

IN THE MATTER OF
MICHAEL EMMER, M.D.

Respondent

License Number: D05120

*** BEFORE THE**
*** MARYLAND STATE**
*** BOARD OF PHYSICIANS**
*** Case Number: 2221-0042**

* * * * *

CONSENT ORDER

On September 3, 2021, Disciplinary Panel A ("Panel A") of the Maryland State Board of Physicians (the "Board") charged **MICHAEL EMMER, M.D.** (the "Respondent"), License Number D05120, under the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. §§ 14-101 *et seq.* (2014 Repl. Vol. & 2020 Supp).

Panel A charges the Respondent with violating the following provision of the Act under Health Occ. § 14-404:

(a) *In general.* -- Subject to the hearing provisions of § 14-405 of this subtitle, a disciplinary panel, on the affirmative vote of a majority of the quorum of the disciplinary panel, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

(3) Is guilty of:

(ii) Unprofessional conduct in the practice of medicine[.]

One form of unprofessional conduct in the practice of medicine is providing self-treatment or treatment to family members. The American Medical Association has addressed this in a series of ethics opinions:¹

¹ The Board and the disciplinary panels may consider the Principles of Ethics of the American Medical Association, but those principles are not binding on the Board or the disciplinary panels. *See* COMAR 10.32.02.16.

Opinion 8.19 (2012) – Self-Treatment or Treatment of Immediate Family Members

Physicians generally should not treat themselves or members of their immediate families. Professional objectivity may be compromised when an immediate family member or the physician is the patient; the physician's personal feelings may unduly influence his or her professional medical judgment, thereby interfering with the care being delivered. Physicians may fail to probe sensitive areas when taking the medical history or may fail to perform intimate parts of the physical examination. Similarly, patients may feel uncomfortable disclosing sensitive information or undergoing an intimate examination when the physician is an immediate family member. This discomfort is particularly the case when the patient is a minor child, and sensitive or intimate care should especially be avoided for such patients. When treating themselves or immediate family members, physicians may be inclined to treat problems that are beyond their expertise or training. If tensions develop in a physician's professional relationship with a family member, perhaps as a result of a negative medical outcome, such difficulties may be carried over into the family member's personal relationship with the physician.

Concerns regarding patient autonomy and informed consent are also relevant when physicians attempt to treat members of their immediate family. Family members may be reluctant to state their preference for another physician or decline a recommendation for fear of offending the physician. In particular, minor children will generally not feel free to refuse care from their parents. Likewise, physicians may feel obligated to provide care to immediate family members even if they feel uncomfortable providing care.

It would not always be inappropriate to undertake self-treatment or treatment of immediate family members. In emergency settings or isolated settings where there is no other qualified physician available, physicians should not hesitate to treat themselves or family members until another physician becomes available. In addition, while physicians should not serve as a primary or regular care provider for immediate family members, there are situations in which routine care is acceptable for short-term, minor problems. Except in emergencies, it is not appropriate for physicians to write prescriptions for controlled substances for themselves or immediate family members.

Opinion 1.2.1 (2016) – Treating Self or Family

When the patient is an immediate family member, the physician's personal feelings may unduly influence his or her professional medical judgment. Or the physician may fail to probe sensitive areas when taking the medical history or to perform intimate parts of the physical examination. Physicians may feel obligated to provide care for family members despite feeling uncomfortable doing so. They may also be inclined to treat problems that are beyond their expertise or training.

Similarly, patients may feel uncomfortable receiving care from a family member. A patient may be reluctant to disclose sensitive information or undergo an intimate examination when the physician is an immediate family member. This discomfort may particularly be the case when the patient is a minor child, who may not feel free to refuse care from a parent.

In general, physicians should not treat themselves or members of their own families. However, it may be acceptable to do so in limited circumstances:

- (a) In emergency settings or isolated settings where there is no other qualified physician available. In such situations, physicians should not hesitate to treat themselves or family members until another physician becomes available.
- (b) For short-term, minor problems.

When treating self or family members, physicians have a further responsibility to:

- (c) Document treatment or care provided and convey relevant information to the patient's primary care physician.
- (d) Recognize that if tensions develop in the professional relationship with a family member, perhaps as a result of a negative medical outcome, such difficulties may be carried over into the family member's personal relationship with the physician.
- (e) Avoiding providing sensitive or intimate care especially for a minor patient who is uncomfortable being treated by a family member.

- (f) Recognize that family members may be reluctant to state their preference for another physician or decline a recommendation for fear of offending the physician.

On November 3, 2021, Panel A was convened as a Disciplinary Committee for Case Resolution (“DCCR”) in this matter. Based on the negotiations occurring as a result of this DCCR, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law, Order, and Consent.

FINDINGS OF FACT

Panel A finds the following:

I. BACKGROUND

1. At all times relevant, the Respondent was and is licensed to practice medicine in the State of Maryland. The Respondent was originally licensed to practice medicine in Maryland on February 20, 1970, under License Number D05120. The Respondent’s license is current through September 30, 2022.

2. The Respondent is board-certified in internal medicine and practices medicine at a medical office in Bethesda, Maryland.

