

IN THE MATTER OF	*	BEFORE THE
MATTHEW WACHSMAN, M.D.	*	MARYLAND STATE BOARD
Respondent	*	BOARD OF PHYSICIANS
License Number: D40922	*	Board Case Number: 7716-0023B

* * * * *

FINAL DECISION AND ORDER

On November 12, 2015, Disciplinary Panel B of the Maryland State Board of Physicians (the "Board") and Matthew Wachsmann (the "Respondent") entered into a Consent Order to resolve charges Disciplinary Panel B had issued against the Respondent under the Maryland Medical Practice Act. *See* Md. Code Ann., Health Occ. §§ 14-101—14-702. Under the Consent Order, Panel B concluded that the Respondent was guilty of unprofessional conduct in the practice of medicine, *see* Health Occ. §14-404(a)(3)(ii); failed to meet the appropriate standards for the delivery of quality medical care as determined by appropriate peer review,¹ *see* Health Occ. § 14-404(a)(22); and failed to keep adequate medical records, *see* Health Occ. § 14-404(a)(40). As a sanction, the Respondent was reprimanded, placed on probation for a minimum of two years, and made subject to peer review. Also, under the Consent Order, an unsatisfactory peer review would be deemed a violation of probation.

On October 24, 2017, pursuant to the Consent Order, the Board referred the Respondent's practice for the peer review. The peer review was conducted by two physicians board-certified in pain medicine. Independently of each other, the peer reviewers reviewed the Respondent's medical records for ten of his patients. Both peer reviewers found, with respect to all ten

¹ This ground, Health Occ. § 14-404(a)(22), is commonly referred to as a violation of the "standard of care" and is referred to in this manner in this decision.

patients, that the Respondent violated the standard of care and failed to keep adequate medical records.

Based on the peer review findings, Disciplinary Panel B, on May 25, 2018, issued new charges against the Respondent, alleging that the Respondent violated the standard of care, *see* Health Occ. § 14-404(a)(22); failed to keep adequate medical records, *see* Health Occ. § 14-404(a)(40); and, because of the unsatisfactory peer review, violated probation, *see* Consent Order, November 12, 2015, probationary condition 11.

On November 7, 2018, an evidentiary hearing on the May 25, 2018, charges was held at the Office of Administrative Hearings, and, on January 16, 2019, the Administrative Law Judge ("ALJ") issued a proposed decision, concluding that the May 25, 2018, charges against the Respondent should be upheld. As a sanction, the ALJ recommended that the Respondent be reprimanded and placed on probation for one year. The ALJ also recommended that the Respondent be permanently prohibited from:

- prescribing and dispensing opioids; including Methadone, Suboxone, and Subutex in all settings, except in a Board-approved addiction treatment facility where he could prescribe Methadone and Suboxone;
- supervising physician assistants, except in a Board-approved addiction treatment facility;
- delegating the prescribing of opioids to a physician assistant;
- obtaining a dispensing permit; and
- certifying patients for medical cannabis treatment.

Neither the State nor the Respondent filed exceptions to the ALJ's proposed decision. The State and the Respondent, however, jointly submitted a letter, dated February 4, 2019, seeking to clarify language in the ALJ's proposed decision to make clear that the Respondent

violated probation as a result of the unsatisfactory peer review. Disciplinary Panel A ("Panel A") considered the case for its final disposition.

FINDINGS OF FACT

Unless otherwise stated in this decision, Panel A adopts the ALJ's Proposed Findings of Fact (Stipulated Findings of Fact, numbered 1-14, ALJ's Proposed Decision at pages 3-7; and factual findings by ALJ, numbered 1-6, ALJ's Proposed Decision at pages 7-9) and the ALJ's Discussion (ALJ's Proposed Decision at pages 9-11), which are incorporated by reference into the body of this document as if set forth in full. The factual findings were proven by the preponderance of evidence. The ALJ's Proposed Decision is attached as **Exhibit 1**.

