

IN THE MATTER OF
ROBERT CHOU, M.D.

Respondent

License Number: D67040

* BEFORE THE
* MARYLAND STATE
* BOARD OF PHYSICIANS
* Case Numbers: 2013-0131
2013-0184

* * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

On November 20, 2012, the Maryland State Board of Physicians (the "Board") charged **ROBERT CHOU, M.D.** (the "Respondent") (D.O.B., _____), License Number D67040, with violating the Maryland Medical Practice Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 14-101 *et seq.* (2009 Repl. Vol.).

Specifically, the Board charged the Respondent with violating the following provisions of the Act under H.O. § 14-404:

- (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:
 - (1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;
 - (3) Is guilty of: (i) immoral conduct in the practice of medicine; or (ii) unprofessional conduct in the practice of medicine;
 - (4) Is professionally, physically, or mentally incompetent;
 - (7) Habitually is intoxicated;
 - (9) Provides professional services: (i) While under the influence of alcohol;

- (11) Willfully files a false report or record in the practice of medicine; [and]
- (36) Willfully makes a false representation when seeking or making application for licensure or any other application related to the practice of medicine[.]

On February 6, 2013, a Case Resolution Conference was convened in this matter. Based on negotiations occurring as a result of this Case Resolution Conference, the Respondent agreed to enter into this Consent Order, which consists of Procedural Background, Findings of Fact, Conclusions of Law, Order, Consent and Notary.

FINDINGS OF FACT

The Board makes the following Findings of Fact:

BACKGROUND FINDINGS

1. At all times relevant hereto, the Respondent was licensed to practice medicine in the State of Maryland. The Respondent was initially licensed to practice medicine in Maryland on January 29, 2008, under License Number D67040. The Respondent's license is scheduled for renewal on September 30, 2014.

2. At all times relevant to these charges, the Respondent maintained a medical office at the following location: 12502 Willowbrook Road, Suite 400, Cumberland, Maryland 21502.

3. The Respondent is board-certified in internal medicine.

4. The Board initiated an investigation of the Respondent after receiving a Report of Disciplinary Action (the "Report") from a health care facility (the "Health Care

Facility”)¹ that is located in Maryland. The Health Care Facility reported that it suspended the Respondent’s clinical privileges, effective August 16, 2012, after it determined that he consumed alcohol before performing a diagnostic procedure on an adult male patient (the “Patient”) on August 15, 2012. The Board investigated this complaint under Case Number 2013-0131.

5. The Board then received a second complaint on September 10, 2012, from the Patient, who alleged that the Respondent failed to complete a colonoscopy he performed on him on August 15, 2012, and failed to contact him afterwards. The Board investigated this complaint under Case Number 2013-0184,

6. The Board’s investigation determined that the Respondent has a serious and acute alcohol abuse problem that has affected his ability to provide safe and responsible medical care to patients. The Respondent has a prior history of alcohol abuse and unsuccessful treatment of this condition. He failed to disclose his history of alcohol abuse when applying for licensure to the Board and when filing his periodic renewal applications with the Board. In addition, the Respondent has been arrested on four occasions in the past twelve months for driving while under the influence of alcohol and/or drugs and related vehicular offenses.

7. After reviewing the Respondent’s actions, the Board, on November 16, 2012, issued an Order for Summary Suspension pursuant to Md. State Gov’t Code Ann. § 10-226(c)(2). The Board concluded that the Respondent’s actions constitute a substantial likelihood of risk of serious harm to the public health, safety and welfare,

¹ For purposes of confidentiality, all health care facilities, patients and other individuals referenced in this Consent Order have not been identified by name. The Respondent is aware of the identity of all health care facilities, patients and other individuals referenced herein.

which imperatively requires the immediate suspension of his license to practice medicine.

8. The Board's investigative findings are set forth *infra*.

BOARD INVESTIGATIVE FINDINGS

9. On or about August 27, 2012, the Health Care Facility notified the Board that it suspended the Respondent's clinical privileges after nurses who were assisting the Respondent perform a colonoscopy on the Patient on the morning of August 15, 2012, reported that they smelled alcohol on the Respondent's breath. The nurses immediately notified a Health Care Facility administrative officer, who also confirmed that the Respondent smelled of alcohol. The administrative officer directed the Respondent to suspend performing the procedure and questioned him about his consumption of alcohol. The Respondent admitted to the administrative officer that he consumed alcohol that morning before coming to the Health Care Facility. The Health Care Facility cancelled the remaining four procedures the Respondent had scheduled for that morning and officially suspended his clinical privileges, effective August 16, 2012.

