

IN THE MATTER OF	*	BEFORE THE
THEODORE C. HOUK, M.D.	*	MARYLAND STATE
Respondent	*	BOARD OF PHYSICIANS
License Number: D41104	*	Case Number: 2220-0221A
* * * * *	*	* * * * *

CONSENT ORDER

On April 16, 2021, Disciplinary Panel A (“Panel A”) of the Maryland State Board of Physicians (the “Board”) charged **Theodore C. Houk, M.D.** (the “Respondent”) License Number D41104, under the Maryland Medical Practice Act (the “Act”), Md. Code Ann., Health Occ. (“Health Occ.”) §§ 14-401 *et seq.* (2014 Repl. Vol. & 2020 Supp.).

The pertinent provisions of the Act under Health Occ. § 14-404(a) provide as follows:

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

(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;
 - ...
 - (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;
 - ...
 - (28) Fails to comply with the provisions of § 12-102 of this article;
 - ...
 - (40) Fails to keep adequate medical records as determined by

appropriate peer review;

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- (43) Violates any provision of this title, any rule or regulation adopted by the Board, or any State or Federal law pertaining to the practice of medicine.

On June 9, 2021, Panel A was convened as a Disciplinary Committee for Case Resolution (“DCCR”) in this matter. Based on negotiations occurring as a result of this DCCR, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law and Order.

FACTUAL FINDINGS

Panel A finds:

I. BACKGROUND

1. At all relevant times, the Respondent was licensed to practice medicine in Maryland. He was originally licensed on December 17, 1990. His license is scheduled to expire on September 30, 2022.
2. The Respondent was board-certified in internal medicine; however, his board certification expired on December 31, 2015.
3. The Respondent maintains an office for the solo practice of internal medicine in Towson, Maryland.
4. The Respondent is a certified provider with the Maryland Medical Cannabis Commission.
5. On or about December 11, 2019, the Board received a referral from the Maryland Department of Health, Office of Controlled Substances Administration

("OCSA") regarding the Respondent's CDS prescribing practices.¹ Specifically, the OCSA referral stated that it was initiated by a pharmacist who complained that the Respondent was prescribing multiple CDS to a patient using multiple pharmacies and payment methods. OCSA obtained and verified documentation of CDS prescriptions written by the Respondent from September 2017 through September 2019. OCSA validated the pharmacist's concern and requested the Board to review the Respondent's CDS prescribing practices.

6. The Board thereafter initiated an investigation of the Respondent's CDS prescribing practice that included subpoenaing from the Respondent nine (9) patient records, referring the records for independent peer review by two (2) physicians who are board-certified in anesthesiology and pain management (the "Peer Reviewers"), requesting the Respondent to provide summaries of care of the patients, and interviewing the Respondent under oath.

The Respondent's Interview

7. On August 20, 2020, Board staff interviewed the Respondent under oath in the presence of his counsel. In response to Board staff questions, the Respondent stated that he orders urine drug testing ("UDT") for his chronic pain patients once a year. The Respondent screens for opioids the patient has been prescribed, but not for illicit drugs.

¹ OCSA enforces the Controlled Dangerous Substance Act, Md. Code Ann., Criminal Law ("Crim. Law") § 5-100 *et seq.* and issues permits to practitioners to dispense and distribute CDS.

8. The Respondent stated that he has been “trying to get everybody to sign a [controlled substance] contract once a year.” The Respondent further stated that he has not discharged from his practice patients who have violated their opioid contract.

9. The Respondent stated that “for years” he has accepted medications, including opioids, that are returned by patients because “the D[rug]E[nforcement]A[dministration] asked me to do it that way.” The Respondent stated that he maintained the returned medications in a locked safe in his office and that he currently has “about 50 pill containers in the locked box in my house.”

10. Shortly after his Board interview, the Respondent submitted to the Board a written statement that stated in pertinent part, “[o]n rare occasions, probably less than 10 or 12 times in my 28 years of practice, patients have returned to me unused medications previously prescribed for them by me.”

11. The Respondent was asked to clarify whether he had “ever dispensed any medications that patients have provided to you in that safe?” The Respondent replied, “I have probably provided less than a dozen...[i]f someone needs just eight oxycodone fives, then I’ve done that once, that’s all I can remember.”²

12. The Respondent does not have a dispensing permit and is not authorized by the DEA to collect and/or dispose of CDS from patients.

13. On September 14, 2020, the Board subpoenaed the Respondent’s inventory of medications returned to him by patients.

² On November 11, 2020, the Respondent submitted to the Board a statement in which he stated in part, “I have never destroyed, given away, or dispensed any medications returned to my by my patients.”

