

IN THE MATTER OF
ERIC S. FELBER, D.O.

Respondent

License Number: H70831

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BEFORE THE

MARYLAND STATE

BOARD OF PHYSICIANS

Case Number: 7723-0049

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FINAL DECISION AND ORDER

INTRODUCTION AND PROCEDURAL HISTORY

On November 29, 2023, Disciplinary Panel B of the Maryland State Board of Physicians (“Board”) issued charges against Eric S. Felber, D.O., (“Dr. Felber” or “Respondent”) alleging that he violated § 14-404(a)(3)(ii), (22), (33) and (40) of the Health Occupations Article, Maryland Code Annotated, for unprofessional conduct in the practice of medicine; failing to meet appropriate standards, as determined by appropriate peer review, for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in the State;¹ failing to cooperate with a lawful investigation conducted by the Board; and failing to keep adequate medical records, as determined by appropriate peer review.

Dr. Felber owns, and practices at, an urgent care center in Bethesda, Maryland (“the Facility”). On August 24, 2020, Disciplinary Panel B of the Board issued a Final Decision and Order reprimanding Dr. Felber, placing him on probation with probationary conditions of a peer supervisor and a recordkeeping course for violations of the standard of care and recordkeeping. At the end of the probationary term, on January 28, 2022, Dr. Felber’s probation was terminated, but, because of concerns identified by Dr. Felber’s peer supervisor in their quarterly reports during

¹ A violation of Health Occ. § 14-404(a)(22) will be referred to as a failure to meet the “standard of care” as it is commonly referred to in the profession.

his probation, the Board notified Dr. Felber in the Order terminating probation that his practice would be subject to a peer review in one year. These charges in this case were issued as a result of the re-review of his practice when two peer reviewers determined that his treatment of the patient records reviewed demonstrated a violation of the standard of care, inadequate medical recordkeeping, and unprofessional conduct. The charges also stem from Dr. Felber's conduct during the Board's investigation and his failure to produce the full records in response to a Board subpoena.

On March 28, 2024, the panel referred the case to the Office of Administrative Hearings ("OAH"). After a scheduling conference, on June 3, 2024, Dr. Felber filed a motion seeking dismissal. OAH held a prehearing conference, on August 6 and 26, 2024, and the Administrative Law Judge ("ALJ") denied the motion to dismiss on August 26, 2024.

On November 6 and 7, 2024, an evidentiary hearing was held before the ALJ on the charges. At the hearing, the State introduced 20 exhibits, including correspondences, the prescriptions Dr. Felber prescribed to the ten patients, the medical records provided by Dr. Felber in response to the subpoena, and the two peer review reports. Dr. Felber introduced one exhibit. The State also presented testimony from the Board's former Probation Supervisor ("Probation Supervisor") and one of the peer reviewers who was accepted as an expert in family medicine and in the standards of care with respect to medical documentation and prescribing medications. Dr. Felber testified on his own behalf.

On January 31, 2025, the ALJ issued a proposed decision, concluding that Dr. Felber failed to meet the standard of care for all ten patients at issue and failed to keep adequate medical records for all ten patients at issue. The ALJ also found that Dr. Felber was guilty of unprofessional conduct in the practice of medicine. The ALJ did not find that Dr. Felber failed to cooperate with

the Board's investigation. The ALJ recommended a sanction of a 3-month suspension and a fine of \$5,000.

Dr. Felber and the State both filed written exceptions, and an exceptions hearing before Disciplinary Panel A ("Panel A" or the "Panel") was scheduled for April 9, 2025. At 3:12 p.m. on April 8, 2025, the day before the hearing, Dr. Felber wrote an email to the Board that stated, "I have a family emergency. I am unable to attend." The Probation Supervisor wrote back, asking for documentation, and Dr. Felber wrote back that it was "private." Dr. Felber failed to appear at the hearing on April 9, 2025. Later that day, the Board sent Dr. Felber a letter rescheduling the hearing to May 14, 2025, at 9:00 a.m. In the letter the Board stated "The Board **will not reschedule the exceptions hearing again, nor will any postponements be granted.** Please note that if you do not appear, the exceptions hearing will proceed without your participation." (Emphasis in original.) The day before the rescheduled hearing, on May 13, 2025, at 2:48 p.m., Dr. Felber wrote an email to the Probation Supervisor, stating, "I have another family emergency and am unable to attend." The Probation Supervisor wrote back, stating that the exceptions hearing would not be postponed further and would be held as scheduled. Dr. Felber responded, "I will do a judicial review and a massive lawsuit against you. I will also file an emergency protective order for the danger you put this community in by attacking a front[-]line essential physician."

