

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

**ORDER FOR SUMMARY SUSPENSION OF LICENSE TO PRACTICE
MEDICINE**

Disciplinary Panel B ("Panel B") of the Maryland State Board of Physicians (the "Board") hereby **SUMMARILY SUSPENDS** the license of Thomas Francis Burke, M.D. (the "Respondent"), License Number D47746, to practice medicine in the State of Maryland. Panel B takes such action pursuant to its authority under Md. Code Ann., State Gov't § 10-226(c)(2)(i) (2014 Repl. Vol. & 2017 Supp.), concluding that the public health, safety, or welfare imperatively requires emergency action.

INVESTIGATIVE FINDINGS¹

I. BACKGROUND

1. At all times relevant hereto, the Respondent was and is licensed to practice medicine in the State of Maryland. The Respondent was originally licensed to practice medicine in Maryland on July 21, 1995, under License Number

¹ The statements regarding the Respondent's conduct are intended to provide the Respondent with notice of the basis of the suspension. They are not intended as, and do not necessarily represent a complete description of the evidence, either documentary or testimonial, to be offered against the Respondent regarding this matter.

D47746. The Respondent's license was renewed on January 1, 2016, which expired on September 30, 2018.

2. The Respondent was previously licensed to practice medicine in the State of Tennessee on July 1, 1994. This license expired on May 31, 1996, and is presently in inactive status.
3. The Respondent is Board Certified in Sleep Medicine and does not hold any hospital privileges.
4. At all times relevant hereto, the Respondent was employed as the Medical Director of a health care facility ("Facility 1")², and also owned and operated a solo practice, ("Facility 2"), in Harford County, Maryland.
5. On or about February 15, 2018, a newspaper article reported that the Respondent had been indicted by the Grand Jury in Harford County, Maryland, for obstruction of justice on January 31, 2018, under case number 12-K-18-00123. The United States Drug Enforcement Agency ("DEA"), Harford County Sheriff's Office ("Sheriff's Office") and Harford County Joint Narcotics Task Force (the "Task Force") and Havre de Grace Police Department ("HDGPD") indicated that there had been an ongoing investigation which determined that the Respondent was providing prescriptions for controlled dangerous substances ("CDS") to unauthorized persons for illegal redistribution. The indictment alleged that the Respondent was providing his

² For confidentiality and privacy purposes, the names of individuals and facilities involved in this case are not disclosed in this document. The Respondent may obtain the names of all individuals and facilities referenced in this document by contacting the administrative prosecutor.

live-in girlfriend (“Individual A”) with CDS prescriptions which she would fill and sell for profit. On or about February 9, 2018, the above-mentioned law enforcement agencies executed a Search and Seizure Warrant (“SSW”) at the Respondent’s residence. During the search, they located drug paraphernalia with powder residue suspected to be cocaine or heroin.

II. BOARD INVESTIGATION

A. Patient Records from EMR Provider

6. The Board opened a full investigation based on the information outlined in the newspaper article.
7. On or about February 23, 2018, the Board notified the Respondent that an investigation had been opened, and subpoenaed three medical records including those of Individual A, a family member of the Respondent’s (“Individual B”), and a friend of Individual A (“Individual C”).
8. In response to the Board staff’s subpoenas, the Respondent indicated through counsel that he did not have access to his electronic medical records system at that time.
9. On or about March 2, 2018, the Board sent subpoenas to the Respondent’s electronic medical records system provider (“EMR Provider”) for the aforementioned records. EMR Provider responded by providing a spreadsheet of the demographic information, diagnosis, and prescribed medications of the Respondent’s patients, but the EMR Provider indicated that no patient office notes were recorded in the files for the requested patients.

10. According to the EMR Provider's response, between January 18, 2016 and September 29, 2017, the Respondent treated Individual A for various ailments including primary insomnia, Lyme Disease, Hepatitis C and chronic pain syndrome. The Respondent prescribed Individual A with a number of prescriptions including, but not limited to: lorazepam³, alprazolam⁴, diazepam⁵, and oxycodone⁶.
11. According to EMR Provider's response, the Respondent diagnosed Individual B with primary insomnia on or about January 18, 2016. The Respondent issued prescriptions to Individual B including but not limited to lorazepam, alprazolam, diazepam, and zolpidem tartrate⁷.
12. According to EMR Provider's response, the Respondent diagnosed Individual C on or about November 13, 2016, with primary insomnia. Between approximately November 2016 and May 2017, the Respondent issued prescriptions to Individual C including but not limited to alprazolam and lorazepam.

³ Lorazepam is a benzodiazepine used to treat anxiety, and is classified by the DEA as Schedule IV.

⁴ Alprazolam is a benzodiazepine used to treat anxiety, and is classified by the DEA as Schedule IV.

⁵ Diazepam is a benzodiazepine used to treat anxiety, and is classified by the DEA as Schedule IV.

⁶ Oxycodone is an opioid analgesic used to treat moderate to severe pain, and is classified by the DEA as Schedule II.

