

VIRGINIA:

BEFORE THE BOARD OF MEDICINE

**IN RE: JOSEPH GERARD McNAMARA, M.D.
 License No.: 0101-039965**

ORDER

In accordance with the provisions of Sections 54.1-105, 54.1-110, 2.2-4020 and 2.2-4021 of the Code of Virginia (1950), as amended ("Code"), a formal administrative hearing was convened before the Virginia Board of Medicine ("Board"), on February 18, 2011, in Henrico, Virginia, to consider Dr. McNamara's application for the reinstatement of his license to practice medicine and surgery in the Commonwealth of Virginia, and to consider evidence that grounds exist to deny such reinstatement. These matters are set forth in the Board's Notice of Hearing and Statement of Particulars dated August 30, 2010.

Pursuant to Sections 2.2-4024.F and 54.1-2400(11) of the Code, the hearing was held before a panel of the Board with a member of the Board presiding. Amy Marschean, Senior Assistant Attorney General, was present as legal counsel for the Board. The proceedings were recorded by a certified court reporter. The case was presented by Julia K. Bennett, Adjudication Specialist, assisted by Fielding Yelverton, Adjudication Specialist. Dr. McNamara appeared at the formal administrative hearing and was represented by John Hart, Esquire.

FINDINGS OF FACT

Now, having properly considered the evidence and testimony presented, the Board makes the following findings of fact by clear and convincing evidence:

1. Joseph Gerard McNamara, M.D., was issued license number 0101-039965 by the Board to practice medicine and surgery in the Commonwealth of Virginia on August 12, 1986. Said license was summarily suspended by Order of the Board entered February 23, 2007 and continued on indefinite suspension for not less than one (1) year by Consent Order of the Board entered June 14, 2007 ("Consent Order").

2. Dr. McNamara's license was suspended in 2007 based on findings that, on or about January 4, 2007, during an office visit, he engaged in sexual contact with Patient A (not the same individual designated as Patient A below) concurrent with and by virtue of the patient-practitioner relationship. Further, on or about October 19, 2007, in the Circuit Court of Rockingham County, Dr. McNamara was convicted of misdemeanor assault and battery under Section 18.2-57 of the Code and misdemeanor indecent exposure under Section 18.2-387 of the Code regarding his conduct with said patient. Dr. McNamara was sentenced to 12 months incarceration, all of which was suspended, and placed on two years of supervised probation with the order that he undergo evaluation and treatment as recommended by his probation officer and have no contact with the victim in the case.

3. Dr. McNamara engaged in sexual contact concurrent with and by virtue of the practitioner-patient relationship, and/or otherwise engaged, during the course of the practitioner-patient relationship, in conduct of a sexual nature that a reasonable patient would consider lewd and offensive:

- a. With Patient A during office visits occurring from approximately March 2, 2006 to March 2, 2007. Further, by order of the Harrisonburg/Rockingham County

General District Court entered on or about December 18, 2007, Dr. McNamara was ordered to have no contact with Patient A.

b. With Patient B during office visits occurring on or about June 10, 2005; July 7, 2005; October 10, 2006; and October 20, 2006.

c. With Patient C during an office visit occurring in January 2006. Further, on or about December 18, 2007, in Harrisonburg/Rockingham County General District Court, Dr. McNamara was convicted of misdemeanor assault under Section 18.2-57 of the Code with respect to his conduct towards Patient C, and sentenced to 12 months in jail, with all 12 months suspended, placed on probation for three years, and ordered to have no contact with Patient C.

d. With Patient D during office visits occurring over the course of approximately nine months in 2006.

4. On or about August 8, 2008, Dr. McNamara pled guilty to and was convicted of obtaining a prescription drug by forgery, a felony under Section 18.2-258.1 of the Code, in Rockingham Circuit Court. The offense date of this crime was August 15, 2007. Dr. McNamara was sentenced to three years of incarceration, all suspended, and placed on supervised probation for three years.

