IN THE MATTER OF	*	**BEFORE THE**
DANIEL M. HOWELL, M.D.	*	**MARYLAND BOARD**
Respondent	*	**OF PHYSICIANS**
LICENSE NUMBER: D02975	*	**CASE NUMBER: 2005-0131**

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CONSENT ORDER

On February 22, 2008, the Maryland Board of Physicians (the "Board") charged Daniel M. Howell, M.D. ("Respondent") (D.O.B. 12/29/43) license number D02975 with violating the Maryland Medical Practice Act (the "Act") codified at Md. Health Occ. Code Ann. (H.O.) §§ 14-101 *et seq.* (2005 Repl. Vol.).

The pertinent provisions of the Act under § 14-404(a) provide the following:

> (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:
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> > (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 the State[;].

On June 4, 2008, a Case Resolution Conference was held; and, as a result of negotiations between the Respondent, the Office of the Attorney General, and the Board, the parties agreed to enter into this Consent Order as an appropriate resolution of the Charges.

FINDINGS OF FACT

The Board makes the following findings of fact:

Background Findings

1. At all times relevant hereto, Respondent was licensed to practice medicine in Maryland. Respondent was originally licensed to practice medicine in Maryland on August 26, 1969, under license number D02975. Respondent last renewed his license in 2006, which license will expire on September 30, 2008.

2. Respondent's self-designated specialty is Family Practice. Respondent was originally board-certified in Family Practice in 1975. Respondent has periodically been re-certified in Family Practice, which certification expired on December 2006.

3. At all times relevant hereto, Respondent maintained an office for the practice of family medicine, known as Family Health Care Physicians, P.A., in Waldorf and LaPlata, Maryland. Respondent had associate physicians and employed physician assistants in these offices.

4. Respondent holds privileges at Civista Medical Center in LaPlata, Maryland and at St. Mary's Hospital in Leonardtown, Maryland

5. Respondent holds an inactive license to practice medicine in the District of Columbia.

II. Findings Regarding Complaint and Peer Review

6. On August 19, 2004, the Board received a complaint from an individual regarding Respondent's care of her fiancé, Patient A,[1] stating that Respondent has been giving her fiancé Percocet, Oxycontin, Methadone, and Xanax. The Complainant attached pharmacy printouts from 2003 and 2004, and copies of prescriptions that

[1] Patient names are confidential and are not used in the Consent Order. Respondent is aware of the identity of Patient A.

Respondent had provided Patient A. The Complainant stated that she has asked Respondent to stop this prescribing but Respondent told her to hide the pills and he gave her instructions on how to dispense. At the time of the complaint, Patient A, was hospitalized in Delaware for detoxification and/or mental health issues.

7. The Board opened the case for investigation, obtained Respondent's records of care of Patient A, and requested Respondent's response to the complaint.

8. The Board sent the complaint, Respondent's medical records, including records from other health care providers contained in Respondent's records, and Respondent's response to the Delmarva Foundation for peer review.

9. Two peer reviewers, both Board certified in family practice, concurred that Respondent failed to meet standards for quality medical care in his care and treatment of Patient A as specified below. Based on the reports of the peer reviewers, the Board charged Respondent with the following:

Findings Specific to Patient A

10. On November 18, 1994, Patient A, then a 46 year old male, born in 1948, first presented to Respondent for "possible broken ribs." Respondent prescribed 20 tablets of Percocet q.i.d.

11. Previously, on October 19, 1994, Patient A had an initial office visit with another physician in the practice for "right heel pain" and requesting a referral to an orthopedist.

12. Respondent's medical records of Patient A contain records of prior care from Group Health Association, Inc, ("GHA") Washington, D.C. [2] Documentation on 10/30/1990 notes a "history of alcohol abuse, a history of IV drug abuse in the remote history, and a history of sedative and narcotic abuse. He even had an overdose of Percodan at one time and there was some question of whether or not this was a suicidal attempt or gesture." At that visit in 1990, Patient A refused BuSpar stating he "needed something that would help him right now." He did see his counselor that morning, and the counselor "declined to refill the Xanax because of a suspected pattern of abuse." On 3/1/1991, Patient A presented demanding a Xanax prescription. He was "informed that Internal Medicine will not prescribe narcotics, hypnotics or tranquilizers for him. He must go through channels." A mental health counselor told Patient A that if his psychologist wanted him to have Xanax, she would discuss this with Patient A's psychiatrist. Patient A did have lumbar spasm on 11/9/1992 and was prescribed Toradol.[3]

13. On December 1, 1994, Respondent noted that Patient A had used 230 tablets of Roxicet[4] in two months.

14. On December 5, 1994, Respondent noted, "dizzy - get light headed spells" and limited Patient A to light work duty for a week.

