

IN THE MATTER OF
SWAMI A. NATHAN, M.D.

Respondent

License Number: D18414

*** BEFORE THE**
*** MARYLAND STATE**
*** BOARD OF PHYSICIANS**
*** Case Number: 7719-0088**

CONSENT ORDER

On August 13, 2020, Disciplinary Panel B (“Panel B”) of the Maryland State Board of Physicians (the “Board”) charged **Swami A. Nathan, M.D.** (the “Respondent”), License Number D18414, with violating the probationary terms and conditions imposed under the Consent Order dated March 27, 2019 (the “2019 Consent Order”) and with violating the Maryland Medical Practice Act (the “Act”), Md. Code Ann., Health Occ. (“Health Occ.”) §§ 14-101 *et seq.* (2014 Repl. Vol. & 2019 Supp.).

Panel B charged the Respondent with violating the following terms and conditions of the 2019 Consent Order:

ORDERED that the Respondent is placed on PROBATION for a minimum period of ONE (1) YEAR. Within that one-year probationary period, the Respondent shall comply with the following terms and conditions:

...

(3) The Respondent is subject to chart and/or peer review conducted by the disciplinary panel or its agents as follows:

...

(d) If the disciplinary panel, upon consideration of the peer review and the Respondent’s response, if any, has a reasonable basis to believe that the Respondent is not meeting the standard of quality care in his practice or cannot safely and competently practice, the disciplinary panel may charge the Respondent with a violation of probation and/or under the Medical Practice Act.

...

- (7) The Respondent shall comply with the Maryland Medical Practice Act, Md. Code Ann., Health Occ. §14-101 – § 14-702, and all federal and state laws and regulations governing the practice of medicine in Maryland[.]

Panel B charged the Respondent with violating the following provisions of the Act:

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

- (a) 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; [and]

...

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

On October 21, 2020, Panel B was convened as a Disciplinary Committee for Case Resolution (“DCCR”) in this matter. Based on 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 B finds the following facts:

I. BACKGROUND & DISCIPLINARY HISTORY

1. At all relevant times, the Respondent has been licensed to practice medicine in the State of Maryland. The Respondent was first licensed to practice medicine in

Maryland on August 4, 1975, under License Number D18414. His license is scheduled to expire on September 30, 2021.

2. The Respondent is board-certified in neurological surgery. He practices as a solo practitioner in Frederick, Maryland.

3. On March 20, 2017, the Board received a complaint alleging that the Respondent allowed one of his employees to call in prescriptions for controlled dangerous substances (“CDS”) for herself. The Board initiated an investigation including peer review of ten patient records. The peer reviewers found standard of care violations in all ten of the reviewed records including the Respondent’s failure to conduct a risk assessment prior to prescribing opioids, failure to use written opioid agreements, failure to check patients’ medication history, failure to document urine drug screens, and failure to conduct ongoing assessments. The peer reviewers also found record keeping violations in nine of the reviewed records including the Respondent’s failure to maintain complete and detail-specific documentation, keeping illegible notes, and failure to document information related to patient monitoring such as the treatment rationale for prescribing opioids. On September 24, 2018, Panel B charged the Respondent with violations of the Act.

4. On March 27, 2019, to resolve the pending charges, the Respondent agreed to and Panel B issued the 2019 Consent Order. Panel B concluded that the Respondent failed to meet appropriate standards of delivery of quality medical care and failed to maintain adequate medical records, in violation of Health Occ. § 14-404(a)(22) and (40). Panel B ordered that, among other things, the Respondent be placed on probation for at least one year subject to terms and conditions including additional peer review.

II. CURRENT INVESTIGATIVE FINDINGS

5. On or about November 14, 2019, the Board subpoenaed medical records of ten specific patients from the Respondent. On or about December 6, 2019, the Respondent provided the Board the requested records along with summaries of care for each patient.

A. Peer Review

6. The Board submitted nine of the patient records (“Patients 1-9”)¹ to a peer review entity for review. Two peer reviewers, each board-certified in anesthesiology and pain medicine, independently reviewed the patient records. At the Board’s direction, the peer reviewers limited their reviews to care the Respondent provided after June 24, 2019. Following their review, the peer reviewers each provided a written report the Board.

