

IN THE MATTER OF	*	BEFORE THE
PHILIP MUSSENDEN, JR., M.D.	*	MARYLAND STATE
Respondent	*	BOARD OF PHYSICIANS
License Number: D81280	*	Case Number: 2223-0083A

CONSENT ORDER

On September 19, 2023, Disciplinary Panel A (“Panel A”) of the Maryland State Board of Physicians (the “Board”) charged Philip Mussenden, JR., M.D. (the “Respondent”), License Number D81280, under the Maryland Medical Practice Act (the “Act”), Md. Code Ann., Health Occ. §§ 14-101 *et seq.* (2021 Repl. Vol. and 2022 Supp.).

Panel A charged the Respondent with violating the following provisions of the Act:

§ 14-404. Denials, reprimands, probations, suspensions, and revocations – Grounds.

(a) *In general.* – Subject to the hearing provisions of § 14-405 of this subtitle, a disciplinary panel, on the affirmative vote of a majority of the quorum of the disciplinary panel, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

...

- (3) Is guilty of:
 - (ii) Unprofessional conduct in the practice of medicine[.]

§ 1-212. Sexual misconduct prohibited; regulations; discipline.

(a) *Adoption of regulations.* – Each health occupations board authorized to issue a license or certificate under this article shall adopt regulations that:

- (1) Prohibit sexual misconduct; and
- (2) Provide for the discipline of a licensee or certificate holder found to be guilty of sexual misconduct.

- (b) *Sexual misconduct.* – For the purposes of the regulations adopted in accordance with subsection (a) of this section, “sexual misconduct” shall be construed to include, at a minimum, behavior where a health care provider:
- (1) Has engaged in sexual behavior with a client or patient in the context of a professional evaluation, treatment, procedure, or other service to the client or patient, regardless of the setting in which professional service is provided....
 - (3) Has engaged in any sexual behavior that would be considered unethical or unprofessional according to the code of ethics, professional standards of conduct, or regulations of the appropriate health occupations board under this article.

The pertinent provisions of the Board’s sexual misconduct regulations, COMAR 10.32.17, apply to the Respondent’s conduct and provide:

10.32.17 Sexual Misconduct.

.01 Scope.

This chapter prohibits sexual misconduct by health care practitioners.

.02 Definitions.

B. Terms Defined.

- (1) “Health care practitioner” means an individual licensed under Health Occupations Article, Titles 14 and 15, Annotated Code of Maryland.

.03 Sexual Misconduct.

- A. Health care practitioners may not engage in sexual misconduct.
- B. Health Occupations Article, §§ 14-404(a)(3), 14-5A-17(a)(3), 14-5B-14(a)(3), 14-5C-17(a)(3), 14-5D-14(a)(3), 14-5E-16(a)(3), 14-5F-18(a)(19), and 15-314(a)(3), Annotated Code of Maryland, includes, but is not limited to, sexual misconduct.
- C. Sexual misconduct includes, but is not limited to:
...

- (5) Using the health care practitioner-patient relationship to initiate or solicit a dating, romantic, or sexual relationship[.]

On January 10, 2024, Panel A was convened as a Disciplinary Committee for Case Resolution (“DCCR”) in this matter. Based on negotiations occurring as a result of this DCCR, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

Panel A finds:

INTRODUCTION

1. The Respondent violated the Maryland Medical Practice Act when he made inappropriate comments about a patient’s physical appearance and later sent unsolicited text messages to the Patient on her personal cell phone.

BACKGROUND & LICENSING INFORMATION

2. At all relevant times, the Respondent was and is licensed to practice medicine in the State of Maryland. The Respondent initially was licensed to practice medicine in the State of Maryland on March 23, 2016, under License Number D81280. His license expires on or about September 30, 2025.

3. The Respondent practices internal medicine at a health care facility (“Health Care Facility”)¹ in Anne Arundel County, Maryland. He is not board certified in any medical specialty.

¹ For confidentiality and privacy purposes, the names of individuals and health care facilities involved in this case are not disclosed in this Consent Order.

COMPLAINT

4. On or about March 2, 2023, the Board received a complaint from an adult female patient (the "Patient") who was treated on one occasion by the Respondent in January 2023 at the Health Care Facility. The Patient reported that when the Respondent entered the examination room, he seemed "flustered, would not make eye contact, and appeared nervous. He apologized, then stated that he was feeling flustered because I had 'very pretty eyes.'" The Patient reported that during the "entire visit, [the Respondent] repeatedly apologized for hoping he did not make me uncomfortable with his earlier statement about my eyes." At one point during the visit, the Respondent left the examination room so the Patient could change into a gown in order for the Respondent to exam a presenting symptom located in her buttocks area. Given the earlier comment about her eyes, the Patient reported being "extremely uncomfortable" during the Respondent's subsequent examination of a presenting symptom located in her buttocks area.

