IN THE MATTER OF

SEAN R. TUNIS, M.D.
License No. D37634
Respondent

BEFORE THE
MARYLAND BOARD
OF PHYSICIANS
Case Number: 2003-0302

CONSENT ORDER


The pertinent provisions of the Act under H.O. § 14-404(a) provide as follows:

Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on the affirmative vote of a majority of the quorum, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

(3) Is guilty of immoral or unprofessional conduct in the practice of medicine;

(11) Willfully makes or files a false report or record in the practice of medicine:

(36) Willfully makes a false representation when seeking or making application for licensure or any other application related to the practice of medicine.

On April 6, 2005, a conference with regard to this matter was held before the Case Resolution Conference (“CRC”). As a result of negotiations entered into after the CRC, the Respondent agreed to enter into this Consent Order, consisting of Procedural Background, Findings of Fact, Conclusions of Law and
Order.

FINDINGS OF FACT

I. Background

1. The Respondent was originally licensed to practice medicine in the State of Maryland on November 11, 1988. The Respondent is board-certified in internal medicine.

2. The Respondent holds privileges at Mercy Medical Center ("Mercy") where he is employed on a part-time basis in the Emergency Medicine Department. In addition, as of April 2003, the Respondent became the Director of Clinical Standards and Quality and Chief Medical Officer for the Centers of Medicare and Medicaid Services ("CMS").

3. On or about July 26, 2002, the Board received an anonymous written complaint\(^1\) regarding the validity of certain of the Respondent's Continuing Medical Education ("CME") credits.

4. Thereafter, the Board conducted an investigation of the complaint.

II. Mercy's Credentialing Requirements

5. Regarding Mercy's CME requirement for physicians employed at that facility, the Bylaws of the Medical Staff of Mercy Medical Center provide in pertinent part:

Section 3.4.5: All members of the Medical Staff shall comply with the continuing education requirements of the Board of Medical Examiners,\(^2\) or the Maryland State Board of Dental Examiners, and also the continuing education requirements as established by the Medical Executive Committee.

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\(^1\) The author of the complaint later identified himself and was interviewed by Board staff.

\(^2\) The "Board of Medical Examiners" is a former name of the Board.
6. Board regulations pertaining to CME credits, Code Md. Regs. tit. 10, § 32.01.09, provide in pertinent part:

B. Requirements

(1) A physician applying for renewal or reinstatement shall earn at least 50 credit hours of Category I CME during the 2-year period immediately preceding the licensee's submission of the renewal or reinstatement application.

(2) The Board shall recognize for Category I CME credit those activities which meet at least one of the following additional requirements for the activity:

(a) Be accredited as Category I by the ACCME [Accreditation Council for Continuing Medical Education];

(b) Be sponsored by an international, national or state medical society, and meet the standards adopted by the ACCME;...

C. On the application form for renewal or reinstatement, a physician shall attest to the fact that the physician has completed the continuing medical education requirement.

D. Documentation of CME credits

(1) The physician has the affirmative obligation to obtain the requisite documentation of CME attendance and retain this documentation for the succeeding 6 years for possible inspection by the Board.

7. The Respondent's Moroy credentialing file contains, inter alia, three (3) reappointment applications:

1) a Reappointment Application for the period February 1, 2002 through January 31, 2004 ("2002 Reappointment Application"), which the Respondent signed on September 15, 2001;

2) a Reappointment Application for the period from February 1, 2000 through January 31, 2002 ("2000 Reappointment Application"), which the Respondent signed on December 11, 1999; and

III. Findings of Fact Pertaining to the 2002 Reappointment Application

8. Attached to the 2002 Reappointment Application are two (2) CME certificates, both of which bear a fax notation that contains a telephone number, the abbreviation HCFA (the abbreviation for the Health Care Financing Administration, the former name of CMS) and the date January 2, 2002.3

9. The first of the two (2) CME certificates contained in the Respondent’s credentialing file states in pertinent part:

American College of Physicians Education Division
Certificate of Attendance
presented to
Sean R. Tunis, M.D.
for participation in
82nd Annual Session
April 2001

The American College of Physicians is accredited by the Accreditation Council for Continuing Medical Education ("ACCME") to sponsor continuing medical education for physicians.

