

IN THE MATTER OF

MARK D. NOAR, M.D.

Respondent

LICENSE NUMBER: D36351

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BEFORE THE

MARYLAND STATE BOARD

OF PHYSICIANS

CASE NUMBER: 2217-0021 B

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### CONSENT ORDER

On October 5, 2018, Disciplinary Panel B ("Panel B") of the Maryland State Board of Physicians (the "Board") charged Mark D. Noar, M.D. (the "Respondent"), license number D36351 with violating the Maryland Medical Practice Act (the "Act") Md. Code Ann., Health Occ. ("Health Occ.") §§ 14-101 *et seq.* (2014 Repl. Vol. and 2017 Supp.).

The pertinent provision of the Act under § 14-404 provides the following:

(a) *In general.* --Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on the affirmative vote of a majority of the quorum, 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[.]

In addition, Panel B voted to charge Respondent with violating Condition 8 of the Consent Order between the Board and Respondent, dated January 11, 2017 (the "Consent Order"), which states the following:

8. Respondent shall comply with the Maryland Medical Practice Act, Health Occ. §§ 14-101 - 14-702 and in accordance with all laws and

regulations governing the practice of medicine in Maryland. Failure to do so shall constitute a violation of this Consent Order[.]

One form of unprofessional conduct in the practice of medicine is “disruptive behavior.” The problem of “disruptive physician behavior” has been addressed by The Joint Commission and the American Medical Association (“AMA”).

On or about July 9, 2008, The Joint Commission issued a Sentinel Event alert entitled “Behaviors that Undermine a Culture of Safety,” which stated in pertinent part:

Intimidating and disruptive behaviors can foster medical errors . . . contribute to poor patient satisfaction and to preventable adverse outcomes . . . Safety and quality of patient care is dependent on teamwork, communication, and a collaborative work environment. To assure quality and to promote a culture of safety, health care organizations must address the problem of behaviors that threaten the performance of the health care team. Intimidating and disruptive behaviors include overt actions such as verbal outbursts and physical threats . . . Intimidating and disruptive behaviors are often manifested by health care professionals in positions of power . . . Overt and passive behaviors undermine team effectiveness and can compromise the safety of patients . . . All intimidating and disruptive behaviors are unprofessional and should not be tolerated.<sup>1,2</sup>

Furthermore, AMA Opinion 9.045, adopted in June 2000, provides in pertinent part:

...

- (1) Personal conduct, whether verbal or physical, that negatively affects or that potentially may negatively affect patient care constitutes disruptive behavior. (This includes but is not limited to conduct that interferes with one’s ability to work with other members of the health care team.) However, criticism that is offered in good faith with the aim of improving patient care should not be construed as disruptive behavior.

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<sup>1</sup> In 2011, The Joint Commission revised the term “disruptive behavior” to “behavior or behaviors that undermine a culture of safety.”

<sup>2</sup> In 2016, The Joint Commission noted that “while the term ‘unprofessional behavior’ is preferred instead of ‘disruptive behavior,’ the suggested actions in this alert remain relevant.”

As of June 2016, the AMA Code of Medical Ethics: Professional Self-Regulation Opinion 9.4.4<sup>3</sup> pertaining to Physicians with Disruptive Behavior states in pertinent part:

The importance of respect among all health professionals as a means of ensuring good patient care is foundational to ethics. Physicians have a responsibility to address situations in which individual physicians behave disruptively, that is, speak or act in ways that may negatively affect patient care, including conduct that interferes with the individual's ability to work with other members of the health care team, or for others to work with the physician.

On November 28, 2018, Disciplinary Panel B 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 Findings of Fact, Conclusions of Law, Order, and Consent.

### **FINDINGS OF FACT**

Panel B makes the following findings of fact:

#### **I. Background**

1. At all times relevant hereto, Respondent was, and is, licensed to practice medicine in Maryland. Respondent was originally licensed to practice medicine in 1988 under license number D36351. He has continuously renewed his license. Respondent last renewed his license in or about September 2017, which will expire on September 30, 2019.

