act provide:

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 or unprofessional conduct in the practice of medicine;
- (27) Sells, prescribes, gives away, or administers drugs for illegal or illegitimate medical purposes.

The Respondent was subsequently notified of the Board's vote by representatives of the Office of the Attorney General ("OAG"). Prior to the issuance of a Statement of Charges, the Respondent entered into negotiations with the OAG to resolve these charges. Pursuant to these negotiations, the Respondent agreed to appear before a Board Case Resolution Conference ("CRC"), which was held on August 4, 1999. As a

result of further 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 and Order.

FINDINGS OF FACT

1. The Respondent is a physician licensed to practice medicine in the State of Maryland. He was initially licensed on May 28, 1992.
2. At the time relevant to the violations described herein, the Respondent maintained offices for the practice of psychiatry in Salisbury and Cambridge, Maryland.
3. On or about March 16, 1998, the Physician Rehabilitation Committee of the Medical and Chirurgical Faculty notified the Board of the Respondent's lack of compliance with its recommendation and of the Respondent's termination of treatment at Marworth, a treatment facility in Waverly, Pennsylvania.
4. Board investigation revealed the following:
5. On or about January 19, 1998, the Respondent was admitted to Marworth. Upon admission, the Respondent required medical detoxification from Ritalin, Xanax and Klonopin. He was discharged on March 6, 1998, the treatment team concluding the Respondent's response to treatment was poor. A copy of the Marworth discharge summary is attached under seal for distribution only to the Board and in accordance with the terms of this Consent Order. The discharge summary from Marworth states:

[The Respondent's] motivation remained highly questionable throughout his treatment stay. It did not seem that he internalized his need for treatment and recovery. While [the Respondent] can identify

through statements that he had a desire for treatment and recovery, his behaviors did not support this statement.

It was discovered during his treatment stay that [the Respondent] had made a number of ethical violations, most specifically dual relationships with his patients, i.e., having patients to work in his private practice.

Upon his discharge, it was clearly reinforced to [the Respondent] that he could not return to practicing psychiatry at this time.

6. Drug surveys obtained by the Board from pharmacies in proximity to the Respondent's medical offices indicated that the Respondent continued to prescribe medications, including controlled substances, to patients while he was away in treatment at Marworth.

7. During the Board investigation, Board Compliance Analysts obtained copies of prescriptions signed by the Respondent. One prescription for Ritalin (150 quantity) dated January 8, 1998, was written for "T.E.,"¹ a man not currently on the Respondent's patient logs. According to the Respondent's statement to Board investigators, this man provided computer services without compensation at the Respondent's medical office.

8. The Board obtained another prescription by the Respondent for the amphetamine product Aderall 30 mg (60 quantity) written to "T.E.," dated January 19, 1998, being the day the Respondent was admitted to Marworth in Waverly, Pennsylvania.

9. The Board obtained another prescription for Ritalin (150 quantity) dated

¹To ensure confidentiality, patient and employee names are not set forth in this Consent Order.

February 11, 1998 written by the Respondent to "T.E." On the date this prescription was written, the Respondent was at Marworth.

10. "S.L." was a volunteer working in the Respondent's Salisbury office.

Although the Respondent informed Board staff he had written no prescriptions for "S.L." since November 1997, the pharmacy survey conducted for the Board indicated that on January 8, 1998, the Respondent wrote a prescription to "S.L." for Xanax (90 quantity) with two refills.

11. Patient "E.H." submitted at least one undated prescription from the Respondent for Xanax (60 quantity) to a Salisbury pharmacy during the time period the Respondent was away from his practice at Marworth.

12. According to the prescriptions obtained during the drug surveys conducted for the Board, the Respondent issued undated prescriptions for narcotic analgesics to "A.F." three (3) times. These three prescriptions were filled during the time period the Respondent was away at Marworth.

13. According to prescriptions obtained during the drug survey conducted for the Board, the Respondent issued an undated prescription for Xanax 1 mg (30 quantity) to "L.H.". "L.H." filled the Xanax prescription on February 7, 1998, during the time period the Respondent was away at Marworth.