14. On September 25, 2020, the Respondent submitted the inventory which documented that he accepted from patients over 100 medications, including opioids, from 2009 through July 2020. Many of the entries on the Respondent's inventory indicated "no name, no date of birth." The Respondent stated that patient names were removed from the medication labels at the patients' request.

Findings of the Peer Reviewers

15. The nine (9) patient records transmitted to the Board by the Respondent were referred for peer review. The Peer Reviewers separately reviewed the nine (9) patient records and submitted their individual reports to the Board.

16. The Peer Reviewers concurred that the Respondent failed to meet the standard of quality care in all nine (9) patient records they reviewed and failed to maintain adequate medical records in all nine (9) patient records.

17. Specifically, the Peer Reviewers found that the Respondent failed to meet the standard of quality care for reasons including, but not limited to, the following. The Respondent:

- a) prescribed and maintained chronic opioid regimens in dosages that exceeded 90 morphine milligram equivalents ("MME"³) per day. The Respondent frequently prescribed oxycodone, a CDS and commonly abused opioid (Patients 1, 3; 4, 5, 6, 7, and 8);
- b) prescribed and maintained chronic opioid regimens with dosages in excess of 90

³ MME is a value assigned to each opioid to represent its relative potency by using morphine as the standard comparison. The *Centers for Disease Control Guideline for Prescribing Opioids for Chronic Pain* uses MME to establish recommended opioid dosing and currently recommends using caution when prescribing opioid doses greater than 50 MME per day and avoiding or carefully justifying a decision to increase opioid doses to greater than or equal to 90 MME per day.

MME per day to high-risk patients, including patients with extensive histories of alcohol and/or substance abuse, mental illness or severe obstructive sleep apnea (Patients 1, 3; 6, and 8);

c) prescribed benzodiazepines in conjunction with high dosages of opioids (Patients 1, 3, 7; and 8);

d) failed to discuss with patients the risks of taking benzodiazepines in conjunction with opioids (Patients 3, and 8);

e) failed to conduct frequent and regular UDTs; several patients had no urine screenings in their records (Patients 1 – 9);

f) failed to conduct confirmatory UDTs to verify the presence of prescribed medications (Patient 6; and 7);

g) failed to review on a consistent and regular basis the Prescription Drug Monitoring Program (“PDMP”) when prescribing high levels of opioids (Patients 1 – 9);

h) failed to conduct pill counts or other methods of monitoring patients’ medication usage (Patients 1 – 9);

i) failed to consistently prescribe Naloxone to patients to whom he prescribed high dosages of opioids or opioids in conjunction with benzodiazepines (Patients 4, 5, and 7);

(j) failed to consistently require patients to whom he prescribed opioids to sign a controlled substance contract (Patients 1, 2, 3, 4, 5, and 9).

16. The Respondent’s medical documentation is frequently cryptic and fails to describe adequately his treatment rationale.

Cease and Desist Order

17. Based on one of the Peer Reviewer's comments regarding the Respondent's overall opioid prescribing practices, the Board sought the Peer Reviewer's opinion on the safety of the Respondent continuing to prescribe CDS during the disposition of Panel A's charges against him.

18. The Peer Reviewer opined that the Respondent's prescribing practice is "highly risky" because he prescribes high dosages of commonly abused opioids, often in conjunction with benzodiazepines, in the absence of adequate and appropriate monitoring. The Respondent prescribed excessive opioid regimens to several patients with comorbidities such as alcohol and/or substance abuse that further exacerbated the risk to the patient.

19. The Peer Reviewer further opined that the Respondent's practice of accepting and storing unused opioids from patients was inappropriate. The Peer Reviewer was unable to find any official guidelines over the past decade that corresponded to the Respondent's practice.

20. The Peer Reviewer concluded that there were enough concerns regarding the Respondent's opioid prescribing practices to warrant a cessation of the Respondent's ability to prescribe opioids.

21. On April 13, 2021, pursuant to the authority under the Maryland Medical Practice Act, Health Occ. § 14-206(e)(3), Panel A issued to the Respondent a Cease and Desist Order stating that the Respondent "shall **IMMEDIATELY CEASE AND DESIST** from prescribing and dispensing all CDS[.]" The Cease and Desist Order was effective

immediately pursuant to Md. Code Regs. 10.32.11.E(1)(b). The Cease and Desist Order is a public document pursuant to Md. Code Ann., Gen. Prov. §§ 4-101 *et seq.* and Md. Code Regs. 10.32.02.11E(1)(a).

