

FILED

APRIL 28, 1992

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

ROBERT J. DEL TUFO
ATTORNEY GENERAL OF NEW JERSEY

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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS
DOCKET NO.

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF THE LICENSE OF :
ROBERT FOGARI, M.D. :
TO PRACTICE MEDICINE & SURGERY :
IN THE STATE OF NEW JERSEY :
_____ :

Administrative Action
ORDER DENYING
REINSTATEMENT AND
GRANTING PERMIT

This matter was opened to the New Jersey State Board of Medical Examiners on the petition of Robert Fogari, M.D. for reinstatement of his license to practice medicine and surgery in the State of New Jersey which had been revoked effective March 17, 1989. The Board's prior order had been based on Dr. Fogari's guilty plea to 21 counts of a criminal indictment involving fabrication of drug research studies. The Board had found that Dr. Fogari engaged in massive fraud, dishonesty and deceit and engaged in an utter mockery of established drug testing procedures.

Dr. Fogari requested reinstatement via a petition which included information regarding his claim of rehabilitation. He

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testified before a Board Committee on March 4, 1992 indicating that he has served 18 months in prison (with outstanding work reports and an early release), paid restitution of \$2 million dollars (plus interest of \$275,000), engaged in 2,500 hours of community service (1,500 hours beyond that mandated by the Criminal Court), completed a course in Health Care Law and Ethics, engaged in a psychological evaluation and presented testimony that he is remorseful and contrite regarding his behavior. In short, Dr. Fogari contends that he has engaged in extensive rehabilitation efforts and therefore his license should be reinstated at this time.

The Board considered that Dr. Fogari's actions which led to the revocation of his license were egregious. The conduct underlying his guilty plea involved the testing of unknown steroid drugs without performing appropriate studies, actions which could have an adverse impact not only on the patient population that was treated by Dr. Fogari, but on thousands of unknown patients who could potentially receive drugs approved based upon his fraudulent studies.

In contrast to the sentencing judge's words of regret pointed out in Dr. Fogari's reinstatement application, it is particularly noteworthy that the trial judge also stated at the time of sentencing:

It is a case of massive proportions, wholly aside from the perjury and the obstruction of justice, we have more than six years of lies, of fraud, deceit. Indeed, I felt it was one of the worst cases I have seen including drug conspiracies and murder cases....

There seemed to be a total contempt for the law, and abuse of public trust, education and position, by a man ... who committed crimes that tear at the fabric of our society, the public health, respect for both the law and the medical profession. I found his conduct to be an insult to the many health professionals working daily for the public good.

Despite those harsh pronouncements, Dr. Fogari has applied for reinstatement of his license, only three years following its revocation, and only approximately 12 months following his release from prison. While the Board has considered his claimed rehabilitation, it must also consider his continuing failure to recognize the patient harm he caused and the egregiousness of the potential for harm stemming from his actions. When Dr. Fogari initially testified before the Board he claimed that there was an absence of patient harm in this case. Despite the Board's prior findings that significant patient harm had occurred via failure to monitor side effects of experimental drugs, completely unnecessary x-rays (and therefore unnecessary radiation) and by the potential approval of unsafe medications based upon fraudulent studies, at his recent appearance, Dr. Fogari while observing that he has had a lot of time to think about the question of patient harm from his actions, only acknowledged that his activity could have caused patients harm as "there is a potential for harm in anything."

The Board recognizes that Dr. Fogari was granted a public trust via his license to practice medicine and that he clearly and egregiously violated that trust and his further contractual obligations via his research fraud. We are now

being asked only three years after revocation, to permit him to participate in a public trust again. Although he has demonstrated some rehabilitation during the time that his license has been revoked, he has not demonstrated sufficient rehabilitation, remorse and contrition to allow this Board to entrust in him the ability to engage in private practice under supervision as he has proposed.

The Board is cognizant that it previously voted to revoke Dr. Fogari's license, not to suspend him, and there is no obligation to allow him to ever again return to the practice of medicine. However, given the quality of the proofs submitted by Dr. Fogari, the Board believes it appropriate to permit a limited return to practice at this time. We believe that the facts underlying the conviction which led to his license revocation require stringent supervision and retraining prior to consideration of a return to private practice. We are therefore willing at this time to allow him to reenter the practice of medicine in training under supervision, which if properly completed, may allow Dr. Fogari to fully participate in medical practice at some future time. We note that Dr. Fogari has expressed willingness to accept whatever conditions the Board determines are appropriate.

Dr. Fogari may apply for a residency permit, if he obtains a three year accredited residency program approved by the Board in advance. The Board notes that it would be inappropriate for Dr. Fogari to perform a residency at Jersey City Medical

Center, given the history of his connection with that institution.

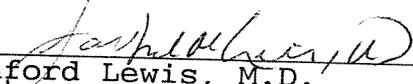
IT IS on this 27 day of April, 1992,

ORDERED:

1. Dr. Fogari's petition for reinstatement of his license is hereby denied.
2. If Dr. Fogari wishes to engage in the practice of medicine in the State of New Jersey, he shall apply for and obtain a three year accredited residency approved in advance by the Board, at which time the Board shall grant a residency permit for the sole purpose of performing within that program. Such permit shall be conditioned upon Dr. Fogari's continued adequate performance. Dr. Fogari shall cause the Board to receive reports via its credentials committee from the residency program regarding his participation and progress by the Director of such program every month during its course.
3. Following the successful conclusion of three years of residency training Dr. Fogari may appear before a committee of the Board of Medical Examiners which will review his progress and consider reinstatement of his license. At that time the Board may prescribe additional requirements or restrictions on his practice which shall include

but not be limited to a requirement that he shall never again engage in any drug study or research in the State of New Jersey.

NEW JERSEY STATE BOARD OF MEDICAL
EXAMINERS

By: 
Sanford Lewis, M.D.
President