

IN THE MATTER OF
DAVID C. ALLEN, M.D.
Respondent

License Number: D25230

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* BEFORE THE
* MARYLAND STATE BOARD
* OF PHYSICIANS
* Case Number: 2011-0258

FINAL DECISION AND ORDER

On March 9, 2011, the Maryland State Board of Physicians (the “Board”) charged Respondent David C. Allen, M.D. with unprofessional conduct in the practice of medicine, Md. Code Ann., Health Occ. § 14-404(a)(3)(ii); being addicted to or habitually using a narcotic or controlled dangerous substance or other drug in excess of therapeutic amounts or without medical indication, Health Occ. § 14-404(a)(8); and providing professional services while using any narcotic or controlled dangerous substance, Health Occ. § 14-404(a)(9)(ii).

The Respondent waived his right to an evidentiary hearing on the charges, which would have been held before an administrative law judge at the Maryland Office of Administrative Hearings. The Respondent and Dawn Rubin, Assistant Attorney General, administrative prosecutor, also agreed to and stipulated to findings of fact and conclusions of law, which are set forth below. The Respondent acknowledged the legal authority and jurisdiction of the Board to initiate the proceedings and to enforce this Board’s order based upon the agreed findings of fact and conclusions of law. The Respondent agreed that by stipulating to and not contesting the findings of fact and conclusions of law, that he would agree to appear before the Board for a disposition hearing on the issue of the appropriate sanction the Board should impose. The Respondent was represented by counsel, H. Kenneth Armstrong, Esquire, and voluntarily entered

into the Stipulation to Findings of Fact, Conclusions of Law and Agreement informed of its contents.

On December 21, 2011, the Respondent appeared before the Board for the disposition hearing. He was represented by Mr. Armstrong at the hearing. Ms. Rubin, administrative prosecutor, was also present. The parties presented their positions on the sanction that the Board should impose.

FINDINGS OF FACT

The Board adopts the following agreed findings of fact, which were stipulated to by the Respondent and by the administrative prosecutor:

Procedural Background

1. At all times relevant hereto, the Respondent was licensed to practice medicine in the State of Maryland. He was originally licensed to practice medicine in Maryland on August 4, 1980.
2. At the time of the incidents described herein, the Respondent practiced as a hospitalist at Hospital A in Leonardstown, Maryland. He is board-certified in Internal Medicine.
3. On or about October 12, 2010, the Board received a Report of Disciplinary Action from Hospital A stating that the Respondent's privileges and employment as a hospitalist had been summarily suspended on September 28, 2010, "pending the results of for cause drug and alcohol testing."
4. Shortly thereafter, the Board opened an investigation, and on or about December 13, 2010, notified the Respondent of its investigation, requesting a response to the allegations.

5. On or about December 29, 2010, the Respondent submitted a written response to the Board, admitting that he had injected himself with opiates during his shift that he had obtained from a used medical disposal container.

6. As a result of the Board’s investigation relating to the Respondent’s actions, on or about March 1, 2011, the Board summarily suspended his license to practice medicine, under Md. Code Ann., State Gov’t § 10-226(c)(2)(i), concluding that the public health, safety or welfare imperatively required emergency action.

7. The Board held a post-deprivation hearing on March 9, 2011, and upheld its March 1, 2011, Order for Summary Suspension.

8. On or about March 9, 2011, the Board charged the Respondent under the Maryland Medical Practice Act (the “Act”), Md. Code Ann., Health Occ. §§ 14-101 – 14-702, specifically under the following provisions of section 14-404 of the Health Occupations Article:

(a) Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on the affirmative vote of a majority of the quorum, 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;

* * *

(8) Is addicted to, or habitually abuses, any narcotic or controlled dangerous substance as defined in § 5-101 of the Criminal Law Article, or other drug that is in excess of therapeutic amounts or without valid medical indication;

(9) Provides professional services: . . . (ii) While using any narcotic or controlled dangerous substance, as defined in § 5-101 of the Criminal Law Article, or other drug that is in excess of therapeutic amounts or without valid medical indication.

9. The Board scheduled an evidentiary hearing on the charges at the Office of Administrative Hearing for November 3 and 4, 2011. The Respondent agreed to waive his right to a hearing on these charges and resolve these charges before the Board at an allocution hearing, without adjudicating them before the Office of Administrative Hearings.

Relevant Past History

10. On December 11, 2000, the Board summarily suspended the Respondent's license to practice medicine for violating his disposition agreement with the Board by ingesting alcohol and self-prescribed medications. He was hospitalized. The Respondent was found to pose a risk to himself and to others.

