



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/

August 13, 2003

David Miles Baroff, M.D.
1859 Twin Oak Drive
Girard, OH 44420

Dear Doctor Baroff:

Please find enclosed a certified copy of the Findings, Order and Journal Entry approved and confirmed by the State Medical Board meeting in regular session on August 13, 2003.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal must be taken to the Franklin County Court of Common Pleas.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

Very truly yours,

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5151 1800
RETURN RECEIPT REQUESTED

Cc: Paul J. Coval, Esq.
CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5151 1794
RETURN RECEIPT REQUESTED

Mailed 8-14-03

CERTIFICATION

I hereby certify that the attached copy of the Findings, Order and Journal Entry approved by the State Medical Board, meeting in regular session on August 13, 2003, constitutes a true and complete copy of the Findings, Order and Journal Entry in the Matter of David Miles Baroff, M.D., as it appears in the Journal of the State Medical Board of Ohio.

This Certification is made by the authority of the State Medical Board of Ohio in its behalf.



Lance A. Talmage, M.D.
Secretary

(SEAL)

August 13, 2003
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :

DAVID MILES BAROFF, M.D. :

FINDINGS, ORDER AND JOURNAL ENTRY

This matter came on for consideration before the State Medical Board of Ohio on August 13, 2003, pursuant to a Notice of Opportunity for Hearing issued to David Miles Baroff, M.D., on February 12, 2003. No request for hearing having been received within the statutorily mandated time period, Attorney Hearing Examiner Sharon W. Murphy, on behalf of the Board, reviewed and summarized evidence supporting the Notice, and prepared Proposed Findings and a Proposed Order.

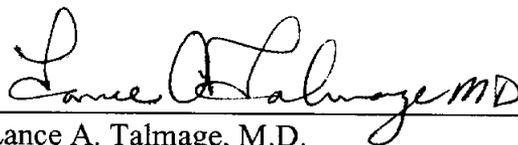
WHEREFORE, having reviewed Ms. Murphy's Proposed Findings and Proposed Order, which is attached hereto and incorporated herein, the Board hereby finds that there is reliable, probative and substantial evidence to support the allegations as set forth in the February 12, 2003, Notice of Opportunity for Hearing.

Accordingly, it is hereby ORDERED that:

The certificate of David Miles Baroff, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

This Order shall become effective immediately upon the mailing of notification of approval by the Board.

This Order is hereby entered upon the Journal of the State Medical Board of Ohio for the 13th day of August 2003, and the original thereof shall be kept with said Journal.



Lance A. Talmage, M.D.
Secretary

(SEAL)

August 13, 2003
Date

2003 AUG -4 P 3: 20

**PROPOSED FINDINGS AND PROPOSED ORDER
IN THE MATTER OF DAVID MILES BAROFF, M.D.**

The Matter of David Miles Baroff, M.D., was reviewed by Sharon W. Murphy, Attorney Hearing Examiner for the State Medical Board of Ohio.

INTRODUCTION

I. Basis for the Review

- A. By letter dated February 12, 2003, the State Medical Board of Ohio [Board] notified David Miles Baroff, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board's action was based on allegations that Dr. Baroff had engaged in sexual conduct with Patients 1 through 4.

The Board alleged that Dr. Baroff's conduct constitutes "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code." The Board further alleged that Dr. Baroff's conduct constitutes "[v]iolation of any provision of a code of ethics of the American medical association," as that clause is used in Section 4731.22(B)(18), Ohio Revised Code, to wit: Principles I, II, and IV of the American Medical Association's Principles of Medical Ethics."

In addition, the Board advised Dr. Baroff that he was entitled to a hearing if such hearing was requested within thirty days of the mailing of the notice of opportunity for hearing. (Exhibit 2).

- B. In accordance with Section 119.07, Ohio Revised Code, the notice of opportunity for hearing was sent via certified mail, return receipt requested, to the address of record for Dr. Baroff at 1859 Twin Oak Drive, Girard, Ohio 44420. The notice of opportunity for hearing was mailed on February 13, 2003, and proper service was documented. (Exhibits 2 and 3).
- C. More than thirty days have elapsed since the mailing of the notice of opportunity for hearing and Dr. Baroff has not submitted a hearing request. (Exhibit 1).

EVIDENCE EXAMINED

1. Exhibit 1: July 28, 2003, Memorandum from Barbara A. Jacobs, Public Services Administrator, to Gregory Porter, Chief Hearing Officer.
2. Exhibit 2: Copy of the Notice of Opportunity for Hearing mailed on February 13, 2003, with copies of certified mail receipts.
3. Exhibit 3: Affidavit of Debra L. Jones, Chief, Continuing Medical Educations, Records and Renewal for the Board.
4. Exhibit 4: Affidavit of David P. Katko, Enforcement Coordinator for the Board, with attached Exhibits 4A through 4D.
 - a. Exhibit 4A: Expert report of Timothy L. Stephens, Jr., M.D.
 - b. Exhibit 4B: Transcript of the December 18, 2002, deposition of Dr. Baroff. (See Procedural Matters, paragraph 2, below.)
 - c. Exhibit 4B-1: Deposition Exhibit 2, a Confidential Patient Key. (Note: Exhibit sealed to protect patients' confidentiality.)
 - d. Exhibit 4C-1 through 4C-3: Copies of patient records for Patients 2 through 4, respectively. (Note: Exhibits sealed to protect patients' confidentiality.)
 - e. Exhibit 4D: Confidential patient key. (Note: Exhibit sealed to protect patients' confidentiality.)

