IN THE MATTER OF	*	BEFORE THE
RICHARD C. MATZKIN, M.D.	*	MARYLAND STATE BOARD
Respondent	*	OF PHYSICIANS
License Number D30395	*	Case Number 2015-0474B

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FINAL DECISION AND ORDER

Procedural History

On August 16, 2016, Disciplinary Panel B ("Panel B") of the Maryland State Board of Physicians (the "Board") charged the Respondent Richard C. Matzkin, M.D. under the Maryland Medical Practice Act, Md. Code Ann., Health Occ. §§ 14-101—14-702, with unprofessional conduct in the practice of medicine, *see* Health Occ. § 14-404(a)(3)(ii); failure to meet the appropriate standards for quality medical care, *see* Health Occ. § 14-404(a)(22); and failure to maintain adequate medical records, *see* Health Occ. § 14-404(a)(40). The charges were based on the Respondent's treatment of two patients. Panel B notified the Respondent that if there were grounds for action, disciplinary sanctions could be imposed against his license. On October 4, 2016, the Board referred this case to OAH for an evidentiary hearing.

After notice to the Respondent and the State, OAH held a Scheduling Conference on November 3, 2016, at 9:30 a.m. at OAH in Hunt Valley, Maryland. The Respondent did not appear for the Scheduling Conference and no one appeared on his behalf. The State was represented by the Administrative Prosecutor from the Maryland Office of the Attorney General, who appeared at the conference. After waiting more than 15 minutes for the Respondent to appear, the ALJ proceeded with the Scheduling Conference in his absence. COMAR

28.02.01.23A. During the Scheduling Conference, a Prehearing Conference was scheduled for December 6, 2016, at 9:30 a.m. at OAH in Hunt Valley, Maryland. COMAR 28.02.01.17.

On November 4, 2016, OAH mailed a Notice of In-Person Prehearing Conference (Notice of Prehearing Conference) to each party at the respective address of record. The Notice of Prehearing Conference mailed to the Respondent was not returned to OAH by the postal service. The Notice of Prehearing Conference informed the parties of the date, time, and location of the Prehearing Conference and enclosed instructions directing each party to prepare and submit a Prehearing Statement in advance of the Prehearing Conference. Further, the Notice of Prehearing Conference informed the parties that failure to attend the December 6, 2016, Prehearing Conference could result in a decision against the party for failing to appear.

Separately, on November 7, 2016, a Scheduling Order notifying the parties of the date, time, and location of the Prehearing Conference, among other things, was mailed to each party at the respective address of record. The copy of the Scheduling Order mailed to the Respondent was not returned to OAH by the postal service. The Scheduling Order informed the parties that, although the Prehearing Conference was designated to be held in person, at OAH in Hunt Valley, Maryland, the Respondent could request to attend by telephone. *See* COMAR 28.02.01.17D(2).

The Respondent did not submit a request to attend the Prehearing Conference by telephone nor did he request a postponement of the Prehearing Conference. The Respondent also did not submit a Prehearing Statement in advance of the Prehearing Conference, as instructed.

The Respondent did not appear for the December 6, 2016, Prehearing Conference as scheduled, nor did anyone appear on his behalf. After waiting more than fifteen minutes for the Respondent to appear, the ALJ commenced the Prehearing Conference in his absence. The

State, represented by the administrative prosecutor, moved for a default judgment against the Respondent and offered the exhibits that it had planned to offer into evidence if the matter had proceeded to a merits hearing. The ALJ admitted those exhibits into evidence so that the disciplinary panel of the Board would be able to consider them in reaching its final disposition. Md. Code Ann., Health Occ. § 14-405 (2014). The State also submitted a written Motion for Proposed Default (Motion), and, as an exhibit thereto, included a letter the Board received from the Respondent, dated September 23, 2016, notifying the Board that the Respondent had ceased practicing medicine and surrendered his license.[1] In the Motion, the State expressly requested that the ALJ enter a proposed order of default and that the ALJ recommend that the Respondent's license to practice medicine be revoked.

On the afternoon of December 6, 2016, the State submitted a certification reflecting that it had mailed a copy of the Motion to the Respondent that same day. The Respondent has not submitted any opposition to the Motion. COMAR 28.02.01.12B(3)(a).