On May 14, 2025, the Disciplinary Panel B waited two hours after the scheduled start time, until 11:00 a.m., and then held the hearing in Dr. Felber's absence. The administrative prosecutor attended and presented the State's case.

FINDINGS OF FACT

Dr. Felber and the State did not take exception to the ALJ's Proposed Findings of Fact. Having considered all the evidence presented, the Panel finds the following facts by a preponderance of the evidence:

1. The Board issued Dr. Felber a license to practice medicine in Maryland on May 14, 2010.
2. At all times relevant to this proceeding, Dr. Felber was a licensed physician in Maryland. Dr. Felber's current license expires on September 30, 2026.
3. Dr. Felber is board certified in family medicine.
4. At all times relevant to this proceeding, Dr. Felber practiced at an urgent care facility he owns and operates in Montgomery County, Maryland (the "Facility").
5. The Facility is a walk-in clinic that does not take appointments. It is a general practice clinic that treats every type of medical condition but primarily encounters coughs, colds, sprains, and strains.
6. Dr. Felber has no malpractice judgments against him.
7. On August 24, 2020, the Board issued a Final Decision and Order, in a prior case against Dr. Felber, which ruled that he (1) failed to meet appropriate standards as determined by appropriate peer review, for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State for eight patients, and (2) failed to keep adequate medical records as determined by appropriate peer review for eleven patients. The Board reprimanded Dr. Felber, placed him on supervised probation for one year, and ordered him to complete a course in medical recordkeeping.

8. Dr. Felber appealed the Board's decision to the Circuit Court for Montgomery County, which remanded the case to the Board in January 2022.

9. During the pendency of the appeal, Dr. Felber completed a course in medical recordkeeping and complied with the terms of his probation, including supervision.

10. On January 28, 2022, the Board issued an Order (2022 Order) which terminated Dr. Felber's probation, preserved the reprimand, and required a peer review of Dr. Felber's practice one year from the date the 2022 Order was issued.

11. On January 28, 2022, Dr. Felber stipulated to the dismissal of his appeal with prejudice and did not continue his appeal or otherwise contest the 2022 Order.

12. On January 30, 2023, the Board initiated the peer review process required by the 2022 Order.

13. The Probation Supervisor managed the peer review process for the Board.

14. The peer review process involved collecting medical and prescription records of ten patients of a licensee and having those records reviewed by two Board-approved experts in family medicine.² The peer reviewers provide written reports to the Board, and the licensee may file a response to the peer reviewers' reports. The Board then considers the information submitted and makes a decision on whether to take any further action against the licensee.

15. On January 30, 2023, the Board sent Dr. Felber a subpoena directing him to provide the appointment logs for his practice from July 28, 2022, through January 30, 2023.

16. On February 9 and 21, 2023, Dr. Felber emailed the Probation Supervisor and stated that the Facility did not have any appointment logs for the pertinent time period.

² The Board employs a third-party organization to select the physicians to conduct the peer review.

17. The Board subpoenaed prescription records from the Prescription Drug Monitoring Program, which monitors prescriptions for controlled substances. The records subpoenaed were for all prescriptions written by Dr. Felber from January 28, 2022, to February 23, 2023.

18. The Board selected ten patients from the prescription records to be peer reviewed.

19. In March 2023, the Board sent Dr. Felber a subpoena directing him to provide any and all medical records for the ten patients selected by the Board from the prescription records. The Board further requested that Dr. Felber provide a certification of the medical records and summaries of care for each of the ten patients.

20. On March 24, 2023, Dr. Felber responded to the Board's request by email. He attached one medical record entry for each patient that, in total, amounted to nineteen pages of medical records for all ten patients. The Probation Supervisor responded, saying that the produced document appeared to be a single progress note from each individual and that the subpoena requires the complete medical records. Dr. Felber responded by email certifying that the records for the ten patients were complete.

Patient 1

21. Dr. Felber provided the Board with one medical record entry for Patient 1, which indicated the patient was examined at the Facility by Physician Assistant 1, on June 23, 2022. On that date, Patient 1, a 37-year-old female, complained of a cough. Physician Assistant 1 provided some benzonatate or cough pills. No medications were prescribed on that date.

22. Dr. Felber prescribed the following medications for Patient 1: on May 4 and July 25, 2022, Diflucan, an antifungal often used to treat yeast infections; on May 30, 2022, Dexcom G6 sensor, a glucose monitoring sensor used for treating diabetes; on July 25, 2022, metronidazole,

an antibiotic; and on August 5, 2022, a glucagon emergency injection kit, which is used to treat low blood sugar.

23. There is no patient history documenting that Patient 1 was diabetic.

24. There is no record documenting that Dr. Felber ever examined Patient 1, and Dr. Felber provided no medical records to support the medications he prescribed Patient 1 from May 4 to August 5, 2022.