5. From approximately May to September 2007, after his license to practice medicine had been suspended, Dr. McNamara forged another physician's signature on medical prescriptions, physician's orders, lab and diagnostic orders, test results, authorizations for patient therapy and evaluation, disability statements, and other medical records.

6. Dr. McNamara knowingly and willfully engaged in the unlawful practice of medicine in the Commonwealth from approximately May 2007 to September 2007, after his license had been summarily suspended on February 23, 2007 and then continued on suspension by the Consent Order.

7. Dr. McNamara is unable to practice medicine safely due to mental illness, incapacity, or incompetence, as set forth below:

a. In a psychiatric/psychological evaluation performed on or about April 2-6, 2007, Dr. McNamara was diagnosed with depression disorder, NOS; dysthymia; and personality disorder, NOS, with obsessive-compulsive personality traits, narcissistic features, and dependent traits. The evaluation team recommended that Dr. McNamara engage in an intensive day treatment or residential treatment program ranging from 4-12 weeks to address the foregoing. Dr. McNamara did not comply with these recommendations. Further, a psychosexual assessment performed by Dr. McNamara's treating therapist, who is certified in sex offender treatment, on or about December 28, 2007, agreed with the preceding diagnoses.

b. Dr. McNamara has completed the required sex offender evaluation and treatment as ordered by the court. In the psychosexual evaluation performed on or about December 28, 2007, Dr. McNamara's court-appointed treating therapist, a certified sex offender treatment provider, noted that Dr. McNamara has a number of factors that may indicate a risk of repeat of the inappropriate sexual behaviors described above. Further, Dr. McNamara's sex-offender treatment therapist stated in the December 28, 2007 psychosexual assessment that Dr. McNamara should

"never [be] alone with a female patient."

8. On his Application for Reinstatement dated June 24, 2009, Dr. McNamara provided a false, fraudulent, deceptive, and misleading response when he answered "No" to question #13 on the Application, which states "Do you have any physical disease, mental disorder, or any condition, which could affect your performance of professional duties?" In fact, Dr. McNamara has been diagnosed with various mental health conditions that could affect his performance of professional duties, as described above in the preceding finding. Dr. McNamara admitted during his testimony that, at the time he applied for reinstatement of his license, he incorrectly answered question #13 because he was denied disability through his insurance, so he reasoned that he was not physically or mentally ill. The Board did not find this rationale credible.

9. Dr. McNamara is not competent to practice medicine because he has not legally practiced medicine since February 23, 2007. Dr. McNamara testified that he underwent a clinical competency assessment at the University of Florida in December 2010. However, he acknowledged that he did not provide a copy of this assessment to the Board. He summarized the assessment results by stating that he had done well on the written test, yet did poorly on at least 50% of the simulated patient portion of the exam. Dr. McNamara also testified that he was in the lower percentile in pulmonary, adolescent and geriatric medicine.

10. Dr. McNamara failed to notify his patients by certified mail of the surrender of his medical license for indefinite suspension pursuant to the Consent Order. Further, Dr. McNamara failed to notify his patients by mail or publication in the newspaper of the

closure of his office on or about March, 2008, nor did he notify them of how to obtain copies of their patient records. Dr. McNamara claimed he notified about 2000 of his patients by registered mail and had his office manager place a newspaper advertisement alerting patients of the practice closure. However, he failed to provide any evidence of such notification.

11. Dr. McNamara failed to provide a copy of the complete medical records of Patient E pursuant to her written request dated October 18, 2008.

12. The Board determined that Dr. McNamara failed to appreciate the impact of his actions on Patients A-D, who were especially vulnerable patients. Patients A, C and D all testified they had previous histories of domestic violence or sexual abuse and that Dr. McNamara's breach of boundaries has significantly impacted their ongoing treatment and ability to trust male physicians. Each of the patients expressed a feeling of being victimized during their encounters with Dr. McNamara. Further, notwithstanding the boundaries class that Dr. McNamara took in August 2009, he failed to convince the panel that he had developed an adequate understanding of the imbalance of power that exists in the physician/patient relationship or the potential for patient harm that exists when a physician fails to maintain and respect appropriate boundaries.