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<sup>3</sup> AMA Opinion 9.045 was revised in 2016 and became AMA Opinion 9.4.4; however, since Respondent's conduct occurred before and after 2016, both opinions are cited.

2. Respondent owns a medical practice, "GI Microsurgery Institute, PA," with offices in Towson and Bel Air, Maryland.<sup>4</sup> Since approximately 1990, Respondent has maintained an outpatient surgery center at the Towson location. Respondent employs approximately 13 -15 staff persons, including three endoscopy technicians, two nurses, a nurse anesthetist, as well as other clinical staff and administrative staff.

3. Respondent practices gastroenterology ("GI") and hepatology.<sup>5</sup> Respondent performs endoscopic procedures and does not do general surgery procedures.

4. Respondent holds privileges at two Maryland hospitals.

5. Respondent is not board-certified in any medical specialty. Respondent's self-designated practice areas are internal medicine and gastroenterology.

6. On January 11, 2016, Respondent entered a Consent Order with the Board for failure to meet standards of quality care in that he performed unnecessary endoscopic retrograde cholangiopancreatographies ("ERCPs"), failed to recognize the leak of a contrast dye during an ERCP, and failed to keep adequate medical records. Respondent was reprimanded and placed on probation for three years with terms and conditions.

7. Respondent also holds active medical licenses in New Jersey and New York.

8. On March 7, 2017, New York reprimanded Respondent, assessed a fine, and placed Respondent on probation based on a reciprocal action.

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<sup>4</sup> Previously, Respondent's practice was called Endoscopic Microsurgery Associates.

<sup>5</sup> Hepatology is the branch of medicine that incorporates the study of liver, gallbladder, biliary tree, and pancreas as well as management of their disorders.

9. On May 15, 2017, New Jersey reprimanded Respondent and placed Respondent on probation based on a reciprocal action.

## **II. Complaint**

10. On or about March 1, 2017, the Board received a written complaint from an individual, who identified himself as a former employee of Respondent ("Employee 1").<sup>6</sup> Employee 1 described Respondent in the complaint as a "bully" and stated that Respondent is verbally abusive to patients and staff, and racially insensitive. Employee 1 alleged that Respondent responds to complaints from employees with "hostile retaliation and punitive actions." The complaint stated that several employees have resigned because of the workplace conditions. The complaint also stated that Respondent repeatedly uses equipment and supplies designed for single-use.<sup>7</sup> In addition, Employee 1 attached to his complaint two (online) articles from July 2012 regarding an Equal Employment Opportunity Commission ("EEOC") suit against Respondent.<sup>8</sup>

## **III. Investigation of Complaint**

11. The Board obtained copies of the following documents:

- a. A list of Respondent's employees from January 2010 through November 2017;

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<sup>6</sup> The names of employees, former employees, and patients are confidential and are not included in the Consent Order. Respondent was provided with a Confidential Identification List, listing the identity of all individuals who are referenced in the Consent Order.

<sup>7</sup> A single-use medical device, also known as a disposable device, is one which is intended for use on one patient during a single procedure and is not intended to be reprocessed (disassembled and cleaned/disinfected/sterilized) and used on another patient.

<sup>8</sup> In 2010, three former female employees of Respondent filed a complaint with EEOC regarding Respondent and his male practice administrator. EEOC sued Respondent's corporation in United States District Court after the complaints were not settled. A jury awarded each former employee \$110,000 in punitive damages, plus \$4,000 to \$10,000 to each in compensatory damages.

- b. Respondent's policies and procedures for reuse of disposable equipment, cleaning, sterilization and storage of equipment, infection control, and disinfection; and
- c. Complaint against Endoscopic Microsurgery Associates, P.A. filed by the EEOC in the United States District Court for the District of Maryland, civil case no. 1:10-cv-02693-JKB, transcripts of testimony, Amended Jury Verdict Form, Civil Docket sheet, and compliance monitoring reports.

