

IN THE MATTER OF
ABRAHAM DABELA, M.D.

Respondent.

License No. D19891

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BEFORE THE

MARYLAND STATE

BOARD OF PHYSICIANS

Case Number: 2220-0145

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FINAL DECISION AND ORDER

On January 29, 2021, Disciplinary Panel A of the Maryland State Board of Physicians (“Board”) summarily suspended the medical license of Abraham Dabela, M.D., concluding that the public health, safety, or welfare imperatively required emergency action under Md. Code Ann., State Gov’t § 10-226(c)(2). On February 10, 2021, Panel A held a post-deprivation hearing and determined to continue the January 29, 2021, summary suspension. Dr. Dabela requested a full evidentiary hearing on the summary suspension and the case was delegated to the Office of Administrative Hearings (“OAH”).

On February 25, 2021, Panel A charged Dr. Dabela with the following disciplinary ground: Is professionally, physically, or mentally incompetent, alleging a violation of Md. Code Ann., Health Occ. § 14-404(a)(4). On June 7, 2021, the charges were delegated to OAH and, on June 8, 2021, the Administrative Law Judge (“ALJ”) consolidated the hearing on the summary suspension and the hearing on the charges.

An evidentiary hearing was held at OAH on July 12, 13, and 14, 2021. Two experts testified on behalf of the State, two experts testified on behalf of Dr. Dabela, and Dr. Dabela testified on his own behalf. The ALJ also admitted into evidence forty-seven documentary exhibits offered by the State and forty-six exhibits from Dr. Dabela.

In a Proposed Decision issued on October 12, 2021, the ALJ recommended that the summary suspension issued on January 29, 2021, and the charges issued by Panel A on February 25, 2021, be upheld. As a sanction, the ALJ recommended that Dr. Dabela's license be revoked.

Dr. Dabela filed written exceptions to the ALJ's Proposed Decision, and the State filed a Response to Dr. Dabela's exceptions. Both parties appeared before Disciplinary Panel B of the Board for an oral exceptions hearing, on December 15, 2021. After considering the entire record, including the evidentiary record made before the ALJ, and the written exceptions and oral arguments by both parties, Panel B now issues this Final Decision and Order.

FINDINGS OF FACT

Panel B makes the following findings of fact by the preponderance of the evidence:

At all times relevant to this proceeding, Dr. Dabela was a licensed physician in the State of Maryland engaged in the practice of nephrology. Dr. Dabela was first licensed by the Board on October 21, 1976. Dr. Dabela was born in Ethiopia and is fluent in Oromo, Amharic, and English. On July 31, 2018, Dr. Dabela was involved in a serious car accident that resulted in a severe injury to his brain, which required major surgery. Following the surgery, Dr. Dabela participated in extensive outpatient physical therapy and cognitive rehabilitation. During this time and while he recovered, Dr. Dabela did not see any patients. Dr. Dabela's medical partner took over the care of Dr. Dabela's patients. On November 4, 2019, Dr. Dabela returned to the practice and expressed his interest in resuming seeing patients. On November 20, 2019, Dr. Dabela's partner filed a complaint with the Board alleging that Dr. Dabela was no longer competent to care for patients and asked the Board to evaluate Dr. Dabela's competency.

As a result of the complaint, the Board opened an investigation to assess Dr. Dabela's competency to practice medicine. The Board subpoenaed Dr. Dabela's medical records and

quality assurance files from each hospital where he held privileges. The Board also interviewed Dr. Dabela and his medical partner and asked Dr. Dabela to provide his response to the complaint. During Dr. Dabela's interview he received assistance from his daughter in answering questions. In his written response, Dr. Dabela stated that he was competent to practice medicine and that he believed his medical partner filed the complaint in an effort to gain sole ownership of their practice. On October 23, 2020, Dr. Dabela provided the Board with a letter from a neurologist ("Dr. A") who examined Dr. Dabela on two occasions in February of 2020. Dr. A concluded that Dr. Dabela was mentally competent to practice as a physician without any limitations.

