

**IN THE MATTER OF
KWANG B. LEE, M.D.**

Respondent

License Number: D21580

*** BEFORE THE
* MARYLAND STATE
* BOARD OF PHYSICIANS
* Case Number: 7719-0101B**

* * * * *

ORDER AFTER SHOW CAUSE HEARING

On July 27, 2018, Kwang B. Lee, M.D. and Disciplinary Panel B of the Maryland State Board of Physicians ("Panel B") entered into a Consent Order wherein he was reprimanded and permanently prohibited from prescribing Controlled Dangerous Substances ("CDS") with the exception for prescribing CDS for the administration of anesthesia during surgical procedures at a hospital or ambulatory surgical center. On July 31, 2019, Panel B issued a Violation of Consent Order and Notice of Show Cause Hearing, charging Dr. Lee with violating the terms and conditions of the July 27, 2018 Consent Order. On September 25, 2019, Panel B held a show cause hearing where Dr. Lee had the opportunity to argue why his license should not be subject to further discipline.

FINDINGS OF FACT

Background

On October 28, 2016, the Board received a complaint from a patient's daughter stating that Dr. Lee "blindly" prescribed narcotics to her mother without performing appropriate assessments, causing her to become dependent on the medications. The Board opened an investigation, which included submitting patient records for an independent peer review. The peer reviewers agreed that Dr. Lee failed to meet the standard of care in all ten records reviewed and failed to maintain adequate medical records in six of the medical records reviewed.

On April 30, 2018, based on the results of the peer review reports, Panel B charged Dr. Lee with failing to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical care, in violation of Maryland Code Ann., Health Occ. § 14-404(a)(22), and failure to keep adequate medical records as determined by appropriate peer review, in violation of Health Occ. § 14-404(a)(40). On July 27, 2018, Dr. Lee entered into a Consent Order with Panel B to resolve the charges against him.

July 27, 2018 Consent Order

In the Consent Order, Panel B found that Dr. Lee failed to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical care, in violation of Health Occ. § 14-404(a)(22), and failed to keep adequate medical records as determined by appropriate peer review, in violation of Health Occ. § 14-404(a)(40). Dr. Lee was reprimanded, permanently prohibited from prescribing CDS except for prescribing CDS for the administration of anesthesia during surgical procedures at a hospital or ambulatory surgical center, permanently prohibited from certifying patients for the medical use of cannabis, and prohibited from supervising allied health professionals except in his practice of anesthesiology at a hospital or ambulatory surgical center.

The Consent Order also included the following:

ORDERED that the Panel may issue administrative subpoenas to the Maryland Prescription Drug Monitoring Program ("PDMP") on a quarterly basis for the Respondent's CDS prescriptions. The administrative subpoenas may request a review of the Respondent's CDS prescriptions from the beginning of each quarter;

ORDERED that if the Respondent allegedly fails to comply with any term or condition imposed in this Consent Order, the Respondent shall be given notice and an opportunity for a hearing. If 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 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 a disciplinary panel determines that the Respondent has failed to comply with any term or condition of this Consent Order, the disciplinary panel may reprimand the Respondent, place the Respondent on probation with appropriate probationary terms and conditions, or suspend 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 upon the Respondent[.]

Dr. Lee signed the Consent Order, agreeing and accepting to be bound by the Consent Order and all of its terms and conditions.

Violation of July 27, 2018 Consent Order

In accordance with the Consent Order, the Board issued a subpoena to the Maryland Prescription Drug Monitoring Program ("PDMP") to review Dr. Lee's CDS prescriptions after the date of the Consent Order. The Board subsequently received data from the PDMP which indicated that Dr. Lee wrote two prescriptions for promethazine-codeine syrup, a Schedule V CDS. The Board obtained copies of the original prescriptions, which confirmed that Dr. Lee wrote two prescriptions for promethazine-codeine syrup to two different patients, one on January 2, 2019, and the other one on January 20, 2019.

The Board requested a response from Dr. Lee, issued a subpoena to Dr. Lee for the medical records of the two patients, and requested that he provide written summaries of care for the patients. Dr. Lee provided the medical records and a written response to the allegations that he prescribed CDS in violation of the terms of his Consent Order. In his response, Dr. Lee admitted that he prescribed CDS that was not for the administration of anesthesia. He explained that the two prescribing incidents were mental lapses or miscues and asked for forgiveness.

Show Cause Hearing

On July 31, 2019, Panel B issued a Violation of Consent Order and Notice to Show Cause, alleging a violation of the terms and conditions of the July 27, 2018 Consent Order for prescribing Schedule V CDS to two patients not for the administration of anesthesia during

surgical procedures, in violation of the Consent Order. On September 25, 2019, Dr. Lee appeared at a show cause hearing before Panel B and was represented by counsel.

During the hearing, Dr. Lee admitted that he prescribed Phenergan with codeine¹ to two patients in January of 2019 and that these prescriptions were written in violation of the Consent Order. Dr. Lee explained that he made a mistake on both occasions and that it “was a miscue, mental lapse,” which he has admitted and taken responsibility for.