11. On April 11, 2001, the Board accepted the Respondent's voluntary surrender of his medical license with conditions for a minimum period of eighteen months, as a resolution of charges that had been issued for violations of his disposition agreement.

12. On September 4, 2003, the Board reinstated the Respondent's medical license, placing him on five years of probation with conditions. On December 4, 2008, the Board terminated his probation.

Findings Relating to Present Charges

Hospital A

13. On September 27, 2010, the Respondent was on-duty as a hospitalist at Hospital A, from 7:00 p.m. until 7:00 a.m. (on September 28, 2010) (hereinafter, the "Shift").

14. During the Shift, the Respondent was responsible for the medical care of eight patients, identified as Patient A through H for purposes of this document.

15. During the Shift, hospital staff observed that the Respondent had been “searching through [a] sharps container” on multiple occasions, had slurred and measured speech, had an unsteady and staggered gait, and had bumped into the wall while walking.

16. When asked by the Nursing Supervisor and the Hospital Administrator why he had been searching through the sharps container, the Respondent stated that he had been looking for hydralazine (used in the treatment of high blood pressure) and zofran (used in the prevention of nausea and vomiting) vials to use in a scale model railroad that he works on as a hobby.

17. As a result of these observations noted in paragraph 15, the Nursing Supervisor on duty and the Hospital Administrator requested that the Respondent submit to a “for cause” urine drug screen (hereinafter the “Respondent’s Screen”). Before the Respondent’s Screen was conducted, the Respondent told them that he had taken a couple of Percocet,¹ and that the prescription had been his mother’s.

18. Also before the Respondent’s Screen was conducted, the Hospital Administrator noticed that the Respondent’s sock was bulging around his left ankle; the Respondent pulled out a syringe and two syringe caps when asked to do so by the Hospital Administrator. The syringe had blood on its tip.

19. After submitting to the Respondent’s Screen, at approximately 8:00 a.m., the Hospital Administrator escorted the Respondent to the Emergency Department so that he could collect his wallet and brief case. During the walk, according to the Hospital Administrator, the Respondent’s “walk was much more staggered, and [the Respondent] ran into a wall at one point.”

¹ A Schedule II Controlled Dangerous Substance (“CDS”). [See Md. Code Ann., Crim. L. §§ 5-101(f), 5-403.]

20. The Respondent told the Hospital Administrator that he would not take the cab, as he had a sick mother at home and needed to have his vehicle. The Hospital Administrator insisted that the Respondent take the cab, escorted him to the cab and shut the vehicle door behind the Respondent as he entered.

21. Shortly after the Hospital Administrator returned to the hospital, the cab driver notified him that the Respondent had not accepted the cab ride home, the Respondent had waited until the Hospital Administrator left the area and proceeded to get into his own vehicle to drive home.

22. The results of the Respondent's Screen were positive for opiates.

23. On September 28, 2010, Hospital A summarily suspended the Respondent's privileges and employment as a hospitalist.

24. On or about October 5, 2010, the Respondent requested a leave of absence from Hospital A "effective immediately for medical issues."

25. On or about October 22, 2010, the President of Hospital A sent a letter to the Respondent, approving his request for leave of absence. Hospital A stated in the letter that the Respondent could not return to work until several conditions had been met, including, but not limited to: undergoing an evaluation for treatment, undergoing treatment, and complying with the recommendations of treatment providers.

Respondent's Interview with Board Staff

26. On January 19, 2011, the Board's Compliance staff interviewed the Respondent under oath regarding the allegations.

27. The Respondent testified that his mother had been living with him for approximately two years, and that he had been prescribing medication for her, including

Percocet.² The Respondent further testified that around September 2010, he told his mother that he did not want to prescribe for her any longer.

28. The Respondent testified that on or about September 27, 2010, he had asked another hospitalist from Hospital A ("Dr. A") to write a Percocet prescription for his mother, and according to the Respondent, Dr. A complied.

29. The Respondent testified that the "trigger" regarding his relapse occurred at the end of September 2010 when he sustained back pain. He began self-medicating with his mother's Percocet.

30. The Respondent testified as to what happened during his Shift:

So about 3:00 in the morning, the pain got basically unbearable. I couldn't really view myself functioning any further. And, unfortunately, we really have no backup plan, you know, if somebody gets sick. So I went in the --- what you call the med room in the ICU and took a nearly empty pre-filled syringe or suret or whatever of morphine, dilaudid and ativan.³ It was probably about one milligram each, and combined them and injected in my muscle up here.

31. The Respondent testified that he did not tell the Hospital Administrator and the Nursing Supervisor what he had done. He could not recall however, precisely what he had told the Hospital Administrator and the Nursing Supervisor.