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[2] The date on which Respondent obtained these records is not known.

[3] Toradol is a non-steroidal anti-inflamatory drug, indicated for short term management of moderately severe pain.

[4] Roxicet and Percocet tablets are both a combination of Oxycodone 5 mg and acetaminophen 325 mg. They are both Schedule II controlled substances, used for moderate to moderately severe pain, can produce drug dependence, and have the potential for being abused. Physician Desk Reference, 49th Ed. 1995.

15. In February 1995, a physician in Respondent's office referred Patient A to a urologist for an IVP to test for a kidney stone.

16. On March 2, 1995, the urologist reported to Respondent's office that Patient A had a kidney stone.

17. On April 17, 1995, Patient A presented with a complaint of kidney stones and Respondent prescribed Percocet #20 and referred Patient A to the urologist.

18. On June 28, 1995, Respondent assessed lumbar strain and prescribed Roxicet 5/325 #20.

19. On June 29, 1995, Respondent noted that a pharmacist at CVS called and informed him that Patient A had been getting multiple refills for several narcotics from different physicians in the area. Respondent noted that Patient A had received two prescriptions from him for 20 tablets of Percocet in 1 week, the last prescription being on June 28, 1995.

20. On August 9, 1995, Patient A presented with complaint of kidney stones. Respondent prescribed Percocet #12. Respondent noted he was referring Patient A to the urologist.

21. On August 10, 1995, it is noted in Patient A's chart that Patient A might be abusing pain medication, specifically Percocet, which had been given to him by Respondent, as well as other physicians in the practice since 1994, and that the doctor to whom Patient A had been referred should be contacted prior to refilling any Percocet.

22. On October 26, 1995, Patient A reported "pains in kidney." Respondent prescribed Percocet #20.

23. On December 14, 1995, Lab work in the chart noted that Patient A had elevated liver enzymes, consistent with chronic hepatitis.

24. Over the years, Respondent treated Patient A for a number of conditions, including lumbar disk injury in 1992, kidney stones, diabetes mellitus, high blood pressure, hypercholesterolemia, Hepatitis C, and H pylori ulcer.

25. On February 29, 1996, Patient A consulted Respondent for H. pylori/ulcer, kidney stone, high blood pressure, alcoholism, and elevated liver function tests. Respondent ordered a hepatitis C titer.

26. On March 29,1996, Respondent noted that Patient A called to report he had been discharged from the hospital where he had had a cardiac catherization the night before. Patient A reported he was having a lot of pain and requested Percocet. Respondent instructed his office to have another physician write a prescription for 10-12 Percodan "to hold him over the weekend and have patient follow-up on Monday." Patient A did not present to the office on the following Monday.

27. On April 1, 1996, Patient A, presented with chest pain and back pain. Respondent prescribed Percocet #30 and other medications.

28. On May 2, 1996, Respondent prescribed Roxicet 325/5 #30, and other medications.

29. On May 21, 1996, Respondent prescribed Roxicet 325/5 and other medications.

30. On June 12, 1996, Respondent prescribed Percocet and other medications.

31. On July 2, 1996, Respondent prescribed Percocet and other medications.

32. On August 5, 1996 Respondent prescribed Percocet and other medications.

33. On August 27, 1996 Respondent prescribed Percocet and other medications.

34. From 1996 onward, Respondent saw Patient A for various pain complaints, including abdominal pain, back pain, kidney stones, leg pain, and neuropathy, and continued to prescribe Percocet for Patient A.

35. On January 8, 1997, another physician in Respondent's office referred Patient A for three visits to a physical therapist for "severe back pain."

36. On February 14, 1997, Respondent saw Patient A for an "ongoing sinus infection," prescribed Septa DS (sulfa), Entex LA and Roxicet #40.