7. The peer reviewers concurred that the Respondent did not meet appropriate standards for the delivery of quality medical and surgical care for six of patients reviewed (Patients 1, 2, 4, 5, 6, and 9). The peer reviewers also concurred that the Respondent did not keep adequate medical records for five of patients reviewed (Patients 2, 4, 5, 6, and 7).

B. Patient Specific Allegations

Patient 1

8. At the time of review, Patient 1 was a 61-year-old male with a relevant history of a transforaminal lumbar interbody fusion in 2010, and chronic low back and leg pain. The Respondent maintained Patient 1 on morphine sulfate 15mg twice per day, oxycodone 10mg three times per day, and Neurontin 300mg three times per day.

¹ To maintain confidentiality, the names of all witnesses, facilities, employees, and patients will not be used in this document.

9. At Patient 1's follow-up visits with the Respondent on July 15, August 13, September 9, and November 7, 2019, the Respondent noted, "In my opinion, [Patient 1] is very low risk for drug abuse, drug overdose, or drug diversion." However, the Respondent did not include any factors or assessment to support that conclusion.

10. For approximately five months, between July 15 and November 7, 2019, the Respondent did not require Patient 1 to undergo urine drug screens to monitor medication compliance.

11. On July 15, 2019, the Respondent noted that he discussed possible surgery for cervical myelopathy, and that Patient 1 "is going to think about it." However, there was no follow-up discussion about surgical intervention or other alternative therapies in progress notes through November 2019.

12. The peer reviewers concurred that since June 24, 2019, the Respondent did not meet appropriate standards for the delivery of quality medical or surgical care regarding Patient 1.

Patient 2

13. At the time of review, Patient 2 was a 57-year-old female with a relevant history of two separate discectomies in 1995 and 2009, a transforaminal lumbar interbody fusion in 2010, and chronic pain in her back and extremities. The Respondent maintained Patient 2 on methadone 10mg twice per day, Neurontin 800mg three times per day, and amitriptyline 25mg daily.

14. Patient 2 wrote on her intake sheet in June 2019 that her current medications included Lasix, tizanidine, and duloxetine, in addition to pain medications. Patient 2 later completed a medication list that included iron, Lasix, gabapentin, propranolol, and

Rosuvastatin, in addition to pain medications. There was also a note from July 1, 2019 that the Respondent reviewed a medication list from a hospital where Patient 2 had recently been admitted. In a progress note dated September 26, 2019, the Respondent wrote that Patient 2's medication list "is attached and reviewed." However, no list was attached, and it is unclear which medication list this note references. In a note dated October 24, 2019, the Respondent only included certain pain medications as current medications and made no mention about the status of Patient 2's other medications.

15. In a visit summary dated July 29, 2019, the Respondent discussed findings of a recent MRI to include cervical degenerative disc disease with neuroforaminal stenosis. The Respondent concluded that surgery was not an option and that continued opioids were appropriate. However, the Respondent did not discuss other non-opioid interventional therapies that may have been appropriate for the MRI findings, including physical therapy.

16. At Patient 2's follow-up visits on August 29 and September 26, 2019, the Respondent noted, "In my opinion, [Patient 2] is at very low risk for drug abuse, drug overdose or drug diversion." However, the Respondent did not include any factors or assessment to support that conclusion.

17. Patient 2 noted on her June 2019 intake form that she had an EKG done about 1-2 years prior. The Respondent did not order additional EKG monitoring for Patient 2 despite her cardiac history and the Respondent's continued prescribing of medications that have cardiovascular considerations.

18. The peer reviewers concurred that since June 24, 2019, the Respondent did not meet appropriate standards for the delivery of quality medical or surgical care and did not keep adequate medical records regarding Patient 2.

Patient 4

19. At the time of review, Patient 4 was a 71-year-old male with a relevant history of a discectomy and laminectomy in 2011, a lumbar pedicle screw fusion in 2017, and chronic pain in his low back and legs. The Respondent maintained Patient 4 on hydrocodone 5/325mg three times per day and ibuprofen as needed.

20. At Patient 4's follow-up visits with the Respondent on July 16, August 13, September 10, and October 8, 2019, the Respondent noted, "In my opinion, [Patient 4] is very low risk for drug abuse, drug overdose, or drug diversion." However, the Respondent did not include any factors or assessment to support that conclusion.

