

IN THE MATTER OF * BEFORE THE MARYLAND STATE
NIHAR B. GALA, M.D. * BOARD OF PHYSICIANS
APPLICANT * CASE NUMBER: 2219-0209 A

* * * * *

CONSENT ORDER

On September 16, 2019, Disciplinary Panel A (“Panel A”) of the Maryland State Board of Physicians (the “Board”) notified **Nihar B. Gala, M.D.** (the “Applicant”) of Panel A’s intent to deny his Application for Initial Medical Licensure under the Maryland Medical Practice Act (the “Act”), Md. Code Ann., Health Occ. §§ 14-101 *et seq.* (2014 Repl. Vol. and 2018 Supp.).

The pertinent provisions of the Act provide:

Health Occ. § 14-205. Miscellaneous powers and duties.

...
(b) *Additional powers.*

...
(3) Subject to the Administrative Procedure Act and the hearing provisions of § 14-405 of this title, a disciplinary panel may deny a license to an application for...

(i) Any of the reasons that are grounds for action under § 14-404 of this title[.]

Health Occ. § 14-307. Qualifications of applicants.

(a) *In general.* To qualify for a license, an applicant shall be an individual who meets the requirements of this section.

(b) *Moral character.* -- The applicant shall be of good moral character[.]

Health Occ. § 14-404. Denials, reprimands, 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:

...

- (21) Is disciplined by a licensing or disciplinary authority or convicted or disciplined by a court of any state or country or disciplined by any branch of the United States uniformed services or the Veterans' Administration for an act that would be grounds for disciplinary action under this section[.]

The underlying disciplinary grounds are:

- (3) Is guilty of:
(i) Immoral conduct in the practice of medicine; or
(ii) Unprofessional conduct in the practice of medicine;

...

- (22) Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital or any other location in this State;

...

- (40) Fails to keep adequate medical records as determined by appropriate peer review[.]

FINDINGS OF FACT

Panel A finds:

I. The Application

1. On or about November 29, 2018, the Applicant submitted to the Board an Application for Initial Medical Licensure (the "Application").

2. The Applicant answered "YES" to "Postgraduate Training" questions 13A and 13B which state:

A. During your years of postgraduate training, did you have a break in training? If "Yes," please provide an explanation.

B. Did you have any condition or impairment that affected your ability to practice medicine during your training. If "Yes," please provide an explanation.

3. With regard to Questions 13A and B, the Applicant explained why it became difficult for him to continue a neurological residency.

4. The Applicant also answered "YES" to Character and Fitness Question" 16c, which states:

Has any licensing or disciplinary board in any jurisdiction (including Maryland), a comparable body in the armed services or the Veterans' Administration, ever filed any complaints or charges against you or investigated you for any reason?

5. With regard to Question 16b, the Applicant explained:

In December 2016, a complaint to the medical board¹ was made by my former employer accusing me of having inappropriate relations with a patient and providing opioid prescriptions in exchange for sexual acts with this patient. I have denied all allegations. I will likely have a medical board hearing after the New Year.

II. The Investigation

6. In furtherance of the Board's investigation of the Applicant's affirmative responses on the Application, Board staff obtained from the Delaware Board of Medical Licensure and Discipline ("Delaware Board") a copy of the *Recommendation of Chief Hearing Officer in the Matter of Nihar Bavesh Gala*,

¹ The Applicant stated on the Application that he holds an active medical license in Delaware and California.

M.D., issued on April 12, 2019, and the subsequent *Final Board Order in re: Nihar Bavesh Gala, M.D* (“Delaware Board Order”), issued on June 4, 2019.

7. The case arose when, in October 2018, the Delaware Board received a complaint from the urgent care facility where the Applicant had been employed which alleged that:

During September and October 2016, the Applicant treated a female patient (the “Patient”) for pain management over the course of three office visits. Prior to presenting to the Applicant, the Patient had been prescribed Suboxone treatment for opioid addiction since December 2015 by a physician other than the Applicant;

At the Patient’s first office visit, the Applicant discontinued the Patient’s Suboxone and wrote her a prescription for oxycodone 10 mg;

The Applicant continued to prescribe CDS to the Patient, including Fentanyl and OxyContin 20 mg. during her two remaining office visits, despite the Patient’s positive urine test for benzodiazepines not prescribed by the Applicant;

Thereafter, in November 2016, the Applicant prescribed to the Patient 90 tablets of oxycodone on one occasion and a 30-day quantity of Dilaudid² on a second occasion;

The Applicant failed to document office visits for the Patient in November 2016; and

In December 2016, the Patient presented to the urgent care facility and requested a prescription for Suboxone from a practitioner other than the Applicant. The Patient told the urgent care facility staff that the Applicant had been giving her CDS without a valid prescription and had prescribed CDS in exchange for sexual favors. The Patient stated that she had complied with the Applicant’s requests for sex because she was afraid of losing her prescriptions for CDS.

² Fentanyl, oxycodone, OxyContin and Dilaudid are Schedule II Controlled Dangerous Substances (“CDS”).

8. After the complaint was filed with the Delaware Board, the Applicant communicated several threats to the Patient and members of her family in order to persuade her to stop cooperating with the Delaware Board's investigation.

9. In furtherance of its investigation, the Delaware Board obtained an expert review of the Applicant's treatment of the Patient. The Expert, a physician board-certified in pain management, opined that the Applicant prescribed excessive quantities of CDS to the Patient in the absence of medical justification, in violation of the standard of care. The Expert further opined that the Applicant's documentation of his treatment of the Patient was sparse, deficient, and devoid of proper documentation. Finally, the Expert opined that the Applicant's sexual relationship with the Patient in exchange for CDS was "exceedingly unethical."

