

**IN THE MATTER OF**  
**CHIOMA ALEXANDER, PA-C**

**Respondent**  
**License Number: C03890**

**\* BEFORE THE**  
**\* MARYLAND STATE**  
**\* BOARD OF PHYSICIANS**  
**\* Case Number: 2217-0092B**

\* \* \* \* \*

### **FINAL DECISION AND ORDER**

On February 22, 2017, the Maryland State Board of Physicians (the “Board”) received a “Termination of Employment (Delegation Agreement) Report” from a hospital notifying the Board that it terminated the employment of Chioma Alexander, PA-C, for unsatisfactory job performance. The Board opened an investigation that revealed that Ms. Alexander did not have a valid delegation agreement between January 1, 2015 and February 22, 2017. On April 23, 2018, Disciplinary Panel B (“Panel B”) of the Board charged Ms. Alexander under the Maryland Medical Practice Act with unprofessional conduct in the practice of medicine, in violation of § 15-314(a)(3)(ii) of the Health Occupations Article, and performing delegated medical acts without the supervision of a physician in violation of § 15-314(a)(42) of the Health Occupations Article.

On January 4, 2019, pursuant to Health Occ. § 15-315, an evidentiary hearing was held at the Office of Administrative Hearings. Ms. Alexander appeared and testified on her own behalf. On March 18, 2019, the Administrative Law Judge (“ALJ”) issued a proposed decision, concluding that Ms. Alexander was guilty of unprofessional conduct in the practice of medicine and performed delegated medical acts without the supervision of a physician, *see* Health Occ. § 15-314(a)(3)(ii) and (42). The ALJ proposed that Ms. Alexander’s license be suspended for six-months and that a civil fine of \$5,000 be imposed by a disciplinary panel.

Neither Ms. Alexander nor the State filed exceptions to the ALJ’s proposed decision.

## FINDINGS OF FACT

Board Disciplinary Panel A ("Panel A") adopts the ALJ's Proposed Findings of Fact (numbered 1-33, ALJ's Proposed Decision at pages 4-9) and Discussion (ALJ's Proposed Decision at pages 10-20), which are incorporated by reference into this Final Decision and Order as if set forth in full.<sup>1</sup> The ALJ's proposed decision is attached as **Exhibit 1**. The factual findings were proven by the preponderance of evidence.

## CONCLUSIONS OF LAW

Panel A concludes that the Ms. Alexander is guilty of unprofessional conduct in the practice of medicine, in violation of Health Occ. § 15-314(a)(3)(ii), and performed delegated medical acts without the supervision of a physician, in violation of Health Occ. § 15-314(a)(42).

## SANCTION

The ALJ recommended that Ms. Alexander's license be suspended for 6 months and that she be fined \$5,000. Panel A finds that the proposed sanction is warranted and adopts it.

## ORDER

It is, by an affirmative vote of a majority of a quorum of Disciplinary Panel A, hereby

**ORDERED** that Chioma Alexander, PA-C's license to practice as a physician assistant in Maryland is **SUSPENDED** for a minimum period of **6 MONTHS**.<sup>2</sup> During the suspension, Ms. Alexander shall not:

- (a) practice medicine;

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<sup>1</sup> The Proposed Order states that the Board issued charges and scheduled a Disciplinary Committee for Case Resolution Conference. Pursuant to its authority under §10-216(b) of the State Gov't Article, Panel A modifies the Proposed Order to clarify that these actions were taken by Disciplinary Panel B of the Board.

<sup>2</sup> Ms. Alexander's physician assistant license expired on June 30, 2017. The suspension period is, therefore, tolled until Ms. Alexander's license is administratively reinstated. COMAR 10.32.02.05C(3).

(b) take any actions after the effective date of this Order to hold herself out to the public as a current provider of medical services;  
(c) authorize, allow or condone the use of Ms. Alexander's name or provider number by any health care practice or any other licensee or health care provider;  
(d) function as a peer reviewer for the Board or for any hospital or other medical care facility in the state;  
(e) dispense medications; or  
(f) perform any other act that requires an active physician assistant's license; and  
it is further

**ORDERED** that within **6 MONTHS**, Ms. Alexander shall pay a civil fine of \$5,000.00.

The Payment shall be by money order or bank certified check made payable to the Maryland Board of Physicians and mailed to P.O. Box 37217, Baltimore, Maryland 21297. The Board will not terminate Ms. Alexander's suspension if she fails to pay the fine to the Board; and it is further

**ORDERED** that, after the minimum period of suspension imposed by this Final Decision and Order has passed and Ms. Alexander has paid the civil fine, she may submit a written petition to the Board for the termination of suspension. After a determination that Ms. Alexander has complied with the terms of the Final Decision and Order, a disciplinary panel may administratively terminate Ms. Alexander's suspension through an order of the disciplinary panel; it is further

**ORDERED** that the effective date of the Final Decision and Order is the date the Final Decision and Order is signed by the Executive Director of the Board. The Executive Director signs the Final Decision and Order on behalf of the disciplinary panel which has imposed the terms and conditions of this Final Decision and Order; and it is further

**ORDERED** that this Final Decision and Order is a public document. *See* Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6).