Panel A does amend the language of the first full paragraph on page 10 of the ALJ's Proposed Decision to state:

Based on the peer review of those ten patient files, Panel B, on May 25, 2018, charged the Respondent with violating a probationary condition of the November 12, 2015 Consent Order. The State now seeks to have the Respondent sanctioned for violating the probation ordered in the Consent Order and to have the Respondent's probation ordered in the Consent Order terminated.^[2]

CONCLUSIONS OF LAW

Concerning the charges issued on May 25, 2018, Panel A concludes that the Respondent failed to meet the appropriate standards as determined by appropriate peer review for the delivery of quality medical care in this State, in violation of Health Occ. § 14-404(a)(22); failed to keep adequate medical records as determined by appropriate peer review, in violation of

² The paragraph in the ALJ's proposed decision that Panel A amends stated, "Based on the peer reviews of those ten patient files, the Board violated the Respondent's probation. The Board now seeks to have the Respondent's probation terminated and that case closed." (ALJ's Proposed Decision at page 10.)

Health Occ. § 14-404(a)(40); and had an unsatisfactory peer review, which constitutes a violation a probation, under probationary condition 11 of the November 12, 2015 Consent Order.

Discussion of Sanction

Before the ALJ, the State and the Respondent submitted Stipulated Proposed Sanctions, which the ALJ adopted. The ALJ recommended a reprimand; one year of probation; a permanent prohibition on the Respondent prescribing opioids, except for Methadone, Suboxone, and Subutex, which could only be prescribed in a Board-approved addiction treatment facility for the treatment of addiction; a permanent prohibition on the Respondent supervising physician assistants, except in a Board-approved addiction treatment facility; a permanent prohibition on the Respondent delegating to a physician assistant the prescribing of opioids; a permanent prohibition on the Respondent obtaining a dispensing permit; and a permanent prohibition on the Respondent certifying patients for medical cannabis treatment.

There, however, appears to be some ambiguity in the ALJ's proposal. For example, the proposed sanction prohibits the Respondent from having a dispensing permit, but it expressly allows the Respondent, in an addiction treatment facility, to dispense Methadone and Suboxone. Additionally, the ALJ's proposed sanction allows the Respondent to delegate medical acts to physician assistants at an addiction treatment facility, but the Respondent is prohibited from delegating to a physician assistant the prescribing of opioids. Whether the intent was to prohibit the Respondent from delegating the prescribing of Methadone and Suboxone to a physician assistant at an addiction treatment facility is unclear to Panel A.

It is also unclear to Panel A what sanctioning law or rule authorizes, in this case, conditions that are permanent. Like the ALJ, Panel A has serious concerns about the Respondent's opioid prescribing for pain. Panel A, however, has made the prohibitions

conditions of the new probation.³ Therefore, instead of making the prohibitions permanent, the prohibitions will be in effect for the length of probation. Due to the profound prescribing deficiencies at issue in this case, Panel A has determined that a five-year probation is warranted and necessary to protect patients.

ORDER

Based upon the Findings of Fact, Conclusions of Law, and discussion in this decision, and pursuant to Health Occ. § 14-404(a)(22) and (40) and the November 12, 2015 Consent Order,⁴ it is, by an affirmative vote of a majority of the quorum of Board Disciplinary Panel A, hereby

ORDERED that the probation imposed in the November 12, 2015 Consent Order is terminated; and it is further

ORDERED that the Respondent Matthew Wachsman, M.D. is **REPRIMANDED**; and it is further

ORDERED that the Respondent is placed on **PROBATION** for a minimum of **FIVE YEARS**.⁵ During probation, the Respondent shall comply with the following terms and conditions of probation:

1. The Respondent is prohibited from prescribing opioids, except the Respondent may prescribe Methadone, Suboxone, and Subutex. The Respondent, however, may only prescribe Methadone, Suboxone, and Subutex in a disciplinary panel-approved addiction treatment facility. And, in a disciplinary panel-approved addiction treatment facility, the

³ The probation imposed under the November 12, 2015 Consent Order is terminated under this order, and a new probation, of five years, is imposed. The probationary conditions of the November 12, 2015 Consent Order are, therefore, also terminated.

⁴ See page 25 of the Consent Order.

⁵ If the Respondent's license expires during the probationary period, the probation and any probationary conditions will be tolled.