12. Between January 2010 and November 2017, Respondent had 79 employees, with 16 employees, including Respondent and three family members, still being employed as of November 2017.

13. On November 30, 2017, Board staff conducted an unannounced site visit at Respondent's office in Towson. By hand-delivered correspondence the Board notified Respondent that it had received a complaint and had opened an investigation.

14. Between January and April 2018, Board staff interviewed several former and current employees of Respondent who had personal knowledge of Respondent's conduct involving patients and staff and about Respondent's re-use of equipment of single-use medical equipment and re-processing of equipment.

15. On March 6, 2018, Board staff interviewed Respondent under oath. Respondent testified:

- a. He denied using profanity towards staff or patients;
- b. He denied commenting on hair, body, or weight of staff, or making racial or sexual jokes;
- c. He attributed the complaints about his behavior to disgruntled employees who had been dismissed from the practice;

- d. He admitted that any instrument that is designed to break the tissue barrier is autoclaved or is disposed;
- e. He admitted that he re-uses snares,<sup>9</sup> an instrument that is designed to break the tissue barrier,<sup>10</sup> after they have been autoclaved; and
- f. He admitted that he re-uses balloon dilators<sup>11</sup> after they are disinfected just like endoscopes are disinfected, that is after they have gone through a moderate level disinfection process.

16. On April 13, 2018, Board staff conducted a second unannounced site visit at Respondent's office in Towson to investigate Respondent's use of "single-use equipment." (See paragraph 28 below.)

#### **IV. Findings of Unprofessional Conduct Based on Disruptive Behavior**

17. On June 19, 2017, Board staff interviewed Employee 1, the complainant, under oath, who testified to the following:

- a. He worked for Respondent from approximately 2004 to 2006, when he left because "I couldn't take his attitude, his demeanor." He worked for Respondent again in 2016 until 2017, when he "retired;"
- b. Respondent has a "high turnover ... because the staff can't take him;"
- c. Respondent was rude and disrespectful of staff. He called them names, if someone was overweight, he would make comments about her weight. He would also make negative comments about her intelligence. He was very condescending and disrespectful;

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<sup>9</sup> A snare is a medical instrument used in GI procedures to remove, cut or cauterize or retrieve polyps in the colon. Snares break the intestinal mucosal tissue barrier.

<sup>10</sup> The intestinal barrier protects the mucosal tissues and circulatory system from exposure to microorganisms, toxins, and antigens, that are vital for the maintenance of health and well-being.

<sup>11</sup> A balloon dilator is a catheter pneumatic device, with a balloon attached to the front of the catheter, typically used to dilate a stricture of the GI tract or a tight sphincter muscle. The manufacturer assembles the dilator and the balloon as one unit.

- d. Respondent referred to some patients as "white trash;"
- e. Respondent told another employee, Employee 4, who is the mother of Patient 1, in front of other employees, that "the problem with your daughter is that she has too much anal sex;"
- f. Respondent told jokes or stories to staff in front of sedated patients where he said "n-----" and thought it was funny;
- g. Respondent would "say anything at any time in front of anyone, staff, the patient or whatever. He was absolutely indifferent to your feelings or privacy or anything like that;"
- h. Respondent used expletives such as the "f---" and "b---h;" and
- i. Respondent called me "'grandpa' because I have a bad back and move slowly, and he made fun of my weight, my belly, and my going to the bathroom too many times."

