

IN THE MATTER OF
ERNEST M. MYERS, M.D.

Respondent

License Number: D59928

* BEFORE THE
* MARYLAND STATE
* BOARD OF PHYSICIANS
* Case Number: 2220-0265B

* * * * *

CONSENT ORDER

On January 21, 2021, Disciplinary Panel B (“Panel B”) of the Maryland State Board of Physicians (the “Board”) charged Ernest M. Myers, M.D. (the “Respondent”), License Number D59928, under the Maryland Medical Practice Act (the “Act”), Md. Code Ann., Health Occ. (“Health Occ.”) §§ 14-101 *et seq.* (2014 Repl. Vol. & 2019 Supp.). Panel B charged the Respondent pursuant to the following provision of the Act:

**§ 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:

...

(4) Is professionally, physically, or mentally incompetent[.]

On February 24, 2021, Panel B 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 this Consent Order, consisting of the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

Panel B finds:

I. BACKGROUND & LICENSING INFORMATION

1. At all relevant times, the Respondent was and is licensed to practice medicine in the State of Maryland. The Board first licensed the Respondent to practice medicine in Maryland on or about March 5, 2003, under License Number D59928. His license expires on or about September 30, 2021, subject to renewal.¹

2. The Respondent is board-certified in otolaryngology and has self-identified his primary practice area as head and neck surgery. The Respondent is a solo practitioner in Silver Spring, Maryland. Until recently, the Respondent had operating privileges at a hospital in Silver Spring, Maryland (the "Hospital").²

II. MANDATED 10-DAY REPORT

3. On or about January 30, 2020, the Board received a Mandated 10-Day Report (the "Report") from the Hospital reporting that the Respondent had "agreed to refrain from exercising his privileges [at the Hospital] while a review of cases is conducted." The Report explained that between October 2019 and December 2019, the Respondent performed at least two procedures "with outcomes that appear to be outside the standard of care resulting in poor patient outcomes."

III. BOARD INVESTIGATION

4. The Board initiated an investigation of the Respondent based on the Report.

¹ Panel B summarily suspended the Respondent's medical license on January 12, 2021, and reaffirmed that summary suspension following a post-deprivation hearing on January 27, 2021.

² To maintain confidentiality, the names of all witnesses, facilities, employees, and patients will not be used in this Consent Order.

5. On or about May 21, 2020, in response to a Board subpoena, the Hospital provided the Board with the Respondent's Quality Assurance & Risk Management file.

6. The Respondent's file included a letter from the Respondent to the Hospital dated February 24, 2020, in which the Respondent requested a personal leave of absence from the medical staff at the Hospital.

7. The Respondent's file included a report from an external peer review that the Hospital requested on or about January 13, 2020. The peer reviewer ("Physician A"), who is licensed to practice medicine in Maryland, board-certified in otolaryngology, and the Section Chief of Otolaryngology at a university-operated hospital, reviewed six records of patients whom the Respondent treated at the Hospital. Physician A noted quality of care concerns with five out of six records he reviewed and summarized his findings as follows:

All of the poor surgical outcomes with these cases are worrisome individually but together are very troubling. Overall, it's my opinion [the Respondent] is not technically competent to perform these surgeries. He doesn't seem to have kept up or been adequately trained in new technology and new surgical techniques which were available for him to use in the operating room for these cases. These cases are extremely concerning and I think patients are in imminent danger and it's unsafe for him to continue to operate.

8. On or about June 16, 2020, Board staff discussed the external peer review report with Physician A. He confirmed his comments and concerns included in the peer review report that he previously submitted to the Hospital. Physician A also opined that the Respondent is not technically competent to perform surgeries on the upper airway such as tonsillectomy or any nasal or sinus surgery that needed to be done under sedation.

9. On or about July 23, 2020, at the direction of a Board-approved program, the Respondent underwent an independent evaluation to determine his present fitness to safely

practice medicine. On or about August 24, 2020, the Board received the report from the Evaluator. Based on his comprehensive testing and evaluation, the Evaluator concurred with Physician A's earlier opinion that the Respondent "cannot safely perform the types of operations that resulted in poor surgical outcomes." The Evaluator recommended further testing to determine the cause of the Respondent's present condition.

CONCLUSION OF LAW

Based on the foregoing Findings of Fact, Panel B concludes as a matter of law that the Respondent violated Health Occ. § 14-404(a)(4) by exhibiting professional, physical, or mental incompetence.

ORDER

It is, on the affirmative vote of a majority of the quorum of Disciplinary Panel B, hereby:

ORDERED that the Order for Summary Suspension of License to Practice Medicine, dated January 12, 2021, which summarily suspended the Respondent's license to practice medicine, is **TERMINATED**; and it is further

ORDERED that the Respondent shall permanently cease from performing any surgery or procedure, including those in an office-based setting, while the patient is under any form of sedation; and it is further

ORDERED that the Respondent shall cease performing the following procedures unless and until the Board or a disciplinary panel receives notification of the Respondent's evaluations by the Maryland Professional Rehabilitation Program ("MPRP") as set forth on page 6 of this Consent Order:

1. Any surgery or procedure, including those in an office-based setting, that in any way obstructs the upper airway;
2. Any surgery or procedure, including those in an office-based setting, done on or through the tympanic membrane, in the middle ear, or in the inner ear;
3. Any type of sinus surgery or procedure, including those in an office-based setting; and
4. Any surgery or procedure, including those in an office-based setting, that have an anticipated blood loss greater than 10cc; and it is further

ORDERED that on every January 31 thereafter if the Respondent holds a Maryland medical license, the Respondent shall provide the Board with an affidavit verifying that the Respondent has not performed any of the prohibited procedures in the past year; and it is further

ORDERED that if the Respondent fails to provide the required annual verification of compliance with these conditions:

1. There is a presumption that the Respondent has violated these conditions; and
2. The alleged violation will be adjudicated pursuant to the procedures of a pre-deprivation show cause hearing; and it is further

ORDERED that the Respondent is placed on **PROBATION** for a **minimum of FIVE (5) YEARS.**³ During probation, the Respondent shall comply with the following terms and conditions of probation:

1. The Respondent shall enroll in the Maryland Professional Rehabilitation Program ("MPRP") as follows:
 - (a) Within 5 business days, the Respondent shall contact MPRP to schedule an initial consultation for enrollment;
 - (b) Within 15 business days, the Respondent shall enter into a Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP;

³ If the Respondent's license expires during the period of probation, the probation and any conditions will be tolled.

- (c) The Respondent shall fully and timely cooperate and comply with all MPRP's 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 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. The Respondent shall not withdraw his/her release/consent;
- (e) 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. The Respondent shall not withdraw his/her release/consent;
- (f) The Respondent's failure to comply with any of the above terms or conditions including terms or conditions of the Participant Rehabilitation Agreement(s) or Participant Rehabilitation Plan(s) constitutes a violation of this Consent Order; and it is further

ORDERED that if, based on evaluations, MPRP finds and notifies the Board or a disciplinary panel that the Respondent is safe to resume performing the procedures involving surgery of the upper airway, tympanic membrane, middle or inner ear, sinus, and blood loss greater than 10cc, the Respondent may submit a written petition to the disciplinary panel to terminate the prohibition on performing the procedures. The Respondent may be required to appear before the disciplinary panel to discuss his petition for termination of the prohibition. After consideration of the petition, if the disciplinary panel determines that it is safe for the Respondent to resume performing the procedures,

the prohibition will be terminated through an order of the disciplinary panel; and it is further

ORDERED that the Respondent shall not apply for early termination of probation; and it is further

ORDERED that a violation of probation constitutes a violation of the Consent Order; and it is further

ORDERED that, after the Respondent has complied with all terms and conditions of probation and the minimum period of probation imposed by the Consent Order has passed, the Respondent may submit to the Board a written petition for termination of probation. After consideration of the petition, the probation may be terminated through an order of the disciplinary panel. The Respondent may be required to appear before the disciplinary panel to discuss his or her petition for termination. The disciplinary panel may grant the petition to terminate the probation, through an order of the disciplinary panel, if the Respondent has complied with all probationary terms and conditions and there are no pending complaints relating to the charges; 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, if the Respondent allegedly fails to comply with any term or condition imposed by this Consent Order, the Respondent shall be given notice and an opportunity for a hearing. If the disciplinary panel determines 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 followed by an exceptions process before a disciplinary panel; and if the disciplinary panel determines there is no genuine dispute as to a material fact,

the Respondent shall be given a pre-deprivation show cause hearing before a disciplinary panel; and it is further

ORDERED that after the appropriate hearing, if the disciplinary panel determines that the Respondent has failed to comply with any term or condition imposed by this Consent Order, the disciplinary panel may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, or suspend with appropriate terms and conditions, or revoke the Respondent's license to practice medicine in Maryland. The disciplinary panel may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine on 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 or her designee 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 this Consent Order is a public document. See Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6) (2014 & 2019 Supp.).

02/26/2021
Date

Signature on File

Christine A. Farrelly
Executive Director
Maryland Board of Physicians

CONSENT

I, Ernest M. Myers, 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

27 Feb 2021
Date

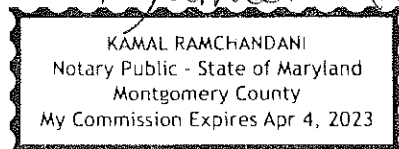
Ernest M. Myers, M.D. *o*

NOTARY

STATE OF Maryland

CITY / COUNTY OF Montgomery

Feb 25 2021



I HEREBY CERTIFY that on this 25th day of February 2021, before me, a Notary Public of the foregoing State and City/County, personally appeared Ernest M. Myers, 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.

Ernest M. Myers
25 February 2021

Kamal

Notary Public

My Commission expires: *04/04/2023*

