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LOUISIANA STATE UNIVERSITY
MEDICAL CENTER
SHREVEPORT, LA 71130

F. P. BORDELON, JR., M.D.
P. O. BOX 154
MARKSVILLE, LA 71351



OFFICE OF THE SECRETARY-TREASURER
J. MORGAN LYONS, M.D.
830 UNION STREET, SUITE 100
TELEPHONE: (504) 524-6763
NEW ORLEANS, LA 70112

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4226 CHEF MENTEUR HIGHWAY
NEW ORLEANS, LA 70126

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In The Matter Of
SAM C. MACALUSO, M.D.

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FINAL DECISION
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By notice of June 24, 1980, the Louisiana State Board of Medical Examiners ("Board") charged Sam C. Macaluso, M.D. ("Dr. Macaluso") with "[m]aking or submitting false or deceptive claims to any patient, insurance company or indemnity association, company, individual, or governmental authority for the purpose of obtaining monetary compensation for services rendered," and "[c]onviction of a crime . . .," in violation of the Louisiana Medical Practice Act, LSA-R.S. 37:1285(11), 1285(1). A formal administrative hearing was convened before the Board on July 17, 1980, and resumed on September 19 and October 16, 1980, to

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adjudicate the alleged and specified violations. A quorum of the Board was present. Dr. Macaluso was present and was represented by legal counsel, Harry A. Burglass, Esq. and Eugene P. Cerise, Esq.*

Throughout these proceedings, Dr. Macaluso maintained, through his attorneys, that the Board's administrative proceedings and decision were premature until his appeals from a Federal criminal conviction were exhausted. On such grounds he repeatedly urged a continuance of evidentiary hearing in this matter and a stay of its disposition by the Board. To the extent that Dr. Macaluso's motions have sought a continuance of evidentiary hearing, they have been previously denied.** In their latter aspect, Dr. Macaluso's motions have been rendered moot by appellate court affirmance of the criminal conviction and entry of final

*Mr. Burglass was not present during the proceedings on July 17, 1980. Dr. Macaluso was represented at that time by Mr. Cerise and Hugh B. Exnicios, Esq.

**An initial motion for continuance was based primarily on Mr. Burglass's inability to participate in the July 17, 1980 proceeding. This motion was denied in part but ultimately mooted by the attorney's full participation in two subsequent hearing dates.

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judgment thereon, as noted infra.

Accordingly, upon consideration of the evidence presented, both documentary and testimonial, and the arguments and representations of Dr. Macaluso's legal counsel, pursuant to LSA-R.S. 49:958 and LSA-R.S. 37:1285, the Board renders the following findings of fact, conclusions of law and decision.

Findings of Fact

1

Dr. Macaluso is a physician duly licensed by the Board to practice medicine in the State of Louisiana. At all times material to the activities which this administrative proceeding concerns, Dr. Macaluso was so licensed and engaged in the practice of medicine in Jefferson and Orleans Parishes.

2

Dr. Macaluso began his private practice of medicine in the New Orleans area in 1963 and two years later became involved in the treatment of soft-tissue injuries

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sustained by victims of vehicular accidents who were referred to the physician by attorneys retained by the victims to pursue personal injury claims. This aspect of his practice was conducted almost exclusively at offices in New Orleans, located successively on Jefferson Davis Parkway, Washington Avenue and Carrollton Avenue. Such referrals grew considerably in number, to the extent that, from 1975 to 1977--the period on which testimony in this matter focused--as many as 150 patients visited the office each day.

3

From the disturbingly consistent testimony of some 29 former patients, three former employees of Dr. Macaluso, and the physician himself, a pattern of practice is clearly discernible. Without reference to individual patients, thus, several generalizations may be drawn respecting the nature of Dr. Macaluso's "soft-tissue injury" practice, his relationship with the patients and their attorneys, the mode and manner of his examination, diagnosis and treatment of such patients, and his generation of written reports and rendition of professional statements for such services.

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4

Virtually all of the large number of patients who visited Dr. Macaluso's New Orleans office were directed to the physician by attorneys whom they had previously retained to pursue claims for damages arising out of vehicular accidents in which they had been involved. While the great majority of such referrals came from approximately seven attorneys, Dr. Macaluso apparently had an established understanding with all such attorneys that the attorneys, and not the patients, would be responsible for payment of the physician's fees and costs, and that such fees and costs would be guaranteed of the proceeds of any settlement or other recovery obtained by the attorneys on behalf of their clients. When Dr. Macaluso's relationship with a patient was concluded, he was expected to, and did, forward to the attorney a written report, setting forth his diagnosis and course of treatment, together with a statement reflecting the dates on which the patient had been examined or received treatment and the charge for such services. These reports and statements were, in turn, transmitted by the attorneys to insurance company representatives or attorneys to substantiate the patients' claims and to

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procure monetary settlements therefor.

5

Upon presentation at Dr. Macaluso's New Orleans office, the name, address and attorney of each patient was recorded. Either Dr. Macaluso or his receptionist also recorded an account of the accident in which the patient had been involved and listed their expressed physical complaints. No medical history was solicited, nor was any inquiry made as to the several conditions contraindicating use of the mode of treatment uniformly employed by Dr. Macaluso, as described infra. Dr. Macaluso, if present at the office at the time, would then perform a brief physical examination, averaging 5 minutes in duration and usually restricted to palpation of the neck and back, even when the patients complained exclusively with respect to other extremities, joints or organs. No x-rays were ever taken, blood pressure was rarely checked, and no other tests were conducted. On the basis of such an examination, the patients were uniformly instructed to return to the office for treatment, usually three times a week.

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6

During the years under scrutiny, however, Dr. Macaluso was present in the office only two days a week. At all other times, the office was attended solely by a receptionist having no medical training. When newly referred patients presented themselves in the physician's absence, they were nonetheless initiated on the same form of treatment and at the same frequency as those seen by Dr. Macaluso. Such patients were also typically issued a prescription by the receptionist for Parafon Forte (chlorzoxazone/acetaminophen). A number of such prescriptions were commonly left for that purpose by Dr. Macaluso, signed by him and completed as to substance, dosage and amount, but otherwise in blank.*

* Dr. Macaluso also acknowledged leaving prescriptions for codeine for issuance by his receptionist, albeit not to new patients. In either case, of course, it is improper medical practice to make prescriptions available to a patient the physician has not seen or examined. With respect to a controlled substance such as codeine, moreover, the delegated issuance of such prescriptions could be a violation of state and federal statutes and regulations governing the form of and cause for prescriptions. As such, it would equally violate the Louisiana Medical Practice Act's proscription of "[p]rescribing . . . controlled substances in other than a legal or legitimate manner." LSA-R.S. 37:1285(6). Dr. Macaluso was not, however, charged with that specific violation in these proceedings.

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7

Virtually without exception, the patients seen at the New Orleans offices were diagnosed as having sustained some form of soft-tissue injury, to the cervical and/or lumbar spine, in the accident for which they had consulted an attorney. Yet, at least three of the patients who testified acknowledged that they had suffered no real injury, but had so advised Dr. Macaluso and submitted to treatment on the belief, or on the advice of their attorneys that such treatment was necessary to a monetary recovery. At least two other patients testified that their injuries eventually proved substantially more serious upon consultation with other physicians, in one instance involving a ruptured disc.

8

Aside from prescriptions for muscle relaxant medications, but a single modality of treatment was employed in Dr. Macaluso's New Orleans offices, the administration of ultrasound diathermy by means of an instrument called the Medco-Sonlator.

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9

The Medco-Sonlator is a machine generating both electromagnetic and ultrasonic stimulation and is said to be capable of both diagnostic and therapeutic functions. While the two forms of stimulation can be used either alone or in combination, ultrasound alone can be employed in the treatment of soft-tissue injuries by the generation of intermuscular heat, which is said to affect a reduction of swelling and congestion.

The ultrasonic waves generated by the unit are transmitted to the affected anatomical site by means of a transducer, an hand held instrument with a round, flat head connected to the main device by a flexible cable. In application of the ultrasound through the transducer, it is necessary to apply to the subject bodily area a dermassage--a gel or oil--to serve as a coupling medium for the sonic waves. Normal body moisture is insufficient as a coupling medium, without which the treatment is ineffectual. To have therapeutic affect, application of ultrasound must last approximately 8 to 15 minutes, and at a minimum, 5 minutes.

Ultrasound therapy with the Medco-Sonlator is medically contraindicated, and potentially dangerous,

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for use over fractures, malignancies, the spinal column, liver, spleen, reproductive organs, or a damaged disc, or in the presence of nervous system disorders or severe hemorrhaging. Improper use of the Medco-Sonlator, moreover, may break down or destroy nerve connections, muscle and bone coverings, and other tissue. As a result of its limitations, restrictions, contraindications and potential dangers, ultrasonic therapy should be administered only by a physician, a qualified physical therapist or other trained personnel under the direct supervision of a physician.

10

Dr. Macaluso neither administered nor supervised ultrasound therapy in his New Orleans offices, nor did he at any time undertake to train his employees in any fashion regarding the proper use of the Medco-Sonlator and its contraindications and potential dangers. Rather, the Medco-Sonlator was used by entirely unsupervised and entirely untrained personnel. One such employee, who had sole responsibility for administering therapy in one of the physician's offices for over two years, had no training in medicine, physical therapy or physiology and had

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received her only instruction in the use of the Medco-Sonlator from another equally untrained employee of the physician. Her successor, who was employed by Dr. Macaluso from February, 1976 to May, 1977, was equally untrained, having previously been employed as a cocktail waitress and a hotel chambermaid. She was hired by one of the physicians employees, without an interview by Dr. Macaluso, after the physician had disapproved the expense of hiring a trained physical therapist. This employee found the number of patients appearing for therapy so great that, for a time, she enlisted the assistance of her teenage daughter to administer ultrasound therapy.

11

While the Medco-Sonlator transducer was occasionally applied directly to the patient's skin with several drops of lotion on the transducer head, more commonly the instrument was applied without any dermassage or coupling medium whatsoever and frequently over clothing. When an employee questioned Dr. Macaluso as to the desirability of using a gel or lotion, the physician indicated that it would be too expensive to provide the towels which would

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be necessary if a gel or lotion were used. The duration of the ultrasound application generally averaged less than 5 minutes, and with some patients, as short as 1 or 2 minutes. During patient visits for ultrasound therapy, no condition, progress or other notes were recorded, save for the date and fact of the visit.

12

Such "treatments" were generally continued thrice weekly for 2 to 6 months. The majority of Dr. Macaluso's patients, without regard to the length of their treatments, saw him only twice during the entire course of their treatments, usually on the first and last visits. Several patients, however, would see the physician only once and ultimately be treated and eventually discharged without further examination. Others would be treated for months at a time before seeing Dr. Macaluso for the first time.

13

The patients were discharged from Dr. Macaluso's care in an arbitrary manner, frequently by the physician's non-professional employee or, if by Dr. Macaluso, with or without a cursory examination. Some patients were discharged

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from therapy despite continuing complaints. Some were discharged long after any pain or other symptoms had subsided.

14

Upon a patient's discharge, one of the physician's employees prepared a written summary of the patient's diagnosis and course of treatment. The diagnosis was copied from the physician's notes recorded during the initial examination. A separate written statement was prepared by the same employee enumerating the dates on which the patient had received treatments. Some of such statements included dates of and charges for treatment not actually rendered, for it was not uncommon for a patient to receive "credit" for treatment when it was not actually administered, either because of a malfunction of the ultrasound equipment or for some other reason. Neither the reports nor the statements were reviewed by Dr. Macaluso before transmittal to the patients' individual attorneys.

15

During the relevant period, among insurance company claims representatives, attorneys and state courts, there

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obtained a general rule of thumb for evaluating the settlement or potential judgment value of soft-tissue injuries. Given a soft-tissue injury, the principal factor considered in making such an evaluation was the period of time over which therapy had been administered. In determining the length of treatment for a given claimant, the representatives, adjusters, attorneys and judges necessarily looked to the physician's report and statement, relying on its implicit, if not explicit, representation that the indicated treatments had actually been rendered and that their frequency and duration were medically warranted. Dr. Macaluso was aware that his reports and statements would be a material factor in the adjudication of damages or in the determination of settlements.

16

Dr. Macaluso's reports and statements, uniformly represented that his patients had sustained soft-tissue injuries necessitating several months of ultrasound therapy. Because his examinations were perfunctory, because he failed to follow the condition of his patients, because the treatments administered were ineffectual or fictitious, Dr. Macaluso could have no basis in fact or

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in medicine for such representations.

17

By Federal Grand Jury indictment filed on December 13, 1979, Dr. Macaluso was charged with 51 counts of

unlawfully, willfully, and knowingly devis[ing] and intend[ing] to devise a scheme and artifice to defraud and for obtaining money and property from various insurance carriers in the New Orleans area, by means of false and fraudulent representations, pretenses and promises . . . well knowing the pretenses, representations, and promises would be and were false when made.

According to the indictment, the object of the scheme "was to cause insurance carriers to pay inflated settlements based on false medical reports and statements."

United States of America v. Sam C. Macaluso, No. 79-467
(U.S.D. Ct., F.D. La.).

18

The scheme was charged as a violation of Title 18 of the United States Code, Section 1341, providing:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, . . . for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter

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or thing whatever to be sent or delivered by the Postal Service . . . or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than \$1,000 or imprisoned not more than 5 years, or both.

Each of the 51 counts of the indictment related to a separate mailing said to be in furtherance of the scheme. Such mailings generally involved the transmittal of Dr. Macaluso's medical reports and bills by an attorney, representing a patient, to an adjuster or attorney representing an insurance company against whom a claim had been made. In each such case where a settlement was made with the claimant-patient, the mailing of the insurance company's settlement check to the attorney constituted a separate count against the physician.

19

Following trial, on March 5, 1980, the jury returned a verdict of guilty as to 50 of the 51 counts charged. On April 23, 1980, Dr. Macaluso was sentenced by the Hon. Jack M. Gordon, District Judge, to a concurrent term of 2 years imprisonment on each of counts 1, 3 to 38, and 40 to 51. As to count 2, the imposition of sentence was sus-

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pended and the physician was placed on supervised probation for a period of three years.

20

Dr. Macaluso's conviction was affirmed by the United States Court of Appeals for the Fifth Circuit on April 1, 1981. United States of America v. Sam C. Macaluso, M.D., No. 80-3347 (U.S. Ct. App., 5th Cir.).

21

On May 20, 1981, pursuant to Dr. Macaluso's motion for a reduction of sentence, the Federal District Court, set aside its original sentence, suspending the sentence of imprisonment on count 1 of the indictment and placing the defendant on active probation for a period of 3 years. As a special condition of probation, the court ordered that the physician

obey all local, state and federal laws and all rules imposed by the probation officer and provide public service work, meaningful public service work, hopefully in connection with his medical profession, for a period of 8 hours a week for three years, as designated by the probation officer.

The same probationary conditions were attached to the

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sentence respecting counts 3 through 38 and 40 through 51.

Conclusions of Law

Based on the foregoing findings of fact, the Board concludes, as a matter of law, that:

1

The practices described in the foregoing findings of fact compel the conclusion that Dr. Macaluso has engaged in "[m]aking or submitting false or deceptive claims to [a] patient, insurance company or indemnity association, company, individual or governmental authority for the purpose of obtaining monetary compensation for services rendered," and, therefore, just cause exists for action against his license as provided for by LSA-R.S. 37:1285(11).

2

Dr. Macaluso has been convicted of a crime arising directly out of his practice of medicine in the State of Louisiana and, therefore, just cause exists for action

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against his license as provided for by LSA-R.S. 37:1285(1).

Decision

Considering the foregoing,

IT IS ORDERED that the license of Sam C. Macaluso, M.D. to practice medicine in the State of Louisiana as evidenced by Certificate No. 7616, be, and the same is hereby, suspended, for a period of five (5) years from the date hereof.

IT IS FURTHER ORDERED that, during the period of suspension ordered herein, upon application by Dr. Macaluso, the Board will consider issuance of an Institutional Temporary Permit, permitting Dr. Macaluso to practice medicine exclusively at an institution approved by the Board and under the general supervision of another physician licensed by the Board, who shall be authorized to provide the Board with regular reports respecting Dr. Macaluso's professional practice.

IT IS FURTHER ORDERED that, upon Dr. Macaluso's application therefor, the Board will consider an enlargement of the authority granted by such Institutional Permit, to permit Dr. Macaluso to render the public service work re-

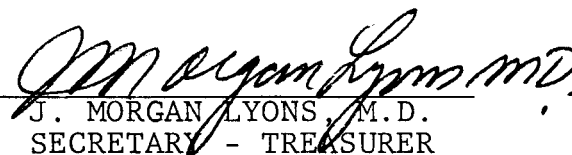
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quired, as a condition of his criminal probation, by the United States District Court for the Eastern District of Louisiana.

New Orleans, Louisiana, this 27 day of July, 1981.

LOUISIANA STATE BOARD
OF MEDICAL EXAMINERS

BY


J. MORGAN LYONS, M.D.
SECRETARY - TREASURER