18. On August 4, 2017, Board staff interviewed Employee 2 under oath, who testified to the following:

- a. She worked for Respondent from July 2016 to February 2017, when Respondent terminated her;
- b. Respondent made very derogatory and demeaning comments, such as "stupid idiots" or "f-----g idiots," or, "what do you f-----g mean you don't know" regarding staff and "b---h", regarding staff and patients;
- c. Respondent said to Employee 3, who was bent over, "I knew that was you from behind;"
- d. One of the technicians quit because "she wasn't going to tolerate anybody talking to her like that;"
- e. Another employee left the practice because Respondent made a joke about a "n-----r;"
- f. Respondent said that a female patient, Patient 2, was "a f-----g" pain in the ass because she kept calling the office requesting to have a

balloon removed because she was not able to eat and keep food down. When Patient 2 came to the office to have the balloon removed, Respondent said, "You know she's a b---h. She should have kept the f----g balloon in. She reached her goal weight and now she's going to take the balloon out and she's going to blow the f---k back up;"

- g. A male patient, Patient 3, woke up in the middle of a procedure, sat straight up and Respondent "smacked him on the side of his face," with an open hand, out of anger, "like he was punishing him;"
- h. Respondent was very nice and friendly with some patients and some "he just talks to them like trash;"
- i. Some employees were "immune" to his "nasty talk," one employee "put him in his place" and she did not have any problems with him; He was extremely nice to some employees, saying "I love your hair" and "You look really nice today." Respondent was like a Dr. Jekyll and Mr. Hyde."

19. On January 8, 2018, Board staff interviewed Employee 3, under oath, who testified to the following:

- a. She was employed by Respondent from April or May 2015 until November 2017, when she resigned;
- b. During her employment, "there was a lot of staff turnover;"
- c. Respondent was "offensive" to her; he was abrasive and abrupt with staff;
- d. On one occasion, when she was wearing an apron in the procedure room, Respondent said to her, "You remind me of someone ... it's the lady that wore the apron on the pancake box."<sup>12</sup> Another Employee, Employee 9 was present. Respondent thought it was funny;
- e. In December 2016, a female patient, Patient 2, who was a participant in a "balloon study" called her and requested to have the balloon

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<sup>12</sup> Employee 3 is African-American woman.

removed because she was feeling sick. She informed Respondent, who yelled in the open office "What does this b---h" want now?" Everyone, including the front office could hear Respondent;

- f. This was very disturbing to her. She decided "I've got to get the heck out of here, which I did;"
- g. On another occasion, when she was in the kitchen and putting her lunch in the refrigerator, Respondent said, "Oh, I can tell you from behind." Respondent then said, "Oh yeah, by your hair, I can tell you by your hair from behind;"
- h. Respondent has "ranted and raved calling folks the 'B' word;"
- i. A patient told her that she was nervous, uncomfortable, and uneasy because Respondent came into the procedure room angry and yelling;
- j. Respondent hired another employee to work with her. Respondent said, "She has a Ph.D. She's smarter than you so I'm going to put her in charge." Employee 3 then needed to train the other employee because the other employee did not know regulatory issues; and
- k. In September 2017, Respondent remarked, "one of the reasons he celebrates Labor Day is because of this law suit where these girls, or what he calls them, 'these Bs, these b-----s' " filed an EEOC complaint against him.

20. On April 27, 2018, Board staff interviewed Employee 4,<sup>13</sup> a registered nurse, under oath, who testified to the following:

- a. In 2010, after Respondent had performed a colonoscopy on one of her daughters, Patient 1, Respondent told her, while she was in the endoscopy center, in the presence of others, that her daughter had a lot of anal sex because her sphincter was loose;
- b. She thought the information was "too personal" and told Respondent he should not have shared the information with her;

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<sup>13</sup> Employee 4 was employed by Respondent from October 2009 to July 2016 when she resigned because of Respondent's behavior in the office.

- c. Whenever Respondent did a rectal examination, he would say that he thought the patient had had rectal sex, saying "yeah this one's had anal sex before;" and
- d. Respondent talked with all the staff about her other daughter's weight (Employee7), saying that she looked like she was going to die.

21. On April 12, 2018, Board staff interviewed Employee 5, a member of the administrative staff, under oath, who testified to the following:

- a. She was employed by Respondent from 1998 to 2017, when she "quit;"
- b. Respondent was "rude" in front of other people; including screaming and berating employees and using derogatory comments, such as "stupid" or "incompetent;"
- c. Respondent told "dirty" jokes in the office; and
- d. She received telephone calls from patients complaining about Respondent's attitude and that they were leaving the practice because he was not listening to them, he was always in a hurry, and late for appointments.

