

IN THE MATTER OF

\*

BEFORE THE

MICHAEL S. MORRIS, M.D.

\*

MARYLAND STATE

RESPONDENT

\*

BOARD OF PHYSICIANS

License Number: D30027

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Case Number: 2219-0126 A

\* \* \* \* \*

CONSENT ORDER

On June 5, 2020, Disciplinary Panel A ("Panel A") of the Maryland State Board of Physicians (the "Board") charged **MICHAEL S. MORRIS, M.D.** (the "Respondent"), License Number D30027, with violating the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") §§ 14-101 *et seq.* (2014 Repl. Vol. and 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:
  - ...
  - (19) Grossly overutilizes health care services;
  - ...
  - (22) Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State;
  - ...
  - (40) Fails to maintain adequate medical records[.]

On October 7, 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:

1. The Respondent was initially licensed to practice medicine in Maryland on November 8, 1983, under License Number D30027. The Respondent's license is scheduled to expire on September 30, 2021. The Respondent holds an active medical license in Delaware and the District of Columbia, and an inactive license in Minnesota.
2. The Respondent is board-certified in otolaryngology.
3. The Respondent practices at in an allergy center in Rockville, Maryland and has privileges at hospitals in Maryland and the District of Columbia.<sup>1</sup>

#### **Prior Board Discipline**

4. On or about February 26, 2018, the Board received a complaint from an epidemiologist (the "Epidemiologist") employed by the Maryland Department of Health.<sup>2</sup> The complaint alleged in pertinent part that the Respondent orders excessive and unnecessary serological tests for pertussis (also known as whooping cough) for patients whose symptoms were inconsistent with pertussis or who were asymptomatic. Pertussis is an acute bacterial infection of the respiratory tract. The

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<sup>1</sup> Names of patients, other individuals and facilities are confidential. .

<sup>2</sup> Pursuant to COMAR 10.06.01.01 *et seq.*, communicable diseases, including pertussis, are to be reported to the Maryland Department of Health.

complaint further alleged that the Respondent prescribes antibiotics excessively and without medical justification.

5. The complaint also alleged that the serologic testing the Respondent uses exclusively is “unreliable and not considered ‘lab-confirmation’ by the C[enters for] D[isease] C[ontrol]. The complaint noted that the correct test is or polymerase chain reaction (“PCR”) culture on a nasopharyngeal swab.
6. On September 6, 2019, Panel A charged the Respondent with grossly overutilizing health care services, failing to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical care, and failing to keep adequate medical records, in violation of Health Occ. § 14-404(a)(19), (22), and (40), respectively.
7. On December 2, 2019, the Respondent entered into a Consent Order in which Panel A concluded as a matter of law that the Respondent had violated the disciplinary grounds with which he was charged. The Panel ordered the Respondent to be reprimanded and placed on probation for a minimum of one year after he successfully completed one (1) remedial course in infectious disease and one (1) remedial course in medical documentation. Under the terms of the Respondent’s probation, he was subject to chart and/or peer review.
8. The Respondent completed both required courses by April 15, 2020, and he was notified by the Panel that he was placed on probation for a minimum of one (1) year effective April 15, 2020.

## **Current Allegations**

### **A. Patient 1**

9. On or about November 28, 2018, the Board received a complaint from a former patient of the Respondent (“Patient 1”). Patient 1 stated that she has numerous food and chemical sensitivities. At her initial office visit, the Respondent advised Patient 1 that her sensitivities could be caused by a long-standing, underlying infection or virus. The Respondent’s staff drew 14 vials of blood from Patient 1 for laboratory testing.
10. At Patient 1’s second visit, the Respondent diagnosed Patient 1 with shingles, an unspecified virus, and a fungal infection. He “pressured” her to undergo a full panel of IgG tests and prescribed an antiviral and antifungal medication. Patient 1 declined the IgG testing.
11. Patient 1 reviewed the Respondent’s prescriptions with her pharmacist who told her that both medications seemed to be prescribed for too long a period and that both were very high dosages.
12. Patient 1 subsequently reviewed the Respondent’s care with her personal physician (“Physician 1). Physician 1 disagreed with the Respondent’s diagnoses and medication regimen.

