IN THE MATTER OF	*	**BEFORE THE**
PANAYIOTIS A. BALTATZIS, M.D.	*	**MARYLAND STATE**
Respondent	*	**BOARD OF PHYSICIANS**
License No. D28949	*	**Case Number: 7716-0095A**

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FINAL DECISION AND ORDER

Panayiotis A. Baltatzis, M.D. was initially licensed by the Maryland State Board of Physicians ("Board") in 1983, and practiced internal medicine. The central issue in this case is whether Dr. Baltatzis is guilty of unprofessional conduct in the practice of medicine, in violation of Maryland Code Ann., Health Occ. § 14-404(a)(3)(ii), based on his non-compliance with a 2015 Consent Order that required him to permanently close his practice in May 2017, when he reached the age of 66. Dr. Baltatzis's lengthy disciplinary history with the Board preceded the 2015 Consent Order and the imposition of this requirement.

BACKGROUND AND DISCIPLINARY HISTORY

Since 1993, Dr. Baltatzis has been subject to repeated discipline by the Board based on pervasive standard of care and recordkeeping deficiencies. The Board imposed disciplinary sanctions in 1995, 2005, and 2009, and entered into a Corrective Action Agreement with Dr. Baltatzis in 1998. For over two decades, the Board also committed itself to significant efforts to provide Dr. Baltatzis with extensive remedial education, training, and monitoring with the goal of enabling him to conform his medical care and documentation to appropriate standards.

Consent Order, April 1995: Courses and Peer Review 1995-1997

The Board first found that Dr. Baltatzis failed to meet the standard of care in his prescribing practices and medical care after a 1993 peer review identified multiple practice deficiencies including: (1) issuing prescription narcotics to patients whom he had not fully

evaluated or diagnosed; (2) failing to adequately document patient histories and physical examinations, patient care plans, and progress notes, to the extent that another physician would find it difficult to continue patient care; and (3) failing to use specialty consultations appropriately. In a Consent Order, dated April 4, 1995, the Board placed Dr. Baltatzis on probation for three years and required him to successfully complete Board-approved courses in prescribing Controlled Dangerous Substances ("CDS") and medical record-keeping. The Board also required an annual review of his practice to be conducted by a peer review committee during the probation.

In June 1995, Dr. Baltatzis began an individualized medical record-keeping tutorial. The instructor noted 14 areas of concern that required improvement. Upon follow up review, the instructor found that several of Dr. Baltatzis's medical records still contained the same type of deficiencies identified in the initial review. In August 1996, the instructor notified the Board that Dr. Baltatzis had declined further review of, and instruction in, his medical record keeping practices. In September 1995, Dr. Baltatzis also completed an intensive controlled substance management course. In 1997, Dr. Baltatzis's practice was subject to a peer review, and the peer reviewers agreed that he failed to meet the standard of care, in part based on his tendency to prescribe multiple benzodiazepines concurrently with opioids and muscle relaxants with little attention to the potential addictive toxicity of the drugs. Although the Board terminated Dr. Baltatzis's probation in 1998, the Board remained concerned about his patient care.

Corrective Action Agreement, May 1998: Courses and Peer Reviews 2001-2003

As a result of these concerns, the Board and Dr. Baltatzis agreed to a plan of corrective action and entered into a formal Corrective Action Agreement in May 1998. Dr. Baltatzis agreed to successfully complete a Board-approved polypharmacy course within 6 months, and a medical

record keeping course within 18 months. He also agreed to a peer review of his medical practice within 9 months.

The peer review conducted in 2001 identified standard of care deficiencies that included prescribing multiple CDS and opioid analgesics in the absence of documentation to support the prescriptions. The Board notified Dr. Baltatzis of these deficiencies and informed him that he would be subject to another review in six months. A subsequent chart review revealed Dr. Baltatzis's failure to document complete history and physical examinations, order basic laboratory studies, conduct routine cancer screening, or record rectal or pelvic examinations.

In 2003, the Board referred the patient medical records to two peer reviewers who concluded that Dr. Baltatzis deviated from standards of quality care and documentation because he failed to order or recommend routine health maintenance screening such as colorectal and prostate screening, mammograms and Pap smears for patients over 50 years old. The reviewers also concluded that he failed to order laboratory studies consistently to monitor for possible side effects of medications he prescribed. In addition, they found that he failed to document past medical or family history, failed to document patient complaints in adequate detail, failed to consistently document a current medication list, medication allergies or significant side effects, and failed to document his clinical thought processes or approaches to the treatment of patients' presenting complaints.

Final Opinion and Order, March 22, 2005: Courses and Peer Review 2005-2007

After the issuance of charges based on the 2003 peer review reports, and an evidentiary hearing at the Office of Administrative Hearings ("OAH") before an Administrative Law Judge ("ALJ"), the Board found that Dr. Baltatzis violated the standard of care with respect to clinical care and record-keeping in his treatment of five patients. The specific violations included failure

to educate an at-risk patient about the potential for a stroke, failure to follow up with another patient about a CT scan showing a nodule on the patient's lung, failure to treat a patient's high blood pressure for five months, and failure to order routine maintenance Pap and mammography screenings, as well as requisite bloodwork for hyperthyroidism and diabetes.

Although the ALJ recommended revocation of Dr. Baltatzis's license, the Board exercised extraordinary leniency and gave him another opportunity for continued education and remediation and monitoring of his practice. On March 22, 2005, the Board imposed a stayed suspension of Dr. Baltatzis's license and probation for five years, during which he was required to enroll in and complete courses in diabetes, thyroid disease, hypertensive disease, vascular disease, and a third course in medical record-keeping. In addition, his practice was subject to another peer review.

The Board conducted a formal peer review of 10 patient medical records, focusing on Dr. Baltatzis's treatment of patients after March 2005. In April 2008, based on the peer review results, the Board again charged Dr. Baltatzis with failing to meet appropriate standards for the delivery of quality medical care, failing to keep adequate medical records, and violating the March 2005 Final Opinion and Order.

Final Decision and Order, October 20, 2009, Course, Supervision, and Peer Review

After an evidentiary hearing on the charges at OAH, the Board again found that Dr. Baltatzis violated the standard of quality care during the 20-month peer review period with respect to 7 patients. In general, the violations involved his failure to properly monitor and treat diabetes, hypertension, depression, gastroesophageal reflux disease, symptomatic prostatic hypertrophy, cerebrovascular disease, hyperlipidemia, and his failure to document patient referrals and specialist examinations. The Board imposed another 5-year period of probation, with conditions that included completion of a course in the management of diabetes and related

co-morbidities, supervision of his medical practice by a Board-approved physician for 1 year, and a chart and/or peer review.

Consent Order, November 5, 2015: Findings and Permanent Condition

In 2013, the Board received a complaint from a former patient of Dr. Baltatzis, who alleged that he failed to address the physical causes of her chronic pelvic pain and did not attempt to wean her off the CDS he prescribed for her. The Board began an investigation, and subsequently performed a peer review of his medical care and recordkeeping. On November 5, 2015, Dr. Baltatzis entered into a Consent Order with Disciplinary Panel A of the Board to resolve charges of general practice deficiencies, as well as failure to meet appropriate standards of care and failure to maintain adequate medical records in his treatment of three specific patients. The practice deficiencies included Dr. Baltatzis's failure to address chronic health maintenance issues such as colon cancer screening, failure to address a patient's presenting complaint, failure to address abnormal lab results with patients or to follow-up on abnormal results, as well as brief and incomplete patient histories, notes that were scant and difficult to read, and two-word treatment plans.