07/09/2019  
Date

***Signature on File***

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

**NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW**

Pursuant to Md. Code Ann., Health Occ. § 15-315(b), Ms. Alexander has the right to seek judicial review of this Final Decision and Order. Any petition for judicial review shall be filed within 30 days from the date of mailing of this Final Decision and Order. The cover letter accompanying this final decision and order indicates the date the decision is mailed. Any petition for judicial review shall be made as provided for in the Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If Ms. Alexander files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

**Maryland State Board of Physicians  
Christine A. Farrelly, Executive Director  
4201 Patterson Avenue  
Baltimore, Maryland 21215**

Notice of any petition should also be sent to the Board's counsel at the following address:

**David S. Finkler  
Assistant Attorney General  
Department of Health and Mental Hygiene  
300 West Preston Street, Suite 302  
Baltimore, Maryland 21201**

# **Exhibit 1**

MARYLAND STATE BOARD OF  
PHYSICIANS

v.

CHIOMA ALEXANDER, PA-C,  
aka CHIOMA ALEXANDER NJOKU,  
RESPONDENT

LICENSE No.: C03890

\* BEFORE LAURIE BENNETT,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No.: MDH-MBP2-74-18-27657

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### **PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
PROPOSED DISPOSITION

### **STATEMENT OF THE CASE**

On April 23, 2018, the Maryland State Board of Physicians (Board) issued charges against Chioma Alexander (Respondent) for alleged violations of the Maryland Physician Assistants Act. Md. Code Ann., Health Occ.<sup>1</sup> §§ 15-101 through 15-317 (2014 & Supp. 2018). The Board scheduled a disciplinary Committee for Case Resolution Conference on or about June 27, 2018. The charges did not resolve, and the Board forwarded the matter to the Office of Administrative Hearings (OAH) for further proceedings.

By notice dated September 6, 2018, the OAH set a scheduling conference for September 25, 2018. The United States Postal Service (USPS) returned the Respondent's notice. The OAH postponed the scheduling conference on receipt of a new address for the Respondent from Dawn

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<sup>1</sup> Unless noted, all statutory references are to the Health Occupations Article.

Rubin, Assistant Attorney General and Administrative Prosecutor for the State of Maryland. I held a scheduling conference on October 25, 2018, at which Ms. Rubin appeared on behalf of the State, but the Respondent failed to appear; I proceeded in her absence.

I held a prehearing conference on November 29, 2018. The Respondent represented herself, and Ms. Rubin again represented the State.

I held a hearing on January 4, 2019, at the OAH in Hunt Valley, Maryland. Health Occ. § 14-405(a) (Supp. 2018); COMAR 10.32.02.04. The Respondent represented herself. Ms. Rubin represented the State.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the Rules for Hearings before the Board of Physicians, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); COMAR 10.32.02; COMAR 28.02.01.

### ISSUES

1. Is the Respondent guilty of unprofessional conduct in the practice of medicine in violation of section 15-314(a)(3)(ii) of the Health Occupations Article?
2. Is the Respondent guilty of performing delegated medical acts without the supervision of a physician in violation of section 15-315(a)(42) of the Health Occupations Article?
3. If so, what sanctions are appropriate, if any?

## SUMMARY OF THE EVIDENCE

### *Exhibits:*

I admitted the following exhibits that the State offered:

1. Charging document, 04/23/2018
2. Initial application for certification, 10/06/2008
3. Renewal application, 05/22/2015
4. Compliance referral with attached Termination of Employment (Delegation Agreement) Report, 04/11/2017
5. Subpoena directed to Hospital A with attached personnel documents received by the Board (Bates stamped 1 through 212), received by the Board 04/27/2017
6. Performance Improvement Feedback Plan for the Respondent from Hospital A, 09/21/2016
7. Notification of investigation from Board staff to Respondent, 05/03/2017
8. Email to Respondent from Board staff, 05/12/2017
9. Email response from Respondent to Board staff, 05/18/2017
10. Letter to Respondent from Board staff with attachment, 06/22/2017
11. Email to Respondent from Board staff with attachment, 07/10/2017
12. Letter to Respondent with attachments, 07/25/2017
13. Information Form from Respondent, 08/17/2017
14. Delegation Agreement, signed by Physician C and Respondent, signed by Respondent on 12/02/2014 and Physician C on 12/05/2014 and 01/06/2015
15. Interview of Lay Person A, 07/12/2017
16. Interview of Respondent, 08/17/2017
17. Interview of Physician E, 10/04/2017
18. Interview of Physician D, 11/07/2017
19. Interview of Physician C, 12/19/2017
20. Board's Report of Investigation, 03/02/2018

The Respondent did not offer any exhibits.

