

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF ARIZONA

In the Matter of)
)
MARK D. GOLDBERG, M.D.)
)
Holder of License No. **18592**)
For the Practice of Medicine)
In the State of Arizona.)
)
Re: BOMEX Inquiry (09-06-95) - Mark)
D. Goldberg, M.D. (Inv. #9224))
H.E.H. v. Mark D. Goldberg, M.D.)
(Inv. #8062))
T.L.W. v. Mark D. Goldberg, M.D.)
(Inv. #9268))
_____)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER OF PROBATION**

MARK D. GOLDBERG, M.D., holder of License No. 18592 for the practice of medicine in Arizona, appeared with legal counsel, Greg Clark, Esq. before the Arizona Board of Medical Examiners ("Board") for an informal interview on July 18, 1996. Based upon the information presented, the Board adopted the following Findings of Fact, Conclusions of Law, and Order of Probation.

FINDINGS OF FACT

1. The Board of Medical Examiners of the State of Arizona is the duly constituted authority for the regulation and control of the practice of medicine in the State of Arizona.

2. MARK D. GOLDBERG, M.D., is the holder of License No. 18592 for the practice of medicine in the State of Arizona.

3. Patient D.H. had been under the care of Dr. GOLDBERG since October 31, 1989. The patient had been previously treated for a ruptured aortic aneurysm in December of 1987 and had a past history of atrial fibrillation with congestive heart

failure. He also had a history of a previous laminectomy and removal of benign parotid tumors.

4. Dr. GOLDBERG treated patient D.H. for minor medical problems and also saw the patient annually for a physical examination. The patient's last general physical was January 20, 1994 and, as was the occasion on the four (4) previous annual physicals, Dr. GOLDBERG ordered a screening x-ray of the chest. Even though Dr. GOLDBERG took x-rays with each annual physical since 1989 on this patient, there was no report of any of the x-ray results noted in Dr. GOLDBERG's records.

5. On March 7, 1994 patient D.H. presented himself to Dr. GOLDBERG complaining of a temperature and chills. Dr. GOLDBERG checked the patient's lungs but had not yet checked his previous x-ray of January, 1994. The patient was referred to Dr. Roberts for further testing which included bone marrow, chest x-ray, sonogram of the abdomen and CT scan. The patient continued to become weaker. Five (5) days later the patient was informed he had a tumor of the lower lobe of his right lung the size of a golf ball. He was subsequently hospitalized, placed on chemotherapy and radiation but never recovered. He died on May 19, 1994. Immediate cause of death was noted to be carcinoma of the lung.

6. The January, 1994 x-ray of patient D.H. revealed a definite 1.25 cm lesion in the right lower lung field seen on both the AP and the lateral films. In his response to the Board, Dr. GOLDBERG indicated he customarily puts routine screening x-rays aside and does not read them for 4-6 weeks.

7. During the Board's July 18, 1995 regular meeting the Board ordered a practice survey be conducted of Dr. GOLDBERG's practice. The following deficiencies were noted.

a) Patient E.F.: This patient was cared for from July 8, 1995 through October 3, 1995. She was treated by Dr. GOLDBERG for recurrent urinary tract infection on August 14, 1995. She was switched from her previous antibiotic to

Macrobid on that date but there was no evidence that he conducted an examination or rechecked another urinalysis at that time. On September 5, 1995, the patient was seen with fatigue and complained of foul-smelling urine. Dr. GOLDBERG documented no exam, no urinalysis, no culture or sensitivity but the patient was placed on Amoxil nevertheless.

b) ~~Patient B.S.~~ On March 8, 1995, ~~Dr. GOLDBERG~~ diagnosed the patient as suffering from among other maladies, pernicious anemia. However, all of her red blood cell indices were normal. There was no evidence that Dr. GOLDBERG performed any evaluation for pernicious anemia in terms of B12 levels or a Schilling test. There was no evidence that the patient had a neuropathy consistent with the diagnosis.

8. On or about November 1, 1994, the Board received information that Dr. GOLDBERG was prescribing large quantities of controlled substances to patient S.O. from June 8, 1995 through October 6, 1995. A pharmacy survey was conducted for the period from December 1, 1995 through May 31, 1995. During this period, Dr. GOLDBERG wrote 164 prescriptions for 17,392 dosage units of Schedule II controlled substances. During this period, patient S.O. was receiving a total of 155 prescriptions for controlled substances and prescription-only drugs for a total of 4,221 dosage units. Of these, Dr. GOLDBERG wrote 116 prescriptions for a total of 1,995 dosage units as follows:

