

**IN THE MATTER OF**  
**STEPHEN R. KAY, M.D.**

**Respondent**

**License Number: D27258**

**\* BEFORE THE**  
**\* MARYLAND STATE**  
**\* BOARD OF PHYSICIANS**  
**\* Case Numbers: 2019-0469A**  
**2220-0244A**

\* \* \* \* \*

**CONSENT ORDER**

On September 14, 2020, Disciplinary Panel A ("Panel A") of the Maryland State Board of Physicians (the "Board") charged **STEPHEN R. KAY, M.D.** (the "Respondent"), License Number D27258, under the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. §§ 14-101 *et seq.* (2014 Repl. Vol. & 2019 Supp).

The relevant provisions of the Act under Health Occ. § 14-404 provide the following:

(a) 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[.]

One form of unprofessional conduct in the practice of medicine is providing self-treatment or treatment to family members. The American Medical Association has addressed this in a series of ethical opinions:<sup>1</sup>

**Opinion 8.19 (2012) – Self-Treatment or Treatment of Immediate Family Members**

Physicians generally should not treat themselves or members of their immediate families. Professional objectivity may be compromised when an immediate family member or the physician is the patient; the physician's personal feelings may unduly influence his or her professional medical judgment, thereby interfering with the care being delivered. Physicians may fail to probe sensitive areas when taking the medical history or may fail to perform intimate parts of the physical examination. Similarly, patients may feel uncomfortable disclosing sensitive information or undergoing an intimate examination when the physician is an immediate family member. This discomfort is particularly the case when the patient is a minor child, and sensitive or intimate care should especially be avoided for such patients. When treating themselves or immediate family members, physicians may be inclined to treat problems that are beyond their expertise or training. If tensions develop in a physician's professional relationship with a family member, perhaps as a result of a negative medical outcome, such difficulties may be carried over into the family member's personal relationship with the physician.

Concerns regarding patient autonomy and informed consent are also relevant when physicians attempt to treat members of their immediate family. Family members may be reluctant to state their preference for another physician or decline a recommendation for fear of offending the physician. In particular, minor children will generally not feel free to refuse care from their parents. Likewise, physicians may feel obligated to provide care to immediate family members even if they feel uncomfortable providing care.

It would not always be inappropriate to undertake self-treatment or treatment of immediate family members. In emergency settings or isolated settings where there is no other qualified physician available, physicians

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<sup>1</sup> The Board and the disciplinary panels may consider the Principles of Ethics of the American Medical Association, but those principles are not binding on the Board or the disciplinary panels. See COMAR 10.32.02.16.

should not hesitate to treat themselves or family members until another physician becomes available. In addition, while physicians should not serve as a primary or regular care provider for immediate family members, there are situations in which routine care is acceptable for short-term, minor problems. Except in emergencies, it is not appropriate for physicians to write prescriptions for controlled substances for themselves or immediate family members.

### **Opinion 1.2.1 (2016) – Treating Self or Family**

When the patient is an immediate family member, the physician's personal feelings may unduly influence his or her professional medical judgment. Or the physician may fail to probe sensitive areas when taking the medical history or to perform intimate parts of the physical examination. Physicians may feel obligated to provide care for family members despite feeling uncomfortable doing so. They may also be inclined to treat problems that are beyond their expertise or training.

Similarly, patients may feel uncomfortable receiving care from a family member. A patient may be reluctant to disclose sensitive information or undergo an intimate examination when the physician is an immediate family member. This discomfort may particularly be the case when the patient is a minor child, who may not feel free to refuse care from a parent.

In general, physicians should not treat themselves or members of their own families. However, it may be acceptable to do so in limited circumstances:

- (a) In emergency settings or isolated settings where there is no other qualified physician available. In such situations, physicians should not hesitate to treat themselves or family members until another physician becomes available.
- (b) For short-term, minor problems.

When treating self or family members, physicians have a further responsibility to:

- (c) Document treatment or care provided and convey relevant information to the patient's primary care physician.
- (d) Recognize that if tensions develop in the professional relationship with a family member, perhaps as a result of a negative medical outcome, such difficulties may be carried

over into the family member's personal relationship with the physician.

- (e) Avoiding providing sensitive or intimate care especially for a minor patient who is uncomfortable being treated by a family member.
- (f) Recognize that family members may be reluctant to state their preference for another physician or decline a recommendation for fear of offending the physician.

On December 2, 2020, Panel A was convened as a Disciplinary Committee for Case Resolution ("DCCR") in this matter. Based on negotiations occurring as a result of this DCCR, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law, Order, and Consent.

### **FINDINGS OF FACT**

Panel A finds the following:

#### **I. BACKGROUND**

1. At all times relevant to these charges, the Respondent was and is licensed to practice medicine in the State of Maryland. The Respondent was originally licensed to practice medicine in Maryland on October 20, 1981, under License Number D27258. The Respondent's license is current through September 30, 2022.

2. The Respondent is board-certified in plastic surgery.

## II. COMPLAINT AND BOARD INVESTIGATIVE FINDINGS

3. The Board initiated an investigation of the Respondent after receiving information that he performed a series of surgical procedures on a family member (“Family Member 1”).<sup>2</sup>

4. The Board issued a subpoena for Family Member 1’s medical records, which revealed that the Respondent performed a number of elective, non-emergent surgeries on Family Member 1 in 2013, 2014, 2015, 2016 and 2018, and also performed a number of out-patient cosmetic procedures on Family Member 1 during this same time period.<sup>3</sup>

5. The Board then queried the Prescription Drug Monitoring Program (“PDMP”), which revealed that the Respondent provided a prescription to a second family member (“Family Member 2”) for a controlled dangerous substance (“CDS”). The Board issued a subpoena for Family Member 2’s medical records, which revealed that the Respondent performed a number of elective, non-emergent surgeries on Family Member 2 from at least 1997 to 2019, and also performed a number of out-patient cosmetic procedures on Family Member 2 during this same time period.