Patient 2

25. Dr. Felber provided the Board with one medical record entry for Patient 2, which indicated that Patient 2 was examined at the Facility by Medical Assistant 1, on January 10, 2015. On that date, Patient 2, a 58-year-old male with a history of diabetes and high cholesterol, sought prescription refills of a medication for diabetes. Patient 2's medication was refilled, and he was directed to return to the Facility the next day for fasting labs. Medical Assistant 1 also recommended that Patient 2 see an ophthalmologist.

26. Over seven years later, Dr. Felber prescribed Patient 2 the following medications: on April 30, 2022, lisinopril, a medication for hypertension, glipizide and metformin a medication for diabetes, and Lipitor a medication for high cholesterol; and on October 13, 2022, and January 1, 2023, medications for erectile dysfunction.

27. There is no record documenting that Dr. Felber ever examined Patient 2, and Dr. Felber provided no medical records relating to the medications he prescribed Patient 2 from April 30, 2022, to January 1, 2023.

Patient 3

28. Dr. Felber provided the Board with one medical record entry for Patient 3, which indicated that Patient 3, who had history of hypertension and high cholesterol, was examined at

the Facility on October 9, 2018, by Nurse Practitioner 1. On that date, Patient 3, a 43-year-old male, requested refills of prescribed medications.

29. Over three years later, Dr. Felber prescribed Patient 3 the following medications: on April 24, 2022, hydrochlorothiazide, losartan, and amlodipine medications for hypertension; on July 27, 2022, febuxostat a medication for gout, atorvastatin a medication for high cholesterol, and amlodipine a medication for hypertension; on December 1, 2022, amlodipine a medication for hypertension; and on January 25, 2023, atorvastatin a medication for high cholesterol.

30. The prescriptions for hydrochlorothiazide and losartan written by Dr. Felber on April 24, 2022, for Patient 3 were for one year's supply of the medications.

31. There is no record that Dr. Felber ever examined Patient 3, and Dr. Felber provided no medical records to support the medications he prescribed Patient 3 from April 24, 2022, to January 25, 2023.

Patient 4

32. Dr. Felber provided the Board with one medical record entry for Patient 4, indicating that Patient 4 was examined at the Facility on April 11, 2016, by Physician 1. On that date, Patient 4, a 78-year-old female, complained of a cough, was given an x-ray, was diagnosed with bronchitis, and was recommended to follow up with her primary care doctor.

33. Over six years later, Dr. Felber prescribed Patient 4 the following medications: on July 19, 2022, and January 13, 2023, a six-month supply of losartan a medication for hypertension; and on November 23, 2022, a six-month supply of acebutolol a medication for hypertension.

34. There is no record that Dr. Felber ever examined Patient 4, and Dr. Felber provided no medical records relating to the medications he prescribed Patient 4 from July 19 to November 23, 2022.

Patient 5

35. Dr. Felber provided the Board with one medical record entry for Patient 5, indicating that Dr. Felber examined Patient 5 on May 30, 2021. On that date, Patient 5, a 63-year-old male, complained of right ear pain. Dr. Felber prescribed an antibiotic ear drop.

36. Dr. Felber prescribed Patient 5 an antibiotic and/or antibiotic ear drops on February 28, 2022; May 28, 2022; and July 2, 2022. There is no record that Dr. Felber examined Patient 5 after May 30, 2021, and Dr. Felber provided no medical records relating to the medications he prescribed Patient 5 in 2022.

Patient 6

37. Dr. Felber provided the Board with one medical record entry for Patient 6 indicating that Dr. Felber examined Patient 6 on March 28, 2022. On that date, Patient 6, a 51-year-old male with a history of chronic kidney disease, complained of itching skin. Dr. Felber advised Patient 6 of over-the-counter creams and recommended following up with a kidney specialist.

38. Dr. Felber prescribed Patient 6 the following medications: on March 19 and September 17, 2022, a six-month supply of atorvastatin a medication for high cholesterol; on March 21, 2022, and February 6, 2023, bisoprolol fumarate a medication for hypertension for over nine months; and on March 21, 2022, amlodipine a medication for hypertension.

39. There is no record that Dr. Felber examined Patient 6 before or after March 28, 2022, and Dr. Felber provided no medical records relating to the medications he prescribed Patient 6 in 2022 and 2023.

Patient 7

40. Dr. Felber provided the Board one medical record entry for Patient 7 indicating that Patient 7 was examined at the Facility by Physician Assistant 2 on August 30, 2021. On that date, Patient 7, a 56-year-old male with a history of diabetes, complained of fatigue.