### *Witnesses:*

The State offered the following witnesses:<sup>2</sup>

- Physician C, M.D., family medicine practitioner at Hospital A
- Molly Dicken, Compliance Analyst for the Board

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<sup>2</sup> At the State's request, I have redacted names for confidentiality in this Proposed Decision. The State offered pseudonyms for all but two people referenced in this Proposed Decision. I will title these individuals Lay Person A, whose title I only partially include here because his full title is unique and would likely reveal his and others' identities, and Physician E. See State Exhibits A and E for their identities and titles.



- Lay Person A, Vice President of \*\*\*, Hospital A
- Physician D, M.D., Medical Director at Hospital A

The Respondent testified on her own behalf.

### FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The Board first licensed the Respondent as a physician assistant in 2008.
2. On October 6, 2008, the Board notified the Respondent in writing it approved her certification, or license, as a physician assistant and:
  - a. She was not free to practice until she and her supervising physician received approval of a delegation agreement from the Board.
  - b. She was responsible for notifying the Board of any address changes.
  - c. She was responsible for renewing the license every two years.
  - d. She was responsible for familiarizing herself with governing regulations and statute.
3. The Respondent renewed her license every two years, as the Board requires, until she voluntarily permitted the license to lapse on June 30, 2017.<sup>3</sup> The Respondent has not subsequently applied for a license to practice as a physician assistant in Maryland.
4. To practice as a physician assistant in Maryland, the Respondent must: (1) file with the Board a delegation agreement, which, among other information, identifies a supervising physician and the specific duties the supervising physician delegates to her; and (2) submit the required fee.

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<sup>3</sup> "Unless a disciplinary panel agrees to accept the surrender of a license of a physician assistant, the physician assistant may not surrender the license nor may the licensure lapse by operation of law while the physician assistant is under investigation or while charges are pending." Md. Code Ann., Health Occ. § 15-312(a). The Board's investigation commenced while the Respondent held a valid license and a disciplinary panel did not accept a voluntary surrender. Thus, the Board has authority to pursue disciplinary charges against the Respondent even though she permitted her license to lapse.

5. The Board will review and accept or reject the delegation agreement. The Board advises a physician assistant of its decision by email and regular mail, with a copy to the supervising physician by regular mail, and by email if the Board has an email address. The Respondent knew she would receive written notice from the Board about whether it accepted the delegation agreement.
6. A delegation agreement does not have an expiration date; an agreement continues until the relationship ends, such as when the supervising physician elects not to serve in a supervisory capacity. When a physician assistant wants or needs a new supervising physician, the physician assistant must file a new delegation agreement with the Board.
7. The Respondent is a licensed physician assistant in Delaware and Pennsylvania.
8. Hospital A's Medical Staff Office ensures its physician assistants are properly credentialed (and is thus sometimes referred to as the credentialing office by the Respondent and others). The Medical Staff Office sends each provider a licensure application and a checklist of information it needs to appoint or reappoint a provider to the staff, including licensure verification, insurance verification, peer references, government agency reviews, and a delegation agreement. A completed appointment or reappointment application is forwarded to the appropriate department chair for review and then to the Credentials Committee for further review. Someone from the Medical Staff Office will check the Board's website to verify the provider has submitted the delegation agreement to the Board.<sup>4</sup>
9. Prior to accepting employment at Hospital A, the Respondent worked as a physician assistant elsewhere. For that prior employment, the Respondent personally filed between three and five delegation agreements for a specific physician to serve as her supervisor. The Board

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<sup>4</sup> The evidence does not show whether Hospital A has a procedure for verifying the filing of a second delegation agreement after the first has ended.

notified the Respondent by email and regular mail that it had accepted each delegation agreement.

