IN THE MATTER OF	*	**BEFORE THE**
JOSEPH F. GIBBONS, M.D.	*	**MARYLAND BOARD OF**
Respondent	*	**PHYSICIANS**
License Number: D38296	*	**Case Number: 2006-0582**

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CONSENT ORDER

The Maryland Board of Physicians (the "Board") charged Joseph F. Gibbons, M.D. (the "Respondent") (D.O.B. 3-17-57), License Number D38296, with violations under the Maryland Medical Practice Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 14-101 *et seq.* (2005 & 2009 Repl. Vols.)

The pertinent provisions of the Act under H.O. § 14-404 provides the following:

(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:

(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 this State.

(40) Fails to keep adequate records as determined by appropriate peer review.

FINDINGS OF FACT

The Board makes the following findings of fact:

A. Background

1. At all times relevant to these charges, the Respondent was and is licensed to practice medicine in the State of Maryland. The Respondent was initially licensed to

practice medicine in Maryland on April 25, 1989, and was issued License Number D38296.

2. The Respondent is board-certified in Internal Medicine and maintains an office for the practice of medicine at the following location: Centennial Medical Group, 8186 Lark Brown Road, Suite 201, Elkridge, Maryland 21075.

3. The Board initiated an investigation of the Respondent after receiving a complaint from the Medicaid Fraud Unit, of the Office of the Attorney General that the Respondent failed to follow-up with a patient's caregiver regarding obtaining a referral to a Gastrointestinal ("GI") specialist to obtain a colonoscopy. The patient later died of colon cancer.

4. The Board requested a practice review of two patient records. The reviewers determined that the Respondent failed to meet the standard of care for the delivery of quality medical and surgical care in the two cases reviewed, including the case of the patient who died of colon cancer.

B. Patient Specific Facts

Patient A

5. In 2002, the Respondent treated a forty-five year old, female patient, hereinafter "Patient A,"[1] who had a history of cerebral palsy[2] with a severe developmental disability, diabetes, mellitus type II,[3] and a seizure disorder. Patient A

[1]For confidentiality purposes the identity of the patients are not included in this document. The Respondent may obtain the identity of all individuals referenced in this document by contacting the administrative prosecutor.

[2] Cerebral Palsy is a term used to describe a group of chronic conditions affecting body movements and muscle coordination. It is caused by damage to one or more specific areas of the brain, usually occurring during fetal development.

[3] Diabetes meillitus is a group of metabolic diseases characterized by high blood sugar (glucose) levels that result from defects in insulin secretion. Diabetes is treated with insulin, oral

was fully dependant on others for activities of daily living and was non-ambulatory. She was cared for in an assisted living facility.

6. On or about July, 26, 2002, the Respondent saw Patient A for an annual physical examination. On that date the medical record notes that Patient A gave a stool sample that was hemoccult positive.[4] The Respondent advised the patient's caretaker to have the patient seen by a gastroenterologist for a colonoscopy[5] and esophagogastroduodenoscopy (EGD),[6] but the record does not indicate that the Respondent made any referrals or provided the caretakers with contact information for a gastroenterologist. According to the medical record, the caretaker did not schedule a follow-up appointment for patient A with a gastroenterologist.

7. During the July 26th office visit the Respondent also ordered a complete blood cell count (CBC)[7] with iron studies. The results came back on or about July 30, 2002, positive for iron deficiency (anemia), with a hemoglobin of 9.6.,[8] ferritin of 6,[9] and

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medication, and diet. Diabetes can lead to other serious medical problems, such as blindness, kidney failure and heart disease.

[4] A hemoccult test is used to check for blood in the stool. It is a screening test for colon and rectal cancer. A hemaccult positive test indicates that blood is present in the stool.

[5] A colonoscopy is an outpatient procedure in which the inside of the large intestine (colon and rectum) is examined with a colonoscope, a long flexible instrument, which is inserted in the rectum and advanced through the large intestine. A colonoscopy is commonly used to evaluate gastrointestinal symptoms, such as rectal and intestinal bleeding, abdominal changes, or changes in bowel habit. A colonoscopy is also used to screen for colon-rectal cancer.

[6] Esophagogastroduodenoscopy (EGD) is an examination of the lining of the esophagus, stomach, and upper duodenum with a small camera (flexible endoscope) which is inserted down the throat. The test may be used to evaluate abdominal or gastrointestinal symptoms.

[7] A CBC is a panel of blood tests, which are used as a broad screening test to check for such disorders as anemia, infection and other diseases.

[8] Hemoglobin is the protein molecule in red blood cells that carries oxygen from the lungs to the body's tissues and returns carbon dioxide from the tissues to the lungs. A normal hemoglobin for an adult female past middle age is 11.7-13.8 gm/dl.

