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| **IN THE MATTER OF** | * | **BEFORE THE** |
| **HAROLDO DRACHENBERG, M.D.** | * | **MARYLAND STATE** |
| **Respondent** | * | **BOARD OF PHYSICIANS** |
| **License Number: D45026** | * | **Case Number: 2221-0076A** |

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# CONSENT ORDER

On November 4, 2021, Disciplinary Panel A ("Panel A") of the Maryland State Board of Physicians (the "Board") charged Haroldo Drachenberg, M.D. (the "Respondent"), License Number D45026, under the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") §§ 14-101 *et seq.* (2014 Repl. Vol. & 2020 Supp.). Panel A charged the Respondent with violating the following provisions of the Act:

> **§ 14-404. Denials, reprimands, probations, suspensions, and revocations – Grounds.**
>
> (a) *In general.* – Subject to the hearing provisions of § 14-405 of this subtitle, a disciplinary panel, on the affirmative vote of a majority of the quorum of the disciplinary panel, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:
>
> . . .
>
> (3) Is guilty of:
>
> (i) Immoral conduct in the practice of medicine; or
>
> (ii) Unprofessional conduct in the practice of medicine[.]
>
> **§ 1-212. Sexual misconduct prohibited; regulations; discipline.**
>
> (a) *Adoption of regulations.* – Each health occupations board authorized to issue a license or certificate under this article shall adopt regulations that:

(1) Prohibit sexual misconduct; and

(2) Provide for the discipline of a licensee or certificate holder found to be guilty of sexual misconduct.

(b) *Sexual misconduct.* – For the purposes of the regulations adopted in accordance with subsection (a) of this section, "sexual misconduct" shall be construed to include, at a minimum, behavior where a health care provider:

...

(3) Has engaged in any sexual behavior that would be considered unethical or unprofessional according to the code of ethics, professional standards of conduct, or regulations of the appropriate health occupations board under this article.

The pertinent provisions of the Board's sexual misconduct regulations, COMAR 10.32.17, apply to the Respondent's conduct prior to May 20, 2019[1] and provide:

**10.32.17 Sexual misconduct.**

**.01 Scope.**

This chapter prohibits sexual misconduct against patients or key third parties by individuals licensed or certified under Health Occupations Article, Titles 14 and 15, Annotated Code of Maryland.

**.02 Definitions.**

. . .

B. Terms defined.

B. Terms Defined

(1) Key Third Party

[1] According to COMAR 10.32.17.9999, the Board's sexual misconduct regulations went into effect March 6, 2000. These regulations were later amended and the amended regulations went into effect on May 20, 2019. The Respondent's conduct occurred over a three-year period, starting in May, 2017, and therefore, both versions of the regulation are applicable.

(a) "Key third party" means an individual who participates in the health and welfare of the patient concurrent with the physician-patient relationship.

(b) "Key third party" includes, but is not limited to the following individuals:

. . .

(iii) Parent

(2) Sexual Impropriety.

(a) "Sexual impropriety" means behavior, gestures, or expressions that are seductive, sexually suggestive, or sexually demeaning to a patient or a key third party regardless of whether the sexual impropriety occurs inside or outside of a professional setting.

(b) "Sexual impropriety" includes, but is not limited to:

. . .

(iii) Using the health care practitioner-patient relationship to initiate or solicit a dating, romantic, or sexual relationship[.]

(3) "Sexual misconduct" means a health care practitioner's behavior toward a patient, former patient, or key third party, which includes:

(a) Sexual impropriety;

(b) Sexual violation; or

(c) Engaging in a dating, romantic or sexual relationship which violates the code of ethics of the American Medical Association, American Osteopathic Association, American Psychiatric Association, or other standard recognized professional code of ethics of the health care practitioner's discipline or specialty.

(4) Sexual Violation

(a) "Sexual violation" means health care practitioner-patient or key third party sex, whether or not initiated by the patient or

key third party, and engaging in any conduct with a patient or key third party that is sexual or may be reasonably interpreted as sexual, regardless of whether the sexual violation occurs inside or outside of a professional setting.

