

IN THE MATTER OF	*	BEFORE THE
MARK N. MOLLENHAUER, M.D.	*	MARYLAND STATE
Respondent	*	BOARD OF PHYSICIANS
License Number: D42846	*	Case Number: 2011-0398

* * * * *

CONSENT ORDER

On September 4, 2012, the Maryland State Board of Physicians (the "Board") charged **MARK N. MOLLENHAUER, M.D. (the "Respondent") (D.O.B. 11/10/1964), License Number D42846**, under the Maryland Medical Practice Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 14-401 *et seq.* (2009 Repl. Vol. and 2011 Supp.).

Specifically, the Board charged the Respondent with the following provisions of the Act under H. O. § 14-404:

- (a) In general – 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;

The pertinent provisions of Code Md. Regs, tit. 10, § 32.17 provide as follows:

.02B(2)(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;

.02B(3)"Sexual misconduct" means a health care practitioner's behavior toward a patient, former patient, or key third party, which includes: (a) Sexual impropriety; or (b) Sexual violation;

02B(4) (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;

.02B(4)(b) "Sexual violation" includes, but is not limited to: (iv) Kissing in a romantic or sexual manner; [and]

.03A. Individuals licensed or certified under Health Occupations Article, Titles 14 and 15, Annotated Code of Maryland, may not engage in sexual misconduct[.]

On February 6, 2013, 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 Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

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

1. At all relevant times, the Respondent was and is a physician licensed to practice medicine in the State of Maryland. He was initially licensed in Maryland on or about January 27, 1992, and his license is presently active and is scheduled to expire on September 30, 2013.
2. The Respondent is board certified in psychiatry.
3. At all relevant times, the Respondent maintained a solo practice located at 5415 W. Cedar, Suite 201B, Bethesda, Maryland.
4. The Respondent maintains hospital privileges at Facilities A and B.¹
5. On or about November 29, 2010, the Board received a complaint from the Respondent's former patient ("the patient") alleging that the Respondent kissed her and left inappropriate messages on her voicemail.
6. Thereafter the Board initiated an investigation.

¹ In order to maintain confidentiality, patient, witness, and facility names will not be used in this document, but will be provided to the Respondent upon request to the administrative prosecutor.

7. On April 13, 2011, the Board staff conducted a sworn interview of the patient, which revealed the information set forth below.

8. The Respondent began seeing the patient, a female born in 1960, as her psychiatrist in 2005. The Respondent saw the patient four to six times per year for medication management for her bipolar affective disorder. The Respondent also independently diagnosed the patient with generalized anxiety disorder, and possibly a personality disorder.

9. The patient stated that during her treatment session on May 18, 2010, she shared with the Respondent her "obsession" with him, which was sexual in nature. At the end of the session, the Respondent approached the patient and kissed her in a romantic, sexual way.

10. The Respondent documented the patient's romantic feelings for him in his treatment notes.

11. The patient stated that she and the Respondent spoke on the telephone several times after they kissed. She stated that the Respondent proposed meeting at his office for sexual intercourse, which the patient declined. Ultimately, the Respondent told the patient that he could not engage in a sexual relationship with her.

12. On June 5, 2010, the Respondent, who was intoxicated, called the patient and left an obscene and inappropriate message on her voicemail.

13. The Respondent left six other voicemail messages for the patient, none of which were obscene, although some of the messages referenced his inappropriate conduct.²

² The Respondent left messages for the patient on May 19, 2011, May 24, 2011, June 5, 2011, June 28, 2011, July 2, 2011, July 6, 2011, and July 19, 2011. The obscene message was left on June 5, 2011.

14. Approximately three weeks later, on or about June 15, 2010, the Respondent saw the patient for a treatment session. According to the patient, he acknowledged the obscene voicemail message, but “treated [the patient] as if he had not sent the message, and as if it was a regular session.” The patient stated that she cried throughout the entire session.

15. The patient stated that the Respondent attempted to schedule another session, believing that their professional relationship could be salvaged.

16. On or about late June or early July 2010, the patient terminated her five-year therapeutic relationship with the Respondent.

17. The Board provided the Respondent with a copy of the patient’s complaint and asked him to provide a written response. In his response to the Board dated November 10, 2011, the Respondent revealed that at the time that the patient revealed her romantic feelings for him, he was experiencing mental health issues.

18. The Respondent stated that he was diagnosed with a mental illness in 1997 and has been regularly seeing a psychiatrist for medication management. He further stated that he failed to disclose his diagnosis to the Board on his initial and renewal applications because it “never impeded his ability to treat patients, until the incident involving [the patient].”

19. On November 28, 2011, the Board staff conducted a sworn interview of the Respondent, which revealed the information set forth below.

20. The Respondent stated that the kiss between him and the patient, on or about May 18, 2010, was mutual.

21. The Respondent admitted to leaving an obscene and inappropriate message on the patient’s voicemail.

22. The Respondent's conduct as outlined above in pertinent part with regard to the patient constitutes in whole or in part a violation of Health Occ. § 14-404(a)(3)(i) and/or (ii) and/or COMAR 10.32.17.02B(2)(a) and/or COMAR 10.32.17.02B(3) and/or COMAR 10.32.17.02B(4)(a) and/or COMAR 10.32.17.02B(4)(b) and/or COMAR 10.32.17.03A.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated Health Occ. § 14-404(a)(3)(ii); COMAR 10.32.17.02B(2)(a); COMAR 10.32.17.02B(3); COMAR 10.32.17.02B(4)(a); COMAR 10.32.17.02B(4)(b); and COMAR 10.32.17.03A. The Board dismisses the charge under Health Occ. § 14-404(a)(3)(i).

