



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
Olympia, Washington 98504

RE: Gaston Cornu-Labat, M.D.  
Master Case No. M2010-84  
Document: Final Order

Regarding your request for information about the above-named practitioner, certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld: **NONE**

If you have any questions or need additional information regarding the information that was withheld, please contact:

Customer Service Center  
P.O. Box 47865  
Olympia, WA 98504-7865  
Phone: (360) 236-4700  
Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to the Privacy Officer, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

**STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
MEDICAL QUALITY ASSURANCE COMMISSION**

In the Matter of:

GASTON CORNU-LABAT, M.D.,  
Credential No. MD00040392,

Respondent.

Master Case No. M2010-84

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND FINAL ORDER

**APPEARANCES:**

Gaston Cornu-Labat, M.D., Respondent, pro se

Department of Health Medical Program (Department), by  
Office of the Attorney General, per  
Kim O'Neal, Assistant Attorney General

**COMMISSION PANEL:** Leslie M. Burger, M.D., Panel Chair  
Richard Brantner, M.D.  
Michael T. Concannon, Public Member  
Bruce Cullen, M.D.

**PRESIDING OFFICER:** John F. Kuntz, Review Judge

A hearing was held in this matter on April 1, 2011, regarding allegations of unprofessional conduct. The Respondent's credential to practice medicine in the state of Washington is suspended until the Respondent complies with the Medical Quality Assurance Commission's (Commission) Findings of Fact, Conclusions of Law and Order for Mental Examination, dated September 24, 2010 (2010 Order).

**ISSUES**

Did the Respondent commit unprofessional conduct as defined in RCW 18.130.180(9)?

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If the Department proves unprofessional conduct, what are the appropriate sanctions under RCW 18.130.160?

### **SUMMARY OF PROCEEDING**

At the hearing, the Department presented the testimony of: Wayne Carlson, Department Health Care Investigator; and Gaston Cornu-Labat, M.D. (the Respondent). The Respondent also testified on his own behalf.<sup>1</sup>

The Department offered for admission 29 exhibits at the prehearing conference. See Prehearing Order No. 2. Given the limited issue at hearing (whether the Respondent committed unprofessional conduct under RCW 18.13.180(9) for failing to comply with the Commission's order), the Presiding Officer denied the admission of the Department's exhibits as not material to the scope of the hearing. See Prehearing Order No. 2. The only exception was the Program's request to admit the Commission's 2010 Order. Prehearing Order No. 2; see *also* RCW 34.050.452(1).

The Respondent offered for admission 53 exhibits at the prehearing conference. The Respondent's exhibits included: Attachment A; Attachment B (with Exhibits R-24 through R-60; and Attachment C (with Exhibits R-61 through R-73). The Presiding Officer denied the admission of the Respondent's 53 exhibits on the grounds that the exhibits were not material to the underlying issue at hearing (whether the Respondent complied with the Commission's 2010 Order). See Prehearing Order Nos. 2 and 3; see *also* RCW 34.05.452(1).

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<sup>1</sup> The Respondent called Robert Fink, M.D., as a witness, but Dr. Fink was not permitted to testify based on the Presiding Officer's earlier ruling regarding the scope of the hearing. See Prehearing Order No. 2.

The Presiding Officer admitted the follow exhibits at the hearing:

Exhibit D-1: Notice of Intent to Order Investigative Mental Examinations, dated July 22, 2010.<sup>2</sup>

Exhibit D-2: Findings of Fact, Conclusions of Law, and Order for Investigative Mental Examination, dated September 24, 2010.<sup>3</sup>

At the hearing the Respondent requested an opportunity to film the proceeding.<sup>4</sup>

The Department did not object so long as the filming could be done without distraction or disruption. The Presiding Officer ruled that the Respondent could create additional recordings of the proceedings, so long as the Respondent could ensure no disruption or distraction; recognized that the additional recordings were not the official record; and that the Department be provided with copies of the additional recordings upon request. RCW 34.05.449(4).

