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## BEFORE THE MARYLAND

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STATE BOARD OF PHYSICIANS

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**Case Number: 2003-0027**

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## FINAL ORDER ON APPLICATION FOR REINSTATEMENT OF MEDICAL LICENSURE

## I. INTRODUCTION

On May 5, 2004, a Reinstatement Inquiry Panel (the “Panel”), a subcommittee of the Maryland State Board of Physicians (the “Board”), met with John L. Flowers, M.D., and his counsel to consider Dr. Flowers’ application for reinstatement of his medical license, dated April 22, 2004. In addition to Dr. Flowers’ application, attachments, and all related correspondence, the Panel reviewed Dr. Flowers’ 2003 Letter of Surrender, as well as written materials from the Physician Rehabilitation Committee of the Medical and Chirurgical Faculty of Maryland (“Med-Chi”). The Panel also considered letters and reports from Dr. Ralph Raphael, Ph.D., Dr. Flowers’ treating psychologist; a psychiatric evaluation report by Ellen McDaniel, M.D; an ethics paper written by Dr. Flowers; and the status of HCAO claims against Dr. Flowers.

Records of Dr. Flowers' disciplinary history with the Board and his underlying criminal offenses for writing fraudulent prescriptions on two separate occasions in 1988 and 2001 were also reviewed by the Panel, in addition to written comments submitted by an Administrative Prosecutor on behalf of the State. Following oral presentations from Dr. Flowers, his counsel and the Administrative Prosecutor, the Panel advised Dr. Flowers that it would recommend to the full Board that his license not be reinstated at this time. The full Board then convened to consider the case, taking into consideration all of the documentation and history of the case, the recommendation of

the Reinstatement Inquiry Panel, and additional written materials submitted by Dr. Flowers on May 11, 2004. This Order constitutes the Board's final decision on this application.

## **II. PROCEDURAL AND FACTUAL HISTORY**

### **A. Prior Criminal and Disciplinary History 1988-1996**

Dr. Flowers was first implicated in a prescription drug fraud case with his wife in 1988, while he was still a resident in the University of Maryland Medical System's ("UMMS") general surgery residency program. At that time, Dr. Flowers was charged with, and admitted to obtaining controlled dangerous substances ("CDS") by fraud after writing prescriptions from 1985 to 1988 for narcotic substances for himself and his wife using fictitious names and taking the prescriptions to pharmacies to obtain the drugs. Dr. Flowers admitted to "recreational use" of drugs which included Hycodan syrup, Oxycodone, and Vicodin. Dr. Flowers was fined \$1000, and received probation before judgment in the criminal case. In 1990, Dr. Flowers also tested positive for marijuana, and received treatment as an inpatient for chemical dependence, followed by outpatient treatment and monitoring.

Dr. Flowers entered into a Consent Order with the Board in 1990 in which the Board concluded that he had violated the Medical Practice Act by practicing medicine other than in connection with the university's unlicensed medical practitioner's postgraduate training program and by willfully making and filing false reports or records in the practice of medicine. Under the terms of the Consent Order, Dr. Flowers was granted a medical license and was placed on probation for five years. He agreed to comply with all conditions of a five-year Physician Rehabilitation Advocacy Contract with

Med-Chi, and a five-year Professional Assistance Treatment Contract with the UMMS, which included urine screening and frequent attendance at Alcoholics Anonymous and/or Narcotics Anonymous meetings. Following Dr. Flowers' successful completion of the probationary conditions, the Board terminated his probation in 1996.

**B. Criminal Proceedings 2001-2003**

In June, 2002, however, Dr. Flowers was again charged with prescription drug fraud following a criminal investigation in 2001 by the Anne Arundel County Police Department. The investigation revealed that Dr. Flowers had written numerous prescriptions over a long period of time using fictitious names for Oxycontin, Percocet and Phentermine, all of which are CDS. These illegal prescriptions were intended for his drug-addicted wife and another individual, whom Dr. Flowers knew to be his wife's drug supplier.<sup>1</sup> Dr. Flowers entered an Alford plea to one count of prescription drug fraud, received a six-month suspended sentence and a fine of \$1000, and was placed on supervised probation for one year.