14. After the Respondent's discharge from Marworth, on or about April 15, 1998, Board staff attempted to set up an interview with the Respondent and was informed by his office that the Respondent was currently in with patients and would not be able to place a return call until later in the day, as he had a very full schedule for the next several days.

15. On or about April 27, 1998, Board staff met with the Clinical Coordinator at Peninsula Addiction Services, where the Respondent was currently under out-patient treatment. The Clinical Coordinator advised Board staff that the Respondent was currently under their care and was not seeing patients at this time based upon his treatment team's recommendations.

16. On that same date, Board staff visited the Respondent's Salisbury office and were greeted by a receptionist who advised that the Respondent was currently in with patients. Board staff requested the Respondent contact their offices.

17. The Respondent subsequently contacted Board staff and was interviewed on or about June 16, 1998. During this interview, the Respondent admitted to his abuse of Ritalin, stating that he would write out prescriptions in his nephews' names for his own use. The Respondent further admitted that he would provide patients undated, signed prescriptions for their own use when needed.

18. By letter to Board staff dated July 2, 1998, the Respondent admitted his addiction to Ritalin (Methylphenidate) and Xanax. He further advised the Board that he would be closing his practice in Salisbury and beginning a fellowship at University of Maryland School of Medicine in September 1998.

19. Upon completion of his outpatient treatment at Peninsula Addiction Services ("Peninsula"), the Respondent was hired as a psychiatrist at Peninsula Mental Health. The Respondent did not enter into the fellowship at the University of Maryland School of Medicine.

20. In March 1999, the Board directed the Respondent to undergo a psychiatric

evaluation conducted by Ellen G. McDaniel, M.D., a psychiatrist licensed in the State of Maryland.

21. The Respondent willingly submitted to the psychiatric evaluation on April 7, 1999.

22. A report by Ellen G. McDaniel, M.D., dated April 10, 1999, was provided to the Board. Attached hereto is a copy of the report under seal for distribution only to the Board members and in accordance with the terms of this Consent Order.

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 (27). Accordingly, the Board concludes as a matter of law that the Respondent is guilty of unprofessional conduct in the practice of medicine; and sells, prescribes, gives away, or administers drugs for illegal or illegitimate medical purposes.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 25th day of August, 1999, by a majority of the full authorized membership of the Board considering this case:

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

ORDERED that, from the date of this Consent Order, the Respondent shall comply with each of the terms and conditions set out in this Consent Order for a period of **FOUR (4) YEARS**.

1. The Respondent must maintain the existing Physician Rehabilitation Advocacy Contract with the Physician Rehabilitation Committee of the Medical and Chirurgical Faculty of the State of Maryland ("Med-Chi Physician Rehabilitation Committee") he entered into on January 14, 1999 and fully comply with all the terms and conditions of the Physician Rehabilitation Committee contract. The Respondent shall maintain a Physician Rehabilitation Advocacy Contract for a four (4) year period from the effective date of this Consent Order, being the date the Board executes this Consent Order. The Respondent shall comply with any and all supplemental contracts entered into by him and the Med-Chi Physician Rehabilitation Committee. The Board and the Med-Chi Physician Rehabilitation Committee shall have authority to add further conditions and terms, if deemed necessary. Any changes in the Respondent's advocacy contract with the Med-Chi Physician Rehabilitation Committee shall be approved by the Board.

