

IN THE MATTER OF

\*

BEFORE THE

AMY M. MOSS, PA-C

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MARYLAND STATE BOARD

RESPONDENT

\*

OF PHYSICIANS

LICENSE NUMBER: C03000

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CASE NUMBER: 2017-0186 B

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### CONSENT ORDER

On September 5, 2017, Disciplinary Panel B ("Panel B") of the Maryland State Board of Physicians (the "Board") charged Amy M. Moss, PA-C ("Physician Assistant"), (the "Respondent"), License Number C03000, under the Maryland Physician Assistants Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") § 15-101 *et seq.* (2014 Repl. Vol. & 2016 Supp.).

The pertinent provisions under §15-314 of the Act provide the following:

- (a) 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; [and]

...

- (9) Provides professional services:

...

- (ii) While using any [narcotic or] controlled dangerous substance as defined in §5-101 of the Criminal Law Article, or other drug that is in excess of therapeutic amounts or without valid medical indication[.]

On December 20, 2017, Panel B was convened as a Disciplinary Committee for Case Resolution ("DCCR") in this matter. Based on negotiations occurring because of the DCCR, Respondent agreed to enter this Consent Order, consisting of Findings of Fact, Conclusions of Law, and Order.

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### **FINDINGS OF FACT**

Panel B makes the following findings of fact:

#### **I. Background**

1. At all times relevant, Respondent was licensed as a physician assistant in Maryland. Respondent was initially licensed as a physician assistant on September 16, 2004 and continually renewed her license. In or about May 2015, Respondent last renewed her license, which expired on June 30, 2017.

2. Respondent was employed as a physician assistant at a medical office in Maryland ("Practice 1") from August 1, 2005 to December 13, 2014.

3. Respondent was employed as a physician assistant for a family practice office in Maryland ("Practice 2") from January 16, 2015 to August 11, 2016.

4. On March 21, 2017, Respondent became licensed as a physician assistant in Pennsylvania.

5. Respondent has since been employed as a physician assistant at a medical office in Pennsylvania.

#### **II. Complaint**

7. On or about September 19, 2016, the Board received a Termination of Employment (Delegation Agreement) Report (the "Termination Report") from

Practice 2, stating that Respondent had been terminated for "good cause" as she was in violation of her contract because of repeated absences, repeated late arrivals, and patient complaints.

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### **III. Board Investigation**

8. On November 30, 2016, the Board notified Respondent that it had opened a full investigation based on the Termination Report and requested that she provide a written response. Respondent did not respond to the correspondence.

9. The Board, pursuant to a subpoena, received Respondent's personnel file from Practice 2. The personnel file revealed the following pertinent information:

- a. From May 15, 2015 to September 7, 2015, Respondent was out sick or came in late on 11 days;
- b. On February 26, 2016, two patients called and asked not to be scheduled with Respondent;
- c. On March 3, 2016, a parent reported he did not want Respondent to see his children because "she was not pleasant to deal with;"
- d. On March 4, 2016, the co-owners of Practice 2 met with Respondent regarding feedback from patients such as "she never touched me, she hardly spent any time with me, I will not be scheduling follow-up with her, she discouraged me from getting a prostate examination;"
- e. On March 21, March 23, and April 7, 2016, Respondent called out of work;
- f. On April 8, 2016, Respondent sent an electronic mail stating "I had been unknowingly taking Ambien 10 mg. every morning for 10 days;"
- g. On April 29 and May 2, 2016, the co-owners of Practice 2 met with Respondent regarding absences and lateness;

