

BEFORE THE LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

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In The Matter of:	:	
	:	NO. 88-A-023
ROBERT LEWIS FIRNBERG, M.D.	:	
(Certificate No. 007294)	:	
	:	CONSENT ORDER
Respondent	:	

An investigation conducted on behalf of the Louisiana State Board of Medical Examiners (Board) beginning in 1988 developed information indicating that Robert Lewis Firnberg, M.D. (Dr. Firnberg), a physician licensed to practice medicine in the state of Louisiana, had written and issued prescriptions for a variety of legally controlled dangerous substances, principally narcotic analgesics, in apparently excessive quantities to a number of patients. The investigation included analysis of prescription records maintained by pharmacies together with the physician's own office records with respect to these patients. Expert opinion was obtained indicating that the prescriptions issued to the seventeen (17) patients in question were without legitimate medical justification.

Predicated on the information received during the course of its investigation, the above-entitled and numbered proceeding was noticed and docketed for hearing before the Board upon Administrative Complaint¹, specifying alleged violations of the Louisiana Medical Practice Act, LSA-R.S. 37:1261-92, to wit: "[p]rescribing, dispensing, or administering legally controlled substances or any dependency-inducing medication without legitimate medical justification therefor or in other

¹ Administrative Complaint, "In the Matter of: Robert Lewis Firnberg, M.D.," No. 88-A-023 before the Louisiana State Board of Medical Examiners, dated February 20, 1989.

than a legal or legitimate manner" LSA-R.S. 37:1285A(6); "[p]rofessional or medical incompetency" LSA-R.S. 37:1285A(12); and "[c]ontinuing or recurring medical practice which fails to satisfy the prevailing and usually accepted standards of medical practice in this state." LSA-R.S. 37:1285A(14).

The aforementioned charges were to be adjudicated at a formal administrative evidentiary hearing noticed and docketed to be held on October 27, 1989. On October 23, 1989, the Respondent moved for continuance of the administrative hearing, predicated on a number of events which had recently occurred, which are discussed more fully below. The continuance was granted conditioned on Dr. Firnberg's agreement to cease writing prescriptions for controlled substances until the administrative hearing could be rescheduled in either December, 1989 or January, 1990. The Respondent agreed to this condition, executing a written acknowledgment² on November 25, 1989. The acknowledgment contained a stipulation that "any violation of this agreement by me shall be deemed just cause, upon proof of such violation, for such action against my license as may be deemed appropriate by the Board, as if same were enumerated in LSA-R.S. 37:1285."

The conditional continuance of the October 23, 1989 hearing was necessitated in part by the Respondent's voluntary admission of himself to the Jackson Recovery Center in Jackson, Mississippi (treatment facility) under the management and care of Doyle P. Smith, M.D. for chemical addiction and dependency. This voluntary admission followed suspension of the Respondent's staff privileges at the Jackson Parish Hospital in Jonesboro, Louisiana. Jackson Parish Hospital required Dr. Firnberg to successfully complete a specified chemical dependency regime as a

² "Acknowledgment" Although Dr. Firnberg signed the agreement on November 25, 1989, he agreed to the condition, through counsel, on October 26, 1989. See October 27, 1989 correspondence from Board counsel, L. Thomas Styron, to Respondent's counsel, William H. Baker.

condition of restoration of privileges. Dr. Firnberg entered and remained in the Jackson Recovery Center for a period of thirty (30) days, from October 25 through November 24, 1989, whereupon he was discharged against medical advise. The final diagnosis was chemical dependency, withdrawal and diffuse cerebral atrophy. Dr. Firnberg's treating physician indicated that Dr. Firnberg had suffered from long-term chemical addiction and dependency. Self-prescribed barbituates were his drug of choice.

Notwithstanding his agreement not to prescribe controlled substances until the conclusion of the administrative hearing in these proceedings, and the fact that Respondent was hospitalized at the treatment facility from October 25 through November 24, 1989, some sixty-one (61) prescriptions for controlled substances, bearing Respondent's signature, were filled at local area pharmacies between October 25 and November, 1989.

Additionally, Dr. Firnberg entered into a Stipulation and Agreement³ on November 27, 1989 whereby he agreed to "observe and strictly abide by the treatment recommendations of Dr. Doyle P. Smith, ..." at the treatment facility, further acknowledging that failure of strict compliance with such stipulation would constitute sufficient legal cause for suspension or revocation of his medical licensure as if such violation were specified among the causes enumerated by LSA-R.S. 37:1285. Yet, Dr. Firnberg declined to follow the recommendations of the treatment facility for further in-patient evaluation and treatment.

