

IN THE MATTER OF * **BEFORE THE MARYLAND**
FERNANDO A. DELGADO, M.D. * **STATE BOARD OF**
Respondent * **PHYSICIANS**
License Number: D32717 * **Case Number: 2218-0200B**

CONSENT ORDER

On July 25, 2018, Disciplinary Panel B (“Panel B”) of the Maryland State Board of Physicians (the “Board”) voted to charge **Fernando A. Delgado, M.D.** (the “Respondent”), License Number D32717, with violating the Maryland Medical Practice Act (the “Act”), Md. Code Ann., Health Occ. (“Health Occ.”) § 14-404(a)(3)(ii) (2014 Repl. Vol. 2017 Supp.), and Md. Code Regs. (“COMAR”) 10.32.03.11C.

The pertinent provisions of the Act provide:

(a) Subject to the hearing provisions of §14-405 of this subtitle, a disciplinary panel, on the affirmative vote of a majority of the quorum of the disciplinary panel, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

...

(3) Is guilty of:

...

(ii) Unprofessional conduct in the practice of medicine[.]

COMAR 10.32.03.11C provides: “Unprofessional conduct in the practice of medicine, Health Occupations Article, § 14-404(a)(3), Annotated Code of Maryland, includes the failure of a physician to comply with the statute and regulations governing the physician’s duty to supervise the physician assistant.”

Prior to the issuance of disciplinary charges under the Act, the Respondent agreed to enter into the following Consent Order, consisting of Findings of Fact, Conclusions of Law, Order and Consent.

FINDINGS OF FACT

I. BACKGROUND

1. At all times relevant hereto, the Respondent was and is licensed to practice medicine in the State of Maryland. The Respondent was initially licensed to practice medicine on August 15, 1985, under License Number D32717. The Respondent's license expires on September 30, 2020.
2. The Respondent is board-certified in internal medicine.
3. At all times relevant hereto, the Respondent practiced at an assisted living facility (the "Facility") in Maryland until his resignation there on or about February 26, 2018.
4. In or around December 2014, the Respondent began acting as a supervising physician at the request of Physician A¹, the owner-operator of the Facility. At this time Physician A was on probation subject to a Consent Order which prohibited

¹ The Board previously charged Physician A under Case Number 2012-0900, which was resolved via Consent Order on July 1, 2014. The probation imposed thereunder was terminated on December 13, 2016.

Physician A from delegating the authority to prescribe controlled dangerous substances (“CDS”).

5. At all times relevant hereto, the Respondent was the primary supervising physician of a physician assistant (“the Physician Assistant”).
6. Pursuant to the Maryland Physician Assistants Act, a “primary supervising physician” is defined in pertinent part as the physician who - after completing a delegation agreement the meets the requirements of Health Occ. § 15-301(d)(e), and § 15-302 and filing with the Board - is responsible to ensure that a physician assistant practices medicine in accordance with the Maryland Physician Assistants Act and regulations adopted under the Act. Health Occ. § 15-101(r)(2).

II. COMPLAINT

7. On or about November 28, 2016, the Board received an anonymous complaint alleging that a former patient of the Physician Assistant (the “Patient”) presented to a hospital during the evening of October 2, 2016, with a reported overdose from Lexapro.² The hospital conducted a search of the CRISP³ database and discovered that the Physician Assistant had written several CDS prescriptions for the Patient at the Facility.
8. On March 15, 2018, Disciplinary Panel B charged the Physician Assistant with the following: failing to meet appropriate standards for the delivery of quality medical

² Lexapro is a brand name for escitalopram oxalate, a selective serotonin reuptake inhibitor used to treat depression and anxiety.

³ “CRISP” is the Chesapeake Regional Information System for our Patients. This is a prescription drug monitoring program (“PDMP”) available to providers in Maryland and the District of Columbia.

care, in violation of Health Occ. §15-314(a)(22); and failing to keep adequate medical records, in violation of Health Occ. §15-314(a)(40).

