

IN THE MATTER OF  
ANN K. BISER, PA-C  
Respondent

\* BEFORE THE  
\* MARYLAND STATE  
\* BOARD OF PHYSICIANS

License Number: C01778

\* Case Number: 2016-0491B

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**CONSENT ORDER**

On November 21, 2016, Disciplinary Panel B of the Maryland State Board of Physicians (the "Board") charged Ann K. Biser, PA-C (the "Respondent"), License Number C01778, with violating the Maryland Physician Assistants Act (the "Act"), Md. Code Ann., Health Occ. II ("Health Occ.") § 15-314 (2014 Repl. Vol. & 2015 Supp.).

The pertinent provisions of the Act provide:

(a) *In general.* -- 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:

...

(3) Is guilty of:

...

(ii) Unprofessional conduct in the practice of medicine;

...

(27) Sells, prescribes, gives away, or administers drugs for illegal or illegitimate medical purposes;

...

(33) Fails to cooperate with a lawful investigation conducted by the Board or a disciplinary panel [.]

On February 22, 2017, Disciplinary Panel B of the Board 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.

## I. FINDINGS OF FACT

### BACKGROUND

Disciplinary Panel B finds as follows:

1. At all times relevant to these charges, the Respondent was and is licensed as a physician assistant in the State of Maryland. She was initially licensed in Maryland on or about August 20, 1998, and her license is scheduled to expire on June 30, 2017.
2. During all times relevant to these charges, the Respondent was a physician assistant employed full time (and prn)<sup>1</sup> at Hospital A, and prn at Hospital B.<sup>2</sup> Both hospitals are in the Baltimore area.
3. The Respondent has assigned supervising physicians at each hospital. As a physician assistant, the Respondent is a dependent practitioner. The medical acts are delegated by the supervising physician, and all medical acts according to the Board's Delegation Agreement are to be "within the scope of practice of the primary supervising physician or a designated alternate supervising physician."
4. At all times relevant to these charges, the Respondent's position at Hospital A was the Coordinator of the Trigeminal Neuralgia Program. Additionally, she was employed prn for the Division of Neurosurgery.

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<sup>1</sup> As needed.

<sup>2</sup> In order to maintain confidentiality, facility, patient and employee names will not be used in this document, but will be provided to the Respondent on request.

5. At all times relevant to these charges, the Respondent's position at Hospital B was as a prn physician assistant, also for the Department of Neurosurgery.

6. On or about March 7, 2016, the Board received a complaint that had been filed by a female ("Patient A") living in Tennessee who alleged the Respondent had prescribed medication to her without ever having met or treated her as a patient. Patient A alleged that a Tennessee Pharmacy ("Pharmacy A") had contacted her by telephone to notify her that her prescription for Ranexa<sup>3</sup> was due to be refilled. Patient A had never heard of the prescriber nor was she taking Ranexa. Patient A alleged in her complaint that the Respondent had prescribed Ranexa to her at the request of a male who resided with Patient A (identified below as "Patient B").

7. Following receipt of the complaint, the Board initiated an investigation into the allegations, including issuing subpoenas for medical records, the Respondent's employment files, pharmacy surveys and conducting interviews of the Respondent and Patient A.

8. On or about March 4, 2016, the Respondent submitted a written response to the Board stating that she had met Patient B on the Internet approximately eight years prior, and they had entered into a long distance romantic relationship. The Respondent acknowledged that she had prescribed to Patient A without having met her, at Patient B's request.

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<sup>3</sup> Ranexa is used in the treatment of angina.

9. Neither Patient A nor B was a patient who had been seen by the Respondent during the scope of her (the Respondent's) employment at Hospital A as a physician assistant.<sup>4</sup>

10. The Board issued a subpoena to the Respondent for medical records for Patients A and B. The Respondent refused to provide records in response to the Board's subpoena, asserting her Fifth Amendment privilege in response to the subpoena request, as set forth in more detail below.

