

IN THE MATTER OF	*	BEFORE THE
ALAN J. ROSS, M.D.	*	STATE BOARD OF PHYSICIAN
Respondent	*	QUALITY ASSURANCE
License Number: D 22050	*	Case Number: 92-0080
* * * * *	*	* * * * *

CONSENT ORDER

BACKGROUND

The State of Maryland Board of Physician Quality Assurance (the "Board"), charged Alan J. Ross, M.D. (the "Respondent") License Number D 22050, (D.O.B. 11/11/43), with a violation of the Maryland Medical Practice Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §14-404(a)(22)(1991 Repl. Vol.), on October 23, 1992. The Board charged that the Respondent violated the following pertinent provision of H.O. §14-404 which provides:

(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:

- (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 facility, office, hospital, or any other location in this State.

The Respondent was notified of these charges by personal service on July 13, 1993. A hearing was scheduled for this matter before the Office of Administrative Hearings on November 16, 1993.

On September 8, 1993, the Board held a Case Resolution Conference ("CRC"). As a result of the CRC's recommendations and the negotiations entered into between the Office of the Attorney

General and the Respondent, the Respondent agreed to enter into the following Consent Order according to the terms set forth below.

FINDINGS OF FACT

The Board bases its charges on the following facts that the Board has cause to believe are true:

1. At all times relevant to these charges, the Respondent was and is a physician licensed to practice medicine in the State of Maryland. He was initially licensed in Maryland on June 8, 1978.

2. On December 10, 1991, the Board received a complaint in the form of a news release from Human Life International, regarding the death of a twenty-eight (28) year old woman (Patient A)* after she had received an abortion on or about April 25, 1989 from the Respondent at the Respondent's office in Bethesda, Maryland.

3. On or about January 22, 1992, the Board referred the complaint for an investigation and an incident review to the Medical and Chirurgical Faculty of Maryland ("Med-Chi") Peer Review Management Committee (PRMC). Subsequently, Med-Chi PRMC referred this matter to the Montgomery County Medical Society (MCMS).

4. The MCMS Peer Review Committee (PRC) conducted an incident review, and then issued a report to the Board on March 3, 1992, finding that the Respondent failed to meet the standard of

*To ensure confidentiality, patient names are not set forth in this Charging Document. The Board maintains a list of patient names which corresponds to the alphabetical letter used in this document. This list is available to Respondent upon request.

care, as described in more detail below, and recommending a practice review.

5. Based upon the MCMS report, the Board ordered a practice review.

6. The Med-Chi PRMC again referred the matter to MCMS; thereafter, the MCMS-PRC conducted the practice review, including a site review which occurred on April 16, 1992 at the Respondent's office, located at 8311 Wisconsin Avenue, Bethesda, Maryland.

7. On August 14, 1992, the PRC of MCMS reported its findings to the Board. In its report, the MCMS-PRC found that the Respondent's overall practice was deficient and that the Respondent failed to meet appropriate standards for the delivery of quality medical and surgical care in several areas, inclusive of the following:

A. On or about April 25, 1989, Patient A presented to the Respondent for an abortion. The Respondent diagnosed Patient A as having an intrauterine pregnancy of six (6) to eight (8) weeks duration, and proceeded to perform a suction aspiration under local anesthesia. According to the Respondent's office records, the aspirate tissue obtained was abnormal, consisting of blood clots. After the abortive procedure, the Respondent sent Patient A home with a prescription for antibiotics.

On May 12, 1989, Patient A arrived in the emergency room of Greater Laurel Beltsville Hospital, in full cardiac arrest secondary to exsanguination, where she was pronounced dead.

Her death was caused by a ruptured tubal ectopic pregnancy.

A review of Patient A's office records indicated that the Respondent found the aspirate from Patient A's uterus to be grossly abnormal, containing mainly blood clots, although he never sent the specimen for pathological examination. According to the records and in a statement written to the Board dated January 6, 1992, the Respondent indicated that he detected placenta villi in the aspirated specimen, of six (6) weeks of pregnancy, by visual inspection.

