IN THE MATTER OF	*	**BEFORE THE**
BRIAN S. KAHAN, D.O.	*	**MARYLAND STATE**
Respondent	*	**BOARD OF PHYSICIANS**
License Number: H53803	*	**Case Number: 2219-0097A**

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CONSENT ORDER

On July 9, 2020, Disciplinary Panel A ("Panel A") of the Maryland State Board of Physicians (the "Board") charged **BRIAN S. KAHAN, D.O.** (the "Respondent"), License Number H53803, with violating the Maryland Medical Practice Act (the "Act"), codified at Md. Code Ann., Health Occ. ("Health Occ.") §§ 14-101 *et seq.* (2014 Repl. Vol. and 2019 Supp.).

The relevant provisions of the Act under Health Occ. § 14-404 provide the following:

> (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:
>
> > (22) Fails 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[.]

On November 4, 2020, Panel A was convened as a Disciplinary Committee for Case Resolution ("DCCR") in this matter. Based on negotiations occurring as a result of this DCCR, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law, Order, and Consent.

FINDINGS OF FACT

Panel A finds the following:

I. BACKGROUND

1. At all times relevant, the Respondent was, and is, licensed to practice medicine in the State of Maryland. The Respondent was originally licensed to practice medicine in Maryland on August 7, 1998, under License Number H53803. The Respondent's license is current through September 30, 2022.

2. The Respondent is board-certified in Physical Medicine and Rehabilitation, and at all times relevant, owned and operated a pain management clinic (the "Pain Clinic") [1] where he practiced pain medicine, located in Annapolis, Maryland.

II. PRIOR DISCIPLINARY HISTORY

3. On December 3, 2009, the Board charged the Respondent with violating the Act based on complaints, dated December 27, 2007, from the Respondent's patients alleging that the Respondent provide reports to the patients' primary care physicians documenting physical examinations that were not performed.

4. The Respondent resolved the Board's charges by entering into a Consent Order, dated June 24, 2010, in which the Board found as a matter of law that the Respondent engaged in unprofessional conduct in the practice of medicine, in violation of

[1] To ensure confidentiality, the names of individuals, hospitals and healthcare facilities involved in this case are not disclosed in this Consent Order.

Health Occ. § 14-404(a)(3)(ii). The Board reprimanded the Respondent, imposed a $5,000 fine and placed the Respondent on probation for one-year with terms and conditions.

III. CURRENT INVESTIGATION

5. The Board initiated an investigation of the Respondent after receiving a complaint on or about October 1, 2018, from a family member of a patient ("Patient A") alleging that the Pain Clinic continued to prescribe narcotic medications to Patient A despite Patient A's numerous hospitalization due to medication misuse.

6. In the course of investigating the current complaint, the Board obtained patient medical records (including Patient A's medical record) and written summaries of care from the Respondent. The Board forwarded the medical records of patients whom the Respondent treated to an independent reviewing entity for a peer review by two licensed physicians Board-certified in Physical Medicine and Rehabilitation. After review, the two reviewers determined that the Respondent failed to meet quality medical standards in two cases reviewed. A summary of the reviewers' findings is set forth below.

IV. PATIENT-SPECIFIC ALLEGATIONS

Patient A

7. Patient A, a female born in the 1960s, has been seeing the Respondent for pain management since July 8, 2004. Patient A was being treated for peripheral neuropathy secondary to pyoderma gangrensum. Patient A had a history of hepatitis, small fiber neuropathy, post-cervical laminectomy syndrome, cervical epidural abscess, chronic wound infections, peripheral edema, phlebitis, cervical spondylosis, hiatal hernia, gastritis and skin grafting.

8. Throughout Patient A's treatment period, the Respondent maintained her on a medication regime that included Dilaudid 40 mg once every three hours and OxyContin 80 to 160 mg every 12 hours. Patient A had follow-up visits with the Respondent generally once every two months.

9. The Respondent ordered urine drug screens infrequently, at times less than once per year. Additionally, Patient A's medical record showed that the Respondent did not review the Chesapeake Regional Information System ("CRISP") and the Prescription Drug Monitoring Program (PDMP) for Patient A.