21. For over four months, between July 16 and November 18, 2019, the Respondent did not require Patient 4 to undergo urine drug screens to monitor medication compliance. On November 18, 2019, Patient 4 tested positive for THC. In progress notes since July 16, 2019, the Respondent did not note whether Patient 4 was enrolled as a patient with the Maryland Medical Cannabis Commission or assess how Patient 4's concurrent use of opioids and marijuana should be managed.²

22. In a progress note dated September 10, 2019, the Respondent wrote that Patient 4's medication list "is attached and reviewed." However, no list was attached to that note, and it is unclear which medication list this note references. Other progress notes for the relevant period include hydrocodone and ibuprofen as Patient 4's only medications despite his being prescribed several other cardiac medications.

² While not subject to peer review, a progress note from April 18, 2019, states that Patient 4 was enrolled in the "Maryland Marijuana Program," although it is unclear from the records whether this was patient-reported, if the Respondent verified Patient 4's enrollment with a MMCC identification card, or who certified Patient 4 for enrollment in the program.

23. Patient 4's records did not include copies of prescriptions for hydrocodone for any of the relevant follow-up visits (July 16, August 13, September 10, and October 8, 2019) despite progress notes for each visit stating that the Respondent provided the patient with a 30-day prescription.

24. The peer reviewers concurred that since June 24, 2019, the Respondent did not meet appropriate standards for the delivery of quality medical or surgical care and did not keep adequate medical records regarding Patient 4.

Patient 5

25. At the time of review, Patient 5 was a 65-year-old female with a relevant history of multiple spinal surgeries and chronic pain in her low back and both legs. The Respondent maintained Patient 4 on Tylenol #4 (300mg acetaminophen and 60mg codeine) three times per day, Soma 350mg three times per day, and Elavil 50mg at bedtime.

26. Progress notes for the relevant period (July 2019 – October 2019) listed Patient 4's pain medications as her only medications despite her being prescribed several other medications. These notes also lacked a complete past medical history.

27. At Patient 5's follow-up visits with the Respondent on July 11, August 8, and October 3, 2019, the Respondent noted, "In my opinion, [Patient 5] is very low risk for drug abuse, drug overdose, or drug diversion." However, the Respondent did not include any factors or assessment to support that conclusion.

28. On August 8, 2019, the Respondent noted that Patient 5 saw her primary care physician complaining of increased pain because she was "doing too much driving and she has more pain." Patient 5's primary care physician prescribed prednisone and three tablets of Percocet. The Respondent did not document why more opioids were needed to manage

Patient 5's pain. He also did not provide counseling or warning that obtaining any opioids from another provider violated the patient's opioid contract with the Respondent.

29. The Respondent did not discuss or assess the appropriateness of alternative therapies such as physical therapy during the relevant period.

30. Patient 5's records did not include copies of prescriptions for Tylenol #4 for the relevant follow-up visits (July 11, August 8, and October 3, 2019) despite progress notes for each visit stating that the Respondent provided the patient with a prescription.

31. The peer reviewers concurred that since June 24, 2019, the Respondent did not meet appropriate standards for the delivery of quality medical or surgical care and did not keep adequate medical records regarding Patient 5.

Patient 6

32. At the time of review, Patient 6 was a 63-year-old male with a relevant history of back surgeries and chronic pain in his low back and both legs. The Respondent maintained Patient 6 on methadone 10mg three times per day, Neurontin 800mg three times per day, and Ambien at bedtime.

33. At Patient 6's follow-up visits with the Respondent on July 11, August 5, September 5, October 3, and October 25, 2019, the Respondent noted, "In my opinion, [Patient 6] is very low risk for drug abuse, drug overdose, or drug diversion." However, the Respondent did not include any factors or assessment to support that conclusion.

34. For approximately five months, from June 2019 through October 2019, the Respondent did not have Patient 6 undergo a urine drug screen to monitor his medication compliance.

35. In a progress note dated August 8, 2019, the Respondent stated that he suggested Patient 6 discuss with his primary care physician about enrolling in the Maryland Medical Cannabis Commission. The progress note is unclear about what prompted the Respondent's suggestion. There were no follow-up notes about whether Patient 6 was ever certified as an MMCC patient or if he used marijuana for pain control in addition to his prescribed opioids. On November 11, 2019, Patient 6 tested positive for THC. The patient records do not include whether the Respondent addressed this inconsistent urine screen.