The American College of Physicians designates this continuing medical education activity for 24.00 credit hours in Category I of the Physician’s Recognition Award of the American Medical Association or any other organization that recognizes Category I credit. (emphasis in original)

10. Information obtained from the American College of Physicians ("ACP")

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3 The two (2) CME certificates are the only CME certificates in the Respondent's Mercy Medical Center credentialing file. The Respondent had completed a CME log to document his CME
revealed that the Respondent did not register for ACP's 2001 Annual Session.

11. Information obtained from the ACP further revealed that from July 1, 1998 through March 3, 2003, the ACP had merged with the American Society of Internal Medicine ("ASIM") and that the official name of the merged organization during that time was the American College of Physicians – American Society of Internal Medicine ("ACP/ASIM"). CME certificates issued from July 1998 through March 2003 bore the official merged name. The CME certificate that is contained in the Respondent's Mercy credentialing file indicates that it was issued by ACP only; it is not the certificate that was issued by the ACP/ASIM for the 2001 Annual Session.

b. 1999 Convocation of the American Academy of Family Physicians

12. The second CME certificate that is contained in the Respondent's Mercy Medical Center credentialing file states:

   Ambulatory Sentinel Practice Network
   1999 Convocation of Practice-Based Research Certificate of Attendance
   This certifies that [this space was left blank]
   has attended 28[^1] hours of a CME course.

   This program has been reviewed and is acceptable for up to 30 hours of prescribed credit by the American Academy of Family Physicians. The sponsor designated for this continuing medical education activity for a maximum of 30 credit hours in Category 1 of the Physician's Recognition Award of the American Medical Association. The sponsor is accredited by the Accreditation Council for Continuing Medical Education (ACCME) to sponsor medical education for physicians.

[^1]: The number 28 was hand-written on the certificate.
13. This certificate indicated an effective date of December 1-4, 1999 and was signed by the Program Director.

14. The Board’s investigation revealed that the Respondent attended the 1999 Convocation. Information obtained from the American Academy of Family Physicians ("AAFP") revealed, however, that the Convocation had been approved by the AAFP for a total of only 14.75 hours, not thirty (30) hours as stated on the CME certificate.

IV. Findings of Fact Portaining to 2000 Mercy Reappointment Application

15. Attached to the Respondent’s 2000 Mercy Reappointment Application is a Continuing Medical Education Log.

16. The Respondent listed, *inter alia*, the following CME credits on the CME log:


   b) ACP 1999 Annual Meeting: April 23, 1999 through April 26, 1999 in Chicago (35 CME credits)

   c) Weekly grand rounds at Johns Hopkins School of Medicine 9/97 – 9/99 (60 CME credits)

   a. 1998 ACP Annual Meeting

17. Information obtained from ACP revealed that the Respondent did not register for the 1998 ACP Annual Meeting.

18. Information obtained from ACP further revealed that the 1998 ACP Annual Meeting was not held in New Orleans, as the Respondent had certified. The 1998 ACP annual meeting was held in San Diego.
b. 1999 ACP Annual Meeting

19. Information obtained from ACP revealed that the Respondent did not register for the 1999 ACP Annual Meeting.

20. Information obtained from ACP further revealed that the 1999 Annual Meeting was not held in Chicago, as the Respondent had certified. The ACP annual meeting was held in New Orleans.

c. Hopkins Grand Rounds

21. Information obtained from Johns Hopkins University revealed that for the period from September 1997 through September 1999, the Respondent had neither completed sign-in sheets for any Grand Rounds at the Johns Hopkins School of Medicine, nor had he registered to obtain certification of CME credits.

