

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

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In The Matter Of
:
HOWARD L. LIPPTON, M.D.
(Certificate No. 107954) :

No. 02-I-025

**CONSENT
ORDER**

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On May 17, 2001 Howard L. Lippton, M.D. ("Dr. Lippton"), a physician licensed to practice medicine in the state of Louisiana, and at all times pertinent engaged in the practice of medicine in and around Ruston, Louisiana, was indicted by a federal Grand Jury sitting in United States District Court for the Eastern District of Louisiana on one (1) count of health care fraud involving the submission of Medicare claims (hereinafter referred to as the "charge"),¹ in violation of 18 U.S.C. §1347.² The charge was predicated upon the allegations that during the years 1995-1996 Dr. Lippton billed Medicare for respiratory therapy services administered to residents of several nursing homes by his employees-respiratory therapists and respiratory therapy technicians-in his absence or that of another supervising physician, when he was fully aware that such services were reimbursable only when the supervising physician was physically present with the patient when the services were administered. Based on this disqualification Dr. Lippton's claims were denied by Medicare. In late 1997 Dr. Lippton resubmitted these and other claims not previously billed to Medicare. For the same reason, *i.e.*, delivery of respiratory therapy services in the absence of the supervising physician, his claims were again denied. In a continuing effort to obtain reimbursement for these services Dr. Lippton then filed an administrative appeal of the denial of his claims. And in the course of that appeal he testified before an administrative law judge that either he or another supervising physician were either present or in the immediate vicinity (70 feet) of the patients at the time that all of the respiratory therapy services in question were provided, when in truth and in fact Dr. Lippton knew that neither he nor any other supervising physician was in the nursing facilities at such times.³ Finally, the allegations also assert that Dr. Lippton knowingly

¹Indictment for Health Care Fraud, 18 U.S.C., 1347, *U. S. vs. Howard Lippton, M.D.*, Cr. No. 01-136, Sect. N, Mag. 2 (U.S.D.C., Ed. La., May 17, 2001).

²In exchange for his cooperation in its investigation, the Government agreed to submit a one count indictment of Dr. Lippton to the Grand Jury and, if an indictment were returned, agreed that it would allow him to plead guilty to the count. See: Plea Agreement, *U. S. vs. Howard Lippton* (Jan. 30, 2001).

³See: Indictment, Section B, pp. 3-6. The information gathered in the Board's investigation indicates that Dr. Lippton's administrative appeal of the denial of his Medicare claims was denied.

submitted billings to Louisiana Medicaid for consultation visits that exceeded the number allowed under governing Medicaid rules and regulations.

On February 6, 2002 Dr. Lippton entered a plea of guilty to the single count indictment (his "plea"). Thereafter, he was released by the court, a pre-sentence investigation was ordered and sentencing was deferred to a future date.⁴ As a condition to his release the physician was required to undergo drug testing and counseling. All reports received and reviewed from the clinician responsible for evaluating and monitoring Dr. Lippton indicate that he has a low probability of having a substance abuse disorder, that he fully complied with all recommendations and assignments, that all drug screens were negative and he was functioning well. At the request of the investigating officer of the Board with respect to this matter Dr. Lippton also voluntarily underwent in-patient chemical dependency evaluation at COPAC, Brandon, MS, in June 2002. Following evaluation by a multi-specialty team he was diagnosed with a history of cocaine abuse for which it was recommended that he continue in a monitoring program with random, observed drug screens, individual therapy initially one time per week, thereafter as determined appropriate by the therapist, and that he abstain from alcohol and chemical substances except as may be prescribed by another physician.

On June 19, 2002 Dr. Lippton was sentenced by the court to incarceration in a federal facility for eighteen (18) months, commencing July 15, 2002, followed by supervised probation for two (2) years on specified terms and conditions, and a \$10,000 fine.