Following receipt of information indicating that Dr. Firnberg was in violation of prior stipulations involving the prescribing of controlled substances and adherence to treatment facility recommendations, together with medical reports from the treatment facility indicating the nature and scope of Dr. Firnberg's illness, a

³ Stipulation and Agreement, "In the Matter of: Robert Lewis Firnberg, M.D.," No. 88-A-023 before the Louisiana State Board of Medical Examiners, dated November 27, 1989.

First Supplemental and Amending Administrative Complaint⁴ ("Amended Complaint") was filed by the investigating officer charging Dr. Firnberg with violation of the two stipulations hereinabove described, as well as impaired ability to practice medicine by virtue of chemical dependency in violation of LSA-R.S. 37:1285A(5)⁵ as well as LSA-R.S. 37:1285A(25)⁶.

In addition to the foregoing, the Amended Complaint set forth additional allegations of fact in support of violations alleged in the original Administrative Complaint. More specifically, the Amended Complaint alleged incompetency on the part of Dr. Firnberg in treating a known substance abuser with additional controlled substances, and treating patients with a fever-reducing medication, Dipyrone, which was determined to be unsafe for treatment of humans and removed from the market effective June 27, 1977 by the Federal Food and Drug Administration.⁷ The Amended Complaint, together with the original Administrative Complaint, was re-noticed and docketed for hearing to be held on January 18, 1990.

On December 18, 1989, Dr. Firnberg voluntarily re-admitted himself to the treatment facility for additional in-patient treatment. Accordingly, the January hearing date was again continued. Dr. Firnberg remained in the treatment facility until discharge by Dr. Smith on June 2, 1990. Although interim reports received from the treatment facility reflected slow progress in the treatment program, the

⁴ First Supplemental and Amending Administrative Complaint, "In the Matter of: Robert Lewis Firnberg, M.D.," No. 88-A-023 before the Louisiana State Board of Medical Examiners, dated December 20, 1989.

⁵ LSA-R.S. 37:1285A(5) provides: "Habitual or recurring abuse of drugs, including alcohol, which affect the central nervous system and which are capable of inducing physiological or psychological dependence."

⁶ LSA-R.S. 37:1285A(25) provides: "Inability to practice medicine or osteopathy with reasonable skill or safety to patients because of mental illness or deficiency; physical illness, including but not limited to deterioration through the aging process or loss of motor skills; and/or, excessive use or abuse of drugs, including alcohol."

⁷ According to the FDA, the medication Dipyrone carries a substantial risk of fatal agranulocytosis, wholly unsatisfactory in view of alternative, safer medications.

final discharge summary reflected an excellent prognosis provided that the Respondent strictly follow the terms of the two (2) year aftercare monitoring contract which he executed.

Upon notice of discharge from the treatment facility, the above-entitled and numbered proceeding was again noticed and docketed for hearing to be held on July 20, 1990.

As evidenced by his subscription hereto, and without denying the accuracy of the charges asserted in the Administrative Complaint as supplemented and amended by the Amended Complaint described hereinabove, Dr. Firnberg now acknowledges the existence of probable cause for the institution of administrative proceedings against his medical licensure, further acknowledging that proof of such information upon administrative evidentiary hearing would establish grounds under the Louisiana Medical Practice Act for the suspension or revocation of his license to practice medicine in Louisiana, or for such other action as the Board might deem appropriate, pursuant to LSA-R.S. 37:1285.

Recognizing his right to have the allegations and charges asserted in the aforesaid Administrative Complaint as supplemented and amended by the Amended Complaint adjudicated, pursuant to LSA-R.S. 49:955-58, and to a final decision rendered upon findings of fact and conclusions of law, Dr. Firnberg, nonetheless, hereby waives his right to formal adjudication and, pursuant to LSA-R.S. 49:955D, consents to entry of the order set forth hereinafter. By his subscription hereto, Dr. Firnberg also hereby authorizes the investigating officer designated by the Board with respect hereto to present this Consent Order to the Board for its consideration and to fully disclose to and discuss with the Board the nature and results of the investigation.

Based upon the information provided, accordingly, and on the recommendation of the investigating officer assigned to this matter, Elmo J.

Laborde, M.D., coupled with receipt of the medical opinion from Dr. Firnberg's treating physicians, the Board has concluded that its responsibility to ensure the health, safety and welfare of the citizens of this state, pursuant to LSA-R.S. 37:1261, will be effectively served by entry of the order set forth hereinafter, by consent.