(b) "Sexual violation" includes, but is not limited to:

. . .

(iv) Kissing in a romantic or sexual manner[.]

**.03 Sexual Misconduct.**

A. Individuals licensed or certified under Health Occupations Article, Titles 14 and 15, Annotated Code of Maryland, may not engage in sexual misconduct.

B. Health Occupations Article, [§] 14-404(a)(3) . . . Annotated Code of Maryland, includes, but is not limited to, sexual misconduct.

The pertinent provisions of the Board's sexual misconduct regulations, COMAR 10.32.17, apply to the Respondent's conduct after May 20, 2019 in Md. Code Regs. provide:

**10.32.17 Sexual Misconduct.**

**.01 Scope.**

This chapter prohibits sexual misconduct by health care practitioners.

**.02 Definitions.**

B. Terms Defined.

(1) "Health care practitioner" means an individual licensed under Health Occupations Article, Titles 14 and 15, Annotated Code of Maryland.

(2) Key Third Party.

(a) "Key third party" means an individual who participates in the health and welfare of the patient concurrent with the physician-patient relationship.

(b) "Key third party" includes, but is not limited to the following individuals:

. . .
(iii) Family member[.]

(3) Sexual Contact.

(a) "Sexual contact" means the knowing touching directly or through clothing, where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by the health care practitioner's own prurient interest or for sexual arousal or gratification.

(b) "Sexual contact" includes, but is not limited to:
. . .

(iv) Kissing in a romantic or sexual manner[.]

(4) "Sexual harassment" means an unwelcome sexual advance, request for sexual favor, or other verbal or physical conduct of a sexual nature.

**.03 Sexual Misconduct.**

A. Health care practitioners may not engage in sexual misconduct.

B. Health Occupations Article, §§ 14-404(a)(3), 14-5A-17(a)(3), 14-5B-14(a)(3), 14-5C-17(a)(3), 14-5D-14(a)(3), 14-5E-16(a)(3), 14-5F-18(a)(19), and 15-314(a)(3), Annotated Code of Maryland, includes, but is not limited to, sexual misconduct.

C. Sexual misconduct includes, but is not limited to:

...

(5) Using the health care practitioner-patient relationship to initiate or solicit a dating, romantic, or sexual relationship;

(6) Engaging in a dating, romantic, or sexual relationship which violates § D of this regulation or the code of ethics of the American Medical Association, American Osteopathic Association, American Psychiatric Association, or other professional code of ethics;

(7) Participating in any form of sexual contact with a patient or key third party[.]

D. Sexual or Romantic Relationships. A health care practitioner may not engage in sexual behavior with:

(1) A current patient;

(2) A key third party if the key third party's decisions directly affect the health and welfare of the patient or if the relationship could otherwise compromise the patient's care based on the following considerations, which include, but are not limited to:

(a) The nature of the patient's medical problem and the likely effect on patient care;

(b) The length of the professional relationship;

(c) The degree of emotional dependence on the health care practitioner;

(d) The importance of the clinical encounter to the key third party and the patient; and

(e) Whether the health care practitioner-patient relationship can be terminated in keeping with ethics guidance and what implications doing so would have for the patient; and

(3) A former patient upon consideration of the following factors:

(a) Duration of the health care practitioner-patient relationship;

(b) Nature of the health care services provided;

(c) Lapse of time since the health care practitioner-patient relationship ended;

(d) Extent to which the former patient confided personal or private information to the health care practitioner;

(e) Degree of emotional dependence that the former patient has or had on the health care practitioner;

(f) Extent to which the health care practitioner used or exploited the trust, knowledge, emotions, or influence derived from the previous health care practitioner-patient relationship; and

(g) Whether the health care practitioner-patient relationship was terminated in order to enter into a romantic or sexual relationship.

