

Date: July 30, 2021

Damean W.E. Freas, D.O., Chair
Disciplinary Panel B
Maryland State Board of Physicians
4201 Patterson Avenue, 4th Floor
Baltimore, MD 21215-2299

Re: Surrender of License to Practice Medicine
Carol Posner, M.D. License Number: D09427
Case Number: 2220-0115B

Dear Dr. Freas and Members of Disciplinary Panel B,

Please be advised that, pursuant to Md. Code Ann., Health Occ. ("Health Occ.") §14-403 (2014 Repl. Vol. & 2020 Supp.), I have decided to **SURRENDER** my license to practice medicine in the State of Maryland, License Number D09427, effective immediately. I understand that upon surrender of my license, I may not give medical advice or treatment to any individual, with or without compensation, and cannot prescribe medications or otherwise engage in the practice of medicine in the State of Maryland as it is defined in the Maryland Medical Practice Act (the "Act"), Health Occ. §§ 14-101 *et seq.* and other applicable laws. In other words, as of the effective date of this Letter of Surrender, I understand that the surrender of my license means that I am in the same position as an unlicensed individual in the State of Maryland.

I understand that this Letter of Surrender is a **PUBLIC DOCUMENT**, and upon Disciplinary Panel B's ("Panel B") acceptance, becomes a **FINAL ORDER** of Panel B of the Maryland State Board of Physicians (the "Board").

I acknowledge that the Board initiated an investigation of my practice and on March 1, 2021, Panel B issued disciplinary charges against me under Health Occ. § 14-404(a)(22), (33), and (40). Specifically, Panel B alleged I failed to meet appropriate standards for the delivery of quality medical care, failed to keep adequate medical records, and failed to cooperate with a lawful investigation conducted by the Board. A copy of the charges is attached as Attachment 1. I have decided to surrender my license to practice medicine in the State of Maryland to avoid further investigation and prosecution of these disciplinary charges.

I wish to make it clear that I have voluntarily, knowingly and freely chosen to submit this Letter of Surrender to avoid further prosecution of the disciplinary charges. I acknowledge that for all purposes related to medical licensure, the charges will be treated as if proven.

I understand that by executing this Letter of Surrender I am waiving my right to a hearing to contest the disciplinary charges. In waiving my right to contest the charges, I

Damean W.E. Freas, D.O. and Members of Disciplinary Panel B

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Letter of Surrender

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am also waiving the right to be represented by counsel at the hearing, to confront witnesses, to give testimony, to call witnesses on my own behalf, and all other substantive and procedural protections provided by law, including the right to appeal to circuit court.

I understand that the Board will advise the Federation of State Medical Boards, and the National Practitioner Data Bank of this Letter of Surrender. I also understand that in the event I would apply for licensure in any form in any other state or jurisdiction that this Letter of Surrender may be released or published by the Board to the same extent as a final order that would result from disciplinary action, pursuant to Md. Code Ann., Gen. Prov. §§ 4-101 *et seq.* (2019), and that this Letter of Surrender constitutes a disciplinary action by Panel B.

I affirm that I will provide access to and copies of medical records to my patients in compliance with Title 4, subtitle 3 of the Health General Article. I also agree to surrender my Controlled Dangerous Substances Registration to the Office of Controlled Substances Administration.

I further recognize and agree that by submitting this Letter of Surrender, my license will remain surrendered unless and until the Board grants reinstatement. In the event that I apply for reinstatement of my Maryland License, I understand that Panel B or its successor is not required to grant reinstatement; and, if it does grant reinstatement, may impose any terms and conditions the disciplinary panel considers appropriate for public safety and the protection of the integrity and reputation of the profession. I further understand that if I file a petition for reinstatement, I will approach Panel B or its successor in the same position as an individual whose license has been revoked.

I acknowledge that I may not rescind this Letter of Surrender in part or in its entirety for any reason whatsoever. Finally, I wish to make clear that I have been advised of my right to be represented by an attorney of my choice throughout proceedings before Panel B, including the right to consult with an attorney prior to signing this Letter of Surrender. I have consulted with and was represented by an attorney prior to signing this letter surrendering my license to practice medicine in Maryland. I understand both the nature of Panel B's actions and this Letter of Surrender fully. I acknowledge that I understand and comprehend the language, meaning and terms and effect of this Letter of Surrender. I make this decision knowingly and voluntarily.

