

IN THE MATTER OF

ANDREW GEOFFREY DALE, M.D.

Applicant

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BEFORE THE

MARYLAND STATE BOARD

OF PHYSICIANS

Case Number: 2220-0150A

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### FINAL DECISION AND ORDER

On March 4, 2020, Disciplinary Panel A (“Panel A”) of the Maryland State Board of Physicians (the “Board”) issued a Notice of Intent to Deny Application for Initial Medical License Under the Maryland Medical Practice Act (“Notice of Intent”) to Andrew Geoffrey Dale, M.D. (the “Applicant”). The Notice of Intent was premised on the following provisions of the Maryland Medical Practice Act, Md. Code Ann., Health Occ. §§ 14-101—14-702:

#### **Health Occ. § 14-205.**

....

(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[.]

#### **Health Occ. § 14-404.**

(a) 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:

(i) Immoral conduct in the practice of medicine; or

(ii) Unprofessional conduct in the practice of medicine[.]

On April 3, 2020, the Applicant filed a request for a hearing. Health Occ. § 14-405(a). On September 4, 2020, the Office of Administrative Hearings (“OAH”) received a transmittal from

the Board, delegating the authority to hold a hearing and issue Proposed Findings of Fact, proposed Conclusions of Law, and a Proposed Disposition. A hearing on this matter was scheduled to be held on November 9 and 10, 2020.

On November 6, 2020, the parties submitted to OAH joint stipulations, which included stipulated facts, stipulated conclusions of law, stipulated exhibits, and a stipulated sanction. Also, on November 6, 2020, the Applicant withdrew his request for OAH to conduct a hearing in this matter. Upon receiving these filings, the Administrative Law Judge (“ALJ”) converted the November 9, 2020, merits hearing into a status conference.

On November 9, 2020, the ALJ held the status conference. An Administrative Prosecutor from the Office of the Attorney General represented the State. The Applicant was represented by an attorney. At the status conference, the parties confirmed that the November 6, 2020 filings eliminated the need for a contested case hearing and that the parties wished for the joint stipulations and exhibits to be incorporated into the ALJ’s Proposed Decision. No live testimony was taken by OAH.

On December 1, 2020, the ALJ issued the Proposed Decision. The ALJ accepted the stipulations of the parties. Based upon the parties’ stipulations, the ALJ made Proposed Stipulated Conclusions of Law that the Applicant engaged in immoral and unprofessional conduct in the practice of medicine, which are grounds for action under Health Occ. § 14-404(a)(3)(i) and (ii), and, therefore, determined that there was a basis to deny the Applicant’s application for licensure, pursuant to Health Occ. § 14-205(b)(3). The ALJ further proposed that, based on the stipulated facts and stipulated conclusions of law, the Applicant’s application for initial medical licensure be denied.

No exceptions to the ALJ's Proposed Decision were filed, and the case was presented to Board Disciplinary Panel B (the "Panel" or "Panel B") for the final decision and order.

### FINDINGS OF FACT

The parties stipulated to the following facts and thus Panel B finds that these facts were established by the preponderance of evidence:

1. On or about September 4, 2019, the Applicant submitted to the Board an Application for Initial Medical Licensure (the "Application") seeking initial licensure to practice medicine in the State of Maryland.

2. In the Application, the Applicant stated that, in August 2018, he completed a residency training program in obstetrics and gynecology at the University of New Mexico School of Medicine ("UNMSOM").

3. In the Application, the Applicant answered "YES" to Question 13(C), which asks the following:

13. Postgraduate Training . . .

....  
C. During your years of postgraduate training, was any action taken against you by any training program, hospital, medical board, licensing authority, or court? Such actions include but are not limited to investigation, limitations of privileges or special conditions, requirements imposed for academic incompetence, disciplinary actions, probationary action, etc. If "Yes," please provide any explanation.

4. The Applicant provided the following written explanation for his affirmative response to Question 13(C): "During my residency I asked out a colleague and the school found me in violation of sexual misconduct. My privileges were not affected."

5. In the Application, the Applicant also answered "Yes" to questions 16(c) and 16(e) which ask the following:

16. Character and Fitness Questions . . .

...  
(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 investigated you for any reason?

...  
(e) Has a hospital, related health care institution, HMO, or alternative health care system ever investigated you or ever brought charges against you?

6. The Applicant provided a written explanation for his affirmative answers to Questions 16(c) and 16(e), stating, "During my residency I asked out one of my colleagues. As a result of this the school found me in violation of sexual misconduct. It was reported to the [National Practitioners Data Bank]."

7. The Board obtained the Applicant's personnel records from his residency at UNMSOM.

8. The Applicant's personnel records included a July 30, 2018 "Final Report" from the University of New Mexico's Office of Equal Opportunity ("OEO") and an August 27, 2018 "Notice of Final Action" from the UNMSOM Department of Obstetrics and Gynecology.

9. The OEO Final Report included findings from an OEO investigation that stemmed from an April 2018 complaint against the Applicant for possible sexual harassment.

10. OEO noted in its Final Report that the Applicant had previous complaints for sending unwanted text messages of a sexual nature to female colleagues in 2015 and 2016, and that these initial complaints were resolved in February 2017 through informal, non-disciplinary education for the Applicant.

11. OEO also explained in its Final Report that during its investigation into the 2018 complaint, it obtained statements from twelve resident physicians who had interactions with the Applicant while he was also a resident physician. OEO found that the Applicant's behavior toward

some of the female resident physicians included “massages, touching of the hair, comments regarding ‘wanting to feed’ a colleague, pulling colleagues into a closet for conversations, and making comments on personal appearance.” However, no evidence was given beyond verbal testimony. No cross-examination was allowed in the gathering of the evidence nor was the Applicant given a chance to respond to the witness statements before conclusion of the investigation.

