

IN THE MATTER OF * BEFORE THE
KELLY LYNN MURRAY, P.A.-C * MARYLAND STATE BOARD
Respondent * OF PHYSICIANS
License Number: C05322 * Case Number: 7720-0012B

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ORDER AFTER SHOW CAUSE HEARING

On July 29, 2019, Disciplinary Panel B of the Maryland State Board of Physicians and Kelly Lynn Murray, P.A.-C, entered into a Consent Order to resolve charges the Panel had issued against the Respondent, under the Maryland Physician Assistants Act. *See* Md. Code Ann., Health Occ. §§ 15-101—15-502. Under the Consent Order, the Respondent was reprimanded and placed on probation for a minimum period of two years with certain probationary terms and conditions.

On April 27, 2020, Panel B issued a Violation of Consent Order and Notice to Show Cause. On June 24, 2020, the Show Cause Hearing was held before Panel B.

FINDINGS OF FACT

Panel B finds the following facts by the preponderance of evidence:

1. The Respondent was initially licensed to practice as a physician assistant in Maryland on February 4, 2014, under License Number C05322. The Respondent's license is current through June 30, 2021. The Respondent's actions at issue in this case occurred while the Respondent practiced as a physician assistant in Maryland.

2. On April 12, 2019, Panel B issued charges against the Respondent alleging that the Respondent's prescribing practices failed to meet the standards for quality medical care, under Health Occ. § 15-314(a)(22); and that the Respondent failed to maintain adequate medical records, under Health Occ. § 15-314(a)(40).

3. The Respondent resolved these charges by entering into a Consent Order with Panel B. Under the Consent Order, the Panel found that the Respondent violated Health Occ. § 15-314(a)(22) and (40). As a sanction, the Respondent was reprimanded and placed on probation for a minimum of two years with the following probationary terms and conditions: Condition 1, the Respondent was prohibited from certifying patients for the medical use of cannabis; Condition 2, the Respondent was required to complete a course in opioid prescribing; **Condition 3, for the first year of probation, the Respondent was prohibited from prescribing and dispensing Controlled Dangerous Substances (“CDS”), except that the Respondent could prescribe Buprenorphine in the treatment of addiction medicine;** Condition 4, for the second year of probation, if the Respondent completed the course, the Respondent could prescribe all CDS, pursuant to the terms of her delegation agreement; Condition 5, for the second year of probation, the Respondent was required to meet with her supervising physician to review a certain minimum number of patient charts each month; and Condition 6, the Panel could issue subpoenas to the Prescription Drug Monitoring Program for the Respondent’s CDS prescriptions from the beginning of each quarter.

4. The Consent Order further provided:

ORDERED that a violation of probation constitutes a violation of this Consent Order; and it is further

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ORDERED that, if the Respondent allegedly fails to comply with any term or condition imposed by this Consent Order, the Respondent shall be given notice and an opportunity for a hearing. If the Panel determines 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 followed by an exceptions process before a disciplinary panel; and if the Panel determines there is no genuine dispute as to a material fact, the

Respondent shall be given a show cause hearing before a disciplinary panel; and it is further

ORDERED that after the appropriate hearing, if the disciplinary panel determines that the Respondent has failed to comply with any term or condition imposed by this Consent Order, the disciplinary panel may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, or suspend with appropriate terms and conditions, or revoke the Respondent's license to practice medicine in Maryland. The disciplinary panel may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine on the Respondent[.]

5. Pursuant to the terms of probation, the Board issued subpoenas to six pharmacies to obtain copies of prescriptions issued by the Respondent for CDS.

6. Between August 8, 2019, and November 16, 2019, which was during the first year of the Respondent's probation under the Consent Order, the Respondent prescribed non-Buprenorphine CDS over 70 times. The majority of these non-Buprenorphine CDS prescriptions were for the stimulants Ritalin, Adderall, and Vyvanse, which are typically used to treat attention deficit hyperactive disorder. These stimulants are Schedule II CDS. In addition to these stimulants, during the first year of probation, the Respondent prescribed the benzodiazepines alprazolam and Ativan, which are non-Buprenorphine Schedule IV CDS.

CONCLUSIONS OF LAW

The Respondent violated the Consent Order she entered into with Panel B, which went into effect on July 29, 2019. Specifically, the Respondent violated probationary condition 3, which prohibited the Respondent from prescribing CDS (other than Buprenorphine) during the first year of probation.

SANCTION

As the sanction, the State recommended that the Respondent's license be suspended for a

short period, either for two weeks or a month. The State argued that the Consent Order was clear and a suspension would demonstrate the necessity for complying with the terms of a Consent Order.

The Respondent states that she prescribed the non-Buprenorphine CDS because she misunderstood the Consent Order. According to the Respondent, due to the nature of the prescriptions which led to the Consent Order, she believed that, not including buprenorphine, the Consent Order only prohibited her from prescribing opioids and that it did not prohibit her from prescribing non-opioid CDS.

The Respondent's violation of the Consent Order is undisputed. And, even if the Respondent's violation was not knowing or willful, her violation of the Consent Order calls for a sanction. The prohibition of all CDS prescriptions (except for buprenorphine) was clear, and it is of paramount importance that a licensee under a Consent Order understands the provisions of the Consent Order he or she enters into. Further, the Respondent's violation of probationary condition 3 did not concern an isolated prescription; the violation was extensive.

