

STATE OF MAINE  
BOARD OF OSTEOPATHIC LICENSURE

IN RE:

ALBERT R. AMALFITANO,  
D.O.

)  
)  
) CONSENT AGREEMENT AND  
) BOARD ORDER  
)

The State of Maine Board of Osteopathic Licensure ("the Board"), Dr. Albert R. Amalfitano, D.O. ("Dr. Amalfitano"), and the Maine Department of the Attorney General ("the Attorney General") enter into this Consent Agreement in order to resolve violations of the Consent Agreement and Board Order entered into between the parties on April 9, 1998, as amended, and to provide for the winding down and termination of Dr. Amalfitano's practice of osteopathic medicine in the State of Maine. This Consent Agreement is entered into pursuant to 32 M.R.S. 2591-A and 10 M.R.S. 8003(5).

**FACTS**

1. At all times relevant, Albert R. Amalfitano, D.O. ("Dr. Amalfitano") has been licensed as an osteopathic physician, license number DO752.

2. On April 9, 1998, Dr. Amalfitano, the Board and the Department of the Attorney General ("the Attorney General") executed a Consent Agreement and Board Order after finding that from November 1995 to November 1997, he violated 32 M.R.S. § 2591-A(2)(E)(2) by failing to utilize appropriate osteopathic standards and procedures necessary to avoid prescribing excessive amounts of controlled substances to patients ("the 1998 Consent Agreement"). Pursuant to the 1998 Consent Agreement, Dr. Amalfitano was granted a license to practice osteopathic medicine with restrictions on prescribing. The 1998 Consent Agreement required,

among other things, that Dr. Amalfitano utilize triplicate prescription pads, numerically ordered, in chronological order, and provide corresponding patient records upon request.

3. On September 10, 1998, Dr. Amalfitano, the Board and the Attorney General executed a First Amendment to Consent Agreement and Board Order amending the 1998 Consent Agreement ("the First Amendment") in order to resolve a complaint and to address issues arising during the process of monitoring the 1998 Consent Agreement. The First Amendment modified timing requirements, required a physician reviewer to evaluate records and provide consultation, and issued a letter of Warning related to treatment of patients that had developed an addiction to scheduled medications.

4. On November 18, 1999, Dr. Amalfitano, the Board and the Attorney General executed a Second Amendment to Consent Agreement and Board Order amending the 1998 Consent Agreement ("the Second Amendment") in order to resolve issues related to the examination requirement and to deal with other concerns regarding documentation. The Second Amendment required Dr. Amalfitano to retain an independent medical office consultant to evaluate his current office practice and to make specific recommendations regarding forms, procedures, protocols and other changes to his practice that would ensure consistent, thorough, and quality documentation regarding all aspects of patient care, and for Dr. Amalfitano to implement those recommendations.

5. On February 8, 2000, Dr. Amalfitano, the Board and the Attorney General executed a Third Amendment to Consent Agreement and Board Order amending the 1998 Consent Agreement ("the Third Amendment") to facilitate the review of patient records and provide Dr. Amalfitano with more participation in the process. The Third Amendment required,

among other things, that Dr. Amalfitano provide copies of all prescriptions entered on the triplicate prescription pad for the previous month and legible copies of his appointment log of all patients seen during that time. The Third Amendment further provided that if patient records requested by the physician reviewer were not provided within the required timeframe it would be presumed that the records did not exist.

6. On May 11, 2000, the Board imposed a \$100 fine for Dr. Amalfitano's failure to comply with reporting requirements contained in the Third Amendment after noting that it was not the first instance in which the deadlines had not been met.

7. On May 29, 2001, Dr. Amalfitano, the Board and the Attorney General executed a Fourth Amendment to Consent Agreement and Board Order amending the 1998 Consent Agreement ("the Fourth Amendment") to address issues of non-compliance with requirements of the 1998 Consent Agreement. The Fourth Amendment required Dr. Amalfitano to promptly provide the actual prescription pads that he uses in his practice as each is used up to the Case Reporter for review. The Fourth Amendment further required that the third copy on the triplicate pad must not be detached so that prescriptions were in chronological order with no unexplained gaps, and for prompt provision of patient records requested in writing.

