

IN THE MATTER OF

*

BEFORE THE

HASAN H. BABATURK, M.D.

*

MARYLAND STATE

Respondent

*

BOARD OF PHYSICIANS

License Number D37592

*

Case Number 2219-0129 A

* * * * *

FINAL DECISION AND ORDER

PROCEDURAL HISTORY

On November 7, 2018, Hasan H. Babaturk, M.D., pled guilty to, and was convicted of, one count of Distribution of a Controlled Dangerous Substance (Fentanyl), in violation of Maryland Code Ann., Crim. Law § 5-602, and one count of Unlawful Prescription of a Controlled Dangerous Substance by Provider (Fentanyl), in violation of Crim. Law § 5-902(c), in the Circuit Court for Harford County (Case No. 12-K-17-001101). On January 16, 2019, Dr. Babaturk was sentenced to twenty years with all but three years suspended as to Count 7, Distribution of CDS. As to Count 18, Unlawful Prescription of CDS, Dr. Babaturk was sentenced to two years to be served consecutively, all suspended. Dr. Babaturk was also placed on five years of supervised probation with terms and conditions to follow upon his release. He was ordered to pay \$10,145 in restitution and fines. Dr. Babaturk did not appeal his convictions and the time for filing an appeal has passed.

On October 4, 2019, the Office of the Attorney General filed with Disciplinary Panel A ("Panel A") of the Maryland State Board of Physicians ("Board") a Petition to Revoke Dr. Babaturk's license to practice medicine, pursuant to § 14-404(b)(2) of the Health Occupations Article, which provides:

After completion of the appellate process if the conviction has not been reversed or the plea has not been set aside with respect to a crime involving moral

turpitude, a disciplinary panel shall order the revocation of a license on the certification by the Office of the Attorney General.

Attached to the Petition were certified copies of the indictment, case summary with docket entries, transcript of proceedings, and commitment record and a show cause order mandating that Dr. Babaturk show cause in writing, on or before November 6, 2019, if there was any reason why his license to practice medicine should not be revoked. On November 6, 2019, the Board received a fax from Dr. Babaturk stating that he would like to defend himself “and leave all options open including court.” To the extent that Dr. Babaturk’s request to defend himself may be interpreted as a request for a hearing, Panel A declines to grant Dr. Babaturk’s request for a hearing pursuant to COMAR 10.32.02.07E(3), which states that the Panel’s decision on whether to grant a hearing is discretionary based on the existence of genuine issues of material facts or law.

Having reviewed and considered the entire record in this case, Panel A issues this Final Decision and Order.

FINDINGS OF FACT

Panel A finds the following facts by a preponderance of the evidence:

1. Dr. Babaturk was originally licensed to practice medicine in the State of Maryland on October 24, 1988, having been issued License Number D37592. Dr. Babaturk’s license expired September 30, 2016.¹
2. On July 25, 2017, Dr. Babaturk was indicted in the Circuit Court for Harford County in State of Maryland v. Hasan H. Babaturk, case number 12-K-17-001101, on ten counts of Distribution of Controlled Dangerous Substances, ten counts of Unlawful Prescription of Controlled Dangerous Substances by Provider, and one count of Keeping a Common Nuisance.

¹ Pursuant to Section 14-403 of the Health Occupations Article, the license of an individual regulated by the Board “may [not] lapse by operation of law while the individual is under investigation or while charges are pending.” Md. Code. Ann., Health Occ. § 14-403(a). Dr. Babaturk’s license was summarily suspended on February 25, 2016 and charges were pending; therefore, the Board retained its jurisdiction over Dr. Babaturk’s license.