CONCLUSIONS OF LAW

Based of the above findings of fact, Panel A concludes that the Respondent is guilty of unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii), failure to meet the standard of care for the delivery of quality medical services, in violation of Health Occ. § 14-404(a)(22), failure to comply with the provisions of § 12-102 of this article, in violation of Health Occ. § 14-404(a)(28); failure to keep adequate medical records, in violation of Health Occ. § 14-404(a)(40), and violation of any provision of this title, any rule or regulation adopted by the Board, or any State or Federal law pertaining to the practice of medicine, in violation of Health Occ. § 14-404(a)(43).

ORDER

It is, by Disciplinary Panel A of the Board, hereby:

ORDERED that the April 13, 2021 Cease and Desist Order is superseded by this Order; and it is further

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

ORDERED that the Respondent is placed on **PROBATION** for a minimum of **ONE YEAR**.⁴ During probation, the Respondent shall comply with the following terms and conditions of probation:

⁴ If the Respondent's license expires during the period of probation, the probation and any conditions will be tolled.

1. The Respondent is prohibited from prescribing and dispensing all Controlled Dangerous Substances (CDS) until after he has successfully completed the courses described in condition 2 and has a supervisor approved by the Panel as described in condition 3. The CDS prohibition may be administratively terminated through an Order of the Panel upon successful completion of the courses and after the Panel has approved the Respondent's proposed supervisor.
2. Within **SIX (6) MONTHS**, the Respondent is required to take and successfully complete courses in CDS prescribing and a course in medical documentation.

The following terms apply:

- (a) it is the Respondent's responsibility to locate, enroll in and obtain the disciplinary panel's approval of the courses before the courses are begun;
 - (b) during the state of emergency, the disciplinary panel will accept courses taken over the internet;
 - (c) the Respondent must provide documentation to the disciplinary panel that the Respondent has successfully completed the courses;
 - (d) the courses may not be used to fulfill the continuing medical education credits required for license renewal;
 - (e) the Respondent is responsible for the cost of the courses.
3. Following completion of the courses, the Respondent shall be subject to supervision for a minimum of one year (four quarterly reports)⁵ by a disciplinary panel-approved supervisor who is board-certified as follows:

⁵ 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.

- (a) within **30 CALENDAR DAYS** of the completion of the courses described in condition 2, 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) 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;
- (d) the supervision begins after the disciplinary panel approves the proposed supervisor;
- (e) the disciplinary panel will provide the supervisor with a copy of this Consent Order and any other documents the disciplinary panel deems relevant;
- (f) the Respondent shall grant the supervisor access to patient records selected by the supervisor from a list of all patients, which shall, to the extent practicable, focus on the type of treatment at issue in the Respondent's charges;
- (g) 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;
- (h) it shall be the Respondent's responsibility to ensure that the supervisor:
 - i. reviews the records of 10 patients each month, such patient records to be chosen by the supervisor and not the Respondent;

- ii. 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;
- iii. be available to the Respondent for consultations on any patient;
- iv. maintains the confidentiality of all medical records and patient information;
- v. 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
- vi. immediately reports to the Board any indication that the Respondent may pose a substantial risk to patients;

(i) the Respondent shall follow any recommendations of the supervisor;

(j) 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.

4. The Respondent agrees that the CDS Registration issued by the Office of Controlled Substances Administration will be restricted as limited by this Order.

5. The disciplinary panel may 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 will request the Respondent's CDS prescriptions from the beginning of each quarter; 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, after and the minimum period of probation imposed by the Consent Order

has passed, and after the Respondent's supervisor has submitted to the Board four quarterly reports that are satisfactory to the Panel, 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, 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 the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this 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 this Consent Order is a public document. *See* Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6).

07/09/2021
Date

Signature on File

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

CONSENT

I, Theodore C. Houk, 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.

7/1/2021
Date

Signature on File

Theodore C. Houk, M.D.
Respondent

NOTARY

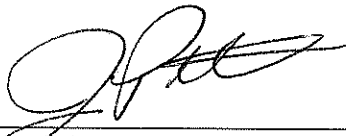
STATE OF Maryland

CITY/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 1 day of July 2021, before me, a Notary Public of the foregoing State and City/County, personally appeared Theodore C. Houk, 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.

JOSHUA PETERS
NOTARY PUBLIC
BALTIMORE COUNTY
MARYLAND
My Commission Expires NOV. 21, 2024



Notary Public

My Commission expires: 11/21/2024