

IN THE MATTER	*	BEFORE THE
ROMEO A. FERRER, M.D.	*	STATE BOARD OF PHYSICIAN
Respondent	*	QUALITY ASSURANCE
License Number D9255	*	CASE Numbers 89-331
		89-332, 89-347, 90-0077
* * * * *	* * * * *	* * * * *

CONSENT ORDER
BACKGROUND

Based on information received by the State Board of Physician Quality Assurance (the "Board"), the Board charged Romeo A. Ferrer, M.D. (the Respondent) (D.O.B. 2/18/41), License Number D9255, under the Maryland Medical Practice Act ("the Act"), Md. Health Occ. Code Ann. ("H.O.") §14-404 (1991 Repl. Volume) on June 10, 1992.

The pertinent provisions of the Act under H.O. §14-404 provide the following:

(a) Subject to the hearing provisions of §14-405 of this subtitle, the Board, on the affirmative vote of a majority of its full membership, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

(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 care performed in an outpatient surgical facility, office, hospital, or any other location in this state.

On August 12, 1992, a Case Resolution Conference¹ was held.

The Case Resolution Conference recommended to the Board that this case be resolved by entering into a Consent Order. The Board, at

¹Chief Case Resolution Officer John F. Strahan, M.D.; J. Andrew Sumner, M.D.; Frank A. Gunther, Jr., Board Members; C. Frederick Ryland, Counsel to the Board; Debra G. Woodruff, Assistant Attorney General and Administrative Prosecutor; Sylvia J. Anderson, Legal Assistant; Romeo A. Ferrer, M.D., Respondent; Edward J. Birrane, Jr., Esquire and Kevin P. Foy, Esquire, Counsel for Dr. Ferrer, were present.

its meeting on November 18, 1992, considered the Case Resolution Conference's recommendation and voted to accept this Consent Order.

FINDINGS OF FACT

1. At all times relevant to these charges, the Respondent was licensed to practice medicine in the State of Maryland. In 1971, Harbor Hospital (then South Baltimore General Hospital) granted Respondent full privileges.

2. On or about July, 1986, the Respondent was notified by his medical malpractice insurance carrier, Medical Mutual Insurance Society of Maryland, that his policy would not be renewed. Solely as a result of that action, Harbor Hospital Center withdrew privileges from the Respondent. After a complaint to the Maryland Insurance Division and a renewal application to the carrier for an insurance policy by the Respondent, the Insurance Commissioner found that Medical Mutual Liability Insurance Society of Maryland had violated §234A of Article 48A of the Annotated Code of Maryland in its refusal to issue a medical professional liability insurance policy to the Respondent and the Insurance Commissioner further ordered the carrier to issue a policy of medical professional liability insurance pursuant to the final order dated July 28, 1988. A copy of the recommended order and the final order is attached hereto as Exhibit A.

3. Thereafter, the Medical Mutual Liability Insurance Society of Maryland issued a policy of professional liability insurance to the Respondent in compliance with the order of the Maryland

Insurance Commissioner whereupon the Respondent reapplied for privileges at Harbor Hospital Center.

4. On August 18, 1988, Harbor Hospital Center granted Respondent gynecologic privileges at the Provisional-Associate Staff level subject to the condition that a senior surgeon assist Respondent during the following ten (10) surgical procedures:

1. Vaginal hysterectomy
2. D&C
3. Laparoscopic tubal sterilization
4. Diagnostic laparoscopy
5. Abdominal hysterectomy
6. Anterior repair or posterior repair
7. Tuboplasty
8. Cystoscopy and/or cystometry
9. Burch procedure
10. Colposcopy with biopsy

In addition, Harbor Hospital Center required Respondent to perform three (3) of each of the procedures with supervision before Respondent was allowed to operate without supervision.

