IN THE MATTER OF	*	BEFORE THE
MICHAEL S. MORRIS, M.D.	*	MARYLAND STATE
RESPONDENT	*	BOARD OF PHYSICIANS
License Number: D30027	*	Case Number: 2218-0160A

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

CONSENT ORDER

On September 6, 2019, 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, under the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") §§ 14-101 *et seq.* (2014 Repl. Vol. and 2018 Supp.).

The pertinent 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 November 6, 2019, 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, and Order.

FINDINGS OF FACT

Panel A finds:

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.

I. The Complaint

4. On or about February 26, 2018, the Board received a complaint from an epidemiologist (the "Epidemiologist") employed by the Maryland Department of Health.[1] 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

[1] 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 that 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. The Epidemiologist communicated her concerns to the Communicable Disease Supervisor in Montgomery County, the county with most of the Respondent's cases.

7. The Epidemiologist filed the complaint with the Board after being notified that one of the Respondent's patients (identified herein as "Patient 6"),[2] a 74 year-old female, had been hospitalized for four days with a Clostridium difficile ("C. diff")[3] infection after the Respondent had prescribed to her multiple oral and intravenous antibiotics for diagnoses of Lyme disease and pertussis.

8. The Respondent submitted to the Board a written response to the complaint in which he stated in pertinent part: "Unlike other doctors in my field I do more testing before unnecessary operations like sinus surgery."

---

[2] For confidentiality purposes, the names of individuals, patients, and institutions involved in this case have not been identified in this document. The Respondent is aware of the identity of all individuals, patients, and institutions referenced herein.

[3] C. diff is a bacterium that can cause symptoms ranging from diarrhea to life-threatening inflammation of the colon.

II. The Board's investigation

9. The Board initiated an investigation that included requesting the Respondent to respond to the complaint, subpoenaing from the Respondent six patient records and referring the records to an independent peer review entity.

10. The Respondent's records were reviewed by two physicians who are board-certified in otolaryngology.

11. Each of the peer reviewers determined that the Respondent failed to meet the standard of quality care and failed to maintain adequate medical records in his treatment of all six of the six patients whose care was reviewed, in violation of Health Occ. § 14-404(a)(22).

12. The peer reviewers concurred that the Respondent failed to keep adequate medical records in four of the six cases, in violation of Occ. § 14-404(a)(40).

13. The peer reviewers concurred that the Respondent grossly overutilized health care services in his treatment of four of the six patients whose care was reviewed, in violation of Health Occ. § 14-404(a)(19).

14. The Respondent responded to the peer review reports in pertinent part:

-positive testing is just that- positive testing – and requires treatment;

-no harm came to any patients from my evaluation or treatment;

-all the laboratory testing ordered [is] covered by patient's insurance. The cost to insurance is a fraction of what laboratory charges are by 50 to 90%; and

> -I'm providing the County with the valuable service understanding how many patients have been exposed to diseases once thought to be eradicated or remote.

III. Standard of Quality Medical Care

15. The standard of quality medical care for diagnosing patients with a cough includes: a detailed history and physical examination regarding the chief complaint including head, neck and lung examinations; ordering appropriate tests that can include, but are not limited to imaging (x-ray or CT scan), lung function tests, cultures or allergy testing; performing appropriate procedures including but not limited to nasal endoscopy, laryngoscopy, bronchoscopy, or esophagoscopy; and providing appropriate treatment based on history and physical examination findings.

16. The standard of quality care for the diagnosis of pertussis requires a detailed physical examination with specific focus on the timing and duration of the cough, vaccination history, and the presence or absence of paroxysmal cough, post-tussive vomiting, inspiratory whooping, and fever; appropriate diagnostic testing if clinically warranted which includes obtaining a culture from a nasopharyngeal ("NP") specimen within the first two weeks of the onset of a cough, or polymerase chain reaction ("PCR") testing within the first four weeks of the onset of a cough. Serologic testing can be performed if symptoms are present for between two and eight weeks, and up to twelve weeks, specifically, testing of IgG-anti-PT levels as it is most sensitive. Treatment for confirmed pertussis includes macrolide therapy[4] as a first-line therapy and trimethoprim-sulfamethoxazole as a second line therapy.