Accordingly, in consideration of the foregoing, and pursuant to the authority vested in the Board by LSA-R.S. 37:1285 and LSA-R.S. 49:955D;

IT IS ORDERED that the license of Robert Lewis Firnberg, M.D., to engage in the practice of medicine in the state of Louisiana, as evidenced by Certificate No. 007294, shall, and the same is hereby SUSPENDED for a period of one (1) year, said suspension to be effective July 20, 1990;

IT IS FURTHER ORDERED that at the conclusion of the one year period of suspension referred to hereinabove, on July 20, 1991, Dr. Firnberg's medical licensure shall be placed on PROBATION for a period of four (4) years, or until July 20, 1995. However, the issuance of Dr. Firnberg's medical license and the resumption of his practice of medicine following the one (1) year active suspension period referred to hereinabove, shall be expressly conditioned on Dr. Firnberg's strict compliance with and satisfaction of the following probationary terms, conditions, and restrictions commencing from the effective date of this order, July 20, 1990, and continuing throughout the probationary period, to wit:

- a) **Physical and Psychiatric Examination:** Within sixty (60) days prior to the conclusion of the one (1) year active suspension period, Dr. Firnberg shall, at his own expense, undergo and cause to be submitted to the Board results of a complete physical examination and complete psychiatric examination from physicians deemed acceptable to the Board indicating that Dr. Firnberg is capable of resuming the practice of medicine with reasonable skill and safety to patients as of July 20, 1991;
- b) **Dispensation of Controlled Substances:** Dr. Firnberg may not, at any time following the date of execution hereof, and for the duration of his medical career, prescribe, dispense, or administer any controlled substance, without regard to the schedule in which such substance may

also take and pass the SPEX examination as evidence of medical competency before restoration of licensure

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be classified, as defined, enumerated, or included in 21 C.F.R. § 1308 and LSA-R.S. 40:964, and any substance which may hereafter be included in any such schedules by amendment or revision of the cited regulations or statutes. This probation shall not extend to medications ordered or prescriptions written by Dr. Firnberg for institutional or hospital in-patients, under the permit or license of said institution or hospital. In connection with this requirement, Dr. Firnberg shall surrender any existing federal and state permits he may currently maintain permitting prescription, administration, or dispensation of controlled substances;

- c) ***Strict Adherence to Aftercare Monitoring:*** Dr. Firnberg shall submit to such continuing out-patient treatment and aftercare monitoring as may be prescribed or recommended by his current primary treating physician, Clyde E. Elliott, M.D., or any other physician, acceptable to the Board, to whom he may be referred for subsequent, continuing or follow-up treatment or therapy, including but not limited to, strict adherence by Dr. Firnberg to all terms and conditions of the "Continuing Care Advocacy Contract" executed between Dr. Firnberg and the Jackson Recovery Center on June 1, 1990;
- d) ***Board Access to Aftercare Treatment Records and Reports:*** Dr. Firnberg shall authorize Clyde E. Elliott, M.D. and any physician under whose care he may come for subsequent, continuing or follow-up treatment or therapy to provide the Board with copies of all medical records relating to Dr. Firnberg's history, examination, evaluation, diagnosis, treatment, and prognosis, and Dr. Firnberg shall authorize and cause his then-current primary treating physician to submit to the Board, not less frequently than quarterly until waived by the Board in writing, written reports on Dr. Firnberg's then-current treatment program, diagnosis, prognosis, and his compliance with the terms and conditions of this order and the continuing care contract referred to hereinabove;
- e) ***Payment of Fine:*** Dr. Firnberg shall pay to the Board a fine in the amount of FIVE THOUSAND AND NO/100 (\$5,000.00) DOLLARS, to be paid in full on or before July 20, 1991⁸;

⁸ In the event of personal hardship, Dr. Firnberg may make application to the Board for an extension of time within which to make full payment of the \$5,000.00 fine, submitted in writing within sixty (60) days of July 20, 1991, supported by affidavit indicating to the satisfaction of the Board the specific reasons why compliance with this provision cannot be made within the time period allotted. In such event, and Dr. Firnberg shall voluntarily provide whatever financial documentation the Board may in its discretion request to test the validity of any representations of financial position set forth in such affidavit.