Very truly yours,

Signature on File

Carol Posner, M.D.

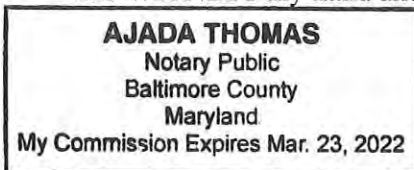
NOTARY

STATE OF Maryland

CITY/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 8 day of July, 2021 before me, a Notary Public of the City/County aforesaid, personally appeared Carol Posner, M.D., and declared and affirmed under the penalties of perjury that the signing of this Letter of Surrender was a voluntary act and deed.

AS WITNESS my hand and Notarial seal.



Ajada Thomas
Notary Public

My commission expires: March 23, 2022

ACCEPTANCE

On behalf of Disciplinary Panel B, on this 30th day of July, 2021, I, Christine A. Farrelly, accept the **PUBLIC SURRENDER** of Carol Posner, M.D.'s license to practice medicine in the State of Maryland.

Signature on File

Christine A. Farrelly, Executive Director
Maryland Board of Physicians

Attachment 1

IN THE MATTER OF

*

BEFORE THE

CAROL POSNER, M.D.

*

MARYLAND STATE

Respondent

*

BOARD OF PHYSICIANS

License Number: D09427

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Case Number: 2220-0115B

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CHARGES UNDER THE MARYLAND MEDICAL PRACTICE ACT

Disciplinary Panel B of the Maryland State Board of Physicians (the "Board") hereby charges CAROL POSNER, M.D. (the "Respondent"), License Number D09427, with violating the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. § 14-101 *et seq.* (2014 Repl. Vol. & 2020 Supp.). The pertinent provisions of the Act provide the following:

Health Occ. § 14-404. Denials, reprimands, probations, suspensions, and revocations -- Grounds.

(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:

....
(22) Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State;

....
(33) Fails to cooperate with a lawful investigation conducted by the Board or a disciplinary panel;

....

- (40) Fails to keep adequate medical records as determined by appropriate peer review[.]

ALLEGATIONS OF FACT¹

Disciplinary Panel B of the Board bases its charges on the following facts that it has cause to believe are true:

I. BACKGROUND

1. At all times relevant hereto, 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 March 15, 1971, under License Number D09427. The Respondent's license is currently active and scheduled to expire on September 30, 2021.

2. The Respondent is board-certified in psychiatry.

3. At all times relevant hereto, the Respondent owned a solo private practice until she closed her private practice and began working at a clinic (the "Clinic").²

II. THE COMPLAINT

4. On or about September 4, 2019, the Board received a complaint from the daughter (the "Complainant") of one of the Respondent's patient's ("Patient 4") who raised concerns about the benzodiazepines the Respondent prescribed to Patient 4.

¹ The allegations set forth in this document are intended to provide the Respondent with notice of the charges. They are not intended as, and do not necessarily represent, a complete description of the evidence, either documentary or testimonial, to be offered against the Respondent in connection with these charges.

² For confidentiality and privacy purposes, the names of individuals and health care facilities involved in this case are not disclosed in this document. The Respondent may obtain the names of all individuals and health care facilities referenced in this document by contacting the administrative prosecutor.

III. BOARD INVESTIGATION

5. After reviewing the above complaint, the Board initiated an investigation of the Respondent. As part of its investigation, the Board obtained a series of patient records, interviewed the Respondent, and obtained a peer review of her practice.

Patient Records

6. By letter dated October 2, 2019, the Board notified the Respondent that it had opened a preliminary investigation of the matter and provided her with a copy of the Complaint. The Board directed the Respondent to provide within ten business days a summary of the care she provided to nine listed patients (“Patients 1-9”).

