

IN THE MATTER OF

*

BEFORE THE

JOSEPH J. BARTH III, M.D.

*

MARYLAND STATE

Respondent

*

BOARD OF PHYSICIANS

License Number: D52242

*

Case Number: 2222-0111A

* * * * *

CONSENT ORDER

On April 11, 2023, Disciplinary Panel A (“Panel A”) of the Maryland State Board of Physicians (the “Board”) charged **JOSEPH J. BARTH III, M.D.**, (the “Respondent”), License Number D52242, under the Maryland Medical Practice Act (the “Act”), Md. Code Ann., Health Occ. §§ 14-101 *et seq.* (2021 Repl. Vol.).

The pertinent provisions of the Act under Health Occ. § 14-404(a) provide as follows:

§ 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:

...

(ii) Unprofessional conduct in the practice of medicine;

...

- (43) Except for the licensure process described under Subtitle 3A of this title,¹ violates any provision of this title, any rule or regulation adopted by the Board, or any State or federal law pertaining to the practice of medicine[.]

Specifically, Panel A charged the Respondent with violating Md. Code Regs. (“COMAR”) 10.32.03.07(A)(5), which provides:

.07 Supervising Physicians

- A. A primary supervising physician shall:

...

- (5) Obtain approval for the delegation of any advanced duties as specified in Regulation .06C, D or E of this chapter[.]

On July 12, 2023, Panel A was convened as a Disciplinary Committee for Case Resolution (“DCCR”) in this matter. Based on negotiations occurring 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

Panel A finds:

1. Panel A issued disciplinary charges after a Board investigation determined that the Respondent failed to obtain Board approval for the delegation of advanced duties to a physician assistant (the “PA”) while he was the PA’s primary supervising physician.

¹ Subtitle 3A is not relevant to this case.

2. 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 June 23, 1999. His license is scheduled to expire on September 30, 2024.

3. On or about March 29, 2012, the Respondent and the PA² jointly submitted to the Board a “Physician Assistant/Primary Supervising Physician Delegation Agreement for Core Duties” application. The Respondent was listed as the PA’s primary supervising physician.

4. Board regulations define “core duties” as “medical acts that are included in the standard curricula of accredited physician assistant education programs.” COMAR 10.32.03.02.B(10).

5. On or about April 10, 2012, the Board approved the Respondent’s and the PA’s 2012 Core Duties Agreement.

6. The 2012 Core Duties Agreement is the only Delegation Agreement on file with the Board between the Respondent and the PA.

7. On or about August 12, 2021, the PA and a physician other than the Respondent (“Physician A”) jointly submitted to the Board a “Physician Assistant/Primary Supervising Physician Delegation Agreement for Core Duties.” Physician A was listed as

² The Board has charged the PA with unprofessional conduct in the practice of medicine, performing delegated medical acts beyond the scope of the delegation agreement filed with the Board, and failure to comply with any State or federal law pertaining to the practice as a physician assistant, in violation of Health Occ. § 15-315(a)(3)(ii), (41), and (45), respectively.

the PA's primary supervising physician. The PA noted that she had changed her practice location.

8. The Board approved the Physician A's and PA's 2021 Core Duties Delegation Agreement effective September 27, 2021.

9. On or about October 12, 2021, the PA and Physician A submitted to the Board a "Delegation Agreement Addendum for Advanced Duties" ("Addendum for Advanced Duties").

10. Board regulations define "advanced duties" as "medical acts that require additional training beyond the basic physician education program required for licensure." COMAR 10.32.03.02.B.(2).

11. Section 7 of the Addendum for Advanced Duties requested the PA to list the procedures that were being delegated to her. The PA listed:

skin excisions, excision and repair of malignant lesions, arthrocentesis³ (without ultrasound or fluoroscopic guidance- shoulder, knee, bursa at elbow, hip, & knee, carpal tunnel), myofascial injections, trigger point injections/greater trochanteric.

12. Section 8 of the Addendum for Advanced Duties states: "Has the health care facility approved the PA to perform the requested procedure(s)?"

13. The Respondent checked the response option, "N/A." The option required the Respondent to "[a]ttach a copy of the procedure logs for each requested procedure showing at least 10 – 25 successful procedures. Include the dates of the procedure and type

³ Arthrocentesis is an injection used to remove fluid from a joint.

of procedure . . . The name and signature of the PA and the training/supervising physician should be on all procedure logs.” (Emphasis in original).