[9] A Ferritin test is used to assess the severity of iron deficiency. A normal ferritin level for an adult female is 18-160 ng/mL. Low ferritin levels indicate the presence of an iron deficiency.

percentage transferrin saturation of 14.4%.[10] The record indicates that the Respondent signed off that he received the report. There is, however, no documentation in the record indicating that the Respondent took any action after receiving the abnormal test results. The medical record does not indicate that the Respondent contacted the caretakers to report the test results, prescribed medication or treatment for iron deficiency, or referred the patient to a gastroenterologist.

8. The Respondent saw Patient A for follow-up visits on or about September 25, 2002, November 11, 2002, December 31, 2002, and March 31, 2003. On December 31, 2002, another CBC was ordered, which showed worsening anemia with a hemoglobin of 8.6. and a hermatocrit of 25.3%.[11] Despite these findings there is no indication in the medical record that the Respondent followed up on his initial recommendation that Patient A be seen by a gastroenterologist or that he initiated treatment for iron deficiency.

9. The peer reviewers concluded that the Respondent failed to meet the standard of care, because the Respondent failed to do appropriate follow-up to ensure that the patient was referred for an evaluation to determine whether she had gastrointestinal cancer. Also, the Respondent failed to treat and/or follow-up on the patient's worsening anemia.

10. The peer reviewers concluded that the file documentation was inadequate because the Respondent failed to document in the file that he informed the caregivers

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[10] A transferrin or Total Iron Binding Capacity (TIBC) test is used to evaluate anemia. These two tests are used to calculate the transferrin saturation, which is an indicator of anemia. A normal transferrin reading is 20-40%, and a low transferrin saturation indicates anemia.

[11] Hermatocrit is the proportion by volume of the blood that consists of red blood cells. The hermatocrit is expressed as a percentage, and a normal hermatocrit for an adult female is 38%-46%.

of the possible diagnosis of gastrointestinal cancer, the treatment plan, and the consequences of failing to follow-up with the recommended referral. The file should have contained clear documentation that the caregiver was informed that a hemoccult positive stool test might be an indicator of cancer, and that a delay in doing the necessary follow-up could make the condition worse if a malignancy was discovered.

Patient B

11. In December of 2003, the Respondent treated a sixty-seven year old, female patient, hereinafter "Patient B, who had a history of gastroesophageal reflux disease (GERD),[12] asthma, chronic cough, allergic rhinitis, hypothyroidism,[13] hysterectomy[14] with bilateral salpingo-oophorectomy,[15] right hip replacement, varicose veins, tonsillectomy, and pulmonary problems. From on or about November 2002 through October 2003 the Respondent treated Patient B for a chronic cough of 1-2 years duration. The condition was treated as an upper respiratory infection, allergies, and bronchitis. Patient B was treated with a regimen of proton pump inhibitors,[16] inhalers, nasal sprays, and oral antibiotics. A pulmonary function test in November 2002 showed a mild obstructive ventilator defect,[17] and a chest x-ray in November 2002

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[12] GERD is caused when stomach acids and juices flow from the stomach back up into the tube that leads from the throat to the stomach (esophagus). This causes heart burn. GERD is generally treated with over the counter medication and diet.

[13] Hypothyroidism is a condition characterized by abnormally low thyroid hormone production.

[14] A hysterectomy is the surgical removal of all or part of a woman's uterus, typically to treat cancer, chronic pain or heavy bleeding.

[15] A bilateral salpingo-oophorectomy is a surgery in which a woman's ovaries and fallopian tubes are removed. This surgery is primarily used to treat cancers.

[16] Proton pump inhibitors are a group of medications that decreases the amount of acid in the stomach and intestines. These medications are commonly prescribed to treat people with GERD, ulcers, or other digestive disorders that may cause excess stomach acids.

[17] An obstructive ventilatory defect is an abnormality in pulmonary functioning consisting of a decrease in flow of air through the airways. Examples of obstructive diseases are asthma, emphysema, and chronic bronchitis.

was reported as mild Chronic Obstructive Pulmonary Disease (COPD).[18] The patient was also referred to a pulmonologist.

12. On or about December 23, 2003, Patient B was seen for an office visit and complained of body aches, coughing, and a headache. The Respondent diagnosed a viral illness and recommended that the patient take Robitussin. The next day Patient B contacted the Respondent's medical office and complained of a temperature. The patient's husband reported that her temperature was 103 F. But once again the patient was told that she had the flu.