The specific standard of care violations for each patient included Dr. Baltatzis's failure to develop a treatment plan to address the complaining patient's long-standing pelvic pain other than prescribing opioids on a regular basis from 2001 through 2013. Panel A also found that Dr. Baltatzis violated standards of quality care based on his treatment of a second patient with a complex medical history that included Chronic Obstructive Pulmonary Disease ("COPD"), coronary artery disease, hypertension, kidney stones, bladder and lung cancer. When the patient's blood tests indicated anemia, Dr. Baltatzis failed to consider that the patient's severe COPD would have resulted in a markedly elevated hematocrit level and that her anemia may have been

more severe than indicated by the lab results. Panel A also found that two pre-operative examination reports completed by Dr. Baltatzis for this patient were incomplete, based on his failure to document for the benefit of the surgeon whether the patient had cardiac or any other medical risks. In addition, Panel A found that Dr. Baltatzis provided substandard treatment to a third patient in her eighties with Alzheimer's disease. He prescribed benzodiazepines, which alter mental status, and Seroquel, an atypical anti-psychotic, a medication regimen that is contraindicated in patients with that disease.

Under the 2015 Consent Order, Panel A imposed a reprimand, and placed Dr. Baltatzis on probation for the entire duration of his medical licensure. More significantly, based on the panel's concerns about the enduring and irremediable nature of Dr. Baltatzis's standard of care and documentation deficiencies, and his indication to the panel that he intended to permanently close his practice in May 2017, when he reached the age of 66, the Consent Order required Dr. Baltatzis's compliance and permanent closure of his practice. The Consent Order also required him to provide the panel with written documentation of the office closure, and prohibited his acceptance of any new patients to his practice between the date of the Order and the date he closed his practice.

Violation of Consent Order and Subsequent Procedural History

The Board began another investigation after receiving information that Dr. Baltatzis continued to treat patients in his private practice after May 2017. The investigation revealed that Dr. Baltatzis continued to treat patients at his practice and to write prescriptions that included CDS and non-CDS medications in June, July and August, 2017. On September 29, 2017, Disciplinary Panel A summarily suspended Dr. Baltatzis's medical license, and on October 26, 2017, charged him with failing to permanently close his practice in May 2017, in violation of the

2015 Consent Order's requirement that he do so, and with unprofessional conduct in the practice of medicine, under Md. Code Ann. Health Occ. § 14-404(a)(3)(ii).

Both the summary suspension and charges alleged a violation of the 2015 Consent Order based on his continued treatment of, and prescribing for, his patients at his medical practice, after the date he agreed to close his practice in May 2017. Following a post-deprivation hearing before Panel A on November 15, 2017, the panel affirmed the summary suspension. Dr. Baltatzis timely appealed the summary suspension and waived the requirement that a hearing be held within 30 days of the request for appeal. Dr. Baltatzis and the State agreed to consolidate the OAH hearings for the summary suspension and charges.

An evidentiary hearing took place at OAH on July 9, 12, and 13, 2018. In a Proposed Decision issued on October 11, 2018, the ALJ found that the direct and unambiguous language of the November 5, 2015 Consent Order required Dr. Baltatzis to permanently close his practice in May 2017. She also found that he kept his practice open after May 2017; employed a physician to keep the practice running in June 2017; continued to employ staff and allow patients to obtain prescriptions during June, July, and August, 2017; practiced medicine and examined and treated patients in his medical office after May 2017, all in violation of the Consent Order's requirement that he permanently close his practice in May 2017. The ALJ concluded that Dr. Baltatzis engaged in unprofessional conduct in the practice of medicine, in violation of § 14-404(a)(3)(ii) of the Health Occupations Article, and recommended that his medical license be revoked.

Dr. Baltatzis filed written exceptions to the ALJ's Proposed Decision and the State filed a Response to Dr. Baltatzis's exceptions. Both parties appeared before Disciplinary Panel B of the Board for an oral exceptions hearing on December 19, 2018. After considering the entire record

in this case, including the evidentiary record made before the ALJ, and the written and oral exceptions by both parties, Panel B now issues this Final Decision and Order.

FINDINGS OF FACT

Panel B adopts the findings of fact numbered 1-28 proposed by the ALJ. (The ALJ's Proposed Decision of October 11, 2018, is incorporated by reference into this Final Decision and Order and is appended to this Order as Attachment A). The panel also adopts the ALJ's discussion and analysis on pages 8-18 of the Proposed Decision. Dr. Baltatzis does not dispute the accuracy of the ALJ's proposed findings of fact, including findings that he turned 66 on May 10, 2017; that his medical practice remained open in June, July, and August, 2017; that he hired another physician in June 2017 to provide coverage for patients in the practice; that his office staff continued to work at his medical practice and called prescriptions into pharmacies for patients during July and August, 2017; and that he treated patients at the practice and wrote prescriptions for them in August 2017. Nor does he dispute the ALJ's conclusions that he failed to permanently close his practice in May 2017, and that he violated the 2015 Consent Order. He does take exception to certain rulings and parts of the Proposed Decision.

CONSIDERATION OF EXCEPTIONS

First, Dr. Baltatzis excepts to the ALJ's finding that his hiring of another physician to provide care to his patients after June 1, 2017 was a violation of the 2015 Consent Order. He argues that Board staff did not inform him that his employment arrangement with this physician was non-compliant with the Consent Order during their visit on June 13, 2017, and that he believed he was compliant at that time. A determination of non-compliance with a Board order is a duty assigned to Board disciplinary panels, however, not to Board staff conducting an investigation or visits to a physician's office location. As Dr. Baltatzis pointed out, through his counsel at the hearing, Board staff gather evidence, they do not make ultimate determinations

based on the evidence - the Board does. (T. 303.) His argument to the contrary at this point is self-contradictory. In any event, as the ALJ found, the relevant question was the undisputed fact of the physician's employment by Dr. Baltatzis to treat patients at the practice in June 2017. That fact supported a finding that Dr. Baltatzis's private practice was still open in June 2017 due to his failure to permanently close the practice as required in May 2017, when he reached the age of 66.[1] The panel agrees. By hiring the physician to see patients throughout most of June 2017, at a practice that Dr. Baltatzis had agreed to close in May 2017, Dr. Baltatzis violated the 2015 Consent Order. Panel B rejects this exception.

Second, Dr. Baltatzis contends that the ALJ's findings omit any reference to witness testimony that his staff handed out referrals directing his patients to other primary care physicians in May and that he continued to employ two staff members from June through August 2017 so they could refer patients and transmit patient records. This contention does not provide support for Dr. Baltatzis.[2] There was no dispute that Dr. Baltatzis retained staff members to accomplish patient referrals and records transmission tasks while the practice remained open after May 31, 2017, despite the 2015 Consent Order's requirement that he permanently close his practice. As the evidence showed, Dr. Baltatzis's staff continued those tasks for months after the requisite closure date of his practice because he did not timely initiate the crucial responsibilities of notifying and transitioning patients and transmitting records. Dr. Baltatzis acknowledged on cross examination that closing a practice takes some time, that patients have to be notified, that a lot of things have to be done, and that the Consent Order gave him 18 months to close his

[1] The ALJ noted that a strict reading of the Consent Order, as written, held that Dr. Baltatzis's practice should have been permanently closed when he reached the age of 66 on May 10, 2017. In the ALJ's view, by treating the Order as though it required closure of the practice by May 31, 2017, the State's generous reading of the Order was even more favorable to Dr. Baltatzis, because it gave him an additional twenty-one days to permanently close his practice. The panel will not modify the State's reading of the 2015 Consent Order.

[2] Dr. Baltatzis does not cite to any specific testimony or witnesses in support of his contention.

practice. He also conceded that he was late in doing so, and did not begin to notify patients of the closure until mid-May 2017. (T. 408, 439, 444.) Dr. Baltatzis further testified that because the physician he employed would be coming to work at the practice, he was not in a hurry to send patient notices out because "we were not going to close the office." (T. 449.) Even more concerning, the evidence overwhelmingly showed that he not only kept his practice open and operational, but engaged in the practice of medicine by seeing, examining, and treating Patients A and E, and writing CDS prescriptions for Patients A, B, and E in August 2017. Patients continued to obtain prescriptions in July and August strictly because Dr. Baltatzis's practice was still open, in violation of the 2015 Consent Order.