## I. FINDINGS OF FACT

1.1 The Respondent was granted a license to practice as a physician and surgeon in the state of Washington on August 30, 2001.

1.2 On or about October 9, 2009, the Respondent self-reported to the Commission that he had been placed on medical leave by his employer, Quincy Valley Medical Center (Quincy Medical).

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<sup>2</sup> The Notice of Intent to Order Investigative Mental Examination was not previously offered as an exhibit, but is a part of the Adjudicative Service Unit record in this matter.

<sup>3</sup> Previously identified as Exhibit D-26, the 2010 Order is renumbered to Exhibit D-2 to avoid confusion with the hearing record.

<sup>4</sup> In fact, there were three members of the audience filming the proceeding.

1.3 On July 22, 2010, the Commission issued a Notice of Intent to Order Investigative Mental Examination (Notice of Intent) under RCW 18.130.170(2). The Commission's action was based on: (1) the Respondent's October 2009 self-report to the Commission; (2) reports from employees at Quincy Medical (the Respondent's employer) regarding the Respondent's appearance and behavior during the period July 2009 through January 2010; and (3) 23 exhibits relating to the Respondent's reported behavior at Quincy Medical.

1.4 On August 23, 2010, the Respondent submitted his Response to the Notice of Intent. The Respondent denied doing anything wrong or inappropriate and argued that he should not be required to undergo any examination. In support of his position, the Respondent submitted 37 exhibits regarding the incidents he self-reported to the Commission.

1.5 Following the Respondent's failure to comply with the Notice of Intent, and after reviewing the exhibits submitted by the Respondent, the Commission entered a Findings of Fact, Conclusions of Law and Order for Investigative Mental Examination on September 24, 2010 (2010 Order). The 2010 Order required the Respondent to attend an examination with a Commission-approved provider and included a protocol for use by the provider in conducting the examination.

1.6 On October 6, 2010, the Respondent filed a written response to inform the Commission that he would refuse to comply with the Commission's 2010 Order.

1.7 On October 26, 2010, the Commission issued a Statement of Charges, alleging that the Respondent committed unprofessional conduct in violation of RCW 18.130.180(9) (failure to comply with an order issued by the disciplining authority).

1.8 On November 17, 2010, the Respondent filed a letter with the Commission, which was treated as the Respondent's answer to statement of charges. On November 30, 2010, the Respondent filed an additional letter to request an opportunity for a hearing.

1.9 The Respondent admitted that he received the Commission's 2010 Order and that he did not comply with the order. More specifically, the Respondent did not attend an examination with a Commission-approved provider. The Respondent refused to do so as a matter of principle. The Respondent previously obtained mental examinations, and the results of those examinations showed that he was not a risk to the public. The Respondent also had a conflict of interest with his former employer, Quincy Medical. The conflict of interest arose from a dispute over the validity of a fire inspection at the Quincy Medical facility, while the Respondent was acting as an administrator. The facility argued that it has complied with the fire inspection requirements, while the Respondent argued the facility had not complied.

## **II. CONCLUSIONS OF LAW**

2.1 The Commission has jurisdiction over the Respondent and subject of this proceeding. RCW 18.130.040 RCW.

2.2 The standard of proof in a professional disciplinary hearing is clear and convincing evidence. *Ongom v. Dept. of Health*, 159 Wn.2d 132 (2006), cert. denied 127 S. Ct. 2115 (2007).

2.3 The Commission used its experience, competency, and specialized knowledge to evaluate the evidence. RCW 34.05.461(5).

2.4 The Department proved with clear and convincing evidence that the Respondent committed unprofessional conduct as defined in RCW 18.130.180(9), which states:

- (9) Failure to comply with an order issued by the disciplining authority or a stipulation for informal disposition entered into with the disciplining authority;

2.5 The Commission concludes that the Respondent failed to submit to a properly ordered mental or physical examination and may order appropriate action for the Respondent's violation of RCW 18.130.180(9). See RCW 18.130.170(2)(d). The action ordered by the Commission shall not be more severe than a suspension of the Respondent's credential to practice medicine, until such time as the Respondent complies with the properly ordered examination. See RCW 18.130.170(2)(d).

