

IN THE MATTER OF \* BEFORE THE  
NELSON L. KOHN, M.D. \* MARYLAND STATE BOARD  
Respondent \* OF PHYSICIANS  
License Number: D45709 \* Case Number: 2012-0754

\* \* \* \* \*

**ORDER FOR SUMMARY SUSPENSION  
OF LICENSE TO PRACTICE MEDICINE**

The Maryland State Board of Physicians (the "Board) hereby **SUMMARILY SUSPENDS** the license of Nelson L. Kohn, M.D. (the Respondent") (D.O.B. 03/16/1960), License Number D45709, to practice medicine in the State of Maryland. The Board takes such action pursuant to its authority under Md. State Gov't Code Ann. § 10-226(c)(2)(i) (2009 Repl. vol. & 2011 Supp.), concluding that the public health, safety or welfare imperatively requires emergency action.

**INVESTIGATIVE FINDINGS**

Based on information received by, and made known to the Board, and the investigatory information obtained by, received by and made known to and available to the Board and the Office of the Attorney General, including the instances described below, the Board has reason to believe that the following facts are true:<sup>1</sup>

1. At all times relevant hereto, the Respondent was and is licensed to practice medicine in the State of Maryland. The Respondent was originally licensed to practice medicine in Maryland on February 8, 1994.

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<sup>1</sup> The statements regarding the Respondent's conduct are intended to provide the Respondent with notice of the basis of the suspension and charges. They are not intended as, and do not necessarily represent a complete description of the evidence, either documentary or testimonial, to be offered against the Respondent with this matter.

2. At the time of the incidents described herein, the Respondent practiced physical medicine and rehabilitation at Hospital A,<sup>2</sup> a facility in Baltimore.
3. The Respondent was employed on a per diem basis at Hospital A for approximately eight years. He is no longer employed at Hospital A. Presently, the Respondent does not hold hospital privileges; he is employed by a clinic that serves workers compensation and personal injury patients.
4. On or about April 25, 2012, the Board opened an investigation of the Respondent based on an anonymous telephone call received from a female caller alleging the Respondent had been suspended from Hospital A for having sex with patients.
5. On or about April 27, 2012, the Board's staff notified the Respondent of its investigation, and requested a written response to the allegations.<sup>3</sup>
6. By letter dated May 14, 2012, the Board's staff made a second request for a written response to the allegations, directed to the Respondent's attorney.
7. By letter dated May 24, 2012, the Respondent's attorney responded to the May 14, 2012 letter, but did not admit or deny the allegations.
8. On or about June 28, 2012, Hospital A, in response to two subpoenas issued on April 30 and May 16, 2012, sent the Board documents responsive to its request including a "Report of Contact" alleging the Respondent had engaged in sexual intercourse with a patient (identified for purposes of this document as Patient A) in an exam room at Hospital A.

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<sup>2</sup> For purposes of confidentiality, patient and facility names will not be used in this document, but will be provided to the Respondent on request.

<sup>3</sup> The Board's staff also requested that he sign a release authorizing the release of confidential records; the Respondent, through counsel, refused to sign the release.

9. According to information received from Hospital A, on or about March 29, 2012, Patient A disclosed to her therapist that she had sex with her “acupuncture doctor.” Patient A’s therapist reviewed her medical record which revealed the Respondent had treated Patient A regularly for acupuncture.
10. Patient A’s therapist reported that Patient A continued to see the Respondent for medical care for approximately one year after the incident, but did not have sex with the Respondent again, “despite the [Respondent’s] inferred suggestions and advances,” which Patient A reported she declined.
11. On or about July 24, 2012, the Board’s staff sent a letter to the Respondent notifying him of the information received from Hospital A, and requesting a written response within ten business days.
12. On or about August 8, 2012, the Respondent submitted a written response to the Board whereby he admitted to having sexual relations with Patient A in an exam room during the Spring of 2011.
13. The Board’s regulations pursuant to Code Md. Regs. tit 10, § 32.17.01 et seq. prohibit licensees from engaging in sexual misconduct, which includes engaging in a sexual relationship that violates the code of ethics of the American Medical Association or other standard recognized professional code of ethics of the health care practitioner’s discipline or specialty.
14. As a result of the Board’s investigation relating to the Respondent’s actions as set forth in pertinent part below, the Board voted to summarily suspend his license to practice medicine pursuant to Md. State Gov’t Code Ann. § 10-226(c)(2)(i) (2009

Repl. Vol. & 2011 Supp.), concluding that the public health, safety or welfare imperatively requires emergency action.

### **THE RESPONDENT'S WRITTEN ADMISSION**

15. The Respondent sent to the Board a signed statement dated August 8, 2012, which stated in pertinent part:

I provided pain management treatment (primarily acupuncture) to [Patient A] via [Hospital A] for more than two years before the incident set forth in [Hospital A's] Report of Contact. At the time the incident occurred (Spring of 2011), I was worried about being let go by [Hospital A] because of budget cuts...