On December 2, 2020, the Board directed Dr. Dabela to submit to an evaluation pursuant to Health Occ. § 14-402(a). Dr. Dabela attended an intake evaluation remotely over the Zoom platform with the medical director, a neurologist¹, ("Dr. R") and the Senior Clinical Manager ("Ms. A") of the Maryland Professional Rehabilitation Program ("MPRP"). Based on the MPRP initial evaluation, Dr. Dabela was referred to a subsequent neuropsychological evaluation to assess his mental competency to practice medicine.

On December 22, 2020, Dr. Dabela underwent an examination conducted by a neuropsychologist² ("Dr. S") with the assistance of a postdoctoral fellow and psychology associate. The battery of tests included 39 values, which were designed to assess a broad spectrum of abilities, including an estimate of pre-morbid function, executive functioning, basic language functions, visual spatial abilities, and the ability to learn and remember new information. Dr. S selected the tests, and the tests were administered by the psychology

¹ Neurology is the study of the entire nervous system, which includes the brain, spinal cord, and all the nerves outside of the brain and spinal cord. Neurologists are trained to conduct mental status examinations, but are not trained to conduct neuropsychological evaluations.

² Neuropsychology is a subset of psychology that focuses on brain function and the relationship between brain function and everyday cognitive function.

associate, who is trained in the administration and scoring of tests. Dr. S interviewed Dr. Dabela, reviewed Dr. Dabela's medical records, evaluated the results of the testing, and compared Dr. Dabela's results to men of his age with 20 years of education. Dr. S explained that Dr. Dabela's performance on the tests was much lower than expected for a person with a post-doctoral degree and over 20 years of education.

Dr. S testified that his decision regarding Dr. Dabela's competency was "not a close call", that Dr. Dabela's results in the testing demonstrated a [REDACTED], and he ultimately diagnosed Dr. Dabela with [REDACTED]. Dr. S explained that the difference between [REDACTED] and a [REDACTED] is that someone with a [REDACTED] [REDACTED] has problems with everyday adaptive functioning. Dr. S concluded that Dr. Dabela showed [REDACTED] substantial [REDACTED] impairment, but did not diagnose Dr. Dabela with a [REDACTED] because there was no compelling evidence that he had impairments of every day adaptive functioning.

After considering Dr. S's report and the entire investigative file, Panel A issued an Order of Summary Suspension on January 29, 2021, and disciplinary charges alleging that Dr. Dabela was incompetent to practice medicine on February 25, 2021. The case was forwarded to the OAH for a consolidated hearing on the merits of the summary suspension and the disciplinary charges. At the hearing, Dr. Dabela presented testimony from two expert witnesses, Dr. B and Dr. M. The expert testimony will be discussed in further detail, below. Upon review of the expert testimony and reports, the Panel finds that Dr. Dabela suffers from [REDACTED].

EVALUATION OF THE EVIDENCE

The record includes reports from four expert witnesses, as well as a report from Dr. A, who did not testify at the hearing. All four physicians who testified at the hearing agree that Dr.

Dabela suffers from [REDACTED]. The State's experts, Dr. R and Dr. S, concluded that it was not safe for Dr. Dabela to practice medicine based largely on Dr. Dabela's medical records and the neuropsychological evaluation conducted by Dr. S, while Dr. Dabela's expert, Dr. M, concluded Dr. Dabela could practice medicine if he followed certain recommendations. Dr. B claimed that Dr. S's evaluation was flawed based on cultural competency limitations.

The State's expert who conducted Dr. Dabela's intake evaluation, Dr. R, was accepted by the ALJ as an expert in neurology. When Dr. Dabela was referred to MPRP for an evaluation, Dr. R conducted a mini mental examination and based on the results, he referred Dr. Dabela to Dr. S for a complete neuropsychological examination. Dr. R then reviewed the reports of Dr. S, Dr. M, and Dr. B and opined that it was not safe for Dr. Dabela to practice medicine even with the recommendations suggested by Dr. M. Dr. R explained that the recommendations proposed by Dr. M could help Dr. Dabela with daily living but concluded that the recommendations would not create enough improvement in his [REDACTED] functioning for him to be able to practice medicine competently.