PROCEDURAL MATTERS

1. Patients 2, 3, and 4, as identified in the Confidential Patient Key submitted as an exhibit in this matter [Exhibit 4D], were identified as Patients 1, 3, and 6 in the Confidential Patient Key attached to the December 18, 2002, deposition of Dr. Baroff [Exhibit 4B-1].
2. Portions of Dr. Baroff's deposition transcript were redacted by Board staff prior to submitting the deposition transcript as an exhibit in this matter. The redactions were made due to the presence of confidential investigatory information which did not form the basis for the allegations in the February 12, 2003, notice of opportunity for hearing. See Exhibit 4.

SUMMARY OF THE EVIDENCE

All exhibits, even if not specifically mentioned, were thoroughly reviewed and considered by the Attorney Hearing Examiner prior to preparing this Proposed Findings and Proposed Order.

1. On December 18, 2002, David Miles Baroff, M.D., provided deposition testimony to the Board during the course of a confidential investigation by the Board. (Exhibit 4B). During the deposition, Dr. Baroff testified that he practices orthopedic surgery in Warren, Ohio. Dr. Baroff further testified that he holds a certificate to practice medicine and surgery in Ohio. He does not hold current licensure in any other state. (Exhibit 4B at 27-28).
2. In or about 1987, during the second or third year of Dr. Baroff's residency training, Dr. Baroff treated Patient 1. During the course of the physician-patient relationship, Dr. Baroff engaged in sexual conduct with Patient 1 by allowing Patient 1 to perform oral sex on him. The sexual encounter took place in Patient 1's hospital room. (Exhibit 4B at 86-90).
3. Dr. Baroff began treating Patient 2 in October 1992 and continued treating her through September 1995. He saw her again in January 2003. Dr. Baroff treated Patient 2 for a variety of complaints, including ankle pain, knee pain, and back pain. (Exhibit 4C-1).

Dr. Baroff engaged in sexual conduct, more specifically, fellatio and cunnilingus, with Patient 2 on three to five occasions. These sexual encounters took place in the examination rooms of Dr. Baroff's office and in the cast room of a hospital. Moreover, the sexual conduct occurred at the conclusion of regularly scheduled patient visits. (Exhibit 4B at 53-57).

4. Dr. Baroff began treating Patient 3 in September 1993 and continued treating her through March 1995. Dr. Baroff treated Patient 3 for a variety of complaints, including hand pain related to a metacarpal fracture, and back pain. (Exhibit 4C-2).

In approximately 1993 and 1994, Dr. Baroff engaged in sexual conduct, more specifically, fellatio and cunnilingus, with Patient 3 on three to five occasions. These sexual encounters took place in the examination rooms of Dr. Baroff's office and in the cast room of a hospital. (Exhibit 4B at 61-68).

5. Dr. Baroff began treating Patient 4 in early October 2001 during Patient 4's hospital stay. Patient 4 was referred to Dr. Baroff for consultation for back pain. Dr. Baroff saw Patient 4 in his office on October 15, 2001. Moreover, he wrote a prescription for physical therapy on October 29, 2001. (Exhibit 4B at 71-73; Exhibit 4C-3).

Dr. Baroff engaged in sexual intercourse with Patient 4 on October 15, 2001, subsequent to Dr. Baroff seeing Patient 4 as a patient in his office. At Dr. Baroff's invitation, Patient 4 returned to Dr. Baroff's office after the office had closed for the day. Dr. Baroff and Patient 4 engaged in sexual intercourse on the floor of his office. Dr. Baroff testified that the encounter

had been consensual. Nevertheless, Patient 4 later told Dr. Baroff that she felt that she had been raped. (Exhibit 4B at 71-84).

6. Timothy L. Stephens, Jr. M.D., is an orthopedic surgeon licensed to practice medicine and surgery in Ohio. Dr. Stephens served as an expert witness in this matter, and provided an expert report to the Board. In his expert report, Dr. Stephens advised that:

Having sex with patients violates American Medical Association's policy E-8.14, Misconduct in the Practice of Medicine. This policy states,

Sexual contact that occurs concurrent with the physician-patient relationship constitutes sexual misconduct. Sexual or romantic interactions between physicians and patients detract from the goals of the physician relationship, may exploit the vulnerability of the patient, may obscure the physician's objective judgment concerning the patient's health care, and ultimately may be detrimental to the patient's well being.