The Panel has determined that a new term of probation is appropriate. The probation imposed under the Consent Order is, thus, terminated under this order, and a new probation period is imposed. The new probation will be in effect for a minimum period of two years beginning on the effective date of this order. This order thus restarts the clock on the length of probation. And, again, for the first year of the probation imposed under this order, the Respondent is prohibited from prescribing all CDS, except, in the treatment of addiction, the Respondent may prescribe Buprenorphine. If the Respondent complies with the terms and conditions of this order for the first year, the Respondent will be allowed to prescribe all CDS during the second year of probation, subject to the terms of her delegation agreement. However, during the second year of probation,

the Respondent's supervising physician must provide the additional supervision required under this order. Additionally, the Panel finds that a civil fine of \$5,000, to be paid within two years, is appropriate. The Respondent completed the course ordered under the Consent Order, and no further courses will be imposed under this order. This order also maintains the prohibition on the Respondent certifying patients for the medical use of cannabis.

ORDER

It is, thus, by Panel B, hereby

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

ORDERED that the probation and probationary terms and conditions imposed under the Consent Order, which went into effect on July 29, 2019, are terminated; and it is further

ORDERED that the Respondent is placed on **PROBATION** for a minimum period of **TWO YEARS**.¹ The Respondent shall comply with the following probationary terms and conditions:

1. For the full period of probation, the Respondent is prohibited from certifying patients for the medical use of cannabis;
2. For a minimum period of **one year**, beginning on the effective date of this order, the Respondent is prohibited from both prescribing and dispensing all CDS, with the exception of Buprenorphine for the treatment of addiction;
3. After the first year of probation, if the Respondent has successfully complied with the conditions of probation, the Respondent may prescribe and dispense all CDS pursuant to the

¹ If the Respondent's license expires during the probation period, the probationary period and the probationary conditions are tolled.

terms of her delegation agreement;

4. After the first year of probation, for a minimum period of one year, the Respondent shall be subject to the following additional requirements of **supervision** by the Respondent's **supervising physician**, who has been approved as the Respondent's supervising physician through the Board's delegation agreement approval process:

(a) the disciplinary panel will provide the supervising physician with a copy of this order and any other documents the disciplinary panel deems relevant;

(b) if the Respondent's supervising physician for any reason does not provide the supervision required under this order, the Respondent shall immediately notify the Board and the Respondent shall not prescribe or dispense CDS until a replacement supervising physician, with a Board-approved delegation agreement, has agreed to provide the additional supervision required under this order and the replacement supervising physician has received this order and any other documents deemed relevant by the disciplinary panel; and

(c) it is the Respondent's responsibility to ensure that the supervising physician:

(i) reviews the records of **10 patients** of the Respondent each month, and such patient records shall be chosen by the supervisor and not the Respondent, and the patient records shall be from patients being prescribed CDS by the Respondent, if there are at least 10 patients being prescribed CDS by the Respondent, and the supervisor shall choose patient records from a pool of all of the Respondent's patients being prescribed CDS by the Respondent;

(ii) meets in-person (or in real-time, if in-person is not feasible) with the Respondent at least once each month and discusses with the Respondent the care the Respondent has provided for these specific patients;

(iii) be available to the Respondent for consultations on any patient;

(iv) maintains the confidentiality of all medical records and patient information;

(v) provides the Board with quarterly reports which detail the quality of the Respondent's practice, any deficiencies, concerns, or needed improvements, as well as any measures that have been taken to improve patient care; and

(vi) immediately reports to the Board any indication that the Respondent may pose a substantial risk to patients.

(d) If the disciplinary panel, upon consideration of the supervisory reports and the Respondent's response, if any, determines that the Respondent is not meeting the standard of quality care or is failing to keep adequate medical records, the disciplinary panel may find a violation of probation after the appropriate hearing;

5. Within **two years** of the effective date of this order, the Respondent shall pay a civil fine of **\$5,000**. 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 renew or reinstate the Respondent's license if the Respondent fails to timely pay the fine to the Board; and

6. The Panel may issue subpoenas to the Maryland Prescription Drug Monitoring Program to obtain information on the Respondent's CDS prescriptions; and it is further

ORDERED that the effective date of this order is the date this order is signed by the Executive Director of the Board or her designee. The Executive Director or her designee signs this order on behalf of the disciplinary panel which has imposed the terms and conditions of this order; and it is further

ORDERED that a violation of probation constitutes a violation of this order; and it is further

ORDERED that, after the Respondent has complied with all terms and conditions and the minimum period of probation imposed by the order has passed, the Respondent may submit a written petition for termination of probation. The Respondent may be required to appear before the disciplinary panel to discuss the petition for termination of probation. After consideration of the petition, the Respondent's probation may be administratively terminated through an order of

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

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

ORDERED that, if the Respondent allegedly fails to comply with any term or condition imposed by this order, the Respondent shall be given notice and an opportunity for a hearing. If the disciplinary panel determines 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 followed by an exceptions process before a disciplinary panel; and if the disciplinary panel determines there is no genuine dispute as to a material fact, the Respondent shall be given a show cause hearing before a disciplinary panel; and it is further

ORDERED that after the appropriate hearing, if the disciplinary panel determines that the Respondent has failed to comply with any term or condition imposed by this order, the disciplinary panel may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, or suspend Respondent's license with appropriate terms and conditions, or revoke the Respondent's license. The disciplinary panel may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine on the Respondent; and it is further

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

08/10/2020

Date

Signature on File

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