

**IN THE MATTER OF** \* **BEFORE THE MARYLAND**  
**CRAIG N. BASH, M.D.** \* **STATE BOARD OF PHYSICIANS**  
**Respondent.** \* **Case Number: 2218-0178**  
**License No. D43471** \*

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**FINAL DECISION AND ORDER**

Craig N. Bash, M.D. is a physician who has been licensed by the Maryland State Board of Physicians (“Board”) since 1992, and is board-certified in diagnostic radiology. Dr. Bash is the founder, owner and president of Veterans Medical Advisor, Inc. in Bethesda, Maryland - a medical practice that primarily offers services to United States military veterans seeking disability benefits from the U.S. Department of Veterans Affairs (“VA”).

On August 29, 2018, Disciplinary Panel B of the Board charged Dr. Bash with unprofessional conduct in the practice of medicine, alleging a violation of Md. Code Ann., Health Occ. § 14-404(a)(3)(ii) (unprofessional conduct in the practice of medicine). The charges followed a Board investigation based on a complaint received from a veteran (the “Complainant”), who alleged that Dr. Bash’s practice was illegal and unethical based on the Complainant’s interactions with Dr. Bash by email, text and telephone in November, 2017, after he contacted Dr. Bash for assistance in obtaining a higher service-connected disability rating.

An evidentiary hearing was held at the Office of Administrative Hearings on March 26 and 27, 2019. The evidence included witness testimony from the Complainant on behalf of the State, and two witnesses for Dr. Bash. In addition, Dr. Bash testified on his own behalf. The Administrative Law Judge (“ALJ”) also admitted into evidence 10 documentary exhibits offered by the State and Dr. Bash as joint exhibits.

In a Proposed Decision issued on June 18, 2019, the ALJ recommended that the charges issued by Panel B be upheld. As a sanction, the ALJ recommended that Dr. Bash be reprimanded and placed on probation, with the probation to include an in-person tutorial and a review of Dr. Bash's website by the Board. The ALJ also proposed a \$20,000 fine.

Dr. Bash filed written exceptions to the ALJ's Proposed Decision, and the State filed a Response to Dr. Bash's exceptions. Both parties appeared before Disciplinary Panel A of the Board for an oral exceptions hearing on November 6, 2019. After considering the entire record, including the evidentiary record made before the ALJ, and the written exceptions and oral arguments by both parties, Panel A now issues this Final Decision and Order.

#### **FINDINGS OF FACT**

Panel A adopts the ALJ's proposed findings of fact numbered 1-32. (The ALJ's Proposed Decision of June 18, 2019, is incorporated by reference into this Final Decision and Order and is appended to this Order as Attachment A). The facts were proven by a preponderance of the evidence and are as follows:

(1) At all times relevant to this proceeding, Dr. Bash was a licensed physician in the State of Maryland.

(2) At all relevant times, Dr. Bash's medical practice has primarily been to offer services to United States military veterans who are seeking disability benefits from the Department of Veterans Affairs (VA).

(3) Through his website, Dr. Bash markets himself to veterans seeking benefits as the "Veterans Medical Advisor," a physician who is uniquely qualified and experienced in assisting veterans and qualifying them medically for service-connected disability ratings.

(4) On his website, Dr. Bash advertised that he had done more than 4,000 patient cases with the VA, encompassing 40,000 different claims, with a ninety percent success rate. He also claimed a near one hundred percent success rate at the Board of Veterans Appeals level.

(5) The Complainant is a retired Maryland State Police trooper who previously served in the United States Marine Corps.

(6) Before his interactions with Dr. Bash, the Complainant had obtained a disability rating of fifty percent from the VA.

(7) The Complainant was seeking a greater disability rating in the range of eighty-five to one hundred percent.

(8) The Complainant visited Dr. Bash's website and contacted Dr. Bash to inquire about Dr. Bash assisting him get a greater disability rating.

(9) On November 2, 2017, the Complainant emailed Dr. Bash a brief synopsis of his medical conditions and explained what he was seeking from the VA.

(10) Dr. Bash sent a brief reply and attached a list of his experience with the VA, a sample lay statement that he had composed, and an order for an upper endoscopy.

(11) The Complainant did not see the order for the endoscopy for several months because he could not or did not open the attachment in which it was sent.

(12) Around the same time, the Complainant and Dr. Bash talked by telephone and by Skype.

(13) The Complainant asked Dr. Bash for a nexus letter to the VA. A nexus letter is a statement from a medical professional causally connecting a current medical condition to the applicant's military service.

(14) Dr. Bash told the Complainant that he could assist him in the claim process and asked for a payment of \$4,000.00. The Complainant agreed to the payment.

(15) Dr. Bash instructed the Complainant to call A.B.<sup>1</sup> in California to arrange payment.

(16) A.B. is an independent contractor who handles Dr. Bash's billing and payments. Dr. Bash is her only client.

(17) Using his American Express card, the Complainant paid Dr. Bash \$4000.00 on or about November 3, 2017.

(18) The Complainant sent Dr. Bash his medical records, including five Disability Benefit Questionnaires (DBQs).

(19) DBQs are VA forms that physicians use to provide detailed information about a veteran's medical conditions. The VA uses them in the process of deciding eligibility for benefits but they are not always necessary.

(20) The Complainant completely filled out the DBQs he sent to Dr. Bash, including diagnosis codes and specific medical details.

(21) Dr. Bash signed four of the DBQs and sent all five back to the Complainant around the end of November 2017.

(22) The Complainant received the DBQs from Dr. Bash on November 28, 2017. He informed Dr. Bash in a text message that he had retained a law firm to help him in the application process.

(23) Texting back, Dr. Bash discouraged the Complainant from hiring a law firm and said, "Send me 10K total and A.B. and I can help you thru it."

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<sup>1</sup> For purposes of confidentiality, this individual is referred to as "A.B." or "billing assistant" in this Final Decision and Order.

(24) The Complainant was unsure whether Dr. Bash was asking for an additional \$10,000.00 or an additional \$6,000.00.

(25) The Complainant was unable and unwilling to pay any additional money to Dr. Bash beyond the \$4000.00 he had already paid.

(26) After the Complainant made this clear to A.B., she texted Dr. Bash, with a copy to the Complainant, telling Dr. Bash not to assist the Complainant with the VA.

(27) The Complainant never received the nexus letter from Dr. Bash that he had requested.

(28) The Complainant requested a refund of the \$4000.00 payment from American Express.

(29) Dr. Bash did not oppose the Complainant's request for a refund.

(30) American Express refunded the Complainant's \$4,000.00 payment before December 8, 2017.

(31) On December 8, 2017, Dr. Bash texted the Complainant asking what fee worked for him.

(32) Dr. Bash undertook no further work for the Complainant in his application for VA disability benefits.