32. Following the incident, around October 19, 2010, the Respondent contacted the Maryland Physician Health Program, was evaluated, and entered into a five year monitoring program.

² A pharmacy survey conducted by the Board reflected that the Respondent had prescribed Percocet to his mother on multiple occasions; the most recent prescription was dated September 18, 2010 (for 50 tablets).

³ Morphine and Dilaudid are Schedule II CDS, [Crim. L. §§ 5-101(f), 5-403]; Ativan is a Schedule IV CDS, [Crim. L. §§ 5-101(f), 5-405(b)(25)].

33. Additionally, the Respondent underwent surgery for his back during the end of October 2010.

34. The Respondent entered a residential treatment program in January, and completed the program on or about February 2, 2011.

CONCLUSIONS OF LAW

Based on the Findings of Fact and the Respondent's and the administrative prosecutor's stipulations, the Board concludes that the Respondent violated the following provisions of the Maryland Medical Practice Act:

Health Occ. § 14-404(a)(3)(ii): Is guilty of . . . Unprofessional conduct in the practice of medicine;

Health Occ. § 14-404(a)(8): Is addicted to any narcotic or controlled dangerous substance as defined in § 5-101 of the Criminal Law Article;

Health Occ. § 14-404(a)(9)(ii): Provides professional services . . . While using any narcotic or controlled dangerous substance, as defined in § 5-101 of the Criminal Law Article, or other drug that is in excess of therapeutic amounts or without valid medical indication.

SANCTION

On October 26, 2010, the Respondent entered into a five year advocacy contract with the Maryland Physician Health Program ("MPHP") to treat his substance abuse. From January 5, 2011, until February 2, 2011, the Respondent received residential substance abuse treatment. Under the Respondent's MPHP case management plan, the Respondent has undergone random toxicology testing four to six times per month. The Respondent has received psychotherapy and has participated in the 12 step recovery process. He has been fully cooperative with all aspects

of his monitoring and case management contract since October 26, 2010. The Respondent's medical license has been summarily suspended since March 1, 2011.

The recommendations for a sanction by both the administrative prosecutor and the Respondent reflect that if the Respondent returns to practicing medicine that he needs to be monitored for, at least, the remainder of his medical career. The administrative prosecutor recommends that the Respondent remain suspended until March 1, 2012, and that he be placed on probation upon the stay of suspension. The Respondent requests that a stay of suspension be issued and that he be placed on probation earlier than March 1, 2012.

Under appropriate treatment and monitoring, the Respondent has not relapsed. The Board is persuaded that with close monitoring and continued treatment, the Respondent will continue to abstain from the conduct that resulted in the summary suspension. The Board, however, has determined that, due to the conduct that he engaged in, his license should remain suspended, at least, temporarily. If he continues to comply with treatment, the suspension will be stayed on March 1, 2012. If the suspension is stayed, the Respondent will be placed on probation for seven years. The Respondent will be required to undergo drug monitoring for so long as the Board has jurisdiction over his practice as a physician.

ORDER

Based upon the findings of fact and conclusions of law, it is by the Board, on an affirmative vote of a majority of the quorum, hereby

ORDERED that the Respondent's license to practice medicine in Maryland is **SUSPENDED**. If the Respondent remains compliant with the advocacy contract he entered into with the MPHP and any subsequent agreement with the Board's Maryland Professional Rehabilitation Program (together the "contract"), the **SUSPENSION** will be **STAYED** on

March 1, 2012, and the Respondent will be placed on probation. If, before March 1, 2012, there is an indication that the Respondent violated the contract, the suspension will remain in effect and the Respondent will not be placed on probation. The Respondent will be entitled to notice and a show cause hearing before the Board, if there is an indication that the Respondent has violated the contract and intends not to stay the suspension.

It is further **ORDERED** that the summary suspension, under section 10-226(c)(2) of the State Government Article, is terminated as moot.