13. The Board determined that Dr. McNamara showed little remorse or insight into the causes and consequences of the serious and repeated misconduct described above.

14. The Board found that, subsequent to the suspension of his license, Dr. McNamara demonstrated extremely poor judgment when he willfully defied the Board's Order of Summary Suspension and the Consent Order by continuing to practice medicine.

Further, he willingly engaged in illegal activities, including forging prescriptions and other medical documents.

15. Audie Gaddis, Ph.D., testified that Dr. McNamara started ongoing therapy with him in 2010, receiving treatment approximately twice a month for a total of 16-20 sessions to date. He currently diagnoses Dr. McNamara with mild depression and generalized anxiety disorder. Dr. Gaddis' psychological explanation for previous misconduct is that Dr. McNamara made serious "errors of judgment." Dr. Gaddis opined that Dr. McNamara has made significant changes in his behavior relative to his conduct of 2006-2007.

16. The Board concludes that Dr. McNamara has failed to satisfy his burden of proving his competency and fitness to safely practice medicine and surgery in the Commonwealth.

CONCLUSIONS OF LAW

1. Finding of Fact #3 constitutes a violation of Sections 54.1-2915.A(3), (12), (13), (16), and (19) of the Code, and 18 VAC 85-20-100 of the Board of Medicine General Regulations.

2. Findings of Fact #4 constitutes a violation of Sections 54.1-2915.A(1), (16), and (20) of the Code.

3. Findings of Fact #5 and #8 constitute violations of Sections 54.1-2915.A(1) and (16) of the Code.

4. Finding of Fact #6 constitutes a violation of Sections 54.1-2915.A(1), (16), and (18), 54.1-111.A(1) and (4), and 54.1-2902 of the Code.

5. Finding of Fact #7 constitutes a violation of Sections 54.1-2915.A(4) and (14) of the Code.

6. Finding of Fact #9 constitutes a violation of Section 54.1-2915.A(4) of the Code.

7. Finding of Fact #10 constitutes a violation of Sections 54.1-2405, 54.1-2915.A(18) and 54.1-2920 of the Code, the terms of the Consent Order, and 18 VAC 25-20-26.F of the Board of Medicine General Regulations.

8. Finding of Fact #11 constitutes a violation of Sections 54.1-2915.A(12), (16), and (18) of the Code; and 18 VAC 85-20-26.B of the Board of Medicine General Regulations.

ORDER

WHEREFORE, it is hereby ORDERED that the application of Joseph Gerard McNamara, M.D., for reinstatement of his license to practice medicine and surgery in the Commonwealth be DENIED.

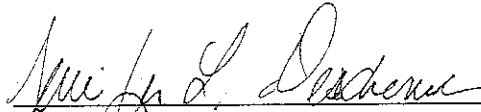
It is further ORDERED that Dr. McNamara shall not petition the Board for reinstatement of his license to practice medicine and surgery in the Commonwealth for at least six (6) months from entry of this Order. As petitioner, Dr. McNamara will have the burden of proving his competency and fitness to practice medicine and surgery in the Commonwealth of Virginia in a safe manner.

As provided by Rule 2A:2 of the Supreme Court of Virginia, Dr. McNamara has thirty (30) days from the date of service (the date he actually received this decision or the date it was mailed to him, whichever occurred first) within which to appeal this decision by filing a

Notice of Appeal with William L. Harp, M.D., Executive Director, Board of Medicine, at 9960 Mayland Drive, Suite 300, Henrico, Virginia 23233. In the event that this decision is served by mail, three (3) days are added to that period.

Pursuant to Sections 2.2-4023 and 54.1-2400.2 of the Code, the signed original of this Order shall remain in the custody of the Department of Health Professions as a public record, and shall be made available for public inspection and copying upon request.

FOR THE BOARD



for William L. Harp, M.D.
Executive Director
Virginia Board of Medicine

ENTERED: 3/10/2011