

<b>IN THE MATTER OF</b>	*	<b>BEFORE THE</b>
<b>ABOLGHASSEM M. GOHARI, M.D.</b>	*	<b>MARYLAND STATE</b>
<b>Respondent</b>	*	<b>BOARD OF PHYSICIANS</b>
<b>License Number: D18165</b>	*	<b>Case Numbers: 2009-0573</b>
		<b>2011-0509</b>

\* \* \* \* \*

**CONSENT ORDER**

**PROCEDURAL BACKGROUND**

On August 8, 2012, the Maryland State Board of Physicians (the "Board") charged Abolghassem M. Gohari, M.D. (the "Respondent") (D.O.B. 10/06/1941), License Number D18165, under the Maryland Medical Practice Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 14-101 *et seq.* (2009 Repl. Vol.); and the Code of Maryland Regulations ("COMAR") tit. 10, § 32.12 *et seq.*

Specifically, the Board charged the Respondent with violating the following provisions of the Act under H.O. § 14-404, which provide the following:

- (a) *In general.* -- Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on the affirmative vote of a majority of the quorum, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:
  - (3) Is guilty of: (ii) unprofessional conduct in the practice of medicine; [and/or]
  - (18) Practices medicine with an unauthorized person or aids an unauthorized person in the practice of medicine.

The pertinent provisions under COMAR 10.32.12 provide the following:

#### **10.32.12.04 Scope of Delegation.**

- E. A physician may not delegate to an assistant acts which include but are not limited to:
- (1) Conducting physical examinations;
  - (2) Administering any form of anesthetic agent or agent of conscious sedation other than topical anesthetics or small amounts of local anesthetics;
  - (3) Initiating independently any form of treatment, exclusive of cardiopulmonary resuscitation;
  - (4) Dispensing medications;
  - (5) Giving medical advice without the consult of a physician[.]

#### **10.32.12.05 Prohibited Conduct.**

- B. A delegating physician, through either act or omission, facilitation, or otherwise enabling or forcing an assistant to practice beyond the scope of this chapter, may be subject to discipline for grounds within Health Occupations Article, § 14-404(a), Annotated Code of Maryland, including, but not limited to, practicing medicine with an unauthorized person or aiding an unauthorized person in the practice of medicine.

On November 7, 2012, a Case Resolution Conference was convened in this matter. Based on negotiations occurring as a result of this Case Resolution Conference, 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**

The Board finds the following:

#### **BACKGROUND FINDINGS**

1. At all times relevant hereto, 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 July 24, 1975, under License Number D18165. The Respondent's license is current through September 30, 2012.

2. The Respondent is board-certified in obstetrics and gynecology.

3. The Respondent maintains professional offices at the following locations: 5915 Greenbelt Road, Berwyn Heights, Maryland 20740; 5625 Allentown Road, Suite 203, Suitland, Maryland 20746 (the "Suitland office"); and 9063 Shady Grove Court, Gaithersburg, Maryland 20877 (the "Gaithersburg office").

4. The Board initiated an investigation of the Respondent after receiving two complaints from former patients. The Board investigated the first complaint under Case Number 2009-0573. The Board investigated the second complaint under Case Number 2011-0509.

5. The Board's investigation determined that in Case Number 2009-0573, the Respondent: engaged in unprofessional conduct in the practice of medicine; practiced medicine with an unauthorized person or aided an unauthorized person in the practice of medicine; and impermissibly delegated medical acts to unlicensed office staff persons, in violation of the Act and Board regulations.

6. The Board's investigation determined that in Case Number 2011-0509, the Respondent engaged in unprofessional conduct in the practice of medicine, in violation of the Act.

7. The Board's investigative findings are set forth *infra*.

#### **Case Number 2009-0573**

8. In Case Number 2009-0573, the complainant ("Patient A")<sup>1</sup> alleged that the Respondent was allowing medical assistants to perform medical abortions.

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<sup>1</sup> To ensure confidentiality, patient names will not be identified in this Consent Order. The Respondent is aware of the identity of all individuals who are referenced herein.

9. Patient A reported that she went to the Respondent's Gaithersburg office on January 22, 2009, to undergo an elective medical abortion. Patient A reported that the Respondent was not present and had no contact with her while she was present at the Gaithersburg office on this date.