#### **Dr. Bash's website**

With respect to the nature of Dr. Bash's practice, procedures undertaken, and fees charged, the website (Joint Exh. 7; Record (R.) 126-152<sup>2</sup>; printed May 23, 2018) contained the following specific statements:

Qualifications, Independent Medical Evaluations (IMEs), Written Statement and Working with Representatives (R. 126-127, 150)

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<sup>2</sup> References to page numbers in this Final Decision and Order indicate the Bates stamped pages in the Record (R.) before the ALJ.

- Since 1986, Dr. Bash has concentrated his practice on completing independent medical evaluations (IMEs) for disabled veterans; (R. 126) He specializes in presenting your medical evidence to meet the requirements for filing claims or appeals with the Department of Veterans Affairs . . . (R. 127)
- Dr. Bash's 11 years postgraduate education, 20 years experience as a physician, and his VA background adds irrefutable credibility to each Independent Medical Examination (IME) he painstakingly prepares. (R. 139)
- Your IME will present solid evidence of your level of disability, as supported by your medical record . . . (R. 126)
- Dr. Bash will analyze your medical record and prepare a written statement presenting all medically sound evidence that can help ensure a positive decision. (R. 126) A well-prepared statement could make the difference between receiving a positive rating decision and being declined. (R. 127)
- Dr. Bash works closely with . . . veterans service organizations and lawyers who represent veterans. He will be glad to work with anyone who is representing you. (R. 127)

#### Independent Medical Evaluation (IME) Procedures (R. 142-143)

- Patient sends in a Consultation Request, providing a brief medical history and the patient's expectations for the claim. Dr. Bash reviews your information and contacts you to let you know whether he can help. (R. 142)
- Dr. Bash further discusses the IME with you and decides his fee, which will be based on how involved he will need to be in your claim or appeal. After mutual agreement to proceed, patient sends a copy of military and civilian medical records and payment in full to Dr. Bash. Dr. Bash receives your IME fee and medical record, and then starts the case as soon as the check clears. (R. 142)
- Dr. Bash reviews your file, then (if necessary) researches medical facts about your condition, as well as searches medical articles for up-to-date support information. (R. 142)
- Dr. Bash types and signs the IME. (R. 142)
- IME is mailed directly to you. (R. 143) You send the complete IME, **by certified mail**, to the agency working your claim. (R. 143)
- From the time Dr. Bash receives your complete medical record and full payment of the IME fee, the medical evaluation and written opinion is usually completed in about **four weeks**. (R. 143)

Fees, Medical Nexus Opinions, and Requirements for Successful Claims (R. 130-131, 139, 144)

- I charge a flat fee based on the number of years claims have been pending, number/complexity of the primary and secondary medical problems, thickness of the c-file and number of other Medical opinions/appeals in the file. . . (R. 130, 144) I understand that patients shop for the least expensive IMO/IME (veteran medical nexus opinion) fee. I provide a very high-quality report, and I am the only doc doing this work full time in the USA and have been for past 20+ years during which I have done more than with a [sic] 4000 pts cases (40,000 different claims) for a 90% success rates. [sic] The work I did for the Veterans of Foreign Wars (VWF) over a decade resulted in a near 100% success rate at the BVA appeals level where usually the success rate is in the 20-26% range. . . (R. 130)
- If you are an honorably discharged veteran, you served your country well and you earned certain benefits. These benefits include the right to receive compensation and medical care for any disabling medical condition that was incurred or aggravated while you were in service. If your disability claim is not clearly supported by your medical records - with the *exact* evidence the VA requires - you will be denied benefits. (R. 139)
- There are three steps must be met for a veteran to satisfy the VA's requirements for a "well-grounded" disability compensation claim: "The first is medical evidence of a current health problem. Secondly, you must prove that an injury or disease occurred or was aggravated while in active military service. The third is proving a nexus or link between one and two. VA turns down thousands of claims each year by saying "no nexus.""(R. 144)
- I can help with your Veteran benefits . . . by providing a nexus letter which is also called an independent medical opinion (IMO) for Veteran benefits. (R. 144)
- I will ask you for a list of your medical problems and your goal for the veteran benefit claim. Then we can establish a flat fee for my second medical nexus opinion for your veteran benefits (R. 144)
- The need for a doctor's medical opinion linking the veteran's disability to military service is critical. . . [o]nly the opinion of a doctor will establish that needed medical link. (R. 145)

**The ALJ's Proposed Decision**

The panel also adopts the ALJ's discussion on pages 7-15 of the Proposed Decision. The ALJ found that Dr. Bash was guilty of unprofessional conduct in the practice of medicine, in violation of § 14-404(a)(3)(ii) of the Health Occupations Article, because he misled the Complainant into thinking he would provide a nexus letter for \$4,000.00, failed to write the

nexus letter, and tried to extract an additional \$6,000.00 to which the Complainant had not agreed. The ALJ also determined that collecting a sizable fee seems to have been Dr. Bash's primary motivation, because he still asked what fee worked for the Complainant even after the \$4,000.00 had been refunded. In addition, the ALJ found that Dr. Bash's fee-related communications with the Complainant, and his email and text message methods of providing service were unprofessional, because they were imprecise, with significant potential for creating confusion and misunderstanding. Based on Dr. Bash's advertising claims on his website about his high success rate, the ALJ further found that Dr. Bash violated the Board's advertising regulations at COMAR 10.32.01.13B(2), which prohibit physicians from placing advertising containing "[s]tatements that cannot be verified by the Board for truthfulness."<sup>3</sup>

#### **The ALJ's Credibility Determinations**

Based on the testimonial and documentary evidence, the ALJ found "altogether credible" the Complainant's testimony that he asked Dr. Bash for a nexus letter. Prop. Dec. at 10. The ALJ did not find believable Dr. Bash's testimony that he told the Complainant his fee was \$10,000.00 during their initial contacts. *Id.* at 12. The ALJ found that the Complainant testified forcefully at the hearing that he clearly asked Dr. Bash to supply him with a nexus letter after reviewing his medical records, and was certain that Dr. Bash agreed to do this for a payment of \$4,000.00. *Id.* at 8. In his testimony, the Complainant confirmed that in his conversations with Dr. Bash, they negotiated and agreed on a price of \$4,000.00 for a nexus letter. (T. 42, 87-89)<sup>4</sup> It was also undisputed that, on November 2, 2017, the Complainant specifically stated in an email to Dr. Bash: "My issue isn't that I don't have the medical documentation but one of how to establish a nexus to my Marine Corps service." (R. 45, 61) The ALJ determined that the Complainant's

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<sup>3</sup> See also Md. Code Ann. Health Occ. § 14-503 which provides: "A physician may advertise only as permitted by the rules and regulations of the Board . . ."

<sup>4</sup> Citations to the hearing transcript are referenced as (T. ) followed by page numbers.



email on that date bolstered his testimony that he asked for a nexus letter. Panel A adopts the ALJ's credibility determinations.

### CONSIDERATION OF EXCEPTIONS

Dr. Bash does not take exception to the ALJ's findings that he communicated with the Complainant by telephone, email, Skype, and text messages. Nor does he dispute his website references to fees, independent medical evaluation (IME) procedures, written statements, reports, veteran medical nexus opinions, and the information required to meet VA requirements for obtaining a service-connected disability rating.