9. On June 12, 2018, the Physician Assistant entered into a Consent Order with the Board. The Board found that in nine of ten of the patients reviewed, the Physician Assistant failed to meet appropriate standards for the delivery of quality medical and surgical care, in violation of Health Occ. § 15-314(a)(22) for reasons that include: failure to monitor for abuse, prescribing opioids to patients concurrently with another provider despite having access to CRISP, and failure to refer patients to pain management providers. The Board also found that in eight of the ten cases reviewed, the Physician Assistant failed to keep adequate medical records in violation of Health Occ. §15-314(a)(40), for reasons that include: failing to accurately list current medications being prescribed, failing to obtain prior medical records to justify diagnoses, and failing to document an adequate evaluation of the patients including subjecting symptoms
10. Pursuant to the Consent Order, the Board reprimanded the Physician Assistant and placed him on probation for a minimum period of two years. The Board ordered the Physician Assistant to cease practicing pain management and limited his ability to prescribe CDS. The Board also ordered the Physician Assistant to complete courses in pain management and record keeping.

III. BOARD INVESTIGATION

11. Pursuant to the Board's authority under Health Occ. §15-302(g), the Board initiated an investigation of the Respondent to determine whether he properly

supervised the Physician Assistant, and requested a written response from the Respondent regarding his supervision of the Physician Assistant.

12. On or about April 20, 2018, the Respondent submitted a written response to the Board, acknowledging that in December 2014, he entered into a Delegation Agreement with the Physician Assistant, which included delegation of “prescriptive authority to [the Physician Assistant].” The Respondent asserted that when executing the Delegation Agreement he relied upon the Physician Assistant’s representations of his training and experience in pharmacology and prescriptive practices.
13. On June 19, 2018, the Respondent appeared at the Board for an under-oath interview in which he acknowledged that he entered into the Delegation Agreement with the Physician Assistant, which included the delegation of prescriptive authority of CDS. The Respondent stated that his understanding of his role as a supervising physician was to review patients’ charts, which he did at random, and to be available to give advice to the physician assistants. The Respondent claimed that the Physician Assistant did not ask him for medical advice or consult with him with respect to patients. The Respondent also stated that he never saw a patient in conjunction with the Physician Assistant and that he would have contact with the Physician Assistant “once or twice a month...”
14. The Respondent stated that the Physician Assistant himself made the decision on whether to prescribe CDS including opioids to a patient but the Physician Assistant had the option to consult with the Respondent if needed. The Respondent stated

that he did not believe that the Physician Assistant was qualified to treat chronic pain patients but stated that he did not submit a termination of the Delegation Agreement to the Board.

15. Disciplinary Panel B's finding that the Physician Assistant violated the standard of quality medical care is evidence that the Respondent failed to adequately supervise the practice of the Physician Assistant and ensure that the Physician Assistant practiced medicine in accordance with the Maryland Physician Assistants Act and applicable regulations.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Disciplinary Panel B of the Board concludes as a matter of law that the Respondent is guilty of unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii) based, in part, on a violation of COMAR 10.32.03.11C.

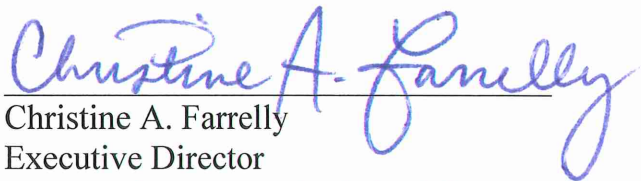
ORDER

It is, on the affirmative vote of a majority of the quorum of Board Disciplinary Panel B, hereby

ORDERED that the Respondent is **REPRIMANDED**; 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).

01/02/2019
Date


Christine A. Farrelly
Executive Director
Maryland State Board of Physicians

CONSENT

I, Fernando A. Delgado, 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 these rights and have elected to sign this Consent Order instead.

I acknowledge the validity and enforceability of this Consent Order as if entered after the conclusions 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 own behalf, and to all other substantive and procedural protections as provided by law. I waive those procedural and substantive protections. I acknowledge the legal authority and the jurisdiction of the disciplinary panel to initiate these proceedings and to issue and enforce this Consent Order.

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

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

12/17/18
Date

Signature on File

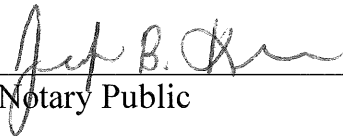
Fernando A. Delgado, M.D.
Respondent

NOTARY

STATE OF MARYLAND
CITY/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 18th day of December,
2018, before me, a Notary Public of the foregoing State and City/County
personally appeared Fernando A. Delgado, 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 notary seal.



Notary Public

My commission expires: 1/3/2022