The presence of placenta villi at six (6) weeks gestation is a microscopic diagnosis, one that is not made by visual inspection. Other than the visual inspection of the uterine aspirate, the Respondent performed no testing to confirm the diagnosis of intrauterine pregnancy. When a diagnosis of intrauterine pregnancy is not confirmed, the operating physician must further examine the patient with pelvic ultrasound, do pathologic examination of uterine aspirate, or do a serial HCG (Human Chorionic Gonadotropic) studies to determine if an ectopic pregnancy does exist.

In this case, the Respondent breached the standard of care with regard to Patient A when he:

- (1) did not consider an ectopic pregnancy when the uterine aspirate was found to be inconsistent with a six (6) to eight (8) week intrauterine pregnancy;
- (2) did not do serial HCG studies;

- (3) did not use pelvic ultrasound to rule out an ectopic pregnancy diagnosis;
- (4) did not send the uterine aspirate which was found to be abnormal for pathological examination; and
- (5) did not counsel Patient A as to the possibility of an ectopic pregnancy with its related risks and dangers.

B. During the on-site practice review, the peer reviewers examined patient medical records. In this inspection, the reviewers found that the Respondent's office records were grossly inadequate. All of the office charts were poorly documented and illegible. Due to the inadequate documentation, the records failed to demonstrate that the Respondent was delivering adequate medical care to his patients.

Of the records reviewed during the on-site practice review, none had a complete or comprehensive history or physical examination; none allowed for determination of the medical status of the patient; none was sufficiently detailed, or detailed at all, to permit another physician to continue treatment on the basis of the record; none had medication sheets; none had current or updated problem lists; none had any typewritten progress notes; none was legibly written -- all of the notes were handwritten, illegibly, by the Respondent who, during the on-site review, was unable to

translate his own writing. It is a breach of the standard of care to fail to maintain complete, accurate, and legible medical records which includes complaints, historical, physical, laboratory data, diagnosis and treatment plan, and medication lists.

C. The reviewers noted that the methods used for disposing of medical waste material were grossly inadequate. The Respondent disposed of all of his biologic waste, including used needles and gloves, and waste from terminations of pregnancies, in the regular trash. He maintained no separate contaminated biologic waste disposal.

D. While conducting the on-site review, the reviewers also noted that laboratory services (e.g. RH factor, chlamydia tests) were performed in the office laboratory; however, the Respondent had no proficiency testing for the tests being performed. When the reviewers queried the Respondent about proficiency testing, he indicated that this was not necessary since he did not charge the patients for the tests.

Overall, the reviewers concluded that the Respondent demonstrated a pattern of careless and inattentive medical care and failed to meet appropriate standards for the delivery of quality medical and surgical care.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes, as a matter of law that the Respondent failed 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 in violation of MD. HEALTH OCC. CODE ANN. §14-404(a)(22) (1991 Repl. Vol.).

ORDER

Based upon the foregoing Findings of Facts and Conclusions of Law, it is this 28 day of December, 1993, by the State Board of Physician Quality Assurance:

ORDERED that the Respondent's **LICENSE TO PRACTICE MEDICINE** in the State of Maryland be and it is hereby **SUSPENDED** for a period of **ONE YEAR**; and it is further

ORDERED that the suspension of the Respondent's license to practice medicine in the State of Maryland be and it is hereby **STAYED**; and it is further

ORDERED that the Respondent be and he is hereby assessed a fine in the amount of Twenty-Five Thousand Dollars (\$25,000.00); and it is further

ORDERED that the Respondent hereby shall pay the Twenty-Five Thousand Dollar (\$25,000.00) fine to the Board by certified check, payable to the "Maryland Board of Physician Quality Assurance," prior to the effective date of this Consent Order, that day being

the date the Board executes this Consent Order; and it is further

ORDERED that the Respondent be and he is hereby placed on **PROBATION** for a period of **THREE YEARS** from the effective date of this Consent Order; and it is further