Dr Bash, however, does take exception to the ALJ's findings that he violated the Board's advertising regulations. *See* COMAR 10.32.01.13(B)(2). The ALJ found that Dr. Bash's claimed success rate of ninety percent was unverifiable based on the meager statistical evidence and data Dr. Bash used to calculate that success rate. At the hearing, Dr. Bash testified that he handled 4,000 cases and 40,000 separate claims, and had successful claims in forty of forty-four cases for which data is available. He also explained that the data he used for his website was "dated" and "hard to come by," and that he could not get the numerator anymore because of actions taken by the VA. (T. 189-190) The Complainant testified that Dr. Bash's claimed success rate of ninety percent was one of the factors that "caught his eye" on the website, as well as Dr. Bash's experience with IMEs. (T. 31) In a text sent to Dr. Bash on November 28, 2017, the Complainant also stated that he thought he had the "A" team on his side after retaining Dr. Bash and a law firm.

The panel agrees with the ALJ that the Board could not possibly verify the truthfulness of Dr. Bash's claims of a ninety percent success rate, and thus, Dr. Bash violated the Board's advertising regulations. COMAR 10.32.01.13B(2). The reliance of veterans like the Complainant

on Dr. Bash's claims is equally concerning, because of their inability to assess the truth of such unsubstantiated claims.

Dr. Bash now contradicts his sworn testimony before the ALJ that the data is unavailable by providing additional data for the first time in his exceptions. The panel gives no weight to the newly-created graph and information generated by Dr. Bash, and rejects his contention that this new information provides meaningful statistical data to evaluate his website claims regarding his success rate. Moreover, his conclusory statements about the purported data still cannot be verified by the Board for truthfulness. Panel A denies this exception.

Dr. Bash also excepts generally to the ALJ's findings of unprofessional conduct. Throughout his exceptions, Dr. Bash suggests that the ALJ based those findings on wrong assumptions about the timeline of the November 2, 2017 emails between the Complainant and Dr. Bash, and that the ALJ was under the wrong impression that Dr. Bash was dismissive of the Complainant from the beginning. According to Dr. Bash, it was Dr. Bash who first emailed the Complainant at 9:33am after an earlier phone conversation, and the Complainant later responded.<sup>5</sup> The panel is not persuaded by Dr. Bash's arguments.

First, the sequence and timing of the email exchange are irrelevant to the findings in this case. There is no disagreement that a phone call took place, and the ALJ correctly focused on the contents of the emails between Dr. Bash and the Complainant. The email from Dr. Bash attached information about Dr. Bash's experience, a lay letter sample, and an order for an upper endoscopy. The Complainant testified, however, that their earlier phone conversation was about

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<sup>5</sup> In the Proposed Decision, the ALJ relied on Joint Exhibit 4 (Prop. Dec. at 8), a document that originated with Dr. Bash's former counsel. (R. 55) This document indicates that the Complainant's email was sent at 8:28am, as the ALJ found. (R. 61) Joint Exhibit 2 also contains a copy of the same email sent by the Complainant on that date, but lists the time sent as 12:28pm. (R. 45) Both documents show the contents of the emails exchanged between the Complainant and Dr. Bash on November 2, 2017, and both show that Dr. Bash sent an email to the Complainant at 9:33am.

his need for a nexus letter, not a lay statement or an endoscopy order. The email from the Complainant to Dr. Bash set forth a brief synopsis of his medical conditions and the claims previously denied, stating that he had the medical documentation, but that “[his] issue was how to establish a nexus to [his] Marine Corps service.” Based on the plain language in the Complainant’s email, Dr. Bash’s credentials and VA background, and the specific website information concerning the importance of a nexus opinion to obtain a higher disability rating, it is inconceivable that a highly-qualified veterans advisor like Dr. Bash would not be aware from their initial exchanges that the Complainant sought and needed a nexus letter.

Second, the ALJ’s findings of unprofessional conduct were based on the entirety of the documentary and testimonial record in the case, not just on the initial email contacts between Dr. Bash and the Complainant. Contrary to Dr. Bash’s claim that the ALJ did not define unprofessional, the Proposed Decision includes the ALJ’s application of relevant case law regarding the contours of unprofessional conduct in the practice of medicine. Prop. Dec. at 8. The ALJ also considered written communications and testimony from the Complainant, Dr. Bash, and Dr. Bash’s billing assistant concerning Dr. Bash’s process and fees, and the Complainant’s hiring of a law firm. In addition, the ALJ considered the testimony of William Creager, who testified as a fact witness on behalf of Dr. Bash about the VA claims process and VA terminology regarding Disability Benefit Questionnaires (DBQs), IMEs, and nexus letters.

#### DBQs

There is no dispute that after their phone and email discussions on November 2, 2017, the Complainant paid a fee of \$4,000.00 by credit card, and then sent his medical records to Dr. Bash, along with five DBQs that the Complainant himself completed in great detail with his diagnosis codes, medical conditions, and the functional effects his conditions had on him. Mr.

Creager testified that DBQs are used to determine factually what the veteran's condition is. They are not medical opinions and are of no use without a physician's signature. (T. 127-139) According to Mr. Creager, while a nexus letter might incorporate information from the DBQs, it is a separate document from the DBQs. The Complainant testified that he sent the completed DBQs with his medical records to Dr. Bash as a way to explain his medical conditions to Dr. Bash in factual detail to help Dr. Bash prepare the nexus letter. He did not request that Dr. Bash sign them, and he did not feel he needed DBQs to support his VA claim. (T. 64, 67-69, 89) He also testified that Dr. Bash's billing assistant told him on the phone that the \$4,000.00 payment was not for completion of the DBQs, but for Dr. Bash's signature. (T. 58)

The ALJ found that Dr. Bash received \$4,000.00 from the Complainant and produced just four signatures on the DBQs. The ALJ did not find evidence establishing that Dr. Bash had taken the time to review the DBQs or the medical records sent by the Complainant. Other than Dr. Bash's testimony, which the ALJ did not find credible, the record does not support Dr. Bash's claim that he discussed the completion or signing of DBQs for the \$4,000.00 payment with the Complainant during their initial communications. The ALJ also found that the Complainant knew he needed a nexus letter. The panel accepts the ALJ's findings. Dr. Bash emphasizes on his website that a veteran should do all he can to make the time Dr. Bash can give to the veteran's case useful. The panel finds reasonable the Complainant's belief that providing the already completed, factually detailed DBQs to Dr. Bash would be useful in facilitating the nexus letter process.