⁷ Zolpidem Tartrate is a sedative-hypnotic used to treat insomnia, and is classified by the DEA as Schedule IV.

B. HDGPD Investigation

13. In furtherance of its investigation, the Board obtained copies of the incident reports generated by the HDGPD which detailed the investigation that led to the indictments of the Respondent.
14. Board staff obtained the following documents from HDGPD:
 - a. Copies of Incident Reports documenting investigatory findings;
 - b. Chain of Custody logs;
 - c. Harford County Public Safety Call Number Detail Reports;
 - d. Requests for Laboratory Examination Reports
15. The HDGPD determined through a long-term investigation that neither Individuals A, B, or C were actual patients of the Respondent. The Respondent and Individual A were in a relationship for at least seven years, and shared the same address of record. At the time of the investigation, Individual B was using the Respondent's address as his own address of record, despite the fact that he did not actually reside there. Individual A was determined to be a close associate of Individual C, who in turn was allowing her own residence to be used for CDS distribution.
16. Investigation by HDGPD revealed that the Respondent was issuing prescription medications, primarily lorazepam and diazepam to Individuals A, B and C. The Respondent prescribed CDS to Individual A, who subsequently sold them on the street in exchange for US currency on multiple occasions

observed by investigators. Investigators were also able to determine that the Respondent and Individual A were purchasing illicit CDS, specifically cocaine.

17. On or about June 30, 2017 investigators were concluding a narcotics investigation into a residence which belonged to Individual C. Investigators were able to determine that another individual who had recently been convicted of CDS distribution and pending a turn-in date was distributing crack cocaine from the same residence. Upon executing a SSW at the location investigators were able to locate a number of prescription medication bottles in the name of Individual C.
18. On or about August 8, 2017, Individual A was scheduled to turn herself in to the Harford County Detention Center pursuant to a jail sentence received at a prior court proceeding. Individual A did not do so, but instead returned to the Respondent's place of residence, where she remained in hiding until August 10, 2017. At that point the Respondent transported Individual A in his personal vehicle to a motel approximately 17 miles from his residence. Investigators were subsequently able to confirm that the Respondent transported Individual A for the explicit purpose of concealing her from law enforcement who were expected to be looking for her.
19. On or about February 9, 2018, as a result of the Respondent's efforts to conceal Individual A from law enforcement, a warrant was issued for his arrest under the charge of obstruction of justice.

20. Investigators were able to secure a Search and Seizure Warrant for the Respondent's place of residence, and business, Facility 1. During the subsequent search of Facility 1, a handwritten note was located on the Respondent's desk indicating that a pharmacy had called to confirm a prescription for oxycodone in the name of Individual A. Investigators learned that this prescription was confirmed by the Respondent via telephone but was handwritten on the Respondent's prescription pad. This prescription was received by Individual A on January 30, 2018. Investigators were able to locate the Respondent's prescription pad at Facility 1 and verified that it matched the prescription filled by Pharmacy 2 on January 30, 2018.
21. During the search of the Respondent's residence, several prescription bottles were found in the bedroom used by the Respondent and Individual A. One of the bottles was labeled 'oxycodone' and was prescribed to Individual A by the Respondent on January 28, 2018. Out of twenty pills that were originally dispensed, only two remained. Investigators recovered another pill bottle prescribed to Individual A by the Respondent containing 22 diazepam tablets. Other items located in the master bedroom area included paraphernalia used for ingesting, injecting and smoking CDS commonly sold on the streets. Investigators also located packaging material containing residue of suspected CDS, as well as pill bottles bearing the name of Individual B with several unidentified pills inside. Also located in the Respondent's residence were prescription pads identical to those recovered from Facility 1.

22. The Respondent was located travelling in his vehicle and placed under arrest pursuant to the outstanding warrant. Upon a subsequent SSW executed on the vehicle, investigators located four empty pill bottles in Individual A's name in the back seat of the vehicle, as well as numerous prescriptions and related paperwork in Individual A's name. The Respondent remains in custody.
23. Board staff attempted to schedule an interview with the Respondent through the Harford County Sheriff's office but were unable to do so.

C. Pharmacy Records

24. The Board received copies of four prescriptions from Pharmacy 1 at two different Maryland locations which were written by the Respondent for Individual B:
 - a. On December 5, 2016 the Respondent wrote an electronic prescription ("ERx") for 60 tablets of alprazolam 2mg at two tablets before bedtime with three refills. This prescription was filled on December 5, 2016.
 - b. On May 10, 2017, the Respondent wrote an ERx for 60 tablets of diazepam 10mg at two tablets per day with one refill. This prescription was filled on May 10, 2017.
 - c. On November 6, 2017, the Respondent wrote an ERx for 60 tablets of Adderall 30mg at two tablets per day with no refills. This prescription was filled on November 9, 2017
 - d. On January 22, 2018 the Respondent wrote an ERx for 30 tablets of Ativan⁸ 2mg at one tablet per day with no refills. This prescription was filled on January 22, 2018.

