

IN THE MATTER OF	*	BEFORE THE
JESUS A. BURBANO, M.D.	*	MARYLAND STATE
Respondent	*	BOARD OF PHYSICIANS
License Number: D55094	*	Case Number: 2218-0282A

* * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

On January 3, 2019, Disciplinary Panel A ("Panel A") of the Maryland State Board of Physicians (the "Board") charged **JESUS A. BURBANO, M.D.** (the "Respondent"), License Number D55094, 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.).

Specifically, Panel A charged the Respondent with violating the following provisions of the Act under Health Occ. § 14-404:

- (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;
 - (4) Is professionally, physically, or mentally incompetent; [and]
 - (8) Is addicted to, or habitually abuses, any narcotic or controlled dangerous substance as defined in § 5-101 of the Criminal Law Article[.]

On April 10, 2019, a hearing was held before Panel B, sitting as a Disciplinary Committee for Case Resolution. As a result of negotiations occurring before Panel A, the Respondent agreed to enter into the following Consent Order, consisting of Procedural Background, Findings of Fact, Conclusions of Law, Order, Consent and Notary.

FINDINGS OF FACT

Panel A makes the following Findings of Fact:

I. BACKGROUND

1. The Respondent was originally licensed to practice medicine in Maryland on July 23, 1999, under License Number D55094. The Respondent's latest license was given the expiration date of June 30, 2020.

2. At all times relevant to these charges, the Respondent operated a medical practice named *JB Pediatrics and Adolescent Medicine* (the "Practice"), which is located at 8615 Ramsey Avenue, Silver Spring, Maryland 20910.

3. The Respondent is board-certified in pediatric medicine.

4. On January 2, 2019, Panel A issued an *Order for Summary Suspension of License to Practice Medicine*, in which it summarily suspended the Respondent's Maryland medical license. Panel A took such action pursuant to Md. Code Ann., State Gov't § 10-226(c)(2), concluding that the public health, safety or welfare imperatively requires emergency action.

II. THE COMPLAINT

5. The Board initiated an investigation of the Respondent after receiving a complaint, dated June 15, 2018, from a physician assistant (the “Complainant”)¹ who practiced at an urgent care facility (the “Facility”) in the District of Columbia. The Complainant reported that on June 15, 2018, the Respondent entered the Facility at 11:00 a.m. and slept in the Facility’s waiting room until 1:00 p.m., when medical assistants there tried to rouse him, without success. The medical assistants asked the Complainant to try to wake up the Respondent. The Complainant administered a sternal rub to the Respondent, who continued snoring through the procedure. The Complainant shook the Respondent, who briefly woke up. The Complainant informed the Respondent that he had to complete paperwork and be seen, or the Facility might be forced to transport him to the emergency room for further evaluation. The Respondent agreed but then fell asleep again briefly. The Complainant was forced to wake up the Respondent again.

6. The Complainant stated that she suspected that the Respondent might be “under the influence.” Upon further inquiry, she determined that the Respondent had self-prescribed several benzodiazepine medications (benzodiazepines are a Schedule IV controlled dangerous substance).

7. The Complainant questioned the Respondent further, who claimed that he had not used benzodiazepines that day. The Complainant stated that the Respondent then

¹ For confidentiality reasons, the names/identities of the Complainant, medical facilities and other individuals will not be disclosed in this document. The Respondent is aware of the identity of all individuals and entities referenced herein.

refused to discuss anything further about his benzodiazepine use and refused to undergo blood tests.

8. Along with her complaint, the Complainant provided the information she obtained to the Board.

III. SUBSEQUENT BOARD INVESTIGATION AND FINDINGS

9. By letter dated August 14, 2018, the Board requested that the Respondent provide a response to the above complaint.

10. The Respondent provided a written response to the Board in a letter dated August 24, 2018. The Respondent acknowledged that since 2004, several physicians had prescribed benzodiazepines for him to treat medical conditions and he did “on a few occasions obtain benzodiazepines pursuant to [his] own prescription.” The Respondent claimed that his objectivity when self-prescribing was not compromised because he was using this medication for nearly fifteen years and only self-prescribed in “emergency” situations when he was not able to obtain prescriptions from his physicians. The Respondent admitted that he “did not create a separate medical record for [himself] related to those [self-prescribing] instances.” The Respondent asserted that his self-prescribing of controlled substances was not inconsistent with American Medical Association guidelines on self-prescribing. The Respondent further stated that he does “not suffer from any addictions or engage in the habitual use of any controlled dangerous substance, and am not otherwise habitually intoxicated.”