14. Neither the PA nor Physician A transmitted to the Board any procedure logs with the 2021 Addendum for Advanced Duties.

15. By email dated November 29, 2021, Board licensing staff notified the PA and Physician A that the Board had received the 2021 Delegation Agreement Addendum for Advanced Duties. Board staff requested the PA and Physician A to submit “a procedure log documenting [the PA]’s performance of at least 10 to 25 of each of the [requested] advanced duties, performed under [Physician A]’s direct supervision.”

16. By response email dated November 30, 2021, the PA stated, “this delegation agreement is for a new business (not opening until 1/31/22 and a new PA/MD collaboration, and as such [Physician A] has not had the opportunity to supervise me doing these procedures.”

17. By email dated December 2, 2021, Board licensing staff notified the PA that the Board had no record of the PA requesting or the Board approving the PA to perform “any advanced duties under [the Respondent]’s supervision.” Board staff inquired whether the PA was able to provide “official documentation that you were approved to perform the requested advanced duties under [the Respondent] . . . The Board will accept a procedure log documenting your performance of at least 10 to 25 of the [requested] advanced duties, performed under [the Respondent]’s direct supervision. However, the procedures would have had to have been performed within the last 2 years.”

18. By email dated December 13, 2021, the PA informed Board staff in pertinent part, "I am sure at my current practice (supervising MD [the Respondent]) we submitted documentation for advanced duties over 10 years ago but unfortunately I did not keep a copy of this documentation."

19. The PA continued, "[t]herefore I am submitting a procedure log from my current practice under the supervision of [the Respondent]. Due to the Covid pandemic and a significant reduction of in office patients and procedures in the last 2 years, not all the dates are within 2 years. They are within the last 3 years or so with the exception of arthrocentesis. Finally, I just recently started offering trigger point injections, so I do not have 10 of those but they are much less complicated and have less risk of adverse outcome than arthrocentesis with which I am more experienced."

20. The PA's December 13, 2021 email included a procedure log for the requested advanced duties. The log identified the procedure, the number of times the PA performed the procedure and the dates the procedures were performed.

21. The PA listed the following procedures:

- 25 skin excisions performed between October 2018 and November 2021;
- 10 excision and repair of malignant lesions performed between November 2019 and May 28, 2021;
- 10 arthrocentesis procedures performed between September 2009 and November 2021; and
- 2 trigger point injections performed in April 2019 and October 2021.

22. The procedure log was signed by the Respondent.

23. In furtherance of its investigation, Board staff interviewed the Respondent under oath on December 5, 2022.

24. The Respondent affirmed that it was his understanding that the 2012 Core Duties Delegation Agreement encompassed excision repair of malignant lesions, arthrocentesis, and trigger point injections.

25. The Respondent further affirmed that once he and the PA filed the 2012 Core Duties Delegation Agreement, the PA was able to perform the advanced duties listed in ¶ 14 above under his supervision.

26. The Respondent stated that he did not train the PA to excise malignant lesions or to perform arthrocentesis or trigger point injections. He recalled that he observed her performing arthrocentesis on one or more occasions to ensure she was performing the procedure properly.

27. The Respondent failed to submit to the Board a Delegation Agreement Addendum for Advanced Duties to obtain approval of his delegation of advanced duties to the PA while the Respondent was the PA's primary supervising physician.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Panel A concludes as a matter of law that the Respondent is guilty of unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii) and failed to comply with any State or federal law pertaining to the practice of medicine, in violation of Health Occ. § 14-404(a)(43).

ORDER

It is thus by Disciplinary Panel A of the Board, hereby:

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

ORDERED that within **ONE (1) YEAR**, the Respondent shall pay a civil fine of \$5,000.00. 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 this Consent Order is a public document. *See* Md. Code Ann., Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6).

Signature On File

08/09/2023
Date

Christine A. Farrelly
Executive Director
Maryland State Board of Physicians

CONSENT

I, Joseph J. Barth, III, 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.

Signature On File

8/4/23
Date

Joseph J. Barth, III, M.D.
Respondent

NOTARY

STATE OF Maryland
CITY/COUNTY OF Calvert

I HEREBY CERTIFY that on this 4th day of August 2023, before me, a Notary Public of the foregoing State and City/County, personally appeared Joseph J. Barth, III, 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.

Rosalind S. Gyemah
Notary Public

My Commission expires: 3-24-27