ORDERED that the Respondent is subject to the following terms and conditions of probation for a period of three (3) years from the date of this Consent Order:

1. The Respondent voluntarily agrees to send out all abortive tissue and/or abortive aspirate and/or products of abortion for pathological examination. However, the Respondent acknowledges, understands and agrees that even though this provision is based upon a voluntary act, if the Respondent breaches this provision and fails to send out all abortive tissue and/or abortive aspirate and/or products of abortion for pathological examination, then this breach shall be deemed a violation of this Consent Order which shall be acted upon in accordance with the provisions in this Consent Order governing such violations.

2. The Respondent shall immediately separate his biologic waste from his regular trash and shall immediately use and maintain separate containers for, and separate methods of disposal of, biologic waste which shall be confirmed by the Board prior to the effective date of this Consent Order. The Respondent acknowledges and understands that it is his sole responsibility to adhere to, conform to and comply with applicable federal and state statutes regarding the separation and disposal of biologic waste. Nothing in this Consent Order can or shall be construed by the Respondent

as excusing, modifying, nullifying, altering or negating Respondent's statutory obligation concerning biologic waste.

3. The Respondent shall maintain complete and legible patient records, including in his charts a record of dates of visits; chief complaints; historical, physical and laboratory data; diagnosis, and a treatment plan; progress notes; communication of laboratory results to patients; types of tests; medications; and medical indications for prescribing medications and ordering diagnostic tests. The Respondent shall maintain patient records, complete and legible, that ensure continuity of health care by a subsequent health care provider.

4. The Respondent shall retain and use the services of a medical records transcriber or transcription service for records transcription and shall submit proof of the retention to the Board in writing on or before the effective date of this Consent Order. The written proof shall be in the form of an Affidavit signed by the Respondent and shall consist of the name, address and telephone number of the transcriber or transcription service.

5. The Respondent shall retain and use the services of a proficiency testing service for laboratory proficiency testing of laboratory services performed in the office laboratory and shall submit proof of the retention to the Board in writing on or before the effective date of this Consent Order. The written proof shall be in the form of an Affidavit signed by the Respondent and shall consist of the name, address and telephone number of the proficiency testing service.

6. The Respondent shall submit himself to the Focused Professional Education (FPE) program of the Medical and Chirurgical Faculty of the State of Maryland ("Med-Chi") for evaluation and assessment for development of a medical education plan as determined by Med-Chi FPE. The Respondent shall cooperate and adhere to any program, plan, medical education, education, training or course of study as determined by Med-Chi and shall pay the expenses associated with, and as determined by, the FPE program.

a. The Respondent shall CONTACT Med-Chi FPE and shall ARRANGE for and ATTEND the INITIAL EVALUATION with Med-Chi FPE WITHIN THREE (3) MONTHS after the effective date of this Consent Order and shall thereafter submit proof to the Board by way of written correspondence to the Board affirming that: (1) Respondent contacted Med-Chi FPE, stating the date; (2) Respondent arranged for an initial evaluation; and (3) Respondent attended the initial evaluation, stating the date.

b. The Respondent acknowledges, understands and agrees that the contacting of and reporting to Med-Chi FPE and submitting proof of same to the Board is the sole responsibility of the Respondent. The Respondent further acknowledges and understands that the three (3) month time period stated above shall not be changed, altered or extended, and that failure to contact and attend the initial evaluation as set forth above shall be deemed a breach of and violation of this Consent Order.