36. The Respondent did not order any EKG monitoring for Patient 6 during the relevant period despite his having a cardiac history and the Respondent's continued prescribing of medications that have cardiovascular considerations.

37. The Respondent did not consider or discuss with Patient 6 any other non-medication therapies such as physical therapy during the relevant period.

38. The peer reviewers concurred that since June 24, 2019, the Respondent did not meet appropriate standards for the delivery of quality medical or surgical care and did not keep adequate medical records regarding Patient 6.

Patient 7

39. At the time of review, Patient 7 was a 64-year-old female with a relevant history of multiple cervical and lumbar back surgeries along with chronic pain in her low back and neck. The Respondent maintained Patient 7 on hydrocodone 5/325mg three times per day, Naprosyn 500mg twice per day, and baclofen 10mg three times per day.

40. In a progress note dated October 24, 2019, the Respondent stated that he wrote a prescription for hydrocodone 5/325mg, three times daily, for four weeks. Copies of prescriptions in the record show a prescription for 45 tablets of hydrocodone 5/325mg

dated November 5, 2019, and a second prescription for 45 tablets of hydrocodone 5/325mg dated November 26, 2019. These two prescriptions had no corresponding progress notes. It is unclear from the Respondent's records whether these prescriptions were post-dated and given to Patient 7 at the October 24 visit.

41. Progress notes for the relevant period included hydrocodone, baclofen, and Naprosyn as Patient 4's only medications despite his being prescribed several other cardiac medications. In addition, Patient 7's significant and relevant past medical history was not described in each progress note during the relevant period.

42. The peer reviewers concurred that since June 24, 2019, the Respondent did not keep adequate medical records regarding Patient 7.

Patient 9

43. At the time of review, Patient 9 was a 58-year-old male with a relevant history of a motor vehicle accident resulting in traumatic brain injury and chronic pain in his back and neck. He had been discharged from other pain clinics and the Respondent considered himself as a provider of last resort for Patient 9. The Respondent maintained Patient 9 on Percocet 10/325mg four times per day.

44. At Patient 9's follow-up visits with the Respondent on July 9, August 6, September 3, October 1, and November 12, 2019, the Respondent noted, "In my opinion, [Patient 9] is very low risk for drug abuse, drug overdose, or drug diversion." However, the Respondent did not include any factors or assessment to support that conclusion especially considering the patient had been discharged from other pain clinics.

45. The Respondent did not have Patient 9 undergo a urine drug screen during the relevant period in order to monitor his medication compliance.

46. The Respondent did not consider or discuss with Patient 9 any concurrent non-opioid therapies such as physical therapy during the relevant period.

47. The peer reviewers concurred that since June 24, 2019, the Respondent did not meet appropriate standards for the delivery of quality medical or surgical care regarding Patient 9.

C. The Respondent's Response

48. On or about April 21, 2020, the Board provided the Respondent with copies of the peer reviewers' reports and provided him the opportunity to file a response. On or about May 8, 2020, the Respondent submitted a response. The Respondent said that he would be making changes to his practice and record keeping based on the reports, but also stated that he disagreed with many of the peer reviewers' conclusions.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Panel B concludes as a matter of law that the Respondent violated: probationary conditions #3 and #7 of the 2019 Consent Order by failing to meet the standard of quality care in his practice; Health Occ. § 14-404(a)(22) by failing to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical care performed in an office or other location in this State; and Health Occ. § 14-404(a)(40) by failing to maintain adequate medical records as determined by appropriate peer review.

ORDER

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

ORDERED that the probation and probationary terms and conditions imposed by the Consent Order dated March 27, 2019 are **TERMINATED**; and it is further

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

ORDERED that the Respondent is placed on **PROBATION** for a **minimum of two (2) years**.³ During probation, the Respondent shall comply with the following terms and conditions of probation:

1. Beginning on January 1, 2021, the Respondent is restricted to prescribing or dispensing opioids for 90 days after surgery;
2. The Respondent shall be subject to supervision for a minimum of one year⁴ by a disciplinary panel-approved supervisor who is board-certified in pain management as follows:
 - (a) within **30 CALENDAR DAYS** of the effective date of this Consent Order, the Respondent shall provide the disciplinary panel with the name, pertinent professional background information of the supervisor whom the Respondent is offering for approval, and written notice to the disciplinary panel from the supervisor confirming his or her acceptance of the supervisory role of the Respondent and that there is no personal or professional relationship with the supervisor;
 - (b) the Respondent's proposed supervisor, to the best of the Respondent's knowledge, should not be an individual who is currently under investigation, and has not been disciplined by the Board within the past five years;
 - (c) if the Respondent fails to provide a proposed supervisor's name within 30 days from the effective date of the Consent Order, the Respondent's license shall be automatically suspended until the Respondent provides the name and background of a supervisor;
 - (d) the disciplinary panel, in its discretion, may accept the proposed supervisor or request that the Respondent submit a name and professional

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

⁴ If the Respondent is not practicing medicine, the supervision shall begin when the Respondent resumes the practice of medicine and the disciplinary panel has approved the proposed supervisor. The Respondent shall submit the name of a proposed supervisor within 30 days of resuming the practice of medicine and shall be subject to supervision by a disciplinary panel approved supervisor upon the return to the practice of medicine.

- background, and written notice of confirmation from a different supervisor;
- (e) the supervision begins after the disciplinary panel approves the proposed supervisor;
 - (f) the disciplinary panel will provide the supervisor with a copy of this Consent Order and any other documents the disciplinary panel deems relevant;
 - (g) the Respondent shall grant the supervisor access to patient records selected by the supervisor, which shall, to the extent practicable, focus on opioid prescribing;
 - (h) if the supervisor for any reason ceases to provide supervision, the Respondent shall immediately notify the Board and shall not practice medicine beyond the 30th day after the supervisor has ceased to provide supervision and until the Respondent has submitted the name and professional background, and written notice of confirmation, from a proposed replacement supervisor to the disciplinary panel;
 - (i) it shall be the Respondent's responsibility to ensure that the supervisor:
 - (1) reviews the records of five (5) patients each month, such patient records to be chosen by the supervisor and not the Respondent;
 - (2) meets in-person (or virtually during the COVID-19 pandemic) with the Respondent at least once each month and discuss in-person (or virtually during the COVID-19 pandemic) with the Respondent the care the Respondent has provided for these specific patients;
 - (3) be available to the Respondent for consultations on any patient;
 - (4) maintains the confidentiality of all medical records and patient information;
 - (5) 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
 - (6) immediately reports to the Board any indication that the Respondent may pose a substantial risk to patients;
 - (j) the Respondent shall follow any recommendations of the supervisor;
 - (k) if the disciplinary panel, upon consideration of the supervisory reports and the Respondent's response, if any, has a reasonable basis to believe that the Respondent is not meeting the standard of quality care or failing

to keep adequate medical records in his or her practice, the disciplinary panel may find a violation of probation after a hearing; and it is further

ORDERED that a violation of probation constitutes a violation of the 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 or her designee 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, after one year of supervision, the Respondent may submit a written petition for termination of the supervision clause of probation. The Respondent may be required to appear before the disciplinary panel to discuss the petition for termination of this provision. After consideration of the petition, the Respondent's probation may be administratively terminated through an order of the disciplinary panel; 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 Consent 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 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 this Consent Order is a public document. *See* Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6) (2014 & 2019 Supp.).

12/01/2020
Date

Signature on File

Christine A. Farrelly
Executive Director
Maryland Board of Physicians

CONSENT

I, Swami A. Nathan, 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.

11-20-2020
Date

Signature on File

Swami A. Nathan, M.D.

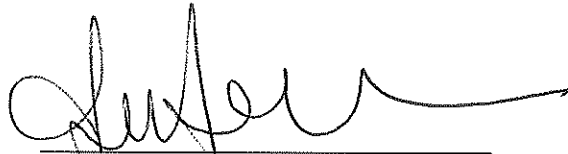
NOTARY

STATE OF Maryland

CITY / COUNTY OF Frederick

I HEREBY CERTIFY that on this 20 day of November 2020, before me, a Notary Public of the foregoing State and City/County, personally appeared Swami A. Nathan, M.D., and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.



Notary Public

My Commission expires:

JENNIFER CABRERA
Notary Public-Maryland
Frederick County
My Commission Expires
August 31, 2024