#### **PRESCRIBING FOR PATIENT A**

11. In the Respondent's March 4, 2016, written response to the Board, she stated that she had prescribed Ranexa to Patient A at Patient B's request because Patient B had represented to the Respondent that while he was visiting Patient A in Tennessee, Patient A "emergently needed" the medicine and was unable to reach her physician over the holiday weekend.<sup>5</sup>

12. The Respondent provided to Board staff copies of two text messages that she had received from Patient B on or about November 25, 2015:

- Good morning love. Would you please call in Raney 500 mg #60 3 refills. Take as directed. [Patient A]...Thank you. Please text when done. Love you; and
- Silly girl. Ranexa. 500 mg.

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<sup>4</sup> The Board issued a subpoena to Hospital A for records for Patients A and B, and there was no record of either having received medical care. Further, there is no evidence to support either Patient A or Patient B was seen at Hospital B in the Respondent's capacity as a physician assistant for the Neurosurgery Department.

<sup>5</sup> Patient A reiterated this information during an interview that was conducted of her by Board staff on April 20, 2016.

13. When Board staff asked the Respondent during an April 20, 2016 interview why she had provided Patient A with three refills of the Ranexa, she was not able to provide a reason.

#### **INTERVIEW OF PATIENT A**

14. On March 8, 2016, Board staff conducted a telephonic interview of Patient A under oath.

15. Patient A stated that she discovered the Ranexa prescription had been written for her by the Respondent when a Pharmacy A contacted her at the end of November 2015 by telephone.

16. During the telephone call from Pharmacy A set forth in ¶ 15, Patient A told Pharmacy A that she was not being prescribed Ranexa, that she did not have a cardiac condition and that she had never heard of the Respondent.

17. According to Patient A, Patient B had picked up the prescription using her prescription card and had purportedly represented himself to Pharmacy A as her husband. Patient A was romantically involved with Patient B, but was not married to him. Patient B resided in Tennessee at Patient A's residence from approximately September through December 2015.

18. After Pharmacy A contacted Patient A, Patient A discovered in her home a large box of medications owned by Patient B that included several prescriptions that the Respondent had written.

## INTERVIEW OF RESPONDENT

19. On April 20, 2016, Board staff interviewed the Respondent under oath.
20. According to the Respondent, she had known Patient B for ten years, and had seen him face-to-face on approximately six occasions.
21. The Respondent acknowledged that she did not maintain a medical record for Patient A.
22. According to the Respondent, Patient A notified her by telephone sometime in January 2016 that the Ranexa prescription was fraudulent. The Respondent stated that she contacted Pharmacy A to cancel the Ranexa prescription and any refills she had issued to Patient A.
23. The Respondent acknowledged that she had telephoned in a "couple" of prescriptions for Patient B.
24. The Respondent refused to answer several questions posed to her during the interview.<sup>6</sup>
25. On or about May 18, 2016, the Board served the Respondent with a subpoena *ad testificandum* for her to reappear on May 27, 2016 for the purpose of a second interview.
26. The Respondent failed to appear at the May 27, 2016, scheduled interview. A written response, through her attorney, stated that the Respondent declined to appear

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<sup>6</sup> The Respondent refused to answer based on the advice of her attorney, but did not assert her Fifth Amendment privilege to any question posed.

as it was her understanding that “the subject matter of the interview goes beyond the scope” of the Respondent’s actions with respect to Patient A.

## **PRESCRIBING TO PATIENT B**

27. The Board received the following responses to subpoenas served on pharmacies for prescriptions issued by the Respondent to Patient B between May 2011 and May 2016:

- **Pharmacy B:** The Respondent issued six prescriptions to Patient B, three of which were for Controlled Dangerous Substances (“CDS”): hydrocodone with acetaminophen<sup>7</sup>. The other prescriptions were for amoxicillin;
- **Pharmacy C:** The Respondent issued six prescriptions to Patient B, one of which was for hydrocodone with acetaminophen. The other prescriptions the Respondent issued were: cheratussin AC,<sup>8</sup> silver *sulfadiazine* cream,<sup>9</sup> Lisinopril,<sup>10</sup> Isosorb<sup>11</sup> and metoprolol;<sup>12</sup>
- **Pharmacy D:** The Respondent issued approximately eleven prescriptions to Patient B, one of which was for hydrocodone with acetaminophen. The other prescriptions included fluocinonide,<sup>13</sup> prednisone,<sup>14</sup> cephalixin, azithromycin,<sup>15</sup> mar-cof cg liquid,<sup>16</sup> Lomotil,<sup>17</sup> topicort<sup>18</sup> and naproxen.<sup>19</sup>

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<sup>7</sup> Effective October 2014, the Drug Enforcement Administration rescheduled hydrocodone combination products from Schedule III to Schedule II Controlled Dangerous Substances (“CDS”).

<sup>8</sup> Cough syrup containing codeine.

<sup>9</sup> Topical antibiotic used in the treatment of burns.

<sup>10</sup> Used in the treatment of hypertension and other cardiac conditions.

<sup>11</sup> Used in the treatment of angina.

<sup>12</sup> Used in the treatment of hypertension.

<sup>13</sup> Anti-inflammatory for skin conditions.

<sup>14</sup> Corticosteroid used in the treatment of inflammatory conditions.

<sup>15</sup> Both cephalixin and azithromycin are antibiotics.

<sup>16</sup> Cough syrup that contains codeine.

<sup>17</sup> Anti-diarrheal.

<sup>18</sup> Steroid cream.

<sup>19</sup> Nonsteroidal anti-inflammatory medication.

28. The Board obtained the following original prescriptions issued by the Respondent written on Hospital A's prescription pad:

**Pharmacy B**

- On or about November 2, 2013, the Respondent issued a prescription for amoxicillin to Patient B;
- On or about November 3, 2013, the Respondent issued a prescription for hydrocodone with acetaminophen 10/325, 60 tablets, to Patient B.

**Pharmacy C**

- On or about August 27, 2014, the Respondent issued a prescription for Norco<sup>20</sup> 10/325, 90 tablets, with one refill, to Patient B.

29. When the Respondent telephoned in prescriptions for Patient B, she provided Pharmacies B, C and D with Hospital A's telephone number.

30. Board staff issued to Hospital A a subpoena for Patient B's medical records. There was no record of Patient B having been seen as a patient at Hospital A.

**REFUSAL TO COMPLY WITH SUBPOENAS**

31. As set forth in ¶ 24 above, after being served with a March 24, 2016 Subpoena *ad testificandum* during the Board's investigation, the Respondent failed to answer several questions posed by Board staff during the course of the interview.

32. As set forth in ¶¶ 25 & 26 above, after service of a second Subpoena *ad testificandum*, dated May 18, 2016, during the Board's investigation, the Respondent declined to appear to answer questions.

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<sup>20</sup> Norco is a trade name for acetaminophen and hydrocodone.



33. On or about July 22, 2016, the Board served the Respondent with a Subpoena *duces tecum* requiring she produce a complete copy of any all medical records for Patient B.

34. On or about August 3, 2016, the Respondent, through her attorney, refused to comply with the July 22, 2016 subpoena, claiming she was "asserting the Fifth Amendment privilege"

35. By letter dated August 9, 2016, the Board responded to the Respondent's failure to comply with the July 22, 2016 subpoena, stating in pertinent part:

No criminal liability arises solely out of Ms. Biser's possession and control of medical records for a patient, and, therefore, the act of producing them is not incriminating and is not subject to Fifth Amendment protection.<sup>21</sup>

36. The Board requested compliance with its subpoena within 5 business days from the date of the letter, and reiterated that a failure to comply with the Board's subpoena may result in either contempt of Court proceedings or a charge under the Medical Practice Act with a failure to cooperate with a lawful investigation conducted by the Board.

37. By letter dated August 17, 2016, the Respondent, through her attorney, reiterated her prior position and declined to produce records in compliance with the Board's subpoena.