Dr. S conducted a neuropsychological examination of Dr. Dabela which included approximately 20 tests with 39 values that Dr. S used to evaluate his competency. The results of the test scores are categorized as abnormal, borderline, low average, average, high average, superior, and very superior. Of the 39 cognitive measures, Dr. Dabela had [REDACTED]
[REDACTED]
[REDACTED]. Dr. S explained that Dr. Dabela's performance was well below expectations since most physicians and people with doctorate degrees tend to score [REDACTED]. Dr. S diagnosed Dr. Dabela with [REDACTED]. Dr. S testified that Dr. Dabela's [REDACTED] impairment was more severe and

widespread than is typical of [REDACTED], but he was unable to diagnose Dr. Dabela with a [REDACTED] [REDACTED] due to a lack of evidence that Dr. Dabela was impaired in everyday adaptive functioning. Dr. S explained that Dr. Dabela scored [REDACTED] [REDACTED] substantial [REDACTED] impairment. Based on the severity of Dr. Dabela's impairment on several of the administered tests, Dr. S opined that Dr. Dabela minimized or did not fully recognize the signs of his [REDACTED]. After reviewing the test results, Dr. Dabela's history, and looking at "what the whole picture shows," Dr. S concluded that Dr. Dabela could not safely practice medicine due to his [REDACTED] impairment.

Dr. Dabela hired Dr. M to conduct a neuropsychological evaluation. Dr. M was accepted as an expert in clinical neuropsychology and neuropsychological assessment and evaluation. Like Dr. S, Dr. M diagnosed Dr. Dabela with [REDACTED] and opined that his areas most affected are language fluency, word finding, and executive functioning. Dr. M stated generally that individuals with a [REDACTED] can often resume employment as current issues may not progress and can improve with treatment. Dr. Dabela, however, is a physician who is licensed by the Board to practice medicine and to provide safe and competent care and treatment to his patients. Dr. M did not specifically address whether Dr. Dabela was safe to practice medicine either in her report or in her testimony. Dr. M stated that she saw nothing in her testing results that would prevent Dr. Dabela from working if he was provided the accommodations she recommended. In her report, she provided multiple detailed recommendations, which included using a scribe, a reduced workload, consultation with peers in his field, rechecking his work for careless errors, leaving extra time to complete tasks, and keeping daily routines the same as much as possible to prevent confusion.

Dr. Dabela admits that the accommodations recommended by his expert Dr. M are significant. Dr. S also noted that Dr. Dabela would have to have a phenomenal memory just to remember the twenty-one concrete recommendations noted by Dr. M to help Dr. Dabela with daily living. The Panel finds that Dr. M's list of accommodations are neither practical nor reasonable for Dr. Dabela to implement in his medical practice. Equally important, the Board has no way of enforcing or requiring Dr. Dabela to rigorously follow the recommendations in order to ensure patient safety. Notably, Dr. M did not comment on the specific skills needed to work as a physician and, in particular, a nephrologist. In addition, Dr. M recommended psychotherapy, cognitive behavioral therapy, cognitive rehabilitation therapy, and consultations with a neurologist, speech and language pathologist, and audiologist. The extensive recommendations noted by Dr. M are indicative of the significant levels of assistance Dr. Dabela requires.