### **B. Physician 2**

13. On or about July 15, 2019, the Board received an anonymous complaint from a physician (“Physician 2”) who has treated a number of patients also treated by the Respondent.

14. Physician 2 alleged that the Respondent orders numerous immunodeficiency laboratory tests and prescribes to patients prolonged, expensive and sometimes unnecessary anti-viral medications and antibiotics.

**C. The Board's Investigation**

15. In furtherance of its investigation of the complaints, the Board subpoenaed from the Respondent six (6) patient records and referred the records to an independent peer review entity.
16. The Respondent records were reviewed by two (2) physicians who are board-certified in otolaryngology. The peer reviewers separately reviewed the patient records and submitted their individual reports to the Board.
17. The peer reviewers concurred that the Respondent:
  - In five (5) of the six (6) cases reviewed, overutilized health care services;
  - In six (6) of six (6) cases reviewed, failed to meet the standard of quality care; and
  - In six (6) out of six (6) cases reviewed, failed to keep adequate medical records.
18. The findings of the peer reviewers are summarized below.

**Failure to Meet the Standard of Quality Medical Care**

19. The peer reviewers concurred that the Respondent failed to meet the standard of quality medical care for the following reasons:
  - a. the Respondent ordered an excessive number of tests to investigate for immunodeficiency disorders in the absence of documented indications that the patient suffered recurrent infections;

- b. the Respondent ordered multiple viral serologic tests in the absence of documented patient symptoms and medical justification;
- c. the Respondent frequently ordered an excessive number of allergen tests in the absence of patient symptoms;
- d. based on the results of serologic testing, the Respondent treated patients with multiple and prolonged courses of antibiotics and/or antiviral drugs, some of which have potential serious side effects. The Respondent prescribed these drugs even in the absence of clinical symptoms that correlated with the Respondent's diagnoses. By example and not in limitation, the Respondent prescribed Vemlidy, an expensive antiviral drug, to patients when their Epstein-Barr Virus ("EBV") titers suggested a past infection. Antiviral therapy is not recommended for EBV;
- e. the Respondent presumed that positive serology results represented active disease; he failed to recognize that positive results may be positive due to their frequency in the population or the patient's previous immunization.
- f. the Respondent frequently repeated extensive laboratory testing. The Respondent consistently place an over-reliance on laboratory testing that results in expensive and potentially dangerous care.

**Failure to Keep Adequate Medical Records**

- 20. The peer reviewers concurred that the Respondent failed to keep adequate medical records for the following reasons:
  - a. the Respondent's documentation is largely populated with electronic medical record standardized documentation, containing little useful information,

making it difficult to follow the logic of his treatment decisions. Some notes contain inconsistent or contradictory findings regarding the history and/or physical examination.

- b. the Respondent consistently failed to document detailed histories and physical examinations.
- c. the Respondent often failed to document the results of multiple laboratory tests he ordered, or a specific treatment plan based on those results, noting only “testing and follow up.”

#### **Gross Overutilization of Health Care Services**

21. The peer reviewer concurred that the Respondent grossly overutilized health care services in five (5) of the six (6) cases they reviewed. In summary the peer reviewers agreed that the Respondent ordered excessive and costly laboratory testing and repeated the testing in the absence of patient complaints or symptoms. The Respondent typically ordered the same battery of tests regardless of the presenting complaint.

#### **CONCLUSION OF LAW**

Based on the Findings of Fact, Disciplinary Panel A of the Board concludes as a matter of law that the Respondent’s conduct constitutes gross overutilization of health care services, in violation of Health Occ. § 14-404(a)(19); failure to meet the standard of care for the delivery of quality medical care, in violation of Health Occ. § 14-404(a)(22); and failure to keep adequate medical records, in violation of Health Occ. § 14-404(a)(40).

## 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 Consent Order dated December 2, 2019 and the Order Commencing Probation dated April 21, 2020 are **TERMINATED**; and it is further

**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>3</sup> During probation, the Respondent shall comply with the following terms and conditions of probation:

(1) Within **SIX MONTHS**, the Respondent is required to take and successfully complete a course in the diagnosis of, including appropriate laboratory testing for, immunodeficiency diseases. 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.

