IN THE MATTER OF	*	**BEFORE THE**
WALTER E. KOZACHUK, M.D.	*	**MARYLAND STATE**
Respondent	*	**BOARD OF PHYSICIANS**
License No.: D37279	*	**Case No.: 2220-0250B**

* *

CONSENT ORDER

On June 8, 2021, Disciplinary Panel B ("Panel B") of the Maryland State Board of Physicians (the "Board") charged Walter E. Kozachuk, M.D. (the "Respondent"), License Number D37279, with violating the probationary conditions imposed under the Final Decision and Order dated April 25, 2016 (the "2016 Order") and with violating the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") §§ 14-101 *et seq.* (2014 Repl. Vol. & 2020 Supp.).

Panel B charged the Respondent with violating the following terms and conditions of the 2016 Order:

> **ORDERED** that the Respondent is placed on **PROBATION** for a minimum period of **TWO YEARS**.[ ] During the probationary period, Dr. Kozachuk shall comply with the following probationary terms and conditions:
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> . . . .
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> 3. Dr. Kozachuk shall comply with the Maryland Medical Practice Act, Md. Code Ann., Health Occ. § 14-101 – § 14-702, and all laws and regulations governing the practice of medicine in Maryland[.]

Panel B also charged the Respondent with violating the following provision of the Act:

Health Occ. § 14-404. Denials, reprimands, probations, suspensions, and revocations – Grounds.

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

. . . .

(40) Fails to keep adequate medical records as determined by appropriate peer review[.]

On August 25, 2021, Panel B was convened as a Disciplinary Committee on Case Resolution ("DCCR") in this matter. Based on negotiations occurring as a result of the DCCR, the Respondent agreed to enter into this Consent Order, consisting of the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

Panel B finds:

Background & Disciplinary History

1. At all relevant times, the Respondent was and is licensed to practice medicine in the State of Maryland under License Number D37279. His license is scheduled to expire on September 30, 2022, subject to renewal.

2. The Respondent is not board-certified in any medical specialty.

3. On April 25, 2016, Panel B issued the 2016 Order, in which Panel B found that the Respondent engaged in unprofessional conduct in the practice of medicine by prescribing opioids and other medications to patients inside restaurants and in parking lots in exchange for cash. Panel B also found that the Respondent failed to meet appropriate standards for the delivery of quality medical care based on his improper opioid prescribing practices. As a sanction, Panel B reprimanded the Respondent and imposed probation for

a minimum of two years subject to certain conditions, including a prohibition against prescribing any controlled dangerous substances and continued compliance with the Act.

4. As of the date of these charges, the Respondent remains on probation and is subject to the terms and conditions imposed in the 2016 Order.

Complaint

5. On or about December 19, 2019, the Board received a complaint from one of the Respondent's former patients ("Patient 1")[1] who described her concerns about certain referrals the Respondent made while treating Patient 1 as well as concerns about the quality of care the Respondent provided to Patient 1.

6. Patient 1 explained in her complaint that, following a motor vehicle accident, she saw the Respondent for ongoing neurological symptoms. According to Patient 1, the Respondent referred Patient 1 to another health care provider for certain testing. Patient 1 believed that this provider was financially "connected" to the Respondent. Patient 1 also explained that the Respondent told Patient 1 that she had a traumatic brain injury and was having mild seizures based on continued tremors, though another physician later evaluated Patient 1 and believed that she was not having seizures.

Board Investigation & Peer Review

7. The Board opened an investigation into the Respondent based on Patient 1's complaint.

8. On various dates between January 10 and May 5, 2020, the Board requested Patient 1's medical records from the Respondent as well as two other health care providers

[1] To maintain confidentiality, the names of all patients, witnesses, facilities, and employees will not be used in this document.

that treated Patient 1 around the time the Respondent treated her. On various dates between January 23 and May 26, 2020, the Board received the requested records for Patient 1.

9. As part of its investigation, the Board identified three other patients that the Respondent had referred for certain neurological testing ("Patients 2-4"). The Board issued a subpoena to the Respondent for the records of Patients 2-4. The Respondent subsequently provided the Board with the subpoenaed records.

10. The Board referred the four patient records and related materials to a peer review entity for review. Two peer reviewers, each board-certified in neurology, separately reviewed the records for Patients 1-4. On or about December 15, 2020, the peer reviewers submitted their reports to the Board.