Dr. Lippton acknowledges the substantial accuracy of the foregoing information as recited herein above and, further, that proof of such information upon an administrative evidentiary hearing would establish grounds under the Louisiana Medical Practice Act for the suspension, revocation or imposition of such other terms, conditions or restrictions as the Board may deem appropriate on his license to practice medicine in the state of Louisiana.⁵

Recognizing his right to have notice of such allegations and charges asserted against him and to administrative adjudication, at which time he would be entitled to be represented by legal counsel, to call witnesses and to present evidence on his own behalf in defense or in mitigation of the charges made, and to a decision thereon by the Board based upon written findings of fact and conclusions of law, pursuant to La. Rev. Stat. §49:955-965, Dr. Lippton, nonetheless, hereby waives his right to notice of charges and formal adjudication and, pursuant to La. Rev. Stat. §49:955(D), consents to entry of the Order set forth hereinafter. Dr. Lippton further acknowledges that he hereby waives any right to

⁴Minute Entry, *U. S. vs. Howard Lippton*, Cr. No. 01-136, Sect. N, Mag. 2 (U.S. D. C., Ed. La., Feb. 7, 2002).

⁵La. Rev. Stat. §37:1285A(1), (2), (5) and (11).

which he may be entitled pursuant to the Louisiana Administrative Procedure Act⁶ or which otherwise may be afforded to him by law to contest his agreement to or the force and effect of this document in any court relating to the matters referred to herein. By his subscription hereto Dr. Lipton also hereby authorizes the Investigating Officer designated by the Board with respect hereto, as well as his legal counsel assisting him in connection herewith, 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 and he waives any objection to such disclosures under La. Rev. Stat. §49:960. Dr. Lipton expressly acknowledges that the disclosure of information to the Board by the Investigating Officer or his legal counsel shall be without prejudice to the Investigating Officer's authority to file a formal administrative complaint against him or to the Board's capacity to adjudicate such Complaint, should the Board decline to approve this Consent Order.

Based upon the information provided, accordingly, and upon the recommendation of the Investigating Officer assigned to this matter, the Board has concluded that its responsibility to insure the health, safety and welfare of the citizens of this state, pursuant to La. Rev. Stat. §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 La. Rev. Stat. §37:1285 and La. Rev. Stat. §49:955(D);

IT IS ORDERED that the license of Howard L. Lipton, M.D., to engage in the practice of medicine in the state of Louisiana, as evidenced by Certificate No. 017954, be, and the same is hereby **REVOKED**;

IT IS FURTHER ORDERED that the foregoing Order of Revocation be, and the same is hereby, **STAYED** and Dr. Lipton's license to practice medicine in the state of Louisiana is hereby **SUSPENDED** for a period of two (2) years, commencing from the date of his incarceration, on July 15, 2002; and

IT IS FURTHER ORDERED that Dr. Lipton shall not practice medicine in any form in the state of Louisiana until and unless the Board issues and serves on him a written order reinstating his license. As prerequisites to the Board's consideration of a request for reinstatement, Dr. Lipton shall demonstrate that he has successfully complied with each of the following terms and conditions:

(A) Completion of Term of Suspension. Dr. Lipton shall not be eligible for reinstatement of his Louisiana medical license until he has been discharged from incarceration and has served and completed the two (2) year suspension imposed by this Order.

⁶La. Rev. Stat. §49:951, *et seq.*

(B) Medical Ethics. Dr. Lipton shall provide written confirmation that he has taken and successfully completed a course on medical ethics that is acceptable to and pre-approved by the Board.

(C) Compliance with Terms and Conditions of Criminal Judgment and Probation/Commitment Order, Medical and Probation Records. Dr. Lipton shall comply with each of the probationary terms and conditions imposed by the court in connection with his plea. Dr. Lipton shall and does by his subscription hereto authorize his federal probation officer to provide the Board with written and verbal reports relative to his compliance with the terms and conditions of his criminal probation and photocopies of any and all reports received from physicians or other health care providers evaluating or treating him during the term of probation. In addition, in connection with any request for reinstatement Dr. Lipton shall cause his Probation Officer to direct a written report to the Board advising of his compliance with or deviation from the terms, conditions and restrictions of probation. He shall also authorize and cause any physician or other health care provider evaluating and/or providing chemical dependency treatment or therapy to him while he is incarcerated to provide the Board with a written report and verbal reports should the Board so desire, as to his diagnosis, prognosis and recommendations for continuing treatment, therapy and monitoring.

(D) Physicians Health Program. Dr. Lipton shall contact the Physicians' Health Foundation of Louisiana Inc.'s Physician Health Program (the "PHP"), inform its representatives of his plea and identify any and all evaluations, treatment or therapy received by him prior to and during his incarceration. Dr. Lipton shall enter into any treatment contract(s) which may be recommended by the PHP and fully comply with all of its terms and conditions and furnish a copy to the Board within five (5) days of its execution. Dr. Lipton shall, moreover, authorize and cause his treating and monitoring physicians to submit to the Board at such times as it may request, written or verbal reports as to his then-current treatment program, diagnosis, prognosis, and his compliance with the terms, conditions and restrictions of this Order.