Respondent may only prescribe Methadone, Subuxone, and Subutex for the treatment of addiction;

2. Except in a disciplinary panel-approved addiction treatment facility, the Respondent is prohibited from acting as a primary supervising physician or as an alternate supervising physician to any physician assistant in any delegation agreement under the Maryland Physician Assistants Act, Health Occ. §§ 15-101—15-502;

3. In all settings, the Respondent is prohibited from delegating the prescribing of opioids to any physician assistant;

4. The Respondent is prohibited from having a dispensing permit;

5. In all settings, the Respondent is prohibited from certifying patients for the medical use of cannabis;

6. 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;

7. Panel A shall issue administrative subpoenas to the Maryland Prescription Drug Monitoring Program on a quarterly basis for the Respondent's prescriptions of Controlled Dangerous Substances ("CDS"). The administrative subpoenas will request the Respondent's CDS prescriptions from the beginning of each quarter;

8. The Respondent shall not apply for early termination of probation; and

9. A violation of probation constitutes a violation of this order; and it is further

ORDERED that, after five years, if the Respondent has complied with all terms and conditions of probation, the Respondent may submit to the Board a written petition for the termination of probation. After consideration of the petition, the probation may be terminated

through an order of a disciplinary panel. The Respondent may be required to appear before a disciplinary panel to discuss his petition for termination. A disciplinary panel may grant the petition to terminate the probation, through an order of the disciplinary panel, if the Respondent has complied with all of the probationary terms and conditions and there are no pending complaints related to the charges; and it is further

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

ORDERED that, unless otherwise stated in the order, any time prescribed in this order goes into effect upon the signature of the Board's executive director, who signs on behalf of Panel A; and it is further

ORDERED that this final decision and order is a public document. *See* Health Occ. §§1-607, 14-411.1(b)(2) and Md. Code Ann., Gen. Prov. § 4-333(b)(6).

04/11/2019
Date

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

NOTICE OF OPPORTUNITY TO APPEAL

Pursuant to § 14-408(a) of the Health Occupations Article, Dr. Wachsman has the right to take judicial review of this Final Decision and Order. Any petition for judicial review must be filed within 30 days from the date this Final Decision and Order was sent to the Respondent. The date on the cover letter accompanying this Final Decision and Order indicates the date this Final Decision and Order was mailed. The petition for judicial review must be made as directed in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222, and Maryland Rules 7-201 *et seq.*

If Dr. Wachsman petitions for judicial review, the Board is a party and should be served with the court's process. In addition, Dr. Wachsman should send a copy of his petition for judicial review to the Board's counsel, David Wagner, Assistant Attorney General, Office of the Attorney General, 300 W. Preston Street, Suite 302, Baltimore, Maryland 21201. The administrative prosecutor is not involved in the circuit court process and does not need to be served or copied on pleadings filed in circuit court.

Exhibit 1

MARYLAND BOARD OF
PHYSICIANS

v.

MATTHEW WACHSMAN, M.D.,
RESPONDENT
LICENSE No.: D40922

* BEFORE JOY L. PHILLIPS,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: MDH-MBP2-71-18-25688
*

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
PROPOSED DISPOSITION

STATEMENT OF THE CASE

On May 25, 2018, a disciplinary panel (Panel B) of the Maryland Board of Physicians (Board) issued charges against Matthew Wachsmann (Respondent) alleging violations of the State law governing the practice of medicine. Md. Code Ann., Health Occ. §§ 14-101 through 14-508, and 14-601 through 14-607 (2014 & Supp. 2018). Specifically, the Respondent is charged with violating section 14-404 of the Maryland Medical Practice Act (Act). Health Occ. § 14-404(a)(22) (failure to meet standards of care) and (40) (failure to keep adequate medical records as determined by appropriate peer review) (Supp. 2018); Code of Maryland Regulations (COMAR) 10.32.02.03E(3)(d). In addition, Panel B voted to charge the Respondent with violating a November 12, 2015 Consent Order, which required the Respondent's practice to be peer reviewed.

Panel B forwarded the charges to the Office of the Attorney General for prosecution, and another disciplinary panel delegated the matter to the Office of Administrative Hearings (OAH)

for issuance of Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Disposition. COMAR 10.32.02.03E(5); COMAR 10.32.02.04B(1).

I held a hearing on November 7, 2018, at the OAH, Hunt Valley, Maryland. Health Occ. § 14-405(a) (Supp. 2018); COMAR 10.32.02.04. Jay D. Miller, Esquire, represented the Respondent, who was present. Janet Klein Brown, Assistant Attorney General and Administrative Prosecutor, represented the State of Maryland (State).

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the Rules for Hearings before the Board of Physicians, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); COMAR 10.32.02; COMAR 28.02.01.

