

IN THE MATTER OF
ERNESTO TORRES, M.D.

Respondent

License Number: D23651

*** BEFORE THE**
*** MARYLAND STATE**
*** BOARD OF PHYSICIANS**
*** Case Number: 2221-0036**

* * * * *

FINAL DECISION AND ORDER

PROCEDURAL HISTORY

Ernesto Torres, M.D., was originally licensed to practice medicine in the State of Maryland on June 21, 1979, under license number D23651.¹ On May 3, 2019, in the Circuit Court for Frederick County, Case Number C-10-CR-19-000357, Dr. Torres was indicted by the grand jury with one count of second-degree rape, one count of fourth-degree sex offense, and one count of second-degree assault. On November 1, 2019, following a three-day bench trial, Dr. Torres was acquitted of second-degree rape, but found guilty and convicted of one count of fourth-degree sex offense, in violation of Md. Code Ann., Criminal Law Article (“Crim. Law”) § 3-308(b)(1) (2012 Repl. Vol. & 2018 Supp.), and one count of second-degree assault, in violation of Crim. Law § 3-203.

The Court sentenced Dr. Torres to the maximum one-year of incarceration, after concluding that the conviction of second-degree assault merged into the conviction for fourth-degree sex offense, for purposes of sentencing. On January 16, 2020, Dr. Torres noted an appeal to the Court of Special Appeals, which is currently pending as of the date of this Order.

¹ Dr. Torres’s license expired on September 30, 2019. Pursuant to section 14-403 of the Health Occupations Article, the license of an individual regulated by the Board may not “lapse by operation of law while the individual is under investigation or while charges are pending.” The Board’s investigation began before the expiration of Dr. Torres’s license. Therefore, by operation of law, Dr. Torres’s license did not expire during these proceedings.

On January 28, 2021, the Office of the Attorney General filed with the Maryland Board of Physicians (the “Board”) a petition to suspend Dr. Torres’s license to medicine (“the Petition”) and a proposed show cause order pursuant to section 14-404(b)(1) of the Maryland Medical Practice Act in Case Number 2219-0154B. The statute provides:

- (1) On the filing of certified docket entries with the Board by the Office of the Attorney General, a disciplinary panel shall order the suspension of a license if the licensee is convicted of or pleads guilty or nolo contendere with respect to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside.

Md. Code Ann., Health Occupations Article (“Health Occ.”) § 14-404(b) (2014 Repl. Vol. & 2018 Supp.). Attached to the Petition were copies of the indictment, certified docket entries, and transcripts of the Judge’s ruling and sentencing hearing.

On March 2, 2021, Dr. Torres, through his counsel, filed a response to the Petition and show cause order and requested that the Panel stay the proceedings and that an evidentiary hearing be scheduled after Dr. Torres’s commitment to the Maryland Department of Health (“MDH”) is rescinded and after the appeal of his criminal convictions was decided.² On March 24, 2021, pursuant to COMAR 10.32.02.07 E(3), Board Disciplinary Panel B (“Panel B”), in its discretion, denied Dr. Torres’s request for an evidentiary hearing. The Panel also denied the request for a stay pending the criminal appeal because Health Occupations Article § 14-404(b)(1) requires the suspension of a license if a licensee is convicted of a crime involving moral turpitude regardless of whether any appeal is pending.

Having reviewed and considered the entire record in this case, Panel B issues this Final Decision and Order. COMAR 10.32.02.07H(1).

² Dr. Torres’s request for a hearing and stay of the proceedings will be discussed in further detail, below.