Panel B also finds that Dr. Baltatzis engaged in the practice of medicine by completing and signing medical authorization forms for Patients C and D in August 2017. The purpose of the form for Patient C was to enable an airline's assessment of the patient's fitness for plane travel due to his need for portable oxygen. The form not only required Dr. Baltatzis's signature as the patient's attending physician, but his knowledge of the patient's medical data and detailed medical diagnosis, the application of that knowledge to specify that the required oxygen flow rate was 1.5 liters per minute via nasal cannula, and his consideration of the patient's current medical stability and prognosis for the flight. The recertification form for Patient D required Dr. Baltatzis to assess the patient's progress with and continuing need for a CPAP[3] machine to enable continued CPAP treatment because of the patient's diagnosis of sleep apnea. The panel rejects Dr. Baltatzis's contention that his actions merely involved the completion of paperwork. Rather, his undertaking of those tasks on behalf of Patients C and D involved his knowledge of their respective medical histories and his diagnosis of their medical ailments to ensure continued

[3] CPAP stands for continuous positive airway pressure.

treatment of their ailments. Md. Code Ann., Health Occ. § 14-101(o). As such, his activities with Patients C and D constituted the practice of medicine.[4]

Third, Dr. Baltatzis excepts to the ALJ's characterization of the 2015 Consent Order as clear and unambiguous and claims he was confused over the Consent Order's directives because he was permitted to retain his medical license. Dr. Baltatzis, however, was ably represented by counsel when he negotiated the Consent Order in 2015, and he signed the Order voluntarily and without reservation. He attested on page 13: "I fully understand and comprehend the language, meaning and terms of the Consent Order." The plain language of the Consent Order states: . . . "the Respondent shall, as he has indicated is his intention, permanently close his practice in May 2017, when he reaches the age of 66." No provision of the Consent Order states or implies that Dr. Baltatzis could continue to engage in the practice of medicine at his private practice because he was permitted to retain his medical license. When asked about his understanding of the Consent Order at the hearing, Dr. Baltatzis testified that he understood it required him to close his practice but allowed him to maintain his license so he could treat weight loss patients at a weight loss center. (T. 383-84.) The panel agrees with the ALJ that there is nothing unclear or confusing about the language of the Consent Order, and rejects Dr. Baltatzis's claim of confusion as implausible.

Dr. Baltatzis also takes exception to the ALJ's recommended sanction of revocation as unduly severe. He characterizes his violation of the 2015 Consent Order as "limited" and "technical," and minimizes his disregard of the disciplinary panel's directive to permanently close his practice. Dr. Baltatzis admits that he failed to give appropriate notice to his patients of the closure, but blames that failure on his inability to sell the practice before May 31, 2017. The

[4] Even without a finding that Dr. Baltatzis engaged in the practice of medicine with Patients C and D, the appropriate sanction would be the same given the facts and circumstances of this case. The panel's findings with respect to his activities with these two patients, therefore, does not alter the sanction imposed.

Consent Order's requirement that he permanently close his practice, however, was not contingent on his selling the practice. Dr. Baltatzis's attempt to downplay the nature of his violation is disconcerting. The panel denies his exception.

Throughout his exceptions, Dr. Baltatzis also ignores the nature and extent of his disciplinary history since 1993, and the multiple standard of care and record keeping deficiencies identified by peer reviewers leading to disciplinary orders and corrective action in 1995, 1998, 2005, 2009, and 2015. He further ignores the Board's decades-long interim efforts to re-educate him on the core medical competencies directly relevant to his internal medicine practice, and discounts his inability or unwillingness to improve his knowledge and skills in diagnosing and treating common medical conditions, and in promoting preventive care. As is evident from the 2015 Consent Order, the type of standard of care violations identified during the many peer reviews revealed that he could not or would not conform his medical care, treatment, and documentation to appropriate professional standards, and that factor was foremost in the panel's considerations when it required him to permanently close his practice in May 2017. Dr. Baltatzis's unequivocal assurance that he would do so was the basis for the panel's remarkable forbearance in allowing him to retain his license in 2015. He did not permanently close his practice in May 2017, or even make timely efforts to do so. Instead, he not only kept the practice open way beyond the May 2017 deadline, but continued to see, treat and prescribe for patients, and to engage in the practice of medicine.

CONCLUSIONS OF LAW

Based on the findings of fact and discussion of Dr. Baltatzis's exceptions, as set forth above, Disciplinary Panel B concludes that Dr. Baltatzis violated the November 5, 2015 Consent Order by failing to comply with a condition of that required him to permanently close his

practice in May 2017. Panel B also concludes that Dr. Baltatzis is guilty of unprofessional conduct in the practice of medicine, in violation of Md. Code Ann., Health Occ. § 14-404(a)(3)(ii).

SANCTION

For over 25 years, the Board has given Dr. Baltatzis multiple chances to correct his deficiencies by re-educating him on the essential components of quality medical care integral to his practice. The Board's objective was to enable Dr. Baltatzis to provide care and treatment within appropriate standards, prevent patient harm, and enhance patient safety. At the OAH hearing, however, despite the overwhelming evidence of his repetitive standard of care violations, Dr. Baltatzis testified that the Board's main complaint was his lack of adequate documentation. (T. 381.) The panel now recognizes, with the benefit of hindsight, that prior decisions enabling Dr. Baltatzis to retain his license were mistaken and gave him the unfounded impression that his violations did not endanger patients.

The imposition of progressive discipline is a disciplinary tool essential to the Board's mission of protecting the public. Based on Dr. Baltatzis's successive violations, it is apparent that the Board's previous attempts to rehabilitate him were unsuccessful. Dr. Baltatzis, as he has done since 1993, continues to violate well-established standards of medical care and documentation in treating patients. Despite multiple courses, supervision, and years of Board monitoring, it is obvious that he has learned little or nothing from the Board's remedial efforts and has shown no meaningful understanding of or commitment to the competent practice of medicine. Based on Dr. Baltatzis's propensity for minimizing his pervasive, serious deficiencies, the panel concludes that the deficiencies are not remediable. Dr. Baltatzis's insight with regard to his deficiencies is so poor, the panel is not reassured that he is capable of or committed to safe

medical practice in any setting. The panel's statutory charge is to protect the public, and the panel deems revocation necessary to protect the public from Dr. Baltatzis's continued practice.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is, by an affirmative vote of a majority of the quorum of Board Disciplinary Panel B, hereby:

ORDERED that the license of Panayiotis Baltatzis, M.D., License No. D28949, to practice medicine in the State of Maryland, is **REVOKED;** and it is further

ORDERED that the summary suspension of Dr. Baltatzis's medical license imposed by Disciplinary Panel A of the Board on September 29, 2017, under Md. Code Ann., State Gov't § 10-226(c)(2) is **TERMINATED** as moot; and it is further

ORDERED that this Final Decision and Order is a **PUBLIC** document pursuant to Health Occ. § 1-607, § 14-411.1(b)(2), and Gen. Prov. § 4-333(b)(6).