8. On May 9, 2002, the Board imposed a Warning for non-compliance with Condition 1 of the Consent Agreement for prescribing a Schedule II medication to a patient on three occasions between February 26, 2002 and March 29, 2002, after noting that it was not the first instance of non-compliance with Condition 1.

9. On February 9, 2006, the Board imposed a fine of \$250 for non-compliance with Condition 1 of the Consent Agreement after noting that he had been notified on three prior

occasions regarding non-compliance.

10. On July 12, 2007, the Board imposed a civil penalty of \$150 for non-compliance with Condition I.G.1, after having been notified on at least one prior occasion that he was out of compliance with the requirement to provide the actual prescription pads.

11. On August 28, 2012, the Board Investigator James Gioia served a subpoena for records of three patients on Dr. Amalfitano. At the time that he was served with the subpoena, Dr. Amalfitano told the investigator that he did not know who Nicholas Amalfitano was and that he had no records for him. Nicholas Amalfitano is his son.

12. In September 2012, the Board Case Reporter spoke with Dr. Amalfitano regarding issues arising from his submissions to the Board related to a change in the manner in which he was reporting, duplication, and a decrease in organization. Dr. Amalfitano indicated to him that the changes resulted from a change in his staff.

13. On October 11, 2012, pursuant to 32 M.R.S. § 2593 the Board required Dr. Amalfitano to undergo a neuropsychological examination.

14. On February 19, 2013, Dr. Amalfitano underwent a neuropsychological examination conducted by Robert Riley, Psy.D., ABPP-CN. Dr. Riley submitted the results in a report to the Board dated February 22, 2013. The report stated that "there does appear to be a decline in general cognitive efficiency and verbal skills" and that "it may be advisable to consider reducing patient load or focusing his professional efforts on providing consultation or otherwise using his years of experience and knowledge without placing excessive demands on his ability to quickly and efficiently make clinical decisions."

15. On July 11, 2013, the Board held an informal conference with Dr. Amalfitano.

Following the informal conference by letter dated July 15, 2013, the Board sent Dr. Amalfitano a proposed Fifth Amendment to Consent Agreement and Board Order amending the 1998 Consent Agreement ("the Fifth Amendment").

16. On September 23, 2013, the Board requested clarification for six instances from his July submission where there was a prescription written for a patient that was not on his appointment log, and an explanation for 97 missing prescription numbers. Dr. Amalfitano was requested to respond to the Board by October 3, 2013. Dr. Amalfitano did not respond to the Board's request for information contained in the September 23, 2013 correspondence.

17. On November 14, 2013, Dr. Amalfitano, the Board and the Attorney General executed a Fifth Amendment to Consent Agreement and Board Order amending the 1998 Consent Agreement. The Fifth Amendment required Dr. Amalfitano to undergo annual neuropsychological examinations, to provide the name of his medical malpractice insurance carrier and a copy of the face sheet or summary of the policy in effect within ten days of execution, to provide a list of individuals providing administrative or health care services related to his practice along with their credentials and description of duties, and that he develop a plan for the transition of his practice.

18. Although stating in correspondence received November 13, 2013, that medical malpractice insurance was "currently in progress with Medical Mutual Insurance Company of Maine," Dr. Amalfitano has failed to provide the required information contained in Condition 15 of the Fifth Amendment concerning malpractice insurance.

19. Dr. Amalfitano's submissions of appointment logs and prescription copies for the periods September 16-30, October 1-15, and October 15-31, 2013, indicate that he is not using

numerically sequenced prescription pads in violation of the requirements of the Consent Agreement. In addition, prescriptions were issued for patients M.L. W.D., and E.L. when no corresponding office visit was identified.