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<sup>21</sup> In support, the Board cited *Unnamed Attorney v. Attorney Griev. Comm'n of Md.*, 349 Md. 391, 412-13 (1998) in which the Court of Appeals held that a person has no testimonial Fifth Amendment privilege with respect to documents kept during the ordinary course of business, so long as the possession and control of those documents is not a criminal act.

## II. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Disciplinary Panel B concludes as a matter of law that the Respondent's actions constitute violations of Md. Code Ann., Health Occ. II § 15-314(a)(3)(ii), (27) and (33).

## III. ORDER

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

**ORDERED** that the Respondent's license to practice as a physician assistant in Maryland (License #C01778) is **SUSPENDED** for **THIRTY (30) DAYS**. The **THIRTY (30) DAY** suspension goes into effect in 10 business days; and it is further

**ORDERED** that, upon the termination of the **THIRTY (30) DAY SUSPENSION**, the Respondent will be placed on probation for a minimum period of **TWO (2) YEARS**.<sup>22</sup> During the probationary period, the Respondent shall comply with all of the following probationary terms and conditions:

1. Within **SIX (6) months**, the Respondent shall successfully complete a Board disciplinary panel-approved course in ethics. The Board disciplinary panel will not accept a course taken over the Internet. 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; and it is further

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<sup>22</sup> The suspension will not be terminated if the Respondent fails to renew his/her license. If the Respondent's license expires while the license is suspended, the suspension period will be tolled.

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

**ORDERED** that the Respondent shall not apply for the early termination of probation; and it is further

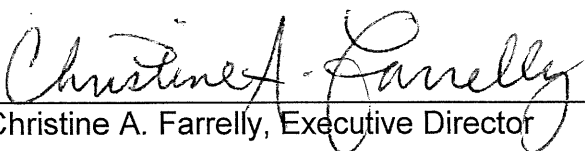
**ORDERED** that, after **TWO (2) YEARS**, if the Respondent has fully and timely complied with the terms and conditions of probation, and there are no pending complaints related to the charges, the Board or Board Disciplinary Panel B will administratively terminate the probation. The administrative termination of probation will be issued through an order of the Board or Board panel; and it is further

**ORDERED** that if the Board or Panel B determines, after notice and an opportunity for a hearing before an Administrative Law Judge of the Office of Administrative Hearings if there is a genuine dispute as to a material fact or a show cause hearing before the Board or Panel B if there is no genuine dispute as to a material fact, that the Respondent has failed to comply with any term or condition of probation or this Consent Order, the Board or Panel B 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 Panel B 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 is responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

**ORDERED** that this Consent Order shall be a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Prov. §§ 4-101-4-601 (2014).

03/02/2017  
Date

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

**CONSENT**

I, Ann Biser, PA-C, 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.

2-24-17  
Date

Ann Biser PA-C  
Ann Biser, PA-C

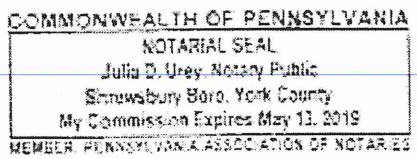
Penn  
**STATE OF MARYLAND**

CITY/COUNTY OF: York

I HEREBY CERTIFY that on this 24<sup>th</sup> day of Feb, 2017, before me, a Notary Public of the State and County aforesaid, personally appeared Ann Biser, and gave oath in due form of law that the foregoing Consent Order was her voluntary act and deed.

AS WITNESS, my hand and Notary Seal.

Julia D. Gray  
Notary Public



My commission expires: 05/11/2019

I HEREBY ATTEST AND CERTIFY UNDER PENALTY OF PERJURY ON 3/2/2017 THAT THE FORGOING DOCUMENT IS A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN MY OFFICE AND IN MY LEGAL CUSTODY.

Christine A. Lavelly  
EXECUTIVE DIRECTOR  
MARYLAND BOARD OF PHYSICIANS