04/12/2019
Date

Christine A. Farrelly
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. Baltatzis 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. Baltatzis files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

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

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

Noreen Rubin
Assistant Attorney General
Maryland Department of Health
300 West Preston Street, Suite 302
Baltimore, Maryland 21201

Attachment A

MARYLAND STATE	*	BEFORE LATONYA B. DARGAN,
BOARD OF PHYSICIANS	*	AN ADMINISTRATIVE LAW JUDGE
v.	*	OF THE MARYLAND OFFICE
PANAYIOTIS BALTATZIS, M.D.,	*	OF ADMINISTRATIVE HEARINGS
RESPONDENT	*	OAH No.: MDH-MBP1-71-18-09153
LICENSE No.: D28949	*	MBP No.: 7716-0095

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
PROPOSED DISPOSITION
NOTICE OF RIGHT TO FILE EXCEPTIONS

STATEMENT OF THE CASE

On October 26, 2017, Disciplinary Panel A of the Maryland State Board of Physicians (Board) issued charges against Panayiotis Baltatzis, M.D., (Respondent), License No. D28949, for alleged violations under the Maryland Medical Practice Act (the Act). Md. Code Ann., Health Occ. §§ 14-101 through 14-508, and 14-601 through 14-607 (2014 & Supp. 2018). Specifically, the Board cited the Respondent for allegedly violating a condition of probation set forth in a November 5, 2015 Consent Order (Consent Order) which he had entered into with the Board. The Board alleges the Respondent violated the condition which required him to close his practice as of May 2017. Under the Act, the Board alleges the Respondent engaged in unprofessional conduct in the practice of medication, in violation of Section 14-404(a)(3)(ii) (Supp. 2018) of the Act. Code of Maryland Regulations (COMAR) 10.32.02.03E(3)(d). The Board forwarded the charges to the Office of the Attorney General for prosecution, and on

March 19, 2018, the matter was forwarded to the Office of Administrative Hearings (OAH) with a delegation to issue Proposed Findings of Fact, Proposed Conclusion(s) of Law and a Proposed Disposition. COMAR 10.32.02.03E(5); COMAR 10.32.02.04B(1).

On July 9, 12 and 13, 2018, I conducted a hearing at OAH headquarters in Hunt Valley, Maryland. Md. Code Ann., Health Occ. § 14-405(a) (Supp. 2018); COMAR 10.32.02.04. Nicholas E. Johansson, Assistant Attorney General and Principal Counsel, Health Occupations Prosecution and Litigation Division, represented the State of Maryland (State). M. Natalie McSherry, Esquire, and Summer Niazy, Esquire, appeared on behalf of the Respondent, who was also present.

The contested case provisions of the Administrative Procedure Act, the Rules for Hearings Before the Board, and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); COMAR 10.32.02 and 28.02.01.

ISSUES

1. Did the Respondent violate Section 14-404(a)(3)(ii) of the Act by failing to close his medical practice as of May 2017; and, if so

2. What is the appropriate sanction?

SUMMARY OF THE EVIDENCE

Exhibits

A complete exhibit list is attached as an appendix.

Testimony

The State presented the following witnesses:

- [redacted], Owner, [redacted] Center
- [redacted]
- [redacted], M.D.
- Zachary Spivey, Compliance Analyst, Probation Unit, Maryland State Board of Physicians

The Respondent testified and presented the following witnesses:

- [redacted],[1] [redacted] Center
- [redacted], [redacted][2] Owner, [redacted] Center

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all relevant times, the Respondent was licensed to practice medicine in the State of Maryland. The Respondent's license was issued on or about February 15, 1983 and it was scheduled to expire on September 30, 2018. (State Ex. 1.)

2. The Respondent practiced internal medicine. His primary practice was general in nature and located in Parkville, Maryland, in an office building the Respondent owns. The Respondent's patients were mostly adults. Many of the Respondent's patients were immigrants of Greek descent and a significant percentage of them communicated primarily in Greek, which the Respondent also fluently speaks. (T.[3] Respondent.)

3. A number of the Respondent's patients had issues with chronic pain, and he would prescribe pain medications, some of which were classified as controlled dangerous substances (CDS). (T. Respondent.)

4. Sometime in 2010, the Respondent began working, on a part-time basis, at the [redacted] Center ([redacted]). His primary duties involved seeing patients to determine whether they were losing weight and, if not, to develop a plan to address why they were not doing so and to help them do so; prescribe the appetite suppressant Phentermine to patients when appropriate; and when necessary, do a brief examination of new patients. (T. [redacted])

5. Phentermine is a CDS. The physicians who worked at [redacted] had both prescribing and dispensing privileges for Phentermine, which meant they were authorized to

[1] Certified Medication Technician
[2] Certified Registered Nurse Practitioner
[3] The abbreviation "T" stands for testimony.

write patients prescriptions for the drug and also dispense it to the patients while on the Center's premises. The Respondent had prescribing privileges for Phentermine. (*Id.*)

6. The Respondent has the following disciplinary history with the Board, prior to November 5, 2015:

- Consent Order, April 4, 1995
- Corrective Action Agreement, May 27, 1998
- Final Opinion and Order, March 22, 2005
- Final Decision and Order, October 20, 2009

(State Ex. 2; State Exs. 26, 28-30.)

7. On November 5, 2015, the Respondent entered into the Consent Order with the Board. Under the Consent Order, the Board concluded as a matter of law that the Respondent failed to meet the appropriate standard of quality care and failed to maintain adequate medical records in violation of the Act. The Board imposed a reprimand on the Respondent, and ordered the following: (i) the Respondent was permitted to retain his license to practice medicine, but he was to remain on probation for the entire duration of his licensure; (ii) the Respondent "shall, as he has indicated is his intention, permanently close his practice in May 2017, when he reaches age [sixty-six] ... Respondent shall provide to the Panel written documentation of the office closure"; and (iii) the Respondent could not accept any new patients to his practice from the date of the Consent Order through the date on which he closed the practice. (State Ex. 31, p. 280.) The Respondent signed the acknowledgment that he was entering the Consent Order voluntarily on or about October 20, 2015. (*Id.*, p. 282.)

8. Between November 5, 2015 and May 10, 2017, the Respondent made at least two efforts to sell his practice, one to [redacted], the owner of [redacted], and one to [redacted]. Neither effort was successful. (T. [redacted]; T. Respondent.)

9. The Respondent turned sixty-six on May 10, 2017. (T. Respondent.)

10. By letter dated May 15, 2017 and addressed to "All My Patients and Friends," the Respondent advised that he was retiring from medical practice, effective June 1, 2017. The letter further advised that beginning June 1, 2017, Dr. [redacted] would see patients at the Parkville office location on a part-time basis on Tuesdays, Wednesdays, and Thursdays from 9:30 a.m. to 3:00 p.m. Additionally, the letter indicated the Respondent would be at the office to "assist you with questions and records through the month of June." (State Ex. 4.) Finally, the letter noted the Respondent would be vacationing in Greece from July 1, 2017 through August 14, 2017, and that upon his return in mid-August, he would be available to assist with referrals and records.

11. On or around June 8, 2017, the Respondent entered into an employment agreement with Dr. [redacted]. Under the agreement, Dr. [redacted] agreed to provide temporary, part-time medical coverage "for the patients and practice of medicine for [the Respondent] until such time as the [Respondent] can arrange for full time permanent medical coverage for his patients and medical practice." The agreement further provided, "[The Respondent] will continue to own the practice and run the business of the above medical practice." (State Ex. 7.)

12. Dr. [redacted] experienced difficulty interacting with the patients in the Respondent's practice, primarily because many of them only spoke Greek, which he did not speak. As a result, it was nearly impossible for him to take a medical or family history without the Respondent present during the examination to act as an interpreter. As a result of the language barrier, it was difficult for Dr. [redacted] to build rapport and bond with the patients. (T. [redacted])

13. On or around Dr. [redacted] first day working at the Respondent's practice, the practice was visited by investigators from the Board. When the investigators expressed concern about the practice being open, Dr. [redacted] expressed concern to the investigators about whether his employment arrangement with the Respondent was permissible in light of the Consent Order. At least one of the investigators advised Dr. [redacted] that the Board would get back to him with

guidance. Dr. [redacted] did not hear from the Board investigators at any point during June 2017 and, as a result, he resigned from the practice on or around June 28, 2017. (*Id.*)

14. On June 13, 2017, Zach Spivey, accompanied by a colleague, conducted a site visit at the Respondent's Parkville office location. At the time of the June 13, 2017 visit, there were patients present in the waiting room and both the Respondent and Dr. [redacted] were on site. The Respondent advised Mr. Spivey that while he still owned the practice, Dr. [redacted] was responsible for providing patient care. The Respondent further advised he was occasionally present in the examination room if Dr. [redacted] required him to interpret for the patient, and he occasionally filled information in on the patients' chart or took their blood pressure readings. (T. Spivey; State Ex. 2.)