Also having sex with a patient in the course of the practice of medicine violates the principals of medical ethics set forth in the American Medical Association's Preamble: I, II, [and] IV:

- I. A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights.
- II. A physician shall uphold the standard of professionalism, be honest in all professional interactions, and strive to report physicians deficient in character or competence, or ingaging [sic] in fraud or deception, to the appropriate entities.

Dr. Baroff's sexual misconduct in the practice of medicine namely having sex with patients fails to uphold minimal standards of care of similar practitioners under similar circumstances * * *.

(Exhibit 4A).

PROPOSED FINDINGS

1. In the routine course of his practice, David Miles Baroff, M.D., undertook the treatment of Patients 1-4.
2. In or about 1987 Dr. Baroff treated Patient 1 during the second or third year of Dr. Baroff's residency program. While Patient 1 was a patient of Dr. Baroff, Dr. Baroff engaged in sexual conduct with Patient 1 in her hospital room.

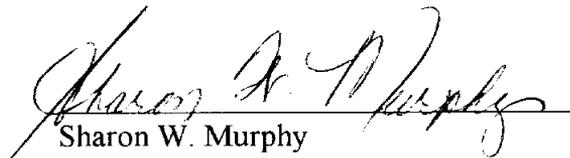
3. Dr. Baroff began treating Patient 2 in October 1992 and continued treating her through September 1995. Dr. Baroff engaged in sexual conduct, more specifically, fellatio and cunnilingus, with Patient 2 on three to five occasions. These sexual encounters took place in the examination rooms of Dr. Baroff's office and in the cast room of a hospital. Moreover, the sexual conduct occurred at the conclusion of regularly scheduled patient visits.
4. Dr. Baroff began treating Patient 3 in September 1993 and continued treating her through March 1995. In approximately 1993 and 1994, Dr. Baroff engaged in sexual conduct, more specifically, fellatio and cunnilingus, with Patient 3 on three to five occasions. These sexual encounters took place in the examination rooms of Dr. Baroff's office and in the cast room of a hospital
5. In early October 2001, Dr. Baroff began treating Patient 4 and continued treating her through October 29, 2001. Dr. Baroff engaged in sexual intercourse with Patient 4 on October 15, 2001, subsequent to Dr. Baroff seeing Patient 4 as a patient in his office.
6. Dr. Baroff's conduct, as set forth in paragraphs 2 through 5, above, constitutes "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.
7. Dr. Baroff's conduct, as set forth in paragraphs 2 through 5, above, constitutes "[v]iolation of any provision of a code of ethics of the American medical association," as that clause is used in Section 4731.22(B)(18), Ohio Revised Code, to wit: Principles I, II, and IV of the American Medical Association's Principles of Medical Ethics.

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of David Miles Baroff, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

This Order shall become effective immediately upon the mailing of notification of approval by the Board.


Sharon W. Murphy
Attorney Hearing Examiner



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/

February 12, 2003

David Miles Baroff, M.D.
1859 Twin Oak Dr.
Girard, OH 44420

Dear Doctor Baroff:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) In the routine course of your practice, you undertook the treatment of Patients 1-4 (as identified on the attached Patient Key- Key confidential to be withheld from public disclosure).
- (2) In or about 1987 you treated Patient 1 during your residency program at a hospital in Cleveland, Ohio. You engaged in sexual conduct with Patient 1 in her hospital room while she was a patient of yours.
- (3) In or about 1992 you began treating Patient 2 and continued treating her into 1994. You engaged in sexual conduct, to include fellatio, with Patient 2 on at least three to five occasions in your office examination rooms and/or the casting room at a hospital in Warren, Ohio, during the approximate period 1993 to 1994.
- (4) In or about 1993 you began treating Patient 3 and continued treating her into 1995. You engaged in sexual conduct, to include fellatio, with Patient 3 on at least three to five occasions in your office examination rooms and/or the casting room at a hospital in Warren, Ohio, during the approximate period 1993 to 1994.
- (5) In or about early October 2001, you began treating Patient 4 and continued treating her through October 29, 2001. You engaged in sexual intercourse with Patient 4 in your office on or about October 15, 2001.

Your acts, conduct, and/or omissions as alleged in paragraphs (2) through (5) above, individually and/or collectively, constitute "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (2) through (5) above, individually and/or collectively, constitute "[v]iolation of any provision of a code of ethics of the American medical association," as that clause is used in Section 4731.22(B)(18), Ohio Revised

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David Miles Baroff, M.D.

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Code, to wit: Principles I, II, and IV of the American Medical Association's Principles of Medical Ethics.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice.

You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Anand G. Garg, M.D.
Secretary

AGG/blt
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5148 0410
RETURN RECEIPT REQUESTED

cc: Paul J. Coval, Esq.
52 East Gay Street
Columbus, OH 43216-1008

CERTIFIED MAIL # 7000 0600 0024 5148 0427
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