Dr. B also testified on behalf of Dr. Dabela. Dr. B was qualified as an expert in neuropsychological assessment and evaluation. Dr. B did not conduct an evaluation of Dr. Dabela and never personally met Dr. Dabela. Rather, Dr. B was asked by Dr. Dabela's counsel to review Dr. S's report from a cultural competency perspective. Dr. B reviewed Dr. S's and Dr. M's reports and opined that the results of Dr. S's evaluation lacked adequate validity to reach a firm clinical diagnostic decision regarding Dr. Dabela's competency. Dr. B opined that Dr. S's evaluation was unreliable and reflected a glaring lack of cultural competency, but she recognized that both Dr. S and Dr. M came to the same conclusion in diagnosing Dr. Dabela with [REDACTED]. Dr. B also noted deficiencies in Dr. M's report, but she trusted the conclusions in Dr. M's report more than the conclusions in Dr. S's report because the conceptualization in Dr. M's report was more comprehensive. Dr. B explained that there was no test available to evaluate the exact cultural characteristics of Dr. Dabela. Dr. S recognized and appreciated the concerns raised in

Dr. B's report and explained that he already had taken many of her concerns into consideration, but that he did not document them in his report. He acknowledged that he could have done a better job in documenting and explained that he did account for factors, such as English being a second language to Dr. Dabela.

The Panel also considered the expert report of Dr. A, a neurologist, who saw Dr. Dabela on two occasions in February of 2020. Dr. A did not testify at the hearing before the ALJ. Dr. A conducted a mini mental examination and reported that Dr. Dabela received a perfect score. Dr. A also performed a neurological competency evaluation and opined that Dr. Dabela could return to work as a physician without limitations.

CONSIDERATION OF EXCEPTIONS

Dr. Dabela's Competency to Practice Medicine

Dr. Dabela argues that Dr. R's testing was flawed because it was conducted as a remote evaluation using the Zoom platform and was flawed in its substance. The Panel agrees that in-person testing is preferable, but the mini mental examination was only used as a screening tool to determine if further evaluations were necessary. Based on the results of the mini mental evaluation, Dr. R determined that further testing was necessary, which is why he referred Dr. Dabela to Dr. S for a complete neuropsychological examination.

Dr. Dabela argues that Dr. S's evaluation was imperfect, contentious, and potentially biased. The testing was contentious, as Dr. Dabela was reluctant to participate and was not fully cooperative. Dr. S admitted that Dr. Dabela's resistance to the evaluation could have resulted in a lower score, but Dr. S explained that it was a relatively small contributor and that Dr. Dabela was deemed sufficiently engaged in the process for the evaluation to be considered valid. While the conditions may not have been optimal due to Dr. Dabela's resistance and lack of cooperation, Dr.

S believed they were adequate. As a result of Dr. Dabela's refusal to complete all of the questionnaires, Dr. S was not able to assess Dr. Dabela's functioning in activities of daily living, which meant he was unable to assess whether Dr. Dabela had [REDACTED]. While Dr. S acknowledged that there is no definitive algorithm to evaluate a physician's [REDACTED], Dr. S used his clinical judgment and determined that Dr. Dabela was not competent to practice medicine.

Dr. Dabela argues that the evaluation performed by Dr. A in February of 2020 should be given more weight than the later evaluation conducted by Dr. S in December of 2020 because Dr. A was the only physician who knew Dr. Dabela's premorbid baseline history. Dr. Dabela also argues that the ALJ only considered the mini mental examination conducted by Dr. A and not the comprehensive neurological examination he conducted in determining that the summary suspension was proper.

The Panel owes no deference to the non-demeanor-based credibility findings of the ALJ and makes "its own decisions about bias, interest, credentials of expert witnesses, the logic and persuasiveness of their testimony, and the weight to be given their opinions." *See State Bd. of Physicians v. Bernstein*, 167 Md. App. 714, 761 (2006). The Panel has reviewed and considered the entire record in this case, which includes Dr. A's full records concerning Dr. Dabela. Just as the Panel considered Dr. R's mini mental screening evaluation but focused on Dr. S and Dr. M's testimony as the basis for determining his competence, similarly here, the Panel considered Dr. A's evaluation, but does not give significant weight to this screening assessment. Dr. A is trained as a neurologist, like Dr. R, while Dr. M and Dr. S are trained neuropsychologists. As Dr. S explained, neurologists are not trained to conduct the more comprehensive neuropsychological examination. The Panel, therefore, gives more weight to the testimony and reports of Dr. S and

Dr. M, neuropsychologists who conducted neuropsychological evaluations and who agree that Dr. Dabela suffers from [REDACTED]. The Panel also gives more weight to the neuropsychological evaluation conducted by Dr. S than the neuropsychological evaluation conducted by Dr. M.