15. When Dr. [redacted] advised the Respondent that he was resigning, effective June 28, 2017, several of the patients in the Respondent's practice came to the office to get prescriptions written, as there would be no physician working in the practice as of July 1, 2017. As a result, the Respondent wrote some prescriptions on June 29, 2017. (T. Respondent; State Ex. 34.)

16. The Respondent went on vacation to Greece on or around July 1, 2017. He returned to the United States on or around August 12, 2017. (T. Respondent; State Ex. 9.)

17. The Respondent travels to Greece for an extended period of approximately four to six weeks every summer. As a result, he got into the habit of writing post-dated prescriptions for patients with chronic conditions and whose medications required a refill while the Respondent was scheduled to be out of town. (T. Respondent.)

18. While the Respondent was vacationing in Greece, his office staff called prescriptions into pharmacies for patients during July and August 2017. (T. [redacted])

19. On August 16, 2017, Patient A[4] came to the Parkville office for pain complaints and weight loss treatment. The Respondent prescribed the appetite suppressant Phentermine and

[4] To preserve confidentiality, patients will be referred to alphabetically.

the pain medication Lortab for Patient A. During the visit, Patient A advised the Respondent that his wife, Patient B, needed a refill of her prescription for Phentermine. The Respondent also wrote a Phentermine prescription for Patient B on August 16, 2017. (T. Respondent.)

20. On August 16, 2017, Patient C came to the Parkville office for the Respondent to sign a medical authorization form for Patient C to take his portable oxygen tank aboard an airplane. (T. Respondent; T. Spivey; State Ex. 16, 17, 19.)

21. On August 17, 2017, Mr. Spivey, accompanied by Doreen Noppinger, Board Compliance Manager, conducted an unannounced site visit at the Parkville office. Mr. Spivey and Ms. Noppinger arrived to the premises at approximately 9:40 a.m. While waiting in their vehicle, they observed an elderly gentlemen enter the practice at approximately 10:00 a.m. (T. Spivey; State Ex. 14.)

22. On August 17, 2017, Patient D came to the Parkville office for the Respondent to fill out the medication authorization form for Patient D's CPAP machine. Patient D was the individual observed by Mr. Spivey and Ms. Noppinger entering the practice on the morning of August 17, 2017. (T. Respondent; T. Spivey; State Ex. 14.)

23. While the Respondent was attending to Patient D, Mr. Spivey and Ms. Noppinger entered the practice. They asked the receptionist, [redacted], if the Respondent was available and she confirmed he was seeing a patient. Patient D came out of the examining room and exited the practice as Mr. Spivey and Ms. Noppinger waited to speak with the Respondent. (T. Spivey; State Ex. 14.)

24. During their August 17, 2017 site visit, Mr. Spivey and Ms. Noppinger asked to see the Respondent's records, including appointment logs from June 1, 2017 to the present, and the employment agreement between the Respondent and Dr. [redacted] Additionally, they interviewed [redacted]. During the visit, the Respondent advised Mr. Spivey and Ms.

Noppinger that he had located a buyer for the practice, a clinical nurse practitioner named [redacted]. (State Ex. 14.)

25. During the August 17, 2017 site visit, Ms. Noppinger advised the Respondent that the Board had received information alleging he had another patient scheduled for later in the day on August 17, and she asked him if he had any other patients scheduled. The Respondent advised her that he did not know. When Mr. Spivey and Ms. Noppinger inquired how patients were scheduled, the Respondent advised them that because his office is open, patients sometimes randomly showed up and asked to be seen. (*Id.*)

26. As Mr. Spivey and Ms. Noppinger were leaving the practice on August 17, 2017, they observed a woman entering the practice. (T. Spivey; State Ex. 15.)

27. Patient E entered the Respondent's practice as the Board investigators were leaving on August 17, 2017. Patient E complained of issues related to arthritis and weight loss. The Respondent conducted a limited physical examination of Patient E and wrote her prescriptions for Lortab and Phentermine. (T. Respondent.)

28. On or around August 23, 2017, [redacted] took over the Parkville office, which she renamed [redacted] Center, and began regularly seeing patients. The sale of the practice from the Respondent to [redacted] was finalized on or around September 26, 2017. The Respondent maintains an office within the building, but he does not see patients. (T. [redacted]; T. [redacted].)

DISCUSSION

Legal Framework

The relevant grounds for reprimand or probation of a licensee, or suspension or revocation of a license under the Act, include the following:

> (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[.]

Md. Code Ann., Health Occ. § 14-404(a)(3)(ii) (Supp. 2018). Unprofessional conduct refers to conduct that breaches rules or ethical codes of professional conduct, or is conduct unbecoming a member in good standing in the profession. *Finucan v. Maryland Bd. of Physician Quality Assurance*, 380 Md. 577, 593 (2004).

In a physician disciplinary proceeding, the Act, at Section 14-405(b)(2), places upon the State the burden of proving its charges by a preponderance of the evidence. For the reasons set forth below, I conclude the State has satisfied its burden with respect to the charges under the Act at § 14-404(a)(3)(ii).

The Merits of the Case

Arguments of the Parties

The State argued the Respondent engaged in unprofessional conduct in the practice of medicine by violating the conditions of the Consent Order when he failed to close his medical practice as of May 31, 2017. The State argued the evidence overwhelmingly supports a finding that the Respondent kept his practice open after May 31, 2017, in a number of ways: he retained his staff ([redacted], and [redacted]); he hired Dr. [redacted]; he wrote prescriptions for patients in June and August 2017; and in August 2017, he saw Patients A, C, D and E at the practice. He prescribed medications for Patients A, B, and E in August 2017, and he signed medical authorization forms for Patients C and D in that same month.

The State further argued that under the Consent Order, the Respondent had ample time to close the practice. The Consent Order was signed on November 5, 2015, but Respondent had

until May 31, 2017 to permanently close the practice.[5] According to the State, there is no good explanation for the Respondent failing to close his practice by May 31, 2017.[6] The State further argued the Respondent did not permanently close his practice until September 26, 2017, when the contract for sale with [redacted] was finalized. The State maintained the Respondent waited until "the last minute" to try to sell his practice. He did not start talking to anyone else about possibly buying the practice until mid- to late Spring 2017, and he did not notify his patients that he was retiring until May 15, 2017, approximately sixteen days before the practice was to close. The Respondent put himself in an untenable position by waiting so late to try to sell the practice, but his doing so does not excuse his failure to close the practice as of May 31, 2017. By failing to permanently close his practice as of May 31, 2017, the Respondent violated the Consent Order. His action in violating the Consent Order, according to the State, is unprofessional conduct.

With respect to a sanction, the State recommended a revocation of the Respondent's medical license. The State noted the Respondent has a prior disciplinary history with the Board, and his prior disciplinary history should be taken into consideration in determining the appropriate sanction. The State argued that the Board has given the Respondent multiple opportunities to improve and remediate the problems with his practice. That the Respondent still had difficulty conforming his behavior to professional standards was an issue for the Board at the time it entered into the Consent Order. According to the State, this case represents another example of the Respondent's inability or unwillingness to conform his behavior to the standards

[5] The period between November 5, 2015 and May 31, 2017 is eighteen months.

