

IN THE MATTER OF
GARY W. NYMAN, M.D.

Respondent

License Number: D01726

* BEFORE THE MARYLAND
* STATE BOARD OF
* PHYSICIANS
* Case Number: 2015-0583

* * * * *

ORDER OF DEFAULT

BACKGROUND

On December 13, 2017, Disciplinary Panel A of the Maryland State Board of Physicians (“Board”) charged Gary W. Nyman, M.D. with failure to meet appropriate standards for the delivery of quality medical care and failure to keep adequate medical records. *See* Md. Code Ann., Health Occ. (“Health Occ.”) § 14-404(a) (22) and (40). On February 15, 2018, the Board referred the case to the Office of Administrative Hearings (“OAH”) for an evidentiary hearing.

After notice was sent to Dr. Nyman and the State, at their respective addresses of record, a scheduling conference was held via telephone on March 15, 2018 at 9:30 a.m. at OAH in Hunt Valley, Maryland. The Notice instructed the parties to contact OAH if the party’s telephone number listed on the Notice was incorrect. Dr. Nyman did not contact OAH to correct his phone number or request a postponement of the scheduling conference. On the day of the scheduling conference, the administrative prosecutor was present on the phone on behalf of the State. The Administrative Law Judge (“ALJ”) called Dr. Nyman several times and left a voicemail message, but ultimately, was unable to reach Dr. Nyman. The ALJ waited fifteen minutes and then held the scheduling conference in Dr. Nyman’s absence. During the scheduling conference, a prehearing conference was scheduled for April 16, 2018, at 1:00 p.m. at OAH. COMAR 28.02.01.17.

After the scheduling conference, the ALJ received Dr. Nyman's copy of the scheduling conference notice, which was mailed back to the OAH in a separate envelope with no return address listed. The envelope mailed back to OAH and the OAH envelope were stamped with the message: "...TRAVELING IN 2017 PLEASE REMAIL IN 2018..." Someone had handwritten an 8 over the 7 in 2017 and a 9 over the 8 in 2018, so the message appeared: "...TRAVELING IN 2018 PLEASE REMAIL IN 2019..."

On March 20, 2018, OAH mailed a Scheduling Order to the parties. On March 21, 2018, OAH mailed a Notice of In-Person Prehearing Conference and a Notice of Hearing to each party at their respective addresses of record. The Notice of Prehearing Conference informed the parties of the date, time, and location of the prehearing conference and enclosed instructions directing each party to prepare and submit a prehearing statement in advance of the prehearing conference. Further, the Notice of Prehearing Conference informed the parties that failure to attend the April 16, 2018 prehearing conference could result in a decision against the party for failing to appear.

On April 4, 2018, the Scheduling Order, the Notice of Prehearing Conference, and the Notice of Hearing were sent priority mail back to OAH in one envelope with no return address. The priority mail envelope was postmarked April 2, 2018, West Palm Beach, Florida.¹ The envelopes for each notice were stamped in the same manner as the envelope for the scheduling conference notice.

On April 16, 2018, Dr. Nyman failed to appear in person or through counsel at the prehearing conference. The administrative prosecutor appeared on behalf of the State. Dr. Nyman did not request a postponement of the prehearing conference and did not submit a prehearing conference statement as he was instructed to do in the Notice of Prehearing

¹ Dr. Nyman's address of record is in West Palm Beach, Florida.

Conference. The ALJ waited fifteen minutes for Dr. Nyman to appear and then conducted the prehearing conference in Dr. Nyman's absence.

The administrative prosecutor moved for a default judgment against Dr. Nyman and offered the exhibits that she had planned to offer into evidence if the matter had proceeded to a merits hearing. The ALJ admitted those exhibits into evidence.

Under OAH's rules of procedure, "[i]f, after receiving proper notice, a party fails to attend or participate in a prehearing conference, hearing, or other stage of a proceeding, the judge may proceed in that party's absence or may, in accordance with the hearing authority delegated by the agency, issue a final or proposed default order against the defaulting party." COMAR 28.02.01.23A. Similarly, Health Occ. § 14-405 provides, in pertinent part:

(d) If after due notice the individual against whom the action is contemplated fails or refuses to appear, nevertheless the hearing officer may hear and refer the matter to the Board or a disciplinary panel for disposition.

(e) After performing any necessary hearing under this section, the hearing officer shall refer proposed factual findings to the Board or a disciplinary panel for the Board's or disciplinary panel's disposition.

Subsection (d) which provides that the ALJ "may hear" the matter if the individual fails to appear, and subsection (e), which uses the language "any necessary hearing," clearly contemplate situations, such as defaults, where no hearing is required. *See also* COMAR 28.02.01.23A.

The ALJ found that Dr. Nyman had proper notice of the April 16, 2018 prehearing conference and that he failed to appear and participate. On April 17, 2018, the ALJ issued a Proposed Default Order based upon the OAH proceedings described above. The ALJ proposed that the Panel find Dr. Nyman in default, adopt as fact the statements set out in the allegations of fact section of the charges, conclude as a matter of law that Dr. Nyman violated Health Occ. §

14-404(a)(22) and (40) in the manner set forth in the charges, and revoke Dr. Nyman's license to practice medicine.

