

<p>IN THE MATTER OF</p> <p>LENNARD G. HERBST, M.D.</p> <p>Respondent</p> <p>License No. D20169</p>	<p>*</p> <p>*</p> <p>*</p> <p>*</p>	<p>BEFORE THE</p> <p>MARYLAND STATE</p> <p>BOARD OF PHYSICIANS</p> <p>Case No. 2220-0124A</p>
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CONSENT ORDER

On June 22, 2021, Disciplinary Panel A (“Panel A”) of the Maryland State Board of Physicians (the “Board”) charged Lennard G. Herbst, M.D. (the “Respondent”), License Number D20169, under the Maryland Medical Practice Act (the “Act”), Md. Code Ann., Health Occ. (“Health Occ.”) §§ 14-101 *et seq.* (2014 Repl. Vol. & 2020 Supp.). Panel A charged the Respondent with violating the following provisions of the Act:

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:

....

- (3) Is guilty of: . . .
 - (ii) Unprofessional conduct in the practice of medicine; [and]

....

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

On September 1, 2021, Panel A was convened as a Disciplinary Committee on Case Resolution (“DCCR”) in this matter. Based on negotiations occurring as a result of the

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

FINDINGS OF FACT

Panel A finds:

Background

1. At all relevant times, the Respondent has been licensed to practice medicine in the State of Maryland under License Number D20169. His license is scheduled to expire on September 30, 2022, subject to renewal.
2. The Respondent is board-certified in obstetrics and gynecology.
3. The Respondent currently practices as part of an obstetrics and gynecology practice that is operated through a regional health care system. The Respondent has privileges at a Maryland hospital (“Hospital A”)¹ that is operated through the same health care system as his practice.

Mandated 10-Day Report

4. On or about September 4, 2019, the Board received a Mandated 10-Day Report from Hospital A reporting that the Respondent’s privileges at Hospital A had been limited to “certain minor procedures” because of “concerns related to the [Respondent’s] documentation and clinical reasoning.”

Board Investigation

5. The Board opened an investigation based on the Mandated 10-Day Report.

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

Records from Hospital A

6. As part of its investigation, and pursuant to a Board subpoena, the Board obtained the Respondent's quality assurance and risk management file for Hospital A.

7. The Respondent's file included a letter dated September 5, 2018, that placed the Respondent on a six-month focused professional practice evaluation ("FPPE"). The Respondent countersigned the letter on September 27, 2018. The letter stated that the FPPE was "for cause" and identified "concerning quality trend" and "inappropriate behavior" as the cause. The letter described the Respondent's conduct to include:

- a. Non-compliance with sample drug policies by bringing prescription drug samples into the office and distributing those samples to patients without proper documentation;
- b. Taking a patient's phone call while in a room with another patient, using the calling patient's name, then discussing her medical condition;
- c. Walking with a patient through the office halls towards the lobby while continuing to discuss her medical conditions in front of others;
- d. Inadequate documentation; and
- e. Complaints regarding "inappropriate behavior toward staff."

8. The Respondent's file included a second letter, dated September 5, 2018, that stated the Respondent "will not be doing any further OB visits." The Respondent had previously self-limited his obstetrics to the first three months of pregnancy as he opted to focus more on the practice of gynecology. According to the letter, the purpose of this limitation was to "avoid confusion for the patients as to who is managing their Obstetrical care."

9. The Respondent's file also included a letter dated July 31, 2019, that limited the Respondent's practice at Hospital A to certain minor procedures. The letter explained

that a hospital investigation “focused on documentation” and that review of patient records “raise[d] serious concerns as to [the Respondent’s] medical decision making, especially related to indications for surgery as well as preoperative counseling of patients.”

Interview of Physician A

10. As part of its investigation, Board staff interviewed the Respondent’s current supervisor (“Physician A”) under oath.

11. Physician A explained that her concerns about the Respondent’s performance arose following a surgical case in mid-2019, in which the Respondent had performed a myomectomy on a patient in her forties with severe physical disabilities. Physician A said that she had concerns about the Respondent’s decision to perform a myomectomy instead of a hysterectomy on this specific patient. According to Physician A the Respondent’s “documentation preoperatively did not support even the reason for surgery.”

12. Physician A said that she began to review records of the Respondent’s other surgeries. She explained that she “saw the same pattern of lack of documentation for the reasons for surgery[.]” Physician A said that in some cases “there was no documentation even of the patient visit . . . or even counseling as to the indication for the surgery or . . . any alternatives to the surgery.”

13. Physician A said that she suspended the Respondent’s general operating room privileges and permitted the Respondent to perform only certain minor surgical procedures. Physician A also allowed the Respondent to perform some surgical cases only if Physician A reviewed the Respondent’s documentation and approved the surgery prior to the Respondent scheduling it.

Interview of Physician B

14. As part of its investigation, Board staff interviewed the Respondent's former supervisor ("Physician B") under oath. Physician B was Hospital A's Department Chair for Obstetrics and Gynecology from 2014 to mid-2019.

