

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE COMMISSION

ORIGINAL

In the Matter of the License)
to Practice Medicine of) No. 95-09-0077MD
)
JOHN M. ZIMBUREAN, M.D.) STATEMENT OF ALLEGATIONS
)
Applicant.)
_____)

The Administrator of the Washington State Medical Quality Assurance Commission, on designation by the Commission, states and alleges as follows: [NOTE: The patient(s) referred to in this Statement of Allegations is (are) identified on the attached Confidential Schedule.]

if any
7-3 **Section I: ALLEGATIONS**

1.1 Dr. John M Zimburean, M.D. has made application for a license to practice medicine in the State of Washington and that application is now pending.

Section 2: SUMMARY OF EVIDENCE

2.1 Applicant has advised the Commission that Applicant, individually and as a corporate partner, is the subject of multiple lawsuits. There are presently six open cases with hundreds of plaintiffs. Additional defendants are Brookhaven Psychiatric Pavilion, Dallas, Texas, and all or most of the professional and corporate individuals associated with Brookhaven. The complaints involve allegations of medical malpractice, conspiracy, fraud, negligence and false imprisonment concerning patients treated prior to 1992.

2.2 Applicant asserts that of the hundreds of patient plaintiffs, Applicant was directly responsible for the medical care of approximately five plaintiffs. Applicant describes his official relationship to Brookhaven as follows.

2.3 Applicant was first associated with Dallas Psychiatric Associates [Dallas Associates] as a senior resident in psychiatry in 1984. On off hours, Applicant was moonlighting and performing history and physicals on new admissions to Brookhaven. Dallas Associates was a group of psychiatrists providing attending physician services to Brookhaven.

2.4 Approximately a year later, Applicant was offered and accepted a position as associate psychiatrist with Dallas Associates. Applicant's position was a half-time salaried position

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providing medical services to patients admitted to Brookhaven. Dallas Associates provided an office and clerical services.

2.5 Applicant asserts that, ^{Larrie Arnold, M.D. was a medical Director at Brookhaven. Larrie Arnold, M.D. was the sole shareholder of Larrie Arnold M.D., P.A., which was a general partner in} a Dallas Associate partner, was also a Brookhaven Medical Director.

2.6 Upon information and belief, Applicant asserts that, Dr. Larrie Arnold, individually and as the professional association or corporation Larrie Arnold, M.D., P.A., has not been disciplined by the Texas Medical Board of Examiners or other competent authority for complaints that are subject of the lawsuits, nor has Dr. Arnold been found culpable for unprofessional medical conduct in any civil or criminal lawsuit, administrative proceeding or by other competent authority for complaints or charges arising out of the subject matter of the lawsuits referred to in Applicant's certified schedule annexed hereto.

Section 3: SUMMARY OF APPLICABLE STATUTES

3.1 The conduct alleged above, if proved at a hearing, would make RCW 18.130.180 applicable to Applicant.

RCW 18.130.180 Unprofessional conduct.

The following conduct, acts, or conditions constitute unprofessional conduct for any license holder or applicant under the jurisdiction of this chapter:

(1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed. The use of a nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed;

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(13) Misrepresentation or fraud in any aspect of the conduct of the business or profession;

(20) The willful betrayal of a practitioner-patient privilege as recognized by law;

(24) Abuse of a client or patient or sexual contact with a client or patient;

Section 4: NOTICE TO THE APPLICANT

4.1 The Commission has determined that this case may be appropriate for resolution through a Stipulation to Informal Disposition, pursuant to RCW 18.130.172(2). A proposed Stipulation to Informal Disposition is attached, which contains the safeguards the Commission believes are necessary to address the conduct alleged in this Statement of Allegations.

4.2 In the event the Applicant declines to agree to disposition of the allegations by means of a Stipulation to Informal Disposition pursuant to RCW 18.130.172(2), the Commission may proceed to formal disciplinary action against the Applicant by filing a statement of charges, pursuant to RCW 18.130.172(3).

DATED this 15th day of December, 1995.