The American Medical Association has issued the following ethical opinions addressing the doctor/patient relationship.[2]

**Code of Medical Ethics Opinion 9.1.1 (2016) – Romantic or Sexual Relationships With Patients.**

Romantic or sexual interactions between physicians and patients that occur concurrently with the patient physician relationship are unethical. Such interactions detract from the goals of the patient-physician relationship and may exploit the vulnerability of the patient, compromise the physician's ability to make objective judgments about the patient's health care, and ultimately be detrimental to the patient's well-being.

A physician must terminate the patient-physician relationship before initiating a dating, romantic, or sexual relationship with a patient.

Likewise, sexual or romantic relationships between a physician and a former patient may be unduly influenced by the previous physician-patient relationship. Sexual or romantic knowledge, emotions, or influence derived from the previous professional relationship, or if a romantic relationship would otherwise foreseeably harm the individual.

[2] "The Board and the disciplinary panels may consider the Principles of Ethics of the American Medical Association, but these principles are not binding on the Board or the disciplinary panels." COMAR 10.32.02.16.

In keeping with a physician's ethical obligations to avoid inappropriate behavior, a physician who has reason to believe that nonsexual, nonclinical contact with a patient may be perceived as or may lead to romantic or sexual contact should avoid such contact.

**Code of Medical Ethics Opinion 9.1.2 (2016) – Romantic or Sexual Relationships with Key Third Parties.**

Patients are often accompanied by third parties who play an integral role in the patient-physician relationship, including, but not limited to, spouses or partners, parents, guardians, or surrogates. Sexual or romantic interactions between physicians and third parties such as these may detract from the goals of the patient-physician relationship, exploit the vulnerability of the third party, compromise the physician's ability to make objective judgments about the patient's health care, and ultimately be detrimental to the patient's well-being.

Third parties may be deeply involved the in the clinical encounter and in medical decision making. The physician interacts and communicates with these individuals and often is in a position to offer them information, advice, and emotional support. The more deeply involved the individual is in the clinical encounter and in medical decision making, the stronger the argument against sexual or romantic contact between the physician and a key third party. Physicians should avoid sexual or romantic relations with any individual whose decisions directly affect the health and welfare of the patient.

For these reasons, physicians should refrain from sexual or romantic interactions with key third parties when the interaction would exploit trust, knowledge, influence, or emotions derived from a professional relationship with the third party or could compromise the patient's care.

Before initiating a relationship with a key third party, physicians should take into account:

1. The nature of the patient's medical problem and the likely effect on patient care.
2. The length of the professional relationship.
3. The degree of the third party's emotional dependence on the physician.
4. The importance of the clinical encounter to the third party and the patient.
5. Whether the patient-physician relationship can be terminated in keeping with ethics guidance and what implications doing so would have for patient.

**The American Psychiatric Association: "The Principles of Medical Ethics" (2013 Edition).**

*Section 2*

*A physician shall uphold the standards of professionalism, be honest in all professional interactions and strive to report physicians deficient in character or competence, or engaging in fraud or deception to appropriate entities.*

1. The requirement that the physician conduct himself/herself with propriety in his or her profession and in all the actions of his or her life is especially important in the case of the psychiatrist because the patient tends to model his or her behavior after that of his or her psychiatrist by identification. Further, the necessary intensity of the treatment relationship may tend to activate sexual and other needs and fantasies on the part of both patient and psychiatrist, while weakening the objectivity necessary for control. Additionally, the inherent inequality in the doctor-patient relationship may lead to exploitation of the patient. Sexual activity with a current or former patient is unethical.

On January 12, 2022, 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 & LICENSING INFORMATION

1. At all relevant times, the Respondent was and is licensed to practice medicine in the State of Maryland. The Respondent initially was licensed to practice medicine in the State of Maryland on August 31, 1993, under License Number D45026. His license expires on or about September 30, 2022.