10. On February 6, 2014, Hospital A extended an offer of employment to the Respondent to serve as a physician assistant.
11. In February 2014, the Respondent and Physician A signed a delegation agreement to serve as the Respondent's supervising physician. Hospital A wrote a check to the Board for \$200.00 for the Board's delegation agreement application fee. On February 27, 2014, Physician A sent a note to Hospital A's Director of Human Resources stating the Respondent had asked him to forward the delegation agreement to her after he completed his sections. Physician A advised the Director of Human Resources the delegation agreement needed to be filed with the Board along with the fee.<sup>5</sup> On March 5, 2014, Hospital A approved the issuance of a check for the delegation agreement fee; the approval form contains a notation for an unspecified person to see the Director of Personnel to pick up the check "that is for a delegation agreement for a PA [Respondent]." On April 4, 2014, the Board notified the Respondent by email that it had received the delegation agreement and preliminarily approved Physician A to serve as her supervising physician and she should consider the delegation approved unless she heard otherwise within 90-120 days.
12. On April 28, 2014, the Respondent started work at Hospital A as a physician assistant.
13. Physician D has served as Hospital A's medical director since June 2016. The Respondent was already working at Hospital A when Physician D started in that position. Physician D has never supervised a physician assistant under the hospital's hierarchy and has never

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<sup>5</sup> Physician A used only a first name in his salutation. State Ex. 5, p. 85. The State's evidence includes a note about the delegation application fee that refers to the person by her first name and both initials of her hyphenated last name. *Id.* p. 84. The only person of record who fits that first name and initials is the Director of Human Resources, whose complete name and title are found at State Exhibit 5 in an email from the director on April 14, 2014. *Id.* p. 48.

served as the Respondent's supervising physician under a delegation agreement. As medical director, Physician D works closely with Lay Person A.

14. Lay Person A oversees the three physician/primary care outpatient group practices associated with the hospital and is responsible for hiring and firing physician assistants, among other practitioners. The practices are located in three cities in Maryland. The Respondent initially worked at one of the practices and then moved to another.
15. Physician A notified Hospital A he was leaving his employment there effective December 31, 2014. Physician A's departure conclusively ended his relationship with the Respondent as her supervising physician under the delegation agreement filed with the Board, thus bringing an end to their delegation agreement.
16. Sometime after December 2, 2014, the Respondent went to Nigeria for about four weeks. The Respondent knew when she left for Nigeria that when she returned, Physician A would no longer serve as her supervising physician.
17. On December 2, 2014, the Respondent signed a delegation application to have Physician C serve as her supervising physician. Physician C provides patient care and supervises physician assistants under Hospital A's hierarchy. On December 5, 2014, Physician C signed and dated the delegation agreement. Physician C only expected to serve as the Respondent's supervising physician from January or February 2015 to June 2015.
18. The Respondent gave the application to an unspecified person at Hospital A on the belief that the hospital would send it to the Board with the required fee, but it did not do so. Neither the Respondent nor anyone on her behalf filed the delegation agreement and associated fee with the Board. The absence of any acceptance email or letter from the Board would have alerted the Respondent to the strong possibility the delegation agreement had not been filed.

19. In March or April 2015, Physician B joined Practice A (where the Respondent was then working). The Respondent did not complete and sign a delegation agreement for Physician B to serve as her supervising physician.
20. The Respondent never completed another delegation agreement for anyone to serve as her supervising physician at Hospital A.
21. Hospital A notified the Respondent that it was terminating her employment effective February 20, 2017 for:
- unsatisfactory job performance or otherwise not performing to standards, engaging in activity detrimental to the operations of the hospital, deliberate inattention to patient care, or engaging in any conduct detrimental to patient care, misrepresenting assessment and diagnosis findings in medical record.
- State Ex. 1 memorandum at 1, termination report at 2.
22. Physician D was involved in the decision to terminate the Respondent's employment.
23. Hospital A sent a required "Termination of Employment (Delegation Agreement) Report" to the Board, which it received on February 23, 2017.<sup>6</sup> Lay Person A completed the report, in which he noted Physician D was the Respondent's supervisor, based solely on the fact Physician D was the medical director.
24. Physician D did not have any reason to know, in his capacity as medical director, whether the Respondent had a delegation agreement for anyone in particular to serve as her supervising physician.
25. Lay Person A completed the report without Physician D's knowledge.
26. The Board initiated an investigation of the termination. It requested records from Hospital A, which, among others, submitted the December 2014 delegation agreement for Physician C to serve as the supervising physician.

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<sup>6</sup> A termination report is required when the termination is related to a quality of care issue. Health Occ. § 15-103.

