

IN THE MATTER OF	*	BEFORE THE MARYLAND
KANSKY JEAN DELISMA, M.D.	*	STATE BOARD OF
Applicant for Licensure	*	PHYSICIANS
	*	Case Number: 2218-0197A

* * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

On April 20, 2018, Disciplinary Panel A ("Panel A") of the Maryland State Board of Physicians (the "Board") notified **KANSKY JEAN DELISMA, M.D.** (the "Applicant") of its intent to deny his *Application for Initial Medical Licensure* (the "Application"), dated December 11, 2017, pursuant to the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") §§ 14-101 *et seq.* (2014 Repl. Vol. and 2017 Supp.).

Specifically, Panel A notified the Applicant that it intended to deny his Application pursuant to the following provisions of the Act, which provide the following:

Health Occ. § 14-205. Miscellaneous powers and duties.

(b) *Additional powers.* –

(3) Subject to the Administrative Procedure Act and the hearing provisions of § 14-405 of this title, a disciplinary panel may deny a license to an applicant . . . for

(i) Any of the reasons that are grounds for action under § 14-404 of this title[.]

Grounds for action under Health Occ. § 14-404(a) include the following:

(3) Is guilty of: (ii) Unprofessional conduct in the practice of medicine; [and/or]

- (15) Pays or agrees to pay any sum to any person for bringing or referring a patient or accepts or agrees to accept any sum from any person for bringing or referring a patient[.]

Health Occ. § 14-307. Qualifications of applicants.

- (b) *Moral character.* – The applicant shall be of good moral character.

On June 13, 2018, a hearing was held before Panel A, sitting as a Disciplinary Committee for Case Resolution. As a result of negotiations occurring before Panel A, the Respondent agreed to enter into the following Consent Order, consisting of Procedural Background, Findings of Fact, Conclusions of Law, Order, Consent and Notary.

FINDINGS OF FACT

Panel A makes the following Findings of Fact:

1. At all times relevant hereto, the Applicant was licensed to practice medicine in Florida. The Applicant was initially licensed to practice medicine in Florida on or about June 13, 2006. The Applicant's Florida medical license expired on or about January 31, 2018. The Applicant is currently licensed to practice medicine in Montana.
2. The Applicant submitted his Application to the Board, dated December 11, 2017, which the Board received on or about December 20, 2017. In the section of the Application entitled, *Character and Fitness Questions*, the Applicant was instructed to respond "YES" or "NO" to a series of questions. The Application instructed the Applicant to provide a detailed explanation on a separate sheet for every "YES" response.
3. The Applicant answered "YES" to the following questions:

QUESTION B--Has a state licensing or disciplinary board (including Maryland), a comparable body in the armed services, or the Veterans Administration, ever taken action against your license? Such actions include, but are not limited to, limitations of practice, required education admonishment or reprimand, suspension, probation or revocation.

QUESTION C—Has any licensing or disciplinary board in any jurisdiction (including Maryland), a comparable body in the armed services, or the Veterans Administration, ever filed any complaints or charges against you or investigations you for any reason?

QUESTION G--Have you ever pleaded guilty or nolo contendere to any criminal charge, been convicted of a crime, or received probation before judgment because of a criminal charge?

QUESTION K—Have any malpractice claims or other claims for money damages ever been filed against you? Include past claims as well as any claim that is now pending, has been dismissed, has been settled, or which has resulted in a damages award against you or your medical practice.

QUESTION N—Has your employment or contractual relationship with any hospital, HMO, or other health care facility, health care provider, institution, armed services, or the Veterans Administration ever been terminated for disciplinary reasons?

4. The Applicant provided written attachments to his Application in which he addressed the "YES" responses he noted in his Application. In these written attachments, the Applicant reported that: (a) on September 19, 2014, he received a \$700 cash payment from a home health care provider for a patient he had referred to his agency; (b) on February 10, 2016, he was charged with one count of "receipt of kickbacks in relation with a federal health care program"; (c) on March 15, 2016, he pleaded guilty to the charge; (d) on May 26, 2016, he was sentenced to eight (8) months of detention and one (1) year of supervised release; (e) on December 2, 2016, the Florida Board of Medicine (the Florida Board") suspended his medical license retroactive to May 26, 2016, and imposed a reprimand; (f) in August 2017, the Florida

Medicaid program terminated him from participating in the Florida Medicaid program; and (g) the United States Department of Health and Human Services excluded him from participating in the Medicare/Medicaid program for a minimum statutory period of five (5) years, as of September 20, 2016.

5. At the end of the Application, the Applicant certified that he personally reviewed all of the responses he made in the Application and that all of the information he provided therein was true and correct.