ISSUES

1. Did the Respondent violate the cited provisions of the applicable law? If so,
2. What sanctions are appropriate?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits into evidence on behalf of the State:

- Bd. Ex. 1 - Charges Under the Maryland Medical Practice Act and Violation of Probation, Case No. 7716-0023B, May 25, 2018
- Bd. Ex. 2 - Consent Order, Case Nos. 2014-0535 B and 2015-0499 B, November 12, 2015
- Bd. Ex. 3 - Peer review report from Dr. [REDACTED] January 22, 2018
- Bd. Ex. 4 - Curriculum Vitae of Dr. [REDACTED]
- Bd. Ex. 5 - Peer review report from Dr. [REDACTED] January 22, 2018
- Bd. Ex. 6 - Curriculum Vitae of Dr. [REDACTED]
- Bd. Ex. 7 - Supervisory report from Dr. [REDACTED], July 3, 2017
- Bd. Ex. 8 - Supervisory report from Dr. [REDACTED] March 30, 2018

I admitted the following exhibits into evidence on behalf of the Respondent:

- Resp. Ex. 1 - Controlled Substance Registration Certificate for [REDACTED] Health, LLC, expiration date February 28, 2019
- Resp. Ex. 2 - About Methadone (Revised Second Edition); pamphlet by Drug Policy Alliance
- Resp. Ex. 3 - Opioid Treatment Program Plan; [REDACTED] Health, LLC

- Resp. Ex. 4 - Medical Director Agreement, signed by Respondent December 5, 2017
- Resp. Ex. 5 - Accreditation letter from Commission on Accreditation of Rehabilitation Facilities International, expiration date November 30, 2018, extended to August 31, 2019
- Resp. Ex. 6 - [REDACTED] Health Site Demographics for [REDACTED] facility, September 5, 2018
- Resp. Ex. 7 - Opioid Treatment Program Certification for [REDACTED] Health, LLC, expiration date August 31, 2019
- Resp. Ex. 8 - [REDACTED] Health, LLC Diversion Control Plan 2017
- Resp. Ex. 9 - Clinical Guidelines for the Use of Buprenorphine in the Treatment of Opioid Addiction; issued by the United States Department of Health and Human Services
- Resp. Ex. 10 - Federal Guidelines for Opioid Treatment Programs, January 2015
- Resp. Ex. 11 - State of Maryland License for [REDACTED] Health, LLC, expiration date February 28, 2019
- Resp. Ex. 12 - Maryland Department of Health Compliance Certification for 2017 and 2018
- Resp. Ex. 13 - Drug Enforcement Administration Registration Certificate, expiration date May 31, 2021
- Resp. Ex. 14 - Department of Health Dispensing License for [REDACTED] Health, LLC, [REDACTED] location, 2019
- Resp. Ex. 15 - Department of Health Dispensing License for [REDACTED] Health, LLC, [REDACTED] location, 2019

Testimony

The parties jointly submitted Stipulations of Fact and Proposed Sanctions for my consideration.

The State presented no witnesses.

The Respondent testified and presented testimony from [REDACTED] Chief Operating Officer of [REDACTED] Health, LLC.

PROPOSED FINDINGS OF FACT

Having considered all of the evidence presented, I adopt the following Stipulated Findings of Fact offered by the parties:

I. Licensing and Medical Background

1. At all times relevant hereto, the Respondent was and is licensed to practice medicine in the State of Maryland. The Respondent was originally licensed to practice medicine in Maryland in October 1990. The Respondent last renewed his license in or about September 2017, which will expire on September 30, 2019.

2. The Respondent maintains an office for the solo practice of medicine in Havre de Grace, Maryland, known as the "Office of the Doctors Wachsman." The practice was originated by the Respondent's father and for a period in the 1990s, the Respondent was in practice with his father until his father retired. Thereafter, the Respondent continued the practice as a solo practitioner.

3. The Respondent was originally board-certified by the American Board of Internal medicine in 1992, which expired in 2002. The Respondent was re-certified on December 15, 2010, which will expire on December 31, 2020.

II. Background of Investigation

4. On or about November 12, 2015, the Respondent entered into a Consent Order with the Board as a resolution of disciplinary charges for failing to meet standards of quality medical care and inadequate documentation regarding ten out of ten of the Respondent's patients reviewed. The Respondent's care had been peer reviewed by two independent physicians who were board certified in internal medicine.