<u>Date</u>	<u>Refill</u>	<u>Drug Name</u>	<u>Quantity</u>	<u>Schedule</u>
06/09/95	R	Lortab 7.5 mg	16.0	3
06/01/95	R	Ambien 10mg	30.0	4
05/03/95	R	Ambien 10mg	30.0	4
03/30/95	R	Hydrocodone/APAP 7.5/500	10.0	3
03/28/95	R	Fioricet	30.0	3
03/09/95	R	Fioricet	30.0	3
03/06/95		Hydrocodone/APAP 7.5/500	30.0	3
03/06/95		Ambien 10mg	30.0	4
02/24/95		Fioricet	30.0	3
02/15/95	R	Lortab 7.5mg	30.0	3

<u>Date</u>	<u>Refill</u>	<u>Drug Name</u>	<u>Quantity</u>	<u>Schedule</u>
01/16/95	R	Lortab 7.5mg	30.0	3
01/16/95	R	Ambien 10mg	30.0	4
12/28/94	R	Lortab 7.5mg	30.0	3
12/19/94		Lortab 7.5mg	30.0	3
12/19/94		Ambien 10mg	30.0	4
10/18/94		Darovet-N 100mg	50.0	4
10/11/94		Lortab 7.5mg	20.0	3
10/07/94		Ambien 10mg	30.0	4
09/19/94		Lortab 7.5mg	20.0	3
09/06/94		Lortab 7.5mg	20.0	3
08/31/94		Lortab 7.5mg	20.0	3
08/31/94		Ambien 10mg	30.0	4
08/29/94		Lortab 7.5 mg	20.0	3
08/24/96		Lortab 7.5mg	20.0	3
08/15/94		Lortab 7.5mg	14.0	3
08/11/94		Lortab 7.5mg	14.0	3
08/05/94		Lortab 7.5mg	14.0	3
08/01/94		Lortab 7.5mg	14.0	3
07/29/94		Lortab 7.5mg	16.0	3
07/25/94		Lortab 7.5mg	30.0	3
07/25/94		Ambien 10mg	30.0	4
07/18/94		Lortab 7.5mg	12.0	3
06/30/94		Lortab 7.5mg	30.0	3
06/27/94		Lortab 7.5mg	30.0	3
06/21/94	R	Lortab 7.5mg	16.0	3
06/21/94		Lortab 7.5mg	16.0	3
06/09/94	R	Lortab 7.5mg	16.0	3
05/23/94	R	Lortab 7.5mg	16.0	3
05/18/94		Stadol NS 10MG/ML	7.5	N
05/18/94		Soma 350mg	100.0	N
05/16/94		Lortab 7.5mg	16.0	3
05/10/94	R	Lortab 7.5mg	16.0	3
05/10/94	R	Lortab 7.5mg	16.0	3
05/07/94	R	Lortab 7.5mg	16.0	3
05/07/94	R	Lortab 7.5mg	16.0	3
05/05/94	R	Lortab 7.5mg	16.0	3
05/05/94	R	Lortab 7.5mg	16.0	3
05/01/94	R	Lortab 7.5mg	16.0	3
05/01/94	R	Lortab 7.5mg	16.0	3
04/28/94	R	Lortab 7.5mg	16.0	3
04/28/94	R	Lortab 7.5mg	16.0	3
04/25/94		Lortab 7.5mg	16.0	3
04/25/94		Lortab 7.5mg	16.0	3
04/22/94	R	Lortab 7.5mg	20.0	3
04/20/94	R	Lortab 7.5mg	20.0	3

<u>Date</u>	<u>Refill</u>	<u>Drug Name</u>	<u>Quantity</u>	<u>Schedule</u>
04/17/94	R	Lortab 7.5mg	20.0	3
04/15/94	R	Lortab 7.5mg	20.0	3
04/11/94	R	Lortab 7.5mg	20.0	3
04/06/94		Lortab 7.5mg	20.0	3
03/28/94	R	Lortab 7.5mg	10.0	3
03/23/94	R	Lortab 7.5mg	10.0	3
03/21/94		Lortab 7.5mg	10.0	3
02/22/94	R	Lortab 7.5mg	30.0	3
02/02/94		Tranxene-T 7.5mg	30.0	4
01/28/94		Alprazolam 0.5mg	30.0	4
01/27/94		Stadol NS 10mg/ml	2.5	N
01/27/94		Xanax 0.5mg	100.0	4
01/27/94		Fiorinal	60.0	3
01/27/94		Fioricet	60.0	3
01/25/94	R	Lortab 7.5mg	18.0	3
01/24/94	R	Lortab 7.5mg	12.0	3
01/20/94	R	Lortab 7.5mg	20.0	3
01/20/94		Fastin 30mg	20.0	4
01/18/94	R	Lortab 7.5mg	10.0	3
01/17/94		Stadol NS 10/mg/ml	2.5	N
01/10/94		Xanax 1mg	60.0	4
01/10/94		Lortab 7.5mg	30.0	3
01/07/94	R	Soma 350mg	100.0	N
01/04/94	R	Lortab 7.5mg	30.0	3
12/30/93	R	Lortab 7.5mg	30.0	3
12/27/93		Soma 350mg	100.0	N
12/27/93		Lortab 7.5mg	30.0	3
12/03/94	R	Lortab 7.5mg	40.0	3
11/30/93		Lortab 7.5mg	20.0	3
11/29/93	R	Lortab 7.5mg	40.0	3
11/22/94		Lortab 7.5mg	40.0	3
11/16/93		Xanax 0.25mg	90.0	4
11/16/93		Lortab 7.5mg	40.0	3
11/12/93	R	Fiorinal w/cod #3	30.0	3
11/08/93	R	Lortab 7.5mg	20.0	3
11/02/93	R	Lortab 7.5mg	20.0	3
10/22/93		Xanax 0.5mg	50.0	4
10/17/93	R	Fiorinal-w/cod-#3	30.0	3
10/12/93	R	Fiorinal w/cod #3	30.0	3
10/08/93		Fiorinal w/cod #3	30.0	3
10/01/93	R	Lortab 7.5mg	20.0	3
10/01/93	R	Xanax 0.5mg	50.0	4
09/24/93	R	Lortab 7.5mg	20.0	3
09/20/93		Lortab 7.5mg	20.0	3
09/13/93	R	Lortab 7.5mg	20.0	3

<u>Date</u>	<u>Refill</u>	<u>Drug Name</u>	<u>Quantity</u>	<u>Schedule</u>
09/07/93		Stadol NS 10mg/ml	2.5	N
09/07/93		Xanax 0.5mg	50.0	4
08/25/93	R	Fastin 30mg	20.0	4
08/19/93	R	Xanax 0.5mg	50.0	4
08/09/93	R	Lortab 7.5mg	20.0	3
08/02/93	R	Lortab 7.5mg	20.0	3
07/29/93		Vicodin 5/500	30.0	3
07/26/93	R	Lortab 7.5mg	20.0	3
07/21/93	R	Xanax 0.5mg	50.0	4
07/14/93		Fastin 30mg	20.0	4
06/18/93	R	Lortab 7.5mg	20.0	3
06/18/93	R	Xanax 0.5mg	50.0	4
06/14/93		Vicodin 5/500	30.0	3
06/14/93		Fastin 30mg	20.0	4
06/07/93		Lortab 7.5mg	20.0	3
05/13/93		Xanax 0.5mg	50.0	4

Total: 3237.0
Count: 116

9. Following the above-referenced survey, charts were obtained on several of Dr. GOLDBERG's patients to evaluate the doctor's evaluation and management of these patients regarding the need for the schedule drugs. The following deficiencies were noted:

a) Patient S.O.: This patient was a 38-year old female who was cared for by Dr. GOLDBERG between February 1992 and March of 1995. On May 25, 1993, the patient was seen for shoulder pain and she was prescribed Lortabs. On June 14, 1993, Dr. GOLDBERG noted that the patient had intermittent migraines but there was no discussion of the characteristics of the headache, whether they were migraines with or without aura, no discussion of any previous workup concerning the headaches nor any examination conducted. Dr. GOLDBERG saw the patient several times through 1995 merely mentioning migraine headaches and he continued to prescribe Lortabs. Over a 726 day period the patient received 1,532 Lortabs from Dr. GOLDBERG, amounting to 2.1 a day. Lortabs are Schedule III controlled substances.

b) Patient C.W.: This patient was a 60-year old male who was under the care of Dr. GOLDBERG for probable bilateral rotator cuff tears, hypertension, arterial sclerotic heart disease with pacemaker, and alcohol abuse. Between March 9, 1995 and May 11, 1995 the patient was prescribed Percocet or Roxicet #480 by Dr. GOLDBERG in an amount which averaged approximately 6 1/2 tablets a day. These medications are Schedule II controlled substances.

c) Patient D.N.: This patient was a 77-year old male with degenerative joint disease with spinal stenosis, arterial sclerotic heart disease and COPD. During the period reviewed the patient was receiving approximately 8.5 Percocet per day. During the course of this patient's treatment he was not given a fair trial of non-steroidals for pain, psychiatric evaluation, biofeedback or referral to a pain center.

d) Patient S.M.: This patient was a 34-year old male who presented to Dr. GOLDBERG with a history of previous neck surgery and severe shoulder pain. He also had multiple emotional and mental problems, hypertension, anxiety and headaches. On August 30, 1990, the patient was started on a course of Vicodin per Dr. GOLDBERG and the patient was continued on Percocet or Oxycodone for his alleged chronic neck pain. Throughout the course of this patient's treatment there was no significant examination of the neck to include range of motion, checking for neurologic deficits or reflexes. There were no attempts at using non-steroidals for this patient's pain, no psychiatric referrals, no evidence of any orthopedic consultation and no attempts to wean the patient off medication despite obvious drug-seeking behavior.