11. The peer reviewers concurred that the Respondent failed to keep adequate medical records for each of the four patients reviewed.

12. On or about December 29, 2020, the Board provided the Respondent with copies of the peer reviewers' reports. The Board allowed the Respondent 13 business days to respond to those reports. The Respondent did not submit a response.

Patient-Specific Allegations

Patient 1

13. Patient 1 was involved in a motor vehicle accident in November 2014. She first saw the Respondent on or about April 8, 2015, due to ongoing neurological symptoms. The Respondent prescribed ibuprofen 800mg and cyclobenzaprine 10mg. He did not note these prescriptions in his progress notes for the April 8, 2015 office visit.

14. Patient 1 saw the Respondent again on or about May 6, 2015 for increased neurological symptoms including headaches, dysphasia, and cognitive dysfunction, among

other things. The Respondent referred Patient 1 for a cervical spine MRI. The Respondent documented that Patient 1 should "continue medications," but he did not list Patient 1's current medications or dosages. There is also no record of the Respondent prescribing Patient 1 with ibuprofen 800mg or cyclobenzaprine during this office visit.

15. Patient 1 next saw the Respondent on or about June 3, 2015. In addition to other neurological symptoms, Patient 1 reported that she now had intermittent total body tremor and intermittent involuntary muscle jerks. The Respondent referred Patient 1 for an electroencephalogram ("EEG")[2] with a specific neuropsychologist ("Individual A"). The Respondent noted that Patient 1 should "continue medications," but he again did not list Patient 1's current medications or dosages.

16. On or about June 8, 2015, Patient 1 was scheduled to undergo an EEG with Individual A. On an intake note, Individual A wrote that a quantitative EEG ("qEEG")[3] was "requested, in order to identify changes in brain patterns, with EEG to be provided to [the Respondent]."[4] Individual A's notes mention that the EEG was postponed to June 24, 2015, "due to hair extensions" preventing proper placement of the electrodes.

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[2] An EEG is used to measure electrical activity in the brain. To conduct an EEG, electrodes are attached to numerous positions on the patient's scalp. Each electrode senses electrical charges produced in the brain during normal activity, which is transferred to a graph that a physician can interpret.

[3] A qEEG is the processing of a digital EEG (as compared to a paper EEG) using certain mathematical algorithms to highlight specific wave features, or to link the digital EEG data to numerical results for later data analysis or comparisons. The American Academy of Neurology, along with many insurance providers, consider qEEG to be investigational.

[4] During the office visit on or about June 3, 2015 (see ¶ 15, above), the Respondent did not document the need for or possible uses of a qEEG. It is unclear from the Respondent's notes whether he requested the qEEG for Patient 1.

17. Patient 1 saw the Respondent on or about June 10, 2015, for a neurological discharge evaluation. The Respondent's record of this visit did not include a copy of any EEG or qEEG results or reports. Despite the absence of any results or reports as well as Individual A's records stating the EEG was delayed until June 24, 2015,[5] the Respondent noted that Patient 1's EEG was "positive for paroxysmal activity," and her qEEG showed "mild brain damage." It is unclear from the Respondent's records which EEG and qEEG results he reviewed to make those conclusions. The Respondent prescribed lamotrigine, an anticonvulsant, to Patient 1 and transferred her care to Individual A.

18. The peer reviewers in this case concurred that the Respondent failed to keep adequate medical records for Patient 1.

Patient 2

19. Patient 2 was involved in a motor vehicle accident in August 2019. She first saw the Respondent on or about October 16, 2019, for an initial neurological evaluation. Patient 2 complained of numerous neurological symptoms including headaches, lower body tremors, mild dysphasia, and light sensitivity. The Respondent referred Patient 2 for a spinal MRI and noted that, among other things, Patient 2 should "continue medications." He did not document Patient 2's current medications or dosages.

20. Patient 2 saw the Respondent again on or about November 13, 2019 for a follow-up appointment. Patient 2 continued to have headaches and lower body tremors, among other things. The Respondent referred Patient 2 for a brain MRI. The Respondent

[5] Individual A's records for Patient 1 show that Individual A performed the requested EEG and qEEG on or about June 24, 2015. Individual A's billing records confirm this date as well.

noted that Patient 2 should "continue medications," but again he did not list Patient 2's current medications or dosages.