5. On November 28, 1988, Respondent performed a Burch procedure on Patient D for stress urinary incontinence. Postoperatively the patient developed right flank pain and difficulty voiding. On December 2, 1988, a cystoscopy and right retrograde study revealed compromise of the right ureter. On December 3, 1988, surgery was necessary to relieve an obstruction of the right ureter caused by a misplaced Burch suture. The peer reviewers found that Respondent did not follow the standard technique in performing the Burch procedure. If Respondent had followed the standard technique, there would have been no danger of ureter compromise.

6. On December 5, 1988, Respondent performed a total vaginal hysterectomy, anterior colporrhaphy with Kelly plication and posterior colporrhaphy, and exploratory laparotomy on Patient E. During the surgery, Respondent unsuccessfully attempted to place a suprapubic catheter, and lost the metal cannula but closed the incision. After the patient awakened from surgery, x-rays showed that the cannula was inside the patient's abdomen. A second exploratory laparotomy was necessary to remove the cannula.

The peer reviewers found that Respondent did not meet the standard of care. Respondent's failure to obtain a correct instrument count before closing caused the patient to undergo repeated anesthesia and surgery.

7. On February 2, 1989, Respondent performed bilateral fimbrioplasty, insertion of left ureteral catheter, suprapubic cystotomy, decompression of right ovarian cyst and bilateral tuboplasty on Patient F. During the procedure, Respondent nicked the left hypogastric vein. Postoperatively, the patient experienced abdominal distention and symptoms of a left ureteral obstruction. An exploratory surgery found no significant difficulties.

A peer review found that the patient experienced retroperitoneal trauma from an intraperitoneal procedure. The operative note indicated clamping and ligating the hypogastric vein. Injury to the hypogastric vein is not a recognized complication of fimbrioplasty. The postoperative management of

abdominal distention and left flank pain by performing a second laparotomy is unnecessary and falls below the standard of care.

8. On July 31, 1989, Respondent performed a total abdominal hysterectomy on Patient G. Postoperatively, the patient had difficulty voiding and an ileus. On August 9, 1989, a CT scan revealed ascites, and an intravenous pyelogram showed compromise of the right ureter. On August 10, 1989, a radiologist had to insert a percutaneous nephrostomy tube (an invasive procedure) and drain the ascites.

A peer review found that a ureteral injury should not have occurred if usual standards of care regarding surgical technique had been followed.

9. On August 14, 1989, based on Respondent's care of Patients D, E, F, and G, Harbor Hospital Center suspended Respondent's privileges.

10. On November 1, 1989, Harbor Hospital Center partially reinstated Respondent's surgical privileges by allowing Respondent to perform twenty-one (21) specified procedures by requiring a second opinion by a Board Certified Gynecologist for patients with a previous medical history of intra-abdominal surgery selected by Respondent for laparoscopy, and in the event that during a diagnostic laparoscopy procedure an ectopic tubal pregnancy was encountered, Respondent was required to refer the case to another board-certified gynecologic surgeon to perform the laparotomy, however, Respondent was permitted to serve in the role of first assistant in the case.

11. On December 22, 1989, the Harbor Hospital Board of Trustees decided that, in order to perform surgery at Harbor Hospital Center, Respondent would be required to have a monitor present for all operations.

12. On or about February 1, 1990, Respondent and Harbor Hospital Center entered into a Monitoring Agreement whereby the Chairman of the Department of OB/GYN at Harbor Hospital Center agreed to review the medical records of each patient Respondent scheduled for surgery and to monitor Respondent in the operating room during the procedure. The Chairman agreed to file a written report about Respondent's performance after each operation.

13. On June 21, 1990 the Monitoring Agreement was amended to allow Respondent to perform tubal laparoscopy with or without suction curettage therapeutic abortion as an independent practitioner. Respondent's selection of cases for tubal laparoscopy continued to be monitored by the Chairman of the Department of OB/GYN.