41. Dr. Felber prescribed Patient 7 the following medications: metformin, a diabetes medication, on March 7, June 2, and December 29, 2022; Ozempic, a diabetes and/or weight loss medication, on March 7 and December 29, 2022; hydrochlorothiazide, a hypertension medication, on March 15 and May 5, 2022; atenolol, another hypertension medication, on March 15, April 4, May 5, and June 2, 2022; and Lipitor a medication for high cholesterol on March 15, 2022.

42. Dr. Felber prescribed Patient 7 lisinopril a medication for hypertension, on March 15 and October 13, 2022; on April 4, June 14, September 20, and December 29, 2022, valacyclovir, an anti-viral medication; and on September 30, 2022, sildenafil a medication for erectile dysfunction.

43. There is no record that Dr. Felber ever examined Patient 7, and Dr. Felber provided no medical records relating to the medications he prescribed Patient 7 in 2022.

Patient 8

44. Dr. Felber provided the Board with one medical record entry for Patient 8, indicating that she was examined at the Facility by Physician Assistant 3, on January 13, 2020. On that date, Patient 8, a 79-year-old female with a history of hypertension, complained of cold symptoms and requested refills of her medications for high blood pressure.

45. Dr. Felber prescribed Patient 8 the following medications: on January 30, 2022, and February 13, 2023, triamcinolone, a topical steroid cream; on February 27, 2022, permethrin a medication for head lice, hydroxyzine, an antihistamine, ivermectin, an anti-parasite medication,

and benzonatate, a cough medicine; on March 6, 2022, magnesium oxide, a mineral that could be used for a variety of indications; on March 6, March 13, and May 29, 2022, halobetasol, a topical corticosteroid; on March 13, 2022, prednisone, an oral corticosteroid on March 27, 2022, Ativan a medication for anxiety; on August 21 and October 2, 2022, clobetasol, a topical corticosteroid; and on February 13, 2023, triamcinolone, a topical corticosteroid.

46. There is no record that Dr. Felber ever examined Patient 8, and Dr. Felber provided no medical records relating to the medications he prescribed Patient 8 in 2022 and 2023.

Patient 9

47. Dr. Felber provided the Board with one medical record entry for Patient 9, indicating that Patient 9 was examined at the Facility on December 5, 2018, by Physician 2 and/or Physician 3. On that date, Patient 9, a 64-year-old female with a history of diabetes and hypertension, requested a blood sugar test and a refill of blood pressure medication.

48. Dr. Felber prescribed Patient 9 the following medications: on April 5, 2022, a one-year supply of losartan a medication for hypertension; and on November 29, 2022, levothyroxine, a thyroid medication, and glimepiride, a diabetes medication.

49. There is no record that Dr. Felber ever examined Patient 9, and Dr. Felber provided no medical records relating to the medications he prescribed Patient 9 in 2022.

Patient 10

50. Dr. Felber provided the Board with one medical record entry for Patient 10, indicating that Patient 10 was examined at the Facility on August 23, 2022, by Physician Assistant 1. On that date, Patient 10, a 59-year-old female, complained of a cough.

51. Dr. Felber prescribed Patient 10 the following medications: on January 29, February 26, March 29, May 3, June 12, July 18, August 23, 2022, and January 14, 2023, clonidine,

a hypertension medication; on September 18, 2022, prednisone, an oral corticosteroid; on December 18, 2022, benzonatate, a cough medication; and on February 10, 2023, Paxlovid, a medication addressing COVID-19.

52. There is no record that Dr. Felber ever examined Patient 10, and Dr. Felber provided no medical records relating to the medications he prescribed Patient 10 in 2022 and 2023.

DR. FELBER'S INTERVIEW BY THE BOARD

53. On April 10, 2023, the Board contacted Dr. Felber to schedule an interview at the Board's office. The Board provided two different times (9:00 a.m. or 12:00 p.m.) on four possible dates (April 24, May 1, 3, and 4, 2023), and one time (12:00 p.m.) on a fifth date (April 25, 2023). Dr. Felber chose May 4, 2023, at 12:00 p.m.

54. Dr. Felber arrived before 10:30 a.m. for the noon appointment at the Board's office for the May 4, 2023, interview. He refused to provide the building security officer with identification or the identity of the Board staff member with whom he was meeting. The security officer did not let Dr. Felber proceed to the Board without this information, and Dr. Felber left the office without attending the interview.

55. On May 4, 2023, Dr. Felber contacted the Board by email, stating that the security officer did not allow him to proceed to the Board's office.

56. On May 10, 2023, the Board rescheduled the interview for May 22, 2023, at 10:00 a.m., at the Board's office.

57. On May 22, 2023, Dr. Felber arrived at the Board's office at approximately 12:30 p.m. He interacted with a security guard in the parking lot and then left the premises.