27. Lay Person A learned during the Board's investigation of the termination the Respondent did not have a delegation agreement and Physician D was not her supervising physician under a delegation agreement.
28. On May 3, 2017, the Board sent the Respondent a letter by regular mail to her address of record in Westgrove, Pennsylvania, about its investigation. The Respondent no longer lived there and the USPS returned the mail as undeliverable and unable to forward. The Respondent had not updated her address with the Board.
29. On May 12, 2017, the Board emailed the letter to the Respondent, with notice that the original correspondence had been returned due to an insufficient address. Among other claims, the Board asserted that it did not have an approved delegation agreement on file.
30. The Respondent replied to the Board's letter by email dated May 18, 2017. She addressed claims of inadequate patient care; she did not claim she had filed the necessary delegation agreements. The Respondent did not update her mailing address with the Board.
31. On June 22, 2017, the Board sent the Respondent a letter by regular mail to her address of record in Westgrove, Pennsylvania, stating it had determined further investigation was warranted. The USPS returned the mail as undeliverable and unable to forward. On July 10, 2017, the Board emailed the letter to the Respondent, with notice that the original correspondence had been returned.
32. Sometime after June 22, 2017, the Respondent updated her mailing address with the Board.
33. Neither the Respondent nor anyone on her behalf submitted an application for a delegation agreement to the Board from January 1, 2015 through her termination from Hospital A in February 2017.

## DISCUSSION

### *Legal Framework*

Even though the Board's investigation of the Respondent was precipitated by Hospital A's termination of her employment for patient care issues, this case is not about whether the Respondent performed her duties within the standard of care for a physician assistant. In fact, the Board declined to charge the Respondent with a standard of care violation. This case is strictly about whether the Respondent worked without a delegation agreement on file with the Board and, if so, whether: (1) that failure constitutes unprofessional conduct in the practice of medicine in violation of the Health Occupations Article section 15-315(a)(3)(ii); and (2) the Respondent is guilty of performing delegated medical acts without the supervision of a physician in violation of Health Occupations Article section 15-315(a)(42). The State argues the Respondent worked as a physician assistant without a delegation agreement, and therefore had no supervising physician, from January 1, 2015 (after Physician A left Hospital A) until February 2017 (when the Respondent left her employment with Hospital A).

If the State proves the Board's charges, the Respondent is subject to disciplinary action, up to and including a reprimand, suspension or revocation of her physician assistant certification, and a civil penalty. *Id.* § 15-314(a). Moreover, a person who violates section 15-401 "[s]hall lose licensure as a physician assistant under this title." *Id.* § 15-403(a)(2). Section 15-401(b) states, "Except as otherwise provided in this title, a person may not perform, attempt to perform, or offer to perform any delegated medical act beyond the scope of the license and which is consistent with a delegation agreement filed with the Board."<sup>7</sup>

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<sup>7</sup> I see no applicable exceptions, and the Respondent does not assert any.

“[A]n individual shall be licensed by the Board before the individual may practice as a physician assistant.”<sup>8</sup> *Id.* § 15-301(d)(1). “A physician assistant is the agent of the primary or alternate supervising physician in the performance of all practice-related activities, including the oral, written, or electronic ordering of diagnostic, therapeutic, and other medical services.” *Id.* § 15-301(e).

A physician assistant is “an individual who is licensed to practice medicine with physician supervision.” COMAR 10.32.03.02B(22). “[A] physician may not supervise a physician assistant in the performance of delegated medical acts without filing a completed delegation agreement with the Board,” except in instances not relevant here.<sup>9</sup> Md. Code Ann., Health Occ. § 15-301(e)(2).

Supervision means:

(a) ... the responsibility of the physician to exercise on-site supervision or provide immediately available direction for physician assistants performing delegated medical acts.

(b) "Supervision" includes:

(i) Oversight of the physician assistant and acceptance of direct responsibility for the patient services and care rendered by the physician assistant;

(ii) Continuous availability to the physician assistant either in person, through written instructions, or by electronic means; and

(iii) Designation of one or more alternate supervising physicians.

COMAR 10.32.03.02B(30).

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<sup>8</sup> The code cites exceptions which are not relevant to the Respondent's case.

<sup>9</sup> A physician assistant may provide emergency services that have not been specifically delegated. Md. Code Ann., Health Occ. § 15-301(d)(3).



Moreover,

- (a) A physician may delegate medical acts to a physician assistant only after:
  - (1) A delegation agreement has been executed and filed with the Board;
  - and
  - (2) Any advanced duties have been authorized as required under subsection (c) of this section.

Health Occ. § 15-302(a); *see also* COMAR 10.32.03.05A. "Nothing in ... title [15] may be construed to authorize a physician assistant to practice independent of a primary or alternate supervising physician." *Id.* § 15-301(a). Moreover,

- (b) A license issued to a physician assistant shall limit the physician assistant's scope of practice to medical acts:
  - (1) Delegated by the primary or alternate supervising physician;
  - (2) Appropriate to the education, training, and experience of the physician assistant;
  - (3) Customary to the practice of the primary or alternate supervising physician; and
  - (4) Consistent with the delegation agreement filed with the Board.