STATE OF WASHINGTON MEDICAL QUALITY ASSURANCE COMMISSION

By: Beverly A. Teeter
Beverly A. Teeter, Administrator

Presented by:

Catherine M. Anderson
Catherine M. Anderson, WSBA#20728
Department of Health Staff Attorney

NOTICE

PURSUANT TO WASHINGTON ADMINISTRATIVE CODE 246-920-130 IT IS THE RESPONSIBILITY OF THE APPLICANT TO MAINTAIN A CURRENT MAILING ADDRESS ON FILE WITH THE COMMISSION. THE MAILING ADDRESS ON FILE WITH THE COMMISSION SHALL BE USED FOR MAILING OF ALL OFFICIAL MATTERS FROM THE COMMISSION TO THE APPLICANT. IF CHARGES AGAINST THE APPLICANT SENT CERTIFIED MAIL TO THE ADDRESS ON FILE WITH THE COMMISSION ARE RETURNED UNCLAIMED OR ARE NOT ABLE TO BE DELIVERED FOR ANY REASON THE COMMISSION IS MANDATED TO PROCEED AGAINST THE APPLICANT BY DEFAULT PURSUANT TO RCW 34.05.440.

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STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE COMMISSION

ORIGINAL

In the Matter of the License
to Practice Medicine of

JOHN M. ZIMBUREAN, M.D.

Applicant.

No. 95-09-0077MD

STIPULATION TO
INFORMAL DISPOSITION

I.

Section 1: STIPULATION

The parties to the above-entitled matter stipulate as follows:

- 1.1 The Applicant is informed and understands the allegations against him, which are that he has violated RCW 18.130.180(1), (4), (13), (20) and (24).
- 1.2 The parties wish to resolve this matter by means of a Stipulation to Informal Disposition pursuant to RCW 18.130.172(1).
- 1.3 The Applicant agrees to be bound by the terms and conditions of the Stipulation to Informal Disposition.
- 1.4 This Stipulation to Informal Disposition is of no force and effect and is not binding on the parties unless and until this Stipulation to Informal Disposition is approved and accepted by the Medical Quality Assurance Commission of the State of Washington.
- 1.5 The Commission has not determined nor is the Applicant admitting to any violations of the provisions stated in RCW 18.130.180(1), (4), (13) and (24) of this Stipulation to Informal Disposition, nor is this Stipulation to Informal Disposition to be construed as such an admission.

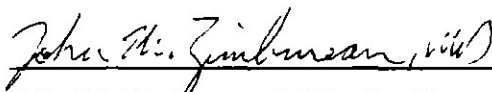
STIPULATION TO INFORMAL DISPOSITION
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- 1.6 The Commission's jurisdiction over the Applicant in regard to this order shall automatically terminate upon the Applicant's satisfactory completion of the terms and conditions denominated herein. The Statement of Allegations and this Stipulation to Informal Disposition, however, remain part of the Applicant's licensing file and cannot be expunged.
- 1.7 This Stipulation to Informal Disposition is not formal disciplinary action. It is not subject to the reporting requirements of RCW 18.130.110 or the interstate/national reporting requirements including, but not limited to, the National Practitioner Data Bank, 45 CFR 60.
- 1.8 The Applicant is advised and understands that a violation of the provisions of section 1.1 above of this Stipulation to Informal Disposition, if proved, would constitute grounds for discipline under RCW 18.130.160.
- 1.9 This Stipulation to Informal Disposition is releasable to the public upon request, pursuant to the Public Records Act, RCW 42.17.

Catherine M. Anderson
Staff Attorney, WSBA #20728
Department of Health

Date


John M. Zimburean, M.D., Applicant

12/11/95
Date

II.

Section 2: INFORMAL DISPOSITION

Based upon the foregoing, the Medical Quality Assurance Commission enters the following Stipulation to Informal Disposition:

2.1 RCW 18.130.180 defines conduct, acts, or conditions that constitute unprofessional conduct for any license holder or applicant under the jurisdiction of Chapter 18.130 RCW. If the disciplining authority determines that the applicant or license holder has committed unprofessional conduct as described in Chapter RCW 18.130, the disciplining authority shall impose such sanctions under RCW 18.130.160 as is deemed necessary to protect the public.

2.2 The Commission agrees to forego further action on the allegations as presently constituted, but is not precluded from taking action on similar or dissimilar allegations arising subsequent to the date that this Stipulation to Informal Disposition and Order is accepted by the Commission.

2.3 Pursuant to RCW 18.130.172(2), the Applicant agrees as follows:

A. The Applicant shall review the laws and administrative rules regulating the practice of medicine in the state of Washington attached hereto.