FINDINGS OF FACT

Panel B finds the following:

1. On May 3, 2019, Dr. Torres was indicated by a Grand Jury of Frederick County, Maryland in the Circuit Court for Frederick County, Maryland in *State of Maryland v. Ernesto Cesar Torres*, Case No.: C-10-CR-19-000357, with: Count 1 (Rape-Second Degree); Count 2 (Sex Offense-Fourth Degree); and Count 3 (Assault-Second Degree).
2. Dr. Torres pleaded not guilty to the charges, and on October 29, 2019, waived his right to a jury trial and elected to proceed with a bench trial. After a three-day trial, on November 1, 2019, the presiding judge issued a verdict acquitting Dr. Torres of Second-Degree Rape (Count 1) but finding him guilty of Fourth-Degree Sex Offense (Count 2), in violation of Crim. Law § 3-308(b)(1)³ and Second-Degree Assault (Count 3), in violation of Crim. Law § 3-203.⁴
3. In issuing his ruling, the Judge made the following factual findings, which included:

The principal witness for the State was [the Patient]. The Court paid particular attention to the manner of her testimony. She stated that she had been having anxiety attacks and had consulted her lifelong pediatrician, Dr. Torres, who is the defendant in his matter.

Her initial appointment for this preceded the appointment in question. She was accompanied by her mother for the initial appointment as she had been so virtually all her life. [The Patient] was prescribed medication at that appointment and a follow-up appointment was made for April 26, 2019 for a medication check. This is appropriate because the physician needs to know if the medication is working and how the patient is otherwise responding or reacting to the medication.

[The Patient] testified she kept her appointment on 4/26. She drove from Frostburg State where she is a student directly to Dr. Torres's office. She was unaccompanied probably for the first time in her life. . .

She was taken to the exam room where she was seen by Dr. Torres after the nurse took preliminary information. The Court finds that Dr. Torres conducted this exam with [the Patient] alone without a chaperon[e] and in fact during the exam all of the personnel in the office left for the day.

³ Crim. Law § 3.308(b)(1) states: "A person may not engage in . . . sexual contact with another without the consent of the other[.] Sexual contact is defined as: "an intentional touching of the victim's or actor's genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party. . . "Sexual contact" does not include: . . . (ii) an act for an accepted medical purpose." Crim. Law § 3-301 (e).

⁴ Crim. Law § 3.203 states: "A person may not commit an assault."

The testimony was initiated while she was seated. Dr. Torres asked about other anxiety attacks or issues. [The Patient] said just talking about it made her anxious and she began to get an anxiety attack. At this point Dr. Torres had her stand and then lie on an examination table.

The testimony continued by stating that he began an exam of her which included an exam of her abdominal area. To do the, to do this he lifted [the Patient's] clothing waistband and inserted his hand which went, pursuant to [the Patient's] testimony, went straight down and touched her in a circular motion just above the clitoris within the lips of the labia majora. Dr. Torres was not gloved with latex gloves at the time. [The Patient] estimated this lasted approximately five minutes. Testimony from [the Patient] was that she had no physical complaint on 4/26 and related none to Dr. Torres.

4. The Judge then applied the facts to the law, as follows:

The elements of second degree assault are (1) . . . that the defendant caused offensive physical contact with [the Patient] and (2) that the contact was intentional or reckless, not accidental and the contact was not consented to by [the Patient].

Based upon the facts found as previously stated the Court finds that the defendant caused physical contact with the defendant [*sic.*] to her genitals, that the contact was offensive as it was not consented to. And that the contact was an intentional act of the defendant and was not accidental therefore I deny the defendant's motion for acquittal both as it was midtrial and at the end of the trial and I find the defendant guilty of Count 3, second degree assault.

Count 2 is fourth degree sexual offense whose elements are (1) that the defendant had sexual contact with [the Patient] and (2) that sexual contact was made against the will and without the consent of [the Patient]. Case law makes clear that the terms against the will and without consent are virtually synonymous.

Sexual contact is defined in criminal law 3-301(e)(1). Sexual contact means an intentional touching of the victim's . . . genital area for sexual arousal or gratification or for abuse of either party. Criminal law 3-301(e)(2) states sexual contact does not include . . . [an]act for accepted medical purposes.