5. The Patient reported that approximately 30 minutes after leaving the Health Care Facility, she received "a thread of texts from an unknown number. In the messages, the person identifies themselves as Phil, the doctor who had seen and treated me at [the Health Care Facility]...In the texts, not only is he acknowledging that he is breaking the rules, but he states that I am very attractive (including my eyes). It was very disturbing and unsettling...I did not consent to receive private communication from anyone at [the Health Care Facility], including any doctor with clear and inappropriate intentions." The Patient also attached a screen shot of the Respondent's text messages to her.

BOARD INVESTIGATION

6. The Board initiated an investigation into the Respondent upon receiving the Patient's complaint. As part of its investigation, Board staff conducted under-oath interviews of the Patient and the Respondent, and reviewed medical and prescribing records of the Patient.

7. In her interview with Board staff, the Patient confirmed that the Respondent told her in the examination room that she has "really pretty eyes." The Patient stated that throughout the visit, the Respondent "continued to kind of bring up, like, I hope I didn't make you uncomfortable earlier about the comment about your eyes."

8. The Patient confirmed that at one point during the visit, the Respondent left the examination room so the Patient could change into a gown so the Respondent could exam a presenting symptom located in her buttocks area. The Patient stated during the ensuing examination by the Respondent she "wasn't super comfortable because he kept bringing up the comment about having pretty eyes. So I kind of just wanted to get out of the room."

9. After the Patient changed back into her clothes, the Respondent re-entered the examination room and offered treatments for the Patient's presenting medical conditions. The Patient reported that the Respondent "came back in, apologized again for hoping to not make me feel uncomfortable. He made the comment that I, like, was one of his favorite patients."

10. Approximately 30 minutes after leaving the Health Care Facility, the Patient received six text messages from the Respondent. The Patient kept a screen shot of the text messages on her cell phone. The text messages stated:

- “Hey I never do this. It’s Phil I just saw you”
- “Tell me never to text you again lol”
- “I’m breaking rules. This is the doc who saw you”
- “I’m sorry. You’re very attractive I hope you know”
- “Eyes included”
- “I’m deleting your number now”

11. The Patient did not respond to any of the text messages. The Patient contemporaneously reported these unsolicited text messages to a friend.

THE RESPONDENT’S INTERVIEW

12. In his interview with Board staff, the Respondent admitted that he made a verbal comment about the Patient’s eyes and that it “was a lapse of judgement on my part.”

13. The Respondent admitted that he sent the six text messages, *supra*, to the Patient approximately 30 minutes after she left the Health Care Facility. The Respondent obtained the Patient’s cell phone number from her medical record at the Health Care Facility. The Respondent stated he sent the Patient the text messages because “I thought she was nice, and I made a lapse in judgment that she was – she seemed nice to me. I don’t know. That was not to say that that was a good reason to do it, because there is no good reason to do it, but that was why.” The Respondent also admitted he “should not have” sent the text messages to the Patient, that doing so was inappropriate, and he “very much” regrets sending the text messages.

14. The Respondent admitted that he was “aware that talking to a patient in this manner is not something that is condoned[.]” The Respondent admitted that it would be

“alarming” for the Patient to receive these text messages from him and a “very unnerving thing to receive.”

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Panel A concludes as a matter of law that the Respondent is guilty of unprofessional conduct in the practice of medicine in violation of Health Occ. § 14-404(a)(3)(ii). The charges under the provisions of Health Occ. § 1-212 and COMAR 10.32.17 are dismissed.

ORDER

It is, on the affirmative vote of a majority of the quorum of Disciplinary Panel A of the Board, hereby:

ORDERED that the Respondent is **REPRIMANDED**; and it is further the Respondent shall be placed on **PROBATION** for a minimum period of **ONE (1) YEAR²** from the effective date of this Consent Order. During probation, the Respondent shall comply with the following terms and conditions of probation:

1. The Respondent shall enroll in the Maryland Professional Rehabilitation Program (“MPRP”) as follows:
 - (a) Within **5 business days** of the effective date of this Consent Order, the Respondent shall contact MPRP to schedule an initial consultation for enrollment;
 - (b) Within **15 business days** of the effective date of this Consent Order, the Respondent shall enter into a Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP;
 - (c) The Respondent shall fully and timely cooperate and comply with all MPRP’s referrals, rules, and requirements, including, but not limited to,

² If the Respondent’s license expires during the period of probation, the probationary period, and any conditions of probation, will be tolled.

the terms and conditions of the Participant Rehabilitation Agreement(s) and Participant Rehabilitation Plan(s) entered with MPRP, and shall fully participate and comply with all therapy, treatment, evaluations, and screenings as directed by MPRP;

- (d) The Respondent shall sign and update the written release/consent forms requested by the Board and MPRP, including release/consent forms to authorize MPRP to make verbal and written disclosures to the Board and to authorize the Board to disclose relevant information from MPRP records and files in a public order. The Respondent shall not withdraw his release/consent;
- (e) The Respondent shall also sign any written release/consent forms to authorize MPRP to exchange with (i.e., disclose to and receive from) outside entities (including all of the Respondent's current therapists and treatment providers) verbal and written information concerning the Respondent and to ensure that MPRP is authorized to receive the medical records of the Respondent, including, but not limited to, mental health and drug or alcohol evaluation and treatment records. The Respondent shall not withdraw his release/consent;
- (f) The Respondent's failure to comply with any of the above terms or conditions including terms or conditions of the Participant Rehabilitation Agreement(s) or Participant Rehabilitation Plan(s) constitutes a violation of this Consent Order;