V. Findings of Fact Pertaining to 1998 Reappointment Application

22. Attached to the Respondent's 1998 Mercy Reappointment Application is a CME log upon which the Respondent listed, inter alia, the following CME credits:⁵

April 1990 – American College of Physicians: Multiple topics in management of acute/chronic medical illness (32 CME credits)
San Diego, California

April 1997 – American College of Physicians: Multiple topics in acute and chronic medical care (32 CME credits)
Philadelphia, Pennsylvania

a. 1996 ACP meeting

⁵ The Respondent certified on this CME Log that he attended four (4) additional CME activities from September 1995 to September 1997, totaling forty-eight (48) CME credits; however, he failed to identify the organization that sponsored the activities, thereby preventing the Board from verifying his attendance.
Information received from the ACP revealed that the ACP did not offer a CME program in San Diego in April 1996.

b. 1997 ACP meeting

Information obtained from the ACP revealed that the only CME activity that the organization held in Philadelphia in 1997 was the Annual Session, for which the Respondent did not register.

VI. The Respondent’s Responses to the Board’s Investigation

On November 6, 2002, prior to having been notified by the Board that it was conducting an investigation of his submission of the CME certificates to Mercy Medical Center, the Respondent wrote to Board staff. The Respondent’s letter states in pertinent part:

This letter is in regard to my Maryland physician license (D37634) which was renewed in September 2001. It is my understanding that questions have been raised about whether I had completed the CME credits in the 2-year period prior to September 30, 2001. With this letter, I am submitting documentation of the necessary category I CME credits. I have also provided this document to Mercy Medical Center.

Attached to the Respondent’s November 6, 2002 letter was an October 29, 2002 letter signed by Herbert Waxman, M.D., Senior Vice President, Medical Knowledge and Education, American College of Physicians/American Society of Internal Medicine (“ACP-ASIM”). Dr. Waxman’s letter stated that the Respondent had attended seventy-two (72) hours of meetings as a member of the ACP-ASIM Clinical Assessment Subcommittee. According to Dr. Waxman, the members of

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6 The Board’s investigation revealed that Dr. Waxman’s letter was not contained in the Respondent’s Mercy Medical Center credentialing file.
the committee, "are responsible for reviewing and analyzing the current medical literature in order to develop background papers and evidence-based clinical guidelines that are eventually approved by the Board of Regents to become official clinical policy of the ACP-ASIM."

27. Dr. Waxman's letter concluded:

While the primary purpose of the meetings is to provide clinical guidelines for the College, they provide educational benefits to committee members that are equivalent to many of the seminars, workshops, and courses that are sponsored by the ACP-ASIM and are accredited for [C]ategory 1 CME credits. I believe that this activity is certainly equivalent to that formally recognized by the American Medical Association as meeting the requirement for Category 1 CME credit.

28. By letter dated November 25, 2002, the Board notified the Respondent that it was conducting an investigation of the allegation that he had altered the CME certificates and transmitted them to Mercy Medical Center. The letter requested the Respondent to respond to the allegation. Attached to the Board's letter was a subpoena for the Respondent's original CME documentation from 1996 to the date of the subpoena\(^7\) and a release for ACP-ASIM to release the Respondent's CME records.

29. By letter dated December 4, 2002, the Respondent submitted his response to the allegation. The Respondent's response states in pertinent part:

> Regarding the CME documents sent to you in the complaint, and allegedly sent by me to Mercy. During my vacation just prior to New Years of 2001, someone from the Mercy medical staff office left a voice mail message at my home requesting CME

\(^7\) The Board's letter advised the Respondent of the physician's affirmative obligation to obtain documentation of CME attendance and retain the documentation for the succeeding six (6) years for possible inspection by the Board. Code Md. Regs. tit. 10, § 32.01.09D(1).
documentation. The individual stated that the records were needed within several days. I did not find the requested documentation in my files and, faced with the very short deadline, altered two documents that I could find. I was fully confident that I was reconstructing records for CME credit that I had legitimately obtained (albeit through activities for which I did not have documents in hand at the time). I sincerely regret having done this.