7. On October 2, 2019, the Board also issued the Respondent a Subpoena Duces Tecum that directed the Respondent to transmit to the Board within ten business days “a complete copy of any and all medical records for [Patients 1-9] along with the enclosed Certification of Medical Records.” The subpoena further notified the Respondent that for failure to comply with the subpoena, a disciplinary panel of the Board may charge her with failure to cooperate with a lawful investigation conducted by the Board pursuant to Health Occ. § 14-404(a)(33).

8. On or about October 23, 2019, the Respondent transmitted to the Board medical records, a summary of patient care, and a signed certificate of medical records for each of the nine patients.³

³ In an effort to obtain the full medical records the Board subsequently subpoenaed and obtained medical records from the clinic for the four patients the Respondent treated at the clinic – Patient 2, Patient 4, Patient 6, and Patient 7.

9. The certificate of medical records signed by the Respondent states:

I C. Jean Posner, MD do hereby certify and solemnly affirm under the penalties of perjury, that to the best of my knowledge, information and belief, the enclosed medical records in response to the attached subpoena are an accurate reproduction of any and all records in my possession or constructive possession and are in compliance with the attached subpoena.

I have personally reviewed the entire medical record and further certify to the best of my knowledge, information and belief, that I have provided the Maryland Board of Physicians (Board) with the **COMPLETE MEDICAL RECORDS** which include all records pertaining to the care and treatment of the patient _____ in my possession or constructive possession and control, including all materials generated by me, or other health care providers, all laboratory reports, all jacket entries and all other entries as kept in the regular course of business for each patient in my medical practice.

I understand for my failure to provide the complete medical records to the Board may constitute failure to cooperate with the Board's lawful investigation and may result in disciplinary action by the Board under the Maryland Medical Practice Act.

10. On the blank line the Respondent handwrote "requested patients."
11. By letter dated November 13, 2019,⁴ the Board notified the Respondent that further investigation in the matter was warranted and requested that the Respondent provide a written response to the complaint within ten business days. The Board also subpoenaed a complete copy of the medical billing records for Patients 1-9.
12. On or about January 9, 2020, the Respondent transmitted to the Board a written response and the billing records for each of the nine patients.
13. By letter dated June 17, 2020, the Board requested that the Respondent provide within five business days a written statement confirming whether she personally

⁴ The Board also emailed the documents to the Respondent on December 11, 2019.

prepared the summaries of care she previously submitted to the Board and a written statement confirming whether the Board has received the complete medical records for the nine patients.

14. On or about June 26, 2020, the Respondent submitted a written response to the Board stating, "I personally dictated the summaries and my secretary typed and transmitted them. I typed the missing notes for the clinic patients but for some reason they were either misfiled or not filed in their charts."

15. By letter dated November 2, 2020, the Board provided the Respondent with the peer reviewers' findings and gave her an opportunity to submit a written response to the peer review reports within thirteen business days.⁵

16. On or about December 4, 2020, the Respondent, through counsel, transmitted to the Board a detailed eleven page response, as well as, over 3,000 pages of medical records for Patient 1, Patient 3, Patient 5, Patient 8, and Patient 9, many of which the Respondent had not previously provided to the Board.

Peer Review

17. In furtherance of its investigation, the Board submitted the nine patient records (referenced *supra* as "Patients 1-9") and related materials to two physicians who are board-certified in psychiatry, for a practice review to determine if the Respondent complied with appropriate standards for the delivery of quality medical care and kept

⁵ The Respondent was subsequently granted an extension until December 4, 2020, to submit her written response.

adequate medical records. On or about October 22, 2020, the peer reviewers submitted their reports to the Board.

18. In their initial reports the two physician peer reviewers concurred that the Respondent failed to meet appropriate standards for the delivery of quality medical care, in violation of Health Occ. § 14-404(a)(22), for five out of nine patients (identified on the peer review reports as Patients 2, 3, 4, 5 and 8). The peer reviewers further concurred that the Respondent failed to keep adequate medical records, in violation of Health Occ. § 14-404(a)(40), for three out of nine patients (identified on the peer review reports as Patients 1, 5, and 8).