The ALJ mailed copies of the Proposed Default Order to Dr. Nyman, the administrative prosecutor, and the Board. The proposed decision notified the parties that they may file written exceptions to the proposed decision but must do so within 15 days of the date of the Proposed Default Order. The Proposed Default Order stated that any exceptions and request for a hearing must be sent to the Board with attention to the Board's Executive Director.

On April 19, 2018, the Board sent a letter to the parties describing the exceptions process and the format for filing exceptions. The letter stated that exceptions were due to the Board on May 7, 2018 and informed the parties that if no exceptions were filed there would not be a hearing scheduled on the matter. Neither party filed exceptions. On April 30, 2018, the Board received Dr. Nyman's copy of the letter, which was mailed back to the Board in a separate envelope with no return address listed. The envelope mailed back to the Board and the Board's envelope were affixed with the same message: "...TRAVELING IN 2018 PLEASE REMAIL IN 2019..."

This case came before Board Disciplinary Panel B ("Panel B") on May 23, 2018 for final disposition.

FINDINGS OF FACT

Because Panel B concludes that Dr. Nyman has defaulted, the following findings of fact are adopted from the allegations of fact set forth in the December 13, 2017 Charges Under the Maryland Medical Practice Act and are deemed proven by the preponderance of the evidence.

Dr. Nyman was initially licensed to practice medicine in Maryland on September 25, 1969. His license expired on September 30, 2015.² Dr. Nyman is board-certified in psychiatry. On or about February 19, 2015, the Board received a complaint from an anonymous pharmacist that alleged, in pertinent part, that Dr. Nyman was prescribing excessively high dosages of methadone. The Board initiated an investigation into Dr. Nyman's prescribing practices, which included referring the matter to two peer reviewers.

The peer reviewers concurred that Dr. Nyman violated the standard of quality medical care and failed to maintain adequate medical records in nine out of ten patient records they reviewed. The deficiencies noted include, but are not limited to, the following:

1. Prescribed excessive dosages of opioids to patients paying in cash;
2. Provided no justification or appropriate documentation when prescribing high dosages of medications (including opioids/narcotics/methadone) for non-specific, non-cancer pain, or why the patients required and maintained such high doses;
3. Failed to conduct appropriate physical examination and patient history at initial visit and/or follow-up visits, including use of appropriate imaging or tests to better understand the source of patients' pain;
4. Prescribed high dosages of methadone for a patient with a documents history of Torsade de Pointes arrhythmia, which is a known fatal side effect of methadone;
5. Failed to consider a multimodal approach to reduce opiate requirements, including a failure to include a formal pain rehabilitation program, behavioral therapy, or referral to appropriate providers (such as a spinal surgeon);

² Pursuant to section 14-403 of the Health Occupations Article, the license of an individual regulated by the Board may not "lapse by operation of law while the individual is under investigation or while charges are pending." The Board's investigation of Dr. Nyman began before the expiration of Dr. Nyman's license. Therefore, by operation of law, Dr. Nyman's license was not permitted to, and did not, expire during these proceedings.

6. Prescribed combination of high dosages of medications that can cause fatal respiratory depression;
7. Prescribed high dosages of methadone to patient who had a documented history of alcohol use which may lead to respiratory depression;
8. Failed to document urine screens as part of routine treatment and monitoring;
9. Maintained poor, insufficient, illegible, and unorganized notes as part of the medical record.

CONCLUSIONS OF LAW

Panel B finds Dr. Nyman in default based upon his failure to appear at the Office of Administrative Hearings for the prehearing conference scheduled for April 16, 2018. *See* State Gov't § 10-210(4). Based upon the foregoing findings of fact, Panel B concludes that Dr. Nyman failed to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical care, in violation of Health Occ. § 14-404(a)(22), and failed to keep adequate medical records as determined by appropriate peer review, in violation of Health Occ. § 14-404(a)(40).

SANCTION

Panel B adopts the sanction recommended by the ALJ, which is to revoke Dr. Nyman's medical license.

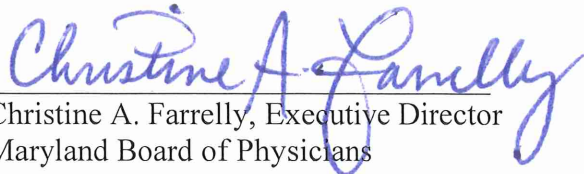
ORDER

Based upon the findings of fact and conclusions of law, it is, on the affirmative vote of a majority of the quorum of Board Disciplinary Panel B, hereby

ORDERED that Gary W. Nyman, M.D.'s license to practice medicine in Maryland (License No. D01726) is **REVOKED**; and it is further

ORDERED that this is a public document.

May 30, 2018
Date


Christine A. Farrelly, Executive Director
Maryland Board of Physicians

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Md. Code Ann., Health Occ. § 14-408, Dr. Nyman has the right to seek judicial review of this Order of Default. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of this Order of Default. The cover letter accompanying this 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 Dr. Nyman 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:

**Stacey Darin
Assistant Attorney General
Maryland Department of Health
300 West Preston Street, Suite 302
Baltimore, Maryland 21201**