- h. On May 27, 2016, the co-owners of Practice 2 met with Respondent regarding repeated lateness and/or absences and their expectation that she spend the allotted time with patients to address health issues in addition to addressing the presenting problem;
  - i. On July 18, 2016, the co-owners of Practice 2 met with Respondent regarding her continued late arrival to work and not starting her afternoon sessions on time;
  - j. On July 29, 2016, a patient complained that Respondent "was not thorough;"
  - k. On August 10, 2016, Respondent failed to come to work. When the office called her, Respondent said she was not coming in. There were two patients waiting to be seen by Respondent and a full day schedule of patients;
  - l. From January 2016 to August 10, 2016, Respondent either left work early, was out sick, and/or came in late on 9 occasions; and
  - m. On August 10, 2016, Respondent was terminated from Practice 2 for "good cause."
10. On January 20, 2017, Board staff interviewed the physician co-owner of Practice 2 ("Physician A"), under oath, who stated the following:
- a. In May 2015, Respondent began demonstrating problems with attendance. For example, Respondent would call out of work in the morning when she had 20 patients scheduled to be seen;
  - b. This pattern of poor attendance became a chronic issue. There were 11 occasions in 2015 when Respondent called out sick without notice. There were 9 days in 2016 when Respondent called out or arrived late from 30 minutes to over an hour;
  - c. On occasion, Respondent failed to notify the office and the office had to call Respondent to see if she was coming in. At times, a patient would be in the examination room undressed and waiting to be seen by her;
  - d. Practice 2 received numerous patient complaints, stating that Respondent never touched them or examined them, Respondent was not in the examination room with them very long, and

Respondent did not call them back when they had called her with a specific question. Some patients refused to see Respondent for another office visit;

- e. Respondent's absences were very disruptive to the patients and the practice;
- f. The co-owners of Practice 2 met with Respondent on numerous occasions to discuss their concerns about patient complaints and her absenteeism; and
- g. On one occasion, Respondent told Physician A that she had unknowingly been given Ambien<sup>1</sup> by the pharmacy instead of another prescription medication. Respondent stated she took Ambien, "by accident," for 10 days. According to Physician A, Respondent came to work on the days she claimed she had "accidentally" taken Ambien, prior to her discovery of the error.

11. The Board, pursuant to a subpoena, received Respondent's personnel file from Practice 1. The personnel file revealed a similar pattern of conduct that was disruptive to patients and the practice, including Respondent's unprofessional attitude, absenteeism, and tardiness, as summarized with the following:

- a. Beginning in April 2011<sup>2</sup>, there were complaints about Respondent being rude to staff and unwilling to talk with patients on the telephone;
- b. On April 22, 2011, Respondent was given a written warning based on chronic tardiness and unscheduled absences (for which she had been given a written warning in December 2007 and a verbal warning in October 2008), taking 6 weeks of medical leave with pay when in fact she was not medically ill, refusing to respond to the answering service if they called her rather than texted her, expecting office managers to write letters that require a medical opinion, and sharing personal and professional frustrations and negative comments about team members with staff;

<sup>1</sup> Ambien is the brand name of Zolpidem, a sedative-hypnotic, which is used to treat insomnia in adults. Ambien is a Schedule IV Controlled Dangerous Substance ("CDS").

<sup>2</sup> Respondent was hired on August 1, 2005; however, the personnel records only begin in 2011.

- c. On August 1, 2011, Respondent was given another written warning for unscheduled absences and lateness;
- d. A report on January 25, 2012, described Respondent's ongoing "negative attitude" and inappropriate comments;
- e. A report on October 10, 2012, described Respondent being "inflexible and unwilling to accommodate patient requests;"
- f. On November 1, 2012, Respondent was given a written warning based on making negative comments about the practice in non-private areas of the office and based on late arrivals, extended lunch breaks, and leaving the office early;
- g. On May 6, 2013, Respondent was given a verbal warning for unscheduled absences and leaving early;
- h. A report on August 20, 2014, described Respondent's refusal to see a patient who called for "urgent care" when there was staff shortage;
- i. On September 5, 2014, Respondent was given a written warning for unscheduled absences and late arrival;
- j. On September 5, 2014, Respondent was required to submit an action plan to address "insubordination – refusal to carry out instruction;"
- k. On October 3, 2014, the Executive Director notified Respondent regarding Practice 1's expectation regarding working occasional extra appointments, demonstrating teamwork, and being flexible to accommodate patient flow and absent colleagues;
- l. On October 14, 2014, the Executive Director reiterated the expectations of Practice 1 about adding an urgent care patient to her schedule, after Respondent had again refused to add one patient to her schedule;
- m. On November 6, 2014, Respondent resigned from Practice 1, effective December 13, 2014; and
- n. The Termination Report of November 16, 2014, evaluated Respondent's attendance/punctuality and cooperation/teamwork as "unsatisfactory." The Executive Director stated that she would not recommend that Respondent be rehired.

