

IN THE MATTER OF
ERIK SERGE KASS, M.D.

Respondent

License Number: D51250

*** BEFORE THE**
*** MARYLAND STATE**
*** BOARD OF PHYSICIANS**
*** Case Number: 2220-0071**

* * * * *

ORDER OF DEFAULT

On January 12, 2021, Disciplinary Panel B of the Maryland State Board of Physicians (“Board”) charged Eric Serge Kass, M.D. with unprofessional conduct in the practice of medicine, willfully making or filing a false report or record in the practice of medicine, and failure to cooperate with a lawful investigation conducted by the Board or a disciplinary panel. *See* Md. Code Ann., Health Occ. § 14-404(a)(3)(ii), (11), and (33) (2014 Repl. Vol. & 2020 Supp.). On March 24, 2021, the case was referred to the Office of Administrative Hearings (“OAH”) for an evidentiary hearing.¹

After notice was sent to Dr. Kass and the State at their respective addresses of record that a Telephone Scheduling Conference would be held at OAH on April 15, 2021, at 9:30 a.m., an Administrative Law Judge (“ALJ”) held a Telephone Scheduling Conference on that date and time. On April 15, 2021, at 9:30 a.m., the ALJ called Dr. Kass multiple times. Each time, the telephone was not answered and the ALJ was unable to leave a message. At 9:45 a.m., the ALJ proceeded with the scheduling conference in the absence of Dr. Kass. The Administrative Prosecutor appeared on behalf of the State. During the Scheduling Conference, a Telephone Prehearing Conference was scheduled for May 18, 2021 at 10:00 a.m. Eastern Daylight Time, from the OAH. COMAR 28.02.01.17.

¹ Before the Board transmitted this matter to OAH, Dr. Kass’s former attorney withdrew her appearance.

On April 22, 2021, OAH mailed a Notice of Telephone Prehearing Conference via Google Meet (Notice of Telephone Prehearing Conference) to each party at their respective addresses of record. The Notice of Telephone Prehearing Conference informed the parties of the date, time, and location of the Telephone Prehearing Conference, enclosed instructions pertaining to joining the Telephone Prehearing Conference via the Google Meet audiovisual platform, and directed each party to prepare and submit a Prehearing Statement in advance of the Telephone Prehearing Conference. Further, the Notice of Telephone Prehearing Conference informed the parties that failure to attend the Telephone Prehearing Conference scheduled for May 18, 2021 could result in a decision against the party failing to appear. The Notice of Telephone Prehearing Conference mailed to Dr. Kass at his address of record in Maryland was not returned to the OAH as undeliverable by the United States Postal Service. (“USPS”).

In addition, the ALJ also sent a letter to the parties dated April 20, 2021, in which he advised the parties that the Telephone Prehearing Conference was scheduled for May 18, 2021, at 10:00 a.m. Eastern Daylight Time, and expressly cautioned the parties that a party’s failure to appear at the Telephone Prehearing Conference may result in the issuance of a decision against that party with respect to the Board’s charges. This letter was mailed to Dr. Kass’s address of record with the Board in Bethesda, Maryland, and also emailed to him at his email address of record with the Board. The letter addressed to Dr. Kass’s Maryland address of record was not returned by the USPS. The letter was also mailed to Dr. Kass at a partial or incomplete address in Ethiopia that he had previously provided to the Board. The letter mailed to the Ethiopia address was returned by the USPS as undeliverable.

The ALJ emailed a Google Meet invitation for the May 18, 2021 Telephone Prehearing Conference to the parties on May 17, 2021, and emailed a reminder on May 18, 2021, prior to the

scheduled time of the Telephone Prehearing Conference. Dr. Kass did not appear for the May 18, 2021 Telephone Prehearing Conference via Google Meet as scheduled, nor did anyone appear on his behalf. He did not request a postponement of the Telephone Prehearing Conference and did not submit a Prehearing Conference Statement in advance of the Telephone Prehearing Conference, as instructed. The State's Prehearing Conference Statement was filed with the OAH on April 26, 2021, as instructed.

After waiting fifteen minutes for Dr. Kass to appear via Google Meet as instructed, the ALJ commenced the Telephone Prehearing Conference in his absence. The State, represented by the Administrative Prosecutor, appeared, and made an oral motion for a default order against Dr. Kass, which the ALJ took under advisement.