Under OAH's rules of procedure, "[i]f, after receiving proper notice, a party fails to attend or participate in a prehearing conference, hearing, or other stage of a proceeding, the judge may proceed in that party's absence or may, in accordance with the hearing authority delegated by the agency, issue a final or proposed default order against the defaulting party." COMAR 28.02.01.23A. Similarly, the Health Occupations Article provides, in pertinent part:

> (d) If after due notice the individual against whom the action is contemplated fails or refuses to appear, nevertheless the hearing officer

[1] The State noted that the Respondent's decision to surrender his license did not resolve the issue of whether disciplinary sanctions were warranted. *See* Md. Code Ann., Health Occ. § 14-403(a) (2014) (providing that a license may not be surrendered while charges are pending against the individual unless the disciplinary panel agrees, and authorizes the disciplinary panel to set conditions on its agreement to accept the surrender of a license). However, the letter confirms the Respondent's address of record.

> may hear and refer the matter to the Board or a disciplinary panel for disposition.
>
> (e) After performing any necessary hearing under this section, the hearing officer shall refer proposed factual findings to the Board or a disciplinary panel for the Board's or disciplinary panel's disposition.

Md. Code Ann., Health Occ. § 14-405 (2014). Read in conjunction, subsection 14-405(d) which provides that the ALJ "may hear" the matter if the individual fails to appear, and subsection (e), which uses the language "any necessary hearing," clearly contemplate situations such as defaults where no hearing is required. *See also* COMAR 28.02.01.23A.

The ALJ found the Respondent had proper notice of the December 6, 2016, Prehearing Conference and failed to appear and participate in the Prehearing Conference.

On January 5, 2017, the ALJ issued a Proposed Default Order, based upon the OAH proceedings described above, which the ALJ recounted in the proposed decision. The ALJ also proposed that the Panel:

1. Find the Respondent in default;

2. Adopt as fact the statements set out in the Allegations of Fact section of the Charges;

3. Conclude as a matter of law that the Respondent violated the Maryland Medical Practice Act, subsection 14-404(a)(3)(ii), (22), and (40) of the Health Occupations Article, Annotated Code of Maryland, in the manner set forth in the Charges; and

4. Revoke the Respondent's license to practice medicine.

On January 5, 2017, the ALJ mailed copies of the Proposed Default Order to Dr. Matzkin, the administrative prosecutor, and the Board. The proposed decision notified the parties that they may file written exceptions to the proposed decision but must do so within 15

days of the date of the proposed order. The proposed order states that any exceptions must be sent to the Board with attention to the Board's Executive Director.

The case came before Board Disciplinary Panel A ("Panel A") for final disposition. Neither party filed exceptions.

FINDINGS OF FACT

Because Panel A concludes that the Respondent has defaulted, the following findings of fact are adopted from the Allegations of Fact set forth in the August 16, 2016, Charges Under the Maryland Medical Practice Act and are deemed proven by the preponderance of the evidence:

The Respondent was initially licensed to practice medicine in Maryland in 1981. He has practiced as a general practitioner and is not board-certified or board eligible in any specialty.

On February 26, 1992, the Maryland Board of Physician Quality Assurance ("BPQA")[2] summarily suspended the Respondent's license based on a June 1991 surrender of his license to practice medicine in Virginia. The surrender of his Virginia medical license was based on findings that he had inappropriately prescribed controlled dangerous substances ("CDS") and that he had been criminally charged with two counts of unlawful CDS prescribing in Maryland (those criminal charges were *nol prossed*).

On June 2, 1992, the Respondent entered into a Consent Order with BPQA under which the Respondent received a three-year stayed suspension of his license and was immediately placed on probation for three years with terms and conditions. The probationary conditions included that he take and successfully pass the Special Purpose Examination ("SPEX"), submit to a psychiatric evaluation and treatment recommendations, be subject to peer review, submit to random urinalysis, and that his CDS prescriptions be monitored.

[2] BPQA was the predecessor to the Maryland Board of Physicians.

On June 6, 1995, the Drug Enforcement Administration ("DEA") placed restrictions on the Respondent's Certificate of Registration for a period of two years requiring that he not dispense or administer any CDS except in a hospital setting, that he use triplicate forms for all CDS prescriptions, maintain one copy at his registered location and another to be received by DEA and that he consent to inspections. The basis of the DEA restriction included findings that the Respondent had prescribed CDS to patients without conducting examinations, and that he did not keep medical records on patients he treated.

On October 25, 1995, the BPQA terminated the Respondent's probation based on his compliance with the terms and conditions of the June 2, 1992, Consent Order.

On November 19, 2008, the Board issued an Advisory Letter to the Respondent after receiving information from law enforcement that he had engaged in questionable CDS prescribing practices including seeing patients in an inappropriate office setting. During the Board's interview of the Respondent, the Respondent acknowledged writing prescriptions for family members and a friend, but he did not maintain a medical record on these individuals. The Board closed the case but advised the Respondent to maintain adequate records on all patients.

The Respondent's license was scheduled to expire on September 30, 2017.

At all times relevant, the Respondent did not maintain a medical office and did not hold hospital privileges. He made house calls to approximately four patients.

On January 15, 2015, the Board reviewed a complaint from the Medical Director of Hospital A's Emergency Room (the "Complainant") alleging the Respondent had represented that he was the roommate/fiancée of a female patient ("Patient A") who had been admitted to Hospital A's Emergency Room with altered mental status due to intoxication after a motor

vehicle accident.[3] The Complainant accessed the Maryland prescription drug monitoring program, the Chesapeake Regional Information System for our Patients ("CRISP"), and reportedly discovered that the Respondent had prescribed multiple recurrent prescriptions to Patient A for lorazepam (a Schedule IV CDS) and Tylenol #3 (a Schedule III CDS) and was concerned about "possible imminent or contributory harm to [Patient A]" by the Respondent.

On January 29, 2015, the Board initiated an investigation of the allegations set forth above that included interviews of the Respondent and Patient A, subpoenaing records and transmitting the relevant records for a formal peer review of the Respondent's patients. As set forth below, the Respondent reported to Board staff that he had seen only four patients over the past two years, identified as Patients A, B, C, and D. He provided records to Board staff for Patients A, B, and D. The Respondent did not keep a record for Patient C.

On April 2, 2015, Board staff notified the Respondent of its investigation, and requested a response to the allegations.

On June 12, 2015, the Respondent submitted a written response to the Board denying that Patient A was his girlfriend or fiancée.

On June 17, 2015, the Respondent submitted a second written response, which included summaries of care of Patients A, B, and D, and an acknowledgment that his documentation was not "normal" and the "technical lack of a full 5 years' worth of [Patient D's] medical records … could merit a reprimand." Patient D is a relative of the Respondent.

Board staff requested that the peer reviewers review records on Patients A, B, and D as the Respondent had not kept a medical record for Patient C. The peer reviewers did not concur on any deficiencies in care or conduct with regard to Patient A but found violations of the

[3] To maintain the confidentiality of the patients, the identities of the patients are not disclosed.

standard of care for Patients B and D, unprofessional conduct for Patient D, and inadequate medical records for Patient D.

By letter dated January 11, 2016, the Board provided the Respondent with copies of the peer review reports and provided him an opportunity to file a supplemental response to the allegations. The Respondent did not file a response.

Respondent's Interview

On July 13, 2015, Board staff interviewed the Respondent under oath regarding the allegations. The Respondent stated that his medical practice is limited to people "that I know." He has not maintained a medical office for at least five years. He saw patients by making "house calls."

The Respondent resides part-time at an age-restricted community in Silver Spring ("Community A") and three of the patients he has treated reside there: Patients A, B, and C.

The Respondent maintained a medical record for Patients A and B. Patient C is a family to whom he prescribes "refills" of Zyrtec. The Respondent did not keep a medical record for Patient C.

Patient D is a male relative of the Respondent. The Respondent acknowledged that he had treated Patient D since receiving his medical license. He stated that Patient D had other physicians providing care for him as well.

The Respondent stated he prescribed Ritalin, a Schedule II stimulant, to Patient D on a regular basis. He acknowledged that he also had prescribed Tylenol #3 (when Patient D was unable to get an appointment with an orthopedic surgeon), Ambien (a Schedule IV sleep aid), synthroid, and Celexa.

Patient B

Patient B, a male in his 20s saw the Respondent for medical care on four occasions between January and October 2014. Patient B is related to Patient A.

In January and October 2014, the Respondent treated Patient B with medications for acute alcohol withdrawal including chlordiazepoxide, which is a sedative used to treat anxiety, tremors, and alcohol withdrawal symptoms; and diazepam, a Schedule IV benzodiazepine.

On October 29, 2014, the Respondent also prescribed metoprolol tartrate (a beta blocker to treat high blood pressure, heart failure, or angina) to Patient B for an elevated blood pressure of 188/92. In April and August 2014, the Respondent treated Patient B with antibiotics for dental caries. The Respondent documented that he refilled Patient B's lorazepam prescriptions on April 1 and 19, 2014, and October 29, 2014.

The Respondent failed to meet the standard of quality medical care for Patient B, in violation of Health Occ. § 14-404(a)(22), by:

A. Prescribing metroprolol tartrate for as needed management of elevated blood pressure during acute alcohol withdrawal;

B. Prescribing chlordiazepoxide as needed for anxiety and without proper monitoring for the treatment of alcohol withdrawal; and

C. Failing to provide adequate follow-up to Patient B for alcohol withdrawal including prescribing/recommending thiamine, and implementing a plan to maintain sobriety.

Patient D

Patient D, a male, is a family member of the Respondent.

During his interview with Board staff, the Respondent reported that he had prescribed methylphenidate (Ritalin) to Patient D for several years. According to the Respondent, he

prescribed methylphenidate to Patient D in "a productive and safe way to maintain what his [Patient D's] psychiatrist refers to as the 'highest cognitive functioning.'" The Respondent acknowledged that he prescribed the medication for an "off-label" use.

Although the Respondent stated during his interview with Board staff that he had treated Patient D since receiving his medical license, and had conceded that there were five years during which time he had not documented notes for the medical care rendered to Patient D, Patient D's medical record only includes two pages of progress notes, dated January 30, 2014 through July 28, 2014.

The Respondent's notes reflect monthly prescribing of methylphenidate 10 mg, 1 tablet by mouth twice daily, #60. The Respondent failed to document a physical examination, cognitive assessment, diagnosis, or treatment plan. The Respondent also failed to document vital signs for Patient D, including monitoring for high blood pressure.

The Respondent provided Board staff with a list of eight physicians who purportedly saw Patient D for medical care. He documented the medications that each physician prescribed for Patient D; none prescribed methylphenidate for him.

The Respondent's continued prescribing of methylphenidate to Patient D constitutes a failure to meet the standard of quality medical care for Patient D, in violation of Health Occ. § 14-404(a)(22), by:

A. Failing to conduct an adequate physical assessment including a physical examination and monitoring of vital signs including blood pressure;

B. Treating Patient D without an adequate assessment or diagnosis; and

C. Failing to develop an adequate treatment plan.

The Respondent's long-term prescribing of a CDS to a family member (Patient D) constitutes unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii).

The Respondent's failure to keep adequate medical records for Patient D constitutes a violation of Health Occ. § 14-404(a)(40).

CONCLUSIONS OF LAW

Panel A adopts the ALJ's proposed default order issued pursuant to COMAR 28.02.01.23A. Panel A thus finds the Respondent in default based upon the Respondent's failure to appear at the Office of Administrative Hearings for the Prehearing Conference scheduled for December 6, 2016. *See* State Gov't § 10-210(4). Based upon the findings of fact, Panel A concludes that the Respondent is guilty of unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii); failed to meet the appropriate standards, as determined by appropriate peer review, for the delivery of quality medical care performed in this State, in violation of Health Occ. § 14-404(a)(22); and failed to keep adequate medical records as determined by appropriate peer review, in violation of Health Occ. § 14-404(a)(40).

Sanction

Panel A adopts the sanction recommended by the ALJ, which is to revoke the Respondent's medical license.

ORDER

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

ORDERED that Richard C. Matzkin, M.D.'s license to practice medicine in Maryland (License No. D30395) is **REVOKED;** and it is further

ORDERED that this is a public document.

03/07/2017
Date

Christine A. Farrelly
Christine A. Farrelly, Executive Director

NOTICE OF RIGHT TO APPEAL

Pursuant to § 14-408(a) of the Health Occupations Article, Dr. Matzkin has the right to seek judicial review of this Final Decision and Order. Any petition for judicial review shall be filed within 30 days from the date this Final Decision and Order is mailed. The cover letter accompanying this Final Decision and Order indicates the date the decision 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 Maryland Rules 7-201 *et seq.*

If Dr. Matzkin petitions for judicial review, the Board is a party and should be served with the court's process. In addition, Dr. Matzkin should send a copy of his petition for judicial review 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 pleadings filed in circuit court.