III. The Delaware Board's Order

10. In the Delaware Board Order, the Delaware Board upheld the majority of the Chief Hearing Officer's findings of fact, including but not limited to the Applicant's "gross, abusive sexual misconduct with [a patient] while she remained in a physician-patient relationship with him." The Chief Hearing Officer characterized the Applicant's sexual misconduct as consisting of "repetitive and bizarre and dehumanizing sexual demands."

11. The Delaware Board further found that the Applicant had a "clearly inappropriate sexual relationship" with the Patient, who participated in the relationship because of her fear that the Applicant would stop prescribing CDS to her. The Delaware Board further found that the Applicant engaged in witness

intimidation by telling the Patient that if she reported him, it would be “big trouble” for her.

12. The Delaware Board Order concluded as a matter of law that the Applicant’s conduct constituted violations of the following provisions of the Delaware Board’s statutes (24 Delaware Administrative Code 1700 *et seq* (24 Del. C)) and regulations promulgated thereunder:

24 Del. C § 1731(b)(2) – Conduct that would constitute a crime substantially related to the practice of medicine.

This ground relates to the Board’s finding that the Applicant engaged in conduct “constituting a crime substantially related to the practice of medicine in that he delivered controlled substances to [the patient] while involved in unethical sexual activity in his home, outside the channel of a valid and lawful prescription”; and engaged in conduct that constitutes the crime of witness intimidation.

24 Del. C § 1731(b)(3) – Any dishonorable, unethical, or other conduct likely to deceive, defraud, or harm the public;³

24 Del. C § 1731(b)(6) – The use, distribution, or issuance of a prescription for a dangerous or narcotic drug, other than for therapeutic or diagnostic purposes;⁴

24 Del. C § 1731(b)(11) – Misconduct, including but not limited to sexual misconduct, incompetence, or gross negligence of pattern of negligence in

³ Delaware Board Regulation 8.1.2 defines this conduct as “an exploitation of the doctor/patient privilege for personal gain or sexual gratification.” Delaware Board Regulation 8.1.3 further defines this conduct as “sexual impropriety, including, but not limited to, sexually suggestive behavior, gestures, expressions, statements and failure to respect a patient’s privacy.” Delaware Board Regulation 8.1.12 further defines this conduct as “failure to comply with the Board’s regulations governing the use of controlled substances for the treatment of pain.” 24 Delaware Administrative Code 1700-8.0 *et seq*.

⁴ The Delaware Board has adopted the Federation of State Medical Board’s “Model Policy for the Use of Controlled Substances for the Treatment of Pain.” 24 Delaware Administrative Code 1700-18.0 *et seq*.

the practice of medicine or other profession or occupation regulated under this chapter;

This ground relates to the Board's conclusion that the Applicant's documentation of his treatment of the Patient was almost "completely devoid of proper documentation and therefore he engaged in a pattern of negligence in the practice of medicine."

24 Del. C § 1731(b)(17) – The violation of a provision of this chapter or the violation of an order or regulation of the Board related to medical procedures or to the procedures of other professions or occupations regulated under this chapter, the violation of which more probably than not will harm or injure the public or an individual[.]

13. After considering mitigating and aggravating factors, the Delaware Board ordered the **permanent revocation** of the Applicant's license to practice medicine in Delaware.⁵

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Panel A concludes that the Applicant's conduct as described above, under Health Occ. §14-205(b)(3)(i), constitutes, in whole or in part, discipline by licensing authorities for acts that would be grounds for discipline under the Act, in violation of Health Occ. § 14-404(a)(21). The underlying disciplinary grounds are: Health Occ. § 14-404(a)(3) – Is guilty of: (i) immoral conduct in the practice of medicine, and (ii) – unprofessional conduct in the practice of medicine; Health Occ. § 14-404(a) (22) – fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical care; and/or Health Occ. § 14-404(a)(40) fails to keep adequate medical

⁵ Dr. Gala appealed the Order, which is now pending in the Delaware courts.

records as determined by peer review. Panel A further concludes that the Applicant's conduct demonstrates that he does not meet the moral character requirement of required pursuant to Health Occ. § 14-307(b).

ORDER

It is thus by Disciplinary Panel A of the Board, hereby:

ORDERED that the Application of Nihar B. Gala, M.D. for a license to practice medicine in Maryland, filed with the Board on November 29, 2018, is **DENIED**; and it is further

ORDERED that Dr. Gala may reapply for a license to practice medicine in Maryland **SIX MONTHS** from the date this Consent Order is signed by the Executive Director on behalf of Disciplinary Panel A; and it is further

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

01/09/2020

Date

Signature On File

Christine A. Farrelly
Executive Director
Maryland State Board of Physicians

CONSENT

I, Nihar B. Gala, M.D. acknowledge that I have consulted with counsel before signing this document.

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 notice of intent to deny. 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 the Consent Order as a resolution of the notice of intent to deny. 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.

Signature On File

1/3/20
Date

Nihar B. Gala, M.D.
Respondent

NOTARY

STATE OF Delaware
CITY/COUNTY OF Sussex

I HEREBY CERTIFY that on this 3rd day of January 2019, 2020
before me, a Notary Public of the foregoing State and City/County, personally
appeared Nihar B. Gala, 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.

Brittany P Cannon
Notary Public

My Commission expires: April 20, 2020

