

IN THE MATTER OF
VINCENT TOMASINO, M.D.

Respondent

License Number: D16338

* BEFORE THE
* MARYLAND STATE
* BOARD OF PHYSICIANS
* Case Number: 2011-0436

* * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

On May 21, 2012, the Maryland State Board of Physicians (the "Board") charged Vincent Tomasino, M.D. (the "Respondent") (D.O.B. 02/07/1940), License Number D16338, under the Maryland Medical Practice Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 14-101 *et seq.* (2009 Repl. Vol.) and Code of Maryland Regulations ("COMAR") tit. 10, § 32.17.01 *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:

H.O. § 14-404

- (a) 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: (i) immoral conduct in the practice of medicine; or (ii) unprofessional conduct in the practice of medicine;¹
- (21) Is disciplined by a licensing or disciplinary authority or convicted or disciplined by a court of any state or country or disciplined by any branch of the United States uniformed services or the Veterans' Administration for an act that would be grounds for disciplinary action under this section; [and]

¹ Pursuant to Chapter 539, Acts 2007, effective June 1, 2007, H.O. § 14-404(a)(3) was rewritten. Prior to June 1, 2007, H.O. § 14-404(a)(3) stated as follows: Is guilty of immoral or unprofessional conduct in the practice of medicine.

- (24) Was subject to investigation or disciplinary action by a licensing or disciplinary authority or by a court of any state or country for an act that would be grounds for disciplinary action under this section and the licensee:
 - (i) Surrendered the license issued by the state or country to the state or country[.]

Grounds under H.O. §§ 14-404(a)(21) and (24) include the following grounds under H.O. § 14-404(a):

- (3) Is guilty of: (i) immoral conduct in the practice of medicine; or (ii) unprofessional conduct in the practice of medicine[.]

The Board also charged the Respondent with violating its sexual misconduct regulations, found at COMAR 10.32.17, which provide the following:

COMAR 10.32.17

10.32.17.01

This chapter prohibits sexual misconduct against patients or key third parties by individuals licensed or certified under Health Occupations Article, Titles 14 and 15, Annotated Code of Maryland.

10.32.17.02

- A. In this chapter, the following terms have the meanings indicated.
- B. Terms Defined.
 - (1) Key third party.
 - (a) “Key third party” means an individual who participates in the health and welfare of the patient concurrent with the physician-patient relationship.
 - (b) “Key third party” includes, but is not limited to the following individuals:
 - (i) Spouse;
 - (ii) Partner;
 - (iii) Parent;
 - (iv) Guardian;
 - (v) Surrogate; or
 - (vi) Proxy designated by durable power of attorney.

(2) Sexual Impropriety.

- (a) "Sexual impropriety" means behavior, gestures, or expressions that are seductive, sexually suggestive, or sexually demeaning to a patient or a key third party regardless of whether the sexual impropriety occurs inside or outside of a professional setting.
- (b) "Sexual impropriety" includes, but is not limited to:
 - (i) Failure to provide privacy for disrobing;
 - (ii) Performing a pelvic or rectal examination without the use of gloves;
 - (iii) Using the health care practitioner-patient relationship to initiate a dating, romantic, or sexual relationship; and
 - (iv) Initiation by the health care practitioner of conversation regarding the health care practitioner's sexual problems, sexual likes or dislikes, or fantasies.

(3) "Sexual misconduct: means a health care practitioner's behavior toward a patient, former patient, or key third party, which includes:

- (a) Sexual impropriety;
- (b) Sexual violation; or
- (c) Engaging in a dating, romantic, or sexual relationship which violates the code of ethics of the American Medical Association, American Osteopathic Association, American Psychiatric Association, or other standard recognized professional code of ethics of the health care practitioner's discipline or specialty.

(4) Sexual Violation.

- (a) "Sexual violation" means health care practitioner-patient or key third party sex, whether or not initiated by the patient or key third party, and engaging in any conduct with a patient or key third party that is sexual or may be reasonably interpreted as sexual, regardless of whether the sexual violation occurs inside or outside of a professional setting.
- (b) "Sexual violation" includes, but is not limited to:
 - (i) Sexual intercourse, genital to genital contact;
 - (ii) Oral to genital contact;
 - (iii) Oral to anal contact or genital to anal contact;
 - (iv) Kissing in a romantic or sexual manner;

- (v) Touching the patient's breasts, genitals, or any sexualized body part;
- (vi) Actively causing the patient or key third party to touch the health care practitioner's breasts, genitals, or any sexualized body part;
- (vii) Encouraging the patient to masturbate in the presence of the health care practitioner or masturbation by the health care practitioner while the patient is present;
- (viii) Offering to provide practice-related services, such as drugs, in exchange for sexual favors; and
- (ix) Intentionally exposing the health care practitioner's breasts, genitals, or any sexualized body part.

10.32.17.03

- A. Individuals licensed or certified under Health Occupations Article, Titles 14 and 15, Annotated Code of Maryland, may not engage in sexual misconduct.
- B. Health Occupations Article, §§ 14-404(a)(3) and 15-314(3), Annotated Code of Maryland, includes, but is not limited to sexual misconduct.