- f) ***Personal Appearance Before the Board:*** Dr. Firnberg shall personally appear before the Board⁹ at its regular meeting during July, 1991, at latest, to permit the Board to consider his compliance with the terms of this order, and to advise the Board of his intentions and plans for the practice of medicine. Likewise, Dr. Firnberg shall personally appear before the Board for like purpose at the conclusion of his probationary period in July, 1995;
- g) ***Continuing Medical Education:*** Dr. Firnberg shall obtain not less than fifty (50) credit hours per year for five (5) years through attendance at and participation in continuing medical education (CME) programs accredited by and qualifying for the Physicians Recognition Award of the American Medical Association, and he shall obtain such award within three (3) years of the date hereof. On or before July 1, 1991, 1992, 1993, 1994, and 1995, Dr. Firnberg shall cause to be submitted to the Board written certification of the CME programs and credits completed by him during the preceding twelve (12) months;
- h) ***Prescription, Dispensation or Administration of Dipyrone:*** Dr. Firnberg shall not, for the duration of his medical career, prescribe, dispense, or administer Dipyrone or any other Dipyrone-containing product or any other medication which has been removed from the market by the Federal Food and Drug Administration based on a determination that such medication is unsafe for treatment of humans;
- i) ***Complete Abstinence for Life:*** Dr. Firnberg shall, for the duration of his life, maintain complete abstinence from the use of alcohol, Nembutol, and any other controlled substance as enumerated in 21 C.F.R. § 1308 and LSA-R.S. 40:964, or any substance which may be hereafter included in any such schedules by amendment or revision of the cited regulation or statute, unless prescribed by a treating physician other than himself for a bona fide medical condition. In the event that any physical condition of Dr. Firnberg does require prescription, administration or dispensation of any controlled substance to Dr. Firnberg for treatment of a bona fide medical condition, Dr. Firnberg shall cause Dr. Clyde E. Elliott or his then-current primary treating physician to know of such incident within thirty (30) days of its occurrence; and,

⁹ The Board may, in its discretion, refer the appearance of Dr. Firnberg to the Louisiana State Medical Society Impaired Physicians Program rather than a panel of the Board during its regularly scheduled meeting. In such event, Dr. Firnberg will be advised of such election by the Board.

- j) *Absence from State - Effect on Suspension:* Should Dr. Firnberg, at any time during the suspension ordered hereinabove, be absent from the state of Louisiana, relocate to and/or take up residency in another state, for the purpose of practicing medicine, for a period of thirty (30) days or more, then, in such instance, the suspension period ordered hereinabove shall be deemed interrupted and shall not commence to run until Dr. Firnberg returns to, relocates in and/or takes up residency in the state of Louisiana. In such instance, Dr. Firnberg shall not receive credit towards the suspension period for the time which he was absent from the state of Louisiana.

IT IS FURTHER ORDERED that this Consent Order shall be, and shall be deemed to be, a public record.

IT IS FURTHER ORDERED that any violation of or failure of strict compliance with any of the terms, conditions or restrictions of this order by Dr. Firnberg shall, upon proof of such violation or failure, be deemed adequate and/or sufficient cause, upon proof of such violation or failure, for the suspension and/or revocation of Dr. Firnberg's medical license or for such other disciplinary action as the Board deems appropriate, as if such violations were enumerated among the causes provided in LSA-R.S. 37:1285.

IT IS FURTHER ORDERED that in no instance shall Dr. Firnberg submit for consideration to the Board, nor shall the Board consider, any request by or on behalf of Dr. Firnberg for any reduction of or commutation of the one year active suspension period hereinabove ordered until Dr. Firnberg has completed at least the first six months of said period of suspension, in full compliance with all probationary conditions. It is understood and agreed by Dr. Firnberg that nothing herein shall be construed as imposing any obligations upon the Board, in the sole and exclusive exercise of its discretion, to alter or amend the terms of this order upon any such application or request by or on behalf of Dr. Firnberg.

IT IS FURTHER ORDERED that the original Administrative Complaint and First Supplemental and Amending Administrative Complaint be, and the same are hereby dismissed, without prejudice.

New Orleans, Louisiana, this 20th day of July, 1990.

LOUISIANA STATE BOARD
OF MEDICAL EXAMINERS

BY: Ike Muslow
IKE MUSLOW, M.D., PRESIDENT

ACKNOWLEDGMENT AND CONSENT

I, ROBERT LEWIS FIRNBERG, M.D., hereby acknowledge, approve, accept and consent to entry of the above and foregoing Order, this 16th day of July, 1990.

Robert Lewis Firnberg, M.D.
ROBERT LEWIS FIRNBERG, M.D.

REVIEWED AND APPROVED
AS TO FORM:

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