58. The parking lot security guard who interacted with Dr. Felber asked him if he needed assistance and took no action that would have caused Dr. Felber to leave the premises without attending the interview.

59. On May 22, 2023, Dr. Felber contacted the Board by email, stating that he did not attend the interview based on his interaction with the security guard in the parking lot.

60. On May 24, 2023, the Board rescheduled the interview for May 31, 2023, at 10:00 a.m.

61. On May 31, 2023, the Board interviewed Dr. Felber.

62. During the interview, Dr. Felber had no explanation for the absence of records relating to the medications prescribed for the ten patients of the peer review. Instead, he repeatedly stated that he did not recall or remember and “I’d have to look at the records,” notes, or charts.

63. On May 31, 2023, following the interview, the Board sent Dr. Felber a letter requesting Dr. Felber to provide any missing records, for the ten patients, by June 14, 2023.

64. Additional information regarding the patients’ prescriptions existed in additional records or electronic records, but Dr. Felber did not send the Board any additional medical records.

65. On June 15, 2023, the Board notified Dr. Felber that the peer review would proceed based on the records supplied and that the provision of additional medical records could be grounds for charging him for failing to cooperate with a Board investigation.

THE PEER REVIEW REPORTS

66. The medical records provided by Dr. Felber to the Board were peer reviewed by two family medicine physicians, Peer Reviewer 1 and Peer Reviewer 2.

67. In a report dated July 16, 2023, Peer Reviewer 1 concluded that Dr. Felber did not meet the standard of care for Patients 1-10 and that he failed to maintain adequate medical records for Patients 1-10.

68. In a report, dated August 29, 2023, Peer Reviewer 2 also concluded that Dr. Felber did not meet the standard of care for Patients 1-10 and that he failed to maintain adequate medical records for Patients 1-10.

DR. FELBER'S RESPONSE TO THE PEER REVIEWS

69. On August 31, 2023, the Board provided Dr. Felber with copies of the peer review reports and directed him to file any response by September 20, 2023.

70. On September 20, 2023, Dr. Felber emailed the following response to the Board:
“I’m sorry. I will do better.”

DISCUSSION

The Panel finds, in accordance with the peer reviews, that Dr. Felber did not meet the standard of care and his recordkeeping was inadequate. In general, Dr. Felber did not record patient histories, did not record examining any of the patients, and refilled prescriptions and issued new prescriptions without any medical records, explanation, or justification for the prescriptions. These are each a violation of the standard of care and recordkeeping. The State’s expert, in her peer review report, explained that, while it is not unusual to have a few medications prescribed without clear documentation in the chart, in this case, none of the prescriptions had a corresponding medical record. The State’s expert testified that the documentation left her unable to understand what Dr. Felber was treating. The Board adopts the ALJ’s analysis that, “adequate record keeping is an inherent component of delivering quality medical care. Without such documentation, it is impossible to track the patient’s history to determine how the patient’s treatment is progressing.”

Dr. Felber's actions constitute a failure to meet the standard of care and a failure to keep adequate medical recordkeeping, as determined by appropriate peer review, in violation of Health Occ. § 14-404(a)(22) and (40).

Unprofessional conduct is conduct that breaches the rules or ethical code of a profession or conduct that is unbecoming a member in good standing of the profession. *Finucan v. Maryland Bd. of Physician Quality Assur.*, 380 Md. 577, 593 (2004). The Panel further finds Dr. Felber's failure to keep adequate medical records documenting the patient visits constitutes unprofessional conduct as well as violating the standard of care and failing to keep adequate medical records.

Dr. Felber's conduct pertaining to his Board interview was also unprofessional as well as demonstrated a failure to cooperate with the Board's lawful investigation.

Dr. Felber arrived at the Board offices an hour and a half before the first scheduled interview but did not stay until the interview time. He would not identify himself or the person with whom he was meeting to the building security guard. After the Board rescheduled the interview, Dr. Felber arrived two-and-a-half-hours late to the second interview. Dr. Felber interacted with the parking lot security, claiming that she instructed him to turn around. The security guard asked if he needed assistance, and he left without ever entering the Board's offices or contacting the Board's investigator.

The ALJ did not find that Dr. Felber failed to cooperate for his conduct pertaining to the interviews, but found that Dr. Felber acted unprofessionally regarding this conduct, and Dr. Felber did not challenge this finding in his exceptions. The Board adopts the ALJ's conclusion that his behavior constituted unprofessional conduct in the practice of medicine.

