

IN THE MATTER OF	*	BEFORE THE MARYLAND
MARK DAVIS, M.D.	*	STATE BOARD
Applicant for Reinstatement	*	OF PHYSICIANS
Former License No: D23760	*	Case No: 8817-0006
* * * * *	*	* * * * *

**ORDER ON APPLICATION FOR REINSTATEMENT
OF MEDICAL LICENSURE**

I. INTRODUCTION

On December 21, 2016, Disciplinary Panel B (the “Panel”) of the Maryland State Board of Physicians (the “Board”) met with Mark Davis, M.D., to consider his application for the reinstatement of his medical license. The Board had revoked Dr. Davis’s license on July 8, 2008.¹ The Panel reviewed Dr. Davis’s application for reinstatement, a response from Dr. Davis responding to questions from the Board, a response from the administrative prosecutor recommending denial of Dr. Davis’s reinstatement, an eight-page answer from Dr. Davis including 35 pages of supporting documentation, and Dr. Davis’s prior Board Orders. The Panel also heard oral presentations from Dr. Davis and the administrative prosecutor.

II. PROCEDURAL AND FACTUAL HISTORY

A. The Board’s First Revocation of Dr. Davis’s License

Dr. Davis owned a nursing home in the Baltimore area and was a medical director and attending physician at that nursing home and at other nursing homes in the Baltimore area. On November 2, 1990, the Board summarily suspended Dr. Davis’s medical license due to his gross negligence, egregious deficiencies and substandard and inappropriate care for his nursing home

¹ The 2008 revocation was temporarily vacated by the Circuit Court of Harford County. The Circuit Court’s decision, however, was vacated in 2011 by the Court of Special Appeals, and, thus, in 2012, based on the Court of Special Appeal’s decision, the Board reinstated the revocation of Dr. Davis’s license.

patients. Dr. Davis was also criminally indicted based on his care of those patients. He pled guilty to two counts of willfully depriving a vulnerable adult for whom he was a caregiver of essential medical treatment resulting in serious harm to vulnerable adults in violation of Maryland Code Ann. Art. 27 § S35B (1991 Cum. Supp.). Upon conviction, Dr. Davis was sentenced to a two-year incarceration.

Additionally, on April 25, 1991, the Board charged Dr. Davis with engaging in immoral or unprofessional conduct in the practice of medicine, being professionally, physically, or mentally incompetent, and failing to meet the appropriate standards for the delivery of quality medical care. *See* Health Occ. § 14-404(a)(3), (4), and (22). On December 6, 1991, after a 16-day hearing, the Administrative Law Judge issued a recommended decision upholding each of the charged violations and recommended the revocation of Dr. Davis's license. On September 23, 1992, the Board issued a Final Order revoking Dr. Davis's license based on the conclusion that Dr. Davis violated each of the charged grounds for discipline.

B. The Board's Reinstatement of Dr. Davis's License

On July 12, 1994, Dr. Davis filed an application for reinstatement. The Board reinstated Dr. Davis's license on December 28, 1995, subject to a five-year probationary period with terms and conditions. In 2001, the Board terminated the probation and instituted certain permanent conditions, including a requirement that Dr. Davis undergo periodic chart and peer reviews by the Board.

C. The Board's 2008 Revocation of Dr. Davis's License

After his reinstatement, pursuant to the terms of the permanent condition on his license, the Board conducted a peer review of Dr. Davis's practice, where he treated patients for obesity. The peer reviewers found that in seven of eight reviewed cases, Dr. Davis violated the standard

of care and failed to keep adequate medical records. The Board charged Dr. Davis and, after a two-day hearing, the ALJ issued a proposed decision recommending upholding the standard of care charge but finding no violation for failing to keep adequate medical records. On July 8, 2008, after an exceptions hearing, the Board revoked Dr. Davis's medical license, finding Dr. Davis violated Health Occ. § 14-404(a)(22) by failing to meet the standard of care and violated Health Occ. § 14-404(a)(40) by failing to keep adequate medical records.

Specifically, the Board found that Dr. Davis failed to meet the standard of care because he: (1) failed to properly consult with patients' primary care physicians to obtain medical histories and inform them of his prescribing Phentermine, an anti-obesity drug; (2) failed to perform physical examinations on follow-up visits; (3) failed to obtain a psychological review of patients related to weight management issues; (4) failed to perform diagnostic tests to assess any other medical or co-morbid conditions; (5) prescribed Phentermine to patients who were below body mass index of 30; (6) failed to obtain informed consent for the off-label use of Phentermine; (7) failed to cease prescribing Phentermine beyond the three-month recommended duration, including 16-month and 30-month prescribing periods in the absence of any significant weight loss; (8) failed to appropriately modify his treatment plan despite its long-term failures; (9) prescribed Xanax beyond the standard of care duration; and (10) failed to recognize warning signs of misuse of