The Panel agrees with Dr. S that Dr. Dabela is not competent to practice medicine and rejects Dr. M's conclusion that with accommodations Dr. Dabela could safely practice medicine. Dr. M had only evaluated five other physicians and Dr. Dabela's evaluation was the first she completed for the purpose of determining whether a physician was safe to practice medicine. In contrast, Dr. S had performed "between 1 and 200 a year" for that purpose over the course of 33 years. Further, Dr. M and Dr. S conducted separate neuropsychological evaluations and reached the same diagnosis that Dr. Dabela suffered from [REDACTED]. The Panel agrees with Dr. S that the accommodations listed by Dr. M could help Dr. Dabela with daily living but concludes that they would not be significant enough to allow him to safely practice medicine. Dr. Dabela has planning and executive functioning deficits caused by his [REDACTED] that are functions integral to the practice of medicine. The practice of medicine, regardless of specialty, is highly complex and requires a greater level of expertise and intelligence. The Panel finds that Dr. Dabela is not mentally competent to practice medicine.

Decision to preclude Dr. A from testifying

On the first day of the hearing, Dr. Dabela sought permission, for the first time, to call Dr. A as a witness in the case, explaining that they had just been able to reach him and secure his availability to testify. Dr. Dabela admitted that he missed the deadline for submitting Dr. A as a witness and that he did not even inform the State of the potential for calling Dr. A as a witness or that they were trying to get in touch with him. The State objected to Dr. Dabela calling Dr. A as a witness because Dr. A was not disclosed as a potential witness until the morning of the hearing.

The Board's regulations require each party to provide to the other party the name, curriculum vitae, and expert report of any expert who will testify at the hearing not later than 15 days prior to the prehearing conference or 45 days prior to the scheduled hearing, whichever is earlier. COMAR 10.32.02.04C(3)(a). Dr. Dabela did not list Dr. A as a witness, but Dr. A's report was disclosed in discovery. The ALJ denied Dr. Dabela's request to call Dr. A as a witness and did not allow Dr. A to testify given the last-minute nature of the request, but Dr. A's report was admitted into evidence as an exhibit and is part of the record in this case. Dr. Dabela takes exception to that ruling. The Panel does not find that the ALJ erred in declining to allow Dr. A to testify. Dr. Dabela's exception is denied.

Dr. Dabela's Diagnosis

Dr. Dabela argues that the Board summarily suspended his license and issued charges on the basis that he was diagnosed with [REDACTED], even though no such diagnosis was made. Dr. Dabela is incorrect that the summary suspension and charges were issued based on a diagnosis of [REDACTED]. The Panel agrees that such a conclusion is not supported by the record and does not adopt the ALJ's findings of [REDACTED]. The record reflects that Dr. Dabela was diagnosed with [REDACTED] and the Panel finds such a diagnosis. Dr. S opined that the results of the evaluation showed that Dr. Dabela had deficiencies that could indicate [REDACTED] impairments, but because Dr. Dabela adamantly denied having any impairment of everyday adaptive functioning, his condition is better understood as [REDACTED], which includes impairments that do not affect daily living.

Dr. S opined that the results of the examination lead him to conclude that Dr. Dabela could no longer safely practice medicine as a result of his [REDACTED] impairments. The Panel does not find that Dr. Dabela was diagnosed with [REDACTED] but finds Dr. Dabela's

lack of competency based on his [REDACTED] abilities to practice medicine rather than any diagnosis label.