Dr. Felber's Exceptions

In his written exceptions, Dr. Felber appears to claim that the ALJ committed legal error by allowing testimony from the State's expert based on the State's expert having a 17-year-old DUI conviction. Specifically, Dr. Felber claims that this criminal record violates Maryland Rule 7-208(c) and Federal Rule 702, presumably referring to Federal Rule of Evidence 702.

As an initial matter, the Board is an administrative body that is not subject to Maryland Rule Title 7, governing appellate review in Maryland Circuit Courts, or the Federal Rules of Evidence. Maryland Rule 7-208 concerns hearings before the circuit court and prohibits the circuit court from considering additional evidence outside the record created at the agency level, below. This Rule is irrelevant to expert testimony given before the ALJ at the evidentiary hearing. The ALJ proceeding is where evidence creating the record is created. The Panel denies this part of Dr. Felber's exception.

Federal Rule of Evidence 702 states that an expert may be used if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue. Fed. R. Evid. 702(a). It further requires the testimony to be the product of reliable principles and methods, be based on sufficient facts and data, and reflect a reliable application of the principles and methods to the facts of the case. Fed. R. Evid. 702(b)-(d). Maryland Rule 5-702 allows expert opinion testimony that will assist the trier of fact to understand the evidence or determine a fact if (1) the witness is qualified as an expert by knowledge, skill, experience, training or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony. Md. Rule 5-702. These rules do not pertain to the ALJ's administrative hearing. In any case, the ALJ accepted the State's witness as an expert to aid him in assessing the issues pertaining to the

standard of care and medical recordkeeping. The Panel finds that the ALJ did not err in determining that the expert would assist his understanding of the evidence and that the expert was qualified based on her knowledge, skill, experience, training, and education. The Panel finds that there was a sufficient factual basis to support the expert's testimony. Nothing in the Federal Rules of Evidence or State Rule 5-702 states that experts cannot have a criminal background and Dr. Felber provided no evidence that the single DUI from 17 years ago rendered the expert's testimony as unreliable. The Panel denies this part of the exception.

State's Exceptions

The State filed exceptions to the ALJ's proposed conclusion of law that Dr. Felber did not fail to cooperate with the Board's lawful investigation. The ALJ concluded that Dr. Felber simply did not keep adequate medical records and, therefore, his failure to produce records was indicative of his deficient medical record practice and cannot be found to also be a failure to cooperate. The ALJ cited to *Solomon v. State Board of Physician Quality Assurance*, 155 Md. App. 687 (2003) and *Maryland State Board of Physicians v. Eist*, 417 Md. 545 (2011), two cases where the respondent had medical records and refused to provide them to the Board. The ALJ distinguished those cases concluding that the evidence supports the conclusion that the respondent did not possess the records, so he was unable to provide them, and that his resistance to being investigated did not rise to the level of a failure to cooperate. In the State's exceptions, the State points to several pieces of evidence that indicate that Dr. Felber did, in fact, possess records that he did not provide and provided additional information concerning his intentional efforts to thwart the Board's investigation.

The Board gave Dr. Felber repeated opportunities to produce the full records, and Dr. Felber repeatedly declined to produce more records. First, the Board emailed the subpoena on

March 6, 2023. The Probation Supervisor then sent another request to respond to the subpoena on March 15, 2023. Once the Board received the documents, the Probation supervisor immediately expressed his concern that the records were incomplete in an email dated March 24, 2023, stating “these appear to be single progress notes for each individual patient and not the entire medical record” and asking the complete medical record to be produced. Dr. Felber responded, “[t]hat is their chart. They have not come back again. I certify the results.” In Dr. Felber’s interview, the Probation Supervisor interviewer pointed to inconsistencies between the records provided and the prescriptions issued and specifically asked Dr. Felber how Dr. Felber reconciled the limited progress notes that were produced with the longer periods when prescriptions were issued? When asked multiple times if that was the whole record, Dr. Felber stated, “As far as I remember [it] is the complete record for the patient,” and “I’d have to look at the chart. I don’t have the chart with me.” In response to the question of whether there are other encounter notes, Dr. Felber stated, “[t]here might be,” and “I’ll have to look at the records – and see what happened, I don’t have it with me.” He also stated, when asked if it was the complete record “as far as I know.” At the end of the meeting, the analyst asked “are you going to go back and check to ensure that the Board has the complete records? Are you going to review your records?” Dr. Felber said, “Yes. I’ll review them” The Board then sent a follow-up letter on May 31, 2025, reminding Dr. Felber to review his files and confirm that the records were complete. The letter warned him that if he did not produce the full records within 10 business days, “and it is determined that [he] failed to provide any remaining patient records by the June 14, 2023 deadline [he] may be charged with failure to cooperate with a Board investigation.”

Despite the multiple requests for records, the Probation Supervisor’s written notice to Dr. Felber expressing concern that the records were incomplete, the Board Probation Supervisor’s

orally discussing the records with Dr. Felber and noting that they were not reflective of the prescriptions he issued, and a final warning letter from the Board that stated that Dr. Felber could be charged with a failure to cooperate if he did not produce the full records, Dr. Felber still did not produce any additional records. However, before the ALJ, Dr. Felber repeatedly testified that there were additional records that were not produced. He twice testified, "I don't have the full records with me," in response to questions about why there was no record pertaining to a visit or medication. He also testified that multiple times that missing records were "in the electronic health records." Dr. Felber admitted to not producing the full records. He testified, "it may be incomplete how many records I sent in. I will admit it." He also testified, "the notes just must not have been sent." When asked, "what I hear you saying is that if they came in for a visit, there should have been a note, and that you didn't provide that note?" Dr. Felber responded "Yes." Dr. Felber's failure to produce the full records to the Board is a failure to cooperate with the Board's investigation. The *Solomon* and *Eist* cases do not require an individual to refuse to produce records in order to be found to have failed to cooperate with a Board investigation. While an outward defiant refusal to produce records is a failure to cooperate, a failure to produce the full records, while claiming to have done so, still constitutes a failure to cooperate.

In addition to his failure to produce records, Dr. Felber's behavior when the Board attempted to interview him was also a failure to cooperate. The Panel finds that Dr. Felber's first and second interviews, where he failed to appear on time and left without participating in the interviews was a deliberate attempt to thwart or delay the Board's investigation and were not good faith efforts to comply with the Board's subpoenas. The Panel finds that his conduct demonstrates both unprofessional conduct and a failure to cooperate, in violation of Health Occ. § 14-404(a)(3)(ii) and (33).

CONCLUSIONS OF LAW

Disciplinary Panel A concludes, as a matter of law, that Dr. Felber is guilty of unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii). Disciplinary Panel A also concludes Dr. Felber failed to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State, in violation of Health Occ. § 14-404(a)(22); failed to cooperate with a lawful investigation conducted by the Board or a disciplinary panel, in violation of Health Occ. § 14-404(a)(33); and failed to keep adequate medical records as determined by appropriate peer review, in violation of Health Occ. § 14-404(a)(40).

SANCTION

The ALJ recommended a sanction of a three-month suspension and a fine of \$5,000. Both the State and Dr. Felber objected to the sanction. The State, in exceptions, requested a one-year suspension and a fine of \$50,000. Dr. Felber argued that a sanction would “leav[e] thousands of people without frontline access to emergency and chronic medical care.” He claims that there are shortages of staff and supplies in nearby clinics and his absence from medical practice would strain the community. He did not suggest an alternative sanction.

As stated by the ALJ, Board sanctions are not intended to punish the offender, but to protect the public. As the Court explained in *Cornfeld v. State Bd. of Physicians*, 174 Md. App. 456, 486 (2007), administrative agencies with disciplinary and licensing authority “have broad latitude in fashioning sanctions within [those] legislative designated limits.” The ALJ noted that Dr. Felber cooperated generally with the Board investigation and has rehabilitative potential. As discussed above, the Board finds that Dr. Felber did not cooperate with the Board’s investigation and

deliberately withheld documents and avoided participating in the Board interview on two occasions. Dr. Felber has demonstrated scant interest in rehabilitating himself.

This is not Dr. Felber's first offense on this issue. Dr. Felber received an advisory letter in 2016, informing him that his patient note was cursory, because he failed to document the patient's vital signs and other pertinent information. He also received an advisory letter in 2018. On August 24, 2020, Dr. Felber had been placed on probation for one year with coursework in recordkeeping and was required to meet with a supervisor based on findings that he violated the standard of care and recordkeeping. Among the findings, Board Disciplinary Panel B found a violation of the standard of care because he conducted insufficient examinations and evaluations and took inadequate histories. His recordkeeping was insufficient because he failed to document the area of patient's injury, failed to document office procedures and failed to document patient histories. These are the same issues with his current violation. In a January 28, 2022, order terminating his probation, the Board notified Dr. Felber that it would conduct a new peer review one year after the order terminating probation. In other words, Dr. Felber was on notice that he needed to improve his practices and comport within the standard of care and standards for adequate medical recordkeeping. He was also notified that the Board would be rereviewing his practice in a year. Despite this direct notice, Dr. Felber appears to have made no efforts to improve his recordkeeping or standard of care. The Board's previous order appears to have made no impression on him. His professional behavior did not change, and his recordkeeping and standard of care did not improve. In the instant case, just as before, Dr. Felber did not take proper histories and did not conduct sufficient examinations. And as before, his recordkeeping fails to document patient histories or much of anything. Dr. Felber failed to conduct adequate examinations, failed to properly monitor

patients, and failed to document any history of his patients. His violations have the potential for patient harm.

