

IN THE MATTER OF
NILAY B. THAKER, D.O.

Respondent

License Number: H70147
(Surrendered)

* * * * *

* BEFORE THE
* MARYLAND STATE
* BOARD OF PHYSICIANS
* Case Number: 2222-0025A

CEASE AND DESIST ORDER

Pursuant to the authority granted to Disciplinary Panel A (“Panel A”) of the Maryland State Board of Physicians (the “Board”) under Md. Code Ann., Health Occ. (“Health Occ.”) § 14-206(e)(1) (2021 Repl. Vol.), Panel A hereby orders **NILAY B. THAKER, D.O.** (the “Respondent”), to immediately **CEASE AND DESIST** from all activities associated with the practice of medicine in the State of Maryland, as defined in Health Occ. § 14-101(o).

The pertinent provisions of the Maryland Medical Practice Act (the “Act”), Health Occ. §§ 14-101 *et seq.*, under which Panel A issues this Order provide the following:

§ 14-101. Definitions.

(o) *Practice medicine.* – (1) “Practice medicine” means to engage, with or without compensation, in medical:

- (i) Diagnosis;
- (ii) Healing;
- (iii) Treatment;
- (iv) Surgery.

(2) “Practice medicine” includes doing, undertaking, professing to do, and attempting any of the following:

- (i) Diagnosing, healing, treating, preventing, prescribing for, or removing any physical, mental, or emotional ailment or supposed ailment of an individual:

1. By physical, mental, emotional, or other process that is exercised or invoked by the practitioner, the patient, or both; or
2. By appliance, test, drug, operation, or treatment[.]

§ 14-206. Judicial Powers.

...

- (e) *Cease and desist orders; injunctions.* – A disciplinary panel may issue a cease and desist order or obtain injunctive relief against an individual for:
 - (1) Practicing a profession regulated under this title or Title 15 of this article without a license[.]

§ 14-601. Practicing without license.

Except as otherwise provided in this title, a person may not practice, attempt to practice, or offer to practice medicine in this State unless licensed by the Board.

The pertinent provision of the State of Maryland, Executive Department, Order of the Governor of the State of Maryland Relating to Various Health Care Matters, effective March 16, 2020, provides:

XI. Additional Regulatory Flexibility

- a. After notice to the Governor, the Maryland Board of Physicians (the “BoP”) may suspend any provision of Title 14 and 15 of the Health Occupations Article and their implementing regulations in COMAR 10.32 if the BoP finds that the suspension will not endanger the public health, welfare, or safety and will augment the healthcare workforce and allow it to respond to the catastrophic health emergency.¹

¹ On June 15, 2021, the Governor of the State of Maryland issued an executive order ending the temporary suspension of certain statutes, rules and regulations related to licensing and credentialing of health care practitioners.

The pertinent provision of the Board's notice to the Governor, which was also posted on the Board's website for public notice, provides:

5. The Board is suspending the requirement in COMAR 10.32.05.03 that requires a provider of telehealth services to have a Maryland license if the individual practicing telehealth is in Maryland or the patient is in Maryland for health care practitioners in adjoining states to see *existing patients* in Maryland who cannot travel to the office during the state of emergency. A physician or allied health practitioner who holds a valid, unexpired license issued by an adjoining state may practice telehealth to the extent authorized by the home state license without obtaining a Maryland license to *treat existing Maryland patients to provide continuity of care* during the state of emergency. (Emphasis added).

INVESTIGATIVE FINDINGS²

Based on the investigatory information received by, made known to, and available to Panel A, there is reason to believe that the following facts are true:

I. BACKGROUND

1. The Respondent was originally issued a license to practice medicine in the State of Maryland on January 8, 2010, under License Number H70147.
2. On March 24, 2020, Panel A summarily suspended the Respondent's medical license based on investigative findings that the Respondent prescribed Controlled Dangerous Substances and provided cash to a female patient in exchange for videos of her having sex.

² The statements regarding the Board's investigative findings are intended to provide the Respondent with reasonable notice of the basis of the Board's action. They are not intended as, and do not necessarily represent, a complete description of the evidence, either documentary or testimonial, to be offered against the Respondent in connection with this matter.

3. On April 6, 2020, the Respondent surrendered his Maryland medical license, which Panel A accepted.

4. On October 29, 2020, the West Virginia Board of Osteopathic Medicine granted the Respondent a license to practice osteopathic medicine in the State of West Virginia on a probationary basis under License Number 3634.

II. Complaint

5. On or about August 3, 2021, the Board received a referral from the Maryland State Board of Pharmacy reporting that during an investigation of a mail-order pharmacy it discovered that the Respondent was writing prescriptions for patients in Maryland without having a valid Maryland medical license.

6. After receiving the complaint, the Board initiated an investigation of the Respondent.

III. BOARD INVESTIGATION

7. As part of its investigation, the Board obtained documents relating to the Respondent's employment with a telemedicine company (the "Company"), dispensing report and all prescriptions the Respondent wrote to patients in Maryland from February to April 2021, medical records of Maryland patients who received prescriptions from the Respondent, and the Respondent's written response to the complaint.

8. The Board's investigation revealed that on or about February 15, 2021, the Respondent accepted a position with the Company to practice telemedicine out of West Virginia.

9. From February to April 2021, the Respondent provided medical consultation through telemedicine and wrote prescriptions for prescription-only medications to nine (9)

patients in Maryland. All nine Maryland patients were new patients whom the Respondent never treated and were not existing patients.

10. In his written response to the Board dated September 22, 2021, the Respondent identified the nine Maryland patients and confirmed that he refilled their existing prescriptions after reviewing their medical history and conducting a telephone consultation with them.

CONCLUSIONS OF LAW

Based on the foregoing Investigative Findings, Panel A concludes as a matter of law that the Respondent's actions constitute practicing, attempting to practice, or offering to practice medicine in the State of Maryland without a license, in violation of Health Occ. § 14-601.

ORDER

Based on the foregoing Investigative Findings and Conclusions of Law, it is, by a majority of the quorum of Panel A, hereby:

ORDERED that pursuant to the authority under the Maryland Medical Practice Act, Health Occ. § 14-206(e)(1), the Respondent, Nilay B. Thaker, D.O., shall **IMMEDIATELY CEASE AND DESIST** from the practice of medicine in the State of Maryland; and it is further

ORDERED that this order is **EFFECTIVE IMMEDIATELY** pursuant to Md. Code Regs. 10.32.02.11E(1)(b), and it is further

ORDERED that this is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Prov. §§ 4-101 *et seq.* and Md. Code Regs. 10.32.02.11E(1)(a).

07/13/2022
Date

Signature On File

Christine A. Farrelly 
Executive Director
Maryland State Board of Physicians

NOTICE OF OPPORTUNITY FOR A HEARING

The Respondent may challenge the factual or legal basis of this order by filing a written opposition, which may include a request for a hearing, within 30 days of its issuance.

The written opposition shall be made to:

Christine A. Farrelly
Executive Director
Maryland State Board of Physicians
4201 Patterson Avenue, 4th Floor
Baltimore, Maryland 21215

A copy shall also be mailed to:

K. F. Michael Kao
Assistant Attorney General
Maryland Office of the Attorney General
Health Occupations Prosecution and Litigation Division
300 West Preston Street, Suite 201
Baltimore, Maryland 21201

If the Respondent files a written opposition and a request for a hearing, the Board shall consider that opposition and provide a hearing if requested. If the Respondent does not file a timely written opposition, the Respondent will lose the right to challenge this Order to Cease and Desist and this Order will remain in effect.