37. Respondent regularly saw Patient A through 1997 and continued to prescribe Roxicet.

38. On April 30, 1997, one of Respondent's colleagues, noted "narcotic abuse" in his progress note regarding Patient A.

39. On June 20, 1997, Respondent prescribed Xanax .5 mg. #60 with two refills.

40. On September 5, 1997, Respondent injected Patient A's heel with decadron and prescribed Percocet.

41. MRI's in 1995 and 1999 revealed degenerative changes in Patient A's lumbar spine.

42. Respondent treated Patient A's pain complaints with increasing quantities of Percocet. Initially, Respondent prescribed 20-30 pills at time. By 1997, Respondent was prescribing up to 40 pills and then 60 pills. By 1999, Respondent was prescribing 100 pills per visit.

43. In December of 2000, Patient A was taking eight 5 mg. Percocet per day. At that time, Respondent was seeing Patient A approximately every two weeks and prescribing 100 Percocet at each visit.

44. On February 19, 2001, Respondent doubled the strength of the Percocet to 10 mg pills.

45. Throughout 2001, Respondent prescribed 100 tablets of 10 mg. Percocet every few weeks, allowing Patient A to take approximately eight tablets per day. However, there were times when Respondent refilled the Percocet in less than two weeks, and sometimes after as little as one week, indicating his use of as many as 14 pills of Percocet per day.

46. On January 25, 2002, Patient A presented with "headache – frontal," for which Respondent prescribed Percocet.

47. At the end of 2002, Respondent prescribed a total of 300 Percocet within 10 days, along with 90 tablets of 80mg Oxycontin.

48. Respondent prescribed methadone for Patient A on July 27, 2002, October 15, 2002, and February 15, 2003.

49. On January 27, 2003, another physician in Respondent's office noted that Patient A was taking 12 Percocet per day, and referred Patient A for pain management.

50. On February 3, 2003, Respondent had Patient A sign a narcotic use contract.

51. On February 25, 2003, Respondent noted, "personality change on oxycontin. screaming at wife and boss." Respondent prescribed Percocet #100, Methadone 10 mg. #100 and B12.

52. In February and March of 2003, Respondent prescribed approximately 700 Percocet. During that time, Respondent's medical records of Patient A noted that Patient A's liver function tests were abnormal, although testing throughout the years indicated persistent elevations of his liver enzymes.

53. Respondent prescribed Celebrex for Patient A in March 2003, January and July 2004.

54. By April of 2003 Respondent noted that Patient A was suffering from chronic hepatitis C, with a high viral load. Respondent indicated, "Reviewed Tylenol toxicity." Respondent continued to prescribe Percocet every several weeks. While Respondent's note states Patient A should limit his Percocet to six per day, Respondent's prescribing of 100 - 200 every few weeks over the next year indicates that Patient A was taking anywhere from 8 to 14 per day.

55. Patient A became so unstable medically that he underwent cardiac catheterization in December 2003.

56. On February 5, 2004, Respondent's office staff noted that Patient A's wife called stating he was vomiting and felt he needed to go to sleep. Respondent continued to prescribe Percocet.

57. On May 2, 2003, a month after Respondent referred Patient A to a GI specialist for Hepatitis C, Respondent noted, "need to limit Tylenol ... Review pain management" and prescribed Zoloft.

58. In June 2003, Respondent prescribed 100 Percocet when Patient A complained of headache after peg intron for Hepatitis C. Respondent also prescribed Zyprexa, ostensibly for anxiety however this is a medication with indications (PDR 2001) only for psychosis and bipolar depression.

59. Patient A's liver function tests remained elevated except for September 12, 2002 and for the nine months between August 2003 and May 2004.

60. The Waldorf Safeway Pharmacy records for 2003 and 2004 list repeated prescriptions by Respondent for Patient A Percocet, Oxycontin, Methadone and Xanax in addition to Prevacid, Atenolol, Triampt/HCT, Accupril, Viagra, Celebrex, Flonase, Nexium, Zoloft, Glucatrol, Zyprexa, Glipizide, Levaquin, and Lisinopril/HCT.

61. For the last six months that Respondent was caring for Patient A, he was prescribing 200 Percocet approximately every 14 days, averaging about 13 per day.