#### IMEs and Nexus Letters

The ALJ also determined that different understandings of the term "IME" contributed to the disagreement between the Complainant and Dr. Bash regarding the fee. The Complainant

understood “IME” to mean an “independent medical examination,” and that Dr. Bash would provide one resulting in a nexus letter for the agreed-upon fee of \$4,000.00. Mr. Creager testified that the elements of a nexus require a medical diagnosis, some manifestation of disability during military service, and evidence of a link or nexus between the current disability and events from military service. (T. 132) Mr. Creager further testified that, in his experience, the veteran community is very naïve and ill-informed about the evidence necessary to prevail on their claims. (T. 133) According to Mr. Creager, in VA parlance, the IME acronym means an “independent medical expert” but that in usage, people sometimes explain it as an opinion. (T. 125, 131) In addition, he stated that the term IME has been called an “independent medical examination” or “independent medical evaluation” by people not particularly precise in the way they use terminology. (T. 139) Dr. Bash, however, uses the terms “evaluation” and “examination” interchangeably on his website in describing an IME, references a four-week timeframe to complete his medical evaluation and written opinion, states that he types and signs the IME, and mails it directly to the patient. Dr. Bash also equates an IME with an IMO (independent medical opinion), a written statement, a report, and a veteran medical nexus opinion. Based on the terminology used by Dr. Bash, the panel finds that the Complainant’s expectations for an end result nexus letter from Dr. Bash were consistent with the guidance and terminology on Dr. Bash’s website.

#### Dr. Bash’s Fees

Dr. Bash’s website states that he charges a flat fee for his services. Dr. Bash’s repeated references on his website to his flat fees for veteran medical nexus opinions are interwoven with information about his “Independent Medical Evaluation (IME) Procedures.” For example, Dr. Bash explains on his website that he asks for a list of a veteran’s medical problems and the

veteran's goal for the veteran benefit claim before establishing a flat fee for the medical nexus opinion. (emphasis added.) The website further clarifies that the flat fee depends in part on the number and complexity of medical problems, and that after the initial agreement to proceed, the patient<sup>6</sup> sends a copy of military and civilian medical records with payment in full to Dr. Bash. This website information also supports the Complainant's testimony that the \$4,000.00 payment he sent to Dr. Bash was the flat fee established from the beginning during their initial discussions on November 2, 2017, and constituted payment in full for the agreed-upon nexus letter.

Dr. Bash, however, never provided the nexus letter. In a subsequent text message sent to the Complainant in late November, 2017, he asked for \$10,000 total to "help you thru [sic] it," without specifying what the increased fee would cover. The ALJ determined that Dr. Bash took an "all the traffic will bear" approach in an attempt to obtain as much money as he could from the Complainant, and misled the Complainant into thinking he would provide a nexus letter for \$4,000.00. The ALJ also found that Dr. Bash's actions in trying to extract an additional \$6,000.00 that the Complainant had not agreed to, border upon dishonesty and bring disrepute to the medical profession. The ALJ concluded that this conduct was unprofessional. The panel agrees.

There is no support for Dr. Bash's exceptions argument that the personal fee information sought by the Complainant from Dr. Bash and his billing assistant was proprietary information, or that the ALJ found that a fixed fee schedule was needed. Dr. Bash also incorrectly claims that the ALJ found that having staff handle financial affairs was unprofessional. Rather, the ALJ determined that a major fault with Dr. Bash's medical practice seems to be a desultory and somewhat chaotic approach in the methods he uses to provide service. The ALJ also found that Dr. Bash's fee-related communication methods were unprofessional based on the imprecise

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<sup>6</sup> It was undisputed that the Complainant was not a patient of, or treated by, Dr. Bash.

means of communication used by him and his financial assistant, and the significant potential for creating misunderstandings and confusion. Dr. Bash's exceptions pertaining to his fees are denied.

#### Law Firm

The ALJ also considered Dr. Bash's text response to information from the Complainant that he had hired a law firm to help with his VA appeal. Dr. Bash not only discouraged the Complainant from hiring an attorney but did so in disparaging terms that questioned the attorney's qualifications, experience, and fees, stating that the "atty sounds rookie." Dr. Bash's derogatory remarks to the Complainant contradict his website representation that he works closely with attorneys who represent veterans and is glad to work with anyone representing a veteran.

#### GERD issue

Dr. Bash argues in his exceptions that the issue of the endoscopy order for gastroesophageal reflux disease ("GERD") emailed by Dr. Bash to the Complainant on November 2, 2017, is significant. Based on the Complainant's testimony that he had trouble with his phone and did not open the attached order until several months later, the ALJ determined that the Complainant's initial allegation that he was not informed of the order was incorrect and unfounded. There is no support in the record for Dr. Bash's continued claims that the GERD issue was engineered or fifty percent of the reason for the charges. That allegation did not form any basis for the ALJ's findings of unprofessional conduct in this case. Likewise, the endoscopy order concern raised by the Complainant in his complaint is a nonissue, and is not a basis for the panel's finding that Dr. Bash engaged in unprofessional conduct.

To summarize, the ALJ's proposed findings of Dr. Bash's unprofessional conduct in this case were based on his consideration of the entire record, and the nature and totality of Dr. Bash's interactions with the Complainant. At the hearing, the ALJ did not find credible Dr. Bash's testimony that he told the Complainant his fee was \$10,000.00 during their initial communications, but found the evidence convincing that Dr. Bash initially agreed to assist the Complainant in return for a \$4,000.00 fee. In addition to Dr. Bash's exceptions arguments, Panel A has also considered the record evidence, including the specific information on Dr. Bash's website related to the VA process, Dr. Bash's IME procedures, nexus opinions, and fees. Panel A agrees with the ALJ's findings. Although the \$4,000.00 fee was the up-front price negotiated and agreed to by Dr. Bash and the Complainant after Dr. Bash established his flat fee for the Complainant's ultimate goal - a nexus letter - Dr. Bash subsequently attempted to extract an additional \$6,000 for the service. The panel further finds that Dr. Bash's justifications for his conduct in his exceptions arguments are implausible and unsupported by the record. Dr. Bash's exceptions are denied.

#### **CONCLUSIONS OF LAW**

Based on the findings of fact and discussion of Dr. Bash's exceptions, as set forth above, Disciplinary Panel A concludes that Dr. Bash is guilty of unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii). The panel also concludes that Dr. Bash violated the Board's advertising regulations at COMAR 10.32.01.13B(2).

#### **SANCTION**

One of the principles espoused by the American Medical Association ("AMA") requires a physician to uphold the standards of professionalism, and to be honest in all professional



interactions.<sup>7</sup> *Am. Med. Ass'n, Principles of Medical Ethics, § 2.* At the hearing, Dr. Bash stated he was not aware of the Code of Medical Ethics promulgated by the AMA, but agreed that it was important for a physician to be honest in all of his professional interactions. (T. 202) Based on the facts and circumstances of his interactions with the Complainant, Dr. Bash failed to adhere to this fundamental principle. The nature of his services and communications on behalf of the veteran population requires honesty and transparency. His imprecise methods of communication in this case regarding the nature and scope of the services he provides, his fees, and his purported success rate as advertised on his website, were misleading and unethical, compromised his professional integrity and his professional responsibilities as a physician, and are inimical to the standards of the medical profession. Dr. Bash's justifications for his actions in this case were not accompanied by any meaningful sense of responsibility for his actions and demonstrate a troubling lack of candor. His methods were conducive to increasing his financial gain to the detriment of the veteran Complainant who sought his assistance.

