

IN THE MATTER OF

*** BEFORE THE MARYLAND**

Thomas B. Fioretti, M.D.,

*** STATE BOARD OF**

Respondent.

*** PHYSICIANS**

LICENSE No. D40836

*** Case Nos. 2007-0805, 2009-0529 &
2012-0666**

*** * * * ***

SUPPLEMENTAL ORDER AFTER SHOW CAUSE HEARING

Thomas B. Fioretti, M.D. (“Dr. Fioretti”) signed a Consent Order with the Board that was effective March 23, 2011. That Consent Order settled formal charges that the Board had had lodged against him regarding his treatment of numerous patients. The charges alleged, and the Consent Order found, that Dr. Fioretti had violated the standard of quality care in his treatment of 17 patients, prescribing large amounts of controlled dangerous substances without sufficient medical examinations and without medical justification. This prescribing was so deficient as to amount to unprofessional conduct in the practice of medicine. In addition, Dr. Fioretti’s medical records were inadequate. The Consent Order thus imposed sanctions for violations of subparagraphs (22), (3)(ii) and (40) of Md. Health Occ. Code Ann. § 14-404(a).

The Consent Order placed Dr. Fioretti on probation for five years and imposed numerous conditions of probation. Because the Board later became concerned that Dr. Fioretti may not have complied with the conditions of probation and of the Consent Order, Dr. Fioretti was sent a document entitled

Notice of Violation of Consent Order on September 12, 2012. The Board then set a hearing for November 14, 2012 in order to give Dr. Fioretti an opportunity to show cause why further sanctions should not be imposed according to the conditions of that Consent Order. Dr. Fioretti appeared at that hearing as did the Administrative Prosecutor. There were no material facts in dispute. Dr. Fioretti did not deny that he committed these violations but argued for mitigation of any sanctions to be imposed, while the prosecutor argued for a substantial sanction.

Findings of Fact

The Board adopts the procedural findings of fact regarding the Consent Order recited above. One of the terms of the Consent Order was that Dr. Fioretti enroll in certain types of Board-approved educational courses within six months, *i.e.*, by September 23, 2011, and complete those courses within one year, *i.e.*, by March 22, 2012. Although not required to by the Consent Order, the Board staff contacted Dr. Fioretti on May 18, 2011 and reminded him of his obligation to enroll by September of 2011; although not required by the Consent Order to do so, staff also enclosed a list of courses that the Board would approve. Dr. Fioretti did not enroll in one of the courses, the required course on medical record keeping, by September 23, 2011, or by any date, and he had not enrolled in or completed the course as of the time of the show cause hearing on November 14, 2012.

Dr. Fioretti was also required by the Consent Order to obtain a supervisor to monitor his medical practice. He did obtain a supervisor, who reported that

there were problems with his medical record keeping. Dr. Fioretti then, however, informed his supervisor that he was closing his practice at the end of 2011. His supervisor's last interview with him was on November 22, 2011, and because Dr. Fioretti was closing his practice, the supervisor indicated that she would be performing no further supervision. Dr. Fioretti informed the Board that he was closing his office as of December 31, 2011 and that he would not be seeing patients. On January 25, 2012, the Board staff reminded him in writing of the supervisory requirement of the Consent Order and reminded him that "[n]o practice of medicine shall take place without supervision." Dr. Fioretti nevertheless, without any supervision, subsequently wrote prescriptions for three individuals on January 31, 2012, February 7, 2012, March 1, 2012, March 6, 2012 and April 5, 2012.

Dr. Fioretti argues that he did not complete the course in medical record keeping because he had financial problems that eventually caused him to close his practice and that he had health problems. These are not sufficient excuses, in the Board's opinion. His practice was still open well beyond the September, 2011, deadline for signing up for the course. In any case, if he had problems, financial, health or otherwise, he did not even bring them to the attention of the Board staff. He simply ignored the requirement until, after the Board staff inquired of him on December 14, 2011, about the status of his courses, he wrote back on December 28, 2011, seeking for the first time an extension of the deadline that had expired more than three months before. This is not an

adequate, good faith attempt to conform to the conditions of probation set out in the Consent Order to which he had agreed.

