

IN THE MATTER OF	*	BEFORE THE
DENNIS JAN KUTZER, M.D.,	*	MARYLAND STATE
RESPONDENT	*	BOARD OF PHYSICIANS
License Number: D19332	*	Case Number: 2218-0158A
* * * * *	*	* * * * *

CONSENT ORDER

On June 7, 2019, Disciplinary Panel A (“Panel A”) of the Maryland State Board of Physicians (the “Board”), charged Dennis Jan Kutzer, M.D. (the “Respondent”), License Number D19332, under the Maryland Medical Practice Act (the “Act”), Md. Code Ann., Health Occ. (“Health Occ.”) § 14-404 (2014 Repl. Vol. and 2018 Supp.).

The pertinent provisions of the Act provide the following:

Health Occ. § 14-404. Denials, reprimands, 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:

(3) Is guilty of:

...

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

Further, the American Medical Association (“AMA”) Code of Medical Ethics (2014-2015 edition) provides in pertinent part:

Opinion 8.19 – Self-Treatment or Treatment of Immediate Family Members¹

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. . . . 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. . . . Likewise, physicians may feel obligated to provide care to immediate family members even if they feel uncomfortable providing care.

. . . 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.

On September 11, 2019, Panel A was convened as a Disciplinary Committee for Case Resolution (“DCCR”) in this matter. Based on negotiations occurring as a result of

¹ In the 2016-2017 edition, the section pertaining to treatment of self or family members was renumbered to section 1.2.1. The text is substantively the same as the 2014-2015 edition.

the DCCR, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

Panel A finds:

I. Background

1. At all times relevant to these charges, Respondent was and is a physician licensed to practice medicine in the State of Maryland. Respondent was initially licensed in Maryland on July 12, 1976. Respondent last renewed his license on or about September 10, 2018, which will expire on September 30, 2020.

2. On October 30, 1980, Respondent was granted lifetime board certification by the American Board of Psychiatry and Neurology in Psychiatry.

3. Respondent completed his residency in psychiatry in 1979 and has practiced psychiatry in Maryland since that time. Respondent currently practices inpatient and outpatient psychiatry as an employee of Hospital A in Maryland.²

II. Complaint

4. On December 7, 2017, the Board received a written complaint from a family member of one of Respondent's former patients ("Patient 1") expressing concern with the care that Respondent provided to Patient 1.³

III. Investigation

5. During the investigation of the complaint, the Board obtained a report from

² For confidentiality reasons, the names of medical facilities, and the identities of patients and family members will not be disclosed in this document.

³ The Board investigated this complaint and there are no charges against Respondent related to this complaint.

the Prescription Drug Monitoring Program (“PDMP”) for prescriptions written by Respondent between May 16, 2016 and February 14, 2018. Based on this report, Board staff reviewed Respondent’s medication profiles from several area pharmacies and obtained his pharmacy records for this time period. The information obtained revealed that Respondent prescribed controlled dangerous substances (“CDS”) to Respondent’s family members.⁴

6. A review of the prescriptions⁵ for CDS issued by Respondent for family members reveals the following:

- a. On February 10, 2018, Pharmacy A dispensed #30 tablets of a Schedule IV CDS to Family Member A; and
- b. On March 21, 2017, Pharmacy B dispensed #20 tablets of Schedule IV CDS to Family Member B.

7. On May 30, 2018, at the request of the Board, Respondent submitted a summary of his care of Family Members A and B. Respondent stated that he has written prescriptions for Family Member A. Beginning in approximately 2001 to approximately 2004, Respondent prescribed a non-CDS medication to Family Member A. From 2015 to 2017, he also prescribed a non-CDS medication on five occasions. Respondent stated he prescribed CDS in 2017-2018 and non-CDS medications to Family Member A. Respondent added that he has advised Family Member A that Family Member A will have to contact Family Member A’s primary care doctor or specialists for all future prescriptions.

⁴ The information obtained also revealed that Respondent has prescribed non-CDS for family members.

⁵ For confidentiality reasons, the names of medications or medical conditions treated or referenced herein will not be identified in this document.

8. Respondent stated that he has also written prescriptions for Family Member B. As confirmed by the Board's investigation, he prescribed a CDS medication, and non-CDS medications for Family Member B. Respondent added that he has advised Family Member B that Family Member B will have to contact Family Member B's internist, go to an out-patient walk-in clinic, or an emergency room for all future prescriptions.

9. On June 28, 2019, Respondent was interviewed under oath by Board staff. Respondent stated the following:

- a. Respondent stated that he exercised "poor judgment" when he prescribed for Family Members A and B;
- b. Respondent acknowledged that he "shouldn't have done it" referring to his prescriptions for Family Members A and B;
- c. Respondent prescribed for family members for last minute or emergency situations. He also prescribed for Family Member A because of a problem Family Member A had with a previous physician; and
- d. Respondent stated that he did not maintain medical records for Family Members A and B.

10. Thereafter, the Board sent the investigative file including a transcript of Respondent's interview, Respondent's case summaries regarding Family Members A and B, and the PDMP report and copies of prescriptions to a board-certified medical consultant to opine on whether the care provided to Family Members A and B represented unprofessional conduct in the practice of medicine.

IV. Allegations of Unprofessional Conduct Regarding Family Members

11. On October 2, 2018, the Board received a report from the medical consultant. Upon review of the investigative file, the medical consultant concluded that

Respondent did not meet the standard of professional conduct when he prescribed for Family Members A and B and did not keep medical records regarding this prescribing. The consultant was particularly concerned with the ongoing long-term prescribing of medications to Family Member A. The consultant noted that Respondent would not be able to maintain the objectivity required by a treating physician. The consultant also commented that Respondent's ongoing prescribing of drugs for Family Member A was not consistent with Respondent's interview statement that he prescribed primarily in emergency situations.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Panel A 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) for prescribing medications for Family Members A and B, including controlled substances, because:

- a. Objectivity is compromised when Respondent is treating a member of his own family;
- b. Quality of care is diminished when treating a family member;
- c. Physician/patient confidentiality is impacted because family members do not have the opportunity to discuss alternative treatment and make private disclosures such as psychosocial and personal stressors, mood difficulties, substance/alcohol abuse, and dietary intake that otherwise would be made to a primary psychiatrist or primary care physician to whom they are not related;
- d. Family members' ability to give meaningful informed consent is limited because family members may be reluctant to state their preference for another physician or decline a recommendation for fear of offending Respondent;

- e. Family members are placed in a position of dependence on Respondent to continue to prescribe their medications;
- f. Respondent may be inclined to treat problems that are beyond his expertise or training; and
- g. Respondent failed to maintain documentation of the prescriptions he was writing for Family Members A and B and the medical indications for each.

ORDER

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

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

ORDERED that within **SIX (6) MONTHS**, the Respondent shall pay a civil fine of \$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 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, 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 this Consent Order is a public document. *See* Md. Code Ann., Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6).

10/15/2019
Date

Signature on File

Christine A. Farrelly 
Executive Director
Maryland State Board of Physicians

CONSENT

I, Dennis Jan Kutzer, 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.

9/30/19
Date

Signature on File

Dennis Jan Kutzer, M.D.
Respondent

NOTARY

STATE OF MD

CITY/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 30th day of September 2019, before me, a Notary Public of the foregoing State and City/County, personally appeared Dennis Jan Kutzer, 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.

Janet Bryan
Notary Public
Janet Bryan

My Commission expires: 6-23-22