The panel has serious concerns that Dr. Bash's methods have the potential to mislead vulnerable veterans who, as Mr. Creager testified, may be naïve and ill-informed about the medical evidence needed to prevail on their VA claims. The Complainant in this case could not afford the increased fee unexpectedly added by Dr. Bash. Fortunately for the Complainant, he was not naïve, but was sufficiently knowledgeable about the VA process to resist Dr. Bash's attempts to extract more money for the nexus letter that Dr. Bash initially agreed to provide.

Panel A will not ignore its deterrent function in this case. The panel imposes a reprimand, two years of probation, and a \$50,000 fine. The panel will also require Dr. Bash to complete an

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<sup>7</sup> The Board's regulations provide that "[t]he Board and its disciplinary panels may consider the Principles of Ethics of the American Medical Association . . ." COMAR 10.32.02.16. In the preamble to the Code, the AMA states that the principles are not laws, but standards of conduct that define the essentials of honorable behavior for the physician.

panel-approved course in medical ethics, and to submit changes to his website for the panel's review and approval.

### **ORDER**

It is, by an affirmative vote of a majority of the quorum of Disciplinary Panel A, hereby:

**ORDERED** that Craig N. Bash, M.D., License No. D43471, is **REPRIMANDED**; and it is further

**ORDERED** that Dr. Bash is placed on **PROBATION** for a minimum of **TWO (2) YEARS**.<sup>8</sup> During probation, Dr. Bash shall comply with the following terms and conditions:

- (1) Within **SIX (6) MONTHS** from the effective date of this Final Decision and Order, Dr. Bash shall take and successfully complete a panel-approved course in medical ethics. The following terms apply:
  - (a) It is Dr. Bash's responsibility to locate, enroll in, and obtain the disciplinary panel's approval of the course before the course begins;
  - (b) The disciplinary panel will not accept a course taken over the internet;
  - (c) Dr. Bash shall provide documentation to the disciplinary panel that he has successfully completed the course;
  - (d) The course may not be used to fulfill the continuing medical education credits required for license renewal;
  - (e) Dr. Bash is responsible for the cost of the course.
- (2) Within **THREE (3) MONTHS** from the effective date of this Final Decision and Order, Dr. Bash shall submit changes to his website to Panel A for Panel A's review and approval.
- (3) Within **TWO (2) YEARS** from the effective date of this Final Decision and Order, Dr. Bash shall pay a civil fine in the amount of **FIFTY THOUSAND DOLLARS (\$50,000)**. The payment or payments shall be made by money order or bank certified check(s) 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 Dr. Bash's license if Dr. Bash fails to timely pay the fine to the Board; and it is further

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<sup>8</sup> If Dr. Bash's license expires during the period of probation, the probation and any conditions will be tolled.

**ORDERED** that a violation of probation is a violation of this Final Decision and Order; and it is further

**ORDERED** that Dr. Bash shall not apply for early termination of probation; and it is further

**ORDERED** that after a minimum of two years, if Dr. Bash has complied with all terms and conditions of probation, Dr. Bash may submit 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. Dr. Bash may be required to appear before a disciplinary panel to discuss his petition to terminate the probation. The disciplinary panel may grant the petition to terminate the probation through an order of the disciplinary panel, if Dr. Bash has complied with all of the probationary conditions, and there are no pending complaints related to the charges; and it is further

**ORDERED** that if Dr. Bash allegedly fails to comply with any term or condition imposed by this Final Decision and Order, Dr. Bash shall be given notice and an opportunity for a hearing. If the disciplinary panel determines that 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. If the disciplinary panel determines that there is no genuine dispute as to a material fact, Dr. Bash 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 Dr. Bash has failed to comply with any term or condition of this Final Decision and Order, the disciplinary panel may reprimand Dr. Bash, place Dr. Bash on probation with appropriate terms and conditions, or suspend or revoke Dr. Bash'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 upon Dr. Bash; and it is further

**ORDERED** that Dr. Bash is responsible for all costs incurred in fulfilling the terms and conditions of this Final Decision and Order; and it is further

**ORDERED** that the effective date of this Final Decision and Order is the date the Final Decision and Order is signed by the Executive Director of the Board. The Executive Director signs the Final Decision and Order on behalf of the disciplinary panel which has imposed the terms and conditions of this Order, and it is further

**ORDERED** that this Final Decision and Order is a **PUBLIC** document pursuant to Health Occ. § 1-607, § 14-411.1(b)(2), and Gen. Prov. § 4-333(b)(6).

03/10/2020

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. Bash 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 this 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. Bash 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:

Noreen Rubin  
Assistant Attorney General  
Maryland Department of Health  
300 West Preston Street, Suite 302  
Baltimore, Maryland 21201

# **Attachment A**

MARYLAND BOARD OF  
PHYSICIANS

v.

CRAIG N. BASH, M.D.,

RESPONDENT

LICENSE No.: D43471

\* BEFORE RICHARD O'CONNOR,  
\* ADMINISTRATIVE LAW JUDGE,  
\* THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No.: MDH-MBP1-71-19-01210

\*

\* \* \* \* \*

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 August 29, 2018, the Maryland Board of Physicians (Board) issued charges against Craig N. Bash, M.D. (Respondent), based on alleged violations of the Maryland Medical Practice Act. Md. Code Ann., Health. Occ. §§ 14-101 through 14-702 (2014 & Supp. 2018). Specifically, the Board charged the Respondent with violating section 14-404(a)(3)(ii), unprofessional conduct in the practice of medicine. A case resolution conference was held on December 19, 2018. Code of Maryland Regulations (COMAR) 10.32.02.03E(9). On January 4, 2019, the Respondent requested a hearing in this matter, and the Board forwarded the case to the Office of Administrative Hearings (OAH) for a hearing and issuance of proposed findings of fact, proposed conclusions of law, and a proposed disposition. COMAR 10.32.02.03E(5); COMAR 10.32.02.04B(1).

I held a hearing on March 26 and 27, 2019, at the OAH in Hunt Valley, Maryland. Health Occ. § 14-405(a) (Supp. 2018); COMAR 10.32.02.04. Thomas P.F. Kiely, Esquire, represented the Respondent, who was present. Victoria Pepper, 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 Office of Administrative Hearings. 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 section 14-404(a)(3)(ii) of the Health Occupations Article by committing unprofessional conduct in the practice of medicine? If so,
2. What sanction is appropriate?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits into evidence as joint exhibits:<sup>1</sup>

- Jt. Ex. 1. Complaint, received December 11, 2017, with the following attachments:
- A. Receipt for \$4,000.00 from Veterans Medical Advisor, November 3, 2017;
  - B. Scars/Disfigurement Disability Benefits Questionnaire signed by the Respondent, undated;
  - C. Hematologic and Lymphatic Conditions, Including Leukemia Disability Benefits Questionnaire signed by the Respondent, November 24, 2017;
  - D. Foot Conditions, Including Flatfoot (Pes Planus) Disability Benefits Questionnaire, unsigned and undated;
  - E. Esophageal Conditions Disability Benefits Questionnaire signed by the Respondent, undated; and
  - F. Back (Thoracolumbar Spine) Conditions Disability Benefits Questionnaire signed by the Respondent, undated.