22. On April 18, 2018 Board staff interviewed Employee 6, formerly employed as a technician, under oath, who testified to the following:

- a. She was employed by Respondent for approximately four months in 2017;
- b. Respondent was "nasty; "his attitude toward me was like I wasn't human. Like I was the scum of the earth...he tried to intimidate me every day. He was yelling and screaming. His temper was just out of control. He was angry all the time;"
- c. He would "purposely let specimens go into feces and then tell me go dig for it and then walk off like he was, like angry enough to fight somebody. He was just not a nice person... he was just mean and

nasty to people and his staff;"

- d. Everybody was on "pins and needles and afraid to say anything;"
- e. She heard Respondent get angry and curse sedated patients who moved when sedated; he would forcefully hold them down and say rude things such as they were "messed up" or "train wrecks;" and
- f. Respondent said "inappropriate (sexual and racial) jokes...every single time we did a procedure...I didn't say anything... I needed my job...One day I got fed up ...and walked out the door...I've never walked off a job in my life."

23. On April 27, 2018, Board staff interviewed Employee 7, personal assistant, under oath, who testified to the following:

- a. She worked for Respondent in part of 2013, and again from 2014 to 2015;
- b. Respondent's mood was variable. "You didn't know if he was going to come to the front of the office yelling and screaming at you. He would yell in the back in front of patients. He would call us idiots, or stupid, in front of patients;"
- c. Respondent would "gossip" about an employee and pit one employee against another;
- e. On one occasion, in spring 2015, Respondent slapped and shoved a male patient, under anesthesia, while the scope was in the patient. In response to staff questioning, Respondent said "He's irritating me. He won't stop moving;"
- f. Respondent was mentally and verbally abusive to her. "He would...call me stupid, brain dead, and idiot ...no one else would hire me, that he was doing me a favor by keeping me employed there;"
- g. Respondent commented on her weight every day, and referenced her weight in front of patients;
- h. Respondent made sexually inappropriate comments about staff and

patients such as:

- i. He commented on the size of a female employee's breasts, and if the employee was in a "bad mood" he commented that the employee's husband needed to have sex with her to put her in a better mood;
  - ii. He commented in front of her and one of her family members, Patient 1, who had a procedure performed by Respondent that he can tell she has had anal sex because her sphincter was loose;
  - iii. Respondent commented about a lot of male patients, "I can tell when a guy is gay because their anus and sphincter are loose;"
  - iv. Respondent asked her frequently how often she and her boyfriend (now husband) were having sexual relations; and
  - v. When she and Respondent were going to a medical conference in Washington D.C., he suggested she get a hotel room rather than commute daily and he said, "I need a room. I'll stay with you."
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- i. Respondent regularly told employees that they could not get raises because he had to pay the former employees who filed an EEOC case against him and that the legal system is "unjust;"
  - j. On one occasion, in 2015, Respondent became angry at an out-of-state patient who was communicating with the office by electronic mail (e-mail) about being scheduled for a "stretta."<sup>14</sup> Respondent sent an email response to staff in which he "cussed at the patient" and commented about the patient being annoying. Respondent did not realize that the patient was copied on the email; and
  - k. She saved an email, dated March 18, 2015, in which Respondent berated her. Respondent had sent her an email asking her to contact a researcher about an article he had read. She found the telephone numbers and informed Respondent that she could not call the

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<sup>14</sup> Stretta is a minimally invasive endoscopic procedure for the treatment of gastroesophageal reflux disease (GERD).

researcher because she was unable to make international calls from the office telephone. She expressed concern about getting "reprimanded." Respondent responded by email, in part: "...Life is for winners not wimps...yeah ok so you may get reprimanded...oh boo hoo...get over it and grab life by the balls and stop finding excuses to not succeed...You are going to learn to grow a spine working for me so get with it..." When she responded that she will "man up," Respondent told her to "b----- up" and proceeded to write that "we should not ask people to be strong by asking them to get a set of balls... better to ask them to get a vagina...man them things take a pounding and just keep going!"