2. The Respondent practices as a psychiatrist. He is not board certified in any medical specialty.

## II. COMPLAINT

3. On or about December 29, 2020, the Board received a complaint from a Psychiatrist (the "Psychiatrist") who reported that an adult female patient of his (the "Patient") disclosed that she and the Respondent were in an "intimate relationship." In the Complaint, the Psychiatrist stated the Patient told him that she and the Respondent "have been sexual only in the last year and 'good friends' prior." In the Complaint, the Psychiatrist stated the Patient had been referred to him by the Respondent for therapy, that the Respondent was the Patient's physician, and that the Respondent was prescribing medications to the Patient.

## III. BOARD INVESTIGATION

4. The Board initiated an investigation into the Respondent upon receiving the Psychiatrist's complaint. As part of its investigation, Board staff interviewed the Psychiatrist, the Patient, the Respondent, reviewed medical and prescribing records of the Patient and a family member (the "Family Member") of the Patient (who also was a patient of the Respondent), and financial and travel records of the Respondent.

### *A. Interview of the Psychiatrist*

5. On or about February 26, 2021, as part of its investigation, Board staff interviewed the Psychiatrist under oath.

6. During his interview, the Psychiatrist confirmed he treated the Patient for severe psychiatric disorders after the Patient was referred to him by the Respondent for therapy. During her initial December 8, 2020 appointment, the Psychiatrist stated that he

was unable to engage in therapy due to the number of medications the Patient was taking that were prescribed by the Respondent.

7. The Psychiatrist stated he became concerned after the Patient reported that she was not able to think, that she felt "numb and...kind of dead inside," and he observed "she was so suppressed cognitively and could not formulate thoughts." Due to his concerns, the Psychiatrist stated he called the Respondent to coordinate a taper of the Patient's medications in order to begin her therapy.

8. At a December 29, 2020 appointment, the Psychiatrist observed the Patient was more fluid with her thoughts and that the Patient seemed more animated. When the Psychiatrist asked the Patient if anyone else perceived any changes in her behavior, the Patient replied that her "significant other" noticed that she was "better." The Patient then admitted that her significant other was the Respondent.

9. The Psychiatrist testified that the Patient disclosed that she and the Respondent engaged in a sexual relationship, stating "she said that they've had sexual intercourse before...and they've been in an – in an intimate relationship as well and it means a lot to her."

***B. Patient Records from the Psychiatrist***

10. The Psychiatrist produced the Patient's medical records to the Board.

11. These records document that the Patient had a history of psychiatric disorders since childhood. The Patient also reported a history of substance abuse but has been sober for more than thirty years.

12. Contemporaneous records of the Psychiatrist from December 29, 2020 note: "client also disclosed to me that she is seeing her psychiatrist intimately since she has been

a patient of his. client became a patient of [the Respondent] 6.5 years, became friends 4 years ago and intimate over the last year – through the 6.5 years he has been her treating physician."

13. A staff member employed by the Psychiatrist (the "Staff Member") was present while the Patient disclosed this information to the Psychiatrist. The Staff Member documented in a December 29, 2020 medical record: "Pt states that she has been Dr. Drackenberg's pt for about 6 years and that a friendship started about 4 years ago. When asked how long they have been intimate, the pt states it has been on and off for a year and they just started up a few months ago in August. As MD interviews pt about this matter, she becomes notably anxious and asks if this will stay between them....Pt appears anxious...and states, 'I wish I had never said anything' noting she thinks it is 'better' if someone else is prescribing her medication because she 'does not like being on that much medication." Board staff on July 16, 2021 interviewed the Technician who confirmed that the Patient stated she engaged in an intimate relationship with the Respondent and that the Patient did not "think it was right."

### *C. Interview of the Patient*

14. As part of its investigation, Board staff interviewed the Patient under oath on March 22, 2021.

15. During the interview, the Patient confirmed the Respondent treated her from 2014-2016 for severe psychiatric disorders. The Patient stated that from 2016 to mid-2017, she did not see the Respondent in any capacity, until she randomly saw the Respondent at a CVS Pharmacy.

16. Shortly after their encounter at CVS, the Patient stated the Respondent began treating her as a self-described friend, "I really never started seeing him as a patient; he started treating me as a friend, like he never charged me." The Patient stated that she saw the Respondent at his office on occasion while he was treating her as a "friend," and that sometimes he wrote prescriptions for her if she "needed prescriptions."