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<sup>1</sup> These exhibits are in a binder presented by the State and labeled "State's Exhibits 1-10."



- Jt. Ex. 2. Emails between the Complainant and the Respondent, November 2, 2017, with the following attachments:
- A. Memo from the Respondent to All Veterans listing the Respondent's experience with the Department of Veterans Affairs, dated 2014;
  - B. Example of a lay statement; and
  - C. Memo from the Respondent to the Complainant, November 2, 2017, with an order for an upper endoscopy.
- Jt. Ex. 3. Subpoena *Duces Tecum* issued to the Respondent, issued December 17, 2017.
- Jt. Ex. 4. Letter from Christopher P. Dean, Esquire, to the Board, January 25, 2018, with the following attachments:
- A. Emails between the Complainant and the Respondent, November 2, 2017; the Complainant's medical history; Memo from the Respondent to the Complainant, November 2, 2017, with an order for an upper endoscopy; receipt for \$4,000.00, November 3, 2017; \$4,000.00 chargeback, December 6, 2017.
  - B. Department of Veterans Affairs News Release with sample Disability Benefits Questionnaire, January 31, 2013; copy of 38 C.F.R.<sup>2</sup> § 3.159; the Respondent's *Curriculum Vitae*, October 2015; and Memo from the Respondent to All Veterans listing the Respondent's experience with the Department of Veterans Affairs, dated 2014.
- Jt. Ex. 5. Transcript of an interview with the Complainant, August 1, 2018.
- Jt. Ex. 6. Text messages among the Complainant, the Respondent, and [REDACTED], November 3 to December 8, 2017.
- Jt. Ex. 7. Excerpts from the Respondent's website, *veteransmedadvisor.com*, printed May 23 and August 24, 2018.
- Jt. Ex. 8. Advisory letter from the Board to the Respondent, December 24, 2007.
- Jt. Ex. 9. Advisory letter from the Board to the Respondent, June 30, 2010.
- Jt. Ex. 10. Charges Under the Maryland Medical Practice Act, August 29, 2018.

Neither the State nor the Respondent offered additional exhibits.

#### Testimony

The Complainant testified on behalf of the State.

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<sup>2</sup> C.F.R. is an abbreviation for the Code of Federal Regulations.

The Respondent testified on his own behalf and presented testimony from [REDACTED] and William B. Creager, Sr.

### PROPOSED FINDINGS OF FACT

Having considered all of the evidence presented, I find the following facts by a preponderance of the evidence:

1. At all times relevant to this proceeding, the Respondent was a licensed physician in the State of Maryland.
2. At all relevant times, the Respondent's medical practice has primarily been to offer services to United States military veterans who are seeking disability benefits from the Department of Veterans Affairs (VA).
3. Through his website, the Respondent markets himself to veterans seeking benefits as the "Veterans Medical Advisor," a physician who is uniquely qualified and experienced in assisting veterans and qualifying them medically for service-connected disability ratings.
4. On his website, the Respondent advertised that he had done more than 4,000 patient cases with the VA, encompassing 40,000 different claims, with a ninety percent success rate. He also claimed a near one hundred percent success rate at the Board of Veterans Appeals level.
5. The Complainant is a retired Maryland State Police trooper who previously served in the United States Marine Corps.
6. Before his interactions with the Respondent, the Complainant had obtained a disability rating of fifty percent from the VA.
7. The Complainant was seeking a greater disability rating in the range of eighty-five to one hundred percent.

8. The Complainant visited the Respondent's web site and contacted the Respondent to inquire about the Respondent assisting him get a greater disability rating.

9. On November 2, 2017, the Complainant emailed the Respondent a brief synopsis of his medical conditions and explained what he was seeking from the VA.

10. The Respondent sent a brief reply and attached a list of his experience with the VA, a sample lay statement that he had composed, and an order for an upper endoscopy.

11. The Complainant did not see the order for the endoscopy for several months because he could not or did not open the attachment in which it was sent.

12. Around the same time, the Complainant and the Respondent talked by telephone and by Skype.

13. The Complainant asked the Respondent for a nexus letter to the VA. A nexus letter is a statement from a medical professional causally connecting a current medical condition to the applicant's military service.

14. The Respondent told the Complainant that he could assist him in the claim process and asked for a payment of \$4,000.00. The Complainant agreed to the payment.

15. The Respondent instructed the Complainant to call [REDACTED] in California to arrange payment.

16. [REDACTED] is an independent contractor who handles the Respondent's billing and payments. The Respondent is her only client.

17. Using his American Express card, the Complainant paid the Respondent \$4,000.00 on or about November 3, 2017.

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<sup>3</sup> I.e., [REDACTED]

18. The Complainant sent the Respondent his medical records, including five<sup>4</sup> Disability Benefit Questionnaires (DBQ).

19. DBQs are VA forms that physicians use to provide detailed information about a veteran's medical conditions. The VA uses them in the process of deciding eligibility for benefits, but they are not always necessary.

20. The Complainant completely filled out the DBQs he sent the Respondent, including diagnosis codes and specific medical details.

21. The Respondent signed four of the DBQs and sent all five back to the Complainant around the end of November 2017.

22. The Complainant received the DBQs from the Respondent on November 28, 2017. He informed the Respondent in a text message that he had retained a law firm to help him in the application process.

23. Texting back, the Respondent discouraged the Complainant from hiring a law firm and said, "Send me 10K total and [REDACTED] and I can help you thru it." (Jt. Ex. 6.)

24. The Complainant was unsure whether the Respondent was asking for an additional \$10,000.00 or an additional \$6,000.00.

25. The Complainant was unable and unwilling to pay any additional money to the Respondent beyond the \$4,000.00 he had already paid.

26. After the Complainant made this clear to [REDACTED] she texted the Respondent, with a copy to the Complainant, telling the Respondent not to assist the Complainant with the VA.

27. The Complainant never received the nexus letter from the Respondent that he had requested.

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<sup>4</sup> The complaint mentions six DBQs, but only five are included in Jt. Ex. 1.

28. The Complainant requested a refund of the \$4,000.00 payment from American Express.

29. The Respondent did not oppose the Complainant's request for a refund.

30. American Express refunded the Complainant's \$4,000.00 payment before December 8, 2017.

31. On December 8, 2017, the Respondent texted the Complainant asking what fee worked for him.

32. The Respondent undertook no further work for the Complainant in his application for VA disability benefits.

#### DISCUSSION

The grounds for reprimand or probation of a licensee, or suspension or revocation of a license under the Act include the following: unprofessional conduct in the practice of medicine in violation of section 14-404(a)(3)(ii) of the Health Occupations article. The Charges Under the Maryland Medical Practice Act issued against the Respondent do not state exactly what actions of the Respondent the State considers unprofessional. The Administrative Prosecutor, in argument, stated that the Respondent used his medical license to exploit the Complainant and to deceive and coerce the Complainant. The Administrative Prosecutor emphasized that the Respondent's website explains that he charges a flat fee for his services and that when a veteran has sent in the necessary records and paid the fee in full, the Respondent then reviews the records and produces the documents necessary to assist the veteran in his or her claim. In this case, though, the Respondent, according to the State, took the \$4,000.00 from the Complainant but considered it merely a deposit, then later demanded an additional payment to complete the agreed-upon work. Additionally, the Respondent never provided the requested nexus letter.

