

IN THE MATTER OF

*

BEFORE THE

GARY J. KERKVLiet, M.D.

*

MARYLAND STATE

Respondent

*

BOARD OF PHYSICIANS

License Number: D45708

*

Case Number: 2017-0497B

* * * * *

CONSENT ORDER

On April 23, 2018, Disciplinary Panel B ("Panel B") of the Maryland State Board of Physicians (the "Board") charged Gary K. Kerkvliet, M.D. (the "Respondent"), License Number D45708, under the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") §§ 14-101 *et seq.* (2014 Repl. Vol. and 2017 Supp.).

The pertinent provisions of the Act under Health Occ. § 14-404 provide the following:

- (a) Subject to the hearing provisions of § 14-405 of this subtitle, a disciplinary panel, on the affirmative vote of a majority of the quorum of the disciplinary panel, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

...

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

...

- (40) Fails to keep adequate medical records as determined by appropriate peer review[.]

On June 27, 2018, a conference with regard to this matter was held before a panel of the Board's Disciplinary Committee for Case Resolution ("DCCR"). As a result of the DCCR, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

Background/licensing information

1. At all times relevant to these charges, the Respondent was and is licensed to practice medicine in the State of Maryland. The Respondent was initially licensed to practice medicine in Maryland on February 8, 1994, under License Number D45708. The Respondent's license is current and is scheduled for renewal on September 30, 2018.
2. The Respondent is board-certified in internal medicine and is a member of a group practice located in Lutherville, Maryland.

Prior Disciplinary History

3. On March 13, 2017, Panel B charged the Respondent with engaging in unprofessional conduct in the practice of medicine (Health Occ. § 14-404(a)(3)(ii)) after investigating a complaint that the Respondent had self-prescribed medications. The Board's investigation revealed that the Respondent had prescribed 17 different medications to himself and 11 different medications to a family member. None of the medications were Controlled Dangerous Substances ("CDS").
4. On September 5, 2017, the Respondent entered into a public Consent Order to resolve the charges under the terms of which he was reprimanded.

Current Findings of Fact

5. On or about January 17, 2017, the Board received an anonymous complaint that the Respondent had prescribed to a CDS-dependent patient ("Patient 1"¹) excessive doses of opioids and benzodiazepines.

¹ Names of patients are confidential.

6. Upon receipt of the complaint, the Board initiated an investigation that included interviewing the Respondent under oath and subpoenaing ten patient records for peer review. In addition, the Respondent was requested to respond to the complaint and provide a summary of his care of the 10 patients whose care was reviewed.
7. In his Board interview, the Respondent, who is not board-certified in pain management, stated that he takes a continuing medical education course on pain management “at least one hour once a year.”
8. The peer reviewers concurred that the Respondent failed to meet the standard of quality care for nine of ten patients, including Patient 1, and failed to keep adequate medical records for all ten patients.
9. The peer reviewers noted the following deficiencies with regard to the Respondent’s pain management prescribing practices:
 - a. The Respondent saw patients at variable and inconsistent intervals; often several months would pass between visits;
 - b. The Respondent failed to conduct patient risk assessments before prescribing opioids;
 - c. The Respondent consistently prescribed excessively high dosages of highly addictive short-acting opioids over prolonged periods of time in the absence of clinical evidence to support the dosages prescribed;
 - d. The Respondent failed to address “red flags” such as patient requests for early refills or the use of multiple pharmacies to fill the Respondent’s opioid prescriptions. The Respondent failed to address documented concerns from insurance companies or other practitioners regarding his prescribing practices;