[6] I also note that May 31, 2017 is a generous reading of the Consent Order. On its face as written, the Consent Order requires the practice to be permanently closed when the Respondent reached sixty-six years old, which he did on May 10, 2017. A strict reading of the Consent Order holds the practice should have been permanently closed by May 10, 2017. By treating the Consent Order as though it required the practice to be closed by May 31, 2017, the State adopted a reading of the Consent Order that is actually more favorable to the Respondent, because it gave him twenty-one additional days within which the practice had to be permanently closed.

set for him by the Board, specifically by refusing to close his practice and by continuing to see patients even after he was no longer permitted to do so.

The Respondent disagreed with the State's characterization of him as someone who fails to comply with the Board. He explained that he is an old-fashioned family doctor. He knows his patients and their histories well, he has an excellent rapport with his patients, and his patients are loyal to and love him. The Respondent acknowledged he has a lengthy disciplinary history. He argued that despite this fact, he has always complied with the Board's orders. He further noted the Board itself, through its prior orders, allowed the Respondent to continue practicing medicine, as the Board's primary issues with him centered around documentation of his medical records. According to the Respondent, the Board never considered the Respondent to be a danger to patients throughout all the years he was subject to monitoring by the Board. The Respondent further explained that under the Consent Order, he was permitted to maintain his medical license; because he was so permitted, it was his understanding that he could continue to practice medicine – such as he did with [redacted] – but he could not continue to operate *his* practice at the Parkville office.

Additionally, the Respondent explained that he wanted to keep his practice open via a buyer who could seamlessly continue to provide care because there are not a lot of physicians providing care for older adults in the community. He argued that he hired Dr. [redacted] to help with the transition and because he believed it gave him more time to find a buyer for the practice.

The Respondent maintained that while he was in Greece, he did not see, examine, evaluate, or diagnosis patients. Although he acknowledged there are prescriptions dated for the period he was in Greece (from July 1, 2017 through or around August 12, 2017), he argued this was because he post-dated the prescriptions so patients could have them filled if refills were due while he was out of town. The Respondent disputed any assertion that he provided medical care

to Patients C and D. He argued that all he did for Patient C was to sign the form to allow him to take oxygen onto a commercial airplane; all he did for Patient D was to sign the form reauthorizing his CPAP machine. According to the Respondent, he did not have to examine either patient to sign those forms and he did not examine them when they came in because he was aware he was not allowed to practice under the Consent Order.

The Respondent argued he made a "good faith effort" to close his practice. He had the intent to comply with the Consent Order and he attempted to comply with the Consent Order by hiring Dr. [redacted] to work in a transitional capacity and by making arrangements with [redacted] to sell the practice to her. The Respondent conceded the possibility he committed a "technical violation" of the Consent Order. He argued that to the extent it was only a technical violation, it does not rise to a level which requires the revocation of his license. The Respondent recommended a dismissal of the charges.

Analysis

I note at the outset that a great deal of time was spent at the hearing with the parties disagreeing with each other about when the Respondent wrote certain prescriptions, and whether certain interactions with patients – specifically, Patients C and D – actually constituted the practice of medicine because the Respondent did not evaluate, examine, or diagnose Patients C and D when he interacted with them. While all of the back and forth provided important and engaging context, it was secondary to the central and solitary question before me: Did the Respondent permanently close his medical practice on or before May 31, 2017? That question is the crux of this matter and the answer to it informs my finding that the Respondent violated Section 14-404(a)(3)(ii) of the Act.

The Consent Order is, as the State correctly noted, direct and unambiguous. It provided that the Respondent "shall ... permanently close his practice in May 2017 and ... shall provide to

the Panel written documentation of the office closure." (State Ex. 31, p. 280.) There is nothing unclear or confusing about the language of the Consent Order. The Respondent was to permanently close his practice in May 2017. The evidence before me overwhelmingly demonstrates the Respondent's practice was open well after May 31, 2017.

[redacted], and Dr. [redacted] all testified about the fact that they worked for the Respondent, at the Parkville office, during June, July, and August 2017. They were working at the office because the *office was still open* after May 31, 2017. I am mindful that the Respondent hired Dr. [redacted] to help with the transition into the Respondent's retirement, but even the hiring of Dr. [redacted] is a violation of the Consent Order. Dr. [redacted] was an employee of the Respondent. He was not running the practice as though it was his practice; he was working for the Respondent. The fact of Dr. [redacted] employment, short though his tenure was, standing alone supports a finding that the *practice was still open after May 31, 2017*. There would have been no need for the Respondent to hire Dr. [redacted] to keep the practice running while the Respondent attempted to secure a buyer, had the Respondent closed the practice on May 31, 2017. The very fact that Dr. [redacted] was working for the Respondent in June 2017 (from June 8 through June 28, 2017) supports a finding the practice was still open after May 31, 2017.

The Respondent seems to conflate "practicing medicine," with "permanently closing the practice," such that if he can successfully argue he did not do the former, then it somehow means he *did* do the latter. I do not find the argument persuasive, for a number of reasons. First and foremost, the Consent Order's directive is for the practice to permanently close. It does not indicate that as long as the Respondent does not engage in conduct which is considered practicing medicine, that restraint is the equivalent of closing his medical practice. Second, the Respondent actually engaged in practicing medicine at his Parkville medical office *after* May 31, 2017. He examined Patient A on August 16, 2017, and wrote prescriptions for Patient A and his

wife, Patient B, on that same date. He examined Patient E on August 17, 2017 and wrote prescriptions for Patient E on that same date. Even if I assume for the sake of argument that merely signing medical authorization forms for Patients C and D somehow does not constitute the "practice of medicine" within the meaning of the Act, the Respondent cannot successfully argue he did not practice medicine at any time after May 31, 2017. He did, in his interactions with Patients A and E, and in writing prescriptions for Patients A, B and E.

The Respondent's practice was open after May 31, 2017 and he engaged in practicing medicine, at his medical office, after May 31, 2017. Furthermore, even if Patients C and D "just" got medical authorization forms signed on August 16 and 17, 2017, they were able to do so precisely because the Respondent's medical practice was open on those dates. Even if I give the Respondent the benefit of the doubt and accept as true his acknowledgment that the earliest point at which his staff stopped scheduling patients was on June 29, 2017 (after Dr. [redacted] quit on June 28, 2017), that still represents almost an entire month the practice was open after May 31, 2017.[7]

A significant amount of time was spent at the hearing around the issue of prescriptions written in June and July 2017 and bearing the Respondent's signature. (*See* State Ex. 34.) The Respondent maintained he had gotten into the practice, over the years, of post-dating prescriptions for his patients to get filled during a time when he was out of the state or country, because he regularly visited Greece for approximately four to six weeks every summer. The State argued it was not appropriate for the Respondent to write post-dated prescriptions, particularly for CDS, and it cited to federal regulations in support of its position. What is most persuasive to me, however, is the simple fact that the reason patients were able to obtain their prescriptions during the time the Respondent was in Greece was *because his medical practice was still open.* [redacted]

[7] As noted, this is giving the Respondent the benefit of the doubt that no patients were seen after June 29, 2017. The evidence demonstrates patients were scheduled in August 2017.

[redacted] who worked for the Respondent until Ms. [redacted] took over the office on or around August 23, 2017, testified without contradiction that she called prescriptions into pharmacies on behalf of patients during June, July, and August 2017. She was able to do this precisely because the Respondent's practice was not closed after May 31, 2017.