**C. Letter of Surrender 2003**

Based on these criminal proceedings, the Board conducted an investigation of Dr. Flowers' medical practice. In lieu of further prosecution and Board disciplinary proceedings, Dr. Flowers voluntarily surrendered his medical license by a Letter of Surrender (the "Surrender") that was accepted by the Board in April, 2003. Dr. Flowers admitted that the Board's investigation and findings were sufficient to justify legal conclusions that Dr. Flowers had engaged in immoral and unprofessional conduct in the practice of medicine, in violation of Md. Health Occ. Code § 14-404(a)(3); had

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<sup>1</sup> In his ethics paper, Dr. Flowers noted that his wife's drug addiction cost \$150,000 a year.

prescribed drugs for illegal or illegitimate purposes, in violation of § 14-404(a)(27); and had pleaded guilty to a crime involving moral turpitude, in violation of § 14-404(b). Dr. Flowers also agreed not to petition for reinstatement of his medical license before December 31, 2003, and that he could not be reinstated until he appeared before a panel of the Board, and the full Board determined that he was fit to return to the practice of medicine. The Surrender also provided that if Dr. Flowers applied for reinstatement, he had the burden of demonstrating to the Board that he was competent to practice medicine and possessed good moral character.

### **III. CURRENT APPLICATION FOR REINSTATEMENT**

On January 8, 2004, Dr. Flowers filed an application for reinstatement. The Board then sent Dr. Flowers a series of questions which the Board routinely asks applicants for reinstatement following surrender of a medical license. These questions were:

1. What is your understanding of the circumstances which resulted in the surrender of your medical license?
2. Have you accepted responsibility for the actions resulting in the surrender of your license and what is your understanding of the concerns of the Board with respect to your practice?
3. What are your plans for returning to the practice of medicine in the State of Maryland, and the circumstances of your proposed practice setting?
4. Have you been able to, and/or what efforts have you made to maintain your competency to practice medicine in your area of specialty (i.e. CMEs (Continuing Medical Education credits))?

In his written response, Dr. Flowers stated that the seriously dysfunctional marital relationship between himself and his wife was a primary factor leading to a “series of poor judgments and bad decision-making” as well as “reactive behaviors” that culminated in his narcotics prescription writing and violation of the law. Dr. Flowers also

stressed his wife's history of mental illness and substance abuse and his inability to step back from their relationship and assess independent options for handling her drug abuse. Dr. Flowers stated that a number of factors, including his ongoing psychotherapy, enrollment in a physician rehabilitation program, and a tutorial course in medical ethics and professionalism, had facilitated his understanding of the circumstances that led to the surrender of his license. He also stated that physical separation from his wife, the beginning of divorce proceedings and his attempt to resolve outstanding tax liabilities exemplified his acceptance of responsibility for his illegal conduct.

### **III. CONSIDERATION OF APPLICATION**

Reinstatement of a physician's medical license is a discretionary act on the part of the Board. See Md. Health Occ. Code Ann. § 14-409. As the Board has often ruled, and as acknowledged by Dr. Flowers in his Surrender, the burden is on the applicant to demonstrate to the Board that he or she possesses the requisite qualities to be reinstated. See, e.g., *Matter of Abbas*, Board Case No. 92-0198 (July 25, 2001). To that end, in assessing the propriety of reinstating a licensee, the Board considers the following four factors:<sup>2</sup>

1. The nature and circumstances of the applicant's original misconduct;
2. his subsequent conduct and reformation;
3. his present character; and
4. his present qualifications and competence to practice.

Dr. Flowers has proposed resuming his clinical practice of general surgery in the Baltimore area and has completed the required Continuing Medical Education credits.

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<sup>2</sup> The Board notes that the Maryland Court of Appeals has considered these four factors in attorney discipline cases involving reinstatement.