- e. The Respondent consistently failed to include an opioid agreement in patients' records;
- f. The Respondent prescribed high dosages of oxycodone that were in excess of the morphine equivalent recommended for chronic pain management;
- g. The Respondent maintained patients on excessively high levels of opioids for months and even years despite lack of improvement of functionality or pain control;
- h. The Respondent failed to adequately monitor patients for the potential risk of diversion or addiction;
- i. The Respondent failed to significantly modify his treatment plan when patients demonstrated aberrant behavior including inconsistent urine drug tests ("UDTs"). Inconsistent results include positive results for drugs not prescribed, or illicit drugs, or negative tests for drugs that were prescribed, which would raise concern for diversion;
- j. The Respondent consistently failed to check patients' past and ongoing medication history with the Chesapeake Regional Information System for our Patients ("CRISP") or the Maryland Prescription Drug Monitoring Program ("PDMP");
- k. The Respondent failed to taper or wean patients from excessive dosages of opioids in spite of the lack of functional improvement or pain control over extended periods of time;

1. The Respondent continued to maintain or escalate opioid doses in spite of patient behavior indicating opioid use disorder where an addiction consult would be more appropriate.
10. With regard to the Respondent's failure to maintain adequate medical records, the peer reviewers noted that the Respondent's documentation was confusing and that it would have been difficult for another practitioner to continue a patient's care. The peer reviewers further noted the following specific deficiencies:
- a. The Respondent failed to adequately evaluate and document patients' side effects, alternatives or additions to therapy, impact on quality of life and function;
 - b. The Respondent's notes frequently did not correspond to prescriptions he had written for patients;
 - c. The Respondent cut and pasted outdated information from previous notes;
 - d. The Respondent consistently failed to document his treatment rationale for prescribing opioids and for increasing dosages or quantities of the opioids he prescribed.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, Disciplinary Panel B concludes as a matter of law that the Respondent failed to meet standards as determined by appropriate peer review for the delivery of quality medical or surgical care in this State, in violation of H.O. § 14-404(a)(22), and failed to keep adequate medical records as determined by appropriate peer review, in violation of Health Occ. § 14-404(a)(40).

ORDER

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

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

ORDERED that the Respondent is placed on probation for a minimum period of three years.² During the probationary period, the Respondent shall comply with the following probationary terms and conditions:

(1) The Respondent is prohibited from prescribing opioid medications, except for as specifically provided in this paragraph. In emergency cases, the Respondent may issue no more than one prescription of an opioid medication to a patient, but the prescription may not exceed the lowest effective dose and quantity needed for a duration of three days. The prescription may not be refilled, nor may it be renewed. The Respondent may not prescribe an emergency prescription for an opioid medication to a patient more than once per year per patient. The Respondent shall notify the Board within 24 hours of any prescription authorized under this paragraph. This paragraph goes into effect in **90 days** from the date this Consent Order goes into effect. After **two years** from the date this Consent Order goes into effect, the Respondent may prescribe opioid medication without the above restrictions but only if the Respondent's medical practice is supervised as set forth in probationary conditions paragraphs 4-6;

(2) The Respondent is prohibited from certifying patients for the medical use of Cannabis;

(3) Within six months, the Respondent shall successfully complete Board disciplinary panel-approved intensive courses in opioid medication prescribing and medical documentation. The Board disciplinary panel will not accept a course taken over the Internet. The courses may not be used to fulfill the continuing medical education credits required for license renewal. The Respondent must provide documentation to the Board that the Respondent has successfully completed the courses;

(4) After two years and after the Respondent has successfully completed the disciplinary panel-approved intensive courses in opioid medication prescribing and medical documentation, the Respondent's medical practice shall be supervised for a period of one year;

(5) The supervisor must be approved by the Panel prior to the supervision. The Respondent shall provide the panel with the name and professional background information of the proposed supervisor whom he is offering for approval. The Board will provide the panel-approved

² If the Respondent's license expires while the Respondent is on probation, the probationary period and any probationary conditions will be tolled.