5. Under the terms of the Consent Order, the Respondent agreed to comply with certain terms and conditions. One of the conditions was that the Respondent was subject to a subsequent peer review by an appropriate entity after completing a course in medical recordkeeping. The Respondent completed the required medical recordkeeping course on March 19, 2016.

6. Another condition is that the Respondent's practice be supervised by a supervisor who is board certified in internal medicine. The supervisor's latest report, dated March 30, 2018, states, "[The Respondent] continues to have adequate documentation in his EMR.¹ He has made great progress since my first review."

¹ Electronic medical record

III. Board Investigation

7. On September 14, 2017, Board staff sent correspondence to the Respondent, notifying him of the initiation of the peer review. The Board issued a subpoena to the Respondent for a complete copy of the medical records for ten patients who were selected by Board staff from the Maryland Prescription Drug Monitoring Program printouts. The Board also requested that the Respondent provide a summary of care for each patient listed in the subpoena.

8. On September 28, 2017, the Respondent submitted to the Board the ten subpoenaed medical records and the summaries of care.

9. On October 5, 18, and 20, 2017, the Respondent sent additional portions of the requested medical records to the Board.

10. On October 24, 2017, the Board referred the case to an independent peer review agency, requesting peer review by two physicians who are board-certified in pain medicine.

11. On January 22, 2018, the Board received the peer review reports. The reviewers concurred regarding ten of the ten patients reviewed that the Respondent failed to meet appropriate standards for the delivery of quality medical care and failed to keep adequate medical records after March 19, 2016.²

12. On January 23, 2018, the Board sent copies of the peer review reports to the Respondent with the names of the reviewers redacted requesting the Respondent provide a Supplemental Response.

13. On February 9, 2018, the Board received the Respondent's Supplemental Response, which was subsequently reviewed by the two peer reviewers prior to the issuance of Charges.

² March 19, 2016 was the date of the beginning of the review period.

IV. Summary of Allegations of Failing to Meet Standards of Quality Medical Care and Inadequate Documentation

14. In ten of the ten cases reviewed, the peer reviewers concurred that the Respondent failed to meet standards for pain management and for prescribing opioids for non-cancer related chronic pain and failed to keep adequate medical records after March 19, 2016, in that the Respondent:

- a. Routinely treated the ten patients who had complaints of chronic musculoskeletal pain with analgesics such as Lortab (hydrocodone), Percocet (oxycodone), MS Contin (morphine) and Oxycodone and/or muscle relaxants such as Soma, with regular refills;
- b. Failed to perform a comprehensive clinical evaluation and pain assessment of any objective findings that correlate with subjective complaints and then to develop a treatment plan to address the level of pain;
- c. Failed to perform or document ongoing assessments of musculoskeletal conditions, level of pain, and responses to treatment with opiate medication;
- d. Failed to discontinue opioid therapy when there is not clinically meaningful improvement in pain and function that outweigh the risks to patient safety;
- e. Failed to perform or adequately document reassessment of risks and benefits when considering increasing patients' dosage of opioids greater than 50 MME³ a day;
- f. Failed to obtain written medication agreements or written informed consent to demonstrate that the Respondent has discussed the risks and side effects of opioid therapy;
- g. Failed to monitor or document the Respondent's monitoring of opioids with urine drug screening prior to initiation of opioid medications and subsequent routine and random urine toxicology screens to determine whether patients are taking prescribed medication and/or taking illicit substances;
- h. Failed to provide or recommend or consistently document that he has provided or recommended alternative treatments for pain such as non-opioid medications, interventional treatments, physical therapy, mental health and neurocognitive referrals;
- i. Failed to maintain clear documentation of the actual medications, including opioids, prescribed during each office visit, in that there are inconsistencies in

³ Morphine milligram equivalents

prescribing of medications, including opioids, throughout notes of office visits; and

- j. Failed to document sufficient data to allow another clinician to understand the rationale for treatment with opioids and to have the ability to follow through with the plan.