It is further **ORDERED** that, upon the stay of the suspension, the Respondent will be placed on **PROBATION** for a minimum of **SEVEN YEARS** and until all the following terms and conditions, which are terms and conditions of probation and also of the stay of suspension, are fully and satisfactorily complied with:

1. The Respondent shall enroll in the Board's Maryland Professional Rehabilitation Program ("MPRP") and enter into a Board-monitored Rehabilitation Agreement for the length of time recommended by the MPRP. For the entire duration of the probationary period, the Respondent shall fully, timely, and satisfactorily cooperate and comply with all MPRP recommendations and requirements, including but not limited to, the terms and conditions of any Rehabilitation Agreements and Rehabilitation Plans entered into with the MPRP; complete abstinence from mood altering drugs, CDS, illegal drugs, and narcotics (including abstinence from alcohol); random monitored toxicology screens as required by the MPRP; self-help fellowship meetings; and in-patient substance abuse treatment, if recommended by the MPRP;
2. The Respondent shall undergo random toxicology screening (for CDS, narcotics, mood altering and illegal drugs, and alcohol) for the period of suspension, for the entire period of probation, and after probation is terminated. **After the termination of probation, the**

Respondent shall continue to be screened and monitored for drugs, CDS, and alcohol so long as he is licensed by the Board to practice medicine, and the Board shall have access to the results of the monitoring and screening. The Respondent must sign the releases/consents necessary for the Board to obtain the results of this screening and monitoring;

3. The Respondent shall sign any written release/consent forms, and update them, as required by the Board or the MPRP. Specifically, the Respondent shall sign any written release/consent forms as required by the Board to authorize the MPRP to make verbal and written disclosures to the Board, including disclosure of any and all MPRP records and files and confidential drug and alcohol abuse information about the Respondent. The Respondent shall also sign any written release/consent forms required by the MPRP to authorize the 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 about him, including confidential drug and alcohol abuse information;

4. The Respondent shall completely abstain from using alcohol, unprescribed or improperly prescribed Controlled Dangerous Substances ("CDS"), narcotics, illegal drugs and other mood-altering substances. The Respondent may take CDS only if prescribed by a licensed health care provider for a legitimate medical purpose and only as prescribed. Prior to accepting any CDS prescription from a licensed health care provider, the Respondent shall provide the prescribing licensed health care provider with a copy of this Final Decision and Order. The Respondent shall immediately notify the Board in writing of any CDS prescription he obtains and the justification for the prescription;

Board Approval for Employment in Practicing Medicine

5. The Respondent's practice setting must be approved by the Board before the Respondent begins employment at his proposed practice setting. The Respondent shall furnish the Board with all of the Board's reasonable requests for information about his proposed practice setting. Any changes in employment must be approved by the Board; and

Compliance With The Law Governing the Practice of Medicine

6. The Respondent shall comply with the Maryland Medical Practice Act and all laws, statutes, and regulations pertaining to the practice of medicine in Maryland.

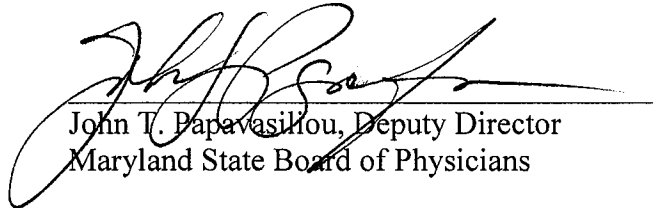
IT IS FURTHER ORDERED that if the Respondent violates any term or condition of this Order or of probation, the Board, after notice and an opportunity to be heard, may impose an additional sanction, including a reprimand, an additional period of probation or additional conditions of probation, or an additional period of suspension or the revocation of his license to practice medicine in Maryland. Additionally, if the suspension is stayed, the Board may lift the stay if, after notice and a show cause hearing before the Board, the Board determines that the Respondent has violated a term or condition of this order; and it is further

ORDERED that after seven years from the date probation commences (if the stay of suspension is not lifted), the Respondent may submit a written petition to the Board requesting termination of probation. The Board, or designated Board Committee, will terminate the probation if the Respondent has fully and satisfactorily complied with the conditions of probation and the order and there are no pending complaints against him. The probation will not be terminated until there is an order terminating the probation; and it is further

ORDERED that the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this order; and it is further

ORDERED that this order is a public document.

1/27/2012
Date


John T. Papavasiliou, Deputy Director
Maryland State Board of Physicians

NOTICE OF OPPORTUNITY TO APPEAL

Pursuant to section 14-408(b) of the Health Occupations Article, Dr. Allen has the right to seek judicial review of this Final Decision and Order. Any petition for judicial review must be filed within 30 days from the date this Final Decision and Order is mailed. The petition for judicial review must be made as directed in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222, and the Maryland Rules 7-201 *et seq.*

If Dr. Allen petitions for judicial review, the Board is a party and should be served with the court's process. In addition, Dr. Allen should send a copy of his petition to the Board's counsel, **David Wagner, Assistant Attorney General, Office of the Attorney General, 300 W. Preston Street, Suite 302, Baltimore, Maryland 21201.** The administrative prosecutor is not involved in the circuit court process and does not need to be served or copied on any pleadings filed in circuit court.