2.6 Given the above statutory requirement, the discipline ordered by the Commission cannot be more severe than a suspension pending his compliance with the Commission's 2010 Order.

2.7 The Respondent argues that the intent of RCW 18.130.170 is to determine whether a physician is capable of practicing with reasonable skill and safety so that the public is protected. The Commission agrees that the public should be protected, and it

takes this responsibility seriously. The Commission's ability to protect the public rests on its ability to order an examination if the Commission decides one is required. So the decision whether an examination is required rests with the Commission and not with the individual physician who would be the subject of the examination.

2.8 Here, the Commission did follow the RCW 18.130.170 requirements and did decide the Respondent should submit to an examination. By obtaining a license to practice in the state of Washington, the Respondent is deemed to consent to an examination when directed by the Commission. See RCW 18.130.170(3). The Respondent's failure to comply with the 2010 Order results in unprofessional conduct under RCW 18.130.180(9).

### **III. ORDER**

3.1 The Respondent's license to practice as a physician and surgeon in the state of Washington is **SUSPENDED**, pending his completion of the examination required under the 2010 Order, dated September 24, 2010.

3.2 Upon the Respondent's completion of the examination required under the 2010 Order, if the examination result shows that the Respondent is unable to practice with reasonable skill and safety, the Commission shall issue a Statement of Charges pursuant to RCW 18.130.170(1).

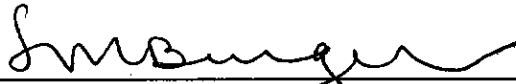
3.3 Upon the Respondent's completion of the examination required under the 2010 Order, if the examination results show that the Respondent is able to practice with reasonable skill and safety, the Respondent shall reappear before the Commission for

further action. The Commission will schedule the Respondent's appearance as soon as is practical for action regarding the Respondent's credential.

3.4 The Respondent shall inform the Program Manager and the Adjudicative Service Unit, in writing, of changes in his residential and/or business address within 30 days of such change.

Dated this 29<sup>th</sup> day of April, 2011.

*Medical Quality Assurance Commission*



LESLIE M. BURGER, M.D.  
Panel Chair

**CLERK'S SUMMARY**

| <u>Charge</u>     | <u>Action</u> |
|-------------------|---------------|
| RCW 18.130.180(9) | Violated      |

**NOTICE TO PARTIES**

This order is subject to the reporting requirements of RCW 18.130.110, Section 1128E of the Social Security Act, and any other applicable interstate or national reporting requirements. If discipline is taken, it must be reported to the Healthcare Integrity Protection Data Bank.

Either party may file a **petition for reconsideration**. RCW 34.05.461(3); 34.05.470. The petition must be filed within 10 days of service of this order with:

Adjudicative Service Unit  
P.O. Box 47879  
Olympia, WA 98504-7879

and a copy must be sent to:

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Department of Health Medical Program  
P.O. Box 47866  
Olympia, WA 98504-7866

The petition must state the specific grounds for reconsideration and what relief is requested. WAC 246-11-580. The petition is denied if the Commission does not respond in writing within 20 days of the filing of the petition.

A **petition for judicial review** must be filed and served within 30 days after service of this order. RCW 34.05.542. The procedures are identified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, the above 30-day period does not start until the petition is resolved. RCW 34.05.470(3).

The order is in effect while a petition for reconsideration or review is filed. "Filing" means actual receipt of the document by the Adjudicative Service Unit. RCW 34.05.010(6). This order is "served" the day it is deposited in the United States mail. RCW 34.05.010(19).

For more information, visit our website at <http://www.doh.wa.gov/hearings>.