

IN THE MATTER OF	*	BEFORE THE MARYLAND
DAVID JOHN ROSSI, D.O.	*	STATE BOARD
RESPONDENT	*	OF PHYSICIANS
LICENSE NUMBER: H72413	*	CASE NUMBER: 2217-0012 B

CONSENT ORDER

On July 3, 2018, Disciplinary Panel B ("Panel B") of the Maryland State Board of Physicians (the "Board") charged David John Rossi, D.O. (the "Respondent"), License No. H72413, under the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") §§14-101 *et seq.* (2014 Repl. Vol. & 2017 Supp.).

The pertinent provisions of the Act provide:

- (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:

...

(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;

...

(40) Fails to keep adequate medical records as determined by appropriate peer review[.]

On February 27, 2019, a Disciplinary Committee for Case Resolution (DCCR") was convened with the parties and members of Panel B. As a result of the negotiations, Respondent agreed to the following Consent Order consisting of Findings of Fact, Conclusions of Law, Order and Consent.

FINDINGS OF FACT

Panel B finds the following facts:

I. License and Medical Background

1. At all times relevant hereto, the Respondent was, and is, licensed to practice medicine in the State of Maryland. The Respondent was initially licensed to practice medicine on June 1, 2011. The Respondent last renewed his license on or about September 11, 2017. His license will expire on September 30, 2019.

2. The Respondent was board-certified as a family physician on October 26, 2007 by the American Osteopathic Association Board of Family Physicians. On December 31, 2015, the Respondent was re-certified in family medicine through December 31, 2023.

3. Until approximately February 9, 2017, the Respondent held hospital privileges at a hospital in Baltimore City ("Hospital A")¹, when he was terminated. The Respondent practiced medicine as a primary care physician in an out-patient setting.

4. The Respondent is currently practicing as a family physician in an out-patient office in Western Maryland ("Office A").

II. Complaint

5. On February 17, 2017, the Board received a Mandated 10-day Report (the "Report") from Hospital A.² The Report stated that Hospital A terminated the Respondent

¹ To ensure confidentiality, the names of patients and facilities involved in this case are not disclosed in this document. The Respondent was provided a list of the identity of all patients and facilities referenced in this document.

² Pursuant to Health Occ. § 14-413(a) a hospital is required to report to the Board if a licensed physician who has privileges with the hospital has had staff privileges changed, if the change is for reasons that might be grounds for disciplinary action. The hospital shall submit the report within 10 days of the action.

when they determined that over a period of several years he had prescribed Controlled Dangerous Substances (“CDS”) to multiple patients without adequate monitoring and evaluation. The Report further stated that the Respondent’s prescriptions for CDS were both excessive in frequency and amount.

III. Board Investigation

6. On or about February 27, 2017, the Board issued a subpoena to Hospital A, requesting a copy of the Respondent’s complete quality assurance/risk management file from the last five years.

7. On February 27, 2017, the Board sent the Respondent a letter, notifying him that it had received the Report from Hospital A and that based on the Report, it had initiated a full investigation. The Board requested the Respondent to provide a written response to the allegations.

8. On March 7, 2017, the Respondent submitted his written response to the Board. In his response, the Respondent stated that he prescribed CDS to 12 of his patients, who he had “inherited” from other providers and who were already receiving CDS. He stated that he used drug contracts and did urine drug screens but “not consistently enough” because he trusted his patients and did not suspect drug diversion or abuse. He acknowledged that he needs to be extremely conservative with all controlled substances, use drug screens and drug contracts, insist on expert evaluation for chronic pain, and that he should not have refilled CDS prescriptions early.

9. On March 23, 2017, the Board issued a subpoena to the Prescription Drug

Monitoring Program (“PDMP”)³ for the Respondent’s prescribing records of CDS.

10. On June 8, 2017, the Board subpoenaed Hospital A’s out-patient office for all medical records for ten of the Respondent’s patients selected from the PDMP.

11. On July 24, 2017, as requested by the Board, the Respondent provided the Board with summaries of care and treatment rendered by him to the ten patients.

12. On September 19, 2017, Board staff interviewed the Respondent under oath. The Respondent acknowledged that he “was not strict enough” with patients about going to pain management doctors or conducting urine drug screens and that he “was not using CRISP as much as [he] should have.” The Respondent provided a document he prepared entitled “Plan for Patient with diagnosis of chronic pain and already on narcotics” (“Plan for Patients on Narcotics”). (Emphasis in the original.)

13. On December 11, 2017, Panel B referred the case to an independent peer review agency, requesting peer review by two physicians who are board-certified in pain medicine. Board staff provided the peer reviewers with documents from the investigative file, including:

- a. Mandated 10-day Report of 2/17/17;
- b. Respondent’s Quality Assurance/Risk Management File;
- c. Respondent’s written response to the complaint, 3/8/17;
- d. Transcript of Respondent’s Interview with Board staff, 9/19/17, with Plan of Patients on Narcotics, attached;
- e. Report from PDMP;
- f. Patient summaries of care of the ten patients as identified in the subpoena; and
- g. Medical records of the ten patients as identified in the subpoena.

³ In Maryland, the PDMP is Chesapeake Regional Information Center for our Patients (“CRISP”).

14. On April 16, 2018, the Board received the peer review reports. The peer reviewers concurred that regarding seven of the ten patients reviewed, the Respondent failed to meet appropriate standards for the delivery of quality medical care. The peer reviewers further concurred that the Respondent failed to keep adequate medical records for three of the ten patients reviewed.⁴

15. On April 17, 2018, following receipt of the peer review reports, Board staff provided the Respondent an opportunity to respond to the deficiencies cited in the peer review reports.

16. On May 2, 2018, the Respondent submitted a supplemental response to the peer review reports, which was reviewed by the peer reviewers prior to issuance of the charges. The Respondent stated that :

- a. The ten patients reviewed represent less than 1% of his total patient volume at Hospital A during five and a half years of employment;
- b. He physically examined the patients' areas of pain but acknowledged that he may not have thoroughly documented this information;
- c. The electronic medical record system shows complete prescribing information but that he should have documented this information in the assessment and plan section of the chart as well;
- d. He has taken steps to correct his knowledge and deficiencies concerning the prescription and use of opioids and that he has used what he has learned from the reviews in his current employment;
- e. He will continue to refer to pain specialists and plans to follow the March 2016, Centers for Disease Control Guidelines for Prescribing

⁴ The two peer reviewers summarized the care that the Respondent provided the ten individual patients based on their review of the medical records as set forth in the two peer review reports which were provided to the Respondent. In addition, for each patient, specific examples of the Respondent's failure to meet standards of care and inadequate documentation are also in the peer review reports.

Opioids for Chronic Pain.

IV. Findings of Fails to Meet Standards of Quality Medical Care

17. The peer reviewers concurred that there were deficiencies relating to seven patients of the ten patients (Patients 1, 3, 5, 6, 7, 8, 10). The following describes in whole or in part the Respondent's failure to meet appropriate standards quality of care. The peer reviewers found that the Respondent:

- a. Failed to perform risk assessments prior to prescribing opioids;
- b. Continued to prescribe opioids and escalate the doses for patients who exhibited aberrant behavior, such as alleging lost prescriptions, requesting early refills of opioids, or overdosing (Patients 1, 3, 6, 7, 8);
- c. Prescribed inappropriately high doses of long and short acting opioids (Patients 3, 7);
- d. Failed to examine patients' painful area or system and/or check past examinations prior to prescribing opioids (Patients 1, 3, 7);
- e. Prescribed and/or escalated CDS without therapeutic indication or rationale (Patients 1, 6);
- f. Failed to use urine drug screens or pill counts to monitor for abuse of opioids (Patients 1, 3, 5, 10);
- g. Increased patients' opioid prescriptions even though he noted that the patient was "stable" or that the patient's condition was improving (Patients 6, 7);
- h. Failed to investigate alerts from pharmacists regarding his prescribing practices (Patients 1, 5);
- i. Allowed and enabled patients to receive early refills by changing the prescription doses (Patients 1, 5, 6, 7, 8); and

- j. Prescribed CDS to patients without requiring them to come in for an office visit (Patients 6, 10).

V. Findings of Inadequate Medical Recordkeeping

18. The peer reviewers concurred that the Respondent's medical records were inadequate for three of the ten patients reviewed (Patients 6, 7, and 8), for reasons in whole or in part in that the Respondent:

- a. Failed to fully document the History of Present Illness ("HPI"), Assessment, and Plan;
- b. Failed to document the consideration/discussion of risk and possible harm versus benefit of treatment choices such as the use of opioids (Patient 8);
- c. Failed to document decision-making in telephone consults (Patients 6, 8);
- d. Failed to document results from urine drug screens (Patient 7);
- e. Failed to conduct and/or record risk assessments of patients (Patients 6, 8);
- f. Failed to document signed opioid agreements (Patients 7, 8); and
- g. Failed to document his rationale for starting opioid treatment or increasing doses of opioids (Patient 6).

CONCLUSIONS OF LAW

Panel B concludes as a matter of law that the Respondent failed to meet appropriate standards of care, in violation of Health Occ. §14-404(a)(22), and failed to keep adequate medical records, in violation of Health Occ. §14-404(a)(40).

ORDER

It is thus by Panel B of the Board,

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

ORDERED that the Respondent is placed on **PROBATION**⁵ for a minimum period of **EIGHTEEN (18) MONTHS**. During that eighteen-month probationary period, the Respondent shall comply with the following terms and conditions:

- (1) Within **SIX (6) MONTHS** of the effective date of this Consent Order, the Respondent is required to take and successfully complete **TWO** panel-approved courses: (i) one course in prescribing Controlled Dangerous Substances ("CDS"); and (ii) a separate course in medical record keeping. The following terms apply:
 - (a) It is the Respondent's responsibility to locate, enroll in, and obtain the disciplinary panel's approval of the courses before the courses begin;
 - (b) The disciplinary panel will not accept courses taken over the internet;
 - (c) The Respondent shall provide documentation to the disciplinary panel that the Respondent has successfully completed the courses;
 - (d) The courses 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 courses.
- (2) **SUPERVISION:** The Respondent shall be subject to supervision during the **eighteen (18) month** probationary period by a disciplinary panel-approved supervisor who is board-certified in pain medicine as follows:
 - (a) Within **THIRTY (30)** calendar days from the effective date of this Consent Order, the Respondent shall provide the disciplinary panel with the name, pertinent professional background information of the supervisor whom the Respondent is offering for approval, and written notice to the disciplinary panel from the supervisor confirming his or her acceptance of the supervisory role of the Respondent, and that that there is no personal or professional relationship with the supervisor;

⁵ If the Respondent's license expires while the Respondent is on probation, the probationary period and any probationary conditions will be tolled.

- (b) The Respondent's proposed supervisor, to the best of the Respondent's knowledge, shall not be an individual who is currently under investigation, or who has been disciplined by the Board within the past five years;
- (c) If the Respondent fails to provide a proposed supervisor's name within 30 days from the effective date of this Consent Order, the Respondent's license shall be automatically suspended from the 31st day until the Respondent provides the name and background of a supervisor;
- (d) The disciplinary panel, in its discretion, may accept the proposed supervisor or request that the Respondent submit the name and professional background of a different supervisor, and written notice of confirmation;
- (e) The supervision begins after the disciplinary panel approves the proposed supervisor;
- (f) The disciplinary panel shall provide the supervisor with a copy of this Consent Order, and any other documents that the disciplinary panel deems relevant;
- (g) The Respondent shall grant the supervisor access to patient records selected by the supervisor, which shall, to the extent possible, focus on the type of treatment at issue in the Respondent's charges;
- (h) If the supervisor for any reason ceases to provide supervision, the Respondent shall immediately notify the Board and shall not practice medicine beyond the 30th day after the supervisor has ceased to provide supervision and until the disciplinary panel has received a submission from the Respondent with the name and professional background of a proposed replacement supervisor, and written notice of confirmation, as set forth in Condition (2)(a), *infra*.
- (i) It shall be the Respondent's responsibility to ensure that the supervisor:
 - i. reviews the records of **TEN (10) patients** each month, such patient records to be chosen by the supervisor and not the Respondent;