3. On or about September 11, 2020, the Board received a referral from the Maryland Office of Controlled Substances Administration (“OCSA”) reporting that the Respondent was prescribing controlled dangerous substances (“CDS”) to himself and his family members in non-emergent situations.

4. Based on the OCSA referral, the Board initiated an investigation of the Respondent’s prescribing practices.

II. BOARD INVESTIGATION

5. As part of its investigation, the Board contacted the Prescription Drug Monitoring Program (“PDMP”) and received information that the Respondent prescribed controlled dangerous substances (“CDS”) on multiple occasions to himself and his family members from approximately late 2012 to mid 2019.

6. After receiving this information, the Board confirmed the PDMP information by obtaining copies of the issued prescriptions from various pharmacies. The Board further obtained the Respondent’s medical record, as well as medical records for three of his family members (“Family Members A, B and C”).²

7. A review of the prescriptions the Respondent issued to himself, and Family Members A, B and C revealed the following:

- A. Between approximately January 2013 and March 2019, the Respondent prescribed to himself Schedule V CDS on approximately nine (9) occasions.
- B. Between approximately January 2013 and June 2019, the Respondent prescribed Schedule IV and V CDS to Family Member A on approximately eighty (80) occasions.
- C. Between approximately June 2013 and May 2019, the Respondent prescribed Schedule II to V CDS to Family Member B on approximately one hundred and thirty-three (133) occasions.

² For confidentiality reasons, the identity of any family member referenced herein will not be identified by name.

D. Between approximately November 2012 and September 2017, the Respondent prescribed Schedule II to V CDS to Family Member C on approximately forty-five (45) occasions.

8. In his written response to the Board dated December 21, 2020, and his under-oath Board interview on March 18, 2021, the Respondent admitted to prescribing CDS to himself, and Family Members A, B and C. The Respondent explained that he issued the prescriptions “out of convenience.”

9. The medical records of himself, and Family Members A, B and C the Respondent provided the Board were scant, at times illegible and often missing copies of the prescriptions he issued.

CONCLUSIONS OF LAW

Based on the Findings of Fact, Disciplinary Panel A of the Board concludes as a matter of law that the Respondent is guilty of unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii).

ORDER

It is thus by Disciplinary Panel A of the Board, hereby:

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

ORDERED that the Respondent is placed on **PROBATION** for a minimum of **ONE (1) YEAR**.³ During probation, the Respondent shall comply with the following terms and conditions of probation:

1. Within **SIX (6) MONTHS**, the Respondent is required to take and successfully complete courses in professional ethics. The following terms apply:

³ If the Respondent’s license expires during the period of probation, the probation and any conditions will be tolled.

- (a) it is the Respondent's responsibility to locate, enroll in and obtain the disciplinary panel's approval of the courses before the course is begun;
- (b) the Respondent must provide documentation to the disciplinary panel that the Respondent has successfully completed the courses;
- (d) the course may not be used to fulfill the continuing medical education credits required for license renewal; and
- (e) the Respondent is responsible for the cost of the courses.

2. Within **SIX (6) MONTHS** the Respondent shall pay a civil fine of One Thousand Dollars (\$1,000). 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 it is further

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

ORDERED that, after the Respondent has complied with all terms and conditions of probation and the minimum period of probation imposed by the Consent Order has passed, the Respondent may submit a written 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 relating to the charges; and it is further

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

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

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

Signature on File

11/23/2021

Date

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

CONSENT

I, Michael Emmer, M.D., acknowledge that I have consulted with counsel before signing this document.

By this Consent, I agree to be bound by this Consent Order and all its terms and conditions and understand that the disciplinary panel will not entertain any request for amendments or modifications to any condition.

I assert that I am aware of my right to a formal evidentiary hearing, pursuant to Md. Code Ann., Health Occ. § 14-405 and Md. Code Ann., State Gov't §§ 10-201 *et seq.* concerning the pending charges. I waive this right and have elected to sign this Consent Order instead.

I acknowledge the validity and enforceability 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 behalf, and to all other substantive and procedural protections as provided by law. I waive those procedural and substantive protections. I acknowledge the legal authority and the jurisdiction of the disciplinary panel to initiate these proceedings and to issue and enforce this Consent Order.

I voluntarily enter into and agree to comply with the terms and conditions set forth in the Consent Order as a resolution of the charges. I waive any right to contest the Findings of Fact and Conclusions of Law and Order set out in the Consent Order. I waive all rights to appeal this Consent Order.

I sign this Consent Order, without reservation, and fully understand the language and meaning of its terms.

Nov 20 2021

Date

Signature on File

Michael Emmer, M.D.
Respondent

NOTARY

STATE OF Maryland

CITY/COUNTY OF Montgomery

I HEREBY CERTIFY that on this 20 day of November, 2021, before me, a Notary Public of the foregoing State and City/County, did personally appear Michael Emmer, M.D., and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSTH my hand and seal.

David C. Nicklas
Notary Public

My commission expires: 7/23/25

David C. Nicklas
Notary Public
Montgomery County, MD
My Commission Expires: July 23, 2025