14. On August 2, 1991, Harbor Hospital Center notified Respondent that the terms of the Monitoring Agreement would be extended until December 31, 1991. Respondent was also notified that he could perform the following procedure without supervision:

- a. D&C
- b. suction curettage for abortion
- c. laparoscopic tubal sterilization
- d. diagnostic laparoscopy
- e. cystoscopy and/or cystometry
- f. colposcopy with biopsy
- g. cold cone biopsy of cervix
- h. hysterosalpingography
- i. diagnostic hysteroscopy

15. On April 20, 1992, Harbor Hospital Center notified Respondent that Respondent was subject to supervision for all major procedures² but that Respondent would be allowed to replace the Chairman of the Department with any Board Certified obstetrician/gynecologist of his choosing who has privileges to practice at Harbor Hospital Center as Respondent's monitor in the operating room for major procedures.

Since February, 1990 Respondent has continued to perform surgical procedures at Harbor Hospital both with and without supervision.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes, as a matter of law, that the Respondent has failed to meet appropriate standards in case number 90-0077 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. (See Md. Health Occ. Code Ann. §§14-404 (a) (22) (1991 Repl. Vol)).

²Trans Abd

1. Abd Hysterectomy
2. Burch Procedure = Abd Bladder Repair
3. Tuboplasty (Miscro Surgery)
4. Ca of Ovary
5. Ovarian Cysts/Neoplasms with or without Adhesions

Trans Vaginal

1. Vaginal Hysterectomy
2. Enterocele Repair
3. Nichols-Randall Procedure

The Board, pursuant to its authority under Md. Health Occ. Code Ann. §14-406(b), finds that there are no grounds for action under Md. Health Occ. Code Ann. §14-404(a)(4) in case number 90-0077.

The Board, pursuant to Md. Health Occ. Code Ann. §14-406(b), finds that there are no grounds for action under Md. Health Occ. Code Ann. §14-404(a)(4) and (22) in case nos. 89-331, 89-332 and 89-347.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 18 day of November, 1992, 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,

ORDERED, that Respondent is hereby REPRIMANDED with regard to violations of Md. Health Occ. Code Ann. §14-404(a)(22) in case number 90-0077; and it is further

ORDERED that pursuant to Md. Health Occ. Code Ann. 14-406(b) the charges brought against the Respondent under Md. Health Occ. Code Ann. §14-404(a)(4) in case number 90-0077 are dismissed and the Board shall exonerate the licensee, shall expunge all records of the charges (except as any such documents also related to §14-404(a)(22)) and may not take any further action on this charge; and it is further

ORDERED that pursuant to Md. Health Occ. Code Ann. §14-406(b), that charges against Respondent under Md. Health Code Ann.

§14-404(a)(4). and (22) in case numbers 89-331, 89-332 and 89-347 are dismissed and that the Board shall exonerate the licensee, shall expunge all records of the charges, and may not take any further actions on the charges; and it is further

ORDERED that Respondent shall submit to a monitor program and a peer review as follows:

1. Beginning December 1, 1992 and continuing through May 31, 1993, before Respondent performs a major procedure³, Respondent will select a Board (American Board of Obstetrics and Gynecology) certified obstetrician/gynecologist (the "proctor") to proctor the procedure. The Respondent has chosen three (3) physicians whose identities have been supplied to the Chief of Compliance Division and those three (3) physicians have been approved by the Board of Physician Quality Assurance to act as "proctors". The Respondent may choose additional physicians other than the three (3) initial physicians to proctor his procedures only if the name of any additional physicians are supplied to Barbara Vona, Esquire, Chief of Compliance Division, at least two weeks before the procedure is

³"Major procedure" is defined as the following operative procedures:

Trans Abd

1. Abd Hysterectomy
2. Burch Procedure = Abd Bladder Repair
3. Tuboplasty (Miscro Surgery)
4. Ca of Ovary
5. Ovarian Cysts/Neoplasms with or without Adhesions

Trans Vaginal

1. Vaginal Hysterectomy
2. Enterocoele Repair
3. Nichols-Randall Procedure

to be performed and the Compliance Division approves of that physician as a proctor. All proctors will preoperatively certify on the proctor's report and document in the medical record that the patient's condition requires the operation. The preoperative certification will include a review of all medical records regarding the patient and her condition. The proctor may perform a preoperative physical examination if the proctor deems it necessary. Once the proctor certifies that the surgery is indicated, the proctor will physically be in attendance throughout the entire operative procedure. All proctors shall prepare a Proctor's Report, attached hereto and incorporated herein as Exhibit B, immediately upon exiting the operating room. House Officers and OB/GYN Residents will not be allowed to assist Respondent in his cases.