I did not ultimately send these documents to Mercy. In fact, I left a phone message at the medical staff office to tell them that I did not yet have the requested documents, and to please let me know if I could have more time. I did not hear from them again. It is my belief that the documents were faxed by a disgruntled CMS subordinate, whom I had chosen not to promote to a management position several months earlier. This person vowed at that time to “make me regret ever having known him.” This person had a cubicle adjacent to my office, and I now realize that he regularly eavesdropped on my phone conversations and entered my office to search my files in an attempt to find some information that might harm my reputation.

30. The Respondent attached to his Docmbr 4, 2002 response the following information:

a. a letter dated December 4, 2002, by Herbert S. Waxman, M.D. Dr. Waxman’s December 4, 2002 letter is nearly identical to his October 29, 2002 letter that the Respondent had previously submitted to the Board.

b. a letter dated November 29, 2002 from the Chairman of the Mercy Department of Emergency Medicine indicating that the Respondent has served as a clinical preceptor at Mercy since 1994 and devotes approximately thirty (30) to forty (40) hours per year to this activity.

c. a signed release for ACP-ASIM to provide to the Board a copy of documentation of the Respondent’s CME credits
earned from that organization from 1996 to the present.

31. By letter dated December 12, 2002, Board staff notified the Respondent that the Board had received his December 4, 2002 letter, but that he had not enclosed original CME documentation as directed by the Board's subpoena.

32. On December 20, 2002, Board staff received from ACP/ASIM a packet of material, sent at the Respondent's request, that consisted of a copy of Dr. Waxman's December 4, 2002 letter and minutes of the meetings and conference telephone calls attended by the Respondent.

33. By letter dated December 27, 2002, the Respondent responded to Board staff's letter of December 12, 2002. In his response, the Respondent noted that a packet had been sent from ACIP/ASIM to verify his attendance at a number of meetings sponsored by that organization. The Respondent further stated: "It is my belief that the letter from Dr. Waxman and the meeting minutes verifying my attendance at the meetings listed in that letter would meet the documentation requirements listed at (D)(2) in your CME guidelines. The Respondent further noted that verification of his clinical preceptorship "would meet the BPQA requirements for category 1 CME described at B(2)(f), which allows up to 10 hours per 2-year period for 'services performed as a preceptor' to medical students and post-graduate trainees."

34. On October 1, 2003, Board staff sought to interview the Respondent and issued to him a subpoena ad testificandum. The subpoena also
demanded that the Respondent bring with him to the interview “the ORIGINALS of any and all Continuing Medical documentation for the time period of 1996 to present.” (emphasis in original).

35. On October 21, 2003, Board staff interviewed the Respondent. The Respondent stated that Mercy staff had contacted him in December 2001 or January 2002 to request a copy of his CME documentation. The Respondent acknowledged that he had altered the ACP documentation because of all the meetings he had attended. The Respondent further stated that he had asked his assistant at CMS to help him alter the documents. The Respondent denied sending the altered documents to Mercy and stated that one of his colleagues, whom he had not promoted, had faxed them.

36. In response to the Board’s subpoena directing him to bring with him the originals of CME documentation from 1996 to October 2003, the Respondent submitted two (2) original certificates for CME activities in 2002, which totaled 6.75 CME hours, and the November 29, 2002 letter from the Chairman of the Mercy Emergency Medicine Department. The Respondent also submitted five (5) original certificates for CME activities in 2003, which totaled 62.75 hours. The Respondent did not submit

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6 The Board subsequently interviewed the Respondent’s assistant who stated that she did not recognize the CME documents and did not remember altering the documents or assisting in their alteration.