**V. Findings of Unprofessional Conduct Based on Re-use of Single-use Equipment**

24. Respondent's office policy on "Infection Control, Accessory Cleaning, Disinfection, and Sterilization", drafted in 1994, and last reviewed in September 2017, addresses procedures for cleaning and sterilization polypectomy snares and procedures for cleaning and disinfecting dilation balloons.<sup>15</sup>

25. Respondent's "Protocol for Monitoring of Disposable Equipment", drafted in 1997, and last reviewed in January 2017, addresses the reuse of disposable equipment and specifically pertains to the reuse of snares and BICAPs.<sup>16</sup>

26. On February 1, 2018, Board staff interviewed Employee 8, under oath, who testified to the following:

- a. She is a technician, she assists in the recovery room, and she purchases equipment;
- b. Respondent re-uses snares, bipolar probes, and dilation balloons.

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<sup>15</sup> When Board staff conducted a site visit, Board staff observed that Respondent uses single-use snares and single-use balloon dilators. See paragraph 28a.

<sup>16</sup> BICAP cautery is a form of bipolar electrocoagulation frequently used to arrest gastrointestinal bleeding.

The office policy is that they re-use single use items more than once if they are cleaned properly;

- c. An instrument is placed in a sink of enzymatic cleaner, it is manually brushed and sponged, the ports and channels are done and then it is hooked up to the "Noar Pump"<sup>17</sup> and it is flushed. Then it is put in the DSD machine;<sup>18</sup> and
- d. The office does environmental cultures on the instruments, but she cannot remember the last time these were done.

27. On February 1, 2018, Board staff interviewed Employee 9, under oath, who testified to the following:

- a. Respondent has a policy that certain items that are listed as single-use can be sterilized, cleaned, and reused; and
- b. Snares are autoclaved, sanitized, and reused.

28. On April 13, 2018, Board staff, including the Board's medical consultant, (the "Medical Consultant") conducted a site visit at Respondent's Towson office to follow-up regarding the Respondent's cleaning and processing of endoscopic equipment such as snares and balloons. The Medical Consultant determined that:

- a. Respondent uses the "Cook AcuSnare" polypectomy device. The manufacturer states that the disposable snares are used with an electrosurgical unit for endoscopic polypectomy. The manufacturer states that this device is supplied sterile and is intended for single - use only;

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<sup>17</sup> The "Noar Pump" was invented by Respondent. According to Respondent instead of an instrument sitting in a cleaning solution for 5 or 10 minutes, the solution is constantly pumped through the instrument.

<sup>18</sup> Respondent's office has a DSD-201 Endoscope Reprocessor, a brand of a machine intended to be used to wash, high-level disinfect, and rinse endoscopes and related accessories between uses.

- b. This snare is braided stainless steel which makes it very difficult to thoroughly clean given the microscopic recesses within the braiding; and
- c. Respondent uses single-use "Hobbs Medical Multi-Purpose Stylet Wire Balloon Dilators." The manufacturer states that the balloon dilators are "packaged sterile for single use."

29. On August 9, 2018, the Board sent the investigative file to a board-certified gastroenterologist, who is the medical director of an outpatient endoscopy unit in Maryland ("Independent Reviewer"), for an independent review.