The Court does not find that this contact was for any accepted medical purpose. The crux of the issue is whether or not sexual contact took

place. The Court has previously found and does so again here that the contact was against the will and without the consent of [the Patient].

...

The Court finds, excuse me, the facts the Court finds relevant to this issue are (1) the doctor and his patient were alone both in the examination room and ultimately in the entire office. Two, the location of the touching was inside the outer lips of the vagina itself, not just above the clitoris.

Three, the touching occurred without the defendant wearing latex gloves which would increase the defendant's tactile sensation. Four, defendant's hands moved in a circular motion over the area of the body as described. And five, the duration was sustained somewhere between one and five minutes pursuant to the differing statements. The Court notes that seconds can feel like minutes when a touching of this type is without consent.

...

Likewise, I do not leave my common sense at home when I come to work each day. The actions of the defendant as found by the Court are sexual in nature and therefore the Court finds they are for sexual gratification. Further, the Court finds that contact by the defendant constitutes an abuse of this patient.

The relationship of doctor to patient is inherently unequal. Ms. Johnson had seen him her entire 18 years minus one week. He was her pediatrician. He was her doctor who treated her as a child all the way up to the last time she saw him. [The Patient] did not react as a young woman would but as a child patient of a pediatrician trying to make sense of what was happening to her during this event.

Her reactions did not become adult like until she left when she said she felt disgusting. Using his position the trust he gained in that, and the trust he gained in that position to take advantage of his patient constitutes abuse. Therefore, the Court finds that defendant had sexual contact with [Patient] against her will and without her consent. The Court therefore denied the motion for acquittal of, the two motions of acquittal and finds the defendant guilty of fourth degree sexual offense.

4. On December 23, 2019, Dr. Torres appeared before the Circuit Court for Frederick County Maryland for sentencing. The Court merged Count 3 (Assault- Second Degree) with Count

2 (Sex Offense-Fourth Degree) and sentenced Dr. Torres to the maximum sentence of one-year incarceration.

5. On January 16, 2020, Dr. Torres filed a Notice of Appeal of the case to the Maryland Court of Special Appeals. As of the date of this Order, Dr. Torres's appeal is still pending before the Court of Special Appeals.

DISCUSSION

Pursuant to COMAR 10.32.02.07E(2), Dr. Torres has the opportunity to respond to the order to show cause, in writing, to address the following limited issues: “(a) Lack of conviction or plea; (b) Whether the crime is one involving moral turpitude; (c) Misidentity of the respondent with the defendant in the criminal matter; and (d) Other relevant issues, if any, other than mitigation.” Dr. Torres does not deny that he was convicted of fourth-degree sex offense and second-degree assault. Nor does he argue that he was misidentified as the defendant in the criminal case. Rather, Dr. Torres argues that (1) the petition to suspend and the hearing should be stayed pending the outcome of his commitment to MDH and pending the outcome of the decision of the Court of Special Appeals; and (2) the crimes he pled guilty to are not crimes involving moral turpitude.

Request for a Hearing and Stay of the Proceedings

Pursuant to COMAR 10.32.02.07E(3), Dr. Torres may request to address the disciplinary panel by a limited evidentiary hearing, but the argument is not as of right, but is discretionary based on the existence of genuine issues of material fact or law as determined by the disciplinary panel. Dr. Torres requested a hearing on the petition but asked for the hearing to be stayed pending his commitment to MDH and pending the outcome of his appeal. The Panel, in its discretion, denied Dr. Torres's request for a hearing and denied the request to stay the proceedings in this matter.

Dr. Torres acknowledges the disciplinary panel's authority to act whether or not any appeal is pending but argues that the findings of the circuit court should not be relied upon while the matter is pending in the appellate courts. Dr. Torres cites no legal authority that would allow the Panel to ignore the Board's statutes and regulations, which require the Board to order the suspension of a license if a licensee is convicted of a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction set aside. *See* Health Occ. § 14-404(b)(1); COMAR 10.32.02.07H(2). This process is distinguished from Health Occupations Article § 14-404(b)(2), which requires the revocation of a license after completion of the appellate process, if the conviction has not been reversed.