I am sympathetic, to a point, to how difficult the idea of permanently closing his practice likely was for the Respondent. It was clear from his testimony, as well as that of [redacted], Dr. [redacted], and [redacted], how much care and regard the Respondent had for his patients and they for him. Additionally, being a practicing physician is no doubt a significant part of the Respondent's identity; he has been a licensed physician in Maryland for approximately thirty-five years. I have no trouble understanding how being required to permanently close his practice would be personally and professionally daunting to the Respondent. It is, however, what he was required to do under the Consent Order. I do not find that he made a good faith effort to close the practice by the deadline specified in the Consent Order. On the contrary, the evidence clearly demonstrates he extended, on his own volition, the period the practice was open. He did not hire Dr. [redacted] until June 8, 2017. He wrote prescriptions for patients after May 31, 2017. He examined patients and wrote prescriptions for them in August 2017. He did not finalize the sale of the practice to Ms. [redacted] until September 26, 2017. The Respondent did not conform his conduct to the terms he agreed to in the Consent Order. Failing to comply with the directives of the entity which oversees one's licensure is unprofessional conduct in the practice of the profession. I find by a preponderance of the evidence that the Respondent failed to permanently close his medical practice by May 31, 2017. In failing to do so, the Respondent violated the terms of the Consent Order. By violating the Consent Order, the Respondent violated Section 14-404(a)(3)(ii) of the Act.

Sanctioning Recommendation

Having found the State proved the Respondent engaged in unprofessional conduct in the practice of medicine, I now turn to the question of what sanction, if any, is appropriate. The State recommended a revocation of the Respondent's license.

The guiding regulations in this matter, found at COMAR 10.32.02.09B, provide in pertinent part as follows:

> B. Aggravating and Mitigating Factors.
>
> (1) Depending on the facts and circumstances of each case, and to the extent that the facts and circumstances apply, the disciplinary panel may consider the aggravating and mitigating factors set out in §B(5) and (6) of this regulation and may in its discretion determine, based on those factors, that an exception should be made and that the sanction in a particular case should fall outside the range of sanctions listed in the sanctioning guidelines.
>
> . . .
>
> (5) Mitigating factors may include, but are not limited to, the following:
>
> (a) The absence of a prior disciplinary record;
> (b) The offender self-reported the incident;
> (c) The offender voluntarily admitted the misconduct, made full disclosure to the disciplinary panel and was cooperative during the disciplinary panel proceedings;
> (d) The offender implemented remedial measures to correct or mitigate the harm arising from the misconduct;
> (e) The offender made good faith efforts to make restitution or to rectify the consequences of the misconduct;
> (f) The offender has been rehabilitated or exhibits rehabilitative potential;
> (g) The misconduct was not premeditated;
> (h) There was no potential harm to patients or the public or other adverse impact; or
> (i) The incident was isolated and is not likely to recur.
>
> (6) Aggravating factors may include, but are not limited to, the following:
>
> (a) The offender has a previous criminal or administrative disciplinary history;
> (b) The offense was committed deliberately or with gross negligence or recklessness;
> (c) The offense had the potential for or actually did cause patient harm;
> (d) The offense was part of a pattern of detrimental conduct;
> (e) The offender committed a combination of factually discrete offenses adjudicated in a single action;

(f) The offender pursued his or her financial gain over the patient's welfare;
(g) The patient was especially vulnerable;
(h) The offender attempted to hide the error or misconduct from patients or others;
(i) The offender concealed, falsified or destroyed evidence, or presented false testimony or evidence;
(j) The offender did not cooperate with the investigation; or
(k) Previous attempts to rehabilitate the offender were unsuccessful.
...

The State argued the existence of a significant aggravating factor, namely, the Respondent's prior disciplinary history. Additionally, the State argued the Respondent's disciplinary history demonstrates the Board has given him multiple opportunities to improve and remediate the problems with his medical practice and he was not able to do so, which is why he has the lengthy disciplinary history. In this specific instance, the Respondent was not willing to permanently close his practice as directed to by the Board and, in fact, he failed to permanently close his practice as directed to by the Board.

Based on the evidence before me, I find that revocation of the Respondent's license is the appropriate sanction. Given his disciplinary history, the Respondent is aware of both (1) the need to comply with Consent Orders and Final Orders issued by the Board, and (2) how seriously the Board takes it when licensees fail to do so. The Respondent essentially refused to conform his conduct to terms to which he agreed – the permanent closing of his practice as of May 2017. Whatever explanation he may have related to the inability to find a buyer for the practice by May 31, 2017 does not mitigate his refusal to conform his conduct to the terms of the Consent Order. The closing of the practice was not, under the terms of the Consent Order, contingent on whether the Respondent could find a buyer. There were no qualifications whatsoever on the directive to permanently close the practice in May 2017. Despite the Consent Order's clear and unambiguous directive, the Respondent ignored it. Given his disciplinary history and his likely awareness of the seriousness with which licensees are expected to take the

Board's orders, I do not find any significant mitigating factor that makes the Respondent's failure to comply with the Consent Order in any way excusable. I recommend a revocation of the Respondent's license to practice medicine.

PROPOSED CONCLUSIONS OF LAW

Based on the Proposed Findings of Fact and Discussion, I conclude as a matter of law that the Respondent is guilty of unprofessional conduct in the practice of medicine as a result of violating the terms of a November 5, 2015 Consent Order by failing to permanently close his medical practice in May 2017. Md. Code Ann., Health Occ., § 14-404(a)(3)(ii) (Supp. 2018).

I further conclude as a matter of law that a revocation of the Respondent's license to practice medicine constitutes a reasonable and appropriate sanction. Md. Code Ann., Health Occ., § 14-404(a) (Supp. 2018).

PROPOSED DISPOSITION

I **PROPOSE** that the Maryland State Board of Physicians' October 26, 2017 charges against the Respondent be **UPHELD**.

I further **PROPOSE** that the Respondent's license to practice medicine be revoked.

October 11, 2018
Date Decision Mailed

Latonya B. Dargan
Administrative Law Judge

LBD/cmg
#176248

NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party adversely affected by this proposed decision may file written exceptions with the disciplinary panel of the Maryland State Board of Physicians that delegated the captioned case to the Office of Administrative Hearings (OAH), and request a hearing on the exceptions. Md. Code Ann., State Gov't § 10-216(a) (2014); COMAR 10.32.02.05. Exceptions must be filed within fifteen (15) days of the date of issuance of this proposed order. COMAR 10.32.02.05B(1). The exceptions and request for hearing must be addressed to the Disciplinary Panel of the Board of Physicians, 4201 Patterson Avenue, Baltimore, MD, 21215-2299, Attn: Christine A. Farrelly, Executive Director.

A copy of the exceptions should be mailed to the opposing attorney, and the other party will have fifteen (15) days from the filing of exceptions to file a written response addressed as above. *Id.* The disciplinary panel will issue a final order following the exceptions hearing or other formal panel proceedings. Md. Code Ann., State Gov't §§ 10-216, 10-221 (2014); COMAR 10.32.02.05C.

The Office of Administrative Hearings is not a party to any review process.

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MARYLAND STATE	*	BEFORE LATONYA B. DARGAN,
BOARD OF PHYSICIANS	*	AN ADMINISTRATIVE LAW JUDGE
v.	*	OF THE MARYLAND OFFICE
PANAYIOTIS BALTATZIS, M.D.,	*	OF ADMINISTRATIVE HEARINGS
RESPONDENT	*	OAH No.: MDH-MBP1-71-18-09153
LICENSE No.: D28949	*	MBP No.: 7716-0095

* * * * * * * * * * * * *

APPENDIX: FILE EXHIBIT LIST

I admitted the following exhibits for the State:[8]

1. Licensing Information
2. Investigative Report dated September 18, 2017
3. 6/1/2017 – Letter from Board to Respondent requesting that he confirm closure of his practice
4. 6/5/2017 – Letter from Respondent with attached letter dated 5/15/2017 informing patients of his retirement
5. 6/13/2017 – Spivey memo of telephone conversation with the Respondent's practice
6. 6/13/2017 – Appointment logs June 1 – 18, 2017
7. Employment agreement between Panayiotis Baltatzis, M.D. and [redacted] M.D.
8. 7/12/2017 – Spivey memo of telephone conversation with [redacted]
9. 8/16/2017 – Memo of telephone conversation between Doreen Noppinger and [redacted]
10. 8/17/2017 – Letter from the Board to the Respondent requesting written response
11. 8/17/2017 – Appointment logs June 1 – Sept. 13, 2017 received during 8/17/2017 site visit
12. 8/17/2017 – Billing records for [redacted] received during 8/17/2017 site visit
13. 8/17/2017 – Transcript of interview with [redacted]
14. 8/18/2017 – Memo of 8/17/2017 site visit
15. 8/22/2017 – Spivey memo of telephone conversation with [redacted]
16. 8/22/2017 – Written response from the Respondent dated 8/20/17
17. 8/23/2017 – Written response from the Respondent with addendum dated 8/20/17
18. 8/23/2017 – Spivey memo of telephone conversation with [redacted]
19. 8/30/2017 – Transcript of interview with the Respondent

[8] Where an exhibit is identified as "Not Admitted," the exhibit was offered, an objection was made to its admission, and the objection was sustained. I retained the exhibit to preserve the record, but I did not consider the exhibit in rendering this Proposed Decision.