6 On October 30, 2003, the Respondent faxed to the Board an additional CME certificate (18 CME credits). The Respondent also faxed a letter dated October 28, 2003, from a CMS Ethics Officer. The letter indicated that the CMS Ethics Office has conducted an investigation of an anonymous complaint that the Respondent had altered CME documents and “official Government travel irregularities.” The CMS investigation was apparently limited to an interview of the Respondent and a review of documents that accompanied the complaint. During the CMS
original CME documentation for the period from 1996 though 2001, notwithstanding his affirmative obligation to maintain such original documentation for six (6) years and the fact that he claimed to have attended several CME activities, other than the ACP/ASIM meetings, on his Mercy Reappointment Applications.

37. In furtherance of its investigation, Board staff sought verification regarding whether the ACP (or ACP/ASIM) had ever submitted to the Accreditation Council for Continuing Medical Education ("AACME") the activities of the Clinical Efficacy Assessment Subcommittee to be designated as Category I CME credit. By letter dated September 8, 2004, the Chief Executive of AACME advised the Board that the ACP did not include the Clinical Efficacy Subcommittee on its list of activities for 2002, so they would not have been designated for credit. The Chief Executive’s letter further stated that, “it is possible that [the ACP] “inadvertently failed to inform ACCME” and suggested that Board staff check directly with the ACP Vice President of Medical Knowledge and Education.

38. By letter dated October 21, 2004, the ACP Vice President of Medical Knowledge and Education responded to the Board’s inquiry in pertinent part:

This is to inform you that the American College of Physicians (formerly the American College of Physicians-American Society of Internal Medicine) has never included the Clinical Efficacy Assessment Subcommittee on its list of activities to the Accreditation Council for Continuing

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interview, the Respondent indicated that he had altered CME documents but had not submitted them to Mercy or the Board of Physicians. The letter concluded that the allegations did not warrant any disciplinary action with regard to the Respondent’s federal employment.
VII. Findings of Fact Pertaining to the Respondent’s 2001 Board Renewal Application

39. On August 5, 2001, the Respondent submitted to the Board an Application for Renewal of Medical License ("Renewal Application"). On the Renewal Application, the Respondent certified as follows:

I have earned 50 credit hours of Category I continuing medical education during the two years preceding this application and this is not my first renewal.

40. The Respondent also made the following affirmation:

I affirm that the information I have given in this application...is true and correct to the best of my knowledge and belief.

41. The Respondent did not attach any CME certificates to the Renewal Application

42. The Board’s investigation revealed that most of the CME credits that the Respondent had reported on his Mercy applications for the period from July 1999 through July 2001, the period covered by the Board’s Renewal Application, were not verifiable.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent’s actions constitute immoral or unprofessional conduct in the practice of medicine, in violation of H.O. § 14-404(a)(3); willfully making or filing of a false report in the practice of medicine, in violation of H.O. § 14-404(a)(11), and willfully making a false representation when seeking or
making application for licensure or any other application related to the practice of medicine, in violation of H.O. § 14-404(a)(36).

ORDER

Based on foregoing Findings of Fact and Conclusions of Law, it is this 25th day of May, 2005, by a majority of the quorum of the Board considering this case:

ORDERED that the Respondent shall be, and hereby is, SUSPENDED for a minimum of ONE (1) YEAR and until the Respondent has satisfactorily complied with the following requirements:

a. The Respondent shall make up the 35.25 hours of required Category I CME credits that he lacks for the two-year licensure cycle (from July 1999 through July 2001) preceding the Respondent’s submission of his August 5, 2001 licensure renewal application. The Respondent shall submit to the Board original written documentation verifying that he has earned all of the required 35.25 Category I CMEs. The Respondent shall be responsible for all costs incurred to earn the required 35.25 Category I CME credits and shall not apply any of the 35.25 CME credits earned to fulfill this requirement toward any future CME credits required during subsequent renewal cycles as a condition of continued medical licensure in the State of Maryland;

b. The Respondent shall pay a monetary fine in the amount of twenty thousand dollars ($20,000.00) by bank-guaranteed check
made payable to the Maryland State Board of Physicians no later than ninety (90) days from the date this Consent Order is executed;

c. At the conclusion of the one-year period of suspension, the Respondent may submit a written petition to the Board requesting termination of the suspension of his medical license, but only if he has satisfactorily complied with the requirements in the preceding paragraphs (a) and (b); and it is further