2. Within ten (10) days of completion of a major procedure, Respondent shall forward the Proctor's Report to the Board, attention: Barbara Vona, Esquire, Chief of Compliance Division.

3. On or before June 15, 1993, the Board will forward all of the Proctor's Reports with a request for peer review of the Respondent's hospital surgical procedures to the Medical and Chirurgical Faculty ("Med-Chi") Peer Review Committee ("PRC"). The peer review will be conducted in conformance with the Peer Review Management Handbook but will not be limited to those major procedures that were proctored, and may include a review of any surgical procedure that the Respondent has performed at Harbor Hospital from January 1, 1992 to May 31, 1993. The PRC may request

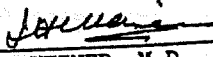
any or all of the proctors who submitted a Proctor Report to appear before the PRC. Thereafter, the PRC will submit a report to the Board on or before December 31, 1993, and upon receipt of the PRC report, the Board shall consider and review the report at its next regularly scheduled monthly meeting in January, 1994. During the time period of June 1, 1993 through November 30, 1993, the Respondent shall continue to be proctored and proctor reports shall be provided to the Chief of Compliance Division as the Respondent was monitored from December 1, 1992 through May 31, 1993. Effective December 1, 1993, the Respondent shall be permitted to perform all procedures without proctoring and without Board ordered supervision. Respondent will receive a copy of the PRC report when it is submitted to the Board and, after the Board receives and reviews the PRC report, the Respondent will be notified in writing by the Board stating the date of the Board meeting on which the Board reviewed the PRC report.

4. If Harbor Hospital terminates its own monitor program of the Respondent before November 30, 1993, Respondent may request the Board to terminate this Board ordered supervision prior to dates otherwise stated herein. However, nothing in this order shall be construed as a promise by the Board to terminate this Board ordered supervision, or any part thereof, prior to the natural termination date previously set forth. Such a decision by the Board will be in the absolute discretion of the Board at the time any such request, if any, is presented to the Board.

AND IT IS FURTHER ORDERED that this Consent Order is a public document pursuant to Maryland State Government Ann. §10-611, et. seq. (1984).

DATE

11/18/82


ISRAEL H. WEINER, M.D.
Chairperson 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 twelve (12) pages.

1. By signing this Consent, I hereby do not admit or agree to the charges, the Findings of Fact, or conclusions of law. Indeed, I dispute and deny any liability or wrong doing. However, I submit to the foregoing Order in a desire to settle and resolve this litigation.

2. I hereby 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 the ruling of the Board in this Consent Order knowing that had this matter proceeded to a hearing and the same results were reached by the Board, I would have had the right to such an appeal. By this Consent, I waive my right to appeal this Consent Order.

4. I sign this Order after having an opportunity to consult with an attorney, without reservation, and I fully understand its meaning and effect.

November 9, 1992
DATE

Romeo A. Ferrer, M.D.
ROMEO A. FERRER, M.D.

March 10, 1992
DATE

Edward J. Birrane, Jr.
EDWARD J. BIRRANE, JR. ESQUIRE

March 9, 1992
DATE

Kevin P. Foy
KEVIN P. FOY, ESQUIRE
BIRRANE, HARIAN & BRATTAN
Seven E. Redwood Street
Ninth Floor
Baltimore, Maryland 21202
(410) 837-2636
Counsel for Romeo A. Ferrer, M.D.