In addition, having considered the evidence and testimony presented, I find the following facts by a preponderance of the evidence:

1. In addition to internal medicine, the Respondent is board certified in addictions medicine and clinical pharmacology. He is not board certified in pain management.
2. In addition to a private practice, since January 1, 2018, the Respondent has been the Medical Director at [REDACTED] Health, LLC, an addictions treatment program that uses Methadone as its primary treatment modality.
3. [REDACTED] Health, LLC, operates in two locations, [REDACTED] and [REDACTED] Maryland. Currently, patients seen at the [REDACTED] location receive Methadone while patients seen at the [REDACTED] location are detoxing from opioids.
4. The Respondent does not treat patients for pain at [REDACTED] Health, LLC.
5. The Respondent still treats thirty to forty patients with narcotics for pain management at his private practice.
6. As part of the peer review process required by the November 12, 2015 Consent Order, two peer reviewers reviewed charts from ten of the Respondent's patients in his private practice. The names were drawn only from those of his patients who are prescribed narcotics. In addition to the summarized findings set forth above, the peer reviewers found the following:
 - a. Patient [REDACTED] who was previously treated by the Respondent's father, was seen by the Respondent for pain associated with a right upper extremity biceps tendon rupture. The Respondent prescribed Ambien, Lortab, Soma, Remeron, and Ativan. Prescribing inconsistencies are prevalent throughout most of the Respondent's office notes, with, for instance, a note indicating medication was not prescribed during a particular visit, but it was, in fact, prescribed.

- b. Patient [REDACTED] who was previously treated by the Respondent's father, was seen by the Respondent for back pain. The Respondent prescribed Lortab and Soma.
- c. Patient [REDACTED] who was previously treated by the Respondent's father, was seen by the Respondent for back, neck and, knee pain, and anxiety. The Respondent prescribed Valium, Soma, and Lortab. Prescribing inconsistencies are prevalent throughout most of the Respondent's office notes, with, for instance, a note indicating medication was not prescribed during a particular visit, but it was, in fact, prescribed.
- d. Patient [REDACTED] was seen by the Respondent for knee pain and back pain. Office notes showed she was prescribed Lortab and Soma. Prescribing inconsistencies are prevalent throughout most of the Respondent's office notes, with, for instance, a note indicating medication was not prescribed during a particular visit, but it was, in fact, prescribed.
- e. Patient [REDACTED] was seen for saddle like distribution of pain elicited by bending or straightening a leg. The Respondent prescribed Lortab and Soma. Prescribing inconsistencies are prevalent throughout most of the Respondent's office notes, with, for instance, a note indicating medication was not prescribed during a particular visit, but it was, in fact, prescribed.
- f. Patient [REDACTED] was seen at the Respondent's practice for decades for buttock decubitus (bed sores) and lumbar disk pain. The Respondent prescribed Soma, Percocet, Paxil, and Valium. Prescribing inconsistencies are prevalent throughout most of the Respondent's office notes, with, for instance, a note indicating medication was not prescribed during a particular visit, but it was, in fact, prescribed.
- g. Patient [REDACTED] was seen for pain management for lumbar disk disease. The Respondent prescribed Percocet, Soma, Robaxin, and gabapentin. Prescribing inconsistencies are prevalent throughout most of the Respondent's office notes, with, for instance, a note indicating medication was not prescribed during a particular visit, but it was, in fact, prescribed.
- h. Patient [REDACTED] was seen by the Respondent for large and small joint problems and lower back pain. The Respondent prescribed Percocet. The handwritten office notes are poorly legible, and both the handwritten and typed notes provided limited clinical information.
- i. Patient [REDACTED] was treated for pain management. The Respondent prescribed Lortab, MS Contin, Soma, gabapentin, and Remeron. Prescribing inconsistencies are prevalent throughout most of the Respondent's office notes, with, for instance, a note indicating medication was not prescribed during a particular visit, but it was, in fact, prescribed.
- j. Patient [REDACTED] was treated for cervical spine disease and was prescribed oxycodone. The records provided limited clinical information.
- k. For all of these ten patients, the Respondent failed to document: a comprehensive clinical history; a directed physical examination and assessment of any objective

findings that correlated with subjective complaints; a baseline drug screening evaluation; an individualized treatment plan; consideration of other treatment options; initial and periodic assessments during opioid therapy; informed consent regarding the risks and benefits of chronic opioid therapy; assessment of whether there is clinically meaningful improvement in pain and function that outweighs risks to patient safety; and medication compliance.

DISCUSSION

The grounds for reprimand or probation of a licensee, or suspension or revocation of a license under the Act include the following:

(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:

(22) Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State;

....

(40) Fails to keep adequate medical records as determined by appropriate peer review;

....