20. 8/30/2017 – Payroll records received from Respondent during interview
21. 9/8/2017 – Transcript of interview with Dr. [redacted]
22. 9/12/2017 – Letter from Respondent dated 9/7/17 and medical records for [redacted]
23. Not Admitted
24. Not Admitted
25. Not Admitted
26. Consent Order, dated April 4, 1995
27. Termination of Probation, dated May 27, 1998
28. Corrective Action Agreement, dated May 27, 1998
29. Final Opinion and Order, dated March 22, 2005
30. Final Decision and Order, dated October 20, 2009
31. Consent Order, dated November 5, 2015
32. September 29, 2017, the Board issued an Order for Summary Suspension of License to Practice Medicine
33. October 26, 2017 Charges
34. Copies of Prescriptions signed by the Respondent

Bates Number	Date	Patient Name	Drug Name
00294	5/17/2017	[redacted]	Omeprazole
00295	5/17/2018		Omeprazole
00296	5/18/2017		Onetouch Ultra Test Strips
00297	5/18/2017		Wellbutrin
00298	5/25/2017		Xanax
00299	5/26/2017		Oxycodone
00300	6/29/2017		Lortab
00301	5/31/2017		Tramadol
00302	6/7/2017		Tramadol
00303	5/31/2017		Clonazepam
00304	6/5/2017		Clonazepam
00305	5/31/2017		Clonazepam
00306	5/31/2017		Lortab
00307	5/31/2017		Lortab
00308	5/31/2017		Meclizine
00309	5/31/2017		Hydrochlorothiazide
00310	5/31/2017		Clonazepam
00311	5/31/2017		Lortab
00312	5/31/2017		Lortab
00313	6/1/2017		Meclizine
00314	6/2/2017		Metoprolol
00315	1/12/2017		Anoro Ellipta
00316	6/5/2017		Percocet
00317	6/6/1971		Percocet
00318	6/5/2017		Xanax

Bates Number	Date	Patient Name	Drug Name
00319	6/5/2017	[redacted]	Xanax
00320	6/8/2017		Percocet
00321	6/8/2017		Percocet
00322	6/8/2017		Amlodipine
00323	6/10/2017		Adderall
00324	6/12/2017		Singulair
00325	6/12/2017		Imitrex
00326	6/13/2017		Viberzi
00327	6/13/2017		Viberzi
00328	6/15/2017		Oxycodone
00329	6/16/2017		Xanax
00330	6/16/2017		Alprazolam
00331	6/22/2017		Phentermine
00332	6/26/2017		Lorazepam
00333	6/26/2017		Zovirax
00334	6/26/2017		Losartan
00335	6/26/2017		Lorazepam
00336	6/27/2017		Lortab
00337	6/28/2017		Lortab
00338	6/28/2017		Percocet
00339	6/29/2017		Dilaudid
00340	7/6/2017		Hydromorphone
00341	6/27/2017		Lortab
00342	6/28/2017		Lortab
00343	6/29/2017		Percocet
00344	6/29/2017		Dilaudid
00345	6/29/2017		Clonazepam
00346	6/29/2017		Lortab
00347	6/29/2017		Metformin
00348	6/29/2017		Valium
00349	6/29/2017		Lorazepam
00350	6/29/2017		Omeprazole
00351	6/29/2017		Omeprazole
00352	6/29/2017		Clonazepam
00353	6/29/2017		Hydrocodone/Acetamin.
00354	6/29/2017		Lortab
00355	7/1/2017		Xanax
00356	7/1/2017		Restoril
00357	7/1/2017		Lortab
00358	7/1/2017		Percocet
00359	7/1/2017		Restoril
00360	7/3/2017		Temazepam

Bates Number	Date	Patient Name	Drug Name
00361	7/3/2017	[redacted]	Temazepam
00362	7/21/2017		Phentermine
00363	7/24/2017		Lortab
00364	7/29/2017		Lortab
00365	8/10/2017		Tramadol
00366	8/10/2017		Lortab
00367	8/10/2017		Percocet
00368	8/12/2017		Lortab
00369	8/12/2017		Pantoprazole
00370	8/12/2017		Magnesium Oxide
00371	8/14/2017		Albuterol Sulfate
00372	8/14/2017		Albuterol Sulfate
00373	8/14/2017		Meclizine
00374	8/12/2017		Pantoprazole
00375	8/14/2017		Ciprofloxacin
00376	8/12/2017		Magnesium Oxide
00377	8/15/2017		Tramadol
00378	8/16/2017		Lortab
00379	8/16/2017		Phentermine
00380	8/16/2017		Phentermine
00381	8/17/2017		Lortab
00382	8/17/2017		Percocet
00383	8/17/2017		Phentermine
00384	8/17/2017		Phentermine
00385	8/14/2007		Oxycodone
00386	8/18/2017		Diltiazem
00387	8/21/2017		Levemir Flextouch
00388	8/21/2017		Levemir Flextouch
00389	8/21/2017		Levemir Flextouch
00390	8/22/2017		Lisinopril
00391	8/24/2017		Mometasone
00392	8/24/2017		Citalopram HBR
00393	8/24/2017		Citalopram HBR
00394	8/26/2017		Metformin
00395	9/18/2017		Tramadol
00396	9/18/2017		Tramadol

35. Not Admitted
36. Not Admitted
37. Not Admitted
38. 11/28/2017 – PDMP records for CDS prescriptions written by the Respondent
39. 11/30/2017 – Copies of prescription records from [redacted] Center

40. 1/25/2018 – List of prescriptions written by the Respondent since June 1, 2017 from CVS Health
41. 1/25/2018 – List of prescriptions written by Dr. Baltatzis since June 1, 2017 from Wal-Mart
42. 1/30/2018 – List of prescriptions written by the Respondent filled at Rite Aid from 6/1/2017 to "present"
43. 4/13/2018 – List of prescriptions written by the Respondent from Walgreens
44. 4/16/2018 – List of prescriptions written by the Respondent from 6/1/2017 to "present" from Weis
45. 4/30/2018 – List of prescriptions written by the Respondent from Target. (The spreadsheet states that these prescriptions were filled at CVS. Due to CVS acquiring Target Pharmacies, all prescriptions filled at Target are reported as being filled at CVS).
46. 5/1/2018 – List of prescriptions written by Respondent from 6/1/2017 to "present" from Wegman's
47. June 13, 2017 Zach Spivey Memo of Office Visit
48. September 25, 2017 Zach Spivey Memo of conversation with [redacted]

I admitted the following exhibits for the Respondent:

1. Bill of Sale between Panayiotis Baltatzis and [redacted], September 26, 2017
2. Not Admitted
3. Not Admitted
4. Not Admitted
5. Not Admitted
6. Not Admitted
7. Not Admitted
8. Not Admitted
9. Pharmacy Response Letters, November 27, 2017; November 28, 2017; December 1, 2017