IN THE MATTER OF	*	**BEFORE THE**
RICHARD FALCIONI, PA-C	*	**MARYLAND STATE**
Respondent	*	**BOARD OF PHYSICIANS**
License Number: C00537	*	**Case Number: 2217-0016B**

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CONSENT ORDER

On March 15, 2018, Disciplinary Panel B ("Panel B") of the Maryland State Board of Physicians (the "Board") charged Richard Falcioni, PA-C (the "Respondent"), License Number C00537, with violating the Maryland Physician Assistants Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") § 15-314(a) (2014 Repl. Vol. & 2017 Supp.).

The pertinent provisions of the Act provide:

> (a) *Grounds.* -- Subject to the hearing provisions of § 15-315 of this subtitle, a disciplinary panel, on the affirmative vote of a majority of the quorum, may reprimand any physician assistant, place any physician assistant on probation, or suspend or revoke a license if the physician assistant:
>
> ...
>
> (22) Fails to meet appropriate standards 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[.]

On May 23, 2018, Panel B was convened as a Disciplinary Committee for Case Resolution ("DCCR") in this matter. Based on negotiations occurring as a result of this DCCR, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

Panel B finds:

I. BACKGROUND

1. The Respondent is a Physician Assistant. The Respondent was initially licensed by the Board on September 17, 1981. The Respondent's license is scheduled to expire on June 30, 2019.

2. At all times relevant to these charges, the Respondent was a physician assistant at an urgent care center located in Havre De Grace, Maryland ("Facility A").

3. At all times relevant to these charges, the Respondent's assigned supervising physician was Physician A. The Board approved the Respondent's delegation agreement with Physician A in 2014 for internal medicine duties and urgent care including conducting histories and physical examinations, interpreting and evaluating patient data, administering and interpreting EKGs, repairing lacerations and incision and drainage of superficial abscesses. Pain management and psychiatry were not included in the requested scope of practice.

4. On or about November 28, 2016, the Board received an anonymous complaint alleging that a former patient of the Respondent (identified below as "Patient 4") presented to Hospital A during the evening of October 2, 2016 purportedly with an overdose of "Lexapro." Hospital A conducted a CRISP[1] search and discovered that Patient 4 had been prescribed several controlled dangerous substances ("CDS") by the Respondent through an urgent care center ("Facility A").

[1] "CRISP" stands for Chesapeake Regional Information System for our Patients and is a prescription drug monitoring program ("PDMP") available to providers in Maryland and the District of Columbia.

5. On receipt of the complaint, the Board initiated an investigation which included issuing a subpoena for a PDMP report of the Respondent's prescribing, issuing subpoenas to Facility A for a total of ten patient records and issuing a subpoena to Hospital A for Patient 4's records.

6. On or about March 24, 2017, the Board notified the Respondent of the complaint filed relating to Patient 4 and requested a written response.

7. On or about April 14, 2017, the Respondent submitted a written response to the Board regarding Patient 4. The Respondent stated that he had no knowledge of Patient 4's prescription(s) by her primary care provider for oxycodone, or that she had been treated for an overdose at Hospital A. Shortly thereafter, the Respondent submitted "summaries of care" for all ten patients as requested by the Board.

8. On or about July 5, 2017, Board staff interviewed the Respondent under oath at the Board's offices. The Respondent acknowledged that he had not completed any coursework or specialized training in pain management. The Respondent stated that although his supervising physician is available anytime and has access to the medical records of the patients the Respondent sees, he does not "typically" call him as he (the Respondent) has been seeing patients as a PA for 38 years.

9. In furtherance of its investigation, on or about October 24, 2017, Board staff transmitted ten patient records and other relevant investigative documents to Permedion requesting that a peer review be conducted of the Respondent's practice. On or about January 9, 2018, the Board received the peer review report regarding the Respondent's care and treatment of Patients 1-10.

II. PATIENT-RELATED FINDINGS

STANDARD OF CARE VIOLATIONS

10. The peer reviewer found the following deficiencies relating to nine patients (Patients 1, 2, 3, 4, 5, 6, 7, 9, and 10) that relate in whole or in part to the Respondent's failure to meet the standard of quality care for patients receiving opioids and/or benzodiazepines and/or psychiatric medications. The peer reviewer found:

- The Respondent's inadequate use of random urine drug screening to monitor for abuse or diversion of controlled dangerous substances ("CDS") (Patients 1, 3, 4, 5, 7, 9, 10);
- The Respondent's early prescribing of CDS refills (Patients 1, 2);
- The Respondent's prescribing of CDS to patients for lost or forgotten medications without documentation of warning or reiteration of policy (Patients 1, 2);
- The Respondent's failure to obtain narcotics' contracts (Patient 1, 3, 5, 7);
- The Respondent's inappropriate prescribing of CDS to patients with a history of substance abuse disorders (Patients 2, 6, 7);
- The Respondent's prescribing of opioids or other CDS including increasing dosages without obtaining prior medical records from pain providers, mental health providers, primary care providers or imaging studies substantiating legitimate need for opioids (Patient 1, 2, 3, 4, 5, 6, 9, 10);
- The Respondent's prescribing for chronic pain and or psychiatric medication management to patients in an acute care setting without evidence of immediate danger to the patient (Patient 1, 2, 3, 4, 5, 6, 7, 9, 10);
- The Respondent's prescribing of opioids to patients concurrently with another provider despite having access to CRISP (Patients 3, 4, 9, 10);
- The Respondent's failure to appropriately refer patients to pain management providers (Patient 5); and/or
- The Respondent's failure to prescribe adjuvant therapies (Patient 5).

11. The Respondent's care as outlined above in whole or in part is evidence of the Respondent's failure to meet the standard of quality medical care in violation of Health Occ. § 15-314(a)(22).