21. Patient 2 next saw the Respondent on or about December 11, 2019 for a follow-up appointment. The Respondent documented an additional diagnosis of lupus based on Patient 2's "additional history." Following his assessment, the Respondent noted that nearly all of Patient 2's symptoms were "markedly improved." The Respondent noted that Patient 2 should "continue medications," but again he did not document Patient 2's current medications or dosages. The Respondent also noted that the plan for Patient 2 included a "possible future EEG, QEEG, and lumbar puncture[.]"

22. Patient 2 saw the Respondent on or about January 22, 2020 for a follow-up appointment. Patient 2 complained of daily headaches and light sensitivity with moderate relief from Excedrin Migraine. The Respondent again noted that nearly all of Patient 2's neurological symptoms were "markedly improved." The Respondent noted that Patient 2 should "continue medications on a p.r.n. basis," but he did not document Patient 2's current medications. It is unclear if the Respondent's note referred only to the Excedrin Migraine referenced earlier. The Respondent also noted that Patient 2 was "scheduled for EEG and [q]EEG." The Respondent did not document the need for or possible uses of either an EEG or qEEG in light of Patient 2's "markedly improved" symptoms.

23. In a follow-up visit on or about March 18, 2020, the Respondent noted that Patient 2 was taking topiramate 50mg each night before bed, which reduced her tremors and headaches, but increased her cognitive dysfunction. The Respondent interpreted the results of Patient 2's EEG and qEEG studies as "abnormal." He then prescribed Patient 2 topiramate 100mg, but also noted that Patient 2 should "continue medications on a p.r.n.

basis." The Respondent did not include a list of Patient 2's current medications or dosages, so it was unclear which medications were to be continued.

24. Patient 2 returned to the Respondent on or about April 15, 2020 for a "final neurological visit." She reported mild improvement of her symptoms and requested that her care be transferred to another physician for a second opinion. The Respondent provided a tapering plan for the topiramate and referred Patient 2 to another health care provider.

25. The peer reviewers in this case concurred that the Respondent failed to keep adequate medical records for Patient 2.

Patient 3

26. Patient 3 slipped and fell in October 2017, causing her to hit the back of her head and lose consciousness. She first saw the Respondent on or about January 15, 2018, complaining of numerous neurological problems including headaches, sensitivity to light and sound, cognitive dysfunction, neck pain, dysphasia, and absence spells, among other things. The Respondent recommended that Patient 3 undergo a lumbar puncture to "assess opening pressure[.]" The Respondent did not document whether Patient 3 was taking any medications to treat her symptoms.

27. At five additional office visits (on or about April 12, 2018, June 21, 2018, September 15, 2018, January 25, 2019, and May 6, 2019), the Respondent recommended that Patient 3 undergo a lumbar puncture, but she declined each time. The Respondent did not document any additional treatments. The Respondent also did not document whether Patient 3 was taking medications to treat her symptoms.

28. Patient 3 saw the Respondent again on or about September 26, 2019 because her neurological symptoms still had not improved. The Respondent documented that "in

lieu of a lumbar puncture, it was strongly suggested that the patient undergo an EEG to assess and quantify cortical paroxysmal activity and a [q]EEG to assess patterns of post-traumatic brain damage." The Respondent did not document how either the EEG or qEEG could serve as alternatives to a lumbar puncture or how the qEEG specifically would add to the diagnosis or treatment of Patient 3.

29. The peer reviewers in this case concurred that the Respondent failed to keep adequate medical records for Patient 3.

Patient 4

30. Patient 4 was involved in a motor vehicle accident in May 2019 resulting in loss of consciousness. He first saw the Respondent on or about June 5, 2019, for an initial evaluation. Patient 4 had numerous neurological symptoms including headaches, severe sensitivity to light and sound, vertigo, nausea, and neck pain. The Respondent ordered a brain MRI for Patient 4. The Respondent also noted that Patient 4 should "continue medications," but he did not list any of Patient 4's current medications or dosages.

31. Patient 4 returned to the Respondent on or about June 12, 2019 for a follow-up appointment. The Respondent documented that Patient 4's symptoms were present but had improved. The Respondent directed Patient 4 to undergo an EEG and [q]EEG "if his concussion symptoms persist." The Respondent did not document the need for or possible uses of either an EEG or qEEG in light of Patient 4's improved symptoms.