13. On December 26, 2003, the patient returned to the medical office, with a fever of 103 F. She complained of decreased appetite, loose stools, coughing with chest pain, and nausea for two to three days. The Respondent diagnosed influenza, and recommended that the patient increase her fluid intake and take Advil for pain. The next day patient B developed shortness of breath and was taken to the hospital by ambulance. She developed acute respiratory failure and was placed on mechanical ventilation and vasopressors.[19] A chest x-ray on December 27, 2003, revealed a large right upper lung lobe and a small right lobe infiltrate.[20] The patient died from sepsis and non necrotizing pneumonia[21] of the right lung.

14. The peer reviewers concluded that the Respondent did not meet the standard of care, because the Respondent failed to assess the possibility that the patient had pneumonia, and also failed to consider the fact that the patient had a history

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[18] COPD is comprised primarily of three diseases, asthma, chronic bronchitis, and emphysema. In each condition there is chronic obstruction of the flow of air through the airways and out of the lungs. The obstruction generally is permanent and may be progressive over time.

[19] Vasopressors are drugs that are used for short periods of time to treat patients who have an extremely low blood pressure.

[20] A lung infiltrate is when fluid collects and gets in the lung.

[21] Pneumonia is a respiratory condition, in which there is inflammation of the lung.

of COPD. The patient complained of worsening symptoms of feeling weak, decreased gait, decreased appetite, nausea, vomiting, chest pain with a cough, and diarrhea. The patient's husband reported that she had not eaten for several days, and that she was extremely weak. The Respondent advised the patient to increase her liquids and to take Advil, but failed to note that the patient was experiencing nausea and vomiting, and was unable to keep down food or liquids.

15. The peer reviewers opined that based on the patient's age and worsening symptoms the differential diagnosis of pneumonia should have been considered. Also, even if pneumonia was not the diagnosis, in view of the patient's history of COPD, and other pulmonary problems she should have been referred to the hospital when she continued to complain of a cough and chest pains.

16. The reviewers concluded that the documentation was not adequate, because the Respondent failed to document important vital sign information such as temperature and respiratory rate despite the fact that Patient B had a suspected respiratory condition. Also, the file did not clearly document the findings and/or recommendations of the patient's pulmonologist.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board makes the following conclusions of law:

1. The Respondent's actions as set forth above in part violated violated H.O. § 14-404 (a) (22).

2. The Respondent's actions as set forth above violated H.O. § 14-404 (a) (40).

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 27th day of October, 2010, by a majority of the quorum of the Board considering this case hereby:

ORDERED that effective the date of this Consent Order, the Respondent's license to practice medicine in the State of Maryland shall be **REPRIMANDED** and it is further

ORDERED that the Respondent shall be placed on **PROBATON** for a minimum of **six (6) months** until all of the following terms and conditions are successfully completed:

1. Within sixty (60) days from the effective date of this Order the Respondent shall submit to the Board Probation Analyst, for review by the Investigative Review Panel ("IRP"), protocols for tracking referrals and abnormal lab results .

2. If the IRP approves the protocols, and after six months from the effective date of probation, the Respondent may petition for the probation to be terminated.

ORDERED that any violation of the terms/and or conditions of the Consent Order, shall be deemed a violation of probation and/or this Consent Order; and be it 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 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 violation being proven by a preponderance of the evidence; and be it further

ORDERED that the Respondent shall comply with the Maryland Medical Practice Act and all laws, statutes and regulations pertaining to the practice of medicine; and be it further

ORDERED that after the conclusion of the entire six (6) month period of probation, the Respondent may file a written petition for termination of probation without further conditions or restrictions, but only if the Respondent has satisfactorily complied with all conditions of this Consent Order, including all terms and 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.* (2009 Repl. Vol.)

27 October 2010
Date

Paul T. Elder, M.D., Chair
Maryland Board of Physicians

CONSENT

I, Joseph Gibbons, M.D., License No. D38296, by affixing my signature hereto, acknowledge that:

1. I have consulted with counsel, Marc K. Cohen, Esquire, and knowingly and voluntarily elected to enter into this Consent Order. By this Consent and for the sole 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 (2009 Repl. Vol.) and Md. State Gov't Code Ann §§ 10-201 *et seq.* (2009 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 may be 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.

10-04-2010
Date

Joseph Gibbons, M.D.
Respondent

Date

Marc K. Cohen, Esquire

NOTARY

STATE OF MARYLAND

COUNTY OF Howard :

I HEREBY CERTIFY that on this 4th day of October, 2010, before me, a Notary Public of the State and County aforesaid, personally appeared Joseph Gibbons, M.D., License Number D38296, 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

Julie Grace White
NOTARY PUBLIC
Howard County, Maryland
My Commission Expires 8/7/2013

My commission expires: