IN THE MATTER OF	*	**BEFORE THE**
JANY RAY ROSE, M.D.	*	**MARYLAND STATE**
Respondent	*	**BOARD OF PHYSICIANS**
License Number: D64551	*	**Case Number: 2220-0266A**

* * * * * * * * * * * *

CONSENT ORDER

On January 27, 2021, Disciplinary Panel A ("Panel A") of the Maryland State Board of Physicians (the "Board") charged **JANY RAY ROSE, M.D.** (the "Respondent"), License Number D64551, under the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. §§ 14-101 *et seq.* (2014 Repl. Vol. & 2019 Supp).

The relevant provisions of the Act provide the following:

> (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[.]

One form of unprofessional conduct in the practice of medicine is providing self-treatment or treatment to family members. The American Medical Association has addressed this in a series of ethics opinions:[1]

[1] The Board and the disciplinary panels may consider the Principles of Ethics of the American Medical Association, but those principles are not binding on the Board or the disciplinary panels. *See* COMAR 10.32.02.16.

Opinion 8.19 (2012) – Self-Treatment or Treatment of Immediate Family Members

Physicians generally should not treat themselves or members of their immediate families. Professional objectivity may be compromised when an immediate family member or the physician is the patient; the physician's personal feelings may unduly influence his or her professional medical judgment, thereby interfering with the care being delivered. Physicians may fail to probe sensitive areas when taking the medial history or may fail to perform intimate parts of the physical examination. Similarly, patients may feel uncomfortable disclosing sensitive information or undergoing an intimate examination when the physician is an immediate family member. This discomfort is particularly the case when the patient is a minor child, and sensitive or intimate care should especially be avoided for such patients. When treating themselves or immediate family members, physicians may be inclined to treat problems that are beyond their expertise or training. If tensions develop in a physician's professional relationship with a family member, perhaps as a result of a negative medical outcome, such difficulties may be carried over into the family member's personal relationship with the physician.

Concerns regarding patient autonomy and informed consent are also relevant when physicians attempt to treat members of their immediate family. Family members may be reluctant to state their preference for another physician or decline a recommendation for fear of offending the physician. In particular, minor children will generally not feel free to refuse care from their parents. Likewise, physicians may feel obligated to provide care to immediate family members even if they feel uncomfortable providing care.

It would not always be inappropriate to undertake self-treatment or treatment of immediate family members. In emergency settings or isolated settings where there is no other qualified physician available, physicians should not hesitate to treat themselves or family members until another physician becomes available. In addition, while physicians should not serve as a primary or regular care provider for immediate family members, there are situations in which routine care is acceptable for short-term, minor problems. Except in emergencies, it is not appropriate for physicians to write prescriptions for controlled substances for themselves or immediate family members.

Opinion 1.2.1 (2016) – Treating Self or Family

When the patient is an immediate family member, the physician's personal feelings may unduly influence his or her professional medical judgment. Or the physician may fail to probe sensitive areas when taking the medical history or to perform intimate parts of the physical examination. Physicians may feel obligated to provide care for family members despite feeling uncomfortable doing so. They may also be inclined to treat problems that are beyond their expertise or training.

Similarly, patients may feel uncomfortable receiving care from a family member. A patient may be reluctant to disclose sensitive information or undergo an intimate examination when the physician is an immediate family member. This discomfort may particularly be the case when the patient is a minor child, who may not feel free to refuse care from a parent.

In general, physicians should not treat themselves or members of their own families. However, it may be acceptable to do so in limited circumstances:

(a) In emergency settings or isolated settings where there is no other qualified physician available. In such situations, physicians should not hesitate to treat themselves or family members until another physician becomes available.

(b) For short-term, minor problems.

When treating self or family members, physicians have a further responsibility to:

(c) Document treatment or care provided and convey relevant information to the patient's primary care physician.

(d) Recognize that if tensions develop in the professional relationship with a family member, perhaps as a result of a negative medical outcome, such difficulties may be carried over into the family member's personal relationship with the physician.

(e) Avoiding providing sensitive or intimate care especially for a minor patient who is uncomfortable being treated by a family member.

(f) Recognize that family members may be reluctant to state their preference for another physician or decline a recommendation for fear of offending the physician.

On April 14, 2021, Panel A was convened as a Disciplinary Committee for Case Resolution ("DCCR") in this matter. Based on negotiations occurring as a result of this DCCR, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law, Order, and Consent.

FINDINGS OF FACT

Panel A finds the following:

I. BACKGROUND

1. At all times relevant to these charges, 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 May 12, 2006, under License Number D64551. The Respondent's license is current through September 30, 2021.

2. The Respondent is not board-certified in any medical specialty at this time. The Respondent's prior board-certification in psychiatry and neurology expired in 2016.

II. THE COMPLAINT

3. The Board initiated an investigation of the Respondent after reviewing a complaint, dated March 27, 2020, from an individual (the "Complainant")[2] with a personal relationship to the Respondent, alleging that the Respondent had prescribed

[2] For confidentiality reasons, the Complainant is not identified by name in this Order.

"dangerous drugs" to the Complainant "with no labs, consult or records." The Complainant stated that as a result, the Complainant became "an addict and suicidal."

4. The Complainant also provided a series of pharmacy print-outs which document that the Respondent had written a series of prescriptions for controlled dangerous substances ("CDS") for the Complainant from 2017 through 2019.

III. BOARD INVESTIGATIVE ALLEGATIONS

Correspondence from the Respondent

5. By letter dated July 2, 2020, the Board notified the Respondent that it had initiated an investigation of her and directed her to respond to allegations that she prescribed CDS for the Complainant. The Board also sent a *subpoena duces tecum* ("SDT") to the Respondent for the Complainant's medical records and directed her to provide a summary of any care she may have provided to the Complainant.

6. By letter dated July 27, 2020, the Respondent, through counsel, provided a response to the Board's inquiry. In this letter, the Respondent provided personal information about the Complainant but did not address whether she provided any medical care or had written any CDS prescriptions for the Complainant.

7. The Respondent also failed to provide any medical records regarding the Complainant in response to the SDT or submit a summary of care she provided to the Complainant. The Respondent, however, did provide medical records regarding a hospital admission of the Complainant.

Prescription survey

8. On July 2, 2020, the Board contacted the Prescription Drug Monitoring Program ("PDMP") to determine if the Respondent had written any prescriptions for the Complainant. Based on information received, the Board obtained prescription records which revealed that from 2015 to 2019, the Respondent wrote at least 27 prescriptions (including refills) for CDS for the Complainant.

Interview of the Complainant/treatment records

9. On July 2, 2020, Board staff interviewed the Complainant. The Complainant stated that the Respondent treated the Complainant's chronic medical condition and that the Complainant relied on her medical advice and trusted her due to her professional qualifications. The Complainant stated that for a number of years, the Respondent treated the Complainant's chronic medical condition through prescribing CDS and other prescription-only medications.

10. The Complainant stated that the Respondent did not undertake a formal consultation or evaluation when initiating treatment or engage in formal follow-up care. The Complainant stated that the Respondent instructed the Complainant to use different pharmacies when filling the prescriptions she prescribed. The Complainant stated that after filling the prescriptions, the Respondent directed the Complainant to turn the prescriptions over to her, which she kept in a lockbox and dispensed to the Complainant. The Complainant stated that the Respondent did not instruct the Complainant on how to use the medications she provided or the possible side effects or risks associated with their

use. The Complainant stated that the Respondent prescribed "just so many pills, I was just in a daze."

11. The Complainant stated that the Respondent instructed the Complainant not to disclose to other health care providers that she was providing treatment to the Complainant, that she had placed the Complainant on medications or her interactions with the Complainant. The Complainant stated that at times, the Respondent discontinued the medications she had prescribed, after which the Complainant's acute symptoms recurred. The Complainant stated that the Respondent engaged in actions that caused or facilitated the Complainant's condition to recur. The Complainant stated that the Respondent did not maintain a medical record while providing treatment and did not consult with other health care professionals who were also providing treatment to the Complainant.

12. The Complainant stated that the Respondent applied for a court-ordered hospitalization of the Complainant, which caused the Complainant to be involuntarily hospitalized. While hospitalized, the Complainant disclosed to an evaluating physician that the Respondent was prescribing medications to the Complainant.

13. The Complainant's treatment records report that the Respondent's engaged in conduct/behaviors that undermined appropriate treatment of the Complainant's chronic condition.

Evaluation of the Complainant

14. On or about March 28, 2019, the Respondent obtained a court order that resulted in the Complainant's involuntary hospitalization. The evaluating physician

concluded that the Complainant's admission was not warranted after which the Complainant was discharged.

15. Board staff interviewed the Complainant's evaluating physician, who confirmed that based on her assessment, the Complainant did not meet the criteria for involuntary admission and was "safe to go home," after which she discharged the Complainant. The physician reported that during her assessment of the Complainant, she interviewed the Respondent, whom she described as appearing "intoxicated," with "slurred speech" and appearing "very sedated." The attending physician confirmed that the Respondent admitted to her that she had been treating the Complainant and had been prescribing a variety of CDS medications for the Complainant, which the physician believed was "inappropriate." The attending physician concluded that based on her own observations and other information she amassed, the Respondent's statements to her were not reliable.

Interview of the Respondent

16. On October 1, 2020, Board staff conducted an under-oath interview of the Respondent. The Respondent acknowledged that she diagnosed the Complainant with a significant medical condition and prescribed CDS and other prescription-only medications as treatment. The Respondent claimed that although she may have taken the Complainant's vital signs, she did not order any laboratory studies when prescribing and did not maintain a medical record for the Complainant. The Respondent claimed that she did not maintain a medical record because the Complainant instructed her not to do so. The Respondent acknowledged using her "clinical judgment" when evaluating the

Complainant. The Respondent stated that one medication she prescribed required laboratory tests but claimed that she did not order them because the Complainant would not agree to undergo such tests. The Respondent stated that she nevertheless prescribed the medication and decided to "just take it day by day to see how [the Complainant] reacted to it . . ."

17. The Respondent stated that she monitored the Complainant by keeping the Complainant's medications in a lockbox and dispensed them to the Complainant based on her "assessment of [the Complainant's] need for them." The Respondent also acknowledged that she did not consult with CRISP[3] to determine if the Complainant was being prescribed medications from any other health care practitioners, stating, "in retrospect I probably should have checked, yes." The Respondent stated that with respect to her prescribing medications for the Complainant, "in retrospect . . . perhaps I should have not just come to [the Complainant's] aid or acquiesce to [the Complainant's] requests . . . ."

IV. GROUNDS FOR DISCIPLINE

18. The Board's investigation determined that the Respondent diagnosed the Complainant with a chronic medical condition and provided non-emergent medical care to the Complainant from at least 2014 to 2019, during which time she wrote multiple prescriptions for CDS and other prescription-only medications. The Respondent engaged in an inappropriate dual relationship with the Complainant while providing treatment to

[3] CRISP is an acronym for Chesapeake Regional Information System for our Patients. Physicians may consult the Prescription Drug Monitoring Program through CRISP to determine whether their patients are receiving prescriptions from other health care providers.

the Complainant. The Respondent dispensed CDS to the Complainant after the Complainant filled the Respondent's prescriptions. The Respondent failed to order laboratory studies when prescribing medications to the Complainant and failed to coordinate the Complainant's treatment with other health care providers who were also providing treatment to the Complainant. The Respondent instructed the Complainant not to divulge that she was prescribing CDS to the Complainant's other health care providers and to use different pharmacies when filling the prescriptions. The Respondent failed to keep medical records of the medical care she provided to the Complainant and failed to consult with CRISP or other sources to determine if the Complainant was receiving medications from other practitioners. The Respondent failed to assess the Complainant for co-morbidities and engaged in conduct or behaviors that undermined appropriate treatment of the Complainant's chronic condition. The Respondent provided treatment under circumstances where her professional judgment and objectivity were compromised.

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).

ORDER

It is thus by a majority of a quorum of Disciplinary Panel A of the Board hereby:

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

ORDERED that the Respondent is placed on **PROBATION** for a minimum of **ONE YEAR**.[4] 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;

(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 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

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

(2) Within **ONE YEAR**, the Respondent is required to take and successfully complete a course in **professional ethics/boundaries.** The following terms apply:

(a) it is the Respondent's responsibility to locate, enroll in and obtain the disciplinary panel's approval of the course before the course is begun;

(b) due to the COVID-19 pandemic, the disciplinary panel will accept a course taken in person or over the internet;

(c) the Respondent must provide documentation to the disciplinary panel that the Respondent has successfully completed the course;

(d) the course may not be used to fulfill the continuing medical education credits required for license renewal;

(e) the Respondent is responsible for the cost of the course; it is further

(3) Within **ONE (1) YEAR**, the Respondent shall pay a civil fine of **FIVE THOUSAND DOLLARS ($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;

ORDERED that, after a minimum period of one year, after the Respondent has complied with all terms and conditions of probation, and upon MPRP's determination that the Respondent can practice without monitoring, 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 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 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 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 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 this Consent Order is a public document. *See* Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6).

05/12/2021
Date

Signature on File

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

CONSENT

I, Jany Ray Rose, 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

5/6/21
Date

Jany Ray Rose, M.D.

NOTARY

STATE OF Maryland

CITY/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 6th day of May, 2021, before me, a Notary Public of the State and County aforesaid, personally appeared Jany Ray Rose, M.D., and gave oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

AS WITNESS, my hand and Notary Seal.

Patricia A. Candle
Notary Public

My Commission Expires: August 9, 2021