2. Within sixty (60) days of the effective date of the Consent Order, that date being the date the Board executes the Consent Order, the Respondent shall commence long-term, intensive, dynamic individual psychotherapy with a Board-approved psychiatrist for a period of four (4) years.

a. The treating psychiatrist shall receive a copy of this Consent Order,

the Med Chi Physician Rehabilitation Advocacy Contract, the report of psychiatrist Ellen McDaniel, M.D., dated April 10, 1999, and any other treatment records and other material in the Board's file, at the discretion of the Board.

b. The Respondent shall arrange for the treating psychiatrist to submit an initial report to the Board verifying receipt of this Consent Order, the Med Chi Physician Rehabilitation Advocacy Contract, the April 10, 1999 psychiatric evaluation and other materials submitted to the treating psychiatrist. Further, the Respondent shall arrange that his treating psychiatrist's initial report to the Board outline the treating psychiatrist's assessments and plan for psychiatric treatment.

c. The Respondent shall comply with all treatment recommendations of the Board-approved psychiatrist.

d. The Respondent shall arrange for this treating psychiatrist to submit written reports to the Board on a quarterly basis regarding the Respondent's attendance and treatment progress.

e. Should the treating psychiatrist discharge the Respondent prior to the termination of the four (4) year period mandated by this Consent Order, the original evaluating psychiatrist, Ellen McDaniel, M.D., or another Board-approved psychiatrist, shall re-evaluate the Respondent and shall report to the Board what, if any, treatment gains the Respondent has achieved. The Board shall consider any further recommendations for treatment or counseling that the evaluating psychiatrist advises and adopt any such recommendations, at its discretion. Should the Board adopt any or all of the evaluating psychiatrist's recommendations that the Respondent receive further

treatment, the Respondent shall be so notified and shall comply with those recommendations.

f. The Respondent shall pay the costs for psychiatric treatment/psychotherapy and subsequent psychiatric evaluation.

3. The Respondent shall attend and actively participate in any support group programs recommended by the Board and/or the Med-Chi Physician Rehabilitation Committee for four (4) years from the effective date of this Consent Order at the frequency recommended by the support group provider, but no less than twice a week. The Respondent shall provide written verification of attendance to both the Med-Chi Physician Rehabilitation Committee and the Board on at least a monthly basis or as otherwise directed.

4. The Respondent shall completely abstain from the use of alcoholic beverages and controlled substances, mood altering drugs or drugs of abuse in any form, including Ritalin and benzodiazepines, except under the following conditions:

a. The Respondent is a bona fide patient of a licensed health care practitioner who is aware of the Respondent's contract with the Med-Chi Physician Rehabilitation Committee and the terms of this Consent Order.

b. Such medications are lawfully prescribed by the Respondent's treating practitioner and approved by the Board and Med-Chi Physician Rehabilitation Committee; and

c. The Respondent provides the Board and the Med-Chi Physician

Rehabilitation Committee within seventy-two (72) hours of receiving the medication, the name of the practitioner prescribing the drug, the illness or medical condition diagnosed, the type, strength, amount and dosage of the medication and a signed statement consenting to the release of the medical information from the prescribing practitioner to the Board and the Med-Chi Physician Rehabilitation Committee or their designated representatives for the purpose of verification.

5. The Respondent shall be required to submit to random monitored urinalysis/toxicology screens as recommended by the Board and/or the Med-Chi Physician Rehabilitation Committee, but not less than two (2) to four (4) times per month for the four (4) year duration of this Consent Order. The Respondent shall get his random monitored urine tests at a facility or laboratory approved by the Board; and he shall not have his toxicology/urines collected and tested at Peninsula or any other place that employs him.

a. The Respondent shall submit, when requested, to additional monitored, unannounced and observed urinalysis toxicology screens by the Med-Chi Physician Rehabilitation Committee or the Board for the detection of substances prohibited under this Consent Order, including Ritalin (Methylphenidate), Xanax, and controlled substances, within twenty-four (24) hours after a request is made.

b. A positive result on a urinalysis or toxicology screening shall constitute an irrefutable violation of this Consent Order unless the Respondent has complied with the provisions of this Consent Order and the Med-Chi Physician Rehabilitation Advocacy Contract pertaining to the use of drugs. Failure to provide a

specimen when requested by the Med-Chi Physician Rehabilitation Committee or the Board will be considered a violation of this Consent Order.

c. The Respondent shall supply the Board, as well as the Med-Chi Physician Rehabilitation Committee, with a copy of each and every urinalysis/toxicology report. Failure to directly supply the Board with a copy of all urinalysis and toxicology reports shall be a violation of this Consent Order.