STATE OF MARYLAND
CITY/COUNTY OF BALTIMORE

I HEREBY CERTIFY this 9TH day of NOVEMBER, 1992, before me, a Notary Public of the State and ~~City/County~~ aforesaid, personally appeared Romeo A. Ferrer, 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.

Christina Burrows
Notary Public

My Commission Expires:

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RECOMMENDED ORDER

Therefore, on the basis of the foregoing Findings of Fact and Conclusions of Law, it is hereby,

ORDERED, that there is a violation of Section 234A of Article 48A of the Annotated Code of Maryland by the Medical Mutual Liability Insurance Society of Maryland in its refusal to issue a medical professional liability insurance policy to Dr. Romeo Ferrer, and be it further;

ORDERED, that the Medical Mutual Liability Insurance Society of Maryland issue a policy of medical professional liability insurance covering Dr. Romeo Ferrer at the \$1,000,000.00 - \$3,000,000.00 coverage requested on his application submitted on or about September 1987.

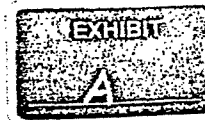
AS WITNESS MY HAND THIS 27th DAY OF July, 1988.

E. SUSAN KELLOGG
INSURANCE COMMISSIONER



BY: Rebecca J. Warren,
Hearing Examiner

RJW/ppm



FINAL ORDER

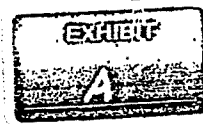
WHEREFORE, this 28th day of July, 1988, the Maryland Insurance Division approved the Proposed Order of the Hearing Examiner.

IN THE MATTER OF
THE MARYLAND INSURANCE DIVISION
VS. "
ROMEO A. FERRER, M.D.
COMPLAINANT

CASE NO. 1627-4/88



Thomas Paul Raimondi
Associate Deputy Commissioner



SURGICAL PROCTOR'S REPORT

PRIMARY SURGEON: Romeo Ferrer, M.D. PROCTOR: (Print Name & Address)

PATIENT: _____ EMERGENCY: Yes No

PROCEDURE: _____

DATE SCHEDULED: _____

PRE-OPERATIVE

TO BE COMPLETED PRIOR TO SURGERY

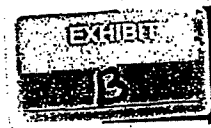
1. History and Physical (Office Chart):
 - (a) Date performed by Dr. Ferrer: _____
Is the H&P Complete?: _____
2. Progress Notes (Office Chart):
 - (a) Date of most recent note by Dr. Ferrer: _____
 - (b) What is the documented reason for surgery: _____
 - (c) Have the appropriate pre-op tests/procedures/
examinations been documented in the chart? _____

I hereby affirm that, prior to surgery, I have reviewed the office chart for the above mentioned patient and I agree with Dr. Ferrer's decision to operate.

DATE _____

PROCTOR'S SIGNATURE _____

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INTRA-OPERATIVE

TO BE COMPLETED IMMEDIATELY AFTER THE SURGERY

DATE: _____

TIME CASE BEGAN: _____

TIME PROCTOR ARRIVED: _____

TIME CASE ENDED: _____

TIME PROCTOR LEFT: _____

1. Describe: (a) Dr. Ferrer's technical skill _____

(b) Dr. Ferrer's knowledge of the procedure _____

(c) Dr. Ferrer's surgical judgment _____

2. Describe any complications and how Dr. Ferrer handled the situation: _____

3. Overall assessment of Dr. Ferrer's performance: _____

I hereby affirm that I was in the Operating Room when Dr. Ferrer began the case, that I was physically present in the Operating Room during the entire procedure and that I stayed in the Operating Room until all operative procedures were completed. I have requested the circulating nurse to document my presence in the Operating Room in the nurses' notes. Furthermore, I agree to attend the Baltimore City Medical Society Review Committee meeting to answer any questions about this case if requested to do so.

DATE _____

PROCTOR'S SIGNATURE _____

F:\WP51\KPF\LEJB\FERRER.SPR