Under OAH's rules of procedure, "[i]f, after receiving proper notice, a party fails to attend or participate in a prehearing conference, hearing, or other stage of a proceeding, the judge may proceed in that party's absence or may, in accordance with the hearing authority delegated by the agency, issue a final or proposed default order against the defaulting party." COMAR 28.02.01.23A.

On December 9, 2020, the ALJ issued a Proposed Default Order. Upon consideration of the record, the ALJ found that Dr. Kass had proper notice of the May 18, 2021 Telephone Prehearing Conference and failed to appear and participate in the Telephone Prehearing Conference. The ALJ proposed that the Panel find Dr. Kass in default, adopt as findings of fact the statements set out in the allegations of fact section of the State's charges and conclude as a matter of law that Dr. Kass violated the Medical Practice Act, Health Occ. § 14-404(a)(3)(ii), (11), and (33) (2014 Repl. Vol. & 2020 Supp.) in the manner set forth in the State's charges. The ALJ proposed that Dr. Kass's license to practice medicine in the State of Maryland be revoked.

The ALJ mailed copies of the Proposed Default Order to Dr. Kass and the Administrative Prosecutor at the parties' respective addresses of record, and to the Board. The Proposed Default Order notified the parties that they may file written exceptions to the proposed order but must do so within 15 days of the date of the Proposed Default Order. The Proposed Default Order stated that any exceptions and request for a hearing must be sent to the Board with a copy provided to the opposing party. Neither party filed exceptions. The case came before Disciplinary Panel A ("Panel A") of the Board for final disposition.

FINDINGS OF FACT

Because Panel A concludes that Dr. Kass has defaulted and has not filed exceptions to the ALJ's Proposed Default Order, the following Findings of Fact are adopted from the Allegations of Fact in the January 12, 2021 charges and are deemed proven by the preponderance of the evidence:

1. At all times relevant, Dr. Kass was licensed to practice medicine in the State of Maryland. Dr. Kass was originally licensed to practice on or about October 2, 1996, under License Number D51250.²
2. Dr. Kass is not currently board-certified. Dr. Kass's board certification in Otolaryngology expired in 2015.
3. Dr. Kass owned and operated a private practice providing medical services related to ear, nose and throat care (the "Practice") in Bethesda, Maryland. While his current employment status is unknown at this time, the Board has reason to believe that the

² Dr. Kass's license was set to expire on September 30, 2020. Dr. Kass's license did not expire because of his non-renewal, however. A license may not lapse by operation of law "while the individual is under investigation or while charges are pending." Health Occ. § 14-403(a); *see also Salerian v. Board of Physicians*, 176 Md. App. 231, 247 (2007). The Board's investigation of Dr. Kass began in 2019. Because the charges against Dr. Kass were still "pending" as that term is used in the statute in September 2020, his license did not lapse or expire and remained active for disciplinary purposes throughout the Board's investigative, charging, and administrative proceedings.

Practice is closed and Dr. Kass is residing outside of the United States based on his last communication with the Board.

4. On or about April 22, 2019, the Board received an anonymous complaint from a pharmacist alleging that Dr. Kass was engaging in improper and unlawful prescribing practices. The complaint alleged, in pertinent part, that Dr. Kass was prescribing controlled dangerous substances (“CDS”) to a family member (“Family Member A”).³
5. The Board initiated an investigation into the complaint, and subpoenaed prescription records and medical records. A Board investigator also notified Dr. Kass of the allegations, the Board’s subsequent investigation, and requested that Dr. Kass provide a written response and participate in an under-oath interview.
6. As part of its investigation, the Board, on or about May 29, 2019, subpoenaed Dr. Kass’s prescription records through the Maryland Prescription Drug Monitoring Program to review his recent prescribing history.
7. The Board obtained a report of Dr. Kass’s prescribing history that documented his prescribing of medications, including CDS, for Family Member A. The Board also obtained copies of the prescriptions.
8. The prescription records showed that between April 7, 2014 and May 5, 2018, Dr. Kass wrote Family Member A sixteen prescriptions for three different CDS. Four of the prescriptions authorized five refills.
9. The Board also received information that Dr. Kass prescribed medications for Family member A that were intended for and used by another family member (“Family Member B”).

³ The American Medical Association (“AMA”) Code of Medical Ethics, specifically Opinion 1.2.1 Treating Self or Family, opines that physicians should, except in emergency settings and/or for short-term minor problems, not treat family members because it poses several challenges to physicians including concerns about professional objectivity, patient autonomy, and informed consent.

