

IN THE MATTER OF

* BEFORE THE STATE BOARD OF

DAVID M. O'NEIL, M.D.
License No. D22619

* PHYSICIAN QUALITY ASSURANCE

* CASE NUMBER: 99-0241

Respondent

* * * * *

CONSENT ORDER

On or about December 29, 2000, the Board of Physician Quality Assurance (the "Board") charged David M. O'Neil, M.D. (the "Respondent"), D.O.B. 11/26/48, License Number D22619, under the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. ("H.O.") § 14-404.

The pertinent provision of the Act under H.O. §14-404 provides as follows:

- (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:
 - (3) Is guilty of immoral or unprofessional conduct in the practice of medicine.

On February 14, 2001 and May 9, 2001, conferences with regard to this matter were held before a panel of the Board Case Resolution Conference (the "CRC"). As a result of negotiations entered into subsequent to the CRC, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. At all times relevant to these charges, the Respondent was and is a physician licensed to practice medicine in the State of Maryland. The Respondent was initially licensed in Maryland on August 15, 1978. The Respondent also holds an active license in California.

2. The Respondent maintains an office for the practice of obstetrics and gynecology at the Gynemed Surgi-Center, 17 Fontana Lane, Baltimore, Maryland. The Respondent holds privileges at Franklin Square Hospital located in Baltimore, Maryland.
3. On or about February 8, 1999, a former employee of the Respondent submitted a written complaint to the Board in which she made allegations regarding several aspects of the Respondent's practice.
4. After receiving the complaint, an investigation was initiated regarding the allegations contained in the former employee's complaint.
5. The investigation revealed that Employee A¹, an employee referred to in the written complaint, had been employed by the Respondent in his office as a medical assistant on a full-time basis from December 1995 until August 1996.
6. In or around February 1996, the Respondent began making inappropriate remarks to Employee A.
7. On or about May 30, 1996, the Respondent summoned Employee A to his office and instructed her to close her eyes. When she did so, he placed a specimen cup under her nose and told her to identify the contents of the specimen cup by its smell. Employee A immediately identified the pungent smell as ejaculate and asked the Respondent what he was doing with it. The Respondent told Employee A that he had conducted a sperm count on himself.
8. As a result of the Respondent's remarks and conduct throughout her employment with him, Employee A became increasingly nervous, apprehensive and uncomfortable in his presence and avoided him when possible.
9. Employee A terminated her employment with the Respondent in or around August 1996.

¹To ensure confidentiality, the employee's name is not set forth in this document.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the Board concludes as a matter of law that the Respondent engaged in unprofessional conduct in the practice of medicine, in violation of the Maryland Medical Practice Act, H.O. § 14-404(a)(3).

ORDER

Based upon the foregoing Findings of Fact and Conclusion of Law, it is this 25th of MAY, 2001, by a majority of the full authorized membership of the Board considering this case:

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

ORDERED that for the period of one (1) year, the Respondent shall be subject to the following **TERMS AND CONDITIONS** of this Consent Order:

1. Within the first sixty (60) days of the effective date of the Consent Order, the Respondent shall undergo an evaluation by a Board-approved psychiatrist. The psychiatrist shall receive a copy of the charging document and the Consent Order. The Respondent is responsible for ensuring that the psychiatrist submits to the Board a written copy of his/her evaluation within fifteen (15) days of the completion of the Respondent's evaluation. The evaluating psychiatrist shall conduct a general psychiatric evaluation of the Respondent and shall also assess the Respondent with respect to his fitness to practice medicine and his understanding of physician-patient boundary issues. The evaluating psychiatrist shall make specific findings in his/her report regarding the Respondent's understanding of appropriate physician-patient boundaries, his fitness to practice medicine and the likelihood of his engaging in boundary violations in the future. The Board may order the Respondent to comply with any treatment recommendations made by the evaluating psychiatrist.

2. Should the evaluating psychiatrist recommend continued treatment and the Board order the Respondent to undergo continued treatment, the Respondent shall be re-evaluated by the original evaluating psychiatrist six (6) months after his initial evaluation to determine what, if any, gains the Respondent has accomplished as a result of psychotherapy. The psychiatrist shall submit to the Board a written copy of his/her re-evaluation within fifteen (15) days of the completion of the Respondent's re-evaluation.
3. Within nine (9) months of the effective date of the Consent Order, the Respondent shall enroll in and successfully complete a Board-approved medical ethics course that focuses on sexual misconduct/physician-patient boundary issues. This course shall be in addition to any continuing medical education course requirements mandated for medical licensure in Maryland. The Respondent shall provide documentation to the Board of his successful completion of the course within ten (10) days.

AND IT IS FURTHER ORDERED that one (1) year after the effective date of this Consent Order, or no earlier than May 23, 2002, the Respondent may petition the Board for termination of the terms and conditions imposed on his license by this Consent Order provided that the Respondent has satisfactorily complied with all the terms and conditions set forth in this Consent Order and there are no outstanding complaints regarding the Respondent; and it is further

ORDERED that the Respondent shall not violate any other provision of the Maryland Medical Practice Act, or any other provision of State or federal law; and it is further

ORDERED that the Respondent will be responsible for all costs associated with complying with this Consent Order; and be it further

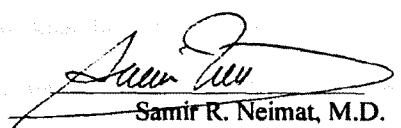
ORDERED that if the Respondent violates any of the terms or fails to comply with the terms of this Order, the Board, after notice and a hearing, and a determination of violation, may impose any other disciplinary sanctions it deems appropriate, said violation being proved by a preponderance of the

evidence; and it is further

ORDERED that if the Respondent presents a danger to the public health, safety or welfare, the Board, without prior notice and an opportunity for hearing, may suspend the Respondent's license, provided the Respondent is given immediate notice of the Board's action and an opportunity for a hearing within thirty (30) days after the Respondent requests a hearing; and it is further

ORDERED that this Consent Order is considered a PUBLIC DOCUMENT pursuant to Md. Code Ann., State Gov't § 10-611 *et seq.*

5/25/01
Date



Samir R. Neimat, M.D.
Chair
Maryland State Board of Physician
Quality Assurance

CONSENT

I, David M. O'Neil, M.D., acknowledge that I am represented by legal counsel, and I have had the opportunity 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 the foregoing Consent Order consisting of 5 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 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.

5/9/01

Date

David O'Neil M.D.
David M. O'Neil, M.D.

STATE OF MARYLAND

CITY/COUNTY OF Carroll

I HEREBY CERTIFY that on this 4th day of May, 2001, before me, Notary Public of the State and City/County aforesaid, personally appeared David M. O'Neil, 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.

Heather McLaughlin
Notary Public

My Commission Expires: 1 Dec 2004