10. The Health Care Facility directed the Respondent to undergo blood alcohol screening at 9:45 a.m. on August 15, 2012. The Respondent's blood alcohol content was measured as being 0.09 % BAC.²

11. The Board investigated the above allegations and determined the following:

² BAC stands for blood alcohol content, which is expressed as a percentage of alcohol in a volume of blood.

(a) The Respondent consumed alcohol prior to performing a colonoscopy on the Patient at the Health Care Facility at about 9:00 a.m. on August 15, 2012;

(b) After Health Care Facility staff determined that the Respondent used alcohol on August 15, 2012, Health Care Facility administrators forced him to cancel his remaining four diagnostic procedures, which included at least one other colonoscopy;

(c) The Respondent admitted to Health Care Facility administrators that he consumed alcohol on the morning of August 15, 2012, prior to performing his first procedure of the morning;

(d) The Respondent underwent blood alcohol testing at the Health Care Facility on August 15, 2012, at about 9:45 a.m. The Respondent's blood alcohol content was measured as being 0.09 g/dL (%);

(e) The Health Care Facility suspended the Respondent's clinical privileges, effective August 16, 2012;

(f) The Respondent has a prior history of alcohol abuse, and underwent alcohol dependency treatment approximately five years ago when practicing medicine in Missouri;

(g) The Respondent admitted to Board investigators that he has abused alcohol since 2011;

(h) The Respondent made material misrepresentations to the Board on his initial application for licensure and in his renewal

applications. The Respondent failed to disclose his alcohol abuse, impairment and dependency issues on his initial application for licensure to the Board in 2008 and in his 2010 and 2012 renewal applications, despite certifying on those applications that his responses to questions about those subjects were true and correct. The Respondent failed to disclose his arrests and/or convictions for alcohol-related vehicular offenses (see ¶ 12, *infra*) in his 2012 renewal application, despite certifying that his responses to questions about that subject area were true and correct; and

(i) The Respondent admitted to Board interviewers that he has an alcohol dependency problem.

12. The Respondent has been arrested on four occasions within the past twelve months for alcohol-related driving offenses, consisting of the following:

(a) On December 7, 2011, the Respondent was arrested in Cumberland, Maryland, and charged with driving or attempting to drive a vehicle while impaired by drugs or alcohol or alcohol and drugs. The Respondent pleaded guilty to this charge on April 13, 2012, and was given a 60-day suspended sentence. The Respondent's driver's license was suspended and he was placed on supervised probation.

(b) On or about January 21, 2012, the Respondent was arrested in Garrett County, Maryland, and charged with driving while under the influence of alcohol and other related vehicular offenses. The Respondent pleaded guilty to negligent driving and failure to stay to the right of the

center line on or about March 16, 2012, and on or about March 27, 2012, was granted probation before judgment on the charge of driving while under the influence of alcohol.

(c) On August 9, 2012, the Respondent was arrested in Rockville, Maryland, and charged with driving while under the influence of alcohol and 22 other related vehicular charges, including driving on a suspended license, reckless driving and fleeing and eluding police. These charges are currently pending.

(d) On August 12, 2012, the Respondent was arrested in Cumberland, Maryland, and charged with driving while under the influence of alcohol and several other traffic offenses. Upon arrest, the Respondent's breathalyzer test result was measured as being 0.11 % BAC. These charges are currently pending.

13. The Respondent's actions, as described above, constitute a violation of the following provisions of the Act: H.O. § 14-404(a)(1), Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another; H.O. § 14-404(a)(3), Is guilty of: (i) immoral conduct in the practice of medicine; or (ii) unprofessional conduct in the practice of medicine; H.O. § 14-404(a)(4), Is professionally, physically, or mentally incompetent; H.O. § 14-404(a)(7), Habitually is intoxicated; H.O. § 14-404(a)(9), Provides professional services: (i) While under the influence of alcohol; H.O. § 14-404(a)(11), Willfully files a false report or record in the practice of medicine; and H.O. § 14-404(a)(36), Willfully makes a false representation

when seeking or making application for licensure or any other application related to the practice of medicine.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated the following provisions of the Act: H.O. § 14-404(a)(1), Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another; H.O. § 14-404(a)(3), Is guilty of: (i) immoral conduct in the practice of medicine; or (ii) unprofessional conduct in the practice of medicine; H.O. § 14-404(a)(4), Is professionally, physically, or mentally incompetent; H.O. § 14-404(a)(7), Habitually is intoxicated; H.O. § 14-404(a)(9), Provides professional services: (i) While under the influence of alcohol; H.O. § 14-404(a)(11), Willfully files a false report or record in the practice of medicine; and H.O. § 14-404(a)36), Willfully makes a false representation when seeking or making application for licensure or any other application related to the practice of medicine.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 27th day of February, 2013, by the affirmative vote of a majority of the quorum of the Board considering this case:

ORDERED that the Order for Summary Suspension, dated November 16, 2012, is hereby **TERMINATED**; and it is further

ORDERED that the Respondent's license is **SUSPENDED** for a minimum period of **ONE (1) YEAR**, to commence on the date the Board executes this Consent Order,

and continuing until the Respondent successfully complies with the following terms and conditions:

1. No later than ten (10) business days of the date the Board executes this Consent Order, the Respondent shall enter into a Board-monitored Rehabilitation Agreement with the Maryland Professional Rehabilitation Program ("MPRP") that shall have a minimum duration of five (5) years. If recommended by the MPRP, the Respondent shall enter into a Rehabilitation Agreement with a duration longer than five (5) years. At the end of the five (5) years, and if recommended by MPRP, the Respondent shall enter into a new Rehabilitation Agreement, or an extension of the initial Rehabilitation Agreement, for the length of time recommended by the MPRP. 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 all Rehabilitation Agreement(s) and Rehabilitation Plan(s) entered into with the MPRP, complete abstinence, weekly 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. No later than ten (10) business days of the date the Board executes this Consent Order, the Respondent shall sign any written release/consent forms, and update them, as required by the Board and the MPRP. Specifically, the Respondent shall sign any written release/consent forms 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.*, disclosure 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.

3. The Respondent shall be responsible for assuring that any treatment provider(s) submit written reports to the MPRP and to the Board at least once every three (3) months regarding his attendance, progress, payment of fees, and recommendations as to the continuation, frequency, and/or termination of treatment. The Respondent shall sign any consent forms required to authorize the Board and the MPRP to receive written reports from any treatment providers.

4. For the entire duration of the **ONE (1) YEAR** period of **SUSPENSION**, the Respondent shall completely abstain from the ingestion of alcohol, unprescribed controlled dangerous substances ("CDS"), narcotics, illegal drugs and other mood-altering substances. The Respondent may take CDS, but only if prescribed by a licensed health care provider for a legitimate medical purpose and only as prescribed. Prior to accepting any medication prescription from a licensed health care provider, the Respondent shall provide the licensed health care provider with a copy of this Consent Order. Within 48 hours of being prescribed CDS, the Respondent shall notify the Board of the CDS prescribed, the prescriber, the medical conditions prescribed for, the pharmacy at which the prescription was filled, and the amount and dosage prescribed.

5. A violation of any of the requirements in the preceding paragraphs and/or a conviction, plea or finding of guilty or *nolo contendere* to any criminal offense,

other than a minor traffic violation, during the suspension period shall constitute a violation of the suspension and a violation of this Consent Order and the Board, in its discretion, after notice and opportunity for a hearing, may impose additional sanctions authorized under § 14-404 of the Act, including additional suspension, additional probation and/or permanent revocation of his license.

6. No later than **nine (9) months** of the date the Board executes this Consent Order, the Respondent shall successfully complete, at his own expense, a Board-approved course in medical ethics. The Respondent shall enroll in this course no later than **three (3) months** of the date the Board executes this Consent Order. The Respondent shall submit to the Board written documentation regarding the particular course he proposes to fulfill this condition. The Board reserves the right to require the Respondent to provide further information regarding the course he proposes, and further reserves the right to reject his proposed course and require submission of an alternative course proposal. The Respondent understands and agrees that the Board reserves the right to approve the course only if it determines that the curriculum and the duration of the course are adequate to address its concerns. The Board reserves the right to provide the course director with the charging document, this Consent Order, and any documents it deems relevant. The Respondent shall be solely responsible for providing timely, written documentation that he successfully completed the course according to the terms and conditions set forth above.

AND IT IS FURTHER ORDERED that at the conclusion of the entire **ONE (1) YEAR** period of **SUSPENSION** of his license, the Respondent may submit a written petition to the Board through the Reinstatement Inquiry Panel requesting that he

appear before it for the purpose of requesting the Reinstatement Inquiry Panel to terminate the suspension of his license, but only if he has fully and satisfactorily complied with all the requirements set forth above; and it is further

ORDERED that if the Board terminates the **SUSPENSION** of the Respondent's license, the Respondent will be placed on probation for a minimum period of **FIVE (5) YEARS**, and until he fully and satisfactorily complies with the following requirements:

1. During the probationary period, the Respondent shall provide the names(s) of all physicians with whom he is professionally affiliated to the Board. The Respondent shall provide a copy of this Consent Order to all physicians with whom he is affiliated as a physician.

2. During the probationary period, the Respondent shall not prescribe, administer or dispense any CDS to patients during the course of his employment.