2. Within **SIX (6) MONTHS** from the effective date of this Consent Order, the Respondent is required to take and successfully complete a course in Professional Boundaries. The following terms apply:

- (a) it is the Respondent's responsibility to locate, enroll in and obtain the disciplinary panel's approval of the course before the course is begun;
- (b) the Respondent must provide documentation to the disciplinary panel that the Respondent has successfully completed the course;
- (c) the course may not be used to fulfill the continuing medical education credits required for license renewal;
- (d) the Respondent is responsible for the cost of the course.

3. Within **ONE (1) YEAR** from the effective date of this Consent Order, the Respondent shall pay a civil fine of **FIVE THOUSAND DOLLARS (\$5,000.00)**. The Payment shall be by money order or bank certified check made payable to the Maryland Board of Physicians and mailed to P.O. Box 37217, Baltimore, Maryland 21297. The Board will not renew or reinstate the Respondent's license if the Respondent fails to timely pay the fine to the Board; and it is further

ORDERED that the Respondent shall not apply for early termination of probation; and it is further

ORDERED that after the minimum period of probation imposed by the Consent Order has passed, and after the Respondent has fully and satisfactorily complied with all terms and conditions of probation, the Respondent may submit to the Board a written petition for termination of probation. The Respondent may be required to appear before the disciplinary panel to discuss his petition for termination. After consideration of the petition and a report from MPRP, the disciplinary panel may grant the petition to terminate the probation, through an order of the disciplinary panel, if the Respondent has satisfactorily complied with all probationary terms and conditions and there are no pending complaints relating to the charges; and it is further

ORDERED that a violation of probation constitutes a violation of the Consent Order; 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, if the Respondent allegedly fails to comply with any term or condition imposed by this Consent Order, the Respondent shall be given notice and an opportunity for a hearing. If the disciplinary panel determines there is a genuine dispute as to a material fact, the hearing shall be before an Administrative Law Judge of the Office of Administrative Hearings followed by an exceptions process before a disciplinary panel; and if the disciplinary panel determines there is no genuine dispute as to a material fact, the Respondent shall be given a show cause hearing before a disciplinary panel; and it is further

ORDERED that after the appropriate hearing, if the disciplinary panel determines that the Respondent has failed to comply with any term or condition imposed by this Consent Order, the disciplinary panel may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, suspend the Respondent's license with appropriate terms and conditions, or revoke the Respondent's license to practice medicine in Maryland. The disciplinary panel may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine on the Respondent; and it is further

ORDERED that the effective date of the Consent Order is the date the Consent Order is signed by the Executive Director of the Board or her designee. The Executive Director or her designee signs the Consent Order on behalf of the disciplinary panel which has imposed the terms and conditions of this Consent Order; and it is further

ORDERED that this Consent Order is a public document. *See* Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6) (2014 & 2019 Supp.).

02/07/2024

Date

Signature On File

Christine A. Farrelly, Executive Director
Maryland State Board of Physicians

CONSENT

I, Philip Mussenden, JR., M.D., acknowledge that I have consulted with counsel before signing this document.

By this Consent, I agree to be bound by this Consent Order and all its terms and conditions and understand that the disciplinary panel will not entertain any request for amendments or modifications to any condition.

I assert that I am aware of my right to a formal evidentiary hearing, pursuant to Md. Code Ann., Health Occ. § 14-405 and Md. Code Ann., State Gov't §§ 10-201 *et seq.* concerning the pending charges. I waive this right and have elected to sign this Consent Order instead.

I acknowledge the validity and enforceability of this Consent Order as if entered 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 behalf, and to all other substantive and procedural protections as provided by law. I waive those procedural and substantive protections. I acknowledge the legal authority and the jurisdiction of the disciplinary panel to initiate these proceedings and to issue and enforce this Consent Order.

I voluntarily enter into and agree to comply with the terms and conditions set forth in the Consent Order as a resolution of the charges. I waive any right to contest the Findings of Fact and Conclusions of Law and Order set out in the Consent Order. I waive all rights to appeal this Consent Order.

I sign this Consent Order, without reservation, and fully understand the language and meaning of its terms.

2/5/24
Date

Signature On File

Philip Mussenden, JR., M.D.

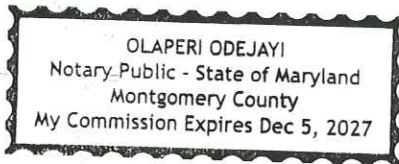
NOTARY

STATE OF Maryland

CITY / COUNTY OF Montgomery

I HEREBY CERTIFY that on this 5th day of Feb 2024,
before me, a Notary Public of the foregoing State and City/County, personally appeared
Philip Mussenden, JR., M.D., 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.



Olaperi Odejayi
Notary Public

My Commission expires: Dec 5th 2027