The Panel concludes that progressive discipline is appropriate here, where Dr. Felber appears not to have taken any steps to improve his practice related to standard of care and recordkeeping in the two years since his last order. As a result, the Panel imposes a reprimand, a six-month suspension, a course in recordkeeping to be completed within six months, and a \$10,000 fine.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is, by an affirmative vote of a majority of a quorum of Panel A, hereby

ORDERED that Eric S. Felber, D.O., is **REPRIMANDED**; and it is further

ORDERED that, **BEGINNING TUESDAY, AUGUST 26, 2025**, Dr. Felber's license to practice medicine in Maryland is **SUSPENDED** for a minimum period of **SIX MONTHS**.³ During the suspension period, Dr. Felber shall comply with the following terms and conditions:

1. Within **SIX (6) MONTHS**, Dr. Felber is required to take and successfully complete a course in medical recordkeeping. The following terms apply:

- (a) It is Dr. Felber's responsibility to locate, enroll in and obtain the disciplinary panel's approval of the course before the course is begun;
- (b) Dr. Felber must provide documentation to the disciplinary panel that he 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) Dr. Felber is responsible for the cost of the course;

2. During the suspension period, Dr. Felber shall not:
(a) practice medicine;

³ If Dr. Felber's license expires while he is suspended, the suspension period and any conditions will be tolled. COMAR 10.32.02.05C(3).

- (b) collaborate with or supervise any physician assistants, athletic trainers, or naturopathic doctors;
- (c) take any actions after the effective date of this Order to hold himself or herself out to the public as a current provider of medical services;
- (d) authorize, allow or condone the use of Dr. Felber's name or provider number by any health care practice or any other licensee or health care provider;
- (e) function as a peer reviewer for the Board or for any hospital or other medical care facility in the state;
- (f) prescribe or dispense medications; or
- (g) perform any other act that requires an active medical license; and

3. Dr. Felber shall establish and implement a procedure by which Dr. Felber's patients may obtain their medical records without undue burden, and he shall notify all patients of that procedure; and

4. Dr. Felber shall notify in writing all physician assistants with whom there is a collaboration agreement that the agreements are terminated.

IT IS FURTHER ORDERED that Dr. Felber shall not apply for early termination of his suspension; and it is further

ORDERED that, after Dr. Felber has complied with all terms and conditions of the suspension and the minimum period imposed by this Order has passed, Dr. Felber may submit to the Board a written petition for termination of suspension. Dr. Felber may be required to appear before the disciplinary panel to discuss his petition for termination. If the disciplinary panel determines that it is safe for Dr. Felber to return to the practice of medicine, the suspension shall be terminated through an order of the disciplinary panel, and the disciplinary panel may impose any terms and conditions it deems appropriate on Dr. Felber's return to practice, including, but not limited to, probation. If the disciplinary panel determines that it is not safe for Dr. Felber to return to the practice of medicine, the suspension shall be continued through an order of the disciplinary panel for a length of time determined by the disciplinary panel, and the disciplinary panel may impose any additional terms and conditions it deems appropriate; and it is further

ORDERED that, within **ONE YEAR**, Dr. Felber shall pay a civil fine of \$10,000. 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 Dr. Felber's license if Dr. Felber fails to timely pay the fine to the Board; and it is further

ORDERED that Dr. Felber is responsible for all costs incurred in fulfilling the terms and conditions of this Final Decision and Order; and it is further

ORDERED that the effective date of this Final Decision and Order is the date the Final Decision and Order is signed by the Executive Director of the Board. The Board's Executive Director signs the Final Decision and Order on behalf of the Panel; and it is further

ORDERED that, if Dr. Felber allegedly fails to comply with any term or condition imposed by this Order, Dr. Felber 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, Dr. Felber 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 Dr. Felber has failed to comply with any term or condition imposed by this Order, the disciplinary panel may reprimand Dr. Felber, place Dr. Felber on probation with appropriate terms and conditions, or suspend with appropriate terms and conditions, or revoke Dr. Felber'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 Dr. Felber; and it is further

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

08/18/2025
Date

Signature on file

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

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Md. Code Ann., Health Occ. § 14-408(a), Dr. Felber has the right to seek judicial review of this Final Decision and Order. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of this Final Decision and Order. The cover letter accompanying this final decision and 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. Felber 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:

**David Finkler
Assistant Attorney General
Department of Health and Mental Hygiene
300 West Preston Street, Suite 302
Baltimore, Maryland 21201**