7. The Respondent shall be subject to periodic peer reviews during the period of probation as ordered by the Board, shall

cooperate in order to facilitate peer review, and shall participate in peer review where and when requested. The Respondent shall be subject to peer review on an annual basis, and shall be subject to a minimum of three (3) peer reviews as a condition of this Consent Order. The Respondent will receive a copy of each peer review report.

a. If, after conducting appropriate peer review of any kind, the peer review committee reports to the Board that the Respondent is not practicing within the standard of care, and if the peer review determination is approved and adopted by the Board, which has sole discretion in the matter, then this breach of standard of care shall be deemed a violation of probation under the terms of this Consent Order.

8. The Respondent shall practice competently. The Respondent shall practice within the standard of care as determined by appropriate peer review to be conducted as set forth in paragraph no. 7 above. If the Respondent is found to be practicing below the standard of care as determined by the Board through appropriate peer review, then he is deemed to have breached and violated the terms of his probation and this Consent Order.

AND BE IT FURTHER ORDERED that if the Respondent violates any of the terms of his probation as set forth in this Consent Order, then the Board, after determination of violation and notice and a hearing, shall lift the stay of suspension and reinstate the one (1) year suspension and/or impose any other disciplinary sanctions it deems appropriate, said violation of probation 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 or welfare, the Board, **WITHOUT PRIOR NOTICE AND AN OPPORTUNITY FOR A HEARING, MAY VACATE THE STAY OF SUSPENSION AND REINSTATE THE SUSPENSION**, and/or impose any other disciplinary sanctions it deems appropriate, 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 State Government Article, of the Annotated Code of Maryland, Section 10-405; and be it further

ORDERED that three (3) years after the effective date of this Consent Order, the Respondent may submit a petition for termination of probation and reinstatement of his license without any conditions or restrictions to the Board provided that he has been peer reviewed a minimum of three (3) times; 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. STATE GOV'T CODE ANN. §10-611 et seq. (1993 Repl. Vol.).

12/28/93

Date



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

CONSENT

I, ALAN J. ROSS, M.D., acknowledge that I am represented by legal counsel, and I have had the opportunity to consult with counsel before entering into and signing this document. By this consent, I hereby acknowledge that the Board, by clear and convincing evidence, could prove the Findings of Fact and Conclusions of Law contained herein. Accordingly, I accept and submit to the foregoing Consent Order, consisting of fourteen (14) pages.

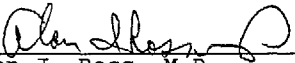
I acknowledge the validity of this Consent Order as if entered after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided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

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.

12/14/93
Date


Alan J. Ross, M.D.
Respondent

Read and approved:

12/14/93
Date

W. Scott Sonntag
W. Scott Sonntag, Esquire
Attorney for Respondent

STATE OF MARYLAND
CITY/COUNTY OF PRINCE GEORGE'S

I HEREBY CERTIFY that on this 14th day of DECEMBER,
1993, before me, a Notary Public of the State and City/County
aforesaid, personally appeared Alan J. Ross, 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.

Sandra H. Strain
Notary Public

My Commission expires: JANUARY 1, 1995

ross#10.ord

STATE OF MARYLAND,
COUNTY OF PRINCE GEORGE'S

AFFIDAVIT OF ALAN J. ROSS, M.D.

I, Alan J. Ross, M.D., after being duly sworn on oath depose and say as follows:

1. That I am the Alan J. Ross, M.D. who is the subject of Case No. 92-0080 presently pending before the State Board of Physician Quality Assurance.

2. That Case No. 92-0080 has been resolved by my agreement to enter into a Consent Order to which this Affidavit and Exhibits have been attached.

3. That pursuant to the terms and conditions of the Consent Order I have retained the services of a medical transcription service identified as MDI (Medical Dictation Services, Inc.). Further, that I have attached to this affidavit both correspondence from MDI and the contract entered into between myself and MDI on November 17, 1993. Both the correspondence and contract have been attached hereto and collectively marked as Exhibit A.

4. Furthermore, pursuant to the terms and conditions of the Consent Order I have entered into an agreement to acquire proficiency testing for my limited in-house laboratory through the HCFA CLIA Program. Both my application to and correspondence from the HCFA CLIA Program are attached hereto and are collectively marked as Exhibit B.