19. After the Respondent submitted to the Board a detailed response to the peer reviewers' initial reports, along with the voluminous medical records (referenced *supra* ¶ 16), the written response and additional medical records were provided to the peer reviewers to ascertain what, if any, impact the additional information had on their opinion. In their supplemental reports the peer reviewers reported that the additional information did have an impact on some of their opinions, but concurred that the Respondent still failed to meet appropriate standards for the delivery of quality medical care, in violation of Health Occ. § 14-404(a)(22), for four out of nine patients (identified on the peer review reports as Patients 2, 3, 4, and 8). The peer reviewers further concurred that the Respondent still failed to keep adequate medical records, in violation of Health Occ. § 14-404(a)(40), for one out of nine patients (identified on the peer review reports as Patient 5).

20. The peer reviewers' final opinions, which took in to consideration all of the records including the records provided with the Respondent's response to the initial peer review reports, was that the Respondent failed to meet appropriate standards for the delivery of quality medical care for four patients for reasons including, but not limited to:

- a. Failed to coordinate care between other providers, both inside of the clinic and outside of the clinic, who were also prescribing benzodiazepines to the patient at the same time the Respondent was prescribing benzodiazepines (Patient 2; Patient 4; Patient 8);
- b. The Respondent utilized benzodiazepines as a first line treatment for disorders such as panic disorder, generalized anxiety disorder, and major depressive disorder (Patient 3; Patient 4; Patient 8);
- c. Prescribed excessively high doses of benzodiazepines (Patient 2; Patient 3; Patient 4);
- d. Prescribed benzodiazepines for long-term use (Patient 2; Patient 3; Patient 8);
- e. Prescribed a high quantity of benzodiazepines to a patient with concerns of abuse and diversion (Patient 4);
- f. Failed to use urine toxicology screening to monitor patient adherence to treatment and avoidance of diversion (Patient 2); and
- g. Failed to conduct CRISP⁶ inquiries (Patient 2; Patient 4).

⁶ CRISP stands for "Chesapeake Regional Information on our Patients."

21. The peer reviewers initial reports and supplemental reports concurred that the Respondent failed to keep adequate medical records for Patient 5 for reasons including, but not limited to: the Respondent failed to include sufficient detail regarding the time spent with the patient.

Interview

22. As part of the Board's investigation, the Respondent was interviewed under oath on July 1, 2020. As part of that interview, the Respondent provided the following:

- a. She has retired from private practice and is working part-time in a clinic.
- b. She obtains CRISP reports on her patients approximately every three months unless she becomes suspicious of the patient, then she gets one immediately. When she was in private practice her secretary would obtain the CRISP reports for her. Since she has been at the Clinic she has asked the secretary to obtain the CRISP reports for all of her patients. For a period of time, however, the secretary at the Clinic was not getting the CRISP reports. But the secretary at the Clinic is now obtaining the reports for her. She further explained that she would have personally obtained the CRISP reports herself, instead of having her secretary do it, if that had been required, but she "was not aware that CRISP required that I personally use the computer to get in to CRISP."
- c. She does not use drug contracts for her patients.

- d. Typically, when she does an initial visit with a patient she administers a urine drug screen. However, she does not administer any additional screens after the initial drug screen “if they’re not showing any life problems.”
- e. When asked how she knew her patients were not using illicit drugs if she was not doing drug contracts or conducting urine drug screens, the Respondent explained that her private practice patients were “normal working people, good family people” and “don’t have any problems at all that suggest drug use or drug abuse” because “when people use illicit drugs, their life is messed up.” She further explained that she does conduct routine urine testing for her patients from the Clinic “because this is an entirely different population from my mostly upper middle class private patients.”
- f. The Respondent admitted that for several years she would write Patient 1 three prescriptions at a time but would leave the date blank on two of the prescriptions, and then the patient would fill the date in before taking the prescriptions to the pharmacy to be filled. The Respondent explained her actions by stating, “[t]his patient was, was a responsible worker, had a steady, reliable life, was, had a, you know, decent family life. There were no signs of drug abuse. He never lost his prescriptions, the dog never ate his prescription and he never asked for more. He was totally reliable.”