12. On February 23, 2017, Board staff interviewed Respondent, under oath, who testified to the following relevant information:

- a. Between March 28 and April 7, 2016,<sup>3</sup> Respondent was late a few times during a 10-day period, due to feeling “exhausted and drugged”;
- b. Respondent went to work on each of the workdays in this period, other than on April 7;<sup>4</sup>
- c. On Thursday, April 7, 2016, Respondent checked her allergy medication bottle and determined that it said “Amb10” (Ambien) not Xyzal,<sup>5</sup> an allergy medication, which had been prescribed by her primary care physician;
- d. Respondent presented to the pharmacy and provided them with the Ambien pills which had been given to her “by accident.” The pharmacy then filled her allergy medication; and
- e. During the days that Respondent was working while taking Ambien, she felt “tired ... exhausted ... and had trouble thinking straight.”

13. Board staff contacted the pharmacy used by Respondent for her prescription for Xyzal and the pharmacy’s corporate office. Both entities confirmed that a pharmacist is required to report all medication errors to the corporate office. Neither the pharmacy nor the corporate office had a report of an error with Respondent’s medication. In addition, the pharmacist reported to Board staff that if a medication error occurred, the pharmacist would notify the patient’s prescribing physician.

14. Board staff reviewed Respondent’s medical records from Respondent’s treating physician, which confirmed that the physician had prescribed Xyzal to Respondent on March 28, 2016. There was no

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<sup>3</sup> Respondent mistakenly said “2015”, although the incident occurred in 2016.

<sup>4</sup> Monday, March 28 to Friday, April 1, 2016 and Monday, April 4 to Friday, April 8, 2016 were workdays for Respondent.

<sup>5</sup> Xyzal is the brand name of levocetirizine which is used to treat year-round seasonal allergies.

documentation of the pharmacy or Respondent having reported a medication error.

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15. Board staff contacted Respondent's treating physician who stated she was never notified by the pharmacy or Respondent of any medication errors during her treatment of Respondent.

**IV. Summary of Grounds for Discipline**

16. Respondent's conduct, including but not limited to:
- a. Chronic unscheduled absences, tardiness, and leaving work early;
  - b. Poor interpersonal relationships with the provider team, based on her negative attitude and lack of cooperation and flexibility;
  - c. Failing to establish a good provider-patient relationship with patients;
  - d. Working for seven days as a physician assistant when she felt "exhausted and drugged" and "tired, exhausted and had trouble thinking straight"; and
  - e. Asserting that the pharmacy had mistakenly filled her prescription for Xyzal with a prescription for Ambien when there is no documentation to support the pharmacy having made this error, and her physician has no recollection of being informed by the pharmacy of their having made such an error;

is evidence that Respondent is guilty of unprofessional conduct in the practice of medicine in violation of Health Occ. § 15-314(a)(3)(ii).

17. Respondent's admission that she worked as a physician assistant for seven days while feeling "drugged" and after taking Ambien 10 mg. in the morning prior to work is evidence that Respondent provided professional services at Practice 2 while using any narcotic or controlled dangerous substance defined in §5-101 of the Criminal Law Article, or other drug that is in



excess of therapeutic amounts or without valid medical indication in violation of Health Occ. § 15-314(a)(9)(ii).

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### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact, Disciplinary Panel B of the Board concludes as a matter of law that the Respondent violated Health Occ. II § 15-314(a)(3)(ii) (unprofessional conduct) and Health Occ. II § 15-314(a)(9)(ii) (provides professional services while using any controlled dangerous substance without valid medical indication).