Dr. Torres also argues that, due to his mental status and commitment to MDH, he was not able to assist counsel with a response to the petition and argued that his mental status and current commitment to MDH should be considered as an "other relevant issue" to justify the request for the stay and postponement of the hearing on the petition.⁵ Dr. Torres, however, was entitled to be represented by counsel, and, in fact, did respond to the petition through counsel. *See* COMAR 10.32.02.07F(1). Counsel for Dr. Torres does not explain how Dr. Torres's assistance would affect the outcome or be useful in this administrative proceeding where the decision is based on the already adjudicated criminal conviction. *See Md. Bd. of Physician Quality Assur. v. Felsenberg*, 351 Md. 288, 303 (1998) (explaining that the determination of whether a crime involves moral turpitude may be resolved without the need for evidence or fact-finding because the determination rests solely on the underlying criminal conviction and judgment). As the Court ruled, the Board's

⁵ According to the documents submitted by Dr. Torres in his response, Dr. Torres was found to be mentally incompetent to stand trial in a separate criminal case. The finding of mental incompetence to stand trial is limited to criminal cases and does not apply to administrative proceedings.

process under Health Occ. § 14-404(b) is not the appropriate forum to re-litigate or challenge the underlying conviction. *Id.* at 396, 304.

After considering Dr. Torres's answer either in writing or at a hearing, the disciplinary panel is required to determine whether the crime involves moral turpitude, and then is required to issue an appropriate order. COMAR 10.32.02.07H(1). The Panel has considered Dr. Torres's written response to the petition and will now address whether fourth-degree sex offense and second-degree assault are crimes involving moral turpitude.

Crime Involving Moral Turpitude

Under Health Occ. §14-404(b)(1), a disciplinary panel has the obligation and discretion to determine what types of crimes are crimes involving moral turpitude for licensing and disciplinary purposes. Maryland appellate courts have held that the term "moral turpitude" is more broadly defined with respect to Board licensure and discipline than in a witness impeachment context. *See Ricketts v. State*, 291 Md. 701, 711-12 (1981) ("[W]hat constitutes a crime of moral turpitude may involve different considerations compelling different results in different circumstances."). In the context of licensure and discipline, the term moral turpitude "strikes the broader chord of public confidence in the administration of government. That is, a person who has credibility to testify [at trial] may not have the public's confidence to practice certain professions[.]" *Stidwell v. Maryland State Bd. of Chiropractic Exam'rs*, 144 Md. App. 613, 619 (2002). Thus, it is well established that "in the context of a licensing board's review of the conduct of its licensee, the concept of moral turpitude is rather broad." *Oltman v. Md. State Bd. of Physicians*, 162 Md. App. 457, 483 (2005). In the licensure context, "[t]he term 'moral turpitude' has been defined generally as importing 'an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty

between man and man.”” *Attorney Grievance Comm’n of Md. v. Walman*, 280 Md. 453, 459 (quoting *Braverman v. Bar Ass’n of Balt. City*, 209 Md. 328, 344, *cert. denied*, 352 U.S. 830 (1956)).

The elements of second-degree assault are: (1) that Dr. Torres caused offensive physical contact and (2) that the contact was intentional or reckless, not accidental and the contact was not consented to by the person. In this case, the subject of the assault was an eighteen-year-old female patient of Dr. Torres who was seen by Dr. Torres, her pediatrician, alone, without a chaperone, for anxiety attacks. Dr. Torres abused his position of power and sexually touched the patient without her consent for no accepted medical purpose. The eighteen-year-old female patient was especially vulnerable in that Dr. Torres had been her pediatrician her entire life, she was unaccompanied at the office for the first time in her life, and she placed her trust in him to help her cope with her anxiety attacks.