6. By letter dated April 28, 2020, the Board requested that the Respondent address allegations that he provided treatment to two family members.

7. By letter dated May 26, 2020, the Respondent responded, stating that the allegations the Board raised were “factually accurate” and that “care of family members

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<sup>2</sup> For confidentiality reasons, the names of any family members have not been identified in this Consent Order.

<sup>3</sup> For confidentiality reasons, the surgeries and cosmetic procedures referenced herein will not be identified.

is currently considered a departure from the accepted standard in medicine.” The Respondent admitted that he performed elective, non-emergent surgical procedures on Family Members 1 and 2 for a number of years, dating back to at least 1997.

8. With respect to Family Member 1, the Respondent disclosed that he performed elective, non-emergent surgeries on Family Member 1 on specific dates in 2013, 2014, 2015, 2016 and 2018. The Respondent also stated that he performed out-patient cosmetic procedures on Family Member 1 during this time period. The Respondent identified the specific surgeries and procedures he had performed and provided records for those surgeries and procedures.

9. With respect to Family Member 2, the Respondent disclosed that he performed elective, non-emergent surgeries on Patient 2 on specific dates in 1997, 2001, 2002, 2003, 2005, 2009 and 2010. The Respondent further disclosed that he performed or supervised the performance of numerous out-patient cosmetic procedures on Family Member 2 from at least 2002 until as recently as 2019. The Respondent identified the specific surgeries and procedures he had performed. The Respondent provided records for these surgeries and procedures, which indicated that he also wrote prescriptions for cosmetic medications.

10. The Board’s investigation confirmed that the Respondent performed numerous elective, non-emergent surgeries and out-patient cosmetic procedures on two family members, Family Member 1 and Family Member 2, from at least as far back as 1997 and continuing onward until as recently as 2019, as referenced above. During this same time period, the Respondent also provided supportive medical care to Family

Members 1 and 2 in conjunction with these surgeries/procedures. Moreover, the Respondent wrote a prescription for a CDS for Family Member 2 and also wrote prescriptions for other medications for Family Member 2.

### **CONCLUSION OF LAW**

Based on the Findings of Fact, Disciplinary Panel A of the Board 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).

### **ORDER**

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

**ORDERED** that the Respondent is **REPRIMANDED**; and it is further

**ORDERED** that the Respondent is placed on **PROBATION**<sup>4</sup>, until the following probationary terms and conditions have been completed:

- (1) The Respondent shall enroll in the Maryland Professional Rehabilitation Program (MPRP) as follows:
  - (a) Within 5 business days, the Respondent shall contact MPRP to schedule an initial consultation for enrollment;
  - (b) Within 15 business days, the Respondent shall enter into a Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP;
  - (c) the Respondent 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;

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<sup>4</sup> If the Respondent's license expires during the period of probation, the probation and any conditions will be tolled.

(d) the Respondent 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. The Respondent shall not withdraw his/her release/consent;

(e) the Respondent 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 the Respondent's current therapists and treatment providers) verbal and written information concerning the Respondent and to ensure that MPRP is authorized to receive the medical records of the Respondent, including, but not limited to, mental health and drug or alcohol evaluation and treatment records. The Respondent shall not withdraw his release/consent;

(f) the Respondent'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 Consent Order

(2) Within **SIX (6) MONTHS**, the Respondent is required to take and successfully complete a course in **medical ethics/self-treatment and treatment of family members**. The following terms apply:

(a) it is the Respondent's responsibility to locate, enroll in and obtain the disciplinary panel's approval of the course before the course is begun;

(b) due to the COVID-19 pandemic, the disciplinary panel will accept a course taken in person or over the internet;

(c) the Respondent must provide documentation to the disciplinary panel that the Respondent has successfully completed the course;

(d) the course may not be used to fulfill the continuing medical education credits required for license renewal;

(e) the Respondent is responsible for the cost of the course; it is further

(3) Within **ONE (1) YEAR**, the Respondent shall pay a civil fine of **ONE THOUSAND DOLLARS (\$1,000.00)**. 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;

**ORDERED** that, after the Respondent has complied with all terms and conditions of probation and upon MPRP's determination that the Respondent can practice without monitoring, the Respondent 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. The Respondent 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 the Respondent has complied with all probationary terms and conditions and there are no pending complaints relating to the charges; 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, 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).

# *Signature on File*

01/08/2021  
Date

Christine A. Farrelly, Executive Director

## CONSENT

I, Stephen R. Kay, 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.

12/14/2020  
Date

***Signature on File***

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Stephen R. Kay, M.D.

**NOTARY**

STATE OF Maryland

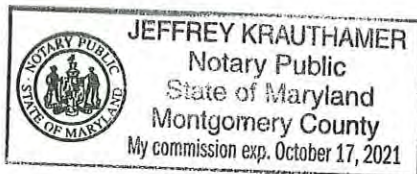
CITY/COUNTY OF Montgomery

I HEREBY CERTIFY that on this 14 day of December 2020, before me, a Notary Public of the foregoing State and City/County, personally appeared Stephen R. Kay, 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: \_\_\_\_\_