---

[4] Macrolides are antibiotics that inhibit bacterial protein synthesis.

IV. Failure to Meet Standard of Quality Medical Care

17. The peer reviewers concurred that the Respondent failed to meet the standard of quality medical care for reasons including but not limited to the following:

    a. The Respondent failed to perform appropriate diagnostic testing for pertussis and other bacterial and viral conditions. The Respondent relies heavily on commercial serology testing for the diagnosis of viral and bacterial pathogens including but not limited to pertussis, Epstein-Barr Virus ("EBV"),[5] hepatitis B[6] and legionella.[7] The Centers for Disease Control ("CDC") advise that commercial serologic tests have "unproven or unknown clinical accuracy." (Patients 1 – 6).

    b. 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. (Patients 1 – 6).

    c. Two of the patients developed a C.diff infection, likely as a result of multiple courses of antibiotics prescribed by the Respondent (Patients 4 and 6).

    d. The Respondent presumed that positive serology results represented active disease; he failed to recognize that positive results may be positive due to

[5] EBV is a member of the herpes virus family.

[6] Hepatis B is a serious liver infection caused by the hepatitis B virus.

[7] Legionella is a bacterium that can cause Legionnaires' Disease, a serious type of pneumonia.

their frequency in the population or the patient's previous immunization. For example, and not in limitation, the Respondent treated Patient 3 and Patient 5 with antiviral therapy for EBV despite not testing for active infection. Anti-viral therapy is not recommended for EBV because it is a self-limited condition unless the patient had a severe manifestation or is immunocompromised, neither of which pertained to Patient 3 or Patient 5.

e. The Respondent frequently repeated serological testing for viral and bacterial pathogens that did not correlate with patients' history and physical examination. (Patients 1, 2, 3, 4 and 6). For example, and not in limitation, Patient 4 presented with chronic sinusitis and a chronic cough for over 10 years. Although Patient 4's symptoms were not consistent with pertussis, the Respondent performed serology pertussis testing on seven occasions. The Respondent treated Patient 4 for pertussis, varicella Zoster infections, and EBV with numerous antibiotic and anti-viral drugs based on results of serologic tests that were positive for prior exposure or prior immunization.

f. The Respondent typically failed to perform chest x-rays and other diagnostic tests to assess the etiology of the patient's symptoms or the patient's failure to respond to respond to the medications he prescribed. (*see e.g* .Patients 4 and 6).

g. The Respondent diagnosed pertussis and prescribed antibiotics in the absence of pertinent physical findings. For example, and not in limitation, the Respondent prescribed antibiotics to treat pertussis but failed to document a

detailed history regarding the key characteristic of pertussis. (Patients 1, 2, 3, 4, and 5).

V. Failure to Keep Adequate Medical Records

18. The peer reviewers concurred that the Respondent failed to maintain adequate medical records in four of the six records reviewed for reasons including but not limited to:

    a. The Respondent's documentation is largely populated with electronic medical record standardized documentation, containing little useful information. Some notes contain inconsistent or contradictory findings regarding the history and/or physical examination. For example, in the same physical examination note, the Respondent documented "mucosal swelling" and "nasal mucosa normal." (Patients 4 and 5).

    b. The Respondent consistently failed to document detailed histories and physical examinations. Notably, he failed to document previous immunizations and history of common viral diseases.

    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." For example, and not in limitation, the Respondent ordered multiple tests of immunoglobulin subclasses[8] and

[8] Laboratory tests to measure the levels of antibodies in the blood.

Antinuclear Antibody ("ANA")[9] tests for Patient 2, yet he failed to mention the results in the record.

d. The Respondent failed to document his treatment rationale for prescribing medications or changing medications.

e. The Respondent frequently failed to document a patient's response to treatment.

