

IN THE MATTER OF

*

BEFORE THE

FELIPE DIAZ, M.D.

*

MARYLAND STATE

Respondent

*

BOARD OF PHYSICIANS

License Number: D87148

*

Case Number: 2221-0060B

* * * * *

CONSENT ORDER

On February 28, 2022, Disciplinary Panel B (“Panel B”) of the Maryland State Board of Physicians (the “Board”) charged **FELIPE DIAZ, M.D.** (the “Respondent”), License Number D87148, under the Maryland Medical Practice Act (the “Act”), Md. Code Ann., Health Occ. (“Health Occ.”) §§ 14-101 *et seq.* (2021 Repl. Vol.); Health Occ. § 1-212; and Code Md. Regs. (“COMAR”) 10.32.17.01 *et seq.* (2019).

The pertinent provisions of the Act provide:

Health Occ. § 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[.]

Health Occ. § 1-212. Sexual misconduct prohibited; regulations; discipline.

(a) *Adoption of regulations.* – Each health occupations board authorized to issue a license or certificate under this article shall adopt regulations that:

- (1) Prohibit sexual misconduct; and
 - (2) Provide for the discipline of a licensee or certificate holder found to be guilty of sexual misconduct.
- (b) *Sexual misconduct.* – For the purposes of the regulations adopted in accordance with subsection (a) of this section, “sexual misconduct” shall be construed to include, at a minimum, behavior where a health care provider:
- ...
- (3) Has engaged in any sexual behavior that would be considered unethical or unprofessional according to the code of ethics, professional standards of conduct, or regulations of the appropriate health occupations board under this article.

COMAR 10.32.17 Sexual Misconduct.

01. Scope.

This chapter prohibits sexual misconduct by health care practitioners.

02. Definitions.

B. Terms Defined.

...

- (4) “Sexual harassment” means an unwelcome sexual advance, request for sexual favor, or other verbal or physical conduct of a sexual nature.

03. Sexual Misconduct

- A. Health care practitioners may not engage in sexual misconduct.
- B. Health Occupations Article, §§ 14-404(a)(3) . . . Annotated Code of Maryland, includes, but is not limited to, sexual misconduct.
- C. Sexual misconduct includes, but is not limited to:

- (1) Engaging in sexual harassment of a patient, key third party, employee, student, or coworker regardless of whether the sexual harassment occurs inside or outside of a professional setting;
- ...
- (8) Having nonconsensual sexual contact with a coworker or employee[.]

On May 25, 2022, Panel B was convened as a Disciplinary Committee for Case Resolution (“DCCR”) in this matter. Based on negotiations occurring as a result of the DCCR, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

Panel B finds:

Background/Licensing Information

1. At all relevant times, the Respondent was and is a physician licensed to practice medicine in the State of Maryland. The Respondent was initially licensed to practice medicine in Maryland on April 4, 2019, under License Number D87148. The Respondent’s Maryland medical license is active through September 30, 2022.
2. The Respondent is board-certified in internal medicine.
3. At all relevant times, the Respondent practiced at a health care facility (the “Facility”)¹ located in Maryland.

¹ For confidentiality reasons, any healthcare facilities or individuals referenced in this document are not identified by name.

4. In or around May 2019, the Facility hired the Respondent to be its Chief Medical Officer (“CMO”). The Facility terminated the Respondent’s employment, effective on or about September 22, 2020.

The Complaint

5. On or about October 9, 2020, the Board received a Mandated 10-Day Report (the “Report”) from the Facility, which stated that on September 22, 2020, it terminated the Respondent’s employment for “unprofessional conduct in violation of [its] Core Standards of Behavior.”

Respondent’s Response to the Complaint

6. By letter dated December 2, 2020, the Board notified the Respondent of its receipt of the above Report and that it had opened a full investigation of the matter. The Board requested that the Respondent address the allegations in the Report in a written response.

7. Through counsel, the Respondent provided a written response to the Board, dated December 22, 2020, wherein the Respondent acknowledged that the Facility terminated his employment for “alleged ‘unprofessional conduct of [its] Core Standards of Behavior.’” The Respondent also provided a copy of the Facility’s September 22, 2020, termination letter, which stated that it was terminating him for “documented instances of [his] unprofessional conduct which violated its Core Standards of Behavior.”

Board Investigation

8. As part of its investigation, the Board subpoenaed the Respondent’s human resources/personnel file from the Facility. The file documents that in or around August

2020, the Facility became aware of a review that was posted on the online website Glassdoor,² which was purportedly posted by an anonymous employee. The review stated,

the CMO is a known sexual predator here and unfortunately I have been subjected to his aggressive unwanted advances multiple times. The last time was very overt and disgusting and I left his office feeling extremely violated . . . I found out the same things have happened to my fellow co-worker by him and she was just as disturbed . . . for years he has had sexual liaisons with his subordinates and it's a known fact that is simply overlooked.

9. Based on this review, a senior Facility representative ("Facility Staff-1") initiated an investigation of these allegations, which included interviewing the Respondent and several Facility staff persons, and obtaining written statements. Facility Staff-1 formulated a report of his findings in which he documented that multiple female staff persons stated that the Respondent made "unwanted advances" toward them and that his behavior made them feel "uncomfortable." Facility Staff-1 interviewed other female staff members who stated that they were aware that the Respondent made inappropriate and unprofessional comments to female staff persons that upset them.

10. One of the Facility's staff persons ("Facility Staff-2") submitted a written statement that the Respondent made inappropriate comments about her tattoos. She stated that on one occasion while she was in the Respondent's office and leaned over his computer monitor to observe his screen, he commented that she was making it "hard for him to do his job." Facility Staff-2 stated that when he made this remark, she backed away, at which

² *Glassdoor.com* advertises itself as a website that enables current and former employees of companies to place anonymous reviews.

point the Respondent opened his legs and arms and asked if she was sure she did not need to check his computer screen again.

11. The Facility then hired a law firm to perform an independent investigation of these allegations. On or about October 27, 2020, the law firm issued a written report of its investigative findings in which it found that female Facility staff persons reported incidents where the Respondent made statements or engaged in behaviors that made them feel uncomfortable. For example:

- (a) Facility Staff-2 reported that on multiple occasions, the Respondent made inappropriate remarks to her or engaged in behaviors that made her feel uncomfortable, or focused unwanted attention on her. For example, she described an incident where she and the Respondent were discussing a recruit in his office. As she was leaning over his desk to view his computer monitor, the Respondent made a comment to her and started gyrating in a sexual manner with his hands behind his head.
- (b) Facility Staff-2 stated that the Respondent, who was invited to an office happy hour, stated that he is happy to buy drinks for others and “see what happens.” Facility Staff-2 also reported that during an office social hour, the Respondent made what she characterized as a sexually suggestive remark about another female Facility staff person (“Facility Staff-3”) when Facility Staff-3 was eating a pickle.
- (c) Facility Staff-3 reported that the Respondent made various comments to her about her appearance, such as “you eat a lot but still maintain your figure,” “you are just so beautiful,” “you look great in that skirt” and “you should wear white pants more often.” Facility Staff-3 reported that the Respondent often stared at her in a way that made her feel uncomfortable. Facility Staff-3 also reported that when she and the Respondent were in her office for a meeting with the door closed, he said to her, “I’m attracted to you . . . when you walk into a room, I get an urge.” When uttering this remark, the Respondent “made a fist with his hand and pushed it upward in the air.” Facility Staff-3 stated that she responded to the Respondent by stating, “you can’t talk to me that way . . . this makes me feel uncomfortable.”