The State, which is prosecuting the charges for the Board, as the moving party, has the burden of proof, by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (2014); Md. Code Ann., Health-Occ. § 14-405 (Supp. 2018); *Comm'r of Labor & Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996) (citing *Bernstein v. Real Estate Comm'n*, 221 Md. 221, 231 (1959)). For the reasons set forth below, I conclude that the State has met that burden on each of the Board's charges.

The Respondent has a long history of failing to properly document patient files in the medical practice he shared with and inherited from his father. He came to the attention of the Board previously and was on probation pursuant to a Consent Order requiring him to comply with certain educational and supervisory requirements, including periodic peer reviews of his

medical records. Although his supervising physician found that he made great progress in his record keeping and met applicable standards, two independent peer reviewers who are pain management specialists reviewed the records of ten patients who were being treated for pain in the Respondent's private practice and found the documentation grossly inadequate. In its argument, the State noted that even though the Respondent is not board certified as a pain management physician, he is bound to the same standards when he is treating a patient for pain management. Under those standards, as set forth above and as stipulated to by the Respondent, he failed to meet the standard of care and failed to properly document his treatment.

Based on the peer reviews of those ten patient files, the Board violated the Respondent's probation. The Board now seeks to have the Respondent's probation terminated and that case closed.

While this investigation was ongoing, the Respondent took a new position as Medical Director of an addictions treatment program, [REDACTED] Health, LLC. In that capacity, the Respondent primarily advises the program's staff on drug interactions. Although he supervises a Physician Assistant there, as noted in the Proposed Sanctions, he would be prohibited from hiring a Physician Assistant in his private practice. During the hearing, the Respondent specifically agreed to that prohibition.

The State is seeking to prohibit the Respondent from prescribing any narcotics as part of pain management. The Respondent has agreed to this Proposed Sanction. He emphasized in his testimony that he does not support the use of medical marijuana. He said the private patients he treats with Suboxone, which he considers to be a narcotic, have already been informed they will have to find a new doctor to prescribe Suboxone to them and manage their pain.

I was impressed with the Respondent's dedication to his patients and to the cause of helping patients remain safe while going through addictions treatment. Nevertheless, the peer

reviewers' reports are clear that the Respondent's clinical notes were woefully inadequate, to the point that it presented a danger for them should another clinician step in to treat them in the Respondent's absence. As stipulated by the Respondent, his record keeping violates the standards of care.

[REDACTED], the Chief Operating Officer at [REDACTED] Health, LLC, testified about the treatment program and stressed that the program is highly accredited through the Commission on Accreditation of Rehabilitation Facilities International, having renewed its accreditation just one week before the hearing. He praised the Respondent's knowledge and helpfulness to the program's staff, particularly as they treat high risk patients who take multiple medications. He said the Methadone they use at the program is kept in an inspected, licensed safe inside a safe room, providing double security to access. He testified the program uses only Methadone in treating patients in care and does not manage pain. It addresses opioid addiction only.

For violations of sections 14-404(a)(22) and (40) of the Health Occupations Article, the sanctions range from a reprimand, probation, suspension, or revocation. The parties submitted Stipulated Proposed Sanctions, which I have adopted and are set forth below. Among other conditions, the parties agreed on a reprimand, a one-year probationary term, and no fine.⁴ Given the Respondent's agreement to stop prescribing all narcotics for pain management, his agreement to stop treating patients currently prescribed Suboxone, his agreement to not hire or supervise any Physician Assistant in his private practice, and the limited role he plays as Medical Director at [REDACTED] Health, LLC, together with the lack of evidence of actual harm done to his patients, I agree that the proposed sanctions are appropriate. COMAR 10.32.02.09A, B.

⁴ Prior to the hearing, the State was seeking a two-year probationary term and the Respondent sought no probation. During a recess in the hearing, the parties agreed to a proposed probationary term of one year.

PROPOSED CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent violated the alleged provisions of the law. Md. Code Ann., Health Occ. § 14-404(a)(22) and (40) (Supp. 2018). I further conclude the Respondent's misconduct subjects him to a sanction from a minimum of a reprimand to a maximum of a revocation of his license to practice medicine, and a fine from a minimum of \$2,500.00 to a maximum of \$50,000.00. *Id.*; COMAR 10.32.02.09A, B; COMAR 10.32.02.10B(22) and (40).