### **ORDER**

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

**ORDERED** that Respondent is **REPRIMANDED**; and be further

**ORDERED** that upon the reinstatement of Respondent's expired license,<sup>6</sup> Respondent shall be placed on **PROBATION** for a minimum of one (1) year. During the probationary period, Respondent shall comply with all the following probationary terms and conditions:

1. Respondent shall enroll in the Maryland Professional Rehabilitation Program ("MPRP"). Within **5 business days**, Respondent shall contact MPRP to schedule an initial consultation for enrollment. Within **15 business days**, the Respondent shall enter into a Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP.
2. Respondent shall fully and timely cooperate and comply with all MPRP's referrals, rules, and requirements, including but not limited to, the terms and conditions of the Participant Rehabilitation Agreement(s) and Participant Rehabilitation

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<sup>6</sup> Respondent's license expired on June 30, 2017. The probationary term and the conditions are tolled until Respondent applies for reinstatement, meets the minimum requirements for reinstatement, and is reinstated to practice in Maryland.

Plan(s) entered with MPRP and shall fully participate and comply with all therapy, treatment, evaluations, and toxicology screenings as directed by MPRP or the Rehabilitation Program;

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3. Respondent shall be enrolled in MPRP for the full probationary period, unless the Board or Panel determines and orders, consistent with the opinion of MPRP that enrollment is no longer appropriate and may be discontinued;
4. Respondent shall sign and update the written release/consent forms requested by the Board and MPRP. Respondent shall sign the release/consent forms to authorize MPRP to make verbal and written disclosures to the Board, including disclosure of all MPRP records and files possessed by MPRP. Respondent shall also sign any written release/consent forms to authorize MPRP to exchange with (i.e., disclose to and receive from) outside entities (including all of Respondent's current therapists and treatment providers, if any) verbal and written information concerning Respondent and to ensure that MPRP is authorized to receive the medical records of Respondent, including, but not limited to, mental health and drug or alcohol treatment records; and
5. Respondent shall comply with the Maryland Physician Assistants Act, Md. Code Ann., Health Occ. §§ 15-101 - 15-502, and all laws and regulations governing practice as a physician assistant in Maryland; and it is further

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

**ORDERED** that, upon satisfactory review by MPRP, Respondent may submit a written petition to the Board requesting termination of probation after a minimum period of one year. After consideration of the petition, the probation may be terminated through an order of the Board or Panel B. Respondent may be required to appear before the Board or Panel B to discuss her petition for termination. The Board or Panel B will grant the petition to terminate the

probation if Respondent has complied with all the probationary terms and conditions and there are no pending complaints related to the charges; and it is further

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**ORDERED** that a violation of any term or condition of MPRP's Rehabilitation Agreement of Rehabilitation Plan constitute a violation of the probation imposed under this Order; and it is further

**ORDERED** that if Respondent allegedly fails to comply with any term or conditions of probation or this Consent Order, 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 Panel B; and it is further

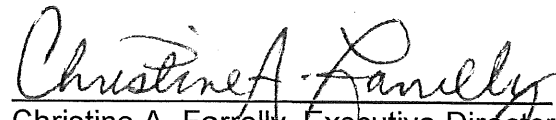
**ORDERED** that, after the appropriate hearing, if the Board or Disciplinary Panel determines that Respondent has failed to comply with any term or condition of probation or this Consent Order, the Board or Disciplinary Panel may reprimand the Respondent, place Respondent on probation with appropriate 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 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, unless stated otherwise in the order, any time 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 the Disciplinary Panel; and it is further

**ORDERED** that this Consent Order is a public document pursuant to Md. Code Ann., Gen. Prov. §§ 4-101 *et seq.*

01/11/2018  
Date

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

**CONSENT**

I, Amy M. Moss, P.A., License No.C03000, by affixing my signature hereto, acknowledge that:

I am represented by counsel and have consulted with counsel before entering 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 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.

1/6/18  
Date

Amy Moss PAC  
Amy M. Moss, P.A., Respondent

#### NOTARY

STATE OF Pennsylvania

CITY/COUNTY OF Berks

I HEREBY CERTIFY that on this 6<sup>th</sup> day of January, 2018 before me, a Notary Public of the State and County aforesaid, personally appeared Amy M. Moss, P.A., License number C03000, 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.

Wellington Santana  
Notary Public

My commission expires 5/3/2018