VI. Gross Overutilization of Health Care Services

19. The peer reviewers concurred that the Respondent grossly overutilized health care services in four of the six patient records reviewed by ordering multiple commercial serologic testing for pertussis. Commercial serology tests lack accuracy and standardization. As stated above, the Respondent often failed to document the results of the tests he ordered and a specific treatment plan based on the results.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Panel A concludes that the Respondent grossly overutilized health care services, failed to meet the standard of quality medical care, and failed to maintain adequate medical records in violation of Health Occ. § 14-404(a)(19), (22), and (40).

ORDER

It is thus by Disciplinary Panel A of the Board, hereby:

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

[9] A test that evaluates the presence of an autoimmune disorder.

ORDERED that the Respondent is placed on **PROBATION** for a minimum period of **ONE (1) YEAR** after the completion of Probationary Condition 1.[10] During the probation, the Respondent shall comply with the following terms and conditions of probation:

1. Respondent shall enroll in and complete two courses. One course shall be in infectious disease and a second course shall be in medical documentation. The following terms apply to the courses:

> (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 disciplinary panel will not accept a course taken 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; and
> (e) the Respondent is responsible for the cost of the course.

2. As a term of probation, the Respondent is subject to a chart and/or peer review conducted by the disciplinary panel or its agents as follows:

> (a) the Respondent shall cooperate with the peer review process;
> (b) the disciplinary panel, in its discretion, may change the focus of the chart and/or peer review if the Respondent changes the specialty of his or her practice;
> (c) if the disciplinary panel, upon consideration of the chart and/or peer review and the Respondent's response, if any, determines that the Respondent is meeting the standard of quality care in his or her practice, the disciplinary panel shall consider the peer review condition of the Consent Order met;
> (d) a peer and/or chart review indicating that the Respondent has grossly overutilized medical services, has not met the standard of quality care, and/or has failed to keep adequate medical records may be deemed, by a disciplinary

---

[10] If the Respondent's license expires during the period of probation, the probation and any conditions will be tolled.

panel, a violation of probation and/or a violation of Health Occ. § 14-404(a)(19), (22), and/or (40).

ORDERED that the Respondent shall not apply for early termination of probation; and it is further

ORDERED that, after the Respondent has complied with all terms and conditions of probation and the minimum period of probation imposed by the Consent Order has passed, the Respondent may submit to the Board a written petition for termination of probation. After consideration of the petition, the probation may be terminated through an order of the disciplinary panel. The Respondent may be required to appear before the disciplinary panel to discuss his or her petition for termination. The disciplinary panel may grant the petition to terminate the probation, through an order of the disciplinary panel, if the Respondent has complied with all probationary terms and conditions and there are no pending complaints relating to the charges; and it is further

ORDERED that a violation of probation constitutes a violation of the 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 the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this 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 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 this Consent Order is a public document. *See* Md. Code Ann., Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6).

Signature on File

12/02/2019
Date

Christine A. Farrelly
Executive Director
Maryland State Board of Physicians

CONSENT

I, Michael 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.

Signature on File

11/22/19
Date

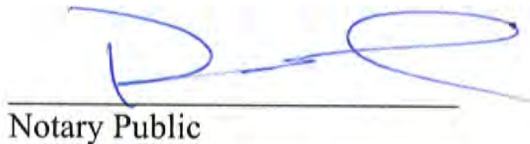
Michaël Morris, M.D.
Respondent

NOTARY

STATE OF Maryland
CITY/COUNTY OF Carroll

I HEREBY CERTIFY that on this 22 day of NOV 2019, before me, a Notary Public of the foregoing State and City/County, personally appeared Michael 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.



Notary Public

My Commission expires: 4/27/23

DONNA G MORTIMER
Notary Public-Maryland
Carroll County
My Commission Expires
4/27/23