- g. Regarding Patient 4, the Respondent explained that at the initial visit with Patient 4, Patient 4 denied previous drug abuse but stated that she had surgery and then went on Suboxone to taper off of a narcotic she had been taking. Therefore, she gave Patient 4 “two weeks’ worth of Klonopin,⁷ hoping to get a CRISP report on her.” Patient 4 then returned several days later and said her husband had thrown all of the Klonopin away. However, Patient 4’s husband said Patient 4 had taken all of the Klonopin, “but she didn’t become unconscious, she seemed a little muddled, but they didn’t bother to take her to the hospital.” The Respondent further explained that “she wasn’t sure which of them was lying But since the family didn’t seem that concerned about her ingesting two weeks’ worth of Klonopin, I didn’t know which one was lying, so I gave her a weeks’ worth of Klonopin.”
- h. Regarding Patient 8, the Respondent explained that Patient 8 told her that Patient 8 was getting Ativan⁸ from the Respondent and an internist simultaneously. At that time, the Respondent instructed Patient 8 to obtain her medications from only one provider. After providing Patient 8 this instruction, she believed she ensured the patient complied with her instruction by obtaining a CRISP report “if it was after we started using the CRISP [b]ut she . . . didn’t abuse any other drugs.

⁷ Klonopin (generic name clonazepam) is a benzodiazepine and a Schedule IV controlled dangerous substance.

⁸ Ativan (generic name lorazepam) is a benzodiazepines and a Schedule IV controlled dangerous substance.

She didn't even smoke, she wasn't even addicted to coffee or nicotine and she wasn't acting funny. And she had a normal, healthy life and a successful family life, so she gave me no indications that she was abusing anything."

- i. Finally, when asked if there was anything else she would like put on the record, the Respondent stated, "I've always been very stingy with Benzos . . . to get Benzos out of me is like trying to get gold out of Fort Knox."

Grounds for Discipline

23. The Respondent's actions, as described above, constitute, in whole or in part, failure to meet the appropriate standards for the delivery of quality medical care, in violation of Health Occ. § 14-404(a)(22), failure to cooperate with a lawful investigation conducted by the Board or a disciplinary panel, in violation of Health Occ. § 14-404(a)(33), and/or failure to keep adequate medical records, in violation of Health Occ. § 14-404(a)(40).

NOTICE OF POSSIBLE SANCTIONS

If, after a hearing, a disciplinary panel of the Board finds that there are grounds for action under Health Occ. § 14-404(a)(22), (33) and/or (40), it may impose disciplinary sanctions against the Respondent's license in accordance with the Board's regulations under Md. Code Regs. 10.32.02.09 and 10.32.02.10, including revocation, suspension, or reprimand, and may place the Respondent on probation. The panel may, in addition to

one or more of the sanctions set forth above, impose a civil monetary fine upon the Respondent.


**NOTICE OF DISCIPLINARY COMMITTEE FOR CASE RESOLUTION
CONFERENCE, PREHEARING CONFERENCE AND HEARING**

A conference before Disciplinary Panel B, sitting as the Disciplinary Committee for Case Resolution (“DCCR”) in this matter, is scheduled for **Wednesday, June 23, 2021, at 9:00 a.m.**, at the Board’s office, 4201 Patterson Avenue, Baltimore, Maryland 21215. The Respondent must confirm in writing their intention to attend the DCCR. The Respondent should send written confirmation of their intention to participate in the DCCR to: Christine A. Farrelly, Executive Director, Maryland State Board of Physicians, 4201 Patterson Avenue, 4th Floor, Baltimore, Maryland 21215. The nature and purpose of the DCCR is described in the attached letter to the Respondent.

If the case cannot be resolved at the DCCR, a pre-hearing conference and a hearing in this matter will be scheduled at the Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, Maryland 21031. The hearing will be conducted in accordance with Health Occ. § 14-405 and Md. Code Ann., State Gov’t §§ 10-201 *et seq.* (2014 Repl. Vol. & 2020 Supp.).

**BRIAN E. FROSH
ATTORNEY GENERAL OF MARYLAND**

03/01/2021
Date



Kelly Cooper
Assistant Attorney General
Administrative Prosecutor

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