The Consent Order also required that Dr. Fioretti's medical practice be supervised. The supervision ended effectively on November 22, 2011. The Board staff, on January 25, 2012, reminded Dr. Fioretti of the requirement that he have a supervisor for his practice and warned him that he may not practice medicine without a supervisor. Although the letter specifically reminded him that he could not practice medicine without supervision, Dr. Fioretti nevertheless prescribed for three individuals later in January and also in February, March and April, without a supervisor in place. Dr. Fioretti admitted doing so but argued that some of these prescriptions were for closely related individuals. The Board does not consider this to be a mitigating factor.¹ In this instance also, Dr. Fioretti ignored the explicit requirement of the Consent Order in spite of a reminder from the Board staff.

Sanction

The Consent Order provided that if Dr. Fioretti violated any provision of the order, the Board may impose additional sanctions up to and including revocation. The Board has determined that revocation is the appropriate sanction in this case. The offenses for which Dr. Fioretti was sanctioned in that Consent Order were violations of the standard of care so egregious as to amount to

¹ The American Medical Association's Code of Medical Ethics generally prohibits self-treatment or the treatment of family members. See *American Medical Association, Code of Medical Ethics* (Chicago, 2000) 2000-2001 ed. ("AMA"), Ethics Opinion 8.19. See also COMAR 10.32.02.10.

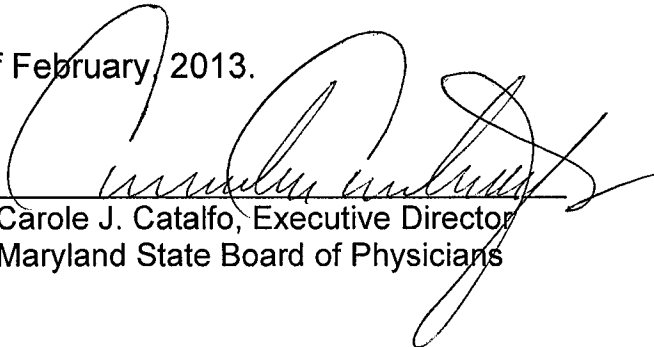
unprofessional conduct in the practice of medicine. The Board could have revoked his license for those offenses alone. The Consent Order set out a specific rehabilitative plan, with specific requirements that would enable Dr. Fioretti to continue to practice medicine safely. Dr. Fioretti simply did not make a serious enough effort to comply with these conditions. Permitting him to continue to practice would not be compatible with the Board's mission to ensure public safety, nor would it suffice to deter non-compliance with conditions of probation by other practitioners who have been placed on probation by the Board.

Order

It is therefore **ORDERED** that the medical license of Thomas B. Fioretti, M.D., No. D40836, be, and it hereby is, **REVOKED**,² and it is further

ORDERED that this Final Decision and Order is a public document.

SO ORDERED this 11th day of February 2013.



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

² The fact that Dr. Fioretti allowed his license to lapse during the course of this investigation does not prevent the Board from acting. Md. Health Occ. Code Ann. § 14-403(a). The practical effect of this revocation is that, should Dr. Fioretti attempt to renew his license, he will be treated as a revoked licensee who is applying for reinstatement.

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Section 14-408(b) of the Health Occupations Article, Dr. Fioretti has the right to seek judicial review of this decision. Any petition for judicial review must be filed within 30 days from the date this Final Decision and Order is mailed. The cover letter accompanying this decision indicates the date the decision is mailed. Any petition for judicial review shall be made as provided for in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222, and the Maryland Rules at 7-201 *et seq.*

If Dr. Fioretti files an appeal, the Board should be notified at the following address:

**Maryland State Board of Physicians
Christine Farrelly, Deputy Director, Compliance & Licensure
4201 Patterson Avenue
Baltimore, Maryland 21215**

Notice of any petition filed should also be sent to the Board's counsel at the following address:

**Thomas W. Keech
Assistant Attorney General
Department of Health and Mental Hygiene
300 West Preston Street, Suite 302
Baltimore, Maryland 21201.**