17. The Patient also stated that while he was treating her as a "friend," she and the Respondent watched television together at each other's houses, "started running into each other at social settings," and "started going out to dinner, we would see, you know, each other just casually." The Patient described the relationship with the Respondent as "a friend, we are just friends...there's no emotional, sexual and there hasn't been any sex between Dr. Drachenberg and myself, Haroldo, at this time...it's platonic." The Patient denied reporting to the Psychiatrist that she and the Respondent had a sexual relationship, stating the Psychiatrist, "just kind of took that and ran with it...I tried to tell him and he wouldn't listen to me."

18. The Patient also admitted that she and the Respondent mutually agreed to travel internationally together for four days in November, 2019 to celebrate their birthdays. The Patient confirmed that the Respondent "paid for most everything," and that they traveled on the same airline, stayed in the same hotel room, slept in the same bed, but that "there was no sex, no, no romantic anything...just platonically went[.]" The Patient stated the Respondent purchased gifts and other souvenirs for her on the trip.

19. The Patient also confirmed the Respondent treated a Family Member for severe psychiatric disorders and prescribed medications to the Family Member.

20. The Patient stated the Respondent referred her to the Psychiatrist for therapy. While treating with the Psychiatrist, the Patient admitted to him that the Respondent was her 'significant other." The Patient also testified she told the Psychiatrist she no longer wanted the Respondent to prescribe medications to her because, "I just thought it would be better, since we are such close friends...the lines, again, you know, it would just be better to have another psychiatrist."

21. The Patient stated the Respondent has not treated her in any capacity since he referred her to the Psychiatrist, but admitted she and the Respondent are still friends.

***D. Medical Records from the Respondent***

22. Board staff obtained the Patient's medical record from the Respondent. One part of the medical record produced by the Respondent was labeled: "Formal professional psychiatric treatment 5/14/14 – 2/29/16." This medical record documented that the Respondent treated the Patient for severe psychiatric disorders, and that the Patient has been in recovery for substance abuse for 26 years.

23. The second part of the Patient's medical record produced by the Respondent was labeled: "Informal courtesy treatment as a friend free of charge. No billing 6/2/2017 – 12/4/20." This portion of the medical record contained a letter to the Respondent from the Psychiatrist documenting therapy with him.

24. Board staff also obtained the Family Member's medical record from the Respondent. The record was labeled: "Billed for treatment from 6/24/14 to 2/17/15." "Pro Bono treatment from 7/12/17 to 2/15/19." The medical record documented that the Respondent treated the Family Member for severe psychiatric disorders as well. The

medical record documents a June 28, 2018 phone call between the Respondent and the Patient regarding the Family Member.

### *E. PDMP Report*

25. Board staff subpoenaed and received the Respondent's Prescription Drug Monitoring Program ("PDMP") which documents from 2014 to 2020, the Respondent prescribed controlled dangerous substances ("CDS") to the Patient.

26. The Respondent's PDMP report also documents that the Respondent prescribed CDS to the Family Member from approximately 2014 to 2020.

### *F. Written Response of the Respondent*

27. The Respondent provided the Board with a written response to the Complaint dated April 19, 2021. In the response, the Respondent states he "treated [the Patient] formally as a patient from the middle of 2014 to the beginning of 2016, at which time she terminated treatment with me."

28. The Respondent stated from "February 2016 until around May 2017, [he] did not see her at all," until "we met at a store, and through friends and family in several different social contexts."

29. Since then, the Respondent admits that the Patient "and I have been close friends for about three years....We have been going to dinner together for years. We have celebrated birthdays together. In 2019, [the Patient] and I traveled abroad and...we slept together in the same bed, but with absolutely no sexual contact of any kind."

30. The Respondent stated that since "2017, at times I have helped [the Patient] with prescriptions, medication samples and advise purely as a friend, not in a formal professional capacity. This has been always free of charge and informally."