supervisor with the relevant Board and Panel orders and peer review reports concerning the Respondent. The Respondent consents to the release of these documents to the supervisor. Each month the supervisor shall review the patient records, chosen by the supervisor, of at least ten (10) of the Respondent's patients. The supervisor shall meet in-person with the Respondent at least two (2) times each month. Discussion at their in-person meetings shall include the care the Respondent has provided for specific patients and detailed feedback from the supervision on the Respondent's practices. The supervisor shall be available to the Respondent for consultations on any patient and shall observe the Respondent's practice and have access to the Respondent's patient's records and shall maintain the confidentiality of all medical records and patient information. The Respondent shall ensure that the supervisor provides the Board with quarterly reports. The quarterly reports shall detail the quality of the Respondent's practices; deficiencies, concerns and needed improvements; and measures to improve patient care. If there are indications that the Respondent poses a substantive risk to patients, the supervisor shall immediately report his or her concerns to the Board.

(6) If, within two years, the Board has contracted with an outside entity to supervise physicians under a Board or panel order, the supervision may be performed by a supervisor assigned by the contracted outside entity and shall include any terms of supervision required by the contract and, unless stated otherwise in the contract, in addition to those specified under probationary conditions paragraph 5;

(7) The Panel may issue administrative subpoenas to the Maryland Prescription Drug Monitoring Program ("PDMP") on a quarterly basis for the Respondent's CDS prescriptions. The administrative subpoenas may request a review of the Respondent's CDS prescriptions from the beginning of each quarter;

(8) The Respondent shall comply with the Maryland Medical Practice Act, Md. Code Ann., Health Occ. §§ 14-101—14-702, and all laws and regulations governing the practice of medicine in Maryland; and

(9) A violation of probation constitutes a violation of the Consent Order; and it is further

ORDERED that, after three years, the Respondent may submit a written petition to the Board requesting termination of probation. After consideration of the petition, the probation may be terminated through an order of a disciplinary panel. The Respondent may be required to appear before a disciplinary panel to discuss his petition for termination. The disciplinary panel will grant the petition to terminate the probation if the Respondent has complied with all of the probationary terms and conditions and there are no pending complaints related to the charges; and it is further

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

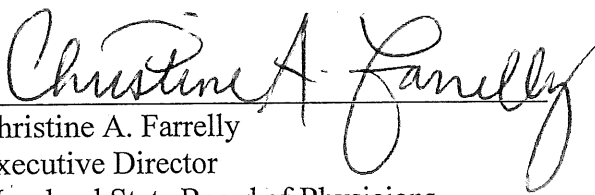
ORDERED that, after the appropriate hearing, if a disciplinary panel determines that the Respondent has failed to comply with any term or condition of this Consent Order, the disciplinary panel may reprimand the Respondent, place the Respondent on probation with appropriate probationary terms and conditions, or suspend 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 upon the Respondent; and it is further

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

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

ORDERED that this Consent Order is a public document pursuant to Md. Code Ann., Gen. Prov. §§ 4-101 *et seq.*

July 27, 2018
Date


Christine A. Farrelly
Executive Director
Maryland State Board of Physicians

CONSENT

I, Gary J. Kerkvliet, M.D., acknowledge that I have been represented by counsel before entering this Consent Order. By this Consent and for the purpose of resolving the issues raised by Disciplinary Panel B, I agree and accept to be bound by the foregoing Consent Order and its conditions.

I acknowledge the validity of this Consent Order as if entered into 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 own behalf, and to all other substantive and procedural protections provided by the law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of Disciplinary Panel B to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of a disciplinary panel of the Board that I might have filed after any such hearing.

I sign this Consent Order voluntarily and without reservation, and I fully understand and comprehend the language, meaning and terms of the Consent Order.

Signature on File

7-24-2018
Date

Gary J. Kerkvliet, M.D.
Respondent

NOTARY

STATE OF MARYLAND

CITY/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 24th day of July 2018, before me, a Notary Public of the foregoing State and City/County, personally appeared Gary J. Kerkvliet, M.D., and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed. Mrs

AS WITNESSETH my hand and notarial seal.



Notary Public

Matthew Lee Davis

My commission expires: January 27, 2022