20. In his correspondence to the Board dated September 27, 2013, but received November 13, 2013, Dr. Amalfitano identified Bryant Lee, Carol Boardman, RN, Laurie Thornberg, RN, Kimberley Amalfitano, RN, Georgette White, and Nerissa Merrill, as employed by or providing administrative or health care services related to his practice of osteopathic medicine as required by Condition 16 of the Fifth Amendment. Ms. Thornberg, Ms. Amalfitano, and Ms. White have told Board Investigator James Gioia that they have not provided any assistance to Dr. Amalfitano since sometime in 2012.

21. At its meeting on November 14, 2013, the Board voted to set this matter for an adjudicatory hearing to consider Dr. Amalfitano's failure to comply with the Consent Agreement and Board Order, as amended, and whether his lack of communication and compliance results in or may result in performing duties in a manner that endangers the health or safety of his patients or that evidences a lack of ability or fitness to discharge his duties to his patients.

22. An adjudicatory hearing was scheduled to be held on December 12, 2013. On December 11, 2013, Dr. Amalfitano and his recently retained legal counsel requested a continuance of the hearing which was granted by the Hearing Officer.

23. This Consent Agreement has been negotiated by Dr. Amalfitano, his legal counsel, and the assigned legal counsel to the Board. Absent acceptance by Dr. Amalfitano and presentation to and ratification of this Consent Agreement by the Board at its January 9, 2014 meeting, this matter shall proceed to an adjudicatory hearing on February 13, 2014.

## COVENANTS

24. Dr. Amalfitano admits the facts as stated above and that such conduct constitutes unprofessional conduct in violation 32 M.R.S. § 2591-A(2)(F).

25. Dr. Amalfitano agrees to accept no new patients after the effective date of this Consent Agreement, to assist in the transition of his patients to another practitioner, to close his medical practice office, and to voluntarily surrender his license to practice osteopathic medicine in the State of Maine no later than 12:00 a.m. eastern standard time, Monday, June 30, 2014. Dr. Amalfitano shall provide the Board with written confirmation of his compliance with this paragraph to be received by the Board no later than Monday, July 7, 2014.

26. This Consent Agreement is not appealable and is effective until modified or rescinded by the parties hereto.

27. The Board and the Office of the Attorney General may communicate and cooperate regarding any matter related to this Consent Agreement.

28. This Consent Agreement is a public record within the meaning of 1 M.R.S. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S. § 408.

29. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.

30. This Consent Agreement constitutes disciplinary action that is reportable to the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank, and the Federation of State Medical Boards.

31. Dr. Amalfitano acknowledges by his signature hereto that he has read this Consent Agreement, that he has had an opportunity to consult with an attorney before executing

this Consent Agreement, that he executed this Consent Agreement of his own free will, and that he agrees to abide by all terms and conditions set forth herein.

I, ALBERT R. AMALFITANO, D.O., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT AND BOARD ORDER. I UNDERSTAND THAT BY SIGNING I WAIVE CERTAIN RIGHTS. KNOWING THIS, I SIGN THE CONSENT AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THE CONSENT AGREEMENT AND BOARD ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN, OR OTHERWISE. I ACKNOWLEDGE THAT I HAVE HAD THE OPPORTUNITY TO DISCUSS THE CONSENT AGREEMENT AND BOARD ORDER WITH LEGAL COUNSEL PRIOR TO SIGNING IT.

DATED: 1/7/2014

Albert R Amalfitano DO  
ALBERT R. AMALFITANO, D.O.

STATE OF MAINE  
Maine, SS.

Before me this 7<sup>th</sup> day of January, ~~2013~~ <sup>2014</sup>, personally appeared Albert R. Amalfitano, D.O., who after first being duly sworn, signed the foregoing Consent Agreement and Board Order in my presence or affirmed that the signature above is his own.

Tanya L. Fossett

Notary Public/Attorney at Law

My commission expires:

TANYA L. FOSSETT

Notary Public  
Maine

My Comm. Expires Nov. 7, 2019



DATED: 1/9/2014

Marty W. McIntyre  
MARTY W. MCINTYRE, Chair  
Maine Board of Osteopathic Licensure

DATED: 1/9/2014

Michael Miller  
MICHAEL MILLER  
Assistant Attorney General