

**IN THE MATTER OF**

**\* BEFORE THE**

**AGHA S. KHAN, M.D.**

**\* MARYLAND STATE**

**Respondent**

**\* BOARD OF PHYSICIANS**

**License Number: D29462**

**\* Case Number: 2221-0055**

**\* \* \* \* \***

**CONSENT ORDER**

On September 22, 2021, Disciplinary Panel A of the Maryland State Board of Physicians (the "Board") charged **AGHA S. KHAN, M.D.** (the "Respondent"), License Number D29462, under the Maryland Medical Practice Act (the "Act"), codified at Md. Code Ann., Health Occ. ("Health Occ.") §§ 14-101 *et seq.* (2014 Repl. Vol. & 2020 Supp.).

Specifically, Disciplinary Panel A charged the Respondent with violating the following provisions of the Act under Health Occ. § 14-404:

- (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:
  - (1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;
  - (3) Is guilty of:
    - (ii) Unprofessional conduct in the practice of medicine;
  - (11) Willfully makes or files a false report or record in the practice of medicine; [and]

- (36) Willfully makes a false representation when seeking or making application for licensure or any other application related to the practice of medicine[.]

On December 1, 2021, Panel A was convened as a Disciplinary Committee for Case Resolution (“DCCR”) in this matter. Based on negotiations occurring as a result of the DCCR, the Respondent agreed to enter this Consent Order, consisting of the following Findings of Fact, Conclusions of Law, and Order.

### **FINDINGS OF FACT**

Panel A finds:

#### **I. BACKGROUND**

1. At all times relevant, 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 June 17, 1983, under License Number D29462. The Respondent’s license is current through September 30, 2022.

2. The Respondent is board-certified in Neurological Surgery, and at all times relevant, owns and operates a medical practice in Baltimore, Maryland.

3. The Board initiated an investigation of the Respondent after receiving a Mandated 10-day Report from a health care facility (the “Facility”)<sup>1</sup> on August 25, 2020, stating that it had suspended the Respondent’s clinical privileges on August 18, 2020, due to the Respondent’s activities related to a settlement with the United States, Department of Justice (“DOJ”).

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<sup>1</sup> To ensure confidentiality, the names of individuals, hospitals and healthcare facilities involved in this case are not disclosed in this Consent Order.

## II. INVESTIGATION

### DOJ Settlement Agreement

4. As part of its investigation, the Board obtained a copy of the civil settlement agreement (the "Settlement Agreement") between DOJ and the Respondent, signed by the Respondent on February 1, 2020, and by a representative of DOJ on March 5, 2020.

5. Under the Settlement Agreement, DOJ claims that the Respondent violated the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b.

6. Pursuant to the Settlement Agreement, the Respondent acknowledged and took responsibility for the following facts:

- A. On or about March 15, 2013, Dr. Khan entered into a consulting agreement with [Company A] ostensibly to provide feedback on the design and usability of [Company A] products. Pursuant to the March 15, 2013 consulting agreement, [Company A] agreed to pay Dr. Khan at a rate of \$500 per hour.
- B. On or about October 4, 2013, [Company A] informed Dr. Khan that it had "outsourced" its consulting services to [Company B], and Dr. Khan signed a new consulting agreement with [Company B] on or about April 1, 2014. Dr. Khan did not perform consulting services for any company other than [Company A] pursuant to the [Company B] agreement.
- C. Between March 15, 2013 and December 31, 2017, [Company A] paid Dr. Khan directly, and indirectly through [Company B], a total of \$144,125 in purported consulting fees. During this time, Dr. Khan utilized [Company A] products, including in surgical procedures reimbursed by Medicare.
- D. Dr. Khan reported consulting hours to [Company A] materially in excess of the number of hours he actually spent

engaged in consultative activities, and [Company A] paid Dr. Khan for consulting hours he did not work. Dr. Khan did so in part based on guidelines [Company A] communicated to him, namely that Dr. Khan could bill a flat rate of 1 hour whenever he used one of [Company A's] cervical spine products, and a flat rate of 2 hours whenever he used one of [Company A's] lumbar spine products, ostensibly for "evaluation" of those products. [Company A] paid Dr. Khan consulting fees even when Dr. Khan provided no substantive feedback to [Company A] whatsoever, or provided only minimal feedback.

