



OFFICE OF THE PRESIDENT
CHARLES B. ODOM, M. D.
4500 MAGNOLIA STREET
NEW ORLEANS, LA. 70115

LOUISIANA STATE BOARD
OF
MEDICAL EXAMINERS
NEW ORLEANS

IN THE MATTER OF
DR. MARY FRANCES GARDNER

A hearing was held by and before the Louisiana State Board of Medical Examiners on the 14th day of August, 1975, on charges brought against Dr. Mary Frances Gardner in order to determine whether or not just cause existed for action against Dr. Gardner's license to practice medicine in the State of Louisiana pursuant to the terms and conditions of a Consent Judgment entered into by Dr. Gardner and rendered by the Board on the 5th day of December, 1974.

The hearing was held subsequent to notice to Dr. Gardner of the charges as well as the proposed date, time and place of the hearing. Dr. Gardner was in attendance and was represented by counsel, Nolan J. Edwards, Esq. The entire Board was present for the hearing.

After hearing the testimony and observing the demeanor of the witnesses, and upon consideration of all the evidence and the arguments of counsel, the Louisiana State Board of Medical Examiners issues the following findings of fact, conclusions of law, and decision.

FINDINGS OF FACT

1.

The Board takes official notice of the prior Consent Judgment entered against Dr. Gardner on December 5, 1974, and which provides in pertinent part:

The Louisiana State Board of Medical Examiners hereby suspends Dr. Mary Frances Gardner's license to practice medicine in the State of Louisiana, evidenced by certificate number 10274, for a period of three years, commencing from the date hereof.

The effect of this order of suspension is in itself suspended and held in abeyance, and Dr. Gardner is authorized to continue her practice under said certificate on a probationary status for a similar period as long as she complies in good faith with the following terms and conditions:

(a) that she have absolutely no professional connection or association whatsoever with Robert B. Gieger in her practice of medicine in this state;

(b) that she make arrangements to appear before the Board at approximately six month intervals in order to advise the Board of the status of her practice and her compliance with these conditions; and,

(c) that she not violate any other provisions of the Medical Practice Act as set forth in Louisiana Revised Statutes 37:1261 et seq.

In the event that the foregoing conditions are not complied with by Dr. Gardner in good faith, then the order of suspension of her license to practice medicine in this state set forth above will automatically be reinstated in full force and effect for a term of three years, commencing from the date of the violation of any of the above conditions.

2.

Dr. Mary Frances Gardner has, since December 5, 1974, continued to maintain a professional connection or association with Robert B. Gieger in her practice of medicine in this state. The Board finds this fact supported by the testimony of Dr. Gardner as to her continuing relationship with Robert B. Gieger as well as by persuasive testimonial and documentary evidence that Dr. Gardner has, since December 5, 1974, (1) re-certified the medical necessity of durable medical equipment for several patients leasing such equipment from the Covington Medical and Surgical Supply Company, which is solely owned by Robert B. Gieger; and, (2) personally accompanied Robert B. Gieger while he visited several individuals, including certain individuals previously attended by Dr. Gardner as physician, for the purpose of persuading such individuals to lease durable medical equipment offered by the Covington Medical and Surgical Supply Company.

The effect of this order of suspension is in itself suspended and held in abeyance, and Dr. Gardner is authorized to continue her practice under said certificate on a probationary status for a similar period as long as she complies in good faith with the following terms and conditions:

(a) That she have absolutely no professional connection or association whatsoever with Robert B. Gieger in her practice of medicine in this state;

(b) That she make arrangements to appear before the Board at approximately six month intervals in order to advise the Board of the status of her practice and her compliance with these conditions;

(c) That she not violate any other provisions of the Medical Practice Act as set forth in Louisiana Revised Statutes 37:1581 et seq.

In the event that the foregoing conditions are not complied with by Dr. Gardner in good faith, then the order of suspension of her license to practice medicine in this state set forth above will automatically be reinstated in full force and effect for a term of three years, commencing from the date of the violation of any of the above conditions.

2.

Dr. Mary Frances Gardner has, since December 5, 1974, continued to maintain a professional connection or association with Robert B. Gieger in her practice of medicine in this state. The Board finds this fact supported by the testimony of Dr. Gardner as to her continuing relationship with Robert B. Gieger as well as by persuasive circumstantial and documentary evidence that Dr. Gardner has, since December 5, 1974, (1) re-certified the medical necessity of duplicate medical equipment for several patients leaving such equipment from the Covington Medical and Surgical Supply Company, which is solely owned by Robert B. Gieger; and (2) personally accompanied Robert B. Gieger as well as visited several individuals, including certain individuals previously attended by Dr. Gardner as physician, for the purpose of purchasing such individuals to lease duplicate medical equipment ordered by the Covington Medical and Surgical Supply Company.

3.