6. The Board initiated an investigation of the Applicant based on the affirmative responses and disclosures he provided in his Application. The Board's investigation determined the following:

Federal criminal conviction

7. Based on a federal criminal investigation, the Applicant entered into plea negotiations with the United States Attorney's Office and pursuant to a plea agreement executed on November 24, 2015, agreed to plead guilty to one count of receiving kickbacks in connection with a federal health care program, said crime occurring on or about September 19, 2014. Under the plea agreement, the Applicant admitted and acknowledged that the following facts were true and that the United States could prove them at trial beyond a reasonable doubt:

- (a) That [the Applicant's] participation in the scheme resulted in the value of the improper benefit to be conferred to be greater than \$40,000 and less than \$95,000; and
- (b) That [the Applicant] abused a position of public trust and used a special skill in a manner that significantly facilitated the commission and concealment of the offense.

8. On or about January 8, 2016, the Applicant, pursuant to a Criminal Information, was charged in the United States District Court for the Southern District of Florida, under Case Number 1:16-cr-20018-KMM, with one count of receiving kickbacks in connection with a federal health care program, said crime occurring on or about September 19, 2014, in violation of 42 U.S.C. § 1320a-7b(b)(1)(A) and Title 18, U.S.C. § 2.¹

9. The Criminal Information filed alleged, *inter alia*, that the Applicant did knowingly and willfully solicit and receive remuneration, that is \$700 in kickbacks and bribes, directly and indirectly, overtly and covertly, in cash from Khaled Elbeblay, in return for referring an individual to a person for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole and in part by a federal health care program, that is, Medicare.

10. On or about March 15, 2016, the Applicant appeared in the United States District Court for the Southern District of Florida and pleaded guilty to one count of receiving kickbacks in connection with a federal health care program, said crime occurring on or about September 19, 2014, in violation of 42 U.S.C. § 1320a-7b(b)(1)(A) and Title 18, U.S.C. § 2.

11. On or about May 26, 2016, the Applicant appeared in the United States District Court for the Southern District of Florida, and pursuant to the above guilty plea, was sentenced to: incarceration for a period of eight (8) months; upon release from imprisonment, placed on supervised release for a term of one (1) year; payment of

¹ 42 U.S.C. § 1320a-7b(b)(1)(A) (the federal Anti-Kickback Statute), makes it a federal offense for anyone to knowingly and willfully solicit or receive remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by Medicare, a federal health care program as defined in 18 U.S.C. § 24(b).

restitution in the amount of \$49,000.00; payment of a fine in the amount of \$5,000.00; and an assessment in the amount of \$100.00.

Exclusion from State and federal health care programs

12. On or about August 31, 2016, the United States Department of Health and Human Services excluded the Applicant from participation in any capacity in the Medicare, Medicaid, and all federal health care programs for a minimum statutory period of five (5) years, effective on or about September 20, 2016.

13. On or about August 24, 2017, the State of Florida issued a Final Order in which it terminated the Applicant's participation in the Florida Medicaid program for cause.

Florida Board of Medicine disciplinary action

14. On or about August 29, 2016, the Florida Department of Health filed an administrative complaint before the Florida Board, alleging that the Applicant violated provisions of Florida law relating to the practice of medicine. Specifically, the administrative complaint alleged that the Applicant violated Section 458.331(1)(i), Florida Statutes (2014), by receiving a cash kickback for referring one of his patients to a provider of health care goods and services; and violated Section 458.331(1)(c), Florida Statutes (2015), by being found guilty of a crime which directly relates to the practice of medicine or to the ability to practice medicine in the United States District Court for the Southern District of Florida.

15. On or about December 16, 2016, the Florida Board issued a Final Order in which it adopted the factual and legal allegations that were set forth in the August 29, 2016, administrative complaint. The Florida Board reprimanded and suspended the

Applicant's Florida medical license, retroactive to the date of his incarceration and until such time as he appeared before the Florida Board following his release from incarceration in a halfway house.

16. On or about June 28, 2017, the Florida Board issued an Order Granting Reinstatement, in which it reinstated the Applicant's Florida medical license.

17. On or about December 15, 2017, the Florida Department of Health filed an administrative complaint before the Florida Board, alleging that the Applicant violated provisions of Florida law relating to the practice of medicine. Specifically, the administrative complaint alleged that the Applicant violated Section 456.072(1)(kk), Florida Statutes (2016-2017), for being terminated from the state Medicaid program or the federal Medicaid program, unless eligibility to participate in the program from which the practitioner was terminate has been restored. The administrative complaint was based on the Applicant's termination from the Florida Medicaid program.

18. On or about December 29, 2017, the Applicant entered into a Settlement Agreement with the Florida Board to resolve the allegations that were set forth in the December 15, 2017, administrative complaint. The Applicant entered into a stipulated disposition with the Florida Board in which he admitted that the facts alleged in the December 15, 2017, administrative complaint, if proven, would constitute a violation of chapter 456, Florida Statutes. Pursuant to the Settlement Agreement, the Florida Board issued a Letter of Concern against the Applicant's license; imposed a fine in the amount of \$500; and imposed costs incurred in the investigation and prosecution of the case.

19. Pursuant to Health Occ. § 14-205(b)(3)(i), a disciplinary panel of the Board may deny an applicant's application for licensure based on any of the reasons that are grounds for action under Health Occ. § 14-404(a).

20. As referenced above, the Applicant was: convicted in federal court for violating the federal Anti-Kickback Act, in violation of 42 U.S.C. § 1320a-7(b)(1)(a) and Title 18, U.S.C. § 2, for which he was incarcerated, placed on supervised release, and ordered to pay restitution and fines; terminated from participation in federal and State health care programs; and suspended and reprimanded by the Florida Board for violating Florida statutes relating to the practice of medicine.

21. The Applicant's actions, as referenced above, constitute grounds for Panel A to deny his application pursuant to the following provisions of the Act under Health Occ. § 14-404(a): (3) Is guilty of: (ii) Unprofessional conduct in the practice of medicine; and (15) Pays or agrees to pay any sum to any person for bringing or referring a patient or accepts or agrees to accept any sum from any person for bringing or referring a patient.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Panel A finds as a matter of law that the Applicant: Is guilty of unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii); and Pays or agrees to pay any sum to any person for bringing or referring a patient or accepts or agrees to accept any sum from any person for bringing or referring a patient, in violation of Health Occ. § 14-404(a)(15).

ORDER

IT IS thus, by Panel A of the Board, hereby:

ORDERED that the Applicant's application for a license to practice medicine in the State of Maryland is **GRANTED**; and it is further

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

ORDERED that, within six (6) months, the Applicant shall successfully complete a Panel-approved course, or a Panel-approved one-to-one tutorial, in medical ethics. The Board disciplinary panel will not accept a course taken over the Internet. The course may not be used to fulfill the continuing medical education credits required for license renewal. The Applicant must provide documentation to the Board that the Applicant completed the course; and it is further

ORDERED that if the Respondent allegedly fails to comply with any term or condition of this Consent Order, the Respondent shall be given notice and an opportunity for a hearing. If 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. If there is no genuine dispute as to a material fact, the Respondent shall be given a show cause hearing before a Board disciplinary panel; and it is further

ORDERED that, after the appropriate hearing, if a Board disciplinary panel determines that the Respondent has failed to comply with any term or condition of this Consent Order, a Board disciplinary panel may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, or suspend or revoke the Respondent's license to practice medicine in Maryland. A Board disciplinary panel may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine upon the Respondent; 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, unless stated otherwise in the order, any time period prescribed in this order begins when the Consent Order goes into effect. The Consent Order goes into effect upon the signature of the Board's Executive Director, who signs on behalf of Panel A; and it is further

ORDERED that grounds for denial of licensure under Health Occ. § 14-307(b) are **DISMISSED**; and it is further

ORDERED that this Consent Order is a public document pursuant to Md. Code Ann., Gen. Prov. §§ 4-101 *et seq.* (2014 Vol. & 2017 Supp.)

06/19/2018
Date

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

CONSENT

I, Kansky Jean Delisma, M.D., acknowledge that I have been apprised of my right to counsel and have knowingly and voluntarily agreed to proceed without counsel before entering into this Consent Order. By this Consent, I agree and accept to be bound by this Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact, Conclusions of Law and Order.

I acknowledge the validity of this Consent Order as if entered into 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 own behalf, and to all other substantive and procedural protections provided by the law. I agree to

forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of Panel A to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of Disciplinary Panel B of the Board that might have followed after any such hearing.

I sign this Consent Order, voluntarily and without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

Signature on File

06/15/2018
Date

Kansky Jean Delisma, M.D.
Applicant

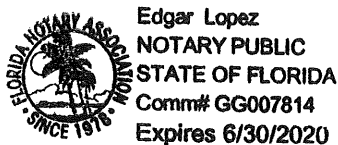
NOTARY

STATE OF Florida

CITY/COUNTY OF Miami Dade

I HEREBY CERTIFY that on this 15th day of June 2018, before me, a Notary Public of the foregoing State and City/County, personally appeared Kansky Jean Delisma, M.D., and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.



[Signature]
Notary Public

My Commission expires: 06/30/2020