e) Patient D.A.: This patient was a 10-year old who was first seen for a cough and had a history of a communication disorder and was on Ritalin. There was no indication why the patient was taking Ritalin or what previous studies were done nor was the communication disorder specified in Dr. GOLDBERG's records. The prescription for Ritalin was refilled by Dr. GOLDBERG throughout the duration of the

patient's visits without further evaluations of the need for Ritalin and even though Dr. GOLDBERG never saw the patient.

f) Patient B.E.: This patient was a 55-year old male who was cared for from April 16, 1993 through July 11, 1995 and who had been prescribed Percocet taking approximately 2.5 tablets daily. The patient's diagnoses included non-insulin dependent diabetes mellitus, peripheral vascular disease, chronic gouty arthritis, pseudogout, status post CVA and anemia of undetermined etiology. The diagnosis of the gout was never well established and there was never any description of a gouty flare up in terms of a description of redness or swelling in his toe, or any other joint, just a mention of pain. There were no x-rays obtained nor was there any aspiration of any affected joint to ascertain whether there were pyrophosphate crystals present.

g) Patient C.D.: This patient was cared for from August 1992 through September 1995 and was receiving methadone syrup approximately 30mg a day for recurrent episodes of intermittent abdominal pain. There was no documented attempt by Dr. GOLDBERG to use alternative therapy, no referral to a pain clinic or psychiatrist for further evaluation of her addictive problem.

h) Patient K.H.: This patient was a 33-year old female cared for by Dr. GOLDBERG between November 23, 1993 and January 9, 1995. She had hypertensive cardiovascular disease, mixed headaches, an old subdural hematoma, chronic obstructive pulmonary disease, asthma and epilepsy. She initially received Fiorinal for her headaches but was switched over to Vicodin. On February 13, 1995 the patient was seen by Dr. GOLDBERG complaining of severe headache. Dr. GOLDBERG examined the patient's lungs because of her persistent cough but performed no other exam. On February 16, 1995 a CAT scan ordered by Dr. Cho revealed a subarachnoid hemorrhage and eventually the patient did expire.

10. On January 17, 1996, the Board met to discuss, among other things, the above-referenced cases, pharmacy survey and practice surveys. As a result of that

review, and because of concerns over Dr. GOLDBERG's overall medical competence, Dr. GOLDBERG was ordered to take and pass the Special Purpose Examination (SPEX) within sixty (60) days of the date of the Order with a scaled score of 75% or greater. The date of the Order was January 29, 1996. Dr. GOLDBERG did not take the exam until April 25, 1996, a violation of the Board Order.

11. Dr. GOLDBERG has been issued a prior Letter of Concern on October 16, 1995 and has been censured on January 17, 1996.

CONCLUSIONS OF LAW

1. The Board of Medical Examiners of the State of Arizona possesses jurisdiction over the subject matter hereof and over MARK D. GOLDBERG, M.D.

2. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(25)(j) (prescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes).

3. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(25)(q) (any conduct or practice which is or might be harmful or dangerous to the health of the patient or the public).

4. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(25)(r) (violating a formal order, probation or stipulation issued or entered into by the board or its executive director under the provisions of this chapter).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered that MARK D. GOLDBERG, M.D. be placed on probation for a term of five (5) years on the following terms and conditions:

1. Dr. GOLDBERG shall obtain thirty (30) hours of Continuing Medical Education annually in the management of pain and prescribing of controlled substances.

2. At his own expense, Dr. GOLDBERG, shall within ninety (90) days of the date of this Order, obtain a practice management consultant approved by Board staff to review his practice and make recommendations. Dr. GOLDBERG shall comply with those recommendations and authorize the practice management consultant to provide a copy of any report or recommendation to the Board.

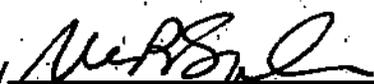
3. Dr. GOLDBERG shall obtain an additional thirty (30) hours of Continuing Medical Education annually over and above the annual requirements.

4. Dr. GOLDBERG shall submit to an annual office survey by Board staff.

DATED this 18th day of July, 1996.



BOARD OF MEDICAL EXAMINERS
OF THE STATE OF ARIZONA

By 
MARK R. SPEICHER
Executive Director

COPY of the foregoing Findings of Fact,
Conclusions of Law and Order of Probation
mailed by Certified Mail this 1st day of
August, 1996 to:

Mark Goldberg, M.D.
5801 E. Main St.
Mesa, Arizona 85205