12. OEO concluded in its Final Report that five female residents “reported experiencing sexual harassment by the [Applicant] in the time since the informal resolution with OEO in February 2017,” and that some resident physicians reported “changing their work habits to avoid him[.]” OEO noted that the Applicant’s conduct was often directed toward medical students and residents that the Applicant supervised, thus putting him in a position of power. OEO also concluded that the Applicant violated the UNM Policy 2740, “Sexual Harassment” (formerly titled “Sexual Violence and Misconduct”), by creating “a sexually harassing hostile work environment for multiple parties in the department of OB/GYN.” However, in the testimony all five female residents openly stated that, when asked to stop, the Applicant did so in all five cases and did not create additional hostile environments or retaliate.

13. The OEO investigation did not find any evidence that the Applicant engaged in any sexual contact with patients, other resident physicians, or any other coworkers.

14. In the process of the OEO investigation the Chair of the Department of Obstetrics and Gynecology, who knew the Applicant through his entire postgraduate education, submitted into evidence a character letter indicating that, despite the Applicant’s challenges, he was a decorated educator who respected all members of the team, “he has worked to create an environment of inclusion, where team voices can be heard[.]” and he consistently provided high

quality patient care. She further wrote that she “will also attest to his intelligence, his strong desire to provide high-quality care for patients, and to provide the highest level of education to learners and to be a responsible team member.” She explained that, based on her observations, the Applicant went out of his way to protect members of the department when they were having difficulties in their lives and he “has volunteered with ‘repayment’ to pick up extra work for colleagues on maternity leave and sick leave.”

15. The UNMSOM Notice of Final Action accepted the OEO findings and conclusions and determined that the Applicant was ineligible for rehire at UNMSOM. UNMSOM also noted that he had been placed on administrative leave as of July 18, 2018, but had completed all the requirements for the residency training by that time. He was, therefore, eligible to be deemed as “ended [his] residency training . . . as [he has] effectively completed [his] participation in the OB/Gyn Residency Program.”

16. On or about February 19, 2019, the New Mexico Medical Board issued an “Agreed Order Stipulating to Investigative Findings,” in which the Applicant stipulated that if the allegations stated in the OEO Final Report and UNMSOM’s Notice of Final Action were proven at an evidentiary hearing, it would constitute a violation of the New Mexico Medical Practice Act, including “unprofessional or dishonorable conduct.” The New Mexico Medical Board and the Applicant agreed that if the Applicant sought full licensure in that State, the New Mexico Medical Board may, without further proceedings, impose conditions responsive to the allegations made in the [OEO] investigation[.]”

17. On or about August 5, 2020, the Applicant and the New Mexico Medical Board agreed that the Applicant would be granted a medical license in New Mexico upon completion of certain requirements. The Applicant is in the process of completing those requirements.

18. The Applicant provided a written response to the Board, in which he stated that he takes "full responsibility for [his] actions," and that he has "learned the importance of professional boundaries." The Applicant further stated that he has "grown in respecting the difference between intent and reception," as well as in understanding "the importance that a power differential can make."

### CONCLUSIONS OF LAW

Based upon the Findings of Fact and the parties' stipulations, Panel B concludes that the Applicant is guilty of: immoral conduct in the practice of medicine, Health Occ. § 14-404(a)(3)(i); and unprofessional conduct in the practice of medicine, Health Occ. § 14-404(a)(3)(ii). Thus, pursuant to § 14-205(b)(3)(i) of the Health Occupations Article, Panel B may deny the Applicant a license to practice medicine in Maryland.

### DISPOSITION

The parties stipulated that, based on the Stipulated Facts and Stipulated Conclusions of Law, the Applicant's Application for Initial Medical Licensure will be denied. The Panel agrees with parties' stipulation and the ALJ's proposed decision for the denial of the Applicant's application for an initial license to practice medicine in Maryland.

### ORDER

Pursuant to § 14-205(b)(3)(i) of the Health Occupations Article, it is, by Board Disciplinary Panel B, hereby

**ORDERED** that Andrew Geoffrey Dale, M.D.'s Application for an initial license to practice medicine in Maryland is **DENIED**; and it is further

**ORDERED** that this Final Decision and Order goes into effect upon the signature of the Board's Executive Director. The Board's Executive Director signs this Final Decision and Order on behalf of Panel B; and it is further

**ORDERED** that this Final Decision and Order is a public document. *See* Md. Code Ann., Gen. Prov. § 4-333(b)(6).

## *Signature on File*

01/06/2021  
Date

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

### **NOTICE OF RIGHT TO APPEAL**

Pursuant to § 14-408(a) of the Health Occupations Article, the Applicant has the right to seek judicial review of this Final Decision and Order. Any petition for judicial review shall be filed within 30 days from the date this Final Decision and Order is mailed. The date of the cover letter accompanying this Final Decision and Order is the date the decision is mailed. The petition for judicial review must be made as directed in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222, and Maryland Rules 7-201 *et seq.*

If the Applicant petitions for judicial review, the Board is a party and should be served with the court's process. In addition, the Applicant should send a copy of his petition for judicial review to the Board's counsel, David Wagner, Assistant Attorney General, Office of the Attorney General, 300 W. Preston Street, Suite 302, Baltimore, Maryland 21201. The administrative prosecutor is not involved in the circuit court process and does not need to be served or copied on pleadings filed in circuit court.