(E) Favorable Medical Opinions. The Board shall have received the written opinion of two physicians who are pre-approved by the Board in writing that Dr. Lipton's prognosis for continued abstinence from the use of mood-altering substances is good and that he is then capable of practicing medicine with reasonable skill and safety to patients, based upon their contemporaneous personal examination, evaluation and diagnosis.

(F) Appearance Before the Board. Dr. Lipton shall arrange for a personal appearance before the Board or its designee at its meeting next following his request for reinstatement of medical licensure to permit the Board to consider his compliance with the terms, conditions and restrictions of this Order and to advise the Board of his intentions with respect to future practice.

IT IS FURTHER ORDERED that upon Dr. Lipton's compliance with and complete and continuing satisfaction of the terms and conditions hereinabove set forth, his license to practice medicine in the state of Louisiana shall be reinstated **ON PROBATION** for a period of three (3) years; *provided*, however, that such reinstatement of licensure and Dr. Lipton's continuing exercise of the rights and privileges thereunder shall be conditioned upon his acceptance of and strict compliance with the following probationary terms, conditions and restrictions:

(1) Continuing Treatment; Reports to the Board. Should the PHP so recommend, Dr. Lipton shall enter into a treatment contract and continue under treatment, consistent with its prescriptions and recommendations, until he has fully satisfied and completed all of its terms and commitments. In such an event, Dr. Lipton shall authorize and cause his treating and monitoring physicians to submit to the Board, not less frequently than quarterly throughout his probationary period, written reports on Dr. Lipton's then-current treatment program diagnosis, prognosis, and his compliance with the terms, conditions and restrictions of this Order and his PHP contract.

(2) Supervision and Monitoring of Practice/Billing. Dr. Lipton's practice shall be monitored by another physician acceptable to the Board in writing who shall periodically review such of Dr. Lipton's patient charts and medical and billing records as he or she may deem necessary to determine whether he is practicing consistently with accepted standards of medical practice. Dr. Lipton shall authorize and cause such physician, not less frequently than semi-annually during the term of probation, to submit to the Board written reports as to his or her evaluation and comments concerning Dr. Lipton's clinical and professional competence and the propriety of his billing practices as derived from such monitoring. Any expenses incurred by the monitoring physician in connection with his or her responsibilities under this Order shall be paid by Dr. Lipton.

(3) Continuing Medical Education. Dr. Lipton shall obtain not less than fifty (50) credit hours per year for each of the three years of the probationary period through attendance at and participation in continuing medical education ("CME") accredited by and qualifying for the Physician's

Recognition Award of the American Medical Association and he shall obtain such an award within three (3) years from the date of the reinstatement of his license to practice medicine. On or before the anniversary date of the reinstatement of his license for each year of the term of probation, Dr. Lippton shall cause to be submitted to the Board written certification of the CME programs and credits completed by him during the preceding twelve months.

(4) Sanction. By his subscription hereto Dr. Lippton acknowledges that his receipt of written notification from the Board that it has received an apparently reliable written report which indicates his failure to comply with any of the requirements set forth by this Order shall, without the need for formal hearing or for providing him with any right to which he may otherwise be entitled pursuant to the Louisiana Administrative Procedure Act, La. Rev. Stat. §49:951, *et seq.*, or which otherwise may be afforded to him by law, constitute his consent to the immediate suspension of his license to practice medicine in this state by the Board pending the final resolution of an administrative hearing and decision by the Board with respect to the information made the basis of such report.

(5) Additional Probationary Terms. In addition to the terms and conditions that shall be placed upon any reinstated Louisiana license issued to Dr. Lippton pursuant to this Order, Dr. Lippton hereby consents to, agrees with and acquiesces in the imposition of any additional probationary terms, conditions or restrictions, as well as the length or nature thereof, which in the sole discretion of the Board it may deem necessary or appropriate to impose upon any reinstated license to practice of medicine in the state of Louisiana.

(6) Payment of Fine. Within ninety (90) days of the effective date of this Order Dr. Lippton shall pay to the Board a fine in the amount of Five Thousand and no/100 (\$5,000.00) Dollars.