⁸ Ativan is a brand name for lorazepam, a Schedule IV benzodiazepine used to treat anxiety.

25. The Board received copies of six prescriptions from Pharmacy 1 at three different Maryland locations which were written by the Respondent for Individual A:

- a. On October 7, 2017, the Respondent telephoned a prescription for 30 tablets of Lunesta⁹. The prescription was filled on October 12, 2017.
- b. On July 14, 2017, the Respondent wrote an ERx for 60 tablets of lorazepam 2 mg, at 1-2 tablets per day at bedtime. The prescription notes "OK for early refill (4 days) patient is going out of town." The prescription was filled on July 15, 2017.
- c. On November 24, 2017, the Respondent wrote an ERx for 60 tablets of zolpidem tartrate 10mg, one or two tablets daily. This prescription was filled on November 24, 2017.
- d. On January 16, 2018, the Respondent wrote a prescription for 60 tablets of Adderall 30 mg, "...for thirty days. No refills." This prescription was filled on January 16, 2018.
- e. On January 17, 2018, the Respondent telephoned a prescription for 60 tablets of lorazepam 1 mg. This prescription was filled on January 17, 2018.
- f. On January 28, 2018, the Respondent wrote an ERx for 60 tablets of diazepam 10 mg, 2 tablets before bedtime with one refill. This prescription was filled on January 28, 2018.

26. The Board received copies of two prescriptions from Pharmacy 2, at two different Maryland locations which were written by the Respondent for Individual A:

- a. On November 30, 2017, the Respondent wrote a prescription for 90 tablets of Adderall 30 mg for thirty days. This prescription was filled on December 1, 2017.
- b. On January 29, 2018, the Respondent wrote a prescription for 20 tablets of oxycodone 15 mg for five days. This prescription was filled on January 30, 2018.

27. The Board received a copy of a prescription from Pharmacy 3 which was written by the Respondent for Individual C:

⁹ Lunesta is a brand name for eszopiclone, a Schedule IV sedative-hypnotic used to treat insomnia.

- a. On April 14, 2017, the Respondent wrote an ERx for 60 tablets of lorazepam 2 mg for thirty days with three refills. This prescription was filled on April 14, 2017.

D. Criminal Indictment

28. On or about March 2, 2018, the Respondent was indicted by a Grand Jury for the State of Maryland, Harford County and arrested for sixty-two (62) counts of: unlawful possession of a CDS and drug paraphernalia; conspiring to distribute CDS; distribution of CDS; and unlawfully prescribing CDS outside the standards of the provider's profession under *State of Maryland v. Thomas Francis Burke*, case numbers 12-K-18-00271, 272, and 273. The Respondent's trial date is presently set for January 28, 2019 for the obstruction of justice and distribution-related cases. The Respondent's trial date for the SSW case is presently set for February 25, 2019. The Respondent is presently being held pending trial according to the State's Attorney's Office.
29. On May 4, 2018, Board staff issued subpoenas to Pharmacies 1, 2, and 3 and obtained copies of the original prescriptions written by the Respondent for Individuals A, B and C.

CONCLUSION OF LAW

Based on the foregoing facts, Panel B concludes that the public health, safety or welfare imperatively requires emergency action in this case, pursuant to Md. Code Ann., State Gov't. § 10-226(c)(2)(i) (2014 Repl. Vol. & 2017 Supp.).

ORDER

It is, by the affirmative vote of a majority of the quorum of Panel B considering this case:

ORDERED that pursuant to the authority vested by Md. Code Ann., State Gov't § 10-226(c)(2), the Respondent's medical license, D47746, to practice as a physician in the State of Maryland be and is hereby **SUMMARILY SUSPENDED**; and be it further

ORDERED that a post-deprivation hearing in accordance with Md. Code Regs. 10.32.02.08B(7)(c), D and E on the Summary Suspension, in which Panel B will determine whether the summary suspension will continue, has been scheduled for **November 28, 2018 at 1:00 p.m.**, and at the Maryland State Board of Physicians, 4201 Patterson Avenue, Baltimore, Maryland 21215-0095; and be it further

ORDERED that after the **SUMMARY SUSPENSION** hearing held before Panel B, the Respondent, if dissatisfied with the result of the hearing, may request

within ten (10) days an evidentiary hearing, such hearing to be held within thirty (30) days of the request, before an Administrative Law Judge at the Office of Administrative Hearings, Administrative Law Building, 11101 Gilroy Road, Hunt Valley, Maryland 21031-1301; and be it further

ORDERED that a copy of this Order of Summary Suspension shall be filed with the Board in accordance with Md. Code Ann., Health Occ. § 14-407 (2014 Repl. Vol. & 2017 Supp.); and be it further

ORDERED that this is an Order of Panel B, and, as such, is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Prov. §§ 4-101 *et seq.* (2014 Repl. Vol. & 2017 Supp.).

11/20/2018
Date

Christine A. Farrelly
Christine A. Farrelly

Executive Director

Maryland State Board of Physicians