

IN THE MATTER OF
PANKAJ MERCHIA, M.D.

Respondent

License Number: D67961

* BEFORE THE MARYLAND
* STATE BOARD OF
* PHYSICIANS

* Case Number: 2217-0107B

* * * * *

ORDER OF DEFAULT

On May 2, 2018, Disciplinary Panel B of the Maryland State Board of Physicians ("Board") charged Pankaj Merchia, M.D., a physician licensed in Maryland, with unprofessional or immoral conduct in the practice of medicine and for being disciplined by a licensing authority in Virginia for an act that would be grounds for discipline under the Maryland Medical Practice Act. *See* Md. Code Ann., Health Occ. ("HO") § 14-404(a) (3)(ii) and (21). The charges stemmed from an Order of the Virginia Board of Medicine ("Virginia Board"), wherein the Virginia Board found, in part, that Dr. Merchia failed to provide patient medical records in a timely manner. The Virginia Board reprimanded Dr. Merchia and required him to complete twelve hours of continuing medical education.

ADMINISTRATIVE PROCEEDINGS

Pursuant to HO § 14-405, the Board or a disciplinary panel is required to "give the individual against whom the action is contemplated an opportunity for a hearing before a hearing officer" prior to taking any disciplinary action. On January 14, 2019, this case was referred to the Office of Administrative Hearings ("OAH") for an evidentiary hearing.

On January 16, 2019, OAH mailed a Notice of Scheduling Conference to Dr. Merchia and the State, at their respective addresses of record, notifying the parties that a scheduling conference would be held on February 14, 2019, at 9:30 a.m., at OAH in Hunt Valley, Maryland. On February

14, 2019, a second Notice of Scheduling Conference was sent to Dr. Merchia at three different addresses, notifying Dr. Merchia that the scheduling conference was rescheduled to March 4, 2019, at 9:30 a.m., at OAH in Hunt Valley, Maryland. The notices sent to Dr. Merchia were not returned to OAH by the United States Postal Service ("USPS") as undeliverable.

On March 4, 2019, the day of the scheduling conference, the administrative prosecutor appeared on behalf of the State. Dr. Merchia did not appear for the scheduling conference, and no one appeared on his behalf. After determining that proper service had been made, the Administrative Law Judge ("ALJ") held the scheduling conference in Dr. Merchia's absence. During the scheduling conference, a prehearing conference was scheduled for April 3, 2019, at 9:30 a.m., at OAH.

On March 4, 2019, OAH mailed a Notice of In-Person Prehearing Conference to each party at their respective addresses of record. The notices mailed to Dr. Merchia at the same three addresses were not returned to OAH by the USPS. The notice informed the parties of the date, time, and location of the prehearing conference and enclosed instructions directing each party to prepare and submit a prehearing statement in advance of the prehearing conference. Further, the notice informed the parties that failure to attend the April 3, 2019 prehearing conference could result in a decision against the party for failing to appear.

On March 5, 2019, the ALJ issued a Scheduling Order, which was mailed by OAH to each party at their respective addresses of record. The Scheduling Order reiterated the information provided in the Notice of In-Person Prehearing Conference and ordered the parties to file, no later than March 19, 2019, a prehearing conference statement and any prehearing motions. The Scheduling Order mailed to Dr. Merchia at the same three addresses was not returned to OAH by the USPS. On March 19, 2019, the State submitted the required prehearing conference statement

and certified that the prehearing conference statement was sent to Dr. Merchia at his three addresses of record. Dr. Merchia did not submit a prehearing conference statement.

Dr. Merchia did not appear for the April 3, 2019 prehearing conference, and no one appeared on his behalf. Dr. Merchia did not request a postponement of the prehearing conference or notify anyone that he would not be in attendance. After waiting more than fifteen minutes for Dr. Merchia to appear, the ALJ commenced the prehearing conference in his absence. The State moved for a default judgment against Dr. Merchia.

Two days later, on April 5, 2019, Dr. Merchia sent an email to OAH requesting that a default judgment not be entered against him for having failed to appear at the April 3, 2019 prehearing conference because he did not receive the notice due to travel related to his son's health condition. He explained that he learned he had missed the prehearing conference when he called the Attorney General's office, on April 4, 2019, in response to a letter he received from the Administrative Prosecutor, which was sent to Dr. Merchia at the same three addresses of record used by OAH.

Later the same day, the ALJ issued a Proposed Default Order pursuant to COMAR 28.02.01.23A. The ALJ acknowledged Dr. Merchia's email sent to OAH earlier in the day and noted that Dr. Merchia failed to provide medical records or documentation to support his contention that he was in Florida during the relevant time frame due to his son's health condition. The ALJ also pointed out that Dr. Merchia "gave no explanation as to why, knowing that Board charges were pending against him, he failed to make arrangements to receive mail addressed to his address of record." The ALJ found that Dr. Merchia had proper notice of the April 3, 2019 prehearing conference and that he failed to appear and participate in the prehearing conference.

The ALJ proposed that the Panel find Dr. Merchia in default, that the May 2, 2018 charges be upheld, and that the Panel impose any disciplinary sanction that the Panel finds appropriate.

The Proposed Default Order notified the parties that they may file written exceptions to the proposed order within 15 days of the date of the Proposed Default Order. The Proposed Default Order stated that any exceptions and request for a hearing must be sent to the Board with attention to the Board's Executive Director. On April 23, 2019, Dr. Merchia filed Exceptions to the ALJ's Proposed Default Order along with a Motion to Vacate Proposed Default Order which incorporated the reasons set forth in a Motion for Reconsideration that Dr. Merchia filed at OAH on April 5, 2019.¹ On May 13, 2019, the State submitted a response to Dr. Merchia's exceptions.²

On June 12, 2019, Board Disciplinary Panel A ("Panel A") held a hearing on Dr. Merchia's Exceptions to the ALJ's Proposed Default Order. The State, represented by the administrative prosecutor, appeared in-person, and Dr. Merchia appeared via telephone conference.³

¹ On April 5, 2019, Dr. Merchia filed a Motion to Reconsider Proposed Default Order with OAH, which was denied by the ALJ pursuant to COMAR 28.02.02.27E, which states "Proposed decisions may not be revised by the Judge" and COMAR 28.02.01.27E, which states "A proposed default order is reviewable in accordance with the delegating agency's regulations governing review of proposed decisions." The Board's regulations provide for the review of proposed decisions through the exceptions process. The Panel will, therefore, consider the arguments presented in Dr. Merchia's Motion to Vacate Proposed Default Order as part of the Exceptions process in reviewing the ALJ's proposed default order.

² On May 13, 2019, Dr. Merchia filed a Motion to Exclude and Disregard the State's response to his exceptions as untimely filed. On May 29, 2019, the State filed a response to Dr. Merchia's Motion and requested that the Panel deny Dr. Merchia's Motion to Exclude because the State's response was timely filed in accordance with the Board's regulations and the deadlines for submitting exceptions established in the April 9, 2019 Exceptions letter sent by the Board to the parties. As explained in the Board's April 9, 2019 Exceptions Letter to the parties, each party was given fifteen days from the April 5, 2019 Proposed Default Order plus three additional days to allow for mailing to file exceptions and fifteen days plus three additional days for mailing to file any response. Because the deadline for filing the response fell on a Saturday, the Board, in its April 9, 2019 Exceptions Letter, stated that any exceptions were due on April 23, 2019 and any response to the exceptions would be due on May 23, 2019. Both parties complied with the deadlines set forth in the April 9, 2019 Exceptions Letter and, therefore, the Board will consider Dr. Merchia's exceptions and the State's response. Dr. Merchia's Motion to Exclude and Disregard the State's response is denied. See COMAR 10.32.02.05B(1)(a) ("The disciplinary panel may extend the period for filing exceptions and responses.").

³ On May 14, 2019, Dr. Merchia asked the Executive Director of the Board whether he could attend the exceptions hearing via telephone conference. The Executive Director informed Dr. Merchia that the preference was to appear in person, but that if there was a specific reason why he could not attend in person, he should submit the reason and any supporting documentation for review. Dr. Merchia did not support any documentation for review or state a reason

CONSIDERATION OF EXCEPTIONS

Dr. Merchia argues that: (1) he did not receive timely notice of the April 3, 2019 prehearing conference at OAH; (2) the case should be remanded to OAH for an evidentiary hearing; and (3) the factual findings, conclusions of law, and sanction issued by the Virginia Board are incorrect and should not be considered in deciding the case.

Notice

Dr. Merchia first argues that, because he was travelling due to his son's health issues, he did not receive timely notice of the April 3, 2019 prehearing conference at OAH and, therefore, he did not have the opportunity to present a defense to the charges at OAH. As a remedy, Dr. Merchia asks the Panel to vacate the proposed order of default and return the case to OAH for an evidentiary hearing on the merits. The State replied that Dr. Merchia received proper notice of the prehearing conference at OAH and failed to attend and, therefore, the ALJ appropriately entered a proposed order of default.

The Medical Practice Act, HO § 14-405(b), requires the hearing officer to give notice and hold the hearing in accordance with the Administrative Procedure Act. Pursuant to OAH's rules of procedure, "services of pleadings, correspondence, and all other documents shall be made by personal delivery, by U.S. mail, or by other form of personal or courier delivery." COMAR 28.02.01.10B.

"In the context of notice, the Supreme Court has established that '[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is

why he could not attend the hearing in person. On June 11, 2019, the day prior to the scheduled hearing, Dr. Merchia requested a continuance of the June 12, 2019 hearing due to his son's health condition and stated that traveling to Maryland for the hearing would be difficult for his family. Dr. Merchia did not submit any documentation in support of his request. Dr. Merchia's request for a continuance was denied, but he was given permission to appear at the exceptions hearing by telephone.

notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Maryland State Bd. of Nursing v. Sesay*, 224 Md. App. 432, 447 (2015) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (citations omitted)). Maryland courts have ruled, “[n]otice by mail is ordinarily presumed to be constitutionally sufficient.” *Griffin v. Bierman*, 403 Md. 186, 198 (2008) (quoting *Crum v. Vincent*, 493 F.3d 988, 993 (2007)). The U.S. Supreme Court has also validated that notice by regular mail to a person’s address of record or last known address is constitutionally sufficient. *Jones v. Flowers*, 547 U.S. 220, 226 (2006). Finally, “actual notice” is unnecessary, rather notice merely must be “‘reasonably calculated’ to provide notice.” *Sesay*, 224 Md. App. at 448 (quoting *Griffin*, 403 Md. at 198) (emphasis omitted).

In *Sesay*, the Court of Special Appeals held that the hearing notice sent by the Board of Nursing to the licensee was legally sufficient even when the notice, sent by regular and certified mail, was returned as undeliverable. 224 Md. App. at 458. In addressing why actual receipt of notice was not required in the licensure context, the Court explained:

Adopting Ms. Sesay’s argument could provide an incentive to licensees in the midst of administrative proceedings in which charges have been brought against them—or even before any such proceedings commence if they believe charges may be brought—to fail to update their address with the appropriate regulatory body. By doing this, the licensee would be able to prevent the administrative body from demonstrating proper notice, and as a result, guarantee them more time, an additional hearing, or perhaps a way to avoid the charges altogether. Indeed, in the instant case, the record shows that Ms. Sesay continued working as a nurse for years after the charges were made against her.

Sesay, 224 Md. App. at 453-54. The Court emphasized that health licensure is “a domain wherein ‘the State has a significant interest in protecting its citizens and the public health.’” *Id.* at 455 (quoting *Dr. K. v. State Bd. of Physician Quality Assurance*, 98 Md. App. 103, 120 (1993)). Ultimately, the Court determined that even though the Board of Nursing knew that Ms. Sesay did

not receive the notice, no additional steps were necessary to ensure that the notice was received and, in doing so, rejected Ms. Sesay's arguments that the Board of Nursing should have made further attempts, such as calling her on the phone, to achieve actual notice. *Id.* at 444, 456.

It is undisputed that prior to the prehearing conference, at a minimum, Dr. Merchia was sent two different Notices of Scheduling Conference, the Notice of In-Person Prehearing Conference, a Scheduling Order, and the State's prehearing conference statement. All documents were sent to Dr. Merchia by regular mail at his address of record and two additional addresses that the Board had on file for him. As a licensee, Dr. Merchia was required to notify the Board of any change in his address. *See* HO § 14-316(f). None of the documents sent to Dr. Merchia were returned as undeliverable. Dr. Merchia was also aware that disciplinary charges were pending against him and had responded to previous Board communications regarding this case addressed to his address of record. As articulated in *Sesay*, actual notice is not required. The notice provided to Dr. Merchia was reasonably calculated to provide notice. Dr. Merchia's exceptions challenging the sufficiency of notice are denied.

Authority to Impose Default Judgment and Consideration of Motion to Vacate Default

Dr. Merchia argues that the Board may not discipline him without giving him the opportunity for a hearing at which he would have been able to call witnesses, present evidence, and cross-examine his accusers and requests that the case be remanded to OAH for an evidentiary hearing.

In this case, Dr. Merchia was provided the opportunity for a hearing at OAH, but he failed to attend. *See* HO § 14-405. Pursuant to OAH's rules of procedure, "[i]f, after receiving proper notice, a party fails to attend or participate in a prehearing conference, hearing, or other stage of a proceeding, the judge may proceed in that party's absence or may, in accordance with the hearing

authority delegated by the agency, issue a final or proposed default order against the defaulting party.” COMAR 28.02.01.23A. The Health Occupations Article, likewise, allows a disciplinary panel to reach a disposition in a case when an individual fails to appear: “If after due notice the individual against whom the action is contemplated fails or refuses to appear, nevertheless the hearing officer may hear and refer the matter to the Board or a disciplinary panel for disposition.” HO § 14-405(d).

As discussed above, the Panel finds that Dr. Merchia was provided legally sufficient notice of the prehearing conference scheduled for April 3, 2019. The ALJ found that Dr. Merchia had proper notice of the April 3, 2019 prehearing conference and failed to appear and participate in the conference and, accordingly, proposed that the Panel uphold the charges and find Dr. Merchia in default. The Panel agrees with the ALJ that the evidence is sufficient to find Dr. Merchia in default.

Dr. Merchia does not challenge the legality of the default but asks the Panel to vacate the Proposed Order of Default and remand the case to OAH for a hearing on the basis that he did not receive timely notice of the hearing due to issues with his son’s health and needing to travel to be with him. He incorporates the arguments made in his Motion for Reconsideration filed with OAH, which included five exhibits.⁴ Pursuant to OAH’s regulations, COMAR 28.02.01.27E, “A proposed default order is reviewable in accordance with the delegating agency’s regulations governing review of proposed decisions.” Accordingly, the appropriate mechanism to challenge a proposed default order is through the Board’s exceptions process and not through a Motion to Vacate. The Panel, therefore has considered Dr. Merchia’s request for a remand to OAH and the

⁴ The Exhibits were: 1) Printout of an outgoing call made by Dr. Merchia to OAH on April 5, 2019 at 9:30am; 2) Three emails that Dr. Merchia sent to OAH on the morning of April 5, 2019; 3) A redacted printout from Boston Children’s Hospital dated February 27, 2019; 4) Redacted plane tickets for a flight from Boston to Florida on March 6, 2019; and 5) A redacted printout of an examination conducted on April 5, 2019.

arguments raised in his motions in the context of the exceptions process. Having done so, the Panel finds that the default was appropriate and is not persuaded that a remand is necessary or required in this case. Dr. Merchia's exceptions and Motion to Vacate are denied.

Challenge to the Virginia Board of Medicine Order findings

Dr. Merchia does not deny that he was disciplined by the Virginia Board. It is undisputed that the Virginia Board reprimanded Dr. Merchia and required him to complete twelve hours of continuing medical education. Dr. Merchia, however, challenges the factual findings of the Virginia Board, disputes the legitimacy of the reprimand issued to him by the Virginia Board, and disputes that he engaged in unprofessional conduct in the practice of medicine. Maryland law does not support his arguments.

First, Dr. Merchia was provided the opportunity to present these arguments at an evidentiary hearing before an ALJ at OAH. *See Heft v. Maryland Racing Comm'n*, 323 Md. 257, 271 (1991) (holding that the opportunity for a hearing is sufficient to satisfy due process principles). Dr. Merchia was provided legally sufficient notice of the prehearing conference and failed to attend the proceeding. Under OAH's rules of procedure, "[i]f, after receiving proper notice, a party fails to attend or participate in a prehearing conference, hearing, or other stage of a proceeding, the judge may proceed in that party's absence or may, in accordance with the hearing authority delegated by the agency, issue a final or proposed default order against the defaulting party." COMAR 28.02.01.23A. As discussed above, the proposed order of default was properly entered by the ALJ and the Panel concurs with the ALJ's finding of default. Dr. Merchia waived his opportunity to challenge the merits of the Maryland Board's charges filed against him when he failed to appear at OAH.

Second, even if Dr. Merchia had not defaulted at OAH and if he had presented the arguments raised in his exceptions at OAH, Dr. Merchia would not have been permitted to relitigate the facts already adjudicated by the Virginia Board nor can he now relitigate these facts in his exceptions. A licensee facing discipline based on facts already adjudicated in another forum may not relitigate those facts found by the other forum. *See Attorney Grievance Comm'n v. Sagbhir*, 350 Md. 67 (1998) (attorney disciplined in New York cannot collaterally attack in Maryland proceedings the findings of fact made in New York); *see also Attorney Grievance Comm'n v. Richardson*, 350 Md. 354 (1998) (in reciprocal disciplinary proceeding, attorney cannot attack the findings of fact made in the Florida court in the Florida disciplinary proceeding).

Dr. Merchia's exceptions are denied.

FINDINGS OF FACT

Because Panel A concludes that Dr. Merchia has defaulted, the allegations of fact set forth in the May 2, 2018 Charges Under the Maryland Medical Practice Act are adopted and deemed proven by the preponderance of the evidence. *See Attachment 1*, May 2, 2018 Charges Under the Maryland Medical Practice Act.

CONCLUSIONS OF LAW

Panel A finds Dr. Merchia in default based upon his failure to appear at the Office of Administrative Hearings for the prehearing conference scheduled for April 3, 2019. *See State Gov't § 10-210(4)*. Based upon the foregoing findings of fact, Panel A concludes that Dr. Merchia is guilty of unprofessional conduct in the practice of medicine, in violation of HO § 14-404(a)(3)(ii), and being disciplined by a licensing authority for an act that would be grounds for discipline under the Maryland Medical Practice Act, in violation of HO § 14-404(a)(21). Dr. Merchia's conduct for which he was disciplined by the Virginia Board, would, if committed in

Maryland, be grounds for disciplinary action under HO § 14-404(a)(3)(ii) (unprofessional conduct in the practice of medicine) and (13) (fails to provide the details of a patient's medical record to the patient or another physician).

ORDER

It is, on the affirmative vote of a majority of the quorum of Panel A, hereby

ORDERED that Pankaj Merchia, M.D. is **REPRIMANDED**; and it is further

ORDERED that within 15 calendar days, Dr. Merchia shall pay a civil fine of \$500.00.

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. If Dr. Merchia fails to pay the fine, in whole or in part, the Board will not renew or reinstate Dr. Merchia's license until the fine has been paid in full; and it is further

ORDERED that the effective date of the Order is the date the Order is signed by the Executive Director of the Board. The Executive Director or her designee signs the Order on behalf of the disciplinary panel which has imposed the terms and conditions of this Order; and it is further

ORDERED that Dr. Merchia's Motion to Exclude and Disregard the State's response and Dr. Merchia's Motion to vacate are denied; and it is further

ORDERED that this Order is a public document. See HO §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6).

09/03/2019
Date

Signature on File

Christine A. Farrelly, Executive Director
Maryland Board of Physicians

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Md. Code Ann., Health Occ. § 14-408, Dr. Merchia has the right to seek judicial review of this Order of Default. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of this Order of Default. The cover letter accompanying this Order indicates the date the decision is mailed. Any petition for judicial review shall be made as provided for in the Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If Dr. Merchia files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

**Maryland State Board of Physicians
Christine A. Farrelly, Executive Director
4201 Patterson Avenue
Baltimore, Maryland 21215**

Notice of any petition should also be sent to the Board's counsel at the following address:

**Stacey Darin
Assistant Attorney General
Maryland Department of Health
300 West Preston Street, Suite 302
Baltimore, Maryland 21201**

Attachment 1

IN THE MATTER OF
PANKAJ MERCHIA, M.D.

Respondent

License Number: D67961

* BEFORE THE
* MARYLAND STATE
* BOARD OF PHYSICIANS

Case Number: 2217-0107B

* * * * *

CHARGES UNDER THE MARYLAND MEDICAL PRACTICE ACT

Disciplinary Panel B of the Maryland State Board of Physicians (the "Board") hereby charges Pankaj Merchia, M.D., (the "Respondent"), License Number D67961, 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.).

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 of the Board, 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;

(21) Is disciplined by a licensing, military, or disciplinary authority in this State or in any other state or country or disciplined by any branch of the United States uniformed services or the Veterans' Administration for an act that would be grounds for disciplinary action under this section: *to wit*,
§ 14-404(a):

(3) Is guilty of: (ii) Unprofessional conduct in the practice of medicine;

(13) On proper request, and in accordance with the provisions of Title 4, Subtitle 3 of the Health- General Article, fails to

provide details of a patient's medical record to the patient, another physician, or hospital[.]

ALLEGATIONS OF FACT¹

Disciplinary Panel B of the Board bases its charges on the following facts that it has reason to believe are true:

1. At all times relevant hereto, the Respondent was licensed to practice medicine in the State of Maryland. The Respondent was originally licensed to practice medicine in Maryland on July 16, 2008. His license is active and is scheduled to expire on September 30, 2019.

DISCIPLINE BY THE VIRGINIA BOARD OF MEDICINE

2. On July 17, 2008, the Board issued the Respondent a license to practice medicine in the Commonwealth of Virginia. The Respondent's license is scheduled to expire on November 30, 2018.
3. On May 19, 2017, the Virginia Board of Medicine ("Virginia Board") held a formal administrative hearing to inquire whether the Respondent violated certain laws and regulations governing the practice of medicine in Virginia.
4. On May 26, 2017, the Virginia Board issued an Order, concluding that the Respondent violated Virginia Code § 54.1-2915.A(16)² and (18)³ of the Code and 18 VAC 85-20-26(B)⁴ of the Regulations.
5. The Virginia Board reprimanded the Respondent's license, subject to the following

¹ The statements of the Respondent's conduct herein are intended to provide the Respondent with notice of the alleged charges. They are not intended as, and do not necessarily represent, a complete description of the evidence, either documentary or testimonial, to be offered against the Respondent in this matter.

² § 54.1-2915.A(16): Performing any act likely to deceive, defraud, or harm the public.

³ § 54.1-2915.A(18): Violating or cooperating with others in violating any of the provisions of Chapters 1 (§ 54.1-100 et seq.), 24 (§ 54.1-2400 et seq.) and this chapter or regulations of the Board.

⁴ 18V AC85-20-26. Patient records. B. Practitioners shall provide patient records to another practitioner or to the patient or his personal representative in a timely manner in accordance with provisions of § 32.1-127.1:03 of the Code of Virginia.

conditions:

Within six (6) months from entry of this Order, Dr. Merchia shall submit evidence satisfactory to the Board verifying that he has completed twelve (12) hours of Board-approved continuing medical education (CME) in the subject of medical record-keeping. Such CME shall be approved in advance of registration by the Executive Director of the Board, and shall be completed through face-to-face interactive sessions (i.e.) no home study, journal, or Internet courses). Any CME hours obtained in compliance with this term shall not be used toward compliance with the Board's continuing education requirements for license renewal.

6. As part of the Order, the Virginia Board made the following findings of fact:

1. Dr. Merchia deceived Patient A between August 17, 2009 and August 27, 2009 in his verbal and electronic responses to her requests by telephone for copies of her medical records, and Dr. Merchia failed to provide patient records requested in a timely manner, as required by Section 32.1-127.1:03(E) of the Code. Specifically:

a. Dr. Merchia told Patient A on more than one occasion that he would provide the requested records, and failed on those occasions to inform Patient A that he would not comply with her e-mail and telephone requests, and would instead require her to submit a signed, written request for her records.

b. By e-mail dated August 17, 2009, Patient A requested that her medical records be forwarded to the office of another physician with whom Patient A had an appointment the following day. By e-mail on the same date, Dr. Merchia acknowledged receipt of the request and informed Patient A that the requested records would be provided. Because the records had not been received, Patient A communicated with Dr. Merchia again by e-mail on August 27, 2009, noting that her previous requests by e-mail and by telephone had not resulted in Dr. Merchia providing the requested records. Further, Patient A noted that direct requests by telephone and by letter dated August 24, 2009 from the other physician had also gone unanswered. Dr. Merchia informed Patient A by e-mail on August 27, 2009 that he would require a signed letter requesting a copy of her records and the address to which the records were to be mailed. Patient A's physician sent another written request to Dr. Merchia on August 31, 2009, to which he also failed to respond. Finally, as per Dr. Merchia's request, Patient A submitted a signed records request form via fax and e-mail on September

11, 2009. Despite these multiple attempts, Dr. Merchia failed to provide the requested records to either Patient A or her physician.

3. Dr. Merchia provided incomplete medical records to Patient C several months after Patient C submitted a request for his records, as required by Section 32.1-127.1:03(E) of the Code. On October 19, 2009, Patient C utilized the newly created records request form on Dr. Merchia's website to request his records in writing. Dr. Merchia failed to provide the requested records until March 1, 2010, at which time he provided only a partial record in that the records consisted of approximately seven (7) pages, while in response to a subsequent request from the Department of Health Professions, Dr. Merchia provided copies of approximately fifty-two (52) pages of medical records for the same patient and the same period of time.

4. Dr. Merchia testified that he believed that he did not have control over the patient records of his practice. He testified that his father, an employee of the practice, was the only person who controlled the records. The Board felt that Dr. Merchia did not have a full understanding of a practitioner's responsibility for the maintenance and release of medical records.

MARYLAND BOARD INVESTIGATION

7. On September 29, 2017, the Respondent submitted an Application for Renewal of the Respondent's license to practice medicine in Maryland. On the Application, the Respondent was prompted with the following:

Select specialty areas only if certified by a recognized board of the American Board of Medical Specialties (ABMS) or the American Osteopathic Association (AOA).

8. The Respondent listed "Internal Medicine" as his Primary Certification.
9. The Respondent's American Board of Internal Medicine certification expired on December 31, 2016.

NOTICE OF POSSIBLE SANCTIONS

If, after a hearing, a disciplinary panel of the Board finds that there are grounds for action under Health Occ. § 14-404(a)(3)(ii) and/or (21), the Board may impose disciplinary sanctions against Respondent's license, including revocation, suspension, reprimand and/or probation. The panel may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine upon the Respondent.

**NOTICE OF DISCIPLINARY CONFERENCE FOR CASE RESOLUTION
AND HEARING**

A Disciplinary Conference for Case Resolution ("DCCR") in this matter has been scheduled for Wednesday August 22, 2018, at 9:00 a.m. at the offices of the Board, 4201 Patterson Avenue, Baltimore, Maryland, 21215. The Respondent must confirm in writing the Respondent's intention to attend the DCCR. The Respondent should send written confirmation of the Respondent's intention to participate in the DCCR to: Christine A. Farrelly, Executive Director, Maryland State Board of Physicians, 4201 Patterson Avenue, 4th Floor, Baltimore, Maryland 21215. The nature and purpose of the DCCR is described in the attached letter to the Respondent.

If the case cannot be resolved at the DCCR, a pre-hearing conference and a hearing in this matter will be scheduled at the Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, Maryland 21031. The hearing will be conducted in accordance with Md. Code Ann., Health Occ. § 14-405 and Md. Code Ann., State Gov't §§ 10-201 *et seq.* (2014 Repl. Vol. & 2015 Supp.).

**BRIAN E. FROSH
ATTORNEY GENERAL OF MARYLAND**

May 2, 2018
Date



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