Thus when [Patient A] came in for her regular office visit in the Spring of 2011, I was feeling vulnerable and depressed. I had treated [Patient A] for more than two years, but had never during her office visits been in the emotional mental state that I was in on that day. I did not plan to have sex with [Patient A] in the exam room that day. Instead, in a moment of weakness, it just happened. [Patient A] had told me during our prior treatment sessions that she was unhappy with the state of her love life; however, she never disclosed to me that she had any history of sexual and physical abuse. During her office visit that day, [Patient A] was receptive to my despondency and tried to comfort me. These gestures – combined with my weak emotional state – led to our having sex in the exam room. [Patient A] fully consented to having sex with me.<sup>4</sup> This was the only time this occurred, although she continued to see me as a patient for a year thereafter. I deeply regret what happened on that occasion.

### **THE RESPONDENT'S INTERVIEW WITH THE BOARD'S STAFF**

16. On September 11, 2012, the Board's staff interviewed the Respondent under oath regarding his admission that he had engaged in sexual relations with Patient A.

During the interview, the Respondent revealed the identity of the patient to the Board's staff.

17. The Respondent testified Patient A had an appointment at 2:30 p.m. for a routine scheduled visit with him at Hospital A's outpatient clinic on the date he engaged in

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<sup>4</sup> The Board has found in prior sexual misconduct cases it is the physician's responsibility to maintain proper boundaries, regardless of what the patient wants or agrees to. See *In the Matter of Thomas E. Finucan, Jr., M.D.*, Case # 99-0263.

sexual relations with Patient A. He did not testify as to the specific date the sexual relations took place.

18. Before the date the Respondent had engaged in sexual relations with Patient A, the Respondent had treated Patient A for several years for pain management, primarily with acupuncture treatments.

19. Patient A continued to see the Respondent for pain management for approximately one year after he had sexual relations with her.

20. The Respondent reiterated the contents of his August 8, 2012 written statement to the Board's staff, testifying that it was a particularly stressful time for him, as he perceived his job to be in jeopardy. He noted that he was "in a particularly depressed and vulnerable state."

21. The sexual relations between the Respondent and Patient A took place in an examination room.

22. The Respondent had been seeing a mental health professional at the time, and he testified that he reported the incident to his psychiatrist.

23. The Respondent testified that around late February or early March 2011, he self-referred to the Maryland Physician Health Program ("MPHP") following the incident.

24. In April 2012, the MPHP discharged the Respondent from its program for failing to comply with the recommendations of the program.

#### **CONCLUSION OF LAW**

Based on the foregoing facts, the Board concludes that the public health, safety or welfare imperatively require emergency action in this case, pursuant to Md. State Gov't Code Ann. § 10-226 (c) (2) (i) (2009 Repl. vol.).

## ORDER

Based on the foregoing, it is this 25<sup>th</sup> day of September, 2012, by a majority of the quorum of the Board:

**ORDERED** that pursuant to the authority vested by Md. State Gov't Code Ann., § 10-226(c)(2), the Respondent's license to practice medicine in the State of Maryland be and is hereby **SUMMARILY SUSPENDED**; and be it further

**ORDERED** that a post-deprivation hearing in accordance with Code Md. Regs. tit. 10, § 32.02.05.B (7) (c), D and E on the Summary Suspension has been scheduled for **October 10, 2012, at 12:30 p.m.**, at the Maryland State Board of Physicians, 4201 Patterson Avenue, Baltimore, Maryland 21215-0095; and be it further

**ORDERED** that at the conclusion of the **SUMMARY SUSPENSION** hearing held before the Board, the Respondent, if dissatisfied with the result of the hearing, may request within ten (10) days an evidentiary hearing, such hearing to be held within thirty (30) days of the request, before an Administrative Law Judge at the Office of Administrative Hearings, Administrative Law Building, 11101 Gilroy Road, Hunt Valley, Maryland 21031-1301; and be it further

**ORDERED** that on presentation of this Order, the Respondent **SHALL SURRENDER** to the Board's Compliance Analyst, the following items:

- (1) the Respondent's original Maryland License D45709;
- (2) the Respondent's current renewal certificate;
- (3) the Respondent's Maryland Controlled Dangerous Substance Registration;
- (4) all controlled dangerous substances in the Respondent's possession and/or practice;

- (5) all Medical Assistance prescription forms:
- (6) all prescription forms and pads in his possession and/or practice; and
- (7) Any and all prescription pads on which his name and DEA number are imprinted; and be it further

**ORDERED** that a copy of this Order of Summary Suspension shall be filed with the Board in accordance with Md. Health Occ. Code Ann. § 14-407 (2009 Repl. vol. & 2011 Supp.); and be it further

**ORDERED** that this is a Final Order of the Board and, as such, is a **PUBLIC DOCUMENT** pursuant to Md. State Gov't Code Ann. § 10-611 *et seq.*

09/25/12  
Date



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Andrea L. Mathias, M.D.  
Board Chair  
Maryland State Board of Physicians