- ii. meets in-person with the Respondent at least **ONCE EACH MONTH** for the duration of the **EIGHTEEN (18) MONTH** supervision period to discuss with the Respondent the care that the Respondent has provided for these specific patients;
 - iii. be available to the Respondent for consultation on any patient;
 - iv. maintains the confidentiality of all medical records and patient information;
 - v. provides the Board with **QUARTERLY** reports which detail the quality of the Respondent's practice, any deficiencies, concerns, or needed improvements, as well as any measures that have been taken to improve patient care; and
 - vi. immediately reports to the Board any indication that the Respondent may pose a substantial risk to patients.
- (3) The disciplinary panel may issue administrative subpoenas to the Maryland Prescription Drug Monitoring Program on a quarterly basis for the respondent's Controlled Dangerous Substances ("CDS") prescriptions. The administrative subpoena will request the Respondent's CDS prescriptions from the beginning of each quarter.
- (4) The Respondent shall not apply for early termination of probation.
- (5) A violation of probation constitutes a violation of the Consent Order.
- (6) the Respondent shall comply with the Maryland Medical Practice Act, Md. Code Ann., Health Occ. II §14-101 - §14-702, and all federal and state laws and regulations governing the practice of medicine in Maryland; and it is further

ORDERED that the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of probation and this Consent Order; and it is further

ORDERED that if the Respondent allegedly fails to comply with any term or condition of probation or this Consent Order, the Respondent shall be given notice and an opportunity for a hearing. If 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. If

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

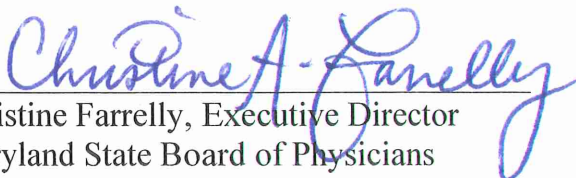
ORDERED that, after the appropriate hearing, if the disciplinary panel determines that the Respondent has failed to comply with any term or condition of probation or this Consent Order, the disciplinary panel may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, or suspend 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 upon the Respondent; and it is further

ORDERED that, after the Respondent has complied with all the terms and conditions of probation, and the minimum period of **EIGHTEEN (18) MONTHS** of probation imposed by the Consent Order has passed, the Respondent may submit a written petition to the panel requesting termination of probation. The Respondent may be required to appear before the panel to discuss his petition for termination. After consideration of the petition, the probation may be terminated through an order of the disciplinary panel. 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 if there are no pending complaints related to the charges; 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 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 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) (2014 & Supp. 2018).

03/19/2019
Date


Christine Farrelly, Executive Director
Maryland State Board of Physicians

CONSENT

I, David John Rossi, 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 these rights 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 their 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 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.

3/13/19

Date

Signature on File

David John Rossi, D.O., Respondent

NOTARY

STATE OF PA

CITY/COUNTY OF Chambersburg/Franklin

I HEREBY CERTIFY that on this 13 day of March, 2019 before me, a

Notary Public of the State and County aforesaid, personally appeared David John Rossi, M.D., License Number H72413, and gave oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

AS WITNESS, my hand and Notary Seal.

Austin Davis

My commission expires 4/11/22