The critical issues, therefore, are Dr. Flowers' understanding of the nature and circumstances of his criminal misconduct, whether he understands the Board's concerns and accepts responsibility for his actions, and whether his subsequent conduct and present character assure that these acts will not occur again.

In providing numerous false and forged prescriptions for CDS for his wife and another individual, Dr. Flowers willfully flouted criminal drug laws and the Maryland Medical Practice Act. Dr. Flowers not only engaged in immoral and unprofessional conduct in the practice of medicine, and prescribed drugs for illegal purposes, but committed a crime involving moral turpitude. He also violated the code of medical ethics by inappropriately prescribing for a family member and created the potential for harm to his wife and her drug supplier by supporting and perpetuating their narcotics addictions.

Moreover, the latest instance of prescription drug fraud by Dr. Flowers marks the second time that Dr. Flowers has failed to conform to the law, social norms and the ethics of his profession. Despite the serious personal and professional repercussions of Dr. Flowers' illegal prescribing from 1985-1988, he again engaged in the same unlawful and medically unethical acts that posed a danger to the public and jeopardized his medical practice and career in 2001. Yet, in his response to the Board's questions, Dr. Flowers argues that his illegal prescription writing was "isolated and aberrant." This is not, in the Board's opinion, an accurate statement. Within the context of his relationship with his wife, Dr. Flowers' illicit prescribing typified a pattern of repetitive and egregious criminal conduct over many years.

In his previous relationship with his wife, Dr. Flowers' inability to set limits on her behavior and his repeated acquiescence to her demands apparently triggered his illegal

prescription writing and subsequent criminal charges. While Dr. Flowers' written responses to the Board's questions showed that he has gained some insight into the causes of his criminal violations, the Board is not assured that Dr. Flowers is no longer vulnerable to the pressures that caused him to commit these offenses on multiple occasions. Nor is the Board assured that he is no longer susceptible to engaging in the same or similar misconduct that has twice resulted in criminal violations and Board disciplinary actions against his medical license.

At the Reinstatement Inquiry Panel meeting on May 5, 2004, Dr. Flowers indicated that multiple additional stressors in his life still include an ongoing fractious relationship with his wife in connection with their separation, legal divorce and custody proceedings, as well as financial debt and federal and state income tax liabilities resulting from unpaid taxes from previous years. All of these stressors continue, and will take quite some time to resolve.

The Board is not persuaded that Dr. Flowers' ongoing contentious interactions with his wife throughout the divorce proceedings do not pose an existing threat to Dr. Flowers' professional judgment and create the potential for similar egregious misconduct. In one expert's view, Dr. Flowers lacks psychological insight about his relationship with his wife, mishandled her drug addiction, was unable to act independently of her, and allowed himself to be victimized by her throughout their marriage. In addition, Dr. Flowers needs to demonstrate responsibility for the existing unresolved tax liabilities resulting from his previous abdication of accountability in financial and tax matters during his marriage.

The Board remains unconvinced that Dr. Flowers has taken sufficient steps or has had enough time to ensure that his criminal behavior is not repeated. Nor is the Board persuaded that such a reinstatement at this time under these conditions would reflect honorably on the profession of medicine or on the Board's responsibility to protect the health and safety of the citizens of the State of Maryland.


Having considered all of the foregoing information, the Board concludes that Dr. Flowers has failed to meet his burden to satisfy the Board that he is fit to return to the practice of medicine at this time.

**ORDER**

Accordingly, the Board hereby **ORDERS** that the Petition for Reinstatement of John L. Flowers, M.D., former license number D 40524 be **DENIED**; and it is further

**ORDERED** that this **FINAL ORDER ON APPLICATION FOR REINSTATEMENT OF MEDICAL LICENSE** is a public document under Md. State Gov't Code Ann. § 10-617(h).

So **ORDERED** this 24<sup>th</sup> day of August, 2004.

  
C. Irving Pinder, Jr., Executive Director  
Maryland State Board of Physicians