*Id.* § 15-301(b).

A properly executed delegation agreement on file with the Board shall include the following information:

- (1) A description of the qualifications of the primary supervising physician and physician assistant;
- (2) A description of the settings in which the physician assistant will practice;
- (3) A description of the continuous physician supervision mechanisms that are reasonable and appropriate to the practice setting;
- (4) A description of the delegated medical acts that are within the primary or alternate supervising physician's scope of practice and require specialized education or training that is consistent with accepted medical practice;
- (5) An attestation that all medical acts to be delegated to the physician assistant are within the scope of practice of the primary or alternate supervising physician and appropriate to the physician assistant's education, training, and level of competence;
- (6) An attestation of continuous supervision of the physician assistant by the primary supervising physician through the mechanisms described in the delegation agreement;
- (7) An attestation by the primary supervising physician of the physician's acceptance of responsibility for any care given by the physician assistant;

- (8) A description prepared by the primary supervising physician of the process by which the physician assistant's practice is reviewed appropriate to the practice setting and consistent with current standards of acceptable medical practice;
- (9) An attestation by the primary supervising physician that the physician will respond in a timely manner when contacted by the physician assistant;
- (10) The following statement: "The primary supervising physician and the physician assistant attest that:
  - (i) They will establish a plan for the types of cases that require a physician plan of care or require that the patient initially or periodically be seen by the supervising physician; and
  - (ii) The patient will be provided access to the supervising physician on request"; and
- (11) Any other information deemed necessary by the Board to carry out the provisions of this subtitle.

Health Occ. § 15-302(a); *see also* COMAR 10.32.03.05B, C.

"A physician assistant may practice in accordance with a delegation agreement filed with the Board." Health Occ. § 15-302 (m). The Board may disapprove the delegation agreement if there are "[l]icensure or compliance issues with the primary supervising physician or the physician assistant" or failure of the agreement to contain the required information. COMAR 10.32.03.06A(2). "The Board shall notify the primary supervising physician and the physician assistant of the Board's receipt of the delegation agreement." COMAR 10.32.03.06B(2). "To the extent practicable, the Board shall approve a delegation agreement or take other action with respect to a delegation agreement within 90 days after receiving a completed delegation agreement including any information from the physician assistant and primary supervising physician." COMAR 10.32.03.06G. "If a delegation agreement does not include advanced duties or the advanced duties have been approved under § 15-302(c)(1) of this subtitle, a physician assistant may assume the duties under a delegation agreement on the date of receipt by the Board of the delegation agreement."<sup>10</sup> Health Occ., § 15-302.1(a)m(2014).

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<sup>10</sup> The State does not allege that the Respondent was delegated advanced duties.

For the reasons that follow, I find the State has proved the Board's charges and the Respondent is subject to a disciplinary suspension and civil penalty.

*Merits of the Charges*

The evidence is conclusive the Respondent did not have a delegation agreement on file starting January 1, 2015, after Physician A terminated their relationship. The Respondent concedes this fact, although she argues she thought Hospital A filed a delegation agreement for Physician C to take over for Physician A, and any other necessary delegation agreements. In support, she testified an unspecified person at Hospital A told her when she was hired the hospital would take care of any credentialing of her license; the Respondent signed an unspecified application and gave it to that person; and the person said the hospital would file it.

To some extent, the Respondent and others at Hospital A had earnest confusion between renewing a Board license and a delegation agreement; between a supervising physician under a delegation agreement and a supervisor under the hospital's hierarchy; and the degree to which Hospital A would ensure a medical provider has all the necessary credentials. This confusion led Lay Person A to incorrectly identify Physician D as the Respondent's supervisor in the "Termination of Employment (Delegation Agreement) Report," dated April 11, 2017. Lay Person A assumed Physician D was the Respondent's supervisor because Physician D oversees the physician, or primary care, group practices. The Respondent, however, knew or should have known that someone who is a supervisor within the hospital's organizational structure was not necessarily her supervising physician under a delegation agreement. In fact, the Board had notified her when she was first licensed she would need a delegation agreement with her supervising physician; she knew she had not filed one after Physician C stopped supervising her;

and she knew the Board had not accepted her delegation agreement for Physician C to supervise her because she never received notice from the Board it had accepted their delegation agreement.