30. On August 26, 2018, the Independent Reviewer submitted his report to the Board. According to the Independent Reviewer, Respondent engages in unprofessional conduct in the practice of medicine by reprocessing of snares, BICAPs, and balloon dilators that are labeled for single use only, in that:

- a. The equipment cannot be adequately sterilized, and/or the equipment is not durable enough to be reprocessed.
- b. With reprocessing, the wires of the polypectomy snares become kinked and frayed resulting in uneven cautery and cutting, presenting a hazard to patients;
- c. BICAPs cannot be reprocessed because mere inspection will not ensure that they will maintain their functionality;
- d. Respondent's re-use of balloon dilators is particularly egregious. Balloon dilators are routinely coated in blood and tissue after use because they break, stretch, and tear the intestinal tissue barrier, and have protected reservoirs where the blood can penetrate;
- e. Respondent has fabricated his own re-processing method for balloon dilators, which is not adequate or acceptable; and
- f. The extraordinarily high turnover of staff in Respondent's office, especially among the endoscopy technicians, related at least in part

to serious issues affecting *esprit de corps*, can contribute to the break-down in a complex series of maneuvers which require training, experience, focus and compulsiveness to adequately and properly reprocess items. The result is serious deficiencies or failures in reprocessing.

### **CONCLUSION OF LAW**

Disciplinary Panel B of the Board concludes as a matter of law that the Respondent engaged in unprofessional conduct in the practice of medicine in violation of Health Occ. § 14-404(a)(3)(ii). Disciplinary Panel B also concludes that the Respondent violated condition 8 of the Consent Order of January 11, 2017.

### **ORDER**

It is thus, by disciplinary Panel B hereby

**ORDERED** that the probation and probationary conditions of the January 11, 2016 Consent Order are terminated; and it is further

**ORDERED** that Respondent shall not re-use devices that are labeled by the manufacturer for single use only; and it is further

**ORDERED** that the Respondent's license to practice medicine is **SUSPENDED** for **45 DAYS**.<sup>19</sup> The suspension goes into effect January 26, 2019. During the suspension, the Respondent shall comply with the following terms and conditions of the suspension:

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<sup>19</sup> If the Respondent's Maryland license expires during the period of the suspension, the suspension and any conditions will be tolled.

1. The Respondent shall enroll in the Maryland Professional Rehabilitation Program (MPRP) as follows:

- a. Within 5 business days of the effective date of this Consent Order, the Respondent shall contact MPRP to schedule an initial consultation for enrollment;
- b. Within 15 business days of the effective date of this Consent Order, the Respondent shall enter into a Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP;
- c. The Respondent shall fully and timely cooperate and comply with all MPRP's referrals, rules, and requirements, including but not limited to, the terms and conditions of the Participant Rehabilitation Agreement(s) and Participant Rehabilitation Plan(s) entered with MPRP, and shall fully participate and comply with all therapy, treatment, evaluations, and screenings as directed by MPRP;
- d. The Respondent's failure to comply with any term or condition of the Participant Rehabilitation Agreement(s) or Participant Rehabilitation Plan(s) constitutes a violation of this Consent Order;
- e. The Respondent shall sign and update the written release/consent forms requested by the Board and MPRP, including release/consent forms to authorize MPRP to make verbal and written disclosures to the Board and to authorize the Board to disclose relevant information from MPRP records and files to the extent necessary to support any violation of this Order or the Medical Practice Act in a public order. A failure to, or withdrawal of consent, is a violation of this Consent Order;
- f. The Respondent shall also sign any written release/consent forms to authorize MPRP to exchange with (i.e., disclose to and receive from) outside entities (including all of the Respondent's current therapists and treatment providers) verbal and written information concerning the Respondent and to ensure that MPRP is authorized to receive the medical records of the Respondent, including, but not limited to, mental health and drug or alcohol evaluation and treatment records;