Section 14-404(a)(3)(ii) of the Health Occupations article does not include a list or examples of what is considered unprofessional conduct. Many of the cases decided under section 14-404(a)(3) involve subparagraph (i), which prohibits immoral conduct in the practice of medicine. The courts have held that failure to disclose malpractice lawsuits on an application to renew a physician's license is unprofessional conduct. *Kim v. Maryland State Bd. of Physicians*, 423 Md. 523 (2010). Also considered unprofessional is inappropriate behavior with clients, managing files inappropriately, and failing to meet the terms of the Board's consent orders. *Cohen v. Maryland State Bd. of Physician Quality Assur.*, 160 Md.App. 277 (2004). Generally, unprofessional conduct is "conduct which breaches the rules or ethical code of a profession, or conduct which is unbecoming a member in good standing of a profession." *Finucan v. Maryland Bd. of Physician Quality Assur.*, 380 Md. 577, 593 (2004), quoting *Shea v. Bd. of Medical Exam'rs*, 81 Cal.App.3d 564, 146 Cal.Rptr. 653, 660 (1978).

The Complainant testified quite forcefully that he clearly asked the Respondent to supply him with a nexus letter after reviewing his medical records. He was also certain that the Respondent agreed to do this in return for a payment of \$4,000.00. However, the documentary record on this issue is less certain.

The Complainant and the Respondent communicated by telephone, email, Skype, and text messages. The first evidentiary document is an email exchange between the Complainant and the Respondent on November 2, 2017. In his email, the Complainant discussed his medical ailments briefly and wrote: "My issue isn't that I don't have the medical documentation but one of how to establish a nexus to my Marine Corps service." Jt. Ex. 4. This is not exactly a request for a nexus letter, but it certainly let the Respondent know what the Complainant was seeking and bolsters the Complainant's testimony that he asked for a nexus letter. The Complainant

testified that he had a telephone conversation with the Respondent at about the same time and agreed to pay \$4,000.00 for a nexus letter.

At this point, the Complainant understood that he had made an agreement with the Respondent whereby the latter would produce a nexus letter, after reviewing medical records, in exchange for a \$4,000.00 fee. The Complainant, however, then muddied the waters by sending the DBQs to the Respondent. The Complainant had prepared these in great detail, setting forth his medical conditions, the diagnosis codes, and the effects his conditions had on him and his ability to function.

Mr. Creager, the Respondent's witness, has several decades of experience in preparing and deciding VA disability claims. He testified from personal knowledge, not as an expert, but he obviously possesses a thorough understanding of the VA claims process. Mr. Creager explained that DBQs must be signed by a physician to be considered by the VA. They are not necessary in many cases, and are not medical opinions. They are used to determine factually what the veteran's condition is. The DBQs prepared by the Complainant would be of no use without a physician's signature.

The Complainant testified that he sent the DBQs to the Respondent as a way of explaining his medical conditions in factual detail. He made no request that the Respondent sign and return them, but that is exactly what the Respondent did. At this point, the expectations of the Complainant and the Respondent were apparently different. The Complainant thought he had paid for a nexus letter, but he did not receive one. The Respondent may have felt that he had been retained to review medical records and sign the DBQs. The proven facts are that the Respondent had received \$4,000.00 and produced just four signatures on the DBQs. The

Respondent may have taken the time to review the DBQs and the other medical records the Complainant had sent, but this is not established by the evidence.

Despite the lack of documentary evidence supporting the Complainant's assertion that he retained the Respondent to produce a nexus letter, the evidence shows that the Complainant was experienced in the VA claims process and knew what he needed. Perhaps it was a mistake to send the Respondent the DBQs, but the Complainant's testimony that he asked the Respondent for a nexus letter is altogether credible.

Another cause for the failure of the meeting of the minds between the Complainant and the Respondent was the term "IME." The Complainant, over a long career with the military, law enforcement, and government agencies, had become familiar with the term IME as meaning an independent medical examination, which is quite common in workers' compensation claims, disability claims, and insurance claims. Mr. Creager, however, testified that, in VA parlance, IME means an independent medical expert. In the hearing, the parties also sometimes referred to an independent medical evaluation. The evidence strongly suggests that the Complainant expected the Respondent to provide an independent medical examination resulting in a nexus letter. The Respondent, on the other hand, had apparently agreed to act as an independent medical expert.

Around the end of November 2017, the Complainant received the DBQs back from the Respondent. He texted the Respondent on November 28, 2017, informing him that he had hired a law firm to help with the VA claim. The Respondent, in a text of November 29, 2017, discouraged the Complainant from retaining a lawyer, stating "they just slow things down" and



other derogatory remarks. Jt. Ex. 6. Most importantly, the Respondent told the Complainant, "Send me 10K total and [REDACTED] and I can help you thru it." Jt. Ex. 6.<sup>5</sup>

The Respondent texted later the same day, asking "is 6000 doable if do<sup>6</sup> pls call [REDACTED] [.]". Jt. Ex. 6. The Complainant replied that he would try to come up with the \$6,000.00, and the Respondent texted back, "Ok thx soon?" Jt. Ex. 6.

After discussions with his attorney and learning that he would not get his first paycheck from a new job for another three weeks, the Complainant decided that he could not afford to pay the Respondent any additional fee. In a text on December 1, 2017, he told the Respondent that "4K is my maximum budget," meaning the \$4,000.00 he had already paid. The Respondent took this to mean that the Complainant could pay an additional \$4,000.00, and texted back: "4k . . . if that works call [REDACTED] today if you want pay plan last 2k or not." Jt. Ex. 6 (ellipsis in original). The Respondent was still trying to have the Complainant pay a total fee of \$10,000.00.

Quite obviously, communication between the Complainant and the Respondent had broken down at this point. The Complainant was annoyed that the Respondent had increased his fee to \$10,000.00 after he thought they had an agreement for a \$4,000.00 fee. Additionally, The Respondent had not sent the nexus letter for which the Complainant had bargained. The Complainant disputed the \$4,000.00 charge on his American Express credit card and asked for a refund. American Express contacted the Respondent, who did not oppose the refund. The Complainant had his \$4,000.00 back by December 8, 2017.

The last mention of the Respondent's fee was in a text the Respondent sent on December 8, 2017: "Hey [Complainant]. Dr Bash here – Do you still need help . . . what fee works for you?"