62. On June 1, 2004, Respondent prescribed Methadone.

63. On or about July 8, 2004, Respondent gave Patient A a prescription signed and pre-dated July 20, 2004 for Methadone #150. At this time, Patient A was living in Delaware.

64. In July 2004, Patient A presented to Hudson Health Services, Delaware with depression and narcotic dependence and was admitted for detoxification from methadone and sedative dependency.

65. During his hospitalization at Hudson Health, Patient A was prescribed Zoloft, Remeron, Neurontin "for pain management" and tapered from Xanax.

IV. Summary Findings

66. As stated by Peer Reviewer 1, Respondent failed to meet appropriate standards for the delivery of quality medical care in regard to his care and treatment of Patient A in that Respondent:

a. During the ten years that Respondent regularly saw Patient A, his notes say almost nothing about referrals to appropriate specialists for Patient A's considerable medical problems;

b. Documented very little about Patient A's elevated liver function tests for almost ten years;

c. Failed to refer Patient A for mental health consultation;

d. Prescribed large doses of controlled substances and Tylenol despite Patient A's Hepatitis C and elevated liver function tests;

e. Referred Patient A to orthopedic and physical medicine/pain specialists but only in the early years of Respondent's relationship with Patient A;

f. Attempted to get Patient A off controlled substances, but Respondent's attempts show only a piecemeal approach.

67. As stated by Peer Reviewer 2, Respondent failed to meet appropriate standards for the delivery of quality medical care in regard to his care and treatment of Patient A in that Respondent:

a. Used Increasing Amounts of Percocet

i. Patient A had chronic benign pain due to degenerative disease of his back. Narcotics are often used for the treatment of this condition; however, Patient A displayed signs of addictive behavior early in the course of his treatment. Respondent did not address this issue of addiction, and continued to supply Patient A with increasing doses of narcotics.

ii. At the end of 2002, when Respondent was prescribing a total of 300 Percocet within 10 days, along with 90 tablets of Oxycontin, Respondent was clearly prescribing an amount of Percocet that was well above the safe limit.

iii. Percocet is a short acting preparation, which must be taken every 4-6 hours and is associated with a euphoric effect. For this reason it is considered to have more addictive potential than longer acting narcotic preparations such as Oxycontin, and other drugs such as longer acting preparations of morphine, as well as methadone.

iv. Over the years, Respondent attempted to change Patient A over to Morphine (MS Contin), Oxycontin, and Methadone; but each time, Respondent went back to prescribing Percocet, sometimes in addition to the longer acting narcotic. Patient A clearly preferred taking Percocet, which was an indication that Patient A was likely using the Percocet for its euphoric effect.

v. The standard of quality care required Respondent to place Patient A on a long acting narcotic. Long acting narcotics are equally effective in providing analgesia, but are less likely to cause euphoria. If Patient A refused to be switched to a longer acting narcotic, it would have been Respondent's responsibility to refuse to provide him with additional Percocet.

b. Used Percocet in a patient with liver disease

i. Percocet is a combination of oxycodone and acetaminophen. The maximum dose of acetaminophen is 4,000 mg per day; therefore patients should not take more than 12 Percocet per day. Respondent prescribed quantities of Percocet that would have allowed Patient A to be taking at least 14 per day.

ii. As early as 1995, Patient A's lab tests showed he had elevated liver enzymes. In 1997, lab tests indicated Patient A had Hepatitis C. Respondent deviated from the standard of quality care by prescribing large quantities of acetaminophen to this patient with liver disease that could damage his liver. If Respondent believed Patient A truly needed oxycodone, he should have prescribed it without acetaminophen.

c. Failed to obtain consultations

i. Respondent referred Patient A for epidural steroids in 1999 and made several referrals to orthopedists and pain

specialists. There is no documentation to support that those referrals were ever kept. Respondent should have required Patient A to see a pain specialist to see if there were any non-narcotic options for pain control and to either validate the use of such large quantities of Percocet or to suggest a different narcotic to use. Respondent could have forced Patient A to see a pain specialist by simply refusing to prescribe any additional narcotic until the consult was obtained.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that Respondent's actions constitute failure to meet standards of quality care, in violation of H.O. § 14-404(a)(22).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 23 day of July, 2008, by a majority of the quorum of the Board considering this case hereby:

ORDERED that effective the date of this Consent Order, the Respondent shall be be REPRIMANDED and it is further