2. During the suspension period, the Respondent shall not:

- a. practice medicine in Maryland;
  - b. Take any actions after the effective date of this Order to hold himself or herself out to the public as a current provider of medical services in Maryland;
  - c. Authorize, allow or condone the use of the Respondent's name or provider number by any health care practice or any other licensee or health care provider in Maryland. This does not prohibit the use of the name of the Respondent's practice;
  - d. Function as a peer reviewer for the Board or for any hospital or other medical care facility in Maryland;
  - e. Dispense medications in Maryland; or
  - f. Perform any other act that requires an active medical license in Maryland;
3. The Respondent shall establish and implement a procedure by which the Respondent's patients may obtain their medical records without undue burden and notify all patients of that procedure;
  4. The Respondent shall not apply for early termination of suspension; and
  5. The Respondent shall notify in writing all athletic trainers with whom there is an evaluation and treatment protocol and all physician assistants with whom there is a delegation agreement that all Evaluation and Treatment Protocols for Athletic Trainers and all Delegation Agreements for Physician Assistants are terminated; and it is further

**ORDERED** that if the Respondent complies with the terms and conditions of the suspension, the suspension will administratively terminate after 45 days from the date the suspension goes into effect; and it is further

**ORDERED** that upon termination of the suspension, the Respondent is placed on Probation for a minimum period of **TWO YEARS** with the following terms and conditions:

1. Within **TWO YEARS**, the Respondent shall pay a civil fine of **\$15,000**.  
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;
2. The Respondent shall continue in MPRP and continue his Participant Rehabilitation Agreement and Participant Rehabilitation Plan and all the MPRP requirements as detailed above;
3. The Respondent shall continue to utilize an independent program (the "Program"), which was approved by the Equal Employment Opportunity Commission ("EEOC"), to provide regular training to the Respondent's employees regarding their rights and the process for making anonymous complaints;
4. The Respondent shall direct the Program, in addition to reporting any complaints it receives to the EEOC, to the State of Maryland Department of Labor;
5. The Respondent shall ensure that the Program makes quarterly reports to the Board regarding the training they have provided and the reports they have received;

6. Respondent's performance of Endoscopic Retrograde Cholangio-pancreatography ("ERCP") shall continue to be 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. If Respondent elects to cease performance of ERCP, Respondent shall notify the Board in writing that he is no longer performing ERCP, and the disciplinary panel in its discretion may change the focus of the peer review;
  - c. If the disciplinary panel, upon consideration of the 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. If the disciplinary panel, upon consideration of the peer review and the Respondent's response, if any, has a reasonable basis to believe that the Respondent is not meeting the standard of quality care in his or her practice or cannot safely and competently practice, the disciplinary panel may charge the Respondent with a violation of probation and/or under the Medical Practice Act; and
7. The Respondent shall comply with the Maryland Medical Practice Act, Md. Code Ann., Health Occ. §14-101 – 14-702, and all federal and state laws and regulations governing the practice of medicine in Maryland; and it is further

**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 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 petition for termination. The disciplinary panel may grant the petition to terminate the probation through an order of the disciplinary panel if there are no pending complaints relating to the charges; and it is further

**ORDERED** that a violation of probation or suspension 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 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 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

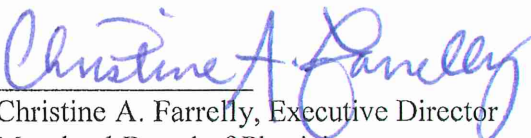
**ORDERED** that after the appropriate hearing, if the disciplinary panel determines that the Respondent has failed to comply with any term or condition imposed by this Consent Order, the disciplinary panel may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, or suspend 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 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 the Respondent is responsible for all costs incurred in fulfilling 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).

01/04/2019  
Date

  
Christine A. Farrelly, Executive Director  
Maryland Board of Physicians

**CONSENT**

I, Mark D. Noar, 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 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 their 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 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 understands the language and meaning of its terms.

***Signature on File***

04 - JAN - 2019  
Date

/ Mark D. Noar, M.D., Respondent

**NOTARY**

STATE OF Maryland

CITY/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 4<sup>th</sup> day of January, 201~~8~~<sup>9</sup> before me, a Notary Public of the State and County aforesaid, personally appeared Mark D.

Noar, M.D., License number D36351, 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.

Karen J. Miller  
Notary Public

1/4/19  
Date

My commission expires 12/2/19