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<sup>5</sup> After this text, some follow-up texts, and a conversation with [REDACTED] the Complainant became confused about how much the Respondent was trying to charge him. He did not know if it was total of \$10,000.00 or \$10,000.00 plus the \$4,000.00 already paid. I find that the Respondent's text of November 29, 2017 clearly establishes that his total requested fee was \$10,000.00.

<sup>6</sup> I take this to mean "so."

Jt. Ex. 6 (ellipsis in original). The Complainant did not reply and filed this complaint shortly thereafter.

The Respondent testified minimally about his initial contacts with the Complainant. He stated that he told the Complainant that his fee was \$10,000.00 and the Complainant said he would pay \$4,000.00. I do not find this testimony believable. The texts between the two show that the Complainant was not expecting to be charged another \$6,000.00. The Respondent also noted that on the Hematologic and Lymphatic Conditions DBQ he wrote, "See the lay and nexus letters," but did not produce the referenced nexus letter. Jt. Ex. 1.

The Respondent's website says that the Respondent charges a flat fee to assist veterans with their VA claims. This seems to be true, but the website provides no information about what the fee might be. This is understandable, as different claims would require differing amounts of the Respondent's time, attention, and expertise. In this case, however, I find the evidence convincing that the Respondent initially agreed to assist the Complainant in return for a fee of \$4,000.00. From the first email and telephone call, he knew (or should have known) that the Complainant needed a nexus letter. The Respondent never provided the nexus letter, and then tried to increase his fee to \$10,000.00. Also, he never told the Complainant what the \$10,000.00 would cover, or what he would do for the Complainant, other than to "help you thru the whole thing."

Indeed, collecting a sizeable fee seems to have been the Respondent's primary motivation in this case. Even after the Complainant obtained a refund of the \$4,000.00, the Respondent was still asking what fee worked for the Complainant. This is a strong suggestion that the Respondent took an "all the traffic will bear" approach in an attempt to get as much money as he could from the Complainant. I find that this is unprofessional conduct, not because the Respondent was

trying to maximize his profits, but because he misled the Complainant into thinking that he would provide a nexus letter for \$4,000.00. He did not provide the service for which he was retained, and, after failing to write the nexus letter, tried to extract an additional \$6,000.00 that the Complainant had never agreed to. The Respondent's actions border upon dishonesty and bring disrepute to the medical profession.

The Charges Under the Maryland Medical Practice Act also mention the Respondent's advertising on his web site (paragraph 26), but do not state specifically how that advertising may be unprofessional conduct. The Respondent claims to have handled 4,000 cases with 40,000 separate claims, with a ninety percent success rate. The Respondent testified that all that information is true, and described how he calculated the success rate: successful claims in forty of forty-four cases for which data is available. This is meager statistical evidence, considering that the Respondent also testified that he has been assisting veterans since 1996 and does about 500 cases a year. He explained that Board of Veterans Appeals cases formerly contained the names of physicians involved, so he was able to determine his success rate in forty-four cases, but now the Board of Veterans Appeals does not include the names and he "can't get data anymore."

COMAR 10.32.01.13B(2) prohibits physicians from placing advertising containing "[s]tatements that cannot be verified by the Board for truthfulness[.]" *See also* Md. Code Ann., Health Occ. § 14-503(b) (2014). The Board could not possibly verify the Respondent's claimed ninety percent success rate. I find, therefore, that the Respondent violated this prohibition.

The Charges Under the Maryland Medical Practice Act also mention that the Respondent wrote an order for an upper endoscopy for the Complainant but never informed him of the order. This allegation is incorrect. The Complainant included this issue in his complaint to the Board,

but his testimony at the hearing was that he was having trouble with his phone and did not (or could not) open the attachment containing the order until several months later. The Complainant's feeling that he was "out of the loop" because he did not know about the order for endoscopy turned out to be unfounded.

The major fault with the Respondent's medical practice, at least in this case, seems to be a desultory and somewhat chaotic approach in the methods he uses to provide service. The Respondent's website states that he charges a flat fee, but does not provide any actual fees charged for a particular service. His methods of communication, i.e., email and text message, are imprecise and have significant potential to create misunderstandings. For example, after the Complainant emailed the Respondent on November 2, 2017, the Respondent sent an essentially non-responsive reply touting his experience and providing an example of a lay letter, which the Complainant did not need. The Respondent's financial affairs are handled by [REDACTED] in California, who also communicates primarily by telephone and text message, creating another opportunity for confusion and misunderstanding. These may be considered failures attributable to the Respondent's business model rather than willful wrongdoing, but they are certainly unprofessional.

#### Sanctions

In this case, the State seeks to impose the disciplinary sanctions of a reprimand with probation, including an in-person tutorial and having the Board review the Respondent's website, and a fine of \$20,000.00. Md. Code Ann., Health Occ. § 14-404(a) (Supp. 2018); COMAR 10.32.02.09A; COMAR 10.32.02.10.

Under the applicable law, the Board may impose a fine instead of or in addition to revoking or suspending a license or reprimanding a licensee who is found to have violated

section 14-404 of the Health Occupations article. Health Occ. § 14-405.1(a) (2014); COMAR 10.32.02.09C. The matrix of sanctions found in COMAR 10.32.02.10 states that for violations of section 14-404(a)(3) that are not sexual in nature, the maximum sanction against a physician's license is revocation and the minimum is a reprimand. The maximum fine is \$50,000.00 and the minimum is \$5,000.00. For advertising in violation of Health Occupations section 14-503, the maximum sanction against a license is a reprimand with probation and the minimum is a reprimand. The maximum fine is \$50,000.00 and the minimum is \$5,000.00. The State's recommended sanctions fall within the guidelines.

I find that none of the aggravating or mitigating factors listed in COMAR 10.32.02.09B apply in this case, and there is no reason to depart from the sanctioning guidelines. The State's recommendations are reasonable in light of the Respondent's actions and are not arbitrary or capricious. I shall recommend that the Board impose those sanctions.

#### PROPOSED CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent committed unprofessional conduct in the practice of medicine. Md. Code Ann., Health Occ. § 14-404(a)(3)(ii) (Supp. 2018). As a result, I conclude that the Respondent is subject to disciplinary sanctions of a reprimand with probation, including an in-person tutorial and having the Board review the Respondent's website, for the cited violation. *Id.*; COMAR 10.32.02.09A.

I further conclude that the Respondent is subject to a fine of \$20,000.00 for the cited violation. Md. Code Ann., Health Occ. § 14-405.1(a) (2014); COMAR 10.32.02.09C.


**PROPOSED DISPOSITION**

I PROPOSE that charges filed by the Maryland State Board of Physicians against the Respondent on August 29, 2018 be **UPHELD**; and

I PROPOSE that the Respondent be sanctioned by being reprimanded and being placed on probation, with the probation to include an in-person tutorial and a review of the Respondent's website by the Board; and

I PROPOSE that the Respondent be ordered to pay a fine of \$20,000.00.

June 18, 2019  
Date Decision Issued

  
Richard O'Connor  
Administrative Law Judge

ROC/kdp  
# 179735

**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 State 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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