10. On or about September 20, 2019, a Board investigator notified Dr. Kass regarding the Board's investigation of allegations that he was engaging in inappropriate prescribing practices, including that he was writing prescriptions for Family Member A for medication intended for Family Member B. The Board investigator requested that Dr. Kass provide a written response.
11. On or about October 4, 2019, Dr. Kass provided a written response to the Board regarding its investigation and admitted that he wrote prescriptions for Family Member A that were intended for and used by Family Member B.
12. Dr. Kass explained that this was an arrangement that he made with Family Member A due to their concerns about insurance coverage for the prescribed medication.
13. Over the course of the investigation, the Board issued subpoenas to Dr. Kass for patient medical records, including the medical records for Family Member A and Family Member B.
14. In response to the Board's subpoena for medical records for Family Member A, Dr. Kass provided a response that did not include any medical records.
15. In response to the Board's subpoena for medical records for Family Member B, Dr. Kass provided medical records documenting Dr. Kass's medical care for Family Member B from April 11, 2011 through May 8, 2019. Dr. Kass's medical records for Family Member B also documented that Family Member B was taking the CDS that Dr. Kass prescribed for Family Member A; however, copies of the prescriptions were not included in the medical records.
16. On or about December 20, 2019, the Board issued Dr. Kass a subpoena to appear on January 23, 2020 at the Maryland Board of Physicians Office in Baltimore, Maryland for an interview.

17. On or about January 13, 2020, Dr. Kass's attorney requested to reschedule the interview because Dr. Kass had travelled to Ethiopia and would not return to Maryland until February 2020.
18. After the Board requested and received verification of Dr. Kass's itinerary, his interview was rescheduled to March 16, 2020.
19. On or about March 13, 2020, Dr. Kass's attorney informed the Board investigator that his return flight to the United States was rescheduled due to the COVID-19 pandemic and provided Dr. Kass's itinerary that documented that Dr. Kass would return to Maryland on May 29, 2020.
20. Between June 11, 2020 and August 24, 2020, the Board investigator corresponded with Dr. Kass's attorney during which time the attorney indicated that she could not reach Dr. Kass and therefore could not confirm whether Dr. Kass had returned to the United States. The Board indicated to Dr. Kass's attorney that due to the COVID-19 pandemic, Dr. Kass's interview could be conducted telephonically.
21. On or about August 24, 2020, Dr. Kass's attorney notified the Board by email Dr. Kass was still in Ethiopia and provided an itinerary that Dr. Kass was scheduled to return to the United States on October 6, 2020. Dr. Kass's attorney further indicated that based on communications limitations due to Dr. Kass's remote location, a telephonic interview was not possible.
22. On September 4, 2020, Dr. Kass emailed the Board and stated that his flight to the United States which was scheduled to arrive October 6, 2020 was cancelled. Dr. Kass further stated:

I will be on travel to East Africa with limited access to internet and cell phone service until further notice. You will no longer be able to reach me at this address [Dr. Kass's email address of record] as of the time and date of the email transmission [sic]. I will notify you of my new email address at [sic] future date.

Dr. Kass also stated that, as of September 2, 2020, he retired from the practice of medicine, no longer had legal representation, and would represent himself, and that all future correspondence should be sent to him.

23. On September 9, 2020, Dr. Kass provided an incomplete address in Ethiopia as his address of record with the Board.

CONCLUSIONS OF LAW

Panel A finds Dr. Kass in default based upon his failure to appear at the OAH for the scheduled for the Telephone Prehearing Conference on May 18, 2021. *See* State Gov't § 10-210(4). Based upon the foregoing findings of fact, Panel A concludes that Dr. Kass is guilty of unprofessional conduct in the practice of medicine, willfully making or filing a false report or record in the practice of medicine, in violation of Health Occ. § 14-404(a)(11) and failing to cooperate with a lawful investigation conducted by the Board or a disciplinary panel, in violation of Health Occ. § 14-404(a)(33).

SANCTION

Panel A adopts the sanction recommended by the ALJ to revoke the medical license of Dr. Kass.

ORDER

It is, on the affirmative vote of a majority of the quorum of Panel A, hereby

ORDERED that the medical license of Erik Serge Kass, M.D., License Number D51250, is **REVOKED**; and it is further

ORDERED that this is a public document. *See* Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6).

Signature on File

11/22/2021
Date

Christine A. Farrelly, Executive Director
Maryland Board of Physicians

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Md. Code Ann., Health Occ. § 14-408, Dr. Kass has the right to seek judicial review of this Order of Default. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of this Order of Default. The cover letter accompanying this 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. Kass files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

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

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

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