15. Physician B explained that the Respondent was previously in private practice and merged with the health care system. She said that "it was a very rocky transition" for the Respondent because the system sought to move the Respondent's office from paper to electronic records, among other things. Physician B also explained her concerns with the Respondent's documentation issues including general disorganization and "very poorly constructed notes" that lacked information expected in progress or pre-operative notes.

16. Physician B also explained that the Respondent lost control over personnel matters when the Respondent's practice merged with the health care system. According to Physician B, the Respondent "didn't always like the people we hired and they didn't always like him[.]" Staff reported to Physician B that the Respondent was "sometimes yelling at them or being disrespectful[.]"

17. Physician B said that the health care system took away sample drugs from the Respondent's office because he did not log them when providing them to patients.² She also said that the Respondent was found "hiding stashes of [sample drugs] in [the] drawers of his desk or hidden in some closet somewhere."

² Physician B explained that sample drugs first needed pharmacy approval, then had to be logged in with lot numbers and expiration dates. When distributed to a patient, the provider had to fill out a form confirming that patient counseling was provided and listing the specific drug information. According to Physician B, these logs were to ensure that patients could be identified and contacted in the event of a drug recall or similar need to speak with patients about the sample drug.

18. Physician B described circumstances when the Respondent violated patient confidentiality. In one instance, a staff member reported that the Respondent walked with a patient from the back room to the front while still talking to the patient about her medical issues. In another instance, the Respondent saw a patient in the waiting room and told her that her daughter had recently been in to see the Respondent for treatment.

19. According to Physician B, the Respondent sought to reduce his practice to gynecology patients only, but “he found it very difficult letting go of his OB patients.” By agreement, the Respondent would not provide any OB treatment past the first trimester. Physician B explained that the Respondent continued to consult with patients beyond their first trimester and would visit patients in labor and delivery then suggest certain care to the nursing staff. The Respondent’s conduct “was interfering” with the OB providers’ ability to manage their patients.

20. Physician B explained that she spoke to the Respondent about his continued care of OB patients, and he agreed to stop. However, “he continued to do it.” As a result, Physician B expressly prohibited the Respondent from providing any OB treatment other than for urgent in-office cases such as ectopic pregnancy evaluations.

21. Physician B confirmed that, based on the Respondent’s conduct, Hospital A placed the Respondent on a six-month focused professional practice evaluation (“FPPE”) in September 2018.

Peer Review

22. The Board issued subpoenas duces tecum to Hospital A and the Respondent for the complete medical records of three specific patients (“Patients 1-3”). Both provided the requested records for Patients 1-3.

23. The Board referred the patient records and related materials to a peer review entity for review. Two peer reviewers, each board-certified in obstetrics and gynecology, separately reviewed the records for Patients 1-3 and provided their reports to the Board.

24. The peer reviewers concurred that the Respondent failed to keep adequate medical records for all three patients for reasons including, but not limited to:

- a. The Respondent failed to document a preoperative history and physical or any appropriate preoperative patient counseling for the proposed surgical procedures (Patients 1, 2, and 3);
- b. The Respondent did not document appropriate informed consent in his office or clinic notes prior to the surgery date (Patients 1 and 3);
- c. The Respondent documented patient consent to undergo the wrong surgical procedure, which demonstrated that he did not discuss the patient's diagnosis or planned procedure at the time he obtained that "consent" (Patient 3).

Response to Peer Review Reports

25. The Board provided the Respondent with an opportunity to review and respond to the peer reviewers' reports. On or about February 23, 2021, the Respondent submitted his response. The Respondent acknowledged the peer reviewers' documentation concerns and said that he has "worked diligently to improve [his] record keeping[.]"

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); and that the Respondent failed to maintain adequate medical records as determined by appropriate peer review, in violation of Health Occ. § 14-404(a)(40).

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 MONTHS** from the effective date of this Consent Order, the Respondent shall pay a civil fine of **five thousand dollars (\$5,000)**. 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 the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

ORDERED that this Consent Order is a public document. *See Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6) (2014 & 2020 Supp.)*.

09/29/2021
Date

Signature on File

Christine A. Farrelly
Executive Director
Maryland Board of Physicians

CONSENT

I, Lennard G. Herbst, 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, Conclusions of Law, Order, and Consent 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.

Signature on File

9/23/2021
Date

Lennard G. Herbst, M.D.
License No. D20169

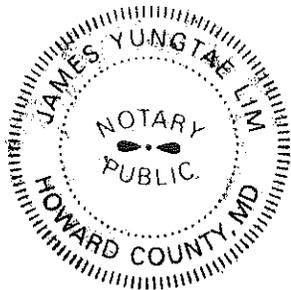
NOTARY

STATE OF Maryland

CITY / COUNTY OF Howard

I HEREBY CERTIFY that on this 23rd day of Sep, 2021,
before me, a Notary Public of the foregoing State and City/County, personally appeared
Lennard G. Herbst, 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.



[Signature]
Notary Public

My commission expires: 03/09/2024