In fairness to the Respondent, however, there is some evidence that raises the possibility Hospital A would file a delegation agreement for her. Physician A sent a note to the hospital's Director of Human Resources stating the Respondent told him to forward the delegation agreement when he completed his sections. Obviously, Physician A meant the delegation agreement application. Although he did not say he was enclosing the application, it is obvious he did because otherwise there would be no purpose to his note and he would have had no reason to tell the Director of Human Resources the delegation agreement needed to be sent to the Board with the fee. Physician A was correct that the delegation needed to be filed with Board, but that does not mean Hospital A was responsible for taking the action.

Also, the record includes a partially obscured document that, for lack of a better description, I will call a check authorization order. State Ex. 5, p. 84. I say partially obscured because a post-it note or other piece of paper was on top of the document when it was photocopied and I cannot see what is underneath. I conclude the check authorization order came from Hospital A because the first two letters in its name are visible. I also see the words "Make Check Payable To:" followed by Maryland, although the rest of the title is obscured. I see a partial P.O. Box address in Baltimore that may or may not belong to the Board. At the bottom of the invoice, in the "Reason/Comments" section, is a notation that an unspecified person should contact the Director of Human Resources to pick up the check which was written for the Respondent's benefit.

Together these two pieces of evidence raise a question about whether Hospital A was going to file the delegation agreement for the Respondent. Even if that were the case, the

Respondent, as the licensee, is responsible for making sure the delegation agreement was accepted. Ms. Dicken testified that when the Board approves (or disapproves) an application for a delegation agreement, it notifies the applicant by email and regular mail with a copy to the supervising physician. The Respondent testified she knew to expect notice from the Board that it had accepted an agreement. Thus, irrespective of who was going to file the delegation agreement, the Respondent knew the Board had not accepted one for Physician C.

The Respondent testified she knew she did not receive anything from the Board about a delegation agreement with Physician C and "time went by so fast" that she forgot about it. The Respondent is not permitted to practice without a delegation agreement. She is not a doctor, and having a supervising physician is required. Forgetting to ensure she has an acceptable delegation agreement is careless and unprofessional.

The Respondent somehow excuses not having a delegation agreement in place with Physician C on the basis she did not initially realize Physician A was gone when she returned from Nigeria. If Physician A left suddenly and without her prior knowledge, I would apply the law governing sudden departure of a supervising physician. In that event, "a designated alternate supervising physician may assume the role of the primary supervising physician by submitting a new delegation agreement to the Board within 15 days." Md. Code Ann., Health Occ. § 15-302(m). Thus, even if Physician A left suddenly while the Respondent was in Nigeria, she was obligated to submit a new delegation to the Board within the prescribed period on her return. She never did that.

In any event, I reject the Respondent's claim that she was caught off guard by Physician A's departure. The Respondent testified when she returned from Nigeria she labored under the belief Physician A was merely on vacation and thus she did not know Physician A would no longer serve as her supervising physician. The Respondent testified she learned within

a few days of returning from Nigeria that Physician A was permanently gone. The Respondent signed the delegation agreement application for Physician C to serve as her new supervising physician on December 2, 2014, before she left for Nigeria. If she did not know until a few days after she returned Physician C would be taking over for the Physician A, she would have had no reason to complete the application more than a month earlier. The Respondent testified she signed the agreement because Hospital A expected to move her between the three physician practices. That explanation makes no sense because the Board would not need to know she was moving from one office to another. The Respondent signed the agreement to have Physician C take over for Physician A. Thus, I find the Respondent knew, before she left for Nigeria, that Physician A was leaving and she knew she needed a delegation agreement for Physician C.

The Respondent testified that at some unspecified time after she returned from Nigeria, she asked the office manager at the physician group practice where she was assigned who her supervisor was and she did not get an "exact answer." This supervisor would have been someone in the hospital's organizational structure, not a supervising physician under a delegation agreement. By her own admission, the Respondent was familiar with the approval process for delegation agreements, so she should have known the Board would have advised her whether it had approved a supervising physician, not the office manager. This is true even if the hospital's credentialing office had submitted her application for a delegation agreement.

Also, Physician C testified she only ever expected to serve as the Respondent's supervising physician from January or February 2015 to June 2015. The Respondent testified she knew this was the case. The Respondent did not present any evidence that she signed a new delegation agreement for someone to replace Physician C. Thus, even if the Respondent had a reasonable basis for believing the delegation agreement with Physician C had been filed with the

Board, she had no reasonable basis for believing anyone had filed one to cover the period from July 2015 through her termination in 2017.

The Respondent testified she assumed Physician B would supervise her when he joined Practice A (where the Respondent was working) in March or April 2015. Physician B may have been her supervisor under the hospital's organizational structure, but the Respondent had no reason to believe he was her supervising physician under a delegation agreement since she had never completed and signed, and had Physician B complete his portion and sign, an application for Physician B to serve in that capacity.

