

<b>IN THE MATTER OF</b>	*	<b>BEFORE THE</b>
<b>THOMAS F. BURKE, M.D.</b>	*	<b>MARYLAND STATE BOARD</b>
<b>Respondent</b>	*	<b>OF PHYSICIANS</b>
<b>License Number: D47746</b>	*	<b>Case Number: 2219-0154B, 2218-0155B</b>

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**FINAL DECISION AND ORDER**

**PROCEDURAL HISTORY**

Thomas F. Burke, M.D., was originally licensed to practice medicine in the State of Maryland on July 21, 1995, under license number D47746.<sup>1</sup> On January 28, 2019, in the Circuit Court for Harford County, Case Number 12-K-18-000271, Dr. Burke pled guilty to and was convicted of five counts of prescribing, administering, manufacturing, distributing, dispensing, or possessing a Controlled Dangerous Substance not in the course of his regular professional duties and not in conformance with Title 5 of the Criminal Law Article and the standards of the profession, in violation of Md. Code Ann., Criminal Law Article (“Crim. Law”) § 5-902(c) (2012 Repl. Vol. & 2018 Supp.).

The Court sentenced Dr. Burke to the maximum period of two years of incarceration for each count, to be served consecutively, with all but three years suspended, for a total of ten years with all but three years suspended and credit for time served. Dr. Burke was also sentenced to three years of probation upon his release from incarceration with conditions that include the surrender of his Drug Enforcement Administration and Maryland CDS registrations during the

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<sup>1</sup> Dr. Burke’s license expired on September 30, 2018. Pursuant to section 14-403 of the Health Occupations Article, the license of an individual regulated by the Board may not “lapse by operation of law while the individual is under investigation or while charges are pending.” The Board’s investigation began before the expiration of Dr. Burke’s license. Therefore, by operation of law, Dr. Burke’s license did not expire during these proceedings.

period of probation, random urinalysis, drug and alcohol evaluation, testing, and treatment, and abstaining from alcohol and drugs.

On May 7, 2019, the Office of the Attorney General filed with the Maryland Board of Physicians (the “Board”) a petition to revoke Dr. Burke’s license to medicine (“the Petition”) and a show cause order pursuant to section 14-404(b) of the Maryland Medical Practice Act in Case Number 2219-0154B. The statute provides:

- (1) On the filing of certified docket entries with the Board by the Office of the Attorney General, a disciplinary panel shall order the suspension of a license if the licensee is convicted of or pleads guilty or nolo contendere with respect to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside.
- (2) After completion of the appellate process if the conviction has not been reversed or the plea has not been set aside with respect to a crime involving moral turpitude, a disciplinary panel shall order the revocation of a license on the certification by the Office of the Attorney General.

Md. Code Ann., Health Occupations Article (“Health Occ.”) § 14-404(b) (2014 Repl. Vol. & 2018 Supp.). Attached to the Petition were copies of the indictment, certified docket entries, and transcript of the plea agreement and sentencing hearing.

On June 24, 2019, Dr. Burke, through his counsel, filed a response to the Petition and show cause order and requested that the Panel deny the State’s Petition to Revoke and give Dr. Burke the opportunity to address the Panel at a Disciplinary Committee for Case Resolution (“DCCR”) Conference scheduled for September 25, 2019 at 9:00 a.m.<sup>2</sup> To the extent that Dr.

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<sup>2</sup> On November 20, 2018, prior to Dr. Burke’s criminal convictions that gave rise to this case, Disciplinary Panel B summarily suspended Dr. Burke’s medical license, pursuant to Md. Code Ann., State Government Article (State Gov’t) § 10-226(c)(2) (2014 Repl. Vol. & 2018 Supp.), based on the panel’s conclusion that the public health, safety, or welfare imperatively required emergency action. On December 3, 2018, Panel B charged Dr. Burke in case number 2218-0155B, with violating Health Occ. § 14-404(a)(3)(ii) (unprofessional conduct in the practice of medicine) and (27) (sells, prescribes, gives away, or administers drugs for an illegitimate medical purpose). The DCCR for that case is scheduled for September 25, 2019. In requesting the opportunity to appear at the DCCR to address the Panel on this moral turpitude case, Dr. Burke confuses the process for resolution of disciplinary cases charged under Health Occ. § 14-404(a) with cases charged under Health Occ. § 14-404(b). As the Court of Appeals

Burke's request to address the Panel at the DCCR may be interpreted as a request for a hearing, Board Disciplinary Panel B ("Panel B") declines to grant Dr. Burke's request for a hearing pursuant to the Code of Maryland Regulations ("COMAR") 10.32.02.07E(3).<sup>3</sup>

Having reviewed and considered the entire record in this case, Panel B issues this Final Decision and Order.