B. Within SIXTY DAYS of the effective date of this Order, the Applicant shall certify in writing to the Commission's designee that Applicant has read and understands such laws and regulations. Such written certification shall state the Applicant is specifically familiar with and understands the laws and regulations pertinent to the issues of the definition of the practice of medicine, the scope of practice of physicians and physician assistants, and requirement for proper licensure in medical practice.

C. The Applicant shall pay an administrative recoupment for the costs of processing this matter in the amount of \$1000.00, payable in full to the Commission within THIRTY DAYS of the effective date of this order addressed as follows:

Executive Director
Medical Quality Assurance Commission
1300 S.E. Quince Street, MS: 7866
Post Office Box 47866
Olympia, Washington 98504-7866

D. Applicant shall notify the Commission of his intent to practice medicine in the State of Washington at least thirty (30) days prior to actual practice in Washington State. Prior to

STIPULATION TO INFORMAL DISPOSITION
JOHN M. ZIMBUREAN - 3 OF 6

practice in the state of Washington, Applicant shall appear before the Commission and inform the Commission of the status of any medical malpractice litigation, complaints of unprofessional conduct pending before *any* medical disciplinary authority, criminal actions or any other complaints or charges that concern Applicant's ability to practice medicine and surgery with reasonable safety to consumers.

E. Thereafter, Applicant shall appear before the Commission on no less than an annual basis until final resolution or disposition of such litigation to provide progress reports concerning the status of the present medical malpractice litigation in the State of Texas as listed in the Certified Schedule annexed hereto. Applicant shall provide a certified schedule listing all medical malpractice, criminal, medical disciplinary actions, or any other charges or complaints presently pending that concern Applicant's ability to practice medicine and surgery with reasonable safety to consumers that shall become a part hereof and be annexed to this Stipulation. Notwithstanding the other provisions of this paragraph, Applicant shall *immediately* notify the Commission in *writing* of the resolution of any medical malpractice, criminal, medical disciplinary action or other complaint or charge listed in the Applicant's certified Schedule annexed to this Stipulation and Order.

F. Applicant shall ensure that all care delivered to patients falls within acceptable standards of medical practice.

G. RESIDENCE:

- a) Applicant shall inform the Commission, in writing, of changes in his practice and residence address.
- b) In the event Applicant leaves the State of Washington to reside or to practice outside the State of Washington, Applicant must notify the Commission in writing of the dates of departure and return.
- c) Any period of probation shall be tolled for any time period during which Applicant resides and/or practices outside the State of Washington.

H. COMPLIANCE:

In order to monitor compliance with the Order, Applicant agrees that a representative of the Commission may make announced or unannounced visits, semi-annually, to Applicant's practice to:

- (1) Inspect office and or medical records;
- (2) Interview office staff or Applicant's supervisors;
- (3) Review other aspects of Applicant's practice.

I. If Applicant violates the terms/conditions of the Commission's

Order in any respect the Commission may:

- a. Summarily suspend Applicant's license to practice under RCW 18.130.050(7);
- b. Impose conditions as appropriate under RCW 18.130.160 to protect the public, following notice to the Applicant and the opportunity to be heard; and/or
- c. Issue charges of unprofessional conduct under RCW 18.130.180.

J. All costs associated with compliance with this Order shall be borne by the Applicant.

K. This Stipulation shall become effective ten (10) days from the date the Order is signed by the Commission chair, or upon service of the Order on the Applicant, whichever date is sooner.

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STIPULATION TO INFORMAL DISPOSITION
JOHN M. ZIMBUREAN - 5 OF 6

III.

Section 3: ORDER

The foregoing is adopted as the Stipulation to Informal Disposition of the Medical Quality Assurance Commission and shall become effective the 15th day of December 1995.

STATE OF WASHINGTON
Medical Quality Assurance Commission

By: Larry T. Brice, M.D.
Larry Brice, M.D.
Chair

Presented by:

Catherine M. Anderson
Catherine M. Anderson, WSBA#20728
Department of Health Staff Attorney

Copy received, approved as to form,
Notice of Presentation waived:

William Smith
By: William Smith, Esq.
Attorneys for Applicant

John M. Zimburean, M.D.
John M. Zimburean, M.D.
Applicant

STIPULATION TO INFORMAL DISPOSITION
JOHN M. ZIMBUREAN - 6 OF 6

Redaction Summary (0 redactions)

0 Privilege / Exemption reason used:

Redacted pages: