

**BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
ON REFERRAL FROM THE ALASKA STATE MEDICAL BOARD**

In the Matter of:	)	
	)	
ROGER GLENN GANO, M.D.,	)	OAH No. 05-0783-MED
	)	Board Case No. 2800-05-074
Respondent.	)	
_____	)	

**DECISION AND ORDER**

**I. Introduction**

In this licensing case, the Alaska State Medical Board (Board) denied Roger Gano’s request to reinstate his suspended medical license based on a finding that he is unable to practice with skill and safety. Dr. Gano requested a hearing. The case was referred to the Office of Administrative Hearings and a hearing was held in conformance with the Administrative Procedure Act (APA).<sup>1</sup> Dr. Gano represented himself and was the only witness who testified at the hearing.<sup>2</sup> David L. Brower, Assistant Attorney General, represents the Department of Commerce, Community and Economic Development, Division of Corporations, Business and Professional Licensing.

The hearing was presided over by Administrative Law Judge David G. Stebing of the Office of Administrative Hearings. Following the resignation of Judge Stebing from the Office of Administrative Hearings, the matter was assigned to Kay L. Howard, Administrative Law Judge, for the preparation of the decision. Judge Howard reviewed the entire record, including the audio recording of the hearing. Based on the evidence as a whole and after due consideration, Dr. Gano is not entitled to reinstatement of his medical license.

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<sup>1</sup> See AS 44.62.330 – .640.

<sup>2</sup> The division’s exhibits A, E, F and H and Dr. Gano’s exhibits 7, 19, 24, 44, 52, 53, 55, 58, 59, 65, 68, 72, 73, 74, 76, 79, 80, 82, 87 and 88 were admitted as evidence.

## II. Facts

### A. Background

Roger Gano graduated from medical school at the Uniformed Services University of Health Sciences in Bethesda, Maryland.<sup>3</sup> He completed a psychiatric residency at Walter Reed Army Hospital and thereafter began serving as a physician in the military beginning in 1994.<sup>4</sup>

It is undisputed that Dr. Gano suffers from the disease of alcoholism. While at his first duty station in Wuerzburg, Germany, Dr. Gano tested positive for alcohol and was referred to a voluntary treatment program at the William Beaumont Army Medical Center in Texas.<sup>5</sup> In November 1996, because of his alcohol dependency, his clinical privileges were initially suspended for one year, but later changed to “100% supervision” for a period of one year while he was enrolled in the Army’s Impaired Provider Program.<sup>6</sup>

In December 1996, Dr. Gano was deployed to Taszar, Hungary and continued to treat patients.<sup>7</sup> In June 1997, he was transferred to Fort Wainwright, Alaska, where he served as Chief of Community Mental Health Services.<sup>8</sup> In July 1997, Dr. Gano’s commander restored full clinical privileges to him on condition that Gano continue his participation in the impaired provider program for the remainder of a two-year period.<sup>9</sup>

In August 1997, Dr. Gano sought a physician’s license in Alaska.<sup>10</sup> Because of his history of alcohol abuse, the Board required Dr. Gano to enter into a Memorandum of Agreement (MOA) that imposed restrictions on his practice. Dr. Gano agreed that the facts set

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<sup>3</sup> Exh. E at 14.

<sup>4</sup> *Id.* at 15.

<sup>5</sup> *Id.*

<sup>6</sup> Exh. 1 at 2. This exhibit, the 1998 Memorandum of Agreement (MOA) between Dr. Gano and the Board, was not moved for admission into evidence, but the information contained therein is not disputed and provides a significant piece of Dr. Gano’s history leading up to the events at issue. Dr. Gano submitted a total of 88 exhibits to the OAH prior to the hearing. When the hearing began, the assigned administrative law judge asked Dr. Gano if he would be moving to admit the documents into evidence one at a time or *en masse*. Dr. Gano responded that he did not understand the procedure, but he wanted all of them considered in his appeal. He later agreed to move to admit his exhibits individually, as the hearing progressed. At the close of the hearing, only twenty of Dr. Gano’s exhibits had been admitted into evidence, as listed in *fn.* 3, above. Those documents that were not admitted were not returned to Dr. Gano, but instead remained in the OAH file. Where necessary, several of these documents will be cited as the source for various events that have transpired in Dr. Gano’s case. In order to maintain fairness to both Dr. Gano and the Division, however, these documents will be used only to provide background information for the reader and not to support any findings of fact on contested issues.

<sup>7</sup> *Id.*

<sup>8</sup> Exh. E at 35.

<sup>9</sup> Exh. 1 at 2.

forth in the MOA constituted grounds for the “possible denial, suspension, revocation, or other disciplinary sanctions of his medical license pursuant to AS 08.01.075, [AS] 08.64.620 and [AS] 08.64.326(a)(1) and (8)(c).”<sup>11</sup>

In general, the provisions of the MOA required Dr. Gano to be on probation for five years; to attend at least three Alcoholics Anonymous (AA) meetings per week; to submit to random urinalyses, blood or hair tests; to submit quarterly reports to the Board’s agent regarding his physical and mental health and activities; to notify his employer and any hospital in which he had admitting privileges of the terms of his probation; and not to consume alcohol or any drugs not prescribed by his physician.<sup>12</sup>

The MOA further provided that Dr. Gano’s license would be automatically suspended if he failed to submit to a urinalysis or blood/hair test upon request; he attempted to alter or disguise the test results, or any such test results were positive for alcohol or an unprescribed drug; he was arrested or charged with any alcohol-related offense; the Board received a report or inquiry that provided reasonable cause to suspect Dr. Gano had violated the MOA; or, if he did not cooperate in a required therapy program.<sup>13</sup>

Dr. Gano signed the MOA on October 13, 1998<sup>14</sup> and it was adopted by the Board on October 27, 1998.<sup>15</sup> Dr. Gano obtained a license to practice medicine in this state on November 18, 1998.<sup>16</sup>

On December 12, 1999, Dr. Gano’s routine urinalysis/breathalyzer test conducted by the U.S. Army tested positive for alcohol.<sup>17</sup> In a letter dated December 17, 1999, Dr. Gano notified the Board of the positive test and reasserted his commitment to abstinence and to a treatment plan that would enable him “to fully recover from the disease of alcoholism.”<sup>18</sup> He subsequently admitted that he had consumed significant amounts of alcohol and used nitrous oxide at his home

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<sup>10</sup> *Id.* at 1.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.* at 5-11.

<sup>13</sup> *Id.* at 12.

<sup>14</sup> *Id.* at 15.

<sup>15</sup> *Id.* at 16.

<sup>16</sup> Exh. A at 1.

<sup>17</sup> Exh. 7 at 1.

<sup>18</sup> Exh. 4.

while viewing pornography on the Internet.<sup>19</sup> On January 20, 2000, Dr. Gano's license to practice medicine was automatically suspended by the Board under the terms of the 1998 MOA.<sup>20</sup>

On February 6, 2000, Dr. Gano voluntarily entered an alcohol treatment program at Springbrook Northwest (Springbrook) in Newberg, Oregon.<sup>21</sup> Dr. Gano's early history was explored during his stay there. He revealed that he began drinking when he was a teenager and he "enjoyed the experience tremendously."<sup>22</sup> Alcohol was his drug of choice, but he also began using marijuana in high school and progressed to almost daily use after college, then ceased marijuana use in 1985.<sup>23</sup> Dr. Gano also tried cocaine, LSD, mushrooms and nitrous oxide in college, and resumed using nitrous oxide during the year prior to entering Springbrook.<sup>24</sup> Before entering the Army treatment program in 1996, Dr. Gano had been drinking as much as a fifth of hard liquor per day since 1992.<sup>25</sup> After completing treatment in 1996, Dr. Gano had periods of being "dry" for six or seven months at a time, but, as he admitted, he never had any real sobriety.<sup>26</sup> In October 1999, after hearing that his medical license was no longer in jeopardy, Dr. Gano began drinking that same day and drank from five or six drinks to a fifth of liquor per day between October and December of 1999.<sup>27</sup> Dr. Gano's major problems on admission to Springbrook were identified as alcohol withdrawal, nicotine dependence, depression, family relationships, emotional isolation, acceptance of addictive disease, relapse prevention skills needed, long-term maintenance plan needed, and issues regarding sexual compulsivity such as use of Internet pornography.<sup>28</sup>

Dr. Gano completed primary treatment at Springbrook, including Steps One through Three of the 12 Step Recovery Program of Alcoholics Anonymous, at which time he was

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<sup>19</sup> Exh. E at 33.

<sup>20</sup> Exh. A at 1.

<sup>21</sup> Exh. 7 at 1.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 2.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 2-3.

transferred to Springbrook's Extended Intensive Day Treatment Program.<sup>29</sup> He continued to work through the 12 Steps and participated in Family Week Programs with his wife and parents.<sup>30</sup> Dr. Gano was discharged on May 11, 2000, having been in treatment for 96 days.<sup>31</sup> His discharge diagnoses were identified as: alcohol dependence; major depression recurrent; history of marijuana dependence currently in remission; history of polysubstance abuse; attention deficit disorder, inattentive type; obsessive compulsive disorder personality traits; and, "severe" psychosocial stressors including marital issues, licensure issues, job concerns and family issues.<sup>32</sup> His discharge plans included 12-step meetings three times per week and random urinalysis and breathalyzer tests once a month. The report concludes "It is the patient's responsibility to see that all his contracts and obligations are understood and fulfilled by him."<sup>33</sup>

On May 22, 2000, less than two weeks after his discharge from Springbrook, Dr. Gano requested reinstatement of his license.<sup>34</sup> On August 3, 2000, the Board voted to deny his request, stating that they would not address his case again for a period of at least one year.<sup>35</sup> On October 26, 2000, Dr. Gano received an honorable discharge from the U.S. Army.<sup>36</sup>

### **C. August 2001 Memorandum of Agreement**

After he had been out of treatment for more than one year, Dr. Gano once again requested reinstatement of his Alaska medical license on July 12, 2001. The Board consented to his request and entered into a second Memorandum of Agreement<sup>37</sup> with him in August 2001, with the following provisions:

Dr. Gano admitted that he had been "diagnosed as suffering from alcohol dependence, recurrent major depression, history of marihuana and polysubstance abuse[,]” and that his “dependence on alcohol, his abuse of marihuana and polysubstance abuse, and his major depression, all present a potential danger to his patients, the public, and himself if he does not

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 4-6.

<sup>31</sup> *Id.* at 1.

<sup>32</sup> *Id.* at 6.

<sup>33</sup> *Id.* at 7.

<sup>34</sup> Exh. 9, not admitted.

<sup>35</sup> Exhs. 11 & 14, not admitted.

<sup>36</sup> Exh. 15, not admitted.

<sup>37</sup> Dr. Gano signed the MOA on August 17, 2001. The board adopted the agreement at its August 3rd meeting and signed the order on August 20, 2001. Exh. A.

receive ongoing care.”<sup>38</sup> Further, Dr. Gano acknowledged he violated the provisions of the 1998 memorandum of agreement by consuming alcohol, which resulted in the automatic suspension of his license.”<sup>39</sup>

As a condition of reinstatement, Dr. Gano was placed on probation for ten years. In order to address his substance abuse, he agreed to “participate in an on-going program of alcohol/drug rehabilitative therapy/counseling, with a psychiatrist,” meeting at least once a month.<sup>40</sup> He also agreed, if it was recommended by his psychiatrist, to participate in “any other psychiatric/psychological therapy, counseling, or treatment designed to assist in his rehabilitation.”<sup>41</sup> Other relevant conditions for licensure included an ongoing program of marital counseling, permanent abstinence from consuming alcohol or non-prescribed controlled drugs, attendance at AA or NA (Narcotics Anonymous) meetings at least three times a week and one group recovery meeting per week, random urinalysis, blood or hair tests, and submission of quarterly progress reports to the Board.<sup>42</sup> Further, Dr. Gano agreed to “practice medicine in a group setting which allows other licensed physicians, psychologists and/or health care providers to observe his professional actions on a regular basis.”<sup>43</sup> On September 7, 2001, Dr. Gano signed an agreement with Alaska Aviation Toxicology (AAT) regarding the parameters for random urinalysis testing.<sup>44</sup>

From 2001 through 2003, Dr. Gano developed and maintained an independent general psychiatry practice in Fairbanks, sharing a suite of four offices with other mental health providers. His only employee was an office manager. A social worker in the office suite agreed to be Dr. Gano’s monitor for the board under terms of the 2001 MOA.

Dr. Gano provided quarterly reports to the Board in October 2001 and December 2001. In the October report, he informed the Board that he was in the final stages of setting up a group practice, but he reported having problems meeting all of the requirements for marital counseling because he did not have medical insurance.<sup>45</sup> In December, Dr. Gano stated he had reinitiated

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<sup>38</sup> Exh. A at 1.

<sup>39</sup> *Id.* at 2.

<sup>40</sup> *Id.* at 4.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 5-7.

<sup>43</sup> *Id.* at 9.

<sup>44</sup> Exh. 20, not admitted.

<sup>45</sup> Exh. 21, not admitted.

marital counseling and he would be switching to a psychiatrist in Anchorage in order to continue to meet his requirement for ongoing therapy.<sup>46</sup>

On January 29, 2002, the Board's agent sent Dr. Gano a letter asserting he was in violation of the 2001 MOA because his therapist had, in fact, left the state at the end of November 2001, but it was not until January 2002 that he arranged for another provider.<sup>47</sup> The letter also claimed that even though Dr. Gano and his wife had recently completed three sessions with a marital counselor, it was not sufficient to constitute an ongoing program of marital counseling, as required by the MOA. The Board's agent informed Dr. Gano that he would have one more opportunity to come into compliance with the 2001 MOA and instructed him to attend the Board's April 2002 meeting.

In March 2002, Bonnie Brody, Dr. Gano's marital therapist, informed the Board that she did not believe marital counseling was a necessary requisite to him maintaining sobriety. Ms. Brody stated Dr. Gano and his wife had attended seven sessions in the preceding few months and had significantly improved their ability to communicate with each other.<sup>48</sup>

At its April 2002 meeting, the Board released Dr. Gano from the requirement to participate in an ongoing marital therapy program and approved Mike Schmoker, one of the practitioners in Dr. Gano's office suite, to be his new onsite monitor. Also, the Board reduced his random testing requirement to monthly urine screens and weekly breathalyzer tests.<sup>49</sup> Mr. Schmoker submitted quarterly reports on Dr. Gano's progress following his approval by the Board. The reports in June 2002, October 2002 and December 2002 were all positive and complimentary of Dr. Gano and his growing psychiatry practice.<sup>50</sup>

In early 2003, Dr. Gano's state of mind and personal affairs began to deteriorate. He wrote in his quarterly report that things were going well for him, but that he'd recently had a stressful visit with his parents, particularly his mother, while he was in California for the holidays.<sup>51</sup> Soon thereafter, Dr. Gano reported late for two random urinalysis and/or breathalyzer tests, which required that he appear to take the test within two hours of being

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<sup>46</sup> Exh. 23, not admitted.

<sup>47</sup> Exh. 24.

<sup>48</sup> Exh. 25, not admitted.

<sup>49</sup> Exh. 28, not admitted.

<sup>50</sup> Exh. 31 at 2-4, not admitted.

<sup>51</sup> Exh. 30, not admitted.

notified of the test.<sup>52</sup> He was five hours late on January 22<sup>nd</sup> and nine hours late for the test on January 30<sup>th</sup>.

Dr. Gano's work monitor, Mr. Schmoker, also noted changes in Dr. Gano's situation. On April 8, 2003, Mr. Schmoker's quarterly report<sup>53</sup> noted the doctor's practice had grown significantly, but that the demands of his practice had led him to sleep overnight in the office "a few times" during the previous three months. Mr. Schmoker also said there had been issues in the office suite regarding the appropriateness of Dr. Gano's work boundaries, specifically, related to his use of a colleague's office without permission. Mr. Schmoker expressed concern that these were "red flag" behaviors possibly indicating increased stress for Dr. Gano and a risk that he might relapse.

On April 9, 2003, AAT notified Dr. Gano to report for his random urinalysis and/or breathalyzer test, but he failed to appear for the test that day.<sup>54</sup> When the Board's agent called him for an explanation on April 10<sup>th</sup>, Dr. Gano said he forgot to report for the test.<sup>55</sup> The agent sent Dr. Gano a letter<sup>56</sup> warning him that failure to report for random testing was a violation of the 2001 MOA and that his failure to comply with the MOA "could conceivably cause the Board to exercise their right to remove you from practice." The letter also instructed Dr. Gano to appear in person at the Board's August 2003 meeting.

Dr. Gano submitted his quarterly report<sup>57</sup> on April 11<sup>th</sup>. He wrote that he was in a session with a client on April 9<sup>th</sup> when the telephone call to report for testing was made to his cell phone. Rather than asking his receptionist to remind him after the session that he had to report for testing, Dr. Gano merely put his phone away and continued the session. He did not get a second reminder call from AAT, so Dr. Gano forgot to report for the test. He acknowledged having a problem with memory and time management and requested that the Board consider amending his testing agreement to provide that the calls to report for testing be made to him in the early morning, which would allow him to appear for testing before his first patient appointment. Dr. Gano's quarterly report, which was fourteen single spaced pages, also

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<sup>52</sup> Exh. 79 at 2.

<sup>53</sup> Exh. 31, not admitted.

<sup>54</sup> Exh. 32, not admitted.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 2.

<sup>57</sup> Exh. 33, not admitted.



contained a lengthy discussion of the problems that had arisen in the office suite that Mr. Schmoker addressed in his quarterly report. Dr. Gano seemed surprised at the extent of the tensions in the office but took responsibility for using his colleague's office without permission.

On May 5, 2003, Mr. Schmoker informed Colin Matthews that he would be moving his office out of the suite with Dr. Gano and would no longer be able to serve as the doctor's office monitor.<sup>58</sup> Dr. Gano wrote on June 2<sup>nd</sup> that he was looking for a replacement for Mr. Schmoker and in the interim requested permission to meet with Guy Patterson, a licensed drug and alcohol counselor.<sup>59</sup>

On June 6, 2003, Dr. Gano exceeded his two-hour window to report for random alcohol testing.<sup>60</sup> AAT notified Mr. Matthews, who wrote to Dr. Gano a few days later.<sup>61</sup> Mr. Matthews told the doctor that he was not in compliance with the 2001 MOA due to this most recent late test and his failure to work in a group setting. After speaking with a Board member, Mr. Matthews approved substituting Guy Patterson as Dr. Gano's monitor and directed the doctor to appear in person at the Board's August 2003 meeting in Kodiak. In his July 2003 quarterly report,<sup>62</sup> Dr. Gano expressed frustration with an apparent change in the way he was being notified to appear for alcohol testing. Dr. Gano observed that in the past he would receive a call to report for testing early in the morning, so it was easy for him to go to AAT before he started seeing clients, but since he missed the test on April 9<sup>th</sup>, he was consistently being called much later in the morning and was having his appointment schedule and his patients disrupted. He reiterated his request to be called at around 8:00 a.m. or 1:00 p.m. so he would be able to appear for testing within an hour of being called, either before seeing clients or during his lunch break.

At its regular quarterly meeting in August 2003, the Board suspended Dr. Gano's medical license for one year after it determined that he had failed to comply with paragraph "H" of the 2001 MOA regarding random drug and alcohol monitoring, and with paragraph "P" allowing for automatic suspension of his license in the event of noncompliance.<sup>63</sup> On August 13<sup>th</sup>, Dr. Gano

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<sup>58</sup> Exh. 34, not admitted.

<sup>59</sup> Exh. 35, not admitted.

<sup>60</sup> Exh. 79 at 3.

<sup>61</sup> Exh. 36, not admitted.

<sup>62</sup> Exh. 37, not admitted.

<sup>63</sup> Exhs. 39 & 42, not admitted.

wrote a letter to his patients notifying them of his license suspension.<sup>64</sup> He continued to write quarterly reports to the Board and to see Dr. Feigin in Anchorage on a monthly basis.<sup>65</sup> Dr. Feigin's October 2003 quarterly report<sup>66</sup> indicates he did not believe Dr. Gano intentionally violated the 2001 MOA when he forgot to appear for the April 9<sup>th</sup> random test. Dr. Feigin stated it was his opinion that Dr. Gano was not abusing any substances and that the suspension was "an excessive response" to the circumstances. Dr. Feigin also said that it would not be unexpected for someone with attentional problems to forget to respond to a call made during a psychotherapy session, which demands "an intense focus on the ongoing interaction between patient and therapist."

On February 11, 2004, Dr. Gano wrote the Division of Occupational Licensing<sup>67</sup> to complain about the handling of his case by the Division's investigator, Colin Matthews, and about losing confidence in the ability of the Board and Mr. Matthews to be objective. Dr. Gano, in the self-described "diatribe," stated it was his opinion that the investigator was assisting the Fairbanks mental health community in getting rid of Dr. Gano, principally by modifying his random alcohol testing schedule so as to disrupt his appointments with patients. Dr. Gano demanded that those responsible for the "lynching" be identified and that he be given "an apology, an expeditious retirement, and a complete reversal of the Board's actions."<sup>68</sup>

On February 16, 2004, Dr. Gano informed Mr. Matthews<sup>69</sup> that he had refused, on the basis of "severe financial problems," to do the \$65 urine drug screen. He requested minutes from previous Board meetings and also inquired about his request to reduce the frequency of his visits with Dr. Feigin because he was out of money. Dr. Gano also complained about Mr. Matthews to Leslie Gallant, Executive Administrator of the Board, and requested copies of the minutes from past Board meetings.

On March 18, 2004, Dr. Gano wrote a 15-page letter<sup>70</sup> to the individual Board members expressing resentment of the process, which he described as "unjust," and how he had lost

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<sup>64</sup> Exh. 41, not admitted.

<sup>65</sup> Exh. 43, not admitted.

<sup>66</sup> Exh. 44, not admitted.

<sup>67</sup> Exh. 45 at 1-4.

<sup>68</sup> *Id.* at 4-5.

<sup>69</sup> Exh. 46, not admitted.

<sup>70</sup> Exh. 48, not admitted.

confidence in Mr. Matthews' ability to act with integrity in his case. Dr. Gano also asserted the new Board members were manipulated into voting in August 2003 to suspend his license "for a single missed biological sample" out of 117 random tests. Dr. Gano claimed the Board had acted in bad faith by ignoring the recommendation of his psychiatrist at Springbrook that Dr. Gano be allowed an unconditional return to work after treatment. Dr. Gano further suggested that using the missed biological sample in April 2003 as justification for a license suspension, with no evidence of patient endangerment, nor of relapse, "raises serious questions about the fairness, the professionalism, and competence of the Alaska State Medical Board." Dr. Gano claimed someone in Fairbanks had a financial motive for having the senior investigator – Colin Matthews – manipulate the Board so his very successful practice would be shut down. Dr. Gano requested reinstatement of his license based on the premise that the Board had violated its own statutes by treating his case differently than other cases before the body.

In August 2004, Dr. Gano stopped participating in board-ordered testing for alcohol or drugs. He notified the Board of his decision to stop participating and apparently has not been monitored by any tests since then.<sup>71</sup> At the hearing, Dr. Gano testified "I stopped doing the urine tests in order to be able to get a hearing."

#### **D. Patient Complaint**

In late 2003 or early 2004, the parents of a thirteen year-old female patient of Dr. Gano (referred to as patient X) filed a complaint against him with the Division of Occupational Licensing.<sup>72</sup> Their complaint alleged that during a medical follow-up session, Dr. Gano revealed to the thirteen year-old, who had no known sexual experience, details of Dr. Gano's pre-marital sexual relations with his wife, including the first time they had intercourse as teenagers. Dr. Gano also shared with the thirteen year-old the details of a sexual assault incident regarding another individual.

At its regularly scheduled meeting on April 2, 2004, the Board ordered Dr. Gano to undergo medical and psychiatric examinations under AS 08.64.338.<sup>73</sup> On behalf of the Board, a Division investigator contacted Seattle clinical psychologists Irwin Dreiblatt, Ph.D., and Charles

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<sup>71</sup> Exh. 52.

<sup>72</sup> Exh. E at 2 & 34.

<sup>73</sup> *Id.*

Maurer, Ph.D., to conduct examinations of Dr. Gano.<sup>74</sup> Dr. Maurer's focus was on substance abuse and mental health concerns and Dr. Dreiblatt's focus was on sexual issues and standards of practice. Over a period of 2-3 days in May 2004, they interviewed Dr. Gano and performed standardized diagnostic tests. They also interviewed Dr. Gano's wife and his treating psychiatrist, Dr. Ron Feigin. Dr. Dreiblatt and Dr. Maurer collaborated in addressing the Board's concerns and they prepared written reports dated June 14, 2004, responding to multiple questions posed to them by the Board.

Dr. Maurer interviewed Dr. Gano for eight hours. Dr. Maurer's diagnostic impressions included: alcohol dependence (in extended full remission); cannabis dependence (in extended full remission); attention-deficit/hyperactivity disorder, predominantly inattentive type; depressive disorder; anxiety disorder; obsessive/compulsive, narcissistic, paranoid and self-defeating personality traits; and, occupational, financial, marital and mental health stressors.<sup>75</sup>

Dr. Maurer stated that in his professional opinion, Dr. Gano does not currently suffer from a substance abuse disorder or addiction that would impair his ability to practice medicine.<sup>76</sup> Accordingly, Dr. Maurer did not make any recommendations for substance use treatment, although he said Dr. Gano should remain active in his ongoing recovery program.<sup>77</sup> In contrast, however, Dr. Maurer's opinion was that Dr. Gano "does suffer from a complex variety of mental disorders that impair his ability to practice medicine at this time."<sup>78</sup> Dr. Maurer explained:

Across time and multiple evaluation experiences, it is clear that initially, Dr. Gano's alcohol dependence and substance use issues demanded attention, intervention, and treatment. As his substance use disorder issues began to be resolved, it then became apparent that he has had a history of Attention Deficit Disorder issues. As that challenge has been assessed and treated, his underlying mental health issues have been revealed and now deserve treatment.

It is essential, however, that ongoing treatment for substance use and ADD issues continue and may need to be enhanced as Dr. Gano works on his underlying personality structure and mental health issues. Dr. Gano's behavior in relationship to the Alaska

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<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 21.

<sup>76</sup> *Id.* at 25.

<sup>77</sup> *Id.* at 26.

<sup>78</sup> *Id.* (emphasis added).

State Medical Board is revealing of his underlying issues. They also relate directly to his ability to practice medicine at this time.

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The initial impact on Dr. Gano's ability to practice medicine centers around his great difficulty at being aware of these underlying emotional and personality disturbances and how they might affect his practice. The second issue centers on Dr. Gano's impaired judgment that is a reflection of his personality characteristics that require intervention. Across the course of the evaluation process, Dr. Gano began to acknowledge the impact of these concerns on his ability to practice as a psychiatrist and seemed to accept the need for ongoing treatment and monitoring in a setting different than his practice in Fairbanks. Assuming that Dr. Gano continues to focus on and resolve the complex and interactive factors that led to this evaluation, it is reasonable to expect that he could eventually return to some form of practice of psychiatry.<sup>[79]</sup>

Dr. Maurer recommended that Dr. Gano not return to his practice "until he has stabilized and has demonstrated a positive response to treatment."<sup>80</sup> Finally, Dr. Maurer joined with Dr. Dreiblatt in recommending seven specific conditions, discussed below, that they both agreed should be essential elements of further treatment for Dr. Gano.<sup>81</sup>

While Dr. Maurer's assessment focused on Dr. Gano's substance use and mental health concerns, Dr. Driblet's primary focus was on sexual issues and standards of practice. He noted that during the evaluation Dr. Gano's verbal style was very verbose, rambling and often tangential; he often engaged in very paranoid and grandiose thinking."<sup>82</sup>

Dr. Dreiblatt and Dr. Gano discussed the latter's treatment at Springbrook Northwest in Oregon, where Dr. Gano was questioned during his initial assessment about sexual compulsivity. Dr. Gano admitted he used Internet pornography while masturbating, particularly when he was drinking, but he said he tried to control his behavior.<sup>83</sup> Dr. Gano denied looking at sexual pictures of children or animals and insisted he only looks at pictures of women. He admitted he

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<sup>79</sup> *Id.* at 26-27.

<sup>80</sup> *Id.* at 28.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 35.

<sup>83</sup> *Id.* at 41.

looked at a pornography website and masturbated in the early morning hours a few weeks before his evaluation with Drs. Maurer and Dreiblatt.<sup>84</sup>

Dr. Gano was asked about sexual feelings towards patients. He responded that when he was drinking, young adolescent patients triggered sexual thoughts that occasionally intruded when he masturbated. Dr. Dreiblatt did not perceive that Dr. Gano had been sexually inappropriate with any patient while engaged in his medical practice.<sup>85</sup>

When Dr. Dreiblatt discussed patient X, Dr. Gano became defensive and challenging. Dr. Dreiblatt observed that Dr. Gano seemed to have "no appreciation for the bizarreness and inappropriateness of his statements to the girl."<sup>86</sup> When Dr. Gano could not persuade Dr. Dreiblatt of the appropriateness of his self-disclosures to her regarding his early sexual history, he became more grandiose about his work and increasingly argumentative and insisted that no harm was done to the girl as a result of his self-disclosure. When Dr. Dreiblatt questioned the basis for the statement, Dr. Gano asserted "you can't prove it did."<sup>87</sup>

Dr. Dreiblatt indicated the psychological testing of Dr. Gano does not suggest any psychotic like disturbance, but rather "long standing personality problems resulting in chronic personal distress, personality dysfunction and problematic coping behavior."<sup>88</sup> Dr. Dreiblatt added that Dr. Gano likely does not suffer from an Axis I sexual disorder, so no specialized treatment for his sexual problems would be necessary, nor would it be appropriate to place special conditions on Dr. Gano regarding adult female patients.<sup>89</sup> Dr. Dreiblatt indicated Dr. Gano's boundary problems are more a function of his ADHD and personality deficits than sexually focused.<sup>90</sup>

When asked whether Dr. Gano is able to practice medicine in a manner consistent with public safety, Dr. Dreiblatt responded that Dr. Gano should not "practice medicine until a significant period of time has passed which would enable him to demonstrate that he is in

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<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 42.

<sup>86</sup> *Id.* at 39.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at 46.

<sup>89</sup> *Id.* at 56.

<sup>90</sup> *Id.* at 55.

sufficient control of his life and his judgment significantly improved to practice medicine."<sup>91</sup> Dr. Dreiblatt stated the following seven conditions need to occur prior to Dr. Gano being considered even for limited practice:

1. He cease the inclination to project blame for his problems and commit to working on the remedies to his extensive personal problems. This would be demonstrated in part by his terminating the endless bickering and writing of angry and critical letters to the board.
2. He write the board taking full and direct responsibility for his inappropriate conduct with [patient X] and directly address the reasons such a self-disclosure is inappropriate.
3. He continue with his recovery program and comply fully and readily with substance monitoring.
4. He do whatever is necessary to enter into long-term, intensive psychotherapy with a provider able and willing to address his mental health, personality, practice and sexual issues. This will require face-to-face appointments no less than once a week over a lengthy term. The duration of treatment would by necessity require a duration of at least two years. Accomplishing this could well mean Dr. Gano leaving his home area for an appropriate treatment resource, whether it be an individual provider or a residential program. Furthermore, it should be expected that Dr. Gano obtain any specialized sexual treatment or marital counseling recommended by his therapist.
5. He agree to take measures to stop the use of the Internet for sexual purposes and agree to report any violations of this agreement.
6. He find a psychiatric mentor, other than his therapist, to begin a systematic review of the areas of psychiatry where he has had problems, e.g., self-disclosure, boundaries, structure, interaction with colleagues. He take CME courses consistent with this need for self-improvement.
7. Each component of the program as well as his therapist and mentor should require approval by the board.<sup>92</sup>

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<sup>91</sup> *Id.* at 56.

<sup>92</sup> *Id.*

Dr. Dreiblatt recommended that at a minimum Dr. Gano should demonstrate a six-month period of full compliance with all of the above measures prior to any discussion or reconsideration of his practice status. Dr. Dreiblatt further recommended that if Dr. Gano were allowed to practice, it should be in a supervised, institutional setting for at least five years and that he provide no services to juveniles for at least two of those years.<sup>93</sup>

Dr. Gano once again requested reinstatement of his license. The board considered the request at its January 20-21, 2005, board meeting, and Dr. Gano participated telephonically. The board offered Dr. Gano the opportunity to enter another memorandum of agreement that would allow him to resume practicing medicine subject to certain conditions including that he continually be monitored for alcohol and drugs and that his practice be limited to adult males only. After the meeting, Dr. Gano declined to sign the MOA because the practice limitation would make it difficult for him to obtain employment. In April 2005, the board met and considered his rejection of the MOA. The Board then unanimously rejected the request for reinstatement, implicitly indicating that because of the ongoing suspension, Dr. Gano was unable to practice with skill and safety. Dr. Gano requested a hearing and the matter was referred to the Office of Administrative Hearings.

### **III. Discussion**

#### **A. Introduction**

The Alaska State Medical Board has broad authority to oversee the practice of medicine in this state, including the authority to discipline members of the medical profession. Pursuant to AS 08.01.075(a), the Board may, among other things, permanently revoke a physician's license or suspend it for a specific period of time, impose limitations or conditions on a licensee's professional practice, require a licensee to submit to peer review, and impose a probationary status in which a licensee must report regularly to the board on matters related to the grounds for probation. As a natural extension of the Board's authority in this context, it may withdraw probationary status if the deficiencies that led to the sanction are remedied.<sup>94</sup> Similarly, the

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<sup>93</sup> *Id.* at 57.

<sup>94</sup> AS 08.01.075(b).



Board may reinstate a suspended or revoked license if, after a hearing, the Board finds that the applicant is “able to practice with reasonable skill and safety.”<sup>95</sup> It is the licensee’s burden to prove by a preponderance of the evidence that he can “practice with reasonable skill and safety.”<sup>96</sup>

The Division did not call any witnesses at the hearing, but rather relies on the exhibits it filed prior to the hearing. The Division depends almost exclusively on Exhibit E, the combined reports of Drs. Maurer and Dreiblatt, to support its claim that Dr. Gano has not met his burden of proving that he can practice medicine with reasonable skill and safety.

At the administrative hearing, Dr. Gano stated he would be willing to sign the MOA proposed by the Board in 2005 if the Board would make one simple change in the document which would allow him to treat adult female patients. He contends this would enable him to work in a structured setting such as the VA Hospital, and, if he were thus allowed to work, he would be able to afford regular, ongoing therapy and in so doing would facilitate further improvement in his condition. Dr. Gano argues that the Board's own expert, Dr. Dreiblatt, determined from his and Dr. Maurer's examination that Dr. Gano does not require that special conditions be placed on his ability to treat adult female patients. As a result, Dr. Gano contends the Board should approve the 2005 MOA with the modification that he proposes.

**B. Dr. Gano Cannot Practice Medicine with Reasonable Skill and Safety**

**1. Dr. Gano has a history of violating conditions placed on his license**

Dr. Gano has never had an unrestricted license to practice medicine in the state of Alaska. His initial license was granted by the Board only after he had entered into an MOA that addressed his history of alcohol and substance abuse and contained monitoring provisions designed to ensure that he would remain sober and thus not endanger the public. Because Dr. Gano relapsed and violated the 1998 MOA, he went to treatment at Springbrook Northwest and subsequently agreed in the 2001 MOA to more stringent monitoring, including a 10-year period of probation.

Dr. Gano claims that he has not taken a drink since 1999 and there is no evidence in the record to suggest otherwise. Even though it appears he is not actively drinking, Dr. Gano

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<sup>95</sup> AS 08.01.075(d); AS 08.64.331(d).

<sup>96</sup> AS 08.01.075(d); *see also* AS 44.62.460(e)(1).

violated the terms of the 2001 MOA in ways not specifically related to the consumption of alcohol. For example, in late 2001, Dr. Gano reduced the frequency of marital counseling sessions and in addition, waited nearly two months to replace his psychiatrist, who had moved out of state in mid-November 2001.<sup>97</sup> Furthermore, in January 2003, Dr. Gano reported several hours late for two random urinalysis or breathalyzer tests within ten days of each other.<sup>98</sup> Less than three months later, Dr. Gano failed to appear at all for another test, claiming the next day that he simply forgot to report to AAT after receiving the call to be tested while he was in a session with a patient.<sup>99</sup> Even more significantly, Dr. Gano currently is not being monitored for compliance with any MOA, and voluntarily has not been since August 2004.<sup>100</sup> This pattern of violating the agreements he enters into with the Board suggests Dr. Gano has an underlying disregard for regulatory authority and that this disregard for authority has not been ameliorated. Dr. Gano has been given many chances to comply with each MOA, but he has not satisfied the requirements for compliance contained in either MOA.

**2. Dr. Gano suffers from mental disorders that impair his ability to practice medicine at this time**

Dr. Gano focuses his arguments primarily on the single limited issue of whether he should be allowed to treat adult female patients. However, since he entered into the first MOA with the Board in 1998, the scope of his personal situation has broadened significantly and negatively. Based on the events that have transpired since 1998, the Board is now concerned not only with his history of alcohol and substance abuse, but is now deeply concerned with Dr. Gano's underlying personality disorders and their overall affect on his ability to practice psychiatry with reasonable skill and safety.

The joint report prepared by Drs. Maurer and Dreiblatt after Dr. Gano's patient complaint was filed is especially trustworthy. Dr. Gano spent many hours with each doctor individually and in addition completed several diagnostic tests. The report of Drs. Maurer and Dreiblatt

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<sup>97</sup> See *fn.* 48.

<sup>98</sup> Recording of hearing, testimony of Dr. Gano. See also *fn.* 53.

<sup>99</sup> *Id.*

<sup>100</sup> See *fn.* 72.

concluded that Dr. Gano suffers from “a complex variety of mental disorders that impair his ability to practice medicine at this time.”<sup>101</sup> Dr. Maurer explained:

Across time and multiple evaluation experiences, it is clear that initially, Dr. Gano's alcohol dependence and substance use issues demanded attention, intervention, and treatment. As his substance use disorder issues began to be resolved, it then became apparent that he has had a history of Attention Deficit Disorder issues. As that challenge has been assessed and treated, his underlying mental health issues have been revealed and now deserve treatment.<sup>[102]</sup>

In essence, now that Dr. Gano’s active alcoholism is more or less resolved, at least in terms of whether he is actively drinking, his personality problems have surfaced and must be dealt with in kind. That his mental health issues have become more prominent is evidenced, for example, by the increased difficulty Dr. Gano has had handling stress, establishing boundaries and maintaining appropriate boundaries, e.g. the tensions he experienced both in his office suite and as a result of self-disclosing his early sexual experiences to thirteen year-old Patient X. Another example includes Dr. Gano pushing the limits of his monitoring on more than one occasion. In particular, when he violated the terms of the 2001 MOA, Dr. Gano became angry with and blamed both the Board and its senior investigator, Colin Matthews, for the doctor’s circumstances. Dr. Gano vigorously asserted in written exhibits and during testimony that Mr. Matthews had manipulated the Board into voting to suspend his license and that the Board had mistreated him by limiting his practice to adult males, thereby rendering him unemployable.

Dr. Gano pointed out that Dr. Feigin’s opinion in 2003, after the Board suspended Dr. Gano’s license, was that the Board was being hard on Dr. Gano and that he should be allowed to practice at the VA without a restriction on having female patients. It should be noted, however, that Dr. Feigin may have been unaware in later years that Dr. Gano had ceased participating in any aspect of the Board’s monitoring program as set forth in the 2001 MOA.<sup>103</sup> Dr. Gano’s testimony indicates he was meeting with Dr. Feigin on a reduced basis at the end of 2005, and Dr. Feigin simply may not have known that Dr. Gano had stopped participating in the monitoring program set out in the 2001 MOA.

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<sup>101</sup> See *fn.* 78.

<sup>102</sup> *Id.*

<sup>103</sup> See *fn.* 66.

Dr. Dreiblatt's examination of Dr. Gano indicated that he does have some problems with sexual compulsivity issues, but not an Axis I sexual disorder. Accordingly, Dr. Dreiblatt did not recommend any specialized treatment for Dr. Gano's sexual problems.<sup>104</sup> Nonetheless, both psychologists clearly were proposing that Dr. Gano not return to the practice of medicine at this time, and not until he has had a minimum of two years of intensive therapy to deal with his mental health issues. After his evaluation in Seattle in 2004, Drs. Maurer and Dreiblatt had seven recommendations for Dr. Gano, as outlined above, that center around him taking personal responsibility for his actions and further recovery. Other than possibly remaining sober, there is little, if any, evidence in the record that Dr. Gano has complied with any of these recommendations.

### **C. Denying Reinstatement is Consistent with the Board's Prior Actions**

The Board is required to seek consistency in the application of disciplinary sanctions.<sup>105</sup> If the Board departs significantly from prior decisions involving similar facts, the Board must explain its action in the order imposing the sanction.<sup>106</sup> The administrative law judge takes official notice of prior relevant Board actions as compiled by Board staff.<sup>107</sup> Review of those actions indicates that the Board has on many occasions since 1997 had various dealings with licensees suffering from alcohol and/or drug addiction. In general, since 2000, the Board has entered into Memoranda of Agreement in order to monitor and supervise the activities of five licensees, released five other licensees from agreements that have been satisfied, and ordered six licensees to obtain physical and/or psychological evaluations. More specific to Dr. Gano's situation, the Board has denied reinstatement to three licensees deemed to have violated one or more provisions of an MOA.<sup>108</sup>

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<sup>104</sup> Dr. Feigin also believed Dr. Gano was safe with patients of both sexes in a structured setting such as a VA hospital. *See* Exh. 68 at 15.

<sup>105</sup> AS 08.01.075(f).

<sup>106</sup> *Id.*

<sup>107</sup> The board's prior actions are summarized at [www.dced.state.ak.us/occ/pmed.htm](http://www.dced.state.ak.us/occ/pmed.htm). *See* 2 AAC 64.300(a); Evidence Rule 803(8). Either party may, in a request for proposed action, seek the opportunity to present evidence to refute the information set forth in the summary.

**IV. Conclusion**

While the record reflects that Dr. Gano has made a sincere and productive effort to recover from alcoholism, he has not met his burden of proving by a preponderance of the evidence that he can practice medicine “with reasonable skill and safety,” as required by AS 08.01.075(d) and AS 44.62.460(e)(1). Accordingly, Dr. Gano is not entitled to reinstatement of his medical license.

DATED this 5<sup>th</sup> day of January, 2007.

By: Signed  
Kay L. Howard  
Administrative Law Judge

**Adoption**

On behalf of the Alaska State Medical Board, the undersigned adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 25<sup>th</sup> day of January, 2007.

By: Signed  
Signature  
David Head  
Name  
Chair Alaska State Medical Board  
Title

[This document has been modified to conform to the technical standards for publication.]

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<sup>108</sup> In Re Gray, (1998); In Re Jarrell, (1998); In Re Winczura, (1/7/2002 and 8/1/2002); and In Re Bullock, (2004) (allegations of sexual misconduct).