### FINDINGS OF FACT

Panel B finds the following:

1. On March 2, 2018, the grand jury in the Circuit Court for Harford County returned a sixty-two count indictment against Dr. Burke, in case number 12-K-18-00271, charging him with unlawful possession of a Controlled Dangerous Substance ("CDS") and drug paraphernalia, conspiracy to distribute CDS, distribution of CDS, and unlawfully prescribing CDS outside of the standards of the provider's profession.
2. On January 28, 2019, Dr. Burke entered into a negotiated plea agreement wherein he pled guilty to five counts (counts 13, 16, 40, 47 and 59) of prescribing, administering, manufacturing, distributing, dispensing, or possessing CDS not in the course of his regular professional duties and not in conformance with Title 5 of the Criminal Law Article and the standards of the profession, in violation of Crim. Law § 5-902(c).<sup>4</sup> In exchange for his plea of guilty, the remaining charges were dismissed.

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has explained, the procedure is different for resolution of cases under Health Occ. § 14-404(a) and cases under Health Occ. § 14-404(b) where there has already been an opportunity for a hearing and an adjudication on the criminal charges. *See Maryland Bd. of Phys. Quality Assurance v. Felsenberg*, 351 Md. 288, 292-95 (1998). Unlike cases charged under Health Occ. § 14-404(a), a limited evidentiary hearing is discretionary for cases charged under Health Occ. § 14-404(b). *See infra*, pp 4-5; COMAR 10.32.02.07E(3).

<sup>3</sup> In 2013, pursuant to Health Occ. § 14-401, the Board was divided into two disciplinary panels to resolve disciplinary actions against physicians. *See House Bill 1096*, ch. 401, 2013 Md. Laws 3542. This case was considered and decided by Disciplinary Panel B of the Board.

<sup>4</sup> Section 5-902 of the Criminal Law Article provides, in pertinent part:

(c) An authorized provider may not prescribe, administer, manufacture, distribute, dispense, or possess a controlled dangerous substance, drug paraphernalia, or controlled paraphernalia except:

- (1) in the course of regular professional duties; and
- (2) in conformity with this title and the standards of the authorized provider's profession relating to controlled dangerous substances, drug paraphernalia, or controlled paraphernalia.

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(e) (1) If the trier of fact specifically finds that a person has knowingly or intentionally violated this section, the person is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 2 years or a fine not exceeding \$100,000 or both.

(2) In all other cases, a person who violates this section is subject to a civil penalty not exceeding \$50,000.

3. Counts 13, 16, 40, 47 and 59 charge Dr. Burke with unlawfully intentionally and knowingly, as an authorized provider, prescribing, administering, manufacturing, distributing, dispensing, or possessing a CDS not in the course of regular professional duties and not in conformance with Title 5 of the Criminal Law Article and the standards of the authorized provider's profession.
4. In accepting Dr. Burke's guilty plea, the Court found that Dr. Burke understood the nature of the charges, the trial and appellate rights he was surrendering, and the other possible negative consequences of a guilty finding. The Court found that Dr. Burke knowingly, freely, voluntarily and intelligently entered the plea of guilty.
5. Thereafter, the Court sentenced Dr. Burke to ten years of incarceration, with all but three years suspended, and gave credit for time served. Dr. Burke was sentenced to three years of probation effective upon his release from incarceration with conditions that included the surrender of Dr. Burke's Drug Enforcement Administration and Maryland CDS registrations during the period of probation, random urinalysis, drug and alcohol evaluation, testing, and treatment, and abstaining from alcohol and drugs.
6. Dr. Burke did not appeal his convictions within the time prescribed by law and the guilty plea and convictions have not been set aside.

#### **DISCUSSION**

Pursuant to COMAR 10.32.02.07E(2), a response to a show cause order must be limited to the following issues: "(a) Lack of conviction or plea; (b) Whether the crime is one involving moral turpitude; (c) Misidentity of the respondent with the defendant in the criminal matter; and (d) Other relevant issues, if any, other than mitigation." Dr. Burke does not deny that he pled guilty to five counts of prescribing, administering, manufacturing, distributing, dispensing, or possessing a CDS not in the course of regular professional duties and not in conformance with Title 5 of the Criminal Law Article and the standards of the authorized provider's profession. Nor does he argue that he was misidentified as the defendant in the criminal case. Rather, Dr. Burke argues that (1) the crime he pled guilty to is not a crime involving moral turpitude; and (2) he should be entitled to address the Panel, respond to questions, and explain the mitigating

circumstances that led to his guilty plea at the DCCR scheduled for September 25, 2019.<sup>5</sup> Consideration of mitigating factors, however, is prohibited by the Board's regulations. See COMAR 10.32.02.04E(2)(d). This prohibition also comports with the intent of the statute to "direct[] summary treatment of a charge based on the conviction of a crime of moral turpitude." *Felsenberg*, 351 Md. at 288. The only issue for Panel B to resolve, therefore, is whether prescribing CDS not in the course of regular professional duties and not in conformance with Title 5 of the Criminal Law Article and the standards of the authorized provider's profession is a crime involving moral turpitude.

### **Crime of Moral Turpitude**

Health Occ. §14-404(b)(2) mandates the automatic revocation of a physician's medical license when a disciplinary panel concludes that a physician was convicted of a crime involving moral turpitude. "Ordinarily, the question [of whether a crime involves moral turpitude] arises in the case of witnesses who have been convicted of infamous crimes or those involving moral turpitude and whose credibility is impeached by the asking whether they have been so convicted." *Board of Dental Exam'rs v. Lazzell*, 172 Md. 314 (1937). Accordingly, in defining the concept of moral turpitude, "it is settled that whatever else it may mean, it includes *fraud* and that a crime in which an intent to defraud is an essential element is a crime involving moral turpitude." *Oltman v. Maryland State Bd. of Physicians*, 162 Md. App. 457, 486 (2005) (quoting *Attorney Grievance Comm'n of Md. v. Walman*, 280 Md. 453, 459-60 (1977)) (emphasis in original).

Under Health Occ. §14-404(b)(2), a disciplinary panel has the obligation to determine what types of crimes are crimes of moral turpitude for licensing and disciplinary purposes.

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<sup>5</sup> As discussed above, the DCCR was scheduled in connection with charges filed under Health Occ. § 14-404(a) in Case Number 2218-0155B.

Maryland appellate courts have held that the term “moral turpitude” is more broadly defined with respect to Board licensure and discipline than in a witness impeachment context. *See Ricketts v. State*, 291 Md. 701, 711-12 (1981) (“[W]hat constitutes a crime of moral turpitude may involve different considerations compelling different results in different circumstances.”). In the context of licensure and discipline, the term moral turpitude “strikes the broader chord of public confidence in the administration of government. That is, a person who has credibility to testify [at trial] may not have the public’s confidence to practice certain professions[.]” *Stidwell v. Maryland State Bd. of Chiropractic Exam’rs*, 144 Md. App. 613, 619 (2002). Thus, it is well established that “in the context of a licensing board’s review of the conduct of its licensee, the concept of moral turpitude is rather broad.” *Oltman*, 162 Md. App. at 483. In the licensure context, “[t]he term ‘moral turpitude’ has been defined generally as importing ‘an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.’” *Walman*, 280 Md. at 459 (quoting *Braverman v. Bar Ass’n of Balt. City*, 209 Md. 328, 344, *cert. denied*, 352 U.S. 830 (1956)).

The Court of Appeals has also established that “[a] guilty plea is an admission of conduct that constitutes all the elements of a formal criminal charge” and that [b]y entering a plea of guilty, the accused is not simply stating that he did the discrete acts described in the indictment; he is admitting guilt of a substantive crime.” *Metheny v. State*, 359 Md. 576, 599 (2000) (internal citations and quotation marks omitted). A guilty plea “also serves as a stipulation that no proof by the prosecution need [be] advanced. . . . It supplies both evidence and verdict, [thus] ending [the] controversy.” *Id.*

### **Dr. Burke's Crimes Involved Moral Turpitude**

Dr. Burke argues that the crime he pled guilty to is not a crime involving moral turpitude. In his guilty plea, Dr. Burke admitted that his conduct constituted all the elements of the criminal charges. In so pleading, he admitted that he, as an authorized provider, intentionally and knowingly prescribed, administered, manufactured, distributed, dispensed or possessed CDS not in the course of his regular professional duties and not in conformance with Title 5 of the Criminal Law Article and the standards of the profession. Dr. Burke did not dispute the elements of the charges to which he pled guilty and he accepted the plea agreement. Dr. Burke cannot now challenge the sufficiency of the evidence or collaterally attack the final judgment entered upon the Court's acceptance of his guilty plea. *See Oltman*, 162 Md. App. at 487 (“[A]ppellant cannot now collaterally attack the conclusive final judgment of the criminal court in his case. . . . To the contrary, the . . . court's final judgment is conclusive proof of [appellant's] guilt of the crime charged.”) (internal quotation marks and citations omitted). The Court of Appeals has established that although violations of the Maryland Controlled Substances Act “will ordinarily involve moral turpitude, each case must be decided on its own facts.” *Attorney Grievance Comm'n of Maryland v. Proctor*, 309 Md. 412, 419 (1987).

Through his guilty plea, Dr. Burke admitted to knowingly and intentionally issuing prescriptions for CDS not in accordance with his regular professional duties and outside of the standards of the medical profession. Dr. Burke's conduct was not just outside of the acceptable standards of medical practice; it was illegal. As the Court stated to Dr. Burke during sentencing, “I am absolutely convinced you violated your oath. In addition to violating the law, you violated your oath.” The Court went on to explain that the public relies on medical professionals to appropriately prescribe drugs because lay people, especially those with an addiction problem, do

not know and have no way of knowing which drugs are appropriate to be taking. In prescribing drugs outside of the standards of the medical profession, Dr. Burke's criminal conduct showed such disregard for social norms and the ethical standards of the medical profession that he undermined the public's confidence in the profession. *See Stidwell*, 144 Md. App. at 619 (a criminal offense that undermines the public's confidence in a profession may be a crime of moral turpitude if so determined by the appropriate licensing board). In the Panel's view, based on the facts of this case, Dr. Burke acted "contrary to the accepted and customary rule of right and duty" that he owes to his fellow citizens in the State of Maryland and, as such, his convictions constituted crimes involving moral turpitude. *Walman*, 280 Md. at 459.

#### **Section 14-404(b)(2) Mandates Revocation of Dr. Burke's Medical License**

Second, Dr. Burke argues that there is no cited precedent for the summary revocation of his license with no due process and no evidentiary hearing. Dr. Burke is incorrect. In enacting Health Occ. § 14-404(b)(2), the Maryland General Assembly has authorized summary revocation of a license for crimes involving moral turpitude. The Court of Appeals in *Felsenberg* determined that "[t]he intent of the Legislature in directing summary treatment of a charge based on the conviction of a crime involving moral turpitude is clear." 351 Md. at 304.

In this case, the State appropriately initiated revocation procedures under Health Occ. § 14-404(b)(2). Unlike cases charged under Health Occ. § 14-404(a), where a licensee has the right to an evidentiary hearing and the opportunity to appear at a DCCR for a settlement conference, there is no statutory or regulatory right to a hearing for cases charged under Health Occ. § 14-404(b). Rather, the decision to grant a hearing is discretionary based on the existence of genuine issues of material fact or law as determined by the disciplinary panel. COMAR 10.32.02.07E(3). The *Felsenberg* Court explained, "when the charge rests solely upon the



conviction, there is no need to inquire into the underlying conduct” and that the question of “[w]hether the crime is one involving moral turpitude is an issue which ordinarily may be resolved without the need for evidence or fact-finding.” 351 Md. at 303.

As noted in footnote 2, Dr. Burke was previously charged under Health Occ. § 14-404(a) and received the opportunity to appear at a DCCR for a settlement conference in connection with that case. The DCCR conference was originally scheduled for March 27, 2019. At Dr. Burke’s request, the DCCR conference was postponed, and rescheduled to September 25, 2019. During the pendency of the charges filed under Health Occ. § 14-404(a), the proceedings in this case were initiated under Health Occ. § 14-404(b). Notwithstanding the pendency of the charges under Health Occ. § 14-404(a), which were filed prior to Dr. Burke’s criminal conviction, the Panel was authorized to initiate separate proceedings under Health Occ. § 14-404(b) after Dr. Burke pled guilty and was convicted of a crime involving moral turpitude. *See Felsenberg*, 351 Md. at 304 (“The fact that particular conduct is proscribed by two or more statutes does not mean that there is a conflict between them; nor does it ordinarily preclude a prosecution under any one of the statutes that applies, notwithstanding that the procedures or penalty applicable to that statute are more onerous than under another applicable statute.”).

The Panel followed the appropriate process in statute and the Board’s regulations for resolution of cases involving a crime of moral turpitude. In doing so, Dr. Burke was given the opportunity to submit a written response to the Petition and to request a hearing limited to the issues appropriately addressed in his written response. *See* COMAR 10.32.02.07E(2), (3). As discussed above, the decision to grant a hearing is discretionary based on the existence of genuine issues of material fact or law as determined by the disciplinary panel. *See* COMAR 10.32.02.07E(3). Dr. Burke did not request a hearing in accordance with COMAR

10.32.02.07E(3). Instead, he sought to address the Panel regarding his case charged under Health Occ. § 14-404(b) at the DCCR scheduled in connection with the charges issued under Health Occ. § 14-404(a). To the extent that Dr. Burke's request to address the Panel at the DCCR can be interpreted as a request for a hearing in this case, Panel B denies the request. The determination of whether the crime in this case involved moral turpitude is a question of law, which does not require an evidentiary hearing or consideration of any facts beyond the elements of the conviction itself.

Upon determining that a licensee has been convicted of a crime involving moral turpitude, Health Occ. § 14-404(b)(2) requires a disciplinary panel to order the revocation of a license after the completion of appellate proceedings. Dr. Burke cites three categories of cases where a disciplinary panel issued orders of revocation in 2019 and argues that the facts in his case warrant a lesser sanction when compared to other orders of revocation issued by a disciplinary panel in the past year. In all three categories of cases cited by Dr. Burke, however, the Respondent was charged and disciplined under Health Occ. § 14-404(a), and not under Health Occ. § 14-404(b).<sup>6</sup> While in cases charged under Health Occ. § 14-404(a), the disciplinary panel has the discretion to impose a sanction of a reprimand, probation, suspension, or revocation, Health Occ. § 14-404(b)(2) requires a disciplinary panel to revoke the license of an individual upon the completion of appellate proceedings if the disciplinary panel determines that the licensee was convicted of a crime involving moral turpitude. The Panel rejects his arguments.

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<sup>6</sup> In the third category, Dr. Burke cites a case where the Respondent was convicted of a crime involving moral turpitude during the pendency of charges filed under Health Occ. § 14-404(a) and after the opportunity for a settlement conference and hearing at the Office of the Administrative Hearings. Prior to the commencement of an action filed under Health Occ. § 14-404(b), the Respondent agreed to enter into a Consent Order to resolve the charges filed under Health Occ. § 14-404(a) with an 8-year revocation of his medical license. *See In the Matter of Atif B. Malik, M.D.*, Case Numbers 2218-0036B and 2219-0039A.

## CONCLUSION OF LAW

Based on the above-discussion, Panel B concludes that Dr. Burke's convictions for prescribing CDS not in accordance with regular professional duties and not in conformance with Title 5 of the Criminal Law Article and the standards of the authorized provider's profession, in violation of Crim. Law § 5-902(c), are crimes involving moral turpitude. As a result, Health Occ. § 14-404(b)(2) requires Panel B to order the revocation of Dr. Burke's license.

## ORDER

It is, by Board Disciplinary Panel B, hereby:

**ORDERED** that the license of Thomas F. Burke, M.D., license number D47746, to practice medicine in Maryland is **REVOKED**, as mandated by Health Occ. § 14-404(b)(2); and it is further

**ORDERED** that the Summary Suspension imposed November 20, 2018, and affirmed on November 28, 2018, is terminated as moot; and it further

**ORDERED** that the December 3, 2018 Charges, filed under Health Occ. § 14-404(a), in Case Number 2218-0155B, are dismissed as moot; and it is further

**ORDERED** that the DCCR conference scheduled for September 25, 2019 is cancelled; and it is further

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

Date

09/09/2019

***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. Burke 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. Burke files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

**Christine A. Farrelly, Executive Director  
Maryland State Board of Physicians  
4201 Patterson Avenue  
Baltimore, Maryland 21215**

Notice of any petition for judicial review should also be sent to the Board's counsel at the following address:

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