- (d) Another Facility staff person (“Facility Staff-4”) reported that on one occasion, the Respondent told a story to a group of Facility employees about a time when he was working for another healthcare facility. Facility Staff-4 stated that the Respondent made a sexually- oriented joke about a nurse’s attire that Facility Staff-4 perceived was sexual in nature.
- (e) The report noted that other female Facility staff members confirmed that the Respondent made remarks and engaged in behaviors that were inappropriate and unprofessional.

12. After reviewing this information, Board staff interviewed the Respondent and several Facility staff persons.

Facility Staff-1

13. Facility Staff-1 confirmed that the Facility terminated the Respondent in September 2020 for “behavior that was not becoming of a CMO” after the Facility became aware of the Glassdoor review. Facility Staff-1 stated that he met with the Respondent in August 2020 to discuss the online review. During the meeting, Facility Staff-1 reminded the Respondent of a joke the Respondent made in the break room that may have been offensive and a comment the Respondent made about Facility Staff-2, which Facility Staff-1 thought was “inappropriate.”

14. Facility Staff-1 confirmed that he interviewed several staff members who raised concerns about the Respondent’s behavior. Facility Staff-1 reported that both Facility Staff-2 and Facility Staff-3 reported that the Respondent made “some comments and some gestures that would be considered less than professional.”

Facility Staff-2

15. Facility Staff-2 confirmed that the Respondent made inappropriate comments to her and engaged in behaviors that made her uncomfortable, including instances where he made comments about her appearance and tattoos. Among other incidents, Facility Staff-2 recounted one where she and the Respondent attended an office social hour where on more than one occasion, he brushed up against her in a manner that made her uncomfortable. Facility Staff-2 recounted another incident when she was in the Respondent's office when she leaned over his computer to assist him and he looked down her shirt. She stated that as she got up to walk away, the Respondent, who was sitting in his chair with his legs wide apart, stated, "you're making it hard for me to do my job." Facility Staff-2 stated that she reported this incident to a coworker.

Facility Staff-3

16. Facility Staff-3 reported that the Respondent made remarks to her and engaged in behaviors that made her uncomfortable. She stated that when she would enter the Respondent's office, he often sat with his legs open toward her. On one occasion where the Respondent did this, Facility Staff-3 stated that she asked him what his intentions were, at which point he stated that he was attracted to her. Facility Staff-3 reported another instance where she was in his office for a meeting when the Respondent informed her that he was "attracted" to her and that when she comes into the room, "she gives him an urge." In response, Facility Staff-3 informed the Respondent that his remarks made her uncomfortable. Facility Staff-3 also reported that the Respondent made gestures toward her of a sexual nature.

17. Facility Staff-3 also reported that she was aware of an incident where Facility Staff-2 reported to her that the Respondent made inappropriate remarks and engaged in inappropriate behaviors toward her.

Facility Staff-4

18. Facility Staff-4, who works in a management position at the Facility, stated that she overheard Facility Staff-2 tell Facility Staff-3 that the Respondent was harassing her and making her feel uncomfortable. Facility Staff-4 stated that Facility Staff-3 reported to her that the Respondent acted in a manner that made her feel uncomfortable. Facility Staff-4 stated that she spoke to the Respondent about Facility Staff-2's concerns about him and told him to stay away from Facility Staff-2, stating that he had "too much to lose." Facility Staff-4 also recounted an instance where the Respondent made a sexually-oriented joke to a group of Facility employees during which he discussed one of his sexual interests.

Facility Staff-5

19. Facility Staff-5, who also works in a management position at the Facility, stated that she "knew of [the Respondent's] reputation" and described him as a "very flirtatious man." Facility Staff 5 stated that she was aware of at least two female staff members who felt uncomfortable around the Respondent. Facility Staff-5 recounted the incident where Facility Staff-2 entered her office and "vented" about how uncomfortable she was about being in the Respondent's office. Facility Staff-5 also stated that she was aware that Facility Staff-3 was uncomfortable around the Respondent and that Facility Staff-3 would always put on a cardigan if she had to go into the Respondent's office due to concerns about the Respondent.