10. Patient A reported that a medical assistant had her fill out a number of forms, after which the medical assistant performed a sonogram to determine the gestational age of her fetus. Patient A stated that she asked the medical assistant if she was qualified to make this assessment, to which the medical assistant stated she "does it all the time." Patient A then asked the medical assistant if there was a physician present, to which the medical assistant stated that he was "around the corner." Patient A then stated that the medical assistant gave her a small cup containing the RU-486 pill (mifepristone, a drug that is used to induce early medical abortions). Patient A refused to take the medication, having misgivings about taking it in the Respondent's absence.

11. Patient A reported that she went to another physician's office the next day, who assessed her as having a gestational age pregnancy requiring a surgical abortion. Patient A then telephoned the Respondent to obtain a refund of the money she paid for her January 22, 2009, visit, since she did not have the procedure performed. In response, the Respondent became irate, started yelling at Patient A, and used profanity when speaking to her.

12. Board investigators subsequently interviewed the Respondent about this incident. The Respondent admitted that he permitted his unlicensed medical assistant to perform the sonogram and administer the RU-486 pill to Patient A in his absence.

The Respondent stated that he permits his medical assistants to do this one-to-two percent of the time for patients who seek medical abortions in his office. The Respondent admitted that he did “lose his temper” when speaking to Patient A by telephone.

13. The Respondent’s actions, as described above, constitute a violation of the following provisions of the Act: unprofessional conduct in the practice of medicine, in violation of H.O. § 14-404(a)(3)(ii); and practicing medicine with an unauthorized person or aiding an unauthorized person in the practice of medicine, in violation of H.O. § 14-404(a)(18). The Respondent’s actions, as described above, constitute a violation of the following regulations: COMAR 10.32.12.04 and 10.32.12.05. The Respondent practiced with an unauthorized person, his medical assistant, and aided his medical assistant, who is not licensed to practice medicine in the State of Maryland, in the practice of medicine. The Respondent permitted his medical assistant to perform non-delegable tasks, including performing a physical examination, initiating independently a form of treatment, dispensing medications, and giving medical advice. The Respondent violated the Act and its regulations by his practice of permitting unlicensed medical assistants to perform non-delegable tasks in his absence.

**Case Number 2011-0509**

14. In Case Number 2011-0509, the complainant (“Patient B”) reported that the Respondent and his staff engaged in unprofessional conduct in the practice of medicine when she visited his office on January 15, 2011, to undergo a surgical abortion. Patient B reported that on this date, office staff did not give her any direct counseling about the procedure. Instead, they gave her explanatory paperwork.

Patient B reported that prior to the initiation of the procedure while she was on the operating table, she became upset and began to cry. In response, the Respondent became belligerent, abusive and started yelling at her. At one point, the Respondent left the operating room and audibly uttered profanity when speaking to a medical assistant. The Respondent then finished the surgery, after which a staff person performed a post-operative sonogram. Patient B reported that she was instructed to come for a follow-up visit but refused to do so because of the Respondent's verbal abusiveness.

15. The Respondent's conduct towards Patient B, which included belligerent, abusive and insensitive behavior, constitutes unprofessional conduct in the practice of medicine, in violation of H.O. § 14-404(a)(3)(ii).

### **CONCLUSIONS OF LAW**

Based on the above Findings of Fact, the Board finds as a matter of law that the Respondent violated the following provisions of the Medical Practice Act: is guilty of unprofessional conduct in the practice of medicine, in violation of H.O. § 14-404(a)(3)(ii); and practicing medicine with an unauthorized person or aiding an unauthorized person in the practice of medicine, in violation of H.O. § 14-404(a)(18).

Based on the above Findings of Fact, the Board finds as a matter of law that the Respondent violated COMAR 10.32.12.04 and 10.32.12.05.

### **ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 19th day of December, 2012, by an affirmative vote of a majority of a quorum of the Board considering this case:

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

**ORDERED** that the Respondent shall be placed on **PROBATION** for a minimum period of **ONE (1) YEAR**, to commence on the date the Board executes this Consent Order, and continuing until he successfully completes the following terms and conditions of probation:

1. Within **one (1) year** of the date the Board executes this Consent Order, the Respondent shall pay a civil fine in the amount of \$10,000.00, by certified check or money order, payable to the Maryland Board of Physicians, P.O. Box 37217, Baltimore, Maryland 21297.