6. Within one (1) month of the effective date of this Consent Order, the Respondent shall obtain a Board-approved physician supervisor, whose practice is in the same specialty as the Respondent's, to review the Respondent's general patient care, medical boundaries, CDS prescribing, and quality of care.

a. The Respondent shall supply his supervising physician with a copy of this Consent Order and the Med-Chi Physician Rehabilitation Advocacy Contract.

b. The Respondent shall make arrangements for the supervising physician to submit to both the Board and the Med-Chi Physician Rehabilitation Committee verification that the physician supervisor has received this Consent Order and the Physician Rehabilitation Advocacy Contract and understands the conditions imposed upon the Respondent.

c. 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 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.

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

i. Within four (4) weeks of the effective date of this Consent Order, the supervision shall begin and shall continue for a four (4) year period according to the schedule below:

(1) For the first two (2) years of supervision, the Respondent shall be supervised on a monthly basis.

(2) After the expiration of the first two (2) years of supervision, the supervising physician will file a written report with the Board.

(3) If the aforementioned written report is satisfactory, then the Respondent may petition the Board, in writing, for approval of a change in his supervision from a monthly basis to a bi-monthly basis for the remaining two (2) years of supervision; otherwise, the supervision shall continue on a monthly basis for the entire four (4) year period of supervision.

e. The Respondent shall meet with the supervising physician in accordance with the schedule set forth above to review the Respondent's medical care, including CDS prescribing. The supervising physician will determine how much time is needed for each session to review the Respondent.

i. During the period of supervision, the Respondent shall make and retain a copy, to be maintained in a separate file, of each and every controlled substance, benzodiazepine, and Ritalin (Methylphenidate) prescription which he writes, for the supervising physician's review at each supervisory review sessions.

f. The Respondent shall make arrangements for the supervising

physician to submit quarterly reports to the Board addressing the Respondent's attendance, participation, and medical practice, including evaluation of general patient care, patient-physician boundaries, quality of care and CDS prescribing. In the quarterly reports, the supervising physician will also relate whether the Respondent is paying the costs, if any, of the supervision as required by subsection 8(i) below.

g. The Board reserves the right to request additional information regarding the physician supervisor or to reject any physician supervisor proposed by the Respondent. The Respondent shall be responsible for assuring that his physician supervisor sends reports to the Board as required by this Consent Order. The Respondent's failure to arrange for regular reports from his physician supervisor as outlined herein as requested by the Board shall be deemed a violation of this Consent Order.

h. The Board must approve and ratify any changes in supervision based upon the supervising physician's reports.

i. The Respondent shall pay all costs, if any, 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.

j. 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. The Respondent's failure to attend shall be deemed a breach of and violation of this Consent Order.

k. If the supervising physician believes that the Respondent is a danger to his patients, or is not competent to practice medicine, or has violated this Consent Order, then the supervising physician shall immediately notify the Board.

7. The Respondent shall enroll in and successfully complete a Board-approved medical ethics course concentrating on patient-therapist boundary issues within the first eighteen (18) months after the effective date of this Consent Order. The Respondent may 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.

8. The Respondent may be subject to annual peer review by an appropriate peer review society, or a chart review by a Board designee, to be determined at the discretion of the Board. After a chart review, the Board may recommend a peer review. The peer review committee or the chart reviewer, if assigned, shall receive a copy of this Consent Order 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 or chart review report and shall follow any recommendations made in the report that are endorsed by the Board. If the peer review or chart 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.

9. The Respondent's execution of this Consent Order shall constitute a release of any medical health related reports, and/or psychological/psychiatric records, and/or physician supervisor reports pertaining to the Respondent both to the Board and the Med-Chi Physician Rehabilitation Committee. Further, the Respondent agrees and consents to the release by the Board and the Med Chi Physician Rehabilitation Committee of any information or data produced as a result of this Consent Order to any treatment provider, employer or physician supervisor.