31. The Respondent stated that in 2020 when the "pandemic started," the Patient was forced to close down her business, and shortly thereafter contracted COVID-19, which involved "a difficult physical recovery and [the Patient] was left with very severe clinical depression." The Respondent stated that after "several months of fighting depression," and "financial hardship," the Patient "asked me in despair, to please help her as a friend with psychiatric knowledge." In response to this request, the Respondent prescribed "several antidepressant medications" for the Patient but stated "this was not a doctor-patient relationship, but rather a friend helping a friend in need." The Respondent also admitted to paying "her rent and groceries, and in every other way I could."

32. The Respondent stated that after the Patient did not respond successfully to the antidepressants, he referred her to the Psychiatrist. The Respondent stated the Psychiatrist overreacted when the Patient disclosed the Respondent was her "significant other," and did not give "her opportunity to explain the nature of our relationship."

### *G. Interview of the Respondent*

33. On June 17, 2021, Board staff conducted an under-oath interview with the Respondent. In the interview, the Respondent stated in May, 2014, he began treating the Patient "formally" for severe psychiatric disorders, and that he initially saw her in-person every three-to-four weeks, including home-visits. By February, 2016, the Respondent stated the Patient requested to terminate her care with him secondary to the Respondent prescribing a benzodiazepine, which was controversial with her recovery sponsor.

34. The Respondent explained in his interview that the term "formally" for him means, "I consider a patient that I see. I charge for the visits with clear boundaries of the session." The Respondent further stated that the word "informally" for him means, "I've

been practicing psychiatry for 30 years and it was common practice to prescribe something to a family member or friend. Over the years I have prescribed to my father, my mother, my two brothers, and friends, which is not considered to be – they're not my patient....Now, that is a practice that has changed dramatically over the last few years and the medical legal implications are very different now. I do regret not having changed my, or adapted soon enough to the medical legal changes. So, I saw it as the same way when once we started a friendship. At times I did prescribe medications so I saw it as an informal, as a friend, not as a patient. And there was never any fee for services involved or anything like that."

35. The Respondent stated that between February, 2016 and May, 2017, he did not see the Patient in any capacity until they ran into each other at a CVS pharmacy. The Respondent described that at this encounter, he and the Patient "exchanged pleasantries," and agreed that they should go to dinner and "catch up on what's going on." Thereafter, the Respondent contacted the Patient on her personal cell phone number to arrange a dinner meeting. The Respondent stated that the Patient did not provide her phone number to him but that he obtained it from her medical records.

36. The Respondent described that at their first dinner together, the Patient stated that "she had some symptoms or had some anxiety that was not well managed." Thereafter, the Respondent began calling in prescriptions for the Patient when "she would call and say can I get a refill for such and such medication." The Respondent stated he would call in prescriptions for the Patient "[m]aybe every few months or so." The Respondent stated, "that one of the medications that [he] refilled for her a number of times was specifically [a benzodiazepine]."

37. The Respondent stated that he and the Patient initially went to dinner together approximately once per month, and stated their friendship developed "extremely slowly." At first, the Respondent stated the Patient only would come to his house as the Family Member was living with the Patient and she did not want the Family Member to know she and the Respondent were friends. The Respondent stated this was because the Family Member "was my patient."

38. The Respondent stated he began treating the Family Member in June, 2014 for severe psychiatric disorders. The Respondent stated he treated the Family Member on and off until February, 2019. The Respondent stated he always treated the Family Member formally but did not bill the Family Member after 2015. The Respondent stated he would speak with the Patient about how the Family Member was doing. The Respondent stated he never used PDMP with the Family Member or the Patient.

39. Starting in 2018, the Respondent stated he and Patient started seeing each other "every week or two," and "it always consisted of dinner and either a movie or a series on TV." By 2019, the Respondent stated he and the Patient were talking on the phone or texting every day.

40. The Respondent stated the Patient "made it very clear that she did not want to have a romantic or sexual relationship, which is not exactly what I would have wanted but I respected that. I hoped eventually she would and the relationship would evolve into something else, but it never did." The Respondent stated he was in love with the Patient.