11. Pursuant to its investigation, the Board obtained the Respondent’s medical records from two physicians whom the Respondent identified as his treating physicians.

12. The Board also issued a subpoena to the Prescription Drug Monitoring Program (“PDMP”), reviewed the Respondent’s medication profiles from various area pharmacies, and obtained his pharmacy records and prescriptions for controlled dangerous substances for the period beginning on January 1, 2016 until July 11, 2018. The information obtained revealed that since 2008, in addition to medications prescribed by his treating providers, the Respondent self-prescribed benzodiazepines on numerous occasions, normally authorizing four refills per new prescription written. Also, the two physicians the Respondent employed at the Practice (Physician A and Physician B, respectively) intermittently wrote benzodiazepine prescriptions for him. Physician A prescribed for the Respondent from approximately mid-2007 to early-2016 while Physician B prescribed for the Respondent from approximately mid-2012 to mid-2014. The Respondent did not maintain a medical record while self-prescribing nor did the Practice maintain medical records for the prescribing that practitioners there provided for him.

13. After receiving this information, the Board, pursuant to Health Occ. § 14-402(a),² referred the Respondent to a Board-approved program (the “Program”) for an evaluation. The Program directed him to undergo a neuropsychological evaluation.

14. On or about December 5, 2018, the Board received a comprehensive evaluation report involving the Respondent.³ The evaluator stated that the Respondent’s

² Health Occ. § 14-402(a) states: In reviewing an application for licensure, certification, or registration or in investigation against a licensed physician or any allied health professional regulated by the Board under this title, the Physician Rehabilitation Program may request the Board to direct, or the Board on its own initiative may direct, any physician or any allied health professional regulated by the Board under this title to submit to an appropriate examination.

“current cognitive profile gives rise to significant concerns about his ability to practice at the level expected for a physician.” The evaluator concluded that for the reasons stated in his report, the Respondent “should not practice medicine at this time.”

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Disciplinary Panel A of the Board finds that the Respondent violated the following provisions of the Act under Health Occ. §§ 14-404(a): (3) Is guilty of: (ii) Unprofessional conduct in the practice of medicine; (4) Is professionally, physically, or mentally incompetent; and (8) Is addicted to, or habitually abuses, any narcotic or controlled dangerous substance as defined in § 5-101 of the Criminal Law Article.

ORDER

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

ORDERED that the Order for Summary Suspension, dated January 2, 2019, is **TERMINATED**; and it is further

ORDERED that the Respondent’s license to practice medicine in the State of Maryland is **SUSPENDED**⁴ for a minimum period of **ONE (1) YEAR** from the date of the Order for Summary Suspension dated January 2, 2019, and until the Maryland Physician Rehabilitation Program (“MPRP”) finds and notifies the Board that the Respondent is safe to return to the practice of medicine; and it is further

³ In order to maintain confidentiality, the details of the comprehensive report have not been disclosed in this document. The report has been disclosed to the Respondent.

⁴ If the Respondent’s license expires during the period of suspension, the suspension and any conditions will be tolled.

ORDERED that during the period of suspension, the Respondent shall comply with the following terms and conditions of suspension:

- (1) The Respondent shall enroll in the Maryland Professional Rehabilitation Program (“MPRP”) as follows:
 - (a) Within **FIVE (5) BUSINESS DAYS** of the effective date of this Consent Order, the Respondent shall contact MPRP to schedule an initial consultation for enrollment;
 - (b) Within **FIFTEEN (15) BUSINESS DAYS** of the effective date of this Consent Order, the Respondent shall enter into a Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP;
 - (c) The Respondent shall fully and timely cooperate and comply with all MPRP referrals, rules, and requirements, including, but not limited to, the terms and conditions of the Participant Rehabilitation Agreement(s) and Participant Rehabilitation Plan(s) entered with MPRP, and shall fully participate and comply with all therapy, treatment, evaluations, and screenings as directed by MPRP;
 - (d) The Respondent’s failure to comply with any term or condition of the Participant Rehabilitation Agreement(s) or Participant Rehabilitation Plan(s) shall constitute a violation of this Consent Order;
 - (e) The Respondent shall sign and update the written release/consent forms requested by the Board and MPRP, including release/consent forms to authorize MPRP to make verbal and written disclosures to the Board and to authorize the Board to disclose relevant information from MPRP records and files in a public order. A failure to, or withdrawal of, consent, is a violation of this Consent Order;
 - (f) The Respondent shall also sign any written release/consent forms to authorize MPRP to exchange with (i.e., disclose to and receive from) outside entities (including all of the Respondent’s current therapists and treatment providers) verbal and written information concerning the Respondent and to ensure that MPRP is authorized to receive the medical

records of the Respondent, including, but not limited to, mental health and drug or alcohol evaluation and treatment records. A failure to, or withdrawal of, consent, is a violation of this Consent Order.

- (2) During the period of suspension, the Respondent shall not:
 - (a) practice medicine;
 - (b) take any actions after the effective date of this Order to hold himself out to the public as a current provider of medical services;
 - (c) authorize, allow or condone the use of the Respondent's name or provider number by any health care practice or any other licensee or health care provider;
 - (d) function as a peer reviewer for the Board or for any hospital or other medical care facility in the state;
 - (e) dispense medications;
 - (g) perform any other act that requires an active medical license.
- (3) The Respondent shall establish and implement a procedure by which the Respondent's patients may obtain their medical records without undue burden and notify all patients of that procedure; and
- (4) The Respondent shall not apply for early termination of suspension; and it is further

ORDERED that after the minimum period of suspension imposed by the Consent Order has passed and the Respondent has fully and satisfactorily complied with all the terms and conditions for the suspension, the Respondent may submit a written petition to the disciplinary panel requesting termination of suspension. The Respondent may be required to appear before the disciplinary panel to discuss his petition for termination. If the disciplinary panel determines that it is safe for the Respondent to return to the practice of medicine, the suspension may be terminated through an order of the

disciplinary panel, and the disciplinary panel may impose any terms and conditions it deems appropriate on the Respondent's return to practice, including, but not limited to, probation; and it is further

ORDERED that if the Respondent allegedly fails to comply with any term or condition of 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. If there is no genuine dispute as to a material fact, the Respondent shall be given a show cause hearing before the Board or a disciplinary panel; and it is further

ORDERED that, after the appropriate hearing, if the Board or a disciplinary panel determines that the Respondent has failed to comply with any term or condition of this Consent Order, the Board or a disciplinary panel may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, or suspend or revoke the Respondent's license to practice medicine in Maryland. The Board or a 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 effective date of the Consent Order is the date the Consent Order is signed by the Executive Director of the Board or her designee. The Executive Director signs the Consent Order on behalf of the disciplinary panel which has imposed the terms and conditions of this Consent Order; 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 this Consent Order is a public document pursuant to Md. Code Ann., Health Occ. §§ 1-607, 14-411.1(b)(2), and Gen. Prov. § 4-333(b)(6) (2014 & Supp. 2018).

05/09/2019
Date

Christine A. Farrelly
Christine A. Farrelly
Executive Director
Maryland State Board of Physicians

CONSENT

I, Jesus A. Burbano, 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 these rights 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 their 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.

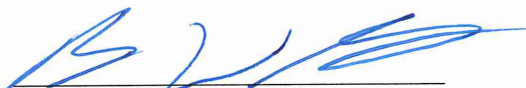
I sign this Consent Order, without reservation, and fully understands the language and meaning of its terms.

Signature of File

04/22/19
Date

Jesus A. Burbano, M.D.
Respondent

Read and approved:


Robert A. Wells, Esquire
Counsel for Dr. Burbano

NOTARY

STATE OF Maryland

CITY/COUNTY OF Montgomery

I HEREBY CERTIFY that on this 22nd day of April 2019, before me, a Notary Public of the foregoing State and City/County, personally appeared Jesus A. Burbano, 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.

Notary Public

My Commission expires: 04/25/2021