10. The Respondent shall at all times cooperate with the Board of Physician Quality Assurance, any of its agents or employees, and with the Physician Rehabilitation Committee of the Medical and Chirurgical Faculty of the State of Maryland, and its agents and employees, in the monitoring, supervision and investigation of the Respondent's compliance with the terms and conditions of this Consent Order, including the Respondent causing to be submitted at his own expense written reports, records and verifications of actions that may be required by the Board and/or Med-Chi Physician Rehabilitation Committee or any of their agents or employees.

11. The Respondent's failure to fully comply with the terms and conditions of this Consent Order hereby imposed shall be deemed a violation and this Consent Order, and the Respondent may be subject to charges by the Board of Physician Quality Assurance.

12. The Respondent's failure to fully cooperate with and successfully complete the terms of the Med-Chi Physician Rehabilitation Advocacy Contract shall be deemed a violation of this Consent Order.

13. The Respondent shall comply with the Maryland Medical Practice Act. Failure to do so shall constitute a violation of this Consent Order, as well as subject the Respondent to further disciplinary action by the Board.

14. The Respondent shall obey all laws of the United States, the State of Maryland and its political subdivisions. A guilty verdict or probation before judgment sentence for any crime, except minor traffic offenses not involving drugs or alcohol, shall constitute a violation of this Consent Order, for which the Board may impose any penalty it deems appropriate; and be it further

ORDERED if the Respondent violates any of the terms of the this Consent Order, the Board, after notice and a hearing, and a determination of violation, may impose any other disciplinary sanctions it deems appropriate, including but not limited to revocation or suspension; said violation of probation being proved by a preponderance of evidence; 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 **FOUR (4) YEARS** after the date of this Consent Order, the Respondent may petition the Board for termination of terms, conditions, and restrictions

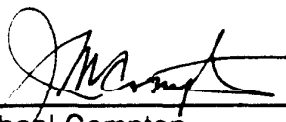
imposed by this Consent Order. If the Respondent has satisfactorily complied with all conditions of this Consent Order, and there are no outstanding complaints regarding the Respondent, the Respondent may petition the Board for termination of conditions and restrictions imposed by this Consent Order. However, the Respondent will continue to abide by any Med-Chi Physician Rehabilitation Advocacy Contracts; and be it further

ORDERED and AGREED that nothing in this Consent Order shall be construed as a promise by the Board to renew the Respondent's Maryland medical license without conditions; 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.

8/25/99
Date



J. Michael Compton
Executive Director
Maryland State Board of Physician
Quality Assurance

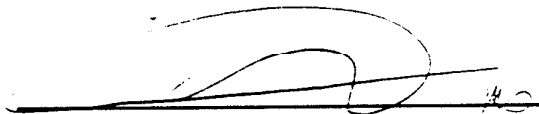
CONSENT

I, Nicholas G. Scotto, M.D., acknowledge that I am represented by legal counsel, and I have had the opportunity to consult with counsel [or have been advised to consult with counsel] before entering into signing this document. By this consent, I hereby admit the Findings of Fact and Conclusions of Law, and submit to this Consent Order consisting of nineteen (19) pages plus an Attachment.

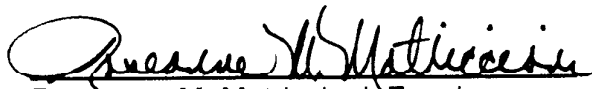
I acknowledge the validity of this Consent Order as if entered after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided 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.

8/11/99
Date


Nicholas G. Scotto, M.D.

Read and approved:


Roseanne M. Matricciani, Esquire
Attorney for Respondent

STATE OF MARYLAND

CITY/COUNTY OF Worcester

I HEREBY CERTIFY that on this 11th day of AUGUST, 1999, before me, Notary Public of the State and City/County aforesaid, personally appeared Nicholas G. Scotto, 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.

Annab Catherine Lynch
Notary Public

My Commission Expires: Aug 1, 2001