Dr. Dabela speculates that if there were true concerns about his mental status or competence at least one patient, employee, staff member, referring physician, or family member would have reported their concerns. The Panel rejects this supposition. Dr. S, an expert evaluator deemed Dr. Dabela not competent to practice medicine. A lack of additional complaints does not alter the potential for patient harm. The Panel does not have to wait for patient harm to occur in order to act. *See Pickert v. Maryland Bd. of Physicians*, 180 Md. App. 490, 505 (2008) (“No proof of injury or harm is required to take disciplinary actions against a physician’s license.”). Based on the reports of the experts and Dr. Dabela’s own testimony, the nature of Dr. Dabela’s impairments indicate that he cannot practice medicine safely.

Dr. Dabela’s Partner

Dr. Dabela takes exception to the ALJ’s finding that the testimony of Dr. Dabela’s partner was immaterial to the proposed conclusions and disposition in the case. He argues that the ALJ ignored his partner’s testimony and that the ALJ failed to consider Dr. Dabela’s partner’s ulterior motive because his business partner stood to gain financially by filing a complaint with the Board regarding Dr. Dabela’s competency. The ALJ did, however, consider that Dr. Dabela’s partner might have filed the complaint against Dr. Dabela to take over the medical practice for one dollar. The ALJ stated, “Even if [Dr. Dabela’s partner] did, in fact, fabricate the allegation that the Respondent is no longer competent to care for patients due to [REDACTED] impairment, the State has presented independent, credible evidence that the Respondent has [REDACTED] which renders him unsafe to continue in the practice of medicine.” The Panel agrees with the ALJ. Regardless of the reason the complaint was filed, the Board

conducted an independent investigation to investigate the allegations and referred Dr. Dabela for an independent evaluation to determine his competency. After the considering the entirety of the record, the Panel finds that the State has met its burden of proving that Dr. Dabela is mentally incompetent by a preponderance of the evidence.

CONCLUSIONS OF LAW

Based on the findings of fact and discussion of Dr. Dabela's exceptions, as set forth above, Disciplinary Panel B concludes that Dr. Dabela is professionally, physically, or mentally incompetent, in violation of Health Occ. § 14-404(a)(4), and that the summary suspension was proper because the public health, safety, or welfare imperatively required emergency action pursuant to State Gov't § 10-226(c)(2).

SANCTION

The ALJ recommended that the Panel revoke Dr. Dabela's license. Dr. Dabela takes exception to the ALJ's recommended sanction and argues that his license should not be revoked until an updated neuropsychological evaluation is performed to determine if there is additional decline and to monitor the efficacy of the treatment and recommendations suggested by Dr. M. Dr. Dabela also argues that not allowing him the opportunity to practice medicine with the accommodations recommended by Dr. M is illegal and in violation of the Americans with Disabilities Act and represents age discrimination.

The Panel's responsibility is to protect the public by ensuring that Dr. Dabela is competent to practice medicine safely. Even if Dr. Dabela strictly followed the recommendations listed by Dr. M, both Dr. R and Dr. S opined that the recommendations would not be sufficient to allow him to safely practice medicine. The Panel accepts the opinions of Dr. R and Dr. S and agrees with the ALJ that revocation is appropriate.

ORDER

It is, by an affirmative vote of a majority of the quorum of Disciplinary Panel B, hereby:

ORDERED that the medical license of Abraham Dabela, M.D., License No. D19891, is **REVOKED**; and it is further

ORDERED that the Summary Suspension imposed on January 29, 2021, and affirmed on, February 11, 2021, is terminated as moot; and it is further

ORDERED that the effective date of this Final Decision and Order is the date the Final Decision and Order is signed by the Executive Director of the Board; and it is further

ORDERED that this Final Decision and Order is a **PUBLIC** document pursuant to Health Occ. § 1-607, § 14-411.1(b)(2), and Gen. Prov. § 4-333(b)(6).

08/03/2022
Date

Signature On File

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

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Md. Code Ann., Health Occ. § 14-408, Dr. Dabela has the right to seek judicial review of this Final Decision and Order. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of this Final Decision and Order. The cover letter accompanying this final decision and 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. Dabela 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, AAG, Maryland Department of Health, 300 West Preston Street, Suite 302, Baltimore, Maryland 21201, and emailed to Stacey.Darin@maryland.gov.