ORDERED that the Respondent shall be placed on PROBATION for a minimum of two (2) years AND UNTIL all of the following terms and conditions are satisfactorily completed:

1. Effective the date of this Order, Respondent shall use a Board approved treatment contract with all patients for whom he prescribes controlled substances as part of a long-term pain management plan;

2. Within three (3) months of the date of this Order, Respondent shall enroll in, and within nine (9) months of the date of this Order, Respondent shall successfully

complete, a Board-approved three day course in medical record keeping;

3. Within three (3) months of the date of this Order Respondent shall enroll in, and within nine (9) months of the date of this Order, Respondent shall successfully complete, a Board-approved course in prescribing controlled substances;

4. Within three (3) months of the date of this Order Respondent shall enroll in, and within nine (9) months of the date of this Order, Respondent shall successfully complete, a Board-approved course in pain management;

5. The above courses shall be in addition to any continuing education requirements mandated for continuing licensure and will not count toward fulfilling the continuing education requirements that Respondent must fulfill in order to renew his license to practice medicine;

6. Within six (6) months after the completion of the courses in medical record keeping, prescribing controlled substances, and pain management, Respondent's practice shall be subject to peer review by an appropriate peer review entity, or a chart review by a Board designee, primarily focusing on pain management patients, to be determined at the discretion of the Board;

7. Respondent shall be responsible for all costs associated with fulfilling the terms and conditions of this Consent Order, and be it further

ORDERED that any violation of the terms/and or conditions of the Consent Order, shall be deemed a violation of this Consent Order; and be it further

ORDERED that if the Respondent violates any of the terms and conditions of this Consent Order, the Board, in its discretion, after notice and an opportunity for an evidentiary hearing before an Administrative Law Judge at 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, may impose any other disciplinary sanction which the Board may have imposed in this case under §§ 14-404(a) and 14-405.1 of the Medical Practice Act, including a reprimand, probation, suspension, revocation and/or a monetary fine, said allegation of violation of the terms and conditions of this Consent Order to be proven by a preponderance of the evidence; and be it further

ORDERED that after a minimum of two (2) years and after the conclusion of a satisfactory peer review, Respondent may file a written petition for termination of probation without further conditions or restrictions, but only if Respondent has satisfactorily complied with all conditions of probation, and if there are no pending complaints regarding Respondent before the Board, and be it further

ORDERED that this Consent Order is a **PUBLIC DOCUMENT** pursuant to Md. State Gov't Code Ann. § 10-611 *et seq.* (2004 Repl. Vol.)

7/23/08
Date

Robert G. Hennessy, M.D., MBA
Chair, Maryland Board of Physicians

CONSENT

I, DANIEL M. HOWELL, M.D. License No. D02975, by affixing my signature hereto, acknowledge that:

1. I have consulted with counsel, Andrew J. Marter, Esquire, and knowingly and voluntarily elected to enter into this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

2. I am aware that I am entitled to a formal evidentiary hearing, pursuant to Md. Health Occ. Code Ann. § 14-405 (2005 Repl. Vol.) and Md. State Gov't Code Ann §§ 10-201 *et seq.* (2004 Repl. Vol.).

3. I acknowledge the validity and enforceability of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have 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 am waiving those procedural and substantive protections.

4. I voluntarily enter into and agree to abide by the terms and conditions set forth herein as a resolution of the Charges against me. I waive any right to contest the Findings of Fact and Conclusions of Law and I waive my right to a

full evidentiary hearing, as set forth above, and any right to appeal this Consent Order or any adverse ruling of the Board that might have followed any such hearing.

5. I acknowledge that by failing to abide by the conditions set forth in this Consent Order, I maybe subject to disciplinary actions, which may include revocation of my license to practice medicine.

6. I sign this Consent Order voluntarily, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

6-19-08
Date

Daniel M. Howell, M.D.
Respondent

06-19-08
Date

Andrew J. Marter, Esquire
Counsel for Respondent

NOTARY

STATE OF MARYLAND

CITY/COUNTY OF :

I HEREBY CERTIFY that on this 19th day of June, 2008 before me, a Notary Public of the State and County aforesaid, personally appeared Daniel M. Howell, M.D., License number D02975, 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.

Notary Public

My commission expires: 10-01-10