

IN THE MATTER OF	*	BEFORE THE
HAROLD D. JOHNSON, M.D.	*	STATE BOARD OF PHYSICIAN
Respondent	*	QUALITY ASSURANCE
License Number: D16699	*	Case Number: 95-0843
* * * * *	*	* * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

The State of Maryland Board of Physician Quality Assurance (the "Board"), on December 15, 1999 voted to charge Harold D. Johnson, M.D. (the "Respondent") (D.O.B. 04/03/46), License Number D16699, under the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. ("H.O.") § 14-404 (1999 Supp.).

The pertinent provision of § 14-404(a) of the Act provides the following:

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:

- (18) Practices medicine with an unauthorized person or aids an unauthorized person in the practice medicine[;].

Respondent was subsequently notified of the Board's vote through telephone communication from the Attorney General's Office ("OAG") to Respondent's counsel. Prior to the issuance of a Statement of Charges, the Respondent entered into negotiations with the OAG to resolve the Board's vote of charges.

Pursuant to these negotiations, on June 14, 2000, Respondent, his attorneys Shelley D. Hayes, Esquire and Benfred B. Alston, Esquire, and Janet Klein Brown, Administrative Prosecutor, appeared before the Case Resolution Conference Committee

(the "CRC") of the Board. As a result of negotiations with the OAG, and entered into before the CRC, Respondent agreed to enter into this pre-charge Consent Order, consisting of Procedural Background, Findings of Fact, Conclusions of Law and Order, with the terms and conditions set forth below.

FINDINGS OF FACT

1. At all times relevant to the Board's vote to charge, Respondent was and is a licensed physician, having been issued license number D16699 in 1974. Respondent also has active licenses to practice medicine in the District of Columbia and in Virginia.

2. At all times relevant to the Board's vote to charge, Respondent has maintained an office for the practice of medicine in Landover, Maryland, specializing in Obstetrics/Gynecology.

3. On January 17, 1989, Respondent entered into an agreement with the Medicaid Fraud Control Unit of the State of Maryland Attorney General's Office for repayment of over billed amounts for certain medical services and for "payment for services performed by other than certified or licensed employees."

4. On May 2, 1995, following a review of Respondent's patient office records from 1992-1994, the State of Maryland Medical Care Finance and Compliance Administration notified the Board that Nurse A¹, a Registered Nurse, may have rendered services to eight (8) of Respondent's patients as a "physician extender" that were not within her scope of practice.

¹The nurse's identity has been omitted from this public document; however, Respondent is aware of the identity of Nurse A.

5. In May 1995, the Board began an investigation of Respondent's utilization of nursing staff in his practice.

6. On November 2, 1998, Nurse A entered into a Consent Order with the State of Maryland Board of Nursing, acknowledging that while she was employed by Respondent as a staff nurse from 1990 to January 1995, she "performed vaginal examinations for the purpose of obtaining cervical and vaginal cultures at the instruction of the physician and examined patients when the physician was not present." The Nursing Board, in its November 2, 1998 Order, determined that these activities violated the Nurse Practice Act because "the examinations were outside the scope of registered nursing practice and such practice is only within the scope of the nurse practitioner or nurse midwife."²

7. Respondent and Nurse A developed a "Duties and Responsibilities" list regarding Nurse A's activities in Respondent's office. Respondent assigned Nurse A to perform the following duties with patients: obtain initial OB/GYN history, perform urinalysis, obtain a pregnancy test, assess fetal heart rate, measure fundus, draw blood, and prepare prescriptions per Respondent.

8. Respondent also trained Nurse A to perform vaginal examinations, obtain pap smears, cultures and breast examinations which she performed when Respondent was absent from the office for deliveries. Nurse A also performed evaluations of the obstetrical patients while Respondent was absent from the office. Respondent then provided further direction by telephone for Nurse A's care of the obstetrical patients. These activities are

²Under the Maryland Nurse Practice Act, a Registered Nurse must be certified by the Maryland Board of Nursing in order to practice as a nurse midwife or nurse practitioner. Nurse A did not have certification as a nurse midwife or nurse practitioner.

not within the scope of nursing practice.