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 20th day of March 2013, by an affirmative vote of a majority of a quorum of the Board considering this case hereby:

ORDERED that the Respondent's license is **SUSPENDED** for **SIX (6) MONTHS**, with all but **THIRTY (30) DAYS** stayed, from the date of this Consent Order; and it is further

ORDERED that upon reinstatement of the Respondent's license, the Respondent will be placed on probation for a minimum period of **TWO (2) YEARS**, and until he fully and satisfactorily complies with the following terms and conditions:

1. No later than ten (10) business days of the date the Board executes this Consent Order, the Respondent shall enroll in the Maryland Professional Rehabilitation Program ("MPRP") and in a Board-monitored Rehabilitation Agreement for the length of time recommended by the MPRP. For the entire

duration of the probationary period, the Respondent shall fully, timely, and satisfactorily cooperate and comply with all MPRP recommendations and requirements, including but not limited to, the terms and conditions of any Rehabilitation Agreement(s) and Rehabilitation Plan(s) entered into with the MPRP.

2. No later than ten (10) business days of the date the Board executes this Consent Order, the Respondent shall sign any written release/consent forms, and update them, as required by the Board and the MPRP. Specifically, the Respondent shall sign any written release/consent forms required by the Board to authorize the MPRP to make verbal and written disclosures to the Board, including disclosure of any and all MPRP records and files. The Respondent shall also sign any written release/consent forms required by the MPRP to authorize the MPRP to exchange with (*i.e.*, disclosure to and receive from) outside entities (including all of the Respondent's current therapists and treatment providers) verbal and written information about him.
3. The Respondent shall be responsible for assuring that any treatment provider(s) submit written reports to the MPRP and to the Board at least once every three (3) months regarding his attendance, progress, payment of fees, and recommendations as to the continuation, frequency, and/or termination of treatment. The Respondent shall sign any consent forms required to authorize the Board and the MPRP to receive written reports from any treatment providers.
4. During the probationary period, the Respondent shall not treat any female patients in his private practice setting. However, the Respondent may continue to treat his female patients in his clinic practice at Facility B, so long

as any and all contact with female patients is in the presence of another treatment provider. Further, he shall not have any contact with his female Facility B patients outside of the Facility B clinic;

5. During the probationary period, the Respondent's practice will be supervised by a Board-approved supervisor/mentor. The Respondent shall cause his supervisor/mentor to submit quarterly reports to the Board regarding his practice; and it is further

ORDERED that after the conclusion of the entire two (2) year period of probation, the Respondent may file a written petition for termination of his probationary status without further conditions or restrictions, but only if he has satisfactorily complied with all conditions of this Consent Order, including all terms and conditions of probation, and including the expiration of the two (2) year period of probation, and if there are no pending complaints regarding him before the Board; and it is further

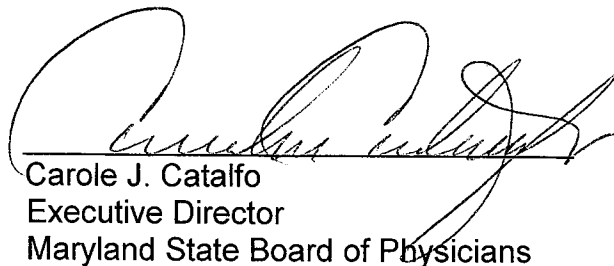
ORDERED that if the Respondent violates any of the terms and conditions of this probation and/or this Consent Order, the Board, in its discretion, after notice and an opportunity for an evidentiary hearing before the Office of Administrative Hearings if there is a genuine dispute as to the underlying material facts, or an opportunity for a show cause hearing before the Board otherwise, may impose any sanction that the Board may have imposed in this case under § 14-404 of the Act, including a reprimand, probation, suspension, and/or revocation, said violation being proved by a preponderance of the evidence; and it is further

ORDERED that the Respondent shall not petition the Board for early termination of his probation and/or the conditions of this Consent Order; and it is further

ORDERED that the Respondent shall be responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

ORDERED that this Consent Order is considered a **PUBLIC DOCUMENT** pursuant to Md. State Gov't. Code Ann. § 10-611 *et seq.* (2009 Repl. Vol. and 2011 Supp.).

3-21-13
Date


Carole J. Catalfo
Executive Director
Maryland State Board of Physicians

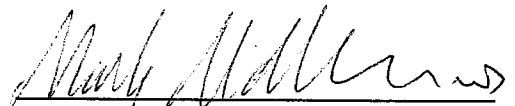
CONSENT

I, Mark N. Mollenhauer, M.D., acknowledge that I have had the opportunity to consult with counsel before signing this document. By this Consent, I agree to the foregoing Consent Order, which consists of Procedural Background, Findings of Facts, Conclusions of Law, Order, and Consent, and 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.

2/25/13
Date


Mark N. Mollenhauer, M.D.
Respondent

Read and approved:

2/25/13
Date


Gerard Emig, Esquire,
Counsel for Dr. Mollenhauer

NOTARY

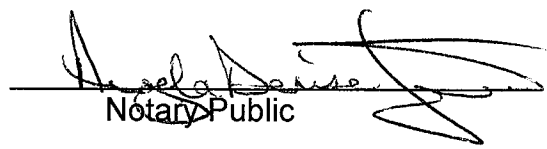
STATE OF Maryland

CITY/COUNTY OF: Frederick

I HEREBY CERTIFY that on this 25th day of February, 2013, before me, a Notary Public of the State and County aforesaid, personally appeared Mark N. Mollenhauer, 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.

ANGELA DENISE JONES
NOTARY PUBLIC
FREDERICK COUNTY, MD
My Commission Expires 12/22/2016


Notary Public

My commission expires: 12/22/16