On August 1, 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 February 28, 1974, under License Number D16338. The Respondent's license is scheduled to expire on September 30, 2013.
2. The Respondent is board-certified in psychiatry and neurology.

3. The Respondent's primary practice address is: Center for Therapeutic Concepts, Inc., 1300 Mercantile Lane, Suite 200/204, Largo, Maryland 20774.

PRIOR DISCIPLINARY HISTORY

4. On or about August 4, 1989, the Respondent entered into a Consent Order with the Board (then known as the Board of Physician Quality Assurance) in which the Board found as a matter of fact that from 1980 to 1982, the Respondent engaged in sexual relations with a psychiatric patient he was then treating for a psychiatric disorder. The Board found as a matter of law that the Respondent's conduct constituted immoral conduct in the practice of medicine, in violation of H.O. § 14-504(3).² Pursuant to the Consent Order, the Board reprimanded the Respondent and imposed a series of probationary terms and conditions.

5. On or about October 19, 1994, the Respondent entered into a Consent Order with the Commonwealth of Pennsylvania State Board of Medicine (the "PA Board") in which the PA Board reprimanded him, based on the Board's disciplinary action against him.

6. On or about February 17, 1996, the Respondent entered into a Consent Order with the District of Columbia Board of Medicine (the "DC Board") in which the DC Board found that the Respondent failed to disclose on a DC renewal application that the PA Board took disciplinary action against his license in or around 1994. The DC Board reprimanded the Respondent.

7. On or about January 28, 1997, the Respondent entered into a Consent Agreement and Order with the PA Board in which the PA Board found that the

² H.O. § 14-504(3) has since been recodified as H.O. § 14-404(a)(3)(i).

Respondent failed to disclose on a Pennsylvania license renewal application that he had been disciplined for professional misconduct by the DC Board. Pursuant to the terms of the Consent Agreement and Order, the PA Board reprimanded the Respondent and imposed a fine.

8. By an Order, dated May 19, 1999, the Board terminated the Respondent's probation.

CURRENT INVESTIGATIVE FINDINGS

The complaint

9. By letter dated November 24, 2010, the Department of Veterans Affairs (the "Veterans' Administration") notified the Board that effective November 4, 2010, the Respondent voluntarily surrendered his clinical privileges at the Washington D.C. Veterans Affairs Medical Center while under investigation for unprofessional and inappropriate conduct with a female patient.³

10. The Veterans' Administration reported that its investigation determined that in or around October 2010, the Respondent telephoned a patient (the "Patient"),⁴ an adult female, whom he had treated at a Veterans Affairs facility in the State of Maryland. During this telephone call, the Respondent made sexually graphic, explicit comments to the Patient that she found were upsetting. The Respondent admitted that he placed the telephone call and made sexually explicit comments to the Patient.

11. The Veterans' Administration's emergency suspension of the Respondent's clinical privileges and the Respondent's immediate surrender of his

³ The Veterans' Administration reported that due to the serious nature of these allegations, it suspended the Respondent's clinical privileges on an emergent basis, effective, November 4, 2010, and that while under investigation, the Respondent voluntarily retired, effective November 4, 2010.

⁴ For confidentiality reasons, this Consent Order does not identify the Patient by name. The Respondent is aware of the identity of the Patient.

Veterans' Administration clinical privileges by retirement constitute a violation of H.O. § 14-404(a)(21), *i.e.*, being disciplined by the Veterans' Administration for an act that would be grounds for disciplinary action under H.O. § 14-404, specifically: H.O. § 14-404(a)(3) Is guilty of (i) immoral conduct in the practice of medicine; and (ii) unprofessional conduct in the practice of medicine.

Subsequent Board investigation

12. After reviewing this complaint, the Board initiated an investigation of the Respondent under Case Number 2011-0436. Pursuant to this investigation, Board investigators interviewed the Respondent about his contact with the Patient. In these interviews, the Respondent admitted that in 2010, he telephoned the Patient and made sexually graphic, explicit comments to her.

13. The Board's investigation concluded that in or around October 2010, the Respondent engaged in professionally inappropriate boundary violations, sexual improprieties and sexual misconduct with the Patient to whom he provided psychiatric care or services by contacting her by telephone and making sexually graphic, explicit comments to her.

14. The Respondent's actions, as described above, constitute immoral conduct in the practice of medicine, in violation of H.O. § 14-404(a)(3)(i); and unprofessional conduct in the practice of medicine, in violation of H.O. § 14-404(a)(3)(ii).

15. The Respondent's actions, as described above, constitute a violation of the Board's sexual misconduct regulations, COMAR 10.32.17 *et seq.* The Board's sexual misconduct regulations prohibit sexual misconduct against patients or key third parties by individuals licensed or certified under Health Occupations Article, Titles 14 and 15, Annotated Code of Maryland. COMAR 10.32.17.01. The Respondent engaged

in sexual improprieties with the Patient, as defined in COMAR 10.32.17.02B(2); sexual misconduct with the Patient, as defined in COMAR 10.32.17.02B(2), and sexual violations with the Patient, as defined in COMAR 10.32.17.02B(4). The Respondent violated COMAR 10.32.17.03A when he engaged in sexual misconduct with the Patient, which according to COMAR 10.32.17.03B, also constitutes immoral and unprofessional conduct in the practice of medicine under H.O. § 14-404(a)(3).