9. The activities of Nurse A which are outside the scope of nursing practice constitute the practice of medicine. Nurse A is not licensed to practice medicine.

10. The above facts constitute Respondent's practicing medicine with an unauthorized person and aiding an unauthorized person in the practice of medicine in violation of §14-404(a)(18) of the Medical Practice Act.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes that Respondent committed prohibited acts under the Act, Health Occupations Article § 14-404(a)(18). Accordingly, the Board concludes as a matter of law that the Respondent is guilty of practicing medicine with an unauthorized person and aiding an unauthorized person in the practice of medicine.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 28th day of June, 2000, by a majority of the full authorized membership of the Board considering this case:

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

ORDERED that Respondent is hereby assessed a **FINE** in the amount of Ten Thousand Dollars (\$10,000.00); and it is further

ORDERED that Respondent shall hereby pay the Ten Thousand Dollars (\$10,000.00) fine to the Board, by check, payable to the "Maryland Board of Physician Quality Assurance," by June 15, 2002, which shall be paid in semi-annual payments of


\$2500 each, due September 15, 2000, June 15, 2001, December 15, 2001 and June 15, 2002; and it is further

ORDERED that if the Board has probable cause to believe that the public health, safety or welfare imperatively requires emergency action, the Board, **WITHOUT PRIOR NOTICE AND AN OPPORTUNITY FOR A HEARING, MAY SUMMARILY SUSPEND THE RESPONDENT'S LICENSE**, provided that Respondent is given notice of the Board's action and an opportunity for a hearing within thirty (30) days after requesting same in accordance with State Government Article, § 10-226(c) (1999 Repl. Vol.); and be it further

ORDERED that if 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 evidence.

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

6/28/02
Date



Sidney B. Seidman, M.D., Chair
Maryland State Board of Physician Quality
Assurance

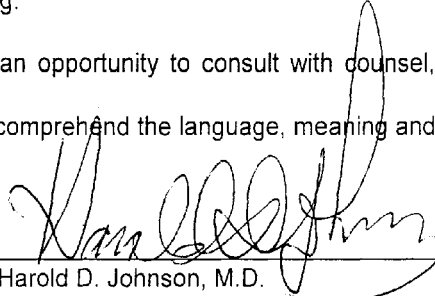
CONSENT

I, Harold D. Johnson, M.D., acknowledge that I am represented by legal counsel, Shelley D. Hayes, Esquire and Benfred B. Alston, Esquire, and I have had the opportunity to consult with counsel before entering into and 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 seven (7) pages.

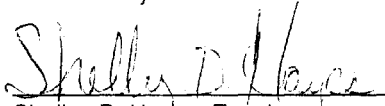
I acknowledge the validity of this Consent Order as if entered after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided 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.

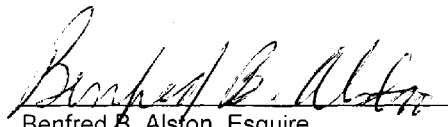
I sign this Consent Order after having an opportunity to consult with counsel, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

19 July 00
Date


Harold D. Johnson, M.D.
Respondent

Reviewed by:


Shelley D. Hayes, Esquire
Respondent's Counsel


Benfred B. Alston, Esquire
Respondent's Counsel

STATE OF MARYLAND

CITY/COUNTY of Baltimore

I HEREBY CERTIFY that on this 19th day of June, 2000, before me, a Notary Public of the State and County aforesaid, personally appeared **Harold D. Johnson, M.D.** and made oath in due form of law that the foregoing was his/her voluntary act and deed.

AS WITNESS my hand and Notarial Seal.



Notary Public

Wanda Hurtt Notary Public

My Commission Expires: County of Baltimore
State of Maryland

My Commission Expires Sept. 01, 2002

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June 15, 2000 (11:22AM)