10. The peer reviewers concurred that the Respondent failed to meet the standard of quality medical care for:

a) Maintaining Patient A on high-dose opioid medications for a prolonged period of time without documented medical justification;

b) Failing to properly monitor Patient A through more frequent follow-up visits than once every two months;

c) Failing to properly monitor Patient A through periodic of review of CRISP and PDMP; and

d) Failing to properly monitor Patient A through more frequent urine drug screens.

Patient B

11. Patient B, a male born in the 1960s, had been seeing the Respondent for pain management since on or about July 25, 2005. Patient B was referred to the Respondent by a neurosurgeon following a spinal surgery with subsequent injury to his left L5 nerve root

surgery. Patient B had a history of lumbar laminectomy, spinal cord stimulator, colon resection, intestinal bypass, hip osteoarthritis, hypertension, androgen deficiency syndrome, chronic lethargy. Respondent's treatment of Patient B included interventional procedures (epidural steroid injection, radiofrequency lesioning of dorsal root ganglion and spinal cord stimulator trial) and pharmacotherapy (anti-inflammatories, tricyclic antidepressants, neuropathics, selective-serotonin re-uptake inhibitors, opioid therapy and N-methyl-D-aspartate antagonists.

12. With respect to opioid therapy, the Respondent initially maintained Patient B on oxycodone 10 to 15 mg once every six hours and buprenorphine. In or around September 2016, the Respondent changed Patient B's opioid medication regimen to oxycodone 15 mg once every six hours and OxyContin 60 mg twice per day. Patient B's most recent prescription under review, dated December 18, 2018, included oxycodone 15 mg once every four hours and OxyContin 60 mg three times a day.

13. In early 2017, the Respondent began diagnosing Patient B with "Opioid type dependence, continuous abuse." Despite the repeated diagnosis, the Respondent continued to prescribe opioid medications to Patient B.

14. The Respondent ordered urine drug screens infrequently, at times less than once per year. Additionally, Patient B's medical record showed that the Respondent did not review CRISP and PDMP for Patient B.

15. The peer reviewers concurred that the Respondent failed to meet the standard of quality medical care for:

a) Failing to properly monitor Patient B through more frequent follow-up visits than once every two months;

b) Failing to properly monitor Patient A through periodic of review of CRISP and PDMP; and

c) Failing to properly monitor Patient A through more frequent urine drug screens.

CONCLUSION OF LAW

Based on the Findings of Fact, Disciplinary Panel A of the Board concludes as a matter of law that the Respondent failed to meet the standard of care for the delivery of quality medical care, in violation of Health Occ. § 14-404(a)(22).

ORDER

It is thus by an affirmative vote of a majority of a quorum of Disciplinary Panel A of the Board, hereby:

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

ORDERED that within **SIX MONTHS**, the Respondent is required to take and successfully complete a course in the controlled dangerous substances prescribing. 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) due to the COVID-19 pandemic, the disciplinary panel will accept a course taken in person or over the internet;
(c) the Respondent must provide documentation to the disciplinary panel that the Respondent has successfully completed the course;

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

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

ORDERED that within **SIX MONTHS**, the Respondent shall pay a civil fine of $2,000. 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; 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. The Executive Director 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 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, 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 this Consent Order is a public document. *See* Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6).

Signature on File

12/09/2020
Date

Christine A. Farrelly, Executive Director

CONSENT

I, Brian S. Kahan, D.O., 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

12/4/2020
Date

Brian S. Kahan, D.O.

NOTARY

STATE OF Maryland

CITY/COUNTY OF Anne Arundel

I HEREBY CERTIFY that on this 4 day of December 2020, before me, a Notary Public of the foregoing State and City/County, personally appeared Brian S. Kahan, D.O., 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.

Notary Public

HEATHER WHITTINGTON
Notary Public
Anne Arundel County
Maryland
My Commission Expires Feb. 21, 2024

My Commission expires: 2/21/2024