5. That pursuant to the request of the Assistant

DeCARO, DORAN,
SICILIANO, GALLAGHER,
SONNTAG & DeBLASIS

WASHINGTON BUSINESS PARK
4601 FORBES BOULEVARD
SUITE 200

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LANNAM, MD 20703-0040
TELEPHONE: (301) 306-4300
FAX: (301) 306-4988

1800 DIAGONAL ROAD
SUITE 300
DRVA, VA 22314
TELEPHONE: (703) 548-0044

Attorney General charged with handling this matter, I attach hereto as Exhibit C the Certificate of Waiver for my limited in-house laboratory date September 1, 1992 and which, by its terms, shall be valid through the date of August 31, 1994.

6. Furthermore, I have paid on the date of the execution of this Affidavit by certified checks Twenty Five Thousand Dollars (\$25,000.00).

FURTHER YOUR AFFIANT SAYETH NOT.

Alan J. Ross
Alan J. Ross, M.D.

I, Alan J. Ross, M.D., being competent to testify and having personal knowledge of the facts set forth here do hereby declare and affirm under the penalties of perjury that the contents of the foregoing document are true and correct.

STATE OF MARYLAND :
:
COUNTY OF PRINCE GEORGE'S : SS:

Sworn to and subscribed before me this 14th day of DECEMBER, 1993.

Shandra H. Adams
NOTARY PUBLIC

My Commission Expires: JANUARY 1, 1995.

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SICILIANO, GALLAGHER,
SONNTAG & DeBLASIS
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FRIA, VA 22314
TELEPHONE: (703) 548-0044

MDI

MEDICAL DICTATION SERVICES, INC.

101 LAKEFOREST BOULEVARD, #330, GAITHERSBURG, MD 20877 (301) 921-2006 FAX (301) 990-1205
8509 LOCH RAVEN BOULEVARD, BALTIMORE, MD 21286 (410) 665-9998 FAX (410) 665-5831

November 17, 1993

Alan J. Ross, M.D.
8311 Wisconsin Avenue
Suite G-14
Bethesda, MD 20814

Dear Dr. Ross:

Thank you for your inquiry regarding our services. Enclosed please find two copies of the transcription Agreement. Please sign both copies and return one to us for our records. Also enclosed is a dictation cue card which gives instructions on dictating into our system. You may begin to dictate immediately upon receipt of this letter.

We are looking forward to taking care of your transcription needs.

Sincerely yours,

Andrea L. Myer / adp
Andrea L. Myer, RRA
President

ALM:scc

Enclosures

AGREEMENT

THIS AGREEMENT made this 17th day of November, 1993, by and between MEDICAL DICTATION SERVICES, INC., 101 Lakeforest Boulevard, Suite 330, Gaithersburg, Maryland 20877, hereinafter referred to as "MDI" and Alan J. Ross, M.D., of 8311 Wisconsin Avenue, Suite C-14, Bethesda, Maryland (Tel: 654-5225), hereinafter referred to as the "Client."

WITNESSETH

WHEREAS, MDI transcribes dictated letters, consultation reports, office visit memoranda and other materials; and

WHEREAS, Client is desirous of employing MDI to transcribe letters, consultation reports, office visit memoranda and other materials as specified by Client.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and for such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. SERVICES TO BE PROVIDED. MDI agrees to perform the following services on behalf of Client:
 - A. Transcribe letters, consultation reports, office visit memoranda, and other material as specified by Client within 48 hours of the date of delivery to MDI.
 - B. All letters will be typed on paper furnished by Client.
 - C. All transcribed letters, consultation reports, office visit memoranda and other materials will be proofed under the supervision of a Registered Medical Record Administrator.
 - D. MDI will attach a note to the transcribed material addressed to Client specifying any discrepancies and/or inaudible dictation. Space will be left in the material, where appropriate, for insertion by Client.
 - E. MDI will correct any errors contained in the material.
 - F. MDI will provide courier service for the delivery of the material to Client.
 - G. MDI will maintain a daily log identifying the title of the material dictated and the date of dictation.
 - H. Any dictation received by MDI from Client after 4:00 p.m. will be considered as if received by MDI the following business day.

2. CONFIDENTIALITY. MDI will maintain Client confidentiality as follows:

- A. Transcription will be completed under the auspices of MDI, 101 Lakeforest Boulevard, Suite 330, Gaithersburg, MD 20877.
- B. All MDI transcriptionist sign statements attesting that confidentiality will be honored and maintained.
- C. Client's transcribed material will not be reproduced in any fashion other than for Client's official business.

3. PAYMENT BY CLIENT. Courier and transcription fee is based on \$.0114 per word (five keystrokes constitutes one word). A 15% surcharge will be added on for all STAT dictations. A xerox copy fee is \$.10 each. A fee of \$1.00 per page is charged for any reprints due to Client's changes. Payment is due within ten (10) days of issuance by MDI of Client's monthly voucher. If payment is not made within ten (10) days, any outstanding balance is subject to interest at the rate of 1.5% per month.

4. TERM OF AGREEMENT. This Agreement shall become effective on the date of execution hereof, and shall continue in effect until terminated in accordance with this Agreement.

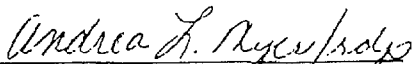
5. TERMINATION OF AGREEMENT. This Agreement can be terminated with ten (10) days written notice by either party.

6. ENTIRE AGREEMENT. This contract expresses the entire agreement between the parties regarding this matter. This Agreement can only be modified in writing. The Agreement shall be binding upon both Client and MDI and their respective heirs, legal representatives and successors in interest.

7. GOVERNING LAW. This Agreement shall be interpreted according to the laws of the State of Maryland.

8. INDEPENDENT CONTRACTOR. Both MDI and the Client agree that the relationship created by this Agreement is that of independent contractor and not that of employee and employer.

WHEREBY, the parties hereto have set their hands to this document this day and year first above written.


ANDREA L. MYER, RRA, PRESIDENT
MEDICAL DICTATION SERVICES, INC.

11/17/93
DATE


ALAN J. ROSS, M.D.

11-17-93
DATE

STATE OF MARYLAND,
COUNTY OF PRINCE GEORGE'S

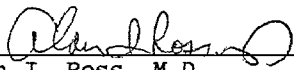
AFFIDAVIT OF ALAN J. ROSS, M.D.

I, ALAN J. ROSS, M.D., after first being duly sworn on oath depose and say the following:

1. That I am the Alan J. Ross, M.D. who is the subject of Case No. 92-0080 presently pending before the State Board of Physician Quality Assurance.

2. That pursuant to the terms and conditions of the Consent Order above-referenced, I have retained the services of Medical Laboratory Evaluations Of The American Society Of Internal Medicine for the purpose of obtaining proficiency testing for my limited in-house laboratory. This entity's phone number is 1-800-338-2746. Should the Board need documentation confirming further my retention of this service, I will provide it upon request.

FURTHER YOUR AFFIANT SAYETH NOT.



Alan J. Ross, M.D.

I, Alan J. Ross, M.D., being competent to testify and having personal knowledge of the facts set forth here do hereby declare and affirm under the penalties of perjury that the contents of the foregoing document are true and correct.

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SICILIANO, GALLAGHER,
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STATE OF MARYLAND :
:
COUNTY OF PRINCE GEORGE'S : SS:

Sworn to and subscribed before me this 16th day of

DECEMBER, 1993.

Sandra N. Strain
NOTARY PUBLIC

My Commission Expires: JANUARY 1, 1995.

DeCARO, DORAN,
SICILIANO, GALLAGHER,
SONNTAG & DeBLASIS

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