- E. [Company A] did not communicate to Dr. Khan that his purported consulting work was unsatisfactory, even when [Company A] paid Dr. Khan for product evaluations with minimal or no substantive content.

7. Pursuant to the Settlement Agreement, the Respondent agreed to pay to the United States \$310,843 plus interest.

#### **2020 License Renewal Application**

8. On or about September 2, 2020, the Respondent filed his *Maryland Board of Physicians 2020 License Renewal Application* (the "2020 Renewal Application") with the Board.

9. In his 2020 Renewal Application, the Respondent answered "NO" to question 6 under "Part 2 - Character and Fitness Questions," which asked, "Has a hospital, related health care facility, HMO, or alternative health care system ever denied your application for privileges, or failed to renew your privileges, including privileges as a resident, or limited, restricted, suspended, or revoked your privileges in any way?"

10. The Respondent's answer was false in that he failed to disclose that on August 18, 2020, the Facility suspended his clinical privileges due to the Settlement Agreement he entered with DOJ.

### CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Panel A concludes as a matter of law that the Respondent violated Health Occ. § 14-404(a)(3)(ii) by engaging in unprofessional conduct in the practice of medicine; violated Health Occ. § 14-404(a)(11), by willfully making or filing a false report in the practice of medicine; and violated Health Occ. § 14-404(a)(36) by willfully making a false representation when seeking or making application for licensure or any other application related to the practice of medicine.

Panel A dismisses the charge of fraudulently or deceptively obtaining or attempting to obtain a license for the applicant or for another. *See* Health Occ. § 14-404(a)(1).

### ORDER

It is thus by 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** for a minimum of **ONE YEAR**.<sup>2</sup> During probation, the Respondent shall comply with the following terms and conditions of probation:

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<sup>2</sup> If the Respondent's license expires during the period of probation, the probation and any conditions will be tolled.

1. Within **SIX (6) MONTHS**, the Respondent is required to take and successfully complete a course in ethics. The following terms apply:
  - (a) it is the Respondent's responsibility to locate, enroll in and obtain the disciplinary panel's approval of the course before the course is begun;
  - (b) the Respondent must provide documentation to the disciplinary panel that the Respondent has successfully completed the course;
  - (c) the course may not be used to fulfill the continuing medical education credits required for license renewal;
  - (d) the Respondent is responsible for the cost of the course.
2. Within **ONE YEAR**, the Respondent shall pay a **civil fine of \$25,000**. The Payment shall be by money order or bank certified check made payable to the Maryland Board of Physicians and mailed to P.O. Box 37217, Baltimore, Maryland 21297. The Board will not renew or reinstate the Respondent's license if the Respondent fails to timely pay the fine to the Board; and it is further

**ORDERED** that a violation of probation constitutes a violation of the Consent Order; 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*

05/24/2022  
Date

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

**CONSENT**

I, Agha S. Khan, M.D., acknowledge that I have consulted with counsel before signing this document.

By this Consent, I agree to be bound by this Consent Order and all its terms and conditions and understand that the disciplinary panel will not entertain any request for amendments or modifications to any condition.

I assert that I am aware of my right to a formal evidentiary hearing, pursuant to Md. Code Ann., Health Occ. § 14-405 and Md. Code Ann., State Gov't §§ 10-201 *et seq.* concerning the pending charges. I waive this right and have elected to sign this Consent Order instead.

I acknowledge the validity and enforceability of this Consent Order as if entered after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my behalf, and to all other substantive and procedural protections as provided by law. I waive those procedural and substantive protections. I acknowledge the legal authority and the jurisdiction of the disciplinary panel to initiate these proceedings and to issue and enforce this Consent Order.

I voluntarily enter into and agree to comply with the terms and conditions set forth in the Consent Order as a resolution of the charges. I waive any right to contest the Findings of Fact and Conclusions of Law and Order set out in the Consent Order. I waive all rights to appeal this Consent Order.

I sign this Consent Order, without reservation, and fully understand the language and meaning of its terms.

***Signature On File***

5/16/2022  
Date

Agha S. Khan, M.D.



**NOTARY**

STATE OF Maryland

CITY/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 16 day of May,  
~~2021~~ 2022, before me, a Notary Public of the State and County aforesaid, personally appeared

Agha S. Khan, M.D., and gave oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

**AS WITNESS, my hand and Notary Seal.**

Jacqueline P. Mariano  
Notary Public

My Commission Expires: 3/25/25