3. On November 7, 2018, Dr. Babaturk entered a plea of guilty to one count of Distribution of a Controlled Dangerous Substance (Fentanyl), in violation of Maryland Code Ann., Crim. Law § 5-602,² and one count of Unlawful Prescription of a Controlled Dangerous Substance by Provider (Fentanyl), in violation of Maryland Code Ann., Crim. Law § 5-902(c).³ The remaining counts were *nolle prosequi*. During the plea hearing, the Assistant Attorney General recited the following facts in support of the plea:

With respect to Count 7 and Count 18 of the indictment, if this matter were to go to trial, the State would call detectives from the Baltimore County Police Department who would testify that between October and November 2015, they received numerous complaints from pharmacists in the Harford and Baltimore County area complaining about Dr. Babaturk's prescribing. They would testify that between October and January – October of 2015 to January 2016 they conducted surveillance of Dr. Babaturk. The State would offer the surveillance tape footage into evidence which showed that, between that time, Dr. Babaturk drove around in his SUV to various locations to meet purported clients and to provide narcotic prescriptions for approximately \$250 in cash.

In February of 2016, Baltimore County, as well as Harford County Police Department, conducted a search and seizure warrant on Dr. Babaturk's residence. They recovered numerous documents, composition books, notepads, and other miscellaneous documents.

The State would call one of Dr. Babaturk's patients ("Patient A")⁴... [Patient A] would testify that she met Dr. Babaturk in January of 2015 at her house where she was seeking treatment for chronic back pain that she had. [Patient A] would testify that she had seen numerous physicians previously. [Patient A] offered Dr. Babaturk her prior medical records. Dr. Babaturk refused to see them. Dr. Babaturk was, in fact, flirting with her roommate during that

² Section 5-602 of the Criminal Law Article provides, in pertinent part: "Except as otherwise provided in this title, a person may not: (1) distribute or dispense a controlled dangerous substance[.]"

³ Section 5-902 of the Criminal Law Article provides, in pertinent part:

(c) An authorized provider may not prescribe, administer, manufacture, distribute, dispense, or possess a controlled dangerous substance, drug paraphernalia, or controlled paraphernalia except:

(1) in the course of regular professional duties; and

(2) in conformity with this title and the standards of the authorized provider's profession relating to controlled dangerous substances, drug paraphernalia, or controlled paraphernalia.

(e) (1) If the trier of fact specifically finds that a person has knowingly or intentionally violated this section, the person is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 2 years or a fine not exceeding \$100,000 or both.

(2) In all other cases, a person who violates this section is subject to a civil penalty not exceeding \$50,000.

⁴ For confidentiality and privacy purposes, the names of individuals and facilities involved in this case are not disclosed in this document. Dr. Babaturk is aware of the identity of Patient A, Individual B, and Facility A.

initial visit. [Patient A] would testify that in exchange for \$300 she received narcotics prescriptions from Dr. Babaturk.

[Patient A] would also confirm under oath that on January 16th, 2016, in Harford County, Dr. Babaturk issued her two prescriptions. One was for a fentanyl patch 100mg, which is what's under indictment Count 7 and 18. She also received a prescription for oxycodone 30mg, 120-count. Both of which she later filled at a local pharmacy. Both fentanyl and oxycodone are Schedule II controlled dangerous substances. [Patient A] would testify that the defendant issued the narcotic prescriptions to her without conducting any sort of medical evaluation, testing, or monitoring.

Finally, the State would call ("Individual B") who is the State's expert witness. [Individual B] is the founder and director of ("Facility A") in Maryland. He's been practicing pain medicine for several decades. He is certified, Board Certified in anesthesiology and has a subspecialty certification in pain medicine. [Individual B] would testify that he was retained by the State to review the police investigation of Dr. Babaturk, including all documents that were recovered from the search and seizure warrant.

[Individual B] would testify that the defendant ignored all aspects of practicing medicine when he prescribed CDS to [Patient A] and other patients. He would testify that Dr. Babaturk failed to properly evaluate [Patient A], including obtaining prior medical records, reviewing those records, performing physical examinations, coming up with a diagnosis and treatment plan in order to justify the initial prescribing of the controlled dangerous substance. He would also testify that after Dr. Babaturk started prescribing, he ignored all safeguards required by the standard of care, including periodic monitoring using urine drug screens or pill counts to monitor patient's use of narcotics. There should have been an opioid agreement including the exact locations of when [Patient A] would fill those – when and where [Patient A] would fill those prescriptions. There were improper informed consents. There were no evaluations of [Patient A] to determine progress.

Finally, [Individual B] would testify that, within a reasonable degree of medical certainty, Dr. Babaturk prescribed controlled dangerous substances, including fentanyl patches 100mg, to [Patient A] on January 16th, 2016 that were not for legitimate medical purposes and were outside the bounds of medical practice.

4. On November 7, 2018, the Circuit Court Judge accepted Dr. Babaturk's plea of guilty and found him guilty on Count 7, Distribution of a Controlled Dangerous Substance, and Count 18, Unlawful Prescription of a Controlled Dangerous Substance by Provider.

5. On January 16, 2019, Dr. Babaturk was sentenced by the Circuit Court in accordance with the plea agreement. Dr. Babaturk was sentenced to twenty years with all but three years suspended as to Count 7, Distribution of Narcotics. As to Count 18, Unlawful Prescription of CDS, Dr. Babaturk was sentenced to two years to be served consecutively, all suspended. Dr. Babaturk was also placed on five years of supervised probation with terms and conditions to follow upon his release. Dr. Babaturk was ordered to pay restitution and fines in the amount of \$10,145.00.
6. Dr. Babaturk did not appeal his convictions and the time for filing an appeal has passed.

CONCLUSIONS OF LAW

Pursuant to COMAR 10.32.02.07E(2), a response to a show cause order must be limited to the following issues: “(a) Lack of conviction or plea; (b) Whether the crime is one involving moral turpitude; (c) Misidentity of the respondent with the defendant in the criminal matter; and (d) Other relevant issues, if any, other than mitigation.” The Board’s regulations only permit a limited evidentiary hearing on the same issues. COMAR 10.32.02.07E(3).

Dr. Babaturk does not dispute that the crimes he pled guilty to are crimes involving moral turpitude. In response to the petition to revoke his license, Dr. Babaturk wrote a letter to the Board stating, “This note is confirmation that I would like to defend myself and leave all options open including Court.” Dr. Babaturk stated that his answer to the Petition would include abuse of power, defrauding, and attempts at extortion, but the Board never received any further communications from Dr. Babaturk. Dr. Babaturk did not request an evidentiary hearing, but to the extent that Dr. Babaturk’s request to defend himself may be interpreted as a request for a hearing, Panel A declines to grant Dr. Babaturk’s request for a hearing, pursuant to COMAR 10.32.02.07 E(3). As determined by the panel, no genuine issues of material fact or law exist in this case. *Id.*

Dr. Babaturk did not present any evidence or argument to address any of the limited issues that were permitted to be raised in the response. See COMAR 10.32.02.07E(2). Consideration of any mitigating factors is prohibited by the Board's regulations and the underlying convictions cannot be collaterally attacked before the Board. See COMAR 10.32.02.07E(2)(d); *Oltman v. Maryland State Bd. of Physicians*, 162 Md. App. 457, 487 (2005) (“[A]ppellant cannot now collaterally attack the conclusive final judgment of the criminal court in his case. . . . To the contrary, the . . . court’s final judgment is conclusive proof of [appellant’s] guilt of the crime charged.”) (internal quotation marks and citations omitted). This aligns with the intent of the statute to “direct[] summary treatment of a charge based on the conviction of a crime involving moral turpitude[.]” *Maryland Board of Physician Quality Assurance v. Felsenberg*, 351 Md. 288, 304 (1998). The only issue for Panel A to resolve, therefore, is whether distribution of CDS and prescribing CDS not in the course of regular professional duties and not in conformance with Title 5 of the Criminal Law Article and the standards of the authorized provider’s profession are crimes involving moral turpitude.

Although violations of the Maryland Controlled Substances Act “will ordinarily involve moral turpitude, each case must be decided on its own facts.” *Attorney Grievance Comm’n of Maryland v. Proctor*, 309 Md. 412, 419 (1987) (holding that possession of marijuana with intent to distribute is a crime of moral turpitude). Through his guilty plea, Dr. Babaturk admitted to knowingly and intentionally issuing prescriptions for and distributing CDS not in accordance with his regular professional duties and outside of the standards of the medical profession. Dr. Babaturk’s conduct was not just outside of the acceptable standards of medical practice; it was illegal and constituted a crime of moral turpitude. The Maryland Court of Appeals has defined moral turpitude as “importing an act of baseness, vileness or depravity in the private and social

duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.” *Attorney Grievance Comm'n of Md. v. Walman*, 280 Md. 453, 459 (1977) (internal quotation marks omitted).

Health Occ. §14-404(b)(2), gives explicit authority to a disciplinary panel to determine what types of crimes are crimes of moral turpitude for licensing and disciplinary purposes. “[M]oral turpitude” is more broadly defined with respect to Board licensure and discipline than in a witness impeachment context. *See Ricketts v. State*, 291 Md. 701, 711-12 (1981) (“[W]hat constitutes a crime of moral turpitude may involve different considerations compelling different results in different circumstances.”); *Oltman*, 162 Md. App. at 483 (“in the context of a licensing board’s review of the conduct of its licensee, the concept of moral turpitude is rather broad.”). In that context, the term moral turpitude “strikes the broader chord of public confidence in the administration of government. That is, a person who has credibility to testify [at trial] may not have the public’s confidence to practice certain professions[.]” *Stidwell v. Maryland State Bd. of Chiropractic Exam’rs*, 144 Md. App. 613, 619 (2002).

In prescribing and distributing fentanyl outside of the standards of the medical profession, Dr. Babaturk’s criminal conduct showed such disregard for social norms and the ethical standards of the medical profession that he undermined the public’s confidence in the profession. *See Stidwell*, 144 Md. App. at 619 (a criminal offense that undermines the public’s confidence in a profession may be a crime of moral turpitude if determined by the appropriate licensing board). In the Panel’s view, Dr. Babaturk acted “contrary to the accepted and customary rule of right and duty” that he owes to his fellow citizens in the State of Maryland and, as such, his convictions constituted crimes involving moral turpitude. *Walman*, 280 Md. at 459.

Health Occ. §14-404(b)(2) mandates the automatic revocation of a physician's medical license when a disciplinary panel concludes that a physician was convicted of a crime involving moral turpitude. The time for filing an appeal has passed, thus the revocation of Dr. Babaturk's license to practice medicine is required under that provision.

ORDER

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

ORDERED that the license of Hasan H. Babaturk, M.D. to practice medicine in Maryland, license number **D37592**, is **REVOKED**, as mandated by Health Occ. §14-404(b)(2); and it is further

ORDERED that the Order of Summary Suspension of Dr. Babaturk's License to Practice Medicine, imposed on February 25, 2016, and continued on March 9, 2016, is terminated as moot; and it is further

ORDERED that this final decision and order is a **PUBLIC DOCUMENT**.

01/23/2020
Date

Signature on File

Christine A. Farrelly, Executive Director
Maryland State Board of Physicians

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Md. Code Ann., Health Occ. § 14-408, Dr. Babaturk has the right to seek judicial review of this Final Decision and Order. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of his Final Decision and Order. The cover letter accompanying this final decision and order indicates the date the decision is mailed. Any petition for judicial review shall be made as provided for in the Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If Dr. Babaturk files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

**Maryland State Board of Physicians
Christine A. Farrelly, Executive Director
4201 Patterson Avenue
Baltimore, Maryland 21215**

Notice of any petition should also be sent to the Board's counsel at the following address:

**Stacey M. Darin
Assistant Attorney General
Maryland Department of Health
300 West Preston Street, Suite 302
Baltimore, Maryland 21201**