3. After completing a minimum period of one (1) year of probation, and if recommended by MPRP, the Respondent may petition the Board through the Board's Investigative Review Panel for permission to prescribe, administer or dispense CDS, and if granted, under what conditions of supervision.

4. During the probationary period and if recommended by MPRP, the Respondent shall remain in the MPRP and continue in 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 Agreement(s) and Rehabilitation Plan(s) entered into with the MPRP, complete abstinence, random monitored toxicology

screens as required by the MPRP, self-help fellowship meetings and in-patient substance abuse treatment if recommended by the MPRP.

5. 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.

6. For the entire duration of the probationary period, the Respondent shall completely abstain from the ingestion of alcohol, unprescribed controlled dangerous substances ("CDS"), narcotics, illegal drugs and other mood-altering substances. The Respondent may take CDS, but only if prescribed by a licensed health care provider for a legitimate medical purpose and only as prescribed. Prior to accepting any medication prescription from a licensed health care provider, the Respondent shall provide the licensed health care provider with a copy of this Consent Order. Within 48 hours of being prescribed CDS, the Respondent shall notify the Board of the CDS prescribed, the prescriber, the medical conditions prescribed for, the pharmacy at which the prescription was filled, and the amount and dosage prescribed.

7. A violation of any of the requirements in the preceding paragraphs and/or a conviction, plea of guilty or *nolo contendere* to any criminal offense, other than a minor traffic violation, during the probationary period shall constitute a violation of probation and a violation of this Consent Order and the Board, in its discretion, after notice and opportunity for a hearing, may impose additional sanctions authorized under § 14-404 of the Act, including additional suspension, additional probation and/or permanent revocation of his license.

8. The Respondent shall comply with the Act and all laws, statutes and regulations pertaining to the practice of medicine.

AND IT IS FURTHER ORDERED that no earlier than **FIVE (5) YEARS** from the date the suspension of the Respondent's license is terminated, the Respondent may submit a written petition to the Board requesting termination of probation, but only if he has fully and satisfactorily complied with the requirements set forth in the preceding paragraphs and there are no pending complaints against him. The Respondent's probation shall not be terminated until such time as the Reinstatement Inquiry Panel issues an order terminating it; and it is further

ORDERED that if the Respondent violates any of the terms and conditions of this probation and/or this Consent Order, the Board, in its discretion, after notice and an opportunity for an evidentiary hearing before the Office of Administrative Hearings if there is a genuine dispute as to the underlying material facts, or an opportunity for a show cause hearing before the Board otherwise, may impose any sanction that the Board may have imposed in this case under § 14-404 of the Act, including a reprimand,

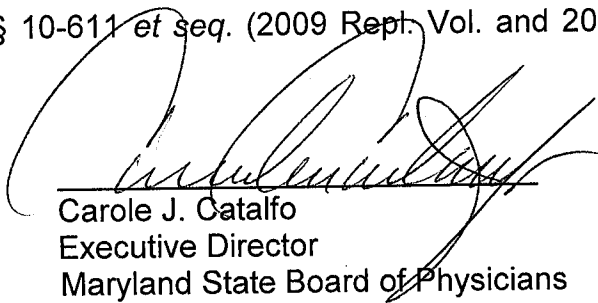
probation, suspension, and/or revocation, said violation being proved by a preponderance of the evidence; and it is further

ORDERED that the Respondent shall not petition the Board for early termination of his probation and/or the conditions of this Consent Order; and it is further

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

ORDERED that this Consent Order is considered a **PUBLIC DOCUMENT** pursuant to Md. State Gov't. Code Ann. § 10-611 *et seq.* (2009 Repl. Vol. and 2012 Supp.).

3-1-13
Date


Carole J. Catalfo
Executive Director
Maryland State Board of Physicians

CONSENT


I, Robert Chou, M.D., acknowledge that I have had the opportunity to consult with counsel before signing this document. By this Consent, I agree to the foregoing Consent Order, which consists of Procedural Background, Findings of Facts, Conclusions of Law, Order, and Consent, and I agree and accept to be bound by this Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact and Conclusions of Law.

I acknowledge the validity of this Consent Order as if entered into 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 own behalf, and to all other substantive and procedural protections as provided by law. I acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I also affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing.

I sign this Consent Order after having had an opportunity to consult with counsel, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order. I voluntarily sign this Order, and understand its meaning and effect.

Feb 13, 2013
Date



Robert Chou, M.D.
Respondent


NOTARY

STATE OF MARYLAND

CITY/COUNTY OF: ALLEGANY

I HEREBY CERTIFY that on this 13 day of FEB, 2013, before me, a Notary Public of the State and County aforesaid, personally appeared Robert Chou, M.D., and gave oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

AS WITNESS, my hand and Notary Seal.



Notary Public

My commission expires: 09/17/2013