

IN THE MATTER OF

*

BEFORE THE

ASHEESH KUMAR, M.D.

*

MARYLAND STATE

Respondent

*

BOARD OF PHYSICIANS

License Number: D74085

*

Case Number: 2222-0128

* * * * *

CONSENT ORDER

On July 26, 2022, Disciplinary Panel B (“Panel B” or the “Panel”) of the Maryland State Board of Physicians (the “Board”) charged **Asheesh Kumar, M.D.** (the “Respondent”), License Number D74085, under the Maryland Medical Practice Act (the “Act”), Md. Code Ann., Health Occ. §§ 14-101 *et seq.* (2021 Repl. Vol.). Panel B charged the Respondent with violating the following provisions of the Act:

Health Occ. § 14-404. License denial, suspension, or revocation.

- (a) *In general.* - Subject to the hearing provisions of § 14-405 of this subtitle, a disciplinary panel, on the affirmative vote of a majority of the quorum of the disciplinary panel, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

...

- (3) Is guilty of:

...

- (ii) Unprofessional conduct in the practice of medicine;

- (4) Is professionally, physically, or mentally incompetent;

...

- (9) Provides professional services:

- (i) While under the influence of alcohol[.]

On September 28 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 makes the following findings of fact:

I. BACKGROUND

1. The Respondent was initially licensed to practice medicine in Maryland on or about May 1, 2012, under License Number D74085. The Respondent allowed his license to lapse on or about September 30, 2016. He was later reinstated on September 7, 2021. On July 13, 2022, the Respondent’s license was summarily suspended by Panel B. On July 28, 2022, the summary suspension was affirmed by Panel B after a postdeprivation hearing.

2. The Respondent is board-certified in anesthesiology and anesthesiology, critical care medicine.

3. The Respondent practiced medicine at a health care facility (the “Facility”)¹ that has several locations in Maryland and in Washington, DC.

4. The Respondent began working at the Facility on February 14, 2022, and he was terminated on April 7, 2022.

¹ To ensure confidentiality and privacy, the names of individuals and entities involved in this case, other than the Respondent, are not disclosed in this document.

5. On or about April 12, 2022, the Board received a Mandated 10-Day Report (the “Report”) from the Facility. According to the Report, the Respondent exhibited indicators of impairment and/or intoxication while working at the Facility on April 5, 2022.

6. The Report stated that the Respondent acknowledged being under the influence of alcohol while at work at the Facility on April 5, 2022. The Facility terminated his employment effective April 7, 2022.

II. INVESTIGATION

7. The Board initiated an investigation based on the Report from the Facility. The Board notified the Respondent of its investigation by letter dated April 25, 2022 and directed him to provide a written response.

8. As part of the investigation, Board staff interviewed the Respondent and several of his colleagues.

A. The Respondent’s Written Response

9. By letter dated May 9, 2022, the Respondent provided a written response in which he wrote that he “take[s] full responsibility for [his] conduct on April 5, 2022.”

10. The Respondent wrote, “on April 4, 2022, I consumed wine in the evening. I went to sleep but woke up at approximately 1:00 a.m. or 2:00 a.m. with anxiety and made the unfortunate decision to consume more wine in an attempt to quell that anxiety. Although I do not specifically recall the precise amount of wine I consumed, it was less than one bottle of rosé wine.”

B. Facility Physician 1

11. On May 18, 2022, Board staff conducted an under-oath interview of a Facility physician ("Facility Physician 1") who directly supervised the Respondent at the Facility. He was contacted on the morning of April 5, 2022, after fellow coworkers became concerned with the Respondent's behavior.

12. Facility Physician 1 stated that he was contacted by another anesthesiologist who asked him to check in on the Respondent because the Respondent was "acting funny" and the anesthesiologist was concerned that the Respondent would not be able to work.

13. The Respondent had provided anesthesiology services for two or three pediatric patients that morning. The anesthesiologist advised Facility Physician 1 that the Respondent was acting sleepy and sluggish, sleeping in the corner between cases, and taking a long time to do basic tasks.

14. Facility Physician 1 contacted his superior, Facility Physician 2, to inform her of these concerns. Facility Physician 1 then called the Respondent and asked him "what was going on." The Respondent replied that he was "not feeling well and was tired." Facility Physician 1 immediately advised the Respondent to stop working and go upstairs to the office.

15. Facility Physician 1 met with the Respondent in the office and again asked him "what was going on." The Respondent stated that he did not feel well and was otherwise very vague. Facility Physician 1 directed the Respondent to go to the Facility's urgent care department to be evaluated.

16. Facility Physician 1 later followed up with the Respondent who advised that the lab results came back positive for alcohol, but the Respondent did not provide a further explanation.

17. The Respondent was terminated from his employment at the Facility on April 7, 2022.

18. Facility Physician 1 stated that he was recently advised that the Respondent was working at another health care facility and “has serious concerns about [the Respondent] practicing and being out there now doing what he is doing.”

C. Facility Physician 2

19. On May 31, 2022, Board staff conducted an under-oath interview of Facility Physician 2. Facility Physician 2 acts in a supervisory capacity and oversees the clinical operations and oversight of physicians across multiple specialties who provide clinical care at the Facility.

20. Facility Physician 2 was contacted by Facility Physician 1 with concerns about the Respondent’s behavior on the morning of April 5, 2022.

21. The staff of the urgent care department provided Facility Physician 2 with the results of the Respondent’s evaluation and testing results.

22. A termination meeting was held on April 7, 2022. Facility Physician 1, Facility Physician 2, and the Respondent were present. The Respondent explained that he was overwhelmed due to many recent stressors in his personal life. The Respondent was very teary and remorseful during the termination meeting and stated that he would be

willing to take daily breathalyzer tests, daily alcohol tests, or whatever it took to keep his job. The Respondent stated that he had already engaged in rehabilitative efforts.

23. Facility Physician 2 expressed concerns that “this may be a repeat event . . . where the Respondent may present to work impaired,” so Facility Physician 2 “has no trust in that [the Respondent] can safely take care of patients, anesthetizing patients, and sedating them.”

D. Interview of Physician Anesthesiologist

24. On May 20, 2022, Board staff conducted an under-oath interview of the Physician Anesthesiologist. The Physician Anesthesiologist had worked with the Respondent once in a clinical setting on or about March 10, 2022.

25. On that day, the Physician Anesthesiologist noticed the smell of alcohol on the Respondent while they were caring for pediatric patients at approximately 9:00 a.m. and later again that afternoon. On both occasions, the Physician Anesthesiologist was standing just a few feet away from the Respondent and they were both wearing masks.

26. The Physician Anesthesiologist told Board staff, “I am very concerned that a physician on his first day of working at a brand-new site that he has never been to—who is taking care of patients, particularly pediatric patients—to possibly be drinking while at work. I am concerned for his health, I am concerned for his judgment, and I—I only hope that from here he is getting professional help.”

E. Interview of the Respondent

27. On June 15, 2022, Board staff conducted an under-oath interview of the Respondent. In this interview, the Respondent stated, “I can’t believe that this—that I

allowed this to happen, and I take full responsibility for it. I don't have any excuses for what I did, and I don't pretend to provide any, but I can provide some background."

28. The Respondent explained that he has had several issues lately that have created a lot of stress and anxiety in his life. He stated, "I was overwhelmed. I was having panic attacks, anxiety attacks, I just kept thinking about that over and over."

29. The Respondent acknowledged that he began drinking at approximately 2:00 p.m. on April 4, 2022 and continued throughout the day and into the morning hours of April 5, 2022. The Respondent stated:

I started drinking on Monday afternoon, which was the 4th. I had tried to get through the entire weekend and was having a lot of flashbacks, a lot of panic. And starting Monday afternoon, I came home, and I would say over the course of Monday afternoon to Tuesday morning, drank a bottle of wine . . . I had a glass. I was exhausted. I went to bed. I woke up—at this point things are hazy, so I'm not going to—unfortunately, I don't know the exact timeline, but I remember waking up throughout the course of the night and still just being in a panic and have another glass, have another glass. The last glass that I had was about 3:00 in the morning.

30. The Respondent admitted that when he woke up for his shift at 5:00 a.m. on April 5, 2022, he felt under the influence. The details of the day are "hazy" for him, but he recalls doing "pediatric gastroenterology patients, kids' colonoscopies or endoscopies." He stated, "I don't recall exactly what my interactions were. I know I was helping the other physician with the cases. On the second case that we did I started a peripheral IV." He believes that he was taken out of the room after starting the second case and directed to go to the office and later to the urgent care.

31. As a result of this relapse, the Respondent offered to undergo treatment measures to address his medical condition.

32. The Respondent denied being under the influence or impaired in any way while working prior to the April 5, 2022 event. When asked about the observations of the Physician Anesthesiologist on March 10, 2022, the Respondent claimed that he had leftovers for lunch which consisted of his mother's chicken that she makes with red wine sauce. He denied consuming any alcohol on March 9 or 10 of 2022 and maintained that he had been sober for two and a half years prior to his relapse in April 2022.

33. In the interview, the Respondent acknowledged that he was working at another health care facility as a staff anesthesiologist at the time. The Respondent did not inform that employer of the circumstances under which he left the Facility and was terminated on April 7, 2022. The Respondent stated, "I have not told them the exact circumstances of leaving [the Facility]. It's not obviously something I am proud of. I'm scared.

CONCLUSIONS OF LAW

Panel B concludes that the Respondent: is guilty of unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii); is professionally, physically, or mentally incompetent, in violation of Health Occ. § 14-404(a)(4); and provided professional services while under the influence of alcohol, in violation of Health Occ. § 14-404(a)(9)(i).

ORDER

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

ORDERED that the Order for Summary Suspension, issued on July 13, 2022, and affirmed, on July 28, 2022, is terminated as moot based upon the suspension ordered under this Consent Order; and it is further

ORDERED that Respondent Asheesh Kumar, M.D. is **REPRIMANDED**; and it is further

ORDERED that the Respondent's license to practice medicine in the State of Maryland is **SUSPENDED**² for a minimum period of **SIX MONTHS**.³ During the suspension, the Respondent shall comply with the following conditions of suspension:

1. The Respondent shall enroll, and participate, in the Maryland Professional Rehabilitation Program 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

² During the suspension period, the Respondent shall not:

- (a) practice medicine;
- (b) take any actions to hold himself out to the public as a current provider of medical services;
- (c) authorize, allow or condone the use of the Respondent's name or provider number by any health care practice or any other licensee or health care provider;
- (d) function as a peer reviewer for the Board or for any hospital or other medical care facility in the State;
- (e) prescribe or dispense medicine;
- (f) perform any other act that requires an active medical license.

³ If the Respondent's license expires while the Respondent is on suspension, the suspension period, and any conditions of suspension, will be tolled.

make verbal and written disclosures to the Board and to authorize the Board to disclose relevant information to MPRP. The Respondent shall not withdraw his 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 verbal and written information concerning the Respondent and to ensure that MPRP is authorized to receive the health care records of the Respondent. The Respondent shall not withdraw his release/consent; and

(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

2. Within **six months**, the Respondent is required to take and successfully

complete a course in professionalism. 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 begins;

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

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

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

ORDERED that a violation of suspension constitutes a violation of this Consent Order; and it is further

ORDERED that, after the Respondent has complied with all terms and conditions of the suspension, the minimum period of suspension imposed by this Consent Order has passed, and MPRP recommends that it is safe for the Respondent to return to the practice of medicine, the Respondent may petition the Board for the termination of suspension. The Respondent may be required to appear before the disciplinary panel to discuss his petition. If a Board disciplinary panel determines that it is safe for the Respondent to return to the

practice of medicine, the panel will terminate the suspension and the Respondent will be placed on probation for a minimum of two years and will be required to remain enrolled in, and participate in, MPRP, and the Respondent shall remain compliant with the terms of MPRP participation as set forth in suspension condition 1.c – f. The probation will also be under the terms and conditions generally applied to probation. If, after considering MPRP's recommendation, the disciplinary panel determines that it is not safe for the Respondent to return to the practice of medicine, the suspension shall remain in effect until it is determined by a disciplinary panel that it is safe for the Respondent to return to the practice of medicine, and that return to practice would also include a minimum two year probations as described above; and it is further

ORDERED that this Consent Order goes into effect upon the signature of the Executive Director of the Board. The Executive Director signs the Consent Order on behalf of Board Disciplinary Panel B; and it is further

ORDERED that the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this 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 a 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 a 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 the Respondent's license 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).

10/21/2022
Date

Signature On File

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

CONSENT

I, Asheesh Kumar, 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

17 OCT 2022
Date

Asheesh Kumar, M.D.
Respondent

NOTARY

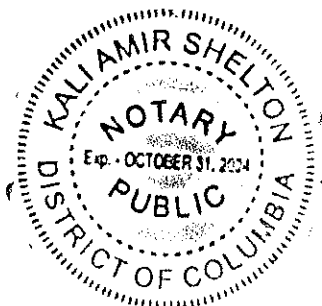
STATE OF District of Columbia

CITY/COUNTY OF Washington

I HEREBY CERTIFY that on this 17th day of October, 2022, before me, a Notary Public of the foregoing

State and City/County, did personally appear Asheesh Kumar, M.D. 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 seal.



[Signature]
Notary Public

My commission expires: 10/31/24