The evidence and the representations of Dr. Gardner's counsel suggest that Dr. Gardner may have suffered under a misapprehension of the true scope and intendment of the terms and conditions of the Consent Judgment previously entered against her.

4.

The evidence submitted to the Board was insufficient to indicate that Dr. Gardner had wilfully failed to comply with condition (b) of the prior Consent Judgment.

CONCLUSIONS OF LAW

Based on the foregoing, the Board concludes that:

A.

Dr. Gardner has violated, in fact, condition (a) of the Consent Judgment entered against her on December 5, 1974; and that, therefore, there exists just cause in accordance with that Judgment to reinstate in full force and effect the suspension of her license to practice medicine in this state for three years as provided therein. It is the Board's opinion, however, that the possibility that Dr. Gardner may have, in good faith, misconstrued the prior Judgment should be considered in mitigation of her culpability and that, therefore, the reinstatement of suspension provided for in the Consent Judgment should not be imposed.

B.

That any possible misunderstanding by Dr. Gardner as to the scope and intendment of the Board's prior Consent Judgment against her should be eradicated. Toward that end, the Board has given careful consideration to a further clarification of the terms and conditions of its prior Judgment. It is the Board's considered opinion, however, with particular reference to condition (a), that any redefinition, restatement or attempted clarification of the condition, which it finds to be clear, unequivocal and absolute in meaning, could only serve to qualify what is intended as an unqualified mandate.

DECISION

Considering the foregoing findings of fact and conclusions of law, the Louisiana State Board of Medical Examiners hereby readopts and

3.

The evidence and the representations of Dr. Gardner's counsel suggest that Dr. Gardner may have suffered under a misapprehension of the true scope and intent of the terms and conditions of the consent judgment entered against her.

4.

The evidence submitted to the Board was insufficient to indicate that Dr. Gardner had willfully failed to comply with condition (b) of the prior consent judgment.

CONCLUSIONS OF LAW

Based on the foregoing, the Board concludes that:

1.

Dr. Gardner has violated, in fact, condition (a) of the consent judgment entered against her on December 2, 1974; and that, therefore, there exists just cause in accordance with that judgment to reinstate in full force and effect the suspension of her license to practice medicine in this state for three years as provided therein. It is the Board's opinion, however, that the possibility that Dr. Gardner may have, in good faith, misconstrued the prior judgment should be considered in mitigation of her culpability and that, therefore, the reinstatement of suspension provided for in the consent judgment should not be imposed.

2.

That any possible misunderstanding by Dr. Gardner as to the scope and intent of the Board's prior consent judgment against her should be excused. However, that the Board has given careful consideration to a further clarification of the terms and conditions of the prior judgment. It is the Board's considered opinion, however, with particular reference to condition (a), that any reduction, restriction or attempted clarification of the condition, which it finds to be clear, unambiguous and absolute in meaning, could only serve to qualify what is intended as an unqualified mandate.

DECISION

Considering the foregoing findings of fact and conclusions of law, the Louisiana State Board of Medical Examiners hereby certifies and

reaffirms, as if copied herein in full, the Consent Judgment rendered by this Board against Dr. Mary Frances Gardner on December 5, 1974. However, condition (b) of the Consent Judgment is hereby amended to require Dr. Gardner's appearance before the Board, for the purposes therein stated, at its semi-annual meetings in December and June of each year, during the term of this Judgment. Prior to such meetings, the Board shall give reasonable notice to Dr. Gardner of the proposed date, time and place for her appearance.

The Board would further reiterate, notwithstanding the interpretation suggested by Dr. Gardner at the hearing, that it has concluded as a matter of law that on several occasions Dr. Gardner's relationship and association with Robert B. Gieger constituted violations, in fact, of condition (a) of the Consent Judgment of December 5, 1974. The Board intends that this conclusion of law be taken by Dr. Gardner as the Board's express rejection of any qualified interpretation that might be placed on such condition as well as its emphatic disapprobation of her continued professional association with Robert B. Gieger since December 5, 1974.

The Board does not wish to encroach upon Dr. Gardner's right of free association with such individuals as she chooses. Doctors do not, by the privilege of licensing, abdicate such rights. This Board, however, is charged with the solemn responsibility of regulating the practice of medicine in this State for the protection of the public health, welfare and safety. Thus, in light of past and present findings in this matter, the Board is bound to admonish Dr. Gardner that it must and will regard with concern any connection or relationship between Dr. Gardner and Robert B. Gieger in circumstances such that Dr. Gardner is or may be regarded in a professional capacity. It is not a personal association per se that we proscribe, but instead the Board intends to preclude a professional association with its propensity to deceive or defraud the public within the meaning of Louisiana Revised Statutes 37:1285 (9) and (12) or to otherwise violate the Medical Practice Act. Accordingly, the Board would commend to Dr. Gardner the utmost circumspection in future associations with Robert B. Gieger.

New Orleans, Louisiana, this 12th day of September, 1975.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

BY:

Charles B. Odom, M.D.

