

IN THE MATTER OF

* BEFORE THE

JOHN M. HAYES, M.D.

* MARYLAND STATE

Respondent

* BOARD OF PHYSICIANS

License Number: D20556

* Case Number: 2219-0078A

CONSENT ORDER

On January 22, 2020, Disciplinary Panel A (“Panel A”) of the Maryland State Board of Physicians (the “Board”) charged **John M. Hayes, M.D.** (the “Respondent”), License Number D20556, under the Maryland Medical Practice Act (the “Act”), Md. Code Ann., Health Occ. (“Health Occ.”) §§ 14-101 *et seq.* (2014 Repl. Vol. & 2019 Supp.). Panel A charged the Respondent under the following provision of the Act:

§ 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; [and]

...

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

On March 11, 2020, 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 and Order.

FINDINGS OF FACT

Panel A finds:

I. Background & Licensing Information

1. At all relevant times, the Respondent was and is licensed to practice medicine in the State of Maryland. The Respondent was initially licensed to practice medicine in Maryland on or about July 21, 1977, under License Number D20556. His license is active through September 30, 2020.

2. The Respondent is board certified in obstetrics and gynecology, though he has retired from that medical specialty. The Respondent currently practices in a pain management clinic (the “Clinic”)¹ in or around Laurel, Maryland.

3. The Respondent holds active medical licenses in Virginia and the District of Columbia. He holds an inactive medical license in Pennsylvania.

II. Complaint

4. On or about October 29, 2018, the Board received a complaint from a pharmacy investigator with the Maryland Department of Health’s Office of the Inspector General (the “Complainant”). The Complainant expressed his concerns about the opioid prescribing practices at the Clinic, specifically that of the Respondent and another provider.

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

The Complainant explained that he reviewed prescriptions from the Clinic written for Medicaid beneficiaries and found high doses of opioids for approximately 59 beneficiaries. He determined that neither the Respondent nor the other provider submitted medical billing to the Medicaid program. The Complainant found this pattern suspicious because it likely meant that these beneficiaries paid out-of-pocket to see the Respondent even though they would have had coverage if they saw a provider who accepted Medicaid reimbursements. The Complainant expressed his concern that 37 of the 59 reviewed patients traveled more than 40 miles to the Clinic. The Complainant concluded that the “red flags” showed that the opioid prescriptions the Respondent wrote “are not for a legitimate purpose.”

III. Board Investigation

5. The Board initiated an investigation into the complaint.
6. As part of its investigation, the Board identified ten patients who received prescriptions for controlled dangerous substances (“CDS”) from the Respondent between January 1, 2016, and November 16, 2018. On or about December 18, 2018, the Board subpoenaed records for those ten patients from the Respondent.
7. On or about January 22, 2019, the Respondent provided the Board with the subpoenaed patient records as well as a summary for each of the ten patients.
8. On or about March 29, 2019, Board staff interviewed the Respondent under oath. The Respondent stated that he retired as an obstetrician/gynecologist in 1999. He was unable to perform surgeries upon returning to practice in 2003. He began working at the Clinic in 2013. The Respondent described his current practice as “provid[ing] pain medication for people who are chronically in pain.” For training in this practice area, the Respondent said that he has taken “free-standing courses” in pain management and spent

a day with an anesthesiologist and pain medicine specialist in Virginia. The Respondent said that he sees between 18 and 25 patients a day at the Clinic. Most of the patients he sees, according to the Respondent, come to him from “other facilities” and are already taking pain medications.

IV. Peer Review

9. On or about June 13, 2019, the Board referred the ten patient records obtained from the Respondent and related materials to a peer review entity for review.

10. Two peer reviewers, who were each board-certified in anesthesiology with subspecialty certification in pain medicine, separately reviewed the ten patient records. On or about July 22, 2019, the peer reviewers submitted their reports to the Board.

11. The peer reviewers concurred that the Respondent did not meet the standard of quality medical care for all ten patients for reasons including, but not limited to:

- a. Findings from physical examinations (such as decreased range of motion, stiffness, and/or muscle spasms) did not support the use of chronic, high-dose opiate therapy ranging from approximately 160 to 300 MME² per day (Patients 1, 2, 3, 5, 6, 7, 8, and 10);
- b. The Respondent failed to require that patients obtain updated imaging studies to support high-dose opiate therapy (Patients 1 and 7);
- c. Imaging studies, when obtained, often showed minor changes that did not correspond to the patients’ reportedly severe pain levels or justify the use of high-dose opioids (Patients 1, 3, 4, 7, 9, and 10);

² Morphine Milligram Equivalence (“MME”) is a value assigned to each opioid to represent its relative potency by using morphine as the standard comparison. The *CDC Guideline for Prescribing Opioids for Chronic Pain* uses MME to establish recommended opioid dosing and currently recommends using precaution when prescribing opioid doses greater than or equal to 50 MME per day and avoiding or carefully justifying a decision to increase opioid doses greater than or equal to 90 MME per day.