(7) Payment of Attorneys' Fees. Within one hundred and eighty (180) days of the effective date of this Order, Dr. Lippton shall reimburse the Board for attorneys' fees expended in this matter in the amount of Two Thousand Five Hundred (\$2,500.00) Dollars.

(8) Probation Monitoring Fee. For each year of the probationary term Dr. Lippton shall pay the Board a probation-monitoring fee of Three Hundred (\$300.00) Dollars. Payment of the initial fee shall be due not later than sixty (60) days from the reinstatement of his license on probation. All

subsequent annual payments shall be due on or before the anniversary date of the initial fee payment.

(9) Community Service. For each year that this Consent Order is in effect Dr. Lippton shall perform, without compensation, 100 hours of community service in a medical setting that is pre-approved by the Board. On or before each anniversary date of this Consent Order, Dr. Lippton shall cause to be forwarded to the Board's Probation Officer proof of the community service hours performed during the preceding year.

(10) Absence from State - Effect on Probation. Should Dr. Lippton at any time during the period of probation ordered herein be absent from the state of Louisiana, relocate to and/or take up residency in another state or country for a period of thirty (30) days or more, he will so advise the Board in writing. In such instance the probationary period ordered herein and all terms and conditions thereof shall be deemed interrupted and extended and shall not commence to run until Dr. Lippton notifies the Board in writing that he has returned to, relocated and/or taken up residency in the state of Louisiana. In such instance Dr. Lippton shall not receive credit toward the probationary period for the time during which he was absent from the state of Louisiana.

(11) Cooperation with Compliance/Probation Officer. Dr. Lippton shall immediately notify the Board's Compliance/Probation Officer of any change in his address and telephone number(s) and cooperate with him on any matter or inquiry relating to his compliance with the terms, conditions and restrictions of this Order. He shall direct all matters, requests or inquiries relating to this Order to the attention of the Compliance/Probation Officer.

(12) Certification of Compliance with Probationary Terms/Personal Appearance before the Board. At least sixty (60) days prior to the conclusion of the probationary term Dr. Lippton shall provide the Board with a notarized affidavit certifying that he has complied with each of the terms and conditions of probation imposed by this Order and he shall arrange for a personal appearance before the Board or its designee to demonstrate his compliance. The probationary period imposed by this Order and all of its terms will be extended and continued in full force and effect until such time as Dr. Lippton has fully complied with the requirements of this provision.

IT IS FURTHER ORDERED that any violation or failure of strict compliance with any of the terms, conditions or restrictions set forth by this Order by Dr. Lippton shall be deemed adequate and sufficient cause, upon proof of such violation or failure, for the

revocation and cancellation of Dr. Lipton's license to practice medicine in the state of Louisiana or for such other disciplinary action as the Board deems appropriate, as if such violations were enumerated among the causes provided in La. Rev. Stat. §37:1285.

IT IS FURTHER ORDERED that this Consent Order shall be, and shall be deemed to be, a **PUBLIC RECORD**.

Signed at New Orleans, Louisiana, and effective on this 17th day of June, 2003.

**LOUISIANA STATE BOARD
OF MEDICAL EXAMINERS**


By:

Kim Edward LeBlanc MD
Kim Edward LeBlanc, M.D., Ph.D.
Vice-President

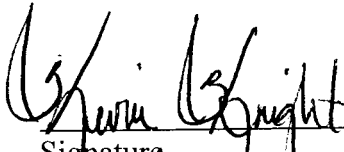
STATE OF Mississippi
COUNTY OF Hinds


**ACKNOWLEDGMENT
AND CONSENT**

I, HOWARD L. LIPPTON, M.D., hereby acknowledge, approve, accept and consent to entry of the above and foregoing Order, this 27th day of March, 2003.

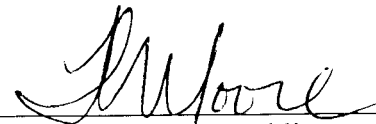

HOWARD L. LIPPTON, M.D.

WITNESSES:


Signature
Kevin Knight
Typed Name
P.O. Box 5000 Yazoo City, MS
Address


Signature
AL FELDER
Typed Name
P.O. BOX 5000 YAZOO CITY, MS
Address

Sworn to and subscribed before me at FCT Yazoo City, this
27th day of March, 2003, in the presence of the two stated witnesses.


Notary Public