The Respondent argues she acted in accordance with "hospital regulation" at the time. The Respondent did not cite any particular regulation, or even policy, but that is hardly the point. The Respondent was obligated to act in accordance with the Maryland statute and the Board's regulations pertaining to her practice as physician assistant.

The Respondent testified when Hospital A hired her "it was brought to my attention that any credentialing in lieu of license is done by the hospital." Tr. 67. I am unclear what she means by "credentialing in lieu of" her license. The Respondent testified she understands she needs two documents to work as a physician assistant: a Board-issued license and a delegation agreement. One is not in lieu of the other. She was responsible for ensuring she had filed all necessary documents to work as a physician assistant.

Because the Respondent worked as a physician assistant for two years without a delegation agreement, I find the Respondent is guilty of unprofessional conduct in the practice of medicine and she performed delegated medical acts without the supervision of a physician, both as charged by the Board.

### *Sanction and Civil Penalty*

The next question is whether the Respondent should suffer the loss of her physician assistant license and a civil penalty. The State recommends a six-month suspension following the Respondent's successful reinstatement of her physician assistant license in Maryland.

The Respondent has no disciplinary history. Nevertheless, two factors cause me to accept the State's recommendation. First, the Respondent's actions are serious. She told the Board during its investigation she was essentially running the physician practice where she was assigned by herself for four months in early 2015, although Physician C was available to her by phone and would come to the office to see patients one day per week and Physician D would visit the office on different occasions to commend her on her job performance and to see patients. The Respondent also wrote she worked without knowledge of who her supervising physician was. It is impossible to know whether she meant supervising physician under a delegation agreement or under the hospital's hierarchy. Either explanation is especially troublesome.

Second, although the Respondent testified she understands it is her responsibility to ensure a delegation agreement is on file, she made no effort to fulfill that responsibility. The Respondent argues none of this would have happened had Hospital A filed the delegation agreement for Physician C to serve as her supervising physician. The Respondent does not seem to understand that she was also responsible for having a delegation agreement on file for someone to succeed Physician A.

Third, the Respondent said this is a "learning experience" for her. The Respondent does not seem to appreciate the seriousness of her conduct. The Respondent cannot jeopardize patient care during a learning period.



The final question is whether the Board may impose a civil penalty. "In addition to the penalties under subsection (a) of this section, a person who violates § 15-401 of this subtitle may be subject to a civil penalty assessed by the Board in an amount not exceeding \$5,000. Health Occ. § 15-403(b)(1). The State recommends a \$5,000.00 penalty on the basis the Respondent's actions were serious and she acted for financial gain.

The only financial gain is the Respondent's salary and performance bonus. If that constitutes financial gain, any licensee who commits any violation is arguably acting for financial gain. I do not find she acted for financial gain.

On the other hand, the Respondent's actions were serious and careless. She stated without appreciation for its meaning she ran a physician practice for months on her own, not only without a delegation agreement but also without adequate supervision with Hospital A's hierarchy. The Respondent knew or should have known she did not have a delegation agreement Physician A and absolutely knew she had not filed delegation agreements to replace Physician C and, thus, the Respondent's decision to practice without a supervising physician was willful. I therefore accept the State's recommended civil penalty.

With regard to payment of the penalty, "[a]n individual shall pay to the Board any fine imposed under this regulation within 15 calendar days of the date of the order, unless the order specifies otherwise." COMAR 10.32.03.17G. I recommend the Board require the Respondent to pay the penalty before the end of the suspension ends.

### CONCLUSIONS OF LAW

I conclude the Respondent is subject to suspension of her license to practice as a physician assistant;

1. The Respondent engaged in unprofessional conduct in the practice of medicine, in violation of section 15-314(a)(3)(ii) of the Health Occupations Article; and
2. The Respondent performed delegated medical acts without the supervision of a physician, in violation of section 15-314(a)(42) of the Health Occupations Article; and

I further conclude the Respondent is subject to a civil penalty, pursuant to section 15-403(b)(1) of the Health Occupations Article.


### PROPOSED DISPOSITION

I **PROPOSE** that the charges filed by the Board on April 23, 2018 against the Respondent shall be **UPHELD**; and I further

**PROPOSE** that the Respondent serve a six-month suspension upon her successful application to the Board for reinstatement as a physician assistant; and I further

**PROPOSE** that the Respondent shall pay a civil penalty of \$5,000.00.

March 18, 2019  
Date Report Mailed

  
Laurie Bennett  
Administrative Law Judge

LB/kdp  
#177035