The elements of fourth-degree sexual offense are: (1) that Dr. Torres had sexual contact with an individual and (2) that sexual contact was made against the will and without the consent of the individual. The individual, again, was the same female patient, who was the subject of the second-degree assault. Sexual contact, as it applies to this case, is defined as an intentional touching of the victim’s genital area for sexual arousal or gratification or for abuse of either party that is not for any accepted medical purpose.

Dr. Torres cites no case law or support for his argument that fourth-degree sexual offense is not a crime involving moral turpitude. Dr. Torres cites the case of *Rudman v. Maryland State Board of Physicians*, 414 Md. 243 (2010) and argues that second-degree assault is not a crime involving moral turpitude. In *Rudman*, the Board revoked the license of Dr. Rudman based on his Alford plea to second-degree assault. The Court explained:

When Petitioner entered his Alford plea to the crime of second degree assault, the record clearly shows that he (1) never withdrew his plea of not guilty to the sexual offense charge, and (2) expressly denied that he had committed either an assault or a sexual offense. The record also shows that the Circuit Court had no opportunity to evaluate the strength of the proffered evidence that Petitioner had actually committed a fourth degree sexual offense rather than a second degree assault.

Rudman, 414 Md. at 260-61.

The instant case is distinguishable from *Rudman* in two respects. First, Dr. Torres elected and received a three-day court bench trial before he was convicted of second-degree assault and fourth-degree sexual offense. Second, unlike Dr. Rudman who entered an Alford plea to second-degree assault, Dr. Torres was found guilty of both second-degree assault and fourth-degree sexual offense. The Circuit Court Judge had the ability to hear testimony from all witnesses called in the case, weighed the evidence, and found Dr. Torres guilty of second-degree assault and fourth-degree sexual offense. The Judge found that Dr. Torres used his position, as the Patient's pediatrician, to gain the trust of the Patient, and that he abused the Patient and touched her in a sexual manner, without her consent, not for any accepted medical purpose.

Based on the Judge's findings in this case and the elements of the crimes, the Panel finds that Dr. Torres acted "contrary to the accepted and customary rule of right and duty" that he owes to his fellow citizens in the State of Maryland and that his conduct was base, vile, and shameful. *Walman*, 280 Md. at 459. Dr. Torres betrayed the trust of his patient and used his position of authority to the detriment of the patient. The Panel finds that Dr. Torres's convictions for second-degree assault and fourth-degree sexual offense are crimes involving moral turpitude.

Upon determining that a licensee has been convicted of a crime involving moral turpitude, Health Occ. § 14-404(b)(1) requires a disciplinary panel to order the suspension of a license while any appellate proceedings are pending.

CONCLUSION OF LAW

Based on the above discussion, Panel B concludes that Dr. Torres’s convictions for fourth-degree sex offense and second-degree assault are crimes involving moral turpitude. As a result, Health Occ. § 14-404(b)(1) requires Panel B to order the suspension of Dr. Torres’s license during the pendency of his criminal appeal.

ORDER

It is, by Board Disciplinary Panel B, hereby:

ORDERED that the license of Ernesto C. Torres, M.D., license number D23651, to practice medicine in Maryland is **SUSPENDED**, as mandated by Health Occ. § 14-404(b)(1); and it is further

ORDERED that this is a **PUBLIC DOCUMENT**. See Md. Code Ann., Health Occ. § 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6).

06/08/2021
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. Torres 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. Torres files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

**Christine A. Farrelly, Executive Director
Maryland State Board of Physicians
4201 Patterson Avenue
Baltimore, Maryland 21215**

Notice of any petition for judicial review should also be sent to the Board's counsel at the following address:

**Stacey Darin, Assistant Attorney General
Office of the Attorney General
Maryland Department of Health
300 West Preston Street, Suite 302
Baltimore, Maryland 21201**