INADEQUATE MEDICAL RECORDKEEPING

12. The peer reviewer found the Respondent's record keeping was inadequate for eight patients (Patients 1, 2, 4, 5, 6, 7, 9 and 10), for reasons in whole or in part as follows:

- The Respondent failed to accurately list current medications the patient was being prescribed (Patients 1, 2);
- The Respondent failed to obtain prior medical records from patients' pain or mental health providers to justify the diagnoses documented as rationales for prescribing CDS (Patients 1, 2, 4, 5, 10);
- The Respondent failed to adequately document the patient's progress on the medication regimen (Patients 6);
- The Respondent failed to document an adequate evaluation of the patient including the subjective symptoms (Patients 6, 7, 9, 10); and/or
- The Respondent used a repetitive chronic low back care plan although the complaint was not complaining of back pain (Patient 7).

13. The Respondent's actions and inactions as outlined in pertinent part above in whole or in part evidence deficiencies in the Respondent's record keeping in violation of Health Occ. § 15-314(a)(40).

II. CONCLUSIONS OF LAW

Based on the Findings of Fact, Panel B concludes as a matter of law that the Respondent's conduct constitutes violations of Health Occ. § 15-314(a) (22) and (40).

III. ORDER

It is, on the affirmative vote of a majority of the quorum of Board Disciplinary Panel B, hereby:

ORDERED that the Respondent is **REPRIMANDED;** and it is further

ORDERED that the Respondent is placed on **PROBATION** for a minimum period of **TWO (2) YEARS**, and shall fully and satisfactorily comply with the following probationary conditions:

1. The Respondent shall cease the practice of pain management. The Respondent is prohibited from prescribing controlled dangerous substances ("CDS"), except as provided in this paragraph. In emergency cases, the Respondent may issue no more than one prescription of a CDS to a patient, but the prescription may not exceed the lowest effective dose and quantity needed for a duration of five days. The prescription may not be refilled, nor may it be renewed. The Respondent may not prescribe an emergency prescription for a CDS to a patient more than once per year per patient. The Respondent shall notify the Board within 24 hours of any prescription authorized under this paragraph;

2. Within **SIX (6) MONTHS** of this Consent Order, the Respondent shall successfully complete a comprehensive Panel-approved course in recordkeeping. The course may not be used to fulfill the continuing medical education credits required for license renewal. The Respondent must provide documentation to the Board that the Respondent has successfully completed the course. The course may not be taken over the internet;

3. Within **SIX (6) MONTHS** of this Consent Order, the Respondent shall successfully complete a comprehensive Panel-approved course in the treatment of pain management. The course may not be used to fulfill the continuing medical education credits required for license renewal. The Respondent must provide documentation to the Board that the Respondent has successfully completed the course. The course may not be taken over the internet;

4. During the probationary period, the Respondent is subject to a chart and/or peer review conducted by the Board or Board disciplinary panel or its agents; and it is further

ORDERED that the Panel may issue administrative subpoenas to the Maryland Prescription Drug Monitoring Program on a quarterly basis for the Respondent's CDS prescriptions. The administrative subpoenas may request a review of the Respondent's CDS prescriptions from the beginning of each quarter; and it is further

ORDERED that, after **TWO (2) YEARS**, the Respondent may submit a written petition to the Board requesting termination of probation. After consideration of the petition, the probation may be terminated through an order of the Board or Panel. The Respondent may be required to appear before the Board or Panel to discuss his/her petition for termination. The Board or Panel will grant the petition to terminate the probation if the Respondent has complied with all of the probationary terms and conditions and there are no pending complaints related to the charges; and it is further

ORDERED that there shall be no early termination of probation or of any conditions of this Consent Order; and it is further

ORDERED that if the Respondent allegedly fails to comply with any term or condition of this Consent Order, the Respondent shall be given notice and an opportunity for a hearing. If there is a genuine dispute as to a material fact, the hearing shall be before an Administrative Law Judge of the Office of Administrative Hearings. If there is no genuine dispute as to a material fact, the Respondent shall be given a show cause hearing before the Board or a Disciplinary Panel; and it is further

ORDERED that, after the appropriate hearing, if the Board or Disciplinary Panel determines that the Respondent has failed to comply with any term or condition of this Consent Order, the Board or Disciplinary Panel may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, or suspend or revoke the Respondent's license to practice medicine in Maryland. The Board or Disciplinary Panel may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine upon the Respondent; and it is further

ORDERED that the Respondent shall comply with all laws governing the practice of medicine under the Maryland Physician Assistants Act and all rules and regulations promulgated thereunder; and it is further

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

ORDERED that, unless stated otherwise in the order, any time period prescribed in this order begins when the Consent Order goes into effect. The Consent Order goes into effect upon the signature of the Board's Executive Director, who signs on behalf of Panel B; and it is further

ORDERED that this Consent Order is a public document pursuant to Md. Code Ann., Gen. Prov. §§ 4–101 *et seq.* (2014 & 2016 Supp.).

06/12/2018
Date

Christine A. Farrelly
Christine A. Farrelly, Executive Director
Maryland State Board of Physicians

CONSENT

I, Richard A. Falcioni, PA-C, by affixing my signature hereto, acknowledge that:

I am represented by counsel and have consulted with counsel before entering into this Consent Order. By this Consent and for the sole purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

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 provided by law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of the Board that I might have filed after any such hearing.

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

Signature on File

6-4-2018
Date

Richard A. Falcioni, PA-C

STATE/ DISTRICT OF Maryland

CITY/COUNTY OF:

I HEREBY CERTIFY that on this 4 day of June, 2018, before me, a Notary Public of the State/District and County aforesaid, personally appeared Richard A. Falcioni, PA-C, 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.

Wanda Cox Exp 8/30/18
Notary Public