32. At Patient 4's final follow-up visit with the Respondent on or about July 24, 2019, the Respondent noted that the EEG and qEEG results were "abnormal." Despite this finding, the Respondent did not document any interventions or treatments for Patient 4 and discharged him.

33. The peer reviewers in this case concurred that the Respondent failed to keep adequate medical records for Patient 4.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Panel B concludes as a matter of law that the Respondent failed to keep adequate medical records as determined by appropriate peer review, in violation of Health Occ. § 14-404(a)(40), and the Respondent violated Condition #3 of the 2016 Order.

ORDER

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

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

ORDERED that the probation imposed upon the Respondent by Panel B's Final Decision and Order, dated April 25, 2016, is **TERMINATED**; and it is further

ORDERED that the Respondent is placed on **PROBATION,** under this Consent Order, for a minimum period of **TWO YEARS**.[6] During the probationary period the Respondent shall comply with the following probationary terms and conditions:

1. The Respondent is prohibited from prescribing or dispensing all Controlled Dangerous Substances (CDS) under Criminal Law Article §§ 5-401 *et seq.*;
2. The Respondent is prohibited from certifying patients for the medical use of cannabis;
3. Any delegation agreement in which the Respondent is the supervising physician shall be modified to prohibit the Respondent from supervising physician assistants in their prescribing CDS;

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

4. The Respondent agrees not to have a CDS Registration issued by the Office of Controlled Substances Administration;

5. The Respondent shall be subject to supervision during probation[7] by a disciplinary panel-approved supervisor who is board-certified in pain medicine (or similar) 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 31st 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, which shall, to the extent practicable, focus on the type of treatment at issue in the Respondent's charges;

[7] 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.

(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 30th 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;

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

(1) Reviews the records of five (5) patients each month, such patient records to be chosen by the supervisor and not the Respondent;

(2) Meets in-person with the Respondent at least once each month and discuss in-person 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;

3. Within **SIX (6) MONTHS**, the Respondent is required to take and successfully complete a course in **recordkeeping**. The following terms apply:

(a) It is the Respondent's responsibility to locate, enroll in and obtain the disciplinary panel's approval of the course before the course is begun;

(b) The Respondent must provide documentation to the disciplinary panel that the Respondent has successfully completed the course;

(c) The course may not be used to fulfill the continuing medical education credits required for license renewal;

(d) The Respondent is responsible for the cost of the course; and

4. Within **SIX (6) MONTHS**, the Respondent shall pay a civil fine of **FIVE THOUSAND DOLLARS ($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; 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 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 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 the effective date of the Consent Order is the date the Consent Order is signed by the Executive Director of the Board or her designee. The Executive Director or her designee signs the Consent Order on behalf of the disciplinary panel which has imposed the terms and conditions of this Consent Order; and it is further

ORDERED that the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

ORDERED that, if the Respondent allegedly fails to comply with any term or condition imposed by this Consent Order, the Respondent shall be given notice and an opportunity for a hearing. If the disciplinary panel determines there is a genuine dispute as to a material fact, the hearing shall be before an Administrative Law Judge of the Office of Administrative Hearings followed by an exceptions process before a disciplinary panel; and if the disciplinary panel determines there is no genuine dispute as to a material fact, the Respondent shall be given a show cause hearing before a disciplinary panel; and it is further

ORDERED that after the appropriate hearing, if the disciplinary panel determines that the Respondent has failed to comply with any term or condition imposed by this Consent Order, the disciplinary panel may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, or suspend with appropriate terms and conditions, or revoke the Respondent's license to practice medicine in Maryland. The disciplinary panel may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine on the Respondent; and it is further

ORDERED that this Consent Order is a public document. *See* Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6) (2014 & 2020 Supp.).

09/22/2021
Date

Signature on File

Christine A. Farrelly
Executive Director
Maryland Board of Physicians

CONSENT

I, Walter E. Kozachuk, 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.

9-7-2021
Date

Signature on File

Walter E. Kozachuk, M.D.

NOTARY

STATE OF MARYLAND

CITY / COUNTY OF BALTIMORE

I HEREBY CERTIFY that on this 7TH day of SEPTEMBER 2021, before me, a Notary Public of the foregoing State and City/County, personally appeared Walter E. Kozachuk, 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.

Patricia A. Jerome
Notary Public

My commission expires: 06/10/2022

PATRICIA A. JEROME
Notary Public
Baltimore County
Maryland
My Commission Expires June 10, 2022