- d. The Respondent failed to consider alternative treatments such as physical therapy, chiropractic interventions, non-narcotic medication, or referrals for orthopedic injections (Patients 1, 2, 3, 4, 5, 6, 9, and 10);
- e. The Respondent continued to prescribe and refill opioids in the presence of noncompliant behavior with no documented attempts to withdraw or taper the patients off opioids (Patients 1, 4, 6, and 9);
- f. The Respondent prescribed benzodiazepines for insomnia to patients who were also prescribed high-dose opiates (Patients 2, 3, and 9);
- g. The Respondent inappropriately based his prescribing of opioids and benzodiazepines for “comfort,” to help patients “cope,” or for patients’ low functioning physical status instead of referring these patients for mental health or other evaluations (Patients 3, 4, 6, and 9); and
- h. The Respondent inappropriately took over prescribing psychotropic medication rather than having patients’ psychiatrists continue to prescribe these medications (Patients 3 and 7).

12. The peer reviewers concurred that the Respondent did not maintain adequate medical records for two out of ten patients for reasons including, but not limited to:

- a. Records lacked clear clinical information to justify changing medications or doses (Patients 8 and 10).

13. The Board provided the Respondent with an opportunity to review and respond to the peer reviewers’ reports. On or about August 29, 2019, the Respondent submitted his response. He generally disagreed with the peer reviewers’ conclusions, and explained that, among other things, he “inherited the vast majority of the [Clinic]’s patients,” and that he “does recommend physical therapy and chiropractic care to many of his patients, but it is not always documented.” The Respondent did not specifically address the opioid doses that he prescribed, which ranged from approximately 160 to 300 MME per day, but he stated his belief that he prescribed the “proper medication” for certain patients based on their complaints of severe pain.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Panel A concludes as a matter of law that the Respondent failed 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, in violation of Health Occ. § 14-404(a)(22), and that the Respondent failed to keep 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, John M. Hayes, M.D., is **REPRIMANDED**; and it is further

ORDERED that the Respondent is permanently prohibited from prescribing and dispensing all opioids and benzodiazepines under Criminal Law § 5-401 *et seq.*; and it is further

ORDERED that the prohibition on prescribing and dispensing goes into effect **THIRTY (30) CALENDAR DAYS** after the effective date of this Consent Order; and it is further

ORDERED that the Respondent is permanently prohibited from certifying patients for the medical use of cannabis; and it is further

ORDERED that on every January 31st thereafter if the Respondent holds a Maryland medical license, the Respondent shall provide the Board with an affidavit verifying that the Respondent has not prescribed or dispensed any opioids and

benzodiazepines or certified patients for the medical use of cannabis in the past year; and it is further

ORDERED that if the Respondent fails to provide the required annual verification of compliance with these conditions:

- (1) There is a presumption that the Respondent has violated these permanent conditions; and
- (2) The alleged violation will be adjudicated pursuant to the procedures of a Show Cause Hearing; and it is further

ORDERED that the Respondent agrees that the Controlled Dangerous Substances (“CDS”) Registration issued by the Office of Controlled Substances Administration will be restricted to the same categories of CDS as limited by this Order; and it is further

ORDERED that the disciplinary panel may issue administrative subpoenas to the Maryland Prescription Drug Monitoring Program on a quarterly basis for the Respondent’s Controlled Dangerous Substances (“CDS”) prescriptions. The administrative subpoenas will request the Respondent’s CDS prescriptions from the beginning of each quarter; and it is further

ORDERED that within **SIX (6) MONTHS** of the effective date of this Consent Order, the Respondent is required to take and successfully complete **TWO** panel-approved courses: (i) one course in medical record keeping; and (ii) a separate course in medical ethics. The following terms apply:

- (a) It is the Respondent’s responsibility to locate, enroll in and obtain the disciplinary panel’s approval of the courses before the courses are begun;
- (b) The disciplinary panel will not accept courses taken over the internet;

- (c) The Respondent must provide documentation to the disciplinary panel that the Respondent has successfully completed the courses;
- (d) The courses may not be used to fulfill the continuing medical education credits required for license renewal; and
- (e) The Respondent is responsible for the cost of the courses; and it is further

ORDERED that within **TWO (2) YEARS** of the effective date of this Consent Order, the Respondent shall pay a civil fine of **FIVE THOUSAND DOLLARS (\$5,000.00)**. 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. The Executive Director 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, 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.).

04/27/2020
Date

Signature on File

Christine A. Farrelly
Executive Director
Maryland Board of Physicians

CONSENT

I, John M. Hayes, 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.

Signature on File

3/26/2020
Date

John M. Hayes, M.D.


NOTARY

STATE OF Maryland

CITY / COUNTY OF Montgomery

I HEREBY CERTIFY that on this 26 day of March ²⁰²⁰~~2019~~,
before me, a Notary Public of the foregoing State and City/County, personally appeared
John M. Hayes, 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:

PADMA BAJRACHARYA Notary Public - Maryland Montgomery County My Commission Expires Aug. 21, 2022