In response, the Administrative Prosecutor pointed out that the violation of the Consent Order was undisputed because Dr. Lee admitted to prescribing two schedule V CDS prescriptions, in violation of the Consent Order. The Administrative Prosecutor reminded the Panel that the Consent Order was entered into because of concerns regarding Dr. Lee’s prescribing of CDS and a peer review that found a violation of the standard of care in ten out of ten patient records reviewed. The Administrative Prosecutor deferred to the Panel as to the appropriate sanction.

The prohibition on prescribing CDS outside of the anesthesia context was abundantly clear, and Dr. Lee agreed to the permanent prohibition when he entered the Consent Order. The Panel is concerned about Dr. Lee’s admitted “mental lapse” in prescribing CDS in violation of the Consent Order and believes that an evaluation is necessary to reassure the Panel that there will be no further violations of the conditions imposed in the July 27, 2018 Consent Order.

CONCLUSIONS OF LAW

Panel B finds that Dr. Lee violated the condition of the July 27, 2018 Consent Order that permanently prohibited him from prescribing CDS except for the administration of anesthesia during surgical procedures at a hospital or ambulatory surgical center by prescribing a Schedule

¹ Phenergan with codeine is the brand name for promethazine-codeine syrup.

V CDS to two patients not for the administration of anesthesia during surgical procedures at a hospital or ambulatory surgical center.

ORDER

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

ORDERED that the permanent conditions imposed by the July 27, 2018 Consent Order remain in effect; and it is further

ORDERED that Dr. Lee is **REPRIMANDED**; and it is further

ORDERED that Dr. Lee is placed on **PROBATION** for a minimum of six months.²

During probation, Dr. Lee shall comply with the following terms and conditions of probation:

(a) Within 5 business days of the effective date of this Order, Dr. Lee shall contact the Maryland Professional Rehabilitation Program (MPRP) to schedule an initial evaluation;

(b) If MPRP determines that enrollment is indicated, Dr. Lee shall enter into a Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP within 15 business days of the effective date of this Order;

(c) Dr. Lee shall fully and timely cooperate and comply with all MPRP's referrals, rules, and requirements, including, but not limited to, the terms and conditions of the Participant Rehabilitation Agreement(s) and Participant Rehabilitation Plan(s) entered with MPRP, and shall fully participate and comply with all therapy, treatment, evaluations, and screenings as directed by MPRP;

(d) Dr. Lee shall sign and update the written release/consent forms requested by the Board and MPRP, including release/consent forms to authorize MPRP to make verbal and written disclosures to the Board and to authorize the Board to disclose relevant information from MPRP records and files in a public order. Dr. Lee shall not withdraw his release/consent;

(e) Dr. Lee shall also sign any written release/consent forms to authorize MPRP to exchange with (i.e., disclose to and receive from) outside entities (including all of Dr. Lee's current therapists and treatment providers) verbal and written information concerning Dr. Lee and to ensure that MPRP is authorized to receive the medical records of Dr. Lee, including, but not limited to, mental health and drug or alcohol evaluation and treatment records. Dr. Lee shall not withdraw his release/consent;

² If Dr. Lee's license expires during the period of probation, the probation and any conditions will be tolled.

(f) Dr. Lee's failure to comply with any of the above terms or conditions including terms or conditions of the Participant Rehabilitation Agreement(s) or Participant Rehabilitation Plan(s) constitutes a violation of this Order; and it is further

ORDERED that Dr. Lee shall not apply for early termination of probation; and it is further

ORDERED that, after Dr. Lee has complied with all terms and conditions of probation, the minimum period of probation imposed by the Order has passed, and MPRP finds, and notifies the Board, that Dr. Lee has no further need of services or monitoring, Dr. Lee may submit to the Board a written petition for termination of probation. After consideration of the petition, the probation may be terminated through an order of the disciplinary panel. Dr. Lee may be required to appear before the disciplinary panel to discuss his petition for termination. The disciplinary panel may grant the petition to terminate the probation, through an order of the disciplinary panel, if Dr. Lee has complied with all probationary terms and conditions and there are no pending complaints relating to the charges. If the disciplinary panel determines that further monitoring through MPRP is warranted, the probation shall be continued through an order of the disciplinary panel for a length of time determined by the disciplinary panel, and the disciplinary panel may impose any additional terms and conditions it deems appropriate; and it is further

ORDERED that a violation of probation constitutes a violation of the Order; and it is further

ORDERED that, if Dr. Lee allegedly fails to comply with any term or condition imposed by this Order, Dr. Lee 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, Dr. Lee 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 Dr. Lee has failed to comply with any term or condition imposed by this Order, the disciplinary panel may reprimand Dr. Lee, place Dr. Lee on probation with appropriate terms and conditions, or suspend with appropriate terms and conditions, or revoke Dr. Lee'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 Dr. Lee; and it is further

ORDERED that Dr. Lee is responsible for all costs incurred in fulfilling the terms and conditions of this Order; and it is further

ORDERED that the effective date of the Order is the date the Order is signed by the Executive Director of the Board. The Executive Director signs the Order on behalf of the disciplinary panel which has imposed the terms and conditions of this Order; and it is further

ORDERED that this 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).

12/17/2019
Date

Signature on File

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