41. The Respondent stated he "wanted to have a romantic date but it became and always remained a friendship. Any type of advance that I would make she would make, she would make it clear that she was not ready for that." The Respondent admitted to giving

the Patient "a hug, like a hi or goodbye hug that was a little bit longer than customary. I kissed her shortly as a hi and goodbye. The first year or so it was always on the cheek. And then in 2018, '19, it was on the lips but it was a short kiss. Anytime I would try to extend it any longer I got the clear message from her that was not what she wanted."

42. The Respondent confirmed that in November, 2019, he and the Patient traveled internationally together to celebrate their birthdays and that he paid for the entire trip. The Respondent testified that the Patient "was somewhat reluctant because of what would that imply. I said look, I promise that I'm not going to push for anything physical. And that's the way it was." The Respondent confirmed he and the Patient slept in the same bed on the trip. "Well, when we were planning the trip I said we can sleep in the same room and I promise I'm not going to touch you anymore than you want to be touched. And that was the deal and we slept in separate parts of the bed." The Respondent stated that while on the international trip, "she was still taking medications that I had prescribed, yes."

43. The Respondent further confirmed that in 2020, after the Patient "had gotten very depressed after she contracted COVID and was going through a hardship," the Respondent "offered to help her pay the rent, both for her office, her business, and for her apartment, her townhouse." The Respondent also "bought groceries for her many times."

44. The Respondent stated he ceased treating the Patient in December, 2020 when he referred the Patient to the Psychiatrist for therapy.

45. At the time of the June 17, 2021 interview, the Respondent stated he had not seen the Patient in "four, five months."

### *H. Financial Payments and Receipts of the Respondent*

46. Board staff subpoenaed and received copies of financial payments and receipts for expenses the Respondent paid on behalf of the Patient. The receipts document in part that on November 1, 2019, the Respondent purchased two international airline tickets totaling $2,410.22. A receipt documented a November, 2019 hotel purchase in the amount of $730.20. Board staff also obtained receipts for transfers made from the Respondent to the Patient on December 18, 2020, December 23, 2020, January 26, 2021, February 6, 2021 and February 23, 2021 totaling $5,200.00.

## CONCLUSIONS OF LAW

Based on the foregoing findings of fact, Disciplinary Panel A concludes as a matter of law that the Respondent is guilty of immoral and unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(i) and (ii). Panel A also concludes that the Respondent violated Health Occ. § 1-212(a)(1) and the Board's sexual misconduct regulations. COMAR 10.32.17.01 *et seq.*

## ORDER

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

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

**ORDERED** that the Respondent's medical license is **SUSPENDED** for a minimum period of **TEN (10) BUSINESS DAYS.**[3] The suspension shall commence upon the effective date of this Consent Order; and it is further

**ORDERED** that during the suspension, the Respondent shall not:

(a) practice medicine;

(b) take any actions after the effective date of this Consent Order to hold himself out to the public as a current provider of medical services;

(c) authorize, allow or condone the use of the Respondent's name or provider number by any health care practice or any other licensee or health care provider;

(d) function as a peer reviewer for the Board or for any hospital or other medical care facility in the state;

(e) prescribe or dispense medications;

(f) perform any other act that requires an active medical license; and it is further

**ORDERED** that the Respondent shall not apply for early termination of suspension; and it is further

**ORDERED** that after the minimum period of suspension imposed by the Consent Order has passed, the Respondent may submit a written petition for termination of suspension. After a determination that the Respondent has complied with the relevant terms of suspension, the disciplinary panel may administratively terminate the Respondent's suspension through an order of the disciplinary panel; and it is further

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

**ORDERED** that upon termination of the suspension, the Respondent shall be placed on **PROBATION** for a minimum period of **TWO (2) YEARS.**[4] During probation, the Respondent shall comply with the following terms and conditions of probation:

1. The Respondent shall enroll in the Maryland Professional Rehabilitation Program ("MPRP") as follows:

   (a) Within 5 business days of the effective date of this Consent Order, the Respondent shall contact MPRP to schedule an initial consultation for enrollment;

   (b) Within 15 business days of the effective date of this Consent Order, the Respondent shall enter into a Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP;

   (c) The Respondent shall fully and timely cooperate and comply with all MPRP's referrals, rules, and requirements, including, but not limited to, the terms and conditions of the Participant Rehabilitation Agreement(s) and Participant Rehabilitation Plan(s) entered with MPRP, and shall fully participate and comply with all therapy, treatment, evaluations, and screenings as directed by MPRP;

   (d) The Respondent shall sign and update the written release/consent forms requested by the Board and MPRP, including release/consent forms to authorize MPRP to make verbal and written disclosures to the Board and to authorize the Board to disclose relevant information from MPRP records and files in a public order. The Respondent shall not withdraw his release/consent;

   (e) The Respondent shall also sign any written release/consent forms to authorize MPRP to exchange with (i.e., disclose to and receive from) outside entities (including all of the Respondent's current therapists and treatment providers) verbal and written information concerning the Respondent and to ensure that MPRP is authorized to receive the medical records of the Respondent, including, but not limited to, mental health and drug or alcohol evaluation and treatment records. The Respondent shall not withdraw his release/consent;

   (f) The Respondent's failure to comply with any of the above terms or conditions including terms or conditions of the Participant Rehabilitation

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

Agreement(s) or Participant Rehabilitation Plan(s) constitutes a violation of this Consent Order;

2. Within **SIX (6) MONTHS** of the effective date of this Consent Order, the Respondent is required to take and successfully complete a course in Professional Boundaries and Ethics. The following terms apply:

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

(b) the disciplinary panel will accept a course taken in-person or over the internet during the state of emergency;

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

(d) the course 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 course.

3. Within **TWO (2) YEARS** of the effective date of this Consent Order, the Respondent shall pay a civil fine of **FIFTEEN THOUSAND DOLLARS ($15,000.00)**. The Payment shall be by money order or bank certified check made payable to the Maryland Board of Physicians and mailed to P.O. Box 37217, Baltimore, Maryland 21297. The Board will not renew or reinstate the Respondent's license if the Respondent fails to timely pay the fine to the Board; and it is further

**ORDERED** that the Respondent shall not apply for early termination of probation; and it is further

**ORDERED** that, after the Respondent has complied with all terms and conditions of probation and the minimum period of probation imposed by the Consent Order has passed, the Respondent may submit to the Board a written petition for termination of probation. After consideration of the petition, the probation may be terminated through an order of the disciplinary panel. The Respondent may be required to appear before the disciplinary panel to discuss his petition for termination. The disciplinary panel may grant the petition to terminate the probation, through an order of the disciplinary panel, if the Respondent has complied with all probationary terms and conditions and there are no pending complaints relating to the charges; and it is further

**ORDERED** that a violation of probation constitutes a violation of the Consent Order; and it is further

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

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

**ORDERED** that after the appropriate hearing, if the disciplinary panel determines that the Respondent has failed to comply with any term or condition imposed by this

Consent Order, the disciplinary panel may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, suspend the Respondent's license 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 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) (2014 & 2019 Supp.).

02/10/2022
Date

***Signature On File***
Christine A. Farrelly, Executive Director
Maryland State Board of Physicians

## CONSENT

I, Haroldo Drachenberg, 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.

1/28/2022
Date

***Signature On File***
Haroldo Drachenberg, M.D.

## NOTARY

**STATE OF** Maryland

**CITY / COUNTY OF** Prince Georges

**I HEREBY CERTIFY** that on this 28th day of January 2022, before me, a Notary Public of the foregoing State and City/County, personally appeared Haroldo Drachenberg, 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.

Renard Warfield
Notary Public

My Commission expires: 06/10-25

Renard Warfield
NOTARY PUBLIC
Prince George's County
MARYLAND
MY COMMISSION EXPIRES June 10, 2025