

IN THE MATTER OF
REZA GHORBANI, M.D.

Respondent

License Number: D65935

* BEFORE THE
* MARYLAND STATE
* BOARD OF PHYSICIANS
* Case Number: 2221-0017B

* * * * *

CONSENT ORDER

On January 5, 2022, Disciplinary Panel B (“Panel B”) of the Maryland State Board of Physicians (the “Board”) charged **REZA GHORBANI, M.D.** (the “Respondent”), License Number D65935, with violating 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 provide the following:

§ 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
[and]

.....

(43) Except for the licensure process described under Subtitle 3A of this title, 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[.]

Panel B charges the Respondent with violating the following regulations that set forth the conditions that all laboratories must meet to be certified to perform testing on human specimens under the Clinical Laboratory Improvement Amendments of 1988 (“CLIA”), 42 Code of Federal Regulations §§ 493.1 *et seq.*:

§ 493.1441 Condition: Laboratories performing high complexity testing; laboratory director.

The laboratory must have a director who meets the qualification requirements of § 493.1443 of this subpart and provides overall management and direction in accordance with § 493.1445 of this subpart.

§ 493.1445 Standard; Laboratory director responsibilities.

The laboratory director is responsible for the overall operation and administration of the laboratory, including the employment of personnel who are competent to perform test procedures, record and report test results promptly, accurately and proficiently, and for assuring compliance with the applicable regulations.

...

- (e) The laboratory director must—
 - (2) Ensure that the physical plant and environmental conditions of the laboratory are appropriate for the testing performed and provide a safe environment in which employees are protected from physical, chemical, and biological hazards;

On March 23, 2022, Panel B was convened as a Disciplinary Committee for Case Resolution (“DCCR”) in this matter. Based on the 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 B finds the following:

I. BACKGROUND

1. The Respondent was originally licensed to practice medicine in Maryland on April 20, 2007, under License Number D65935. The Respondent has retained continuous licensure in Maryland since that time. The Respondent's license is scheduled to expire on September 30, 2022.

2. The Respondent is board-certified in anesthesiology and pain management.

3. The Respondent has privileges at one Maryland hospital.

4. At all times relevant, the Respondent is the owner, president, and medical director of a pain management practice (the "Practice")¹ with offices in Greenbelt and Chevy Chase, Maryland. The Respondent also owns a laboratory that is affiliated with the Practice (the "Laboratory") in Greenbelt, Maryland.

II. PRIOR DISCIPLINARY ACTION

5. On or around July 14, 2016, the Respondent entered into a consent order (the "Consent Order") with the Board to resolve the Respondent's dispensing prescription medication without a permit issued by the Board.

6. The Consent Order stated that the Respondent failed to comply with Health Occ. § 12-102, in violation of § 14-404(a)(28), when he continued to dispense prescription

¹ To maintain confidentiality, the names of health care facilities and individuals will not be identified in this charging document. The Respondent may obtain the names of the health care facilities and individuals referenced herein by contacting the administrative prosecutor.

medication after his dispensing permit had expired. The Board imposed a civil fine of \$1,000.

III. THE COMPLAINT

7. On or around July 1, 2020, the Board received notice that the Maryland State Department of Health had issued an order and directive (“The Complaint”) to the Practice on June 27, 2020.

8. The Complaint stated, among other things, that a COVID-19 test specimen collection site located in Ellicott City, Maryland and operated by staff affiliated with the Practice on June 27, 2020, “shall not collect COVID-19 test specimens to be processed by [the Practice] due to concerns about the use of potentially unvalidated PCR assays² and the lack of a laboratory medical director.”

9. The Complaint further stated that the Practice “shall not collect or process COVID-19 specimens from any COVID-19 specimen collection sites in Maryland, unless authorized by [the Maryland Department of Health’s] Office of Health Care Quality (“OHCQ”).”

10. The Board initiated an investigation of the Complaint.

IV. THE BOARD INVESTIGATION

11. As part of its investigation, the Board subpoenaed the Practice’s investigative file from OHCQ (the “OHCQ File”). Board investigators also conducted under-oath

² “PCR” stands for polymerase chain reaction. A “PCR assay” is an investigative procedure in laboratory medicine that determines the presence of virus infection by analyzing a sample to see if it contains genetic material from the virus.

interviews of Laboratory employees. The Board notified the Respondent of the Complaint and its subsequent investigation and provided him with the opportunity to respond in writing and in an under-oath interview with the Board.

12. The Board's investigation concluded that the Respondent knowingly conducted COVID-19 testing at the Laboratory, which he owns, without approval from the Laboratory's laboratory director (the "Laboratory Director"). The Board's investigation further determined that the Respondent continued to conduct COVID-19 testing: (1) after the Laboratory Director repeatedly stated to the Respondent that she did not approve the COVID-19 testing at the Laboratory due to physical and environmental concerns; and (2) after the Laboratory Director resigned and in the absence of a laboratory director.

A. The OHCQ File

13. The OHCQ File contained a document titled "Statement of Deficiencies and Plan of Correction" (the "Statement of Deficiencies") from an inspection of the Laboratory that occurred on July 25, 2020.

14. The Statement of Deficiencies identified numerous CLIA violations, and the corrective action taken by the Laboratory, including that the Laboratory had ceased COVID-19 testing.

B. Interviews of Laboratory Employees

The Laboratory Director

15. On March 31, 2021, Board investigators interviewed the Laboratory Director, employed at the Practice from 2014 until June 2020. In the under-oath interview, the Laboratory Director stated:

- a. She was not initially aware that the Laboratory was conducting COVID-19 testing. She learned of the COVID-19 testing when she went to the Laboratory, saw new machinery, and was informed by a laboratory medical technologist (the “Laboratory Technologist”).
- b. She immediately had concerns, including that the testing was occurring in an inappropriate space.
- c. She did not and would not have approved the COVID-19 testing that occurred at the Laboratory.
- d. It was not appropriate that the Respondent did not involve her in the COVID-19 testing.
- e. She emailed the Respondent regarding her concerns and resigned as laboratory director at the Laboratory on or around June 23, 2020.

16. Following the interview, the Laboratory Director provided Board investigators the emails that she sent the Respondent.

- a. On June 18, 2020, the Laboratory Director’s email stated:

I happened to stop by [the Practice], found out the [Laboratory] is been doing PCR for COVID [-19]. The set up is not appropriate for running PCR, First of all it has to be a separate room with nothing else running in that area and it has to be very clean otherwise the results are doubtful How come i was not involved im this at all I just found out when I came here (*sic*) [.]

- b. On June 19, 2020, the Laboratory Director responded to the Respondent and, among other things, the email stated:

I have not approved any of the PCR procedure. Neither the space is appropriate neither the equipment is We have to stop generating reports without validation and my approval...These reports are very important for both the patients and Doctors and I am not taking responsibility

for calling them as positive or negative based on the way its performed (*sic*) [.]

- c. On June 22, 2020, the Laboratory Director responded to the Respondent and, among other things, the email stated:

As mentioned in earlier email, I am not part of this PCR testing. I have not approved this at all. We have to stop testing these or I am out from [the Practice] directorship.

- d. On June 23, 2020, the Laboratory Director attached a letter to an email to the Respondent which stated that she was resigning from the Practice based on the Laboratory's unapproved COVID-19 testing.

The Laboratory Manager

17. On April 10, 2021, Board investigators interviewed the Laboratory's laboratory manager (the "Laboratory Manager"), employed at the Practice from 2016 until June 2020. In the under-oath interview, the Laboratory Manager stated:

- a. The Respondent was the owner of the Laboratory and COVID-19 testing was the Respondent's idea. It was a "great opportunity for [the Respondent's] lab to expand and to grow, so we explored that opportunity" and "we hit the ground running."
- b. He took the lead on setting up the Laboratory for COVID-testing, including working with consultants; however, the Respondent was "there the whole time." He and the Respondent discussed the COVID-19 testing on the phone and they had "strategizing meetings." The Respondent's goal was to line up clients and the Laboratory Director 's role was that she "had the final approval."
- c. On or around May 22, 2020, he sent the Laboratory Director an email that stated "we are scrambling to open a COVID-19 lab at [the Practice]...we will be ramping up pretty fast. Please

let me know your questions and concerns.”³ When asked if he felt the Laboratory Director’s non-response to the email was an acceptance that the Laboratory could proceed with COVID-19 testing, the Laboratory Manager stated, “I knew we weren’t ready without her – without her blessing, I knew we weren’t ready.”

- d. When questioned if the Laboratory Director expressed concerns about proceeding with the COVID-19 testing:

Oh, yeah, she expressed a lot. She came immediately. She came to the [Laboratory] and immediately she was, like, stop what you’re doing, because she was already directing a COVID[-19] lab, and she said, stop what you’re doing, this is not set up properly. And honestly, I knew it wasn’t. That’s why – my problem with this whole thing was that we started too soon. Because he had already lined up clients. I hate saying this, but he had already lined up clients to start the COVID[-19] lab and my – my suggestion was to, we’re not – we’re not ready because we’re not set up correctly...But another two weeks and we’ll be ready, but he didn’t – he didn’t want to do that.

- e. When further questioned about the Respondent’s response to his statements that the Laboratory was not ready to provide COVID-19 testing, the Respondent stated:

We’re moving forward. I have these people lined up, I can’t afford—I can’t lose this account, I made promises. I have to keep promises, we’re going to move forward. And we’ll continue to build the [Laboratory] as we move forward.

- f. “We tested even after [the Laboratory Director] said stop testing.”

³ In the Laboratory Director’s under-oath interview with Board investigators, she stated that she did not receive this email on or around May 22, 2020. She stated that she only received this email once she had emailed the Respondent upon learning that the Laboratory was performing COVID-19 testing.

- g. He resigned on or around June 23, 2020, following the Laboratory Director's resignation.

The Laboratory Technologist

18. On May 5, 2021, Board investigators interviewed the Laboratory Technologist, employed at the Practice from May 18, 2020, until September 18, 2020. In the under-oath interview, the Laboratory Technologist stated:

- a. In late May 2020, the Laboratory Manager told her that the Laboratory would start COVID-19 testing the following week. On or around June 1, 2020, a machine for conducting COVID-19 testing was installed and a consultant provided her some training. The Laboratory tested approximately 200 patients on June 6, 2020.
- b. The Practice held three COVID-19 testing events at churches, two in Baltimore City and one in Howard County, and received between 50 and nearly 300 specimens per event. In addition, the Laboratory received specimens from nursing homes.
- c. After the COVID-19 testing had begun, she spoke with the Laboratory Director and informed her of concerns she had regarding the testing space, equipment, and training she had received.
- d. She overheard the Laboratory Manager tell the Respondent that the Laboratory was not properly equipped to handle COVID-19 testing. She thought it was because of the amount of time they had to get the lab up and running before they started testing the patient samples, "because normally when you bring up a new method or a new process it takes about a month at least to get this done. And to rush and get it done within five days is not proper at all."
- e. On or around June 27, 2020, the Laboratory stopped performing COVID-19 testing.

The Respondent's Interview

19. On August 12, 2021, Board investigators interviewed the Respondent. In the under-oath interview, the Respondent stated:

- a. He is the sole owner of the Laboratory.
- b. He did not know the details and requirements of COVID-testing. He left it up to the Laboratory Manager and the Laboratory Director. A laboratory director is the final authority regarding the operation of the Laboratory.
- c. After he received the Laboratory Director's emails stating her concerns regarding the COVID-19 testing at the Laboratory, he continued to move forward with the COVID-19 testing event on June 27, 2020, because:

She didn't tell me exactly what her concerns were and I didn't know exactly. That's why I wanted to meet with her, to see what is the issue. She never discussed it with me (*sic*).

- d. As of June 27, 2020, following the Laboratory Director's resignation, the Laboratory did not have a laboratory director.

CONCLUSIONS OF LAW

Based on the Findings of Fact, Disciplinary Panel B 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 in violation of a federal law pertaining to medicine, in violation of Health Occ. § 14-404(a)(43).

ORDER

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

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

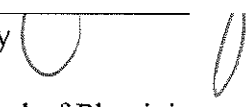
ORDERED that within six (6) months, the Respondent shall pay a civil fine of \$10,000.00. The payment shall be by money order or bank certified check made payable to the Maryland Board of Physicians and mailed to P.O. Box 37217, Baltimore, Maryland 21297. The Board will not renew or reinstate the Respondent's license if the Respondent fails to timely pay the fine to the board; and it is further

ORDERED 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 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).

04/21/2022
Date

Signature On File

Christine A. Farrelly 
Executive Director
Maryland State Board of Physicians

CONSENT

I, Reza Ghorbani, 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

4/18/2022

Date

Reza Ghorbani, M.D.
Respondent

NOTARY

STATE OF Maryland

CITY/COUNTY OF Montgomery

I HEREBY CERTIFY that on this 18 day of April 2022, before me, a Notary Public of the foregoing State and City/County, Reza Ghorbani, M.D., personally appeared and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSTH my hand and notarial seal.

DK

Notary Public

My commission expires: May 1, 2023