ORDERED that beginning on the date the suspension of Respondent's medical license is lifted, the Respondent shall be placed on PROBATION for a MINIMUM OF TWO (2) YEARS AND UNTIL he satisfactorily complies with the following requirement:

- Within six (6) months of the date probation begins, the Respondent shall successfully complete, at his own expense, a Board-approved course in ethics or an ethics tutorial. The Respondent shall submit written documentation regarding this course to the Board and obtain the Board’s prior approval before he enrolls in this required course. The Board reserves the right to require the Respondent to provide further information regarding the courses he proposes, and further reserves the right to reject the proposed course and require submission of an alternative proposed course. The Board will approve a course only if it deems the curriculum and the duration of the course adequate of fulfill the need. The Respondent shall be responsible for submitting written documentation to the Board of his successful completion of this course. The Respondent
shall not apply any CME credits earned for taking this course toward any CME credits required for continued medical licensing in Maryland; and it is further

ORDERED that for long as the Respondent holds an active medical license in the State of Maryland, the Respondent shall submit to the Board, along with each licensure renewal application, original documentation of all CME credits that he claims he has earned for that licensure renewal cycle. In addition, the Board reserves the right to verify all CME credits than the Respondent claims he has earned for continued medical licensure for as long as the Respondent holds an active medical license in the State of Maryland; and it is further

ORDERED that any violation of the terms and/or conditions of this Consent Order shall be deemed a violation of probation and/or of this Consent Order; and it is further

ORDERED that the Respondent shall comply with the Maryland Medical Practice Act and all laws, statutes and regulations pertaining to the practice of medicine; and it is further

ORDERED that if the Respondent violates any of the terms and conditions of the suspension, probation and/or this Consent Order, the Board, in its discretion, after notice and an opportunity for a hearing may impose additional sanctions under §§ 14-404(a) and 14-405.1 of the Medical Practice Act, including a reprimand, additional probation, suspension, revocation and/or a monetary fine; and it is further

ORDERED that the Respondent shall not petition the Board for early
termination of the terms and conditions of this Consent Order; and it is further

ORDERED that the Respondent may petition for termination of probationary status without any further conditions or restrictions only if the Respondent has satisfactorily complied with all conditions of probation and has no outstanding complaints against him; and it is further

ORDERED that the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

ORDERED that this Consent Order shall be a PUBLIC DOCUMENT pursuant to Md. State Gov't Code Ann. § 10-611 et seq. (2004).

\[\text{Date} \quad 5/25/05\]

\[\text{Signature} \quad \text{Harry C. Knipp, M.D., Chair} \text{\hfill Maryland Board of Physicians}\]

CONSENT

I, Sean R. Tunis, M.D., acknowledge that I am represented by counsel and have consulted with counsel before entering this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to
counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided by the law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of the Board that I might have followed after any such hearing.

I sign this Consent Order after having an opportunity to consult with counsel, voluntarily and without reservation, and I fully understand and comprehend the language, meaning and terms of the Consent Order.

5/2/05
Date
Sean R. Tunia, M.D.
Respondent

STATE OF MARYLAND
CITY/COUNTY OF BALTIMORE

I HEREBY CERTIFY that on this 2nd day of April 2005, before me, a Notary Public of the foregoing State and City/County personally appeared Sean R. Tunia, M.D., License Number D37634, and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.

[Signature]
Notary Public