(2) Within **SIX MONTHS**, the Respondent shall pay a civil fine of \$5,000. 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.

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<sup>3</sup> If the Respondent's license expires during the period of probation, the probation and any conditions will be tolled.



(3) The Respondent shall be subject to supervision for **ONE YEAR**<sup>4</sup> by a disciplinary panel-approved supervisor who is board-certified in otolaryngology as follows:

(a) within **30 CALENDAR DAYS** of the effective date of this Consent Order, the Respondent shall provide the disciplinary panel with the name, pertinent professional background information of the supervisor whom the Respondent is offering for approval, and written notice to the disciplinary panel from the supervisor confirming his or her acceptance of the supervisory role of the Respondent and that there is no personal or professional relationship with the supervisor;

(b) the Respondent's proposed supervisor, to the best of the Respondent's knowledge, should not be an individual who is currently under investigation, and has not been disciplined by the Board within the past five years;

(c) if the Respondent fails to provide a proposed supervisor's name within 30 calendar days from the effective date of the order, the Respondent's license shall be automatically suspended from the 31<sup>st</sup> day until the Respondent provides the name and background of a supervisor;

(d) the disciplinary panel, in its discretion, may accept the proposed supervisor or request that the Respondent submit a name and professional background, and written notice of confirmation from a different supervisor;

(e) the supervision begins after the disciplinary panel approves the proposed supervisor;

(f) the disciplinary panel will provide the supervisor with a copy of this Consent Order and any other documents the disciplinary panel deems relevant;

(g) the Respondent shall grant the supervisor access to patient records selected by the supervisor from a list of all patients, which shall, to the extent practicable, focus on the type of treatment at issue in the Respondent's charges;

(h) if the supervisor for any reason ceases to provide supervision, the Respondent shall immediately notify the Board and shall not practice medicine beyond the 30<sup>th</sup> day after the supervisor has ceased to provide supervision and until the Respondent has submitted the name and professional background, and written notice of confirmation, from a proposed replacement supervisor to the disciplinary panel;

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<sup>4</sup> If the Respondent is not practicing medicine, the supervision shall begin when the Respondent resumes the practice of medicine and the disciplinary panel has approved the proposed supervisor. The Respondent shall submit the name of a proposed supervisor within 30 days of resuming the practice of medicine and shall be subject to supervision by a disciplinary panel approved supervisor upon the return to the practice of medicine.

(i) it shall be the Respondent's responsibility to ensure that the supervisor:

- (1) reviews the records of ten patients each month, such patient records to be chosen by the supervisor and not the Respondent;
- (2) meets in-person or virtually<sup>5</sup> with the Respondent at least once each month and discuss in-person or virtually with the Respondent the care the Respondent has provided for these specific patients;
- (3) be available to the Respondent for consultations on any patient;
- (4) maintains the confidentiality of all medical records and patient information;
- (5) provides the Board with quarterly reports which detail the quality of the Respondent's practice, any deficiencies, concerns, or needed improvements, as well as any measures that have been taken to improve patient care; and
- (6) immediately reports to the Board any indication that the Respondent may pose a substantial risk to patients;

(j) the Respondent shall follow any recommendations of the supervisor;

(k) if the disciplinary panel, upon consideration of the supervisory reports and the Respondent's response, if any, has a reasonable basis to believe that the Respondent is not meeting the standard of quality care or failing to keep adequate medical records in his or her practice, the disciplinary panel may find a violation of probation after a hearing.

**AND IT IS FURTHER ORDERED** that the effective date of the Consent Order is November 2, 2020. The Executive Director 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,

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<sup>5</sup> The meeting may take place virtually because of the COVID-19 pandemic.

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).

11/02/2020  
Date

***Signature on File***

Christine A. Farrelly, Executive Director

## CONSENT

I, Michael S. Morris, 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.

11/24/20  
Date

***Signature on File***

Michael S. Morris, M.D.

**NOTARY**

STATE OF Maryland

CITY/COUNTY OF Montgomery

I HEREBY CERTIFY that on this 24<sup>th</sup> day of November 2020, before me, a Notary Public of the foregoing State and City/County, personally appeared Michael S. Morris, 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.

Sharon Z. Brennan

Notary Public

My Commission expires: 3/26/2022