Louisiana Medical Board action

16. On or about July 18, 2011, the Respondent entered into a Stipulation and Agreement for Voluntary Surrender of Medical License with the Louisiana State Board of Medical Examiners (the "Louisiana Board") in which he voluntarily surrendered his Louisiana medical license while under Louisiana Board investigation for unprofessional conduct. See La. Rev. Stat. §§ 37:1285A(13). The Louisiana Board found that it had cause to investigate the Respondent for unprofessional conduct stemming from the action taken above by the Veterans' Administration and that he voluntarily surrendered his Louisiana medical license while under investigation for unprofessional conduct.

17. The Respondent's surrender of his Louisiana medical license while under Louisiana Board investigation for unprofessional conduct, an act that would be grounds for action under H.O. § 14-404, constitutes a violation of H.O. § 14-404(a)(24).

18. Grounds underlying H.O. § 14-404(a)(24) constitute the following grounds under H.O. § 14-404(a): H.O. § 14-404(a)(3) Is guilty of: (i) immoral conduct in the practice of medicine; and (ii) unprofessional conduct in the practice of medicine.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated the following provisions of the Act: Is guilty of immoral

conduct in the practice of medicine, in violation of H.O. § 14-404(a)(3)(i); Is guilty of unprofessional conduct in the practice of medicine, in violation of H.O. § 14-404(a)(3)(ii); Is disciplined by a licensing or disciplinary authority or convicted or disciplined by a court of any state or country or disciplined by any branch of the United States uniformed services or the Veterans' Administration for an act that would be grounds for disciplinary action under this section, in violation of H.O. § 14-404(a)(21); and Was subject to investigation or disciplinary action by a licensing or disciplinary authority or by a court of any state or country for an act that would be grounds for disciplinary action under this section and the licensee: (i) surrendered the license issued by the state or country to the state or country[.]. Grounds underlying H.O. §§ 14-404(a) (21) and (24) include the following grounds under H.O. § 14-404(a): H.O. § 14-404(a)(3) Is guilty of: (i) immoral conduct in the practice of medicine; and (ii) unprofessional conduct in the practice of medicine.

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated its sexual misconduct regulations, found at COMAR 10.32.17 *et seq.*: The Board's sexual misconduct regulations prohibit sexual misconduct against patients by individuals licensed or certified under Health Occupations Article, Titles 14 and 15, Annotated Code of Maryland. COMAR 10.32.17.01. The Respondent engaged in sexual improprieties with the Patient, as defined in COMAR 10.32.17.02B(2); sexual misconduct with the Patient, as defined in COMAR 10.32.17.02B(2), and sexual violations with the Patient, as defined in COMAR 10.32.17.02B(4). The Respondent violated COMAR 10.32.17.03A when he engaged in sexual misconduct with the Patient, which according to COMAR 10.32.17.03B, also

constitutes immoral and unprofessional conduct in the practice of medicine under H.O. § 14-404(a)(3).

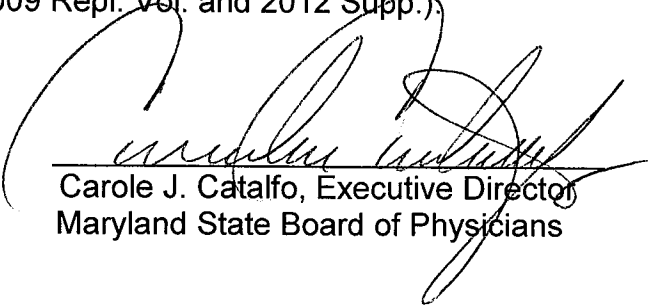
ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 28th day of NOVEMBER, 2012, by an affirmative vote of a majority of a quorum of the Board considering this case:

ORDERED that the Respondent's medical license in the State of Maryland is hereby **REVOKED**, to commence on the date the Board executes this Consent Order; and it is further

ORDERED that the Respondent shall not apply for reinstatement of his medical license for a period of not less than **FIVE (5) YEARS** from the date the Board executes this Consent Order; and it is further

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



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

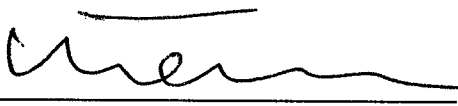
CONSENT

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

11.19.12
Date



Vincent Tomasino, M.D.
Respondent

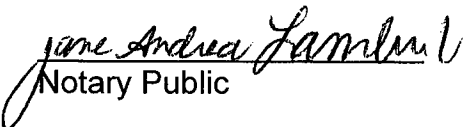
NOTARY

STATE OF Maryland
CITY/COUNTY OF: Montgomery

I HEREBY CERTIFY that on this 19 day of November, 2012, before me, a Notary Public of the State and County aforesaid, personally appeared Vincent Tomasino, 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.

My commission expires: _____
JANE ANDREA LAMBERT
Notary Public of Montgomery County, Maryland
My Commission Expires October 21, 2015



Notary Public