CHARLES B. ODOM, M.D., President

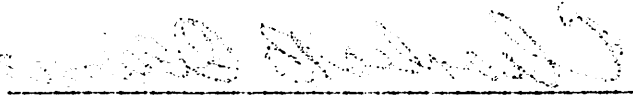
...as it is noted herein in full, the Consent Judgment rendered by the Board against Dr. Mary Frances Gardner on December 2, 1974. However, condition (b) of the Consent Judgment is hereby amended to require Dr. Gardner's appearance before the Board for the purpose to be stated, at the semi-annual meeting in December and June of each year, during the term of this Judgment. Prior to such meetings, the Board shall give reasonable notice to Dr. Gardner of the proposed date, time and place for her appearance.

The Board would further reiterate, notwithstanding the investigation suggested by Dr. Gardner at the hearing, that it has concluded as a matter of law that on several occasions Dr. Gardner's relationship and association with Robert B. Gieger constituted violations, in fact, of condition (c) of the Consent Judgment of December 2, 1974. The Board intends that this continuation of law be taken by Dr. Gardner as the Board's express rejection of any qualified investigation that might be placed on such condition as well as the emphasis and appreciation of her continued professional association with Robert B. Gieger since December 2, 1974.

The Board does not wish to encroach upon Dr. Gardner's right of free association with such individuals as she chooses. Doctors do not, by the privilege of licensing, abdicate such rights. This Board, however, is charged with the solemn responsibility of regulating the practice of medicine in this State for the protection of the public health, welfare and safety. Thus, in light of past and present findings in this matter, the Board is bound to admonish Dr. Gardner that it must and will regard with concern any connection or relationship between Dr. Gardner and Robert B. Gieger in circumstances such that Dr. Gardner is or may be regarded in a professional capacity. It is not a personal association per se that we prohibit, but instead the Board intends to provide a professional association with the propensity to derive or demand the public within the meaning of Louisiana Revised Statutes 33:1225 (9) and (12) or to otherwise violate the Medical Practice Act. Accordingly, the Board would commend to Dr. Gardner the utmost attention in future associations with Robert B. Gieger.

New Orleans, Louisiana, this 10th day of September, 1975.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

BY: 
 CHARLES R. ODOM, M.D., President

CONSENT JUDGMENT

Information was received by the Louisiana State Board of Medical Examiners of circumstances which indicated the possibility that Dr. Mary Frances Gardner, M.D. may have been guilty of efforts to deceive or defraud the public and or of having professional connection with or lending her name to an illegal practitioner.

Based on such information, the Board charged Dr. Gardner with possible violation of the Medical Practice Act and scheduled a formal hearing on said charges for December 5, 1974. Dr. Gardner was provided notice of the hearing as well as the specifics of the charges pending against her by a letter from the Board dated November 4, 1974.

The hearing was commenced as scheduled. Dr. Gardner was present and was represented by counsel, Nolan J. Edwards, Esq. All members of the Board were present. At the beginning of the hearing, Dr. Gardner, through her counsel, advised the Board that she admitted the allegations made against her, and on advice of counsel, desired to enter into a consent judgment, all of which is more fully shown by the attached statement of Dr. Gardner.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the foregoing, the Louisiana State Board of Medical Examiners finds that Dr. Mary Frances Gardner was guilty of attempts to deceive or defraud the public and of having professional connection with, or lending her name to an illegal practitioner and that just cause therefore exists for suspension of her license to practice medicine in the State of Louisiana in accordance with Louisiana Revised Statutes 37:1285 (9) (12).

JUDGMENT

Considering the foregoing, the Louisiana State Board of Medical Examiners hereby suspends Dr. Mary Frances Gardner's license to practice medicine in the State of Louisiana, evidenced by certificate number 10274, for a period of three years, commencing from the date hereof.

The effect of this order of suspension is in itself suspended and held in abeyance and Dr. Gardner is authorized to continue her practice under said certificate on a probationary status for a similar period as long as she complies in good faith with the following terms and conditions:

(a) that she have absolutely no professional connection or association whatsoever with Robert B. Gieger in her practice of medicine in this state;

(b) that she make arrangements to appear before the Board at approximately six month intervals in order to advise the Board of the status of her practice and her compliance with these conditions; and

(c) that she not violate any other provisions of the Medical Practices Act as set forth in Louisiana Revised Statutes 37:1261 et seq.

In the event that the foregoing conditions are not complied with by Dr. Gardner in good faith, then the order of suspension of her license to practice medicine in this state set forth above will automatically be reinstated in full force and effect for a full term of three years, commencing from the date of the violation of any of the above conditions.

NEW ORLEANS, LOUISIANA, this 5th day of December, 1974.



Louisiana State Board of Medical
Examiners
Dr. Charles Odom, President

Approved and consented
to this 5th day of
December, 1974.

Dr. Mary Frances Gardner, M.D.