2. Within **six (6) months** of the date the Board executes this Consent Order, the Respondent shall successfully complete a Board-approved course of significant duration in appropriate physician-patient relations and communication. The Respondent shall enroll in this required course within **ninety (90) days** of the date the Board executes this Consent Order. The Respondent shall submit written documentation to the Board regarding the particular course he proposes to fulfill this condition. The Board reserves the right to require the Respondent to provide further information regarding the course he proposes, and further reserves the right to reject his proposed course and require submission of an alternative proposal. The Board will approve a course only if it deems the curriculum and the duration of the course adequate to satisfy its concerns. The Respondent shall be responsible for submitting written documentation to the Board of his successful completion of this course. The Respondent understands and agrees that he may not use this coursework to fulfill any requirements mandated for licensure renewal. The Respondent shall be solely

responsible for furnishing the Board with adequate written verification that he has completed the course according to the terms set forth herein.

3. The Respondent shall practice according to the Maryland Medical Practice Act and in accordance with all applicable laws, statutes, and regulations pertaining to the practice of medicine.

4. The Board reserves the right to conduct a practice review of the Respondent's practice, or may delegate the practice review, to be determined at the discretion of the Board.

5. The Respondent shall not permit any unlicensed medical personnel to practice medicine in his office. Prior to performing any medical abortion services, he will ensure that all sonograms will be reviewed by a licensed physician. The Respondent will also ensure that he will personally advise all patients of the risks, benefits and alternatives to medical abortion services in obtaining their informed consent prior to rendering the services.

**AND IT IS FURTHER ORDERED** that after the conclusion of the entire **ONE (1) YEAR** period of **PROBATION**, the Respondent may file a written petition to the Board requesting termination of his probation. After consideration of his petition, the probation may be terminated through an order of the Board or designated Board committee. The Respondent may be required to appear before the Board or designated Board committee. The Board, or designated Board committee, will grant the termination if the Respondent has fully and satisfactorily complied with all of the probationary terms and conditions of this Consent Order, including the expiration of the one (1) year period of



probation, and if there are no outstanding complaints related to the charges before the Board; and it is further

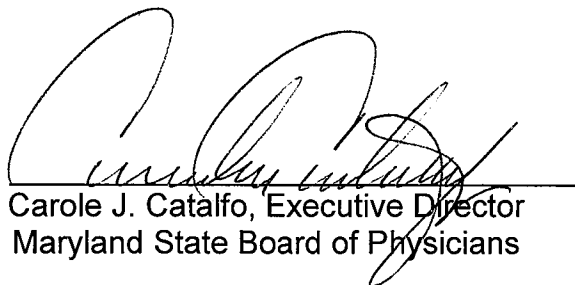
**ORDERED** that if the Respondent violates any of the terms or conditions of probation or this Consent Order, the Board, in its discretion, after notice and an opportunity for a hearing before an administrative law judge at the Office of Administrative Hearings if there is a genuine dispute as to the underlying material facts, or an opportunity for a show cause hearing before the Board, may impose any other disciplinary sanctions the Board may have imposed, including a reprimand, probation, suspension, revocation and/or a monetary fine, said violation being proven by a preponderance of the evidence; and it is further

**ORDERED** that the Respondent shall not apply for early termination of probation; and it is further

**ORDERED** that the Respondent shall be responsible for all costs incurred in fulfilling the terms and conditions of the Consent Order; and it is further

**ORDERED** that this Consent Order is considered a **PUBLIC DOCUMENT** pursuant to Md. State Gov't. Code Ann. § 10-611 *et seq.* (2009 Repl. Vol. and 2012 Supp.).

12-19-12



Carole J. Catalfo, Executive Director  
Maryland State Board of Physicians

**CONSENT**

I, Abolghassem M. Gohari, M.D., acknowledge that I have had the opportunity to consult with counsel before signing this document. By this Consent, I agree and accept

**NOTARY**

STATE OF Maryland

CITY/COUNTY OF Fredrick

I HEREBY CERTIFY that on this 14<sup>th</sup> day of November, 2012, before me, a Notary Public of the State and County aforesaid, personally appeared Abolghessem M. Gohari, M.D., and gave oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

**AS WITNESS**, my hand and Notary Seal.

Lillian Keenan  
Notary Public


My commission expires: 6-16-2013

to be bound by this Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact and Conclusions of Law.


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

11-14-12  
Date

  
Abolghassem M. Gohari, M.D.  
Respondent

Read and approved by:

  
Bradford J. Roegge, Esquire  
Counsel for Dr. Gohari