Facility Staff-6

20. Facility Staff-6, who holds a senior management position at the Facility, stated that both Facility Staff-2 and Facility Staff-3 reported to her that the Respondent made comments that made them uncomfortable and that he “crossed lines.” Specifically, Facility Staff-2 informed Facility Staff-6 that the Respondent had made a sexual advance toward her when he “invited her to sit on his lap.” Facility Staff-6 further stated that Facility Staff-3 informed her that the Respondent “invited intimate interaction . . . to be in an affair . . . that she had turned down.”

21. Facility Staff-6 stated that after reviewing Facility Staff-2’s concerns and the law firm’s investigative finding, the Facility confirmed that the Respondent had engaged in unwelcomed behaviors toward female staff members and that he was unfit to represent the Facility at an executive level.

The Respondent

22. The Respondent confirmed that the Facility terminated him after it conducted an investigation into allegations that he engaged in unprofessional conduct. During the interview, the Respondent claimed that he was involved in a mutually flirtatious relationship with Facility Staff-2. He stated that Facility Staff-2 had a “*je ne sais quoi*” and admitted that he was attracted to her. The Respondent addressed an encounter with Facility Staff-2 when she leaned over him, admitting that he said to her, “damn girl, you’re triggering me.”

23. Regarding Facility Staff-3's allegation that he told her he was attracted to her, the Respondent stated, "I don't remember saying anything like that. I am not forward with women unless they are forward with me."

24. The Respondent also acknowledged that he was engaged in a sexual liaison with a subordinate staff person, which he claimed was consensual. When the Respondent was asked whether he thought it was appropriate or professional to engage in sexual relationships with staff, the Respondent stated, "you know, probably not, no."

25. The Board's investigation determined that the Respondent engaged in inappropriate, unprofessional behaviors with female staff persons while employed at the Facility. The Respondent made sexually explicit remarks to female staff persons and engaged in sexually harassment of them while employed at the Facility.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, 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 Health Occ. § 1-212 by violating the Board's sexual misconduct regulations under COMAR 10.32.17.01 *et seq.*

ORDER

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

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

ORDERED that the Respondent is placed on **PROBATION**³ for a minimum of two (2) years. 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, if deemed necessary by MPRP:

(a) Within 5 business days, the Respondent shall contact MPRP to schedule an initial evaluation to determine whether enrollment is appropriate;

(b) If, after an evaluation, MPRP determines enrollment is appropriate, the Respondent shall enter into a Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP within 15 business days of being informed by 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 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;

³ If the Respondent's license expires during the period of probation, the probation and any conditions will be tolled.

(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;

2) Within **SIX (6) MONTHS**, the Respondent is required to take and successfully complete a course in appropriate workplace 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) 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;

(d) the Respondent is responsible for the cost of the course.

3) Within **ONE (1) YEAR**, the Respondent shall pay a civil fine of \$5,000. 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 Respondent shall not apply for early termination of probation; and it is further

ORDERED that, after the Respondent has complied with all terms and conditions of probation and the minimum period of probation imposed by the Consent Order has passed, 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 or her 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 a violation of probation constitutes a violation of the Consent Order;

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 the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; 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 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).

06/23/2022
Date

Signature On File

Christine A. Farrelly
Executive Director
Maryland State Board of Physicians

CONSENT

I, Felipe Diaz, 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

6/14/22
Date

Felipe Diaz, M.D.
Respondent

NOTARY

STATE OF New York

CITY/COUNTY OF Onondaga

I HEREBY CERTIFY that on this 14th day of June 2022, before me, a Notary Public of the foregoing State and City/County, personally appeared Felipe Diaz, 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.

KATHY A. BIDWELL
Notary Public, State of New York
Qual. in Onondaga County
No. 01B16066241
Commission Expires November 13, 2025

Kathy A. Bidwell
Notary Public

My Commission expires: November 13, 2025