PROPOSED DISPOSITION

I **PROPOSE** that charges filed by the Maryland Board of Physicians against the Respondent on May 25, 2018 be **UPHELD**; and

That the probation and probationary terms and conditions imposed by the November 12, 2015 Consent Order be **TERMINATED**; and

I **PROPOSE** that the Board sanction the Respondent as follows:

ORDER that the Respondent be **REPRIMANDED**; and

ORDER that the Respondent be permanently prohibited from prescribing and dispensing opioids, including Methadone, Suboxone, and Subutex in all settings, except in a Board-approved addiction treatment facility for purposes of addiction treatment; and

ORDER that, in a Board-approved addiction treatment facility, the Respondent be permitted to prescribe and dispense Methadone and Suboxone only for purposes of addiction treatment; and

ORDER that the Respondent be permanently prohibited from acting as a primary supervising physician or alternate supervising physician to a Physician Assistant in any delegation agreement under the Physician Assistants' Act, except in a Board-approved addiction treatment facility; and

ORDER that the Respondent be permanently prohibited from delegating to a Physician Assistant the prescription of opioids; and

ORDER that the Respondent be permanently prohibited from obtaining a dispensing permit; and

ORDER that the Respondent be permanently prohibited from issuing written certifications to patients for medical cannabis treatment; and

ORDER that the Respondent be placed on PROBATION⁵ for a period of ONE YEAR, to begin upon the effective date of this Consent Order; and

ORDER that Panel B shall issue administrative subpoenas to the Maryland Prescription Drug Monitoring Program on a quarterly basis for the Respondent's Controlled Dangerous Substances (CDS) prescriptions. The administrative subpoenas shall request a review of the Respondent's CDS prescriptions from the beginning of each quarter; and

ORDER that if the Respondent allegedly fails to comply with any term or condition of probation or this 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 OAH. If there is no genuine dispute as to a material fact, the Respondent shall be given a show cause hearing before the Board or a disciplinary panel; and

ORDER that, after the appropriate hearing, if the Board or a disciplinary panel determines that the Respondent has failed to comply with any term or condition of probation or this Order, the Board or a 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 Board or a disciplinary panel may,

⁵ If the Respondent's license expires while the Respondent is on probation, the probationary period and any probationary conditions will be tolled.

in addition to one or more of the sanctions set forth above, impose a civil monetary fine upon the Respondent; and

ORDER that the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this Order; and

ORDER that the Respondent shall comply with the Maryland Medical Practice Act, Md. Code Ann., Health Occ. §§ 14-101 through 702, and all federal and state laws and regulations governing the practice of medicine in Maryland; and

ORDER that unless stated otherwise in this Order, any time prescribed in this Order begins when this Order goes into effect. This Order goes into effect upon the signature of the Board's Executive Director, who signs on behalf of Panel B; and

ORDER that, after **ONE YEAR**, the Respondent may submit a written petition to the Board or Panel B requesting termination of probation. After consideration of the petition, the probation may be terminated through an order of the Board or Panel B. The Respondent may be required to appear before Panel B to discuss his petition for termination of probation. The Board or Panel B will grant the petition to terminate the probation if the Respondent has complied with all of the probationary terms and conditions and there are no pending complaints related to the charges; and

ORDER that the Respondent shall not apply for early termination of probation; and

ORDER that this Final 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) (2014 & Supp. 2018).

January 16, 2019
Date Decision Issued

Jay L. Phillips /HKS
Jay L. Phillips
Administrative Law Judge


JLP/dlm
#177686

NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party adversely affected by this proposed decision may file written exceptions with the disciplinary panel of the Maryland Board of Physicians that delegated the captioned case to the Office of Administrative Hearings (OAH), and request a hearing on the exceptions. Md. Code Ann., State Gov't § 10-216(a) (2014); COMAR 10.32.02.05. Exceptions must be filed within fifteen (15) days of the date of issuance of this proposed order. COMAR 10.32.02.05B(1). The exceptions and request for hearing must be addressed to the Disciplinary Panel of the Board of Physicians, 4201 Patterson Avenue, Baltimore, MD, 21215-2299, Attn: Christine A. Farrelly, Executive Director.

A copy of the exceptions should be mailed to the opposing attorney, and the other party will have fifteen (15) days from the filing of exceptions to file a written response addressed as above. *Id.* The disciplinary panel will issue a final order following the exceptions hearing or other formal panel proceedings. Md. Code Ann., State Gov't §§ 10-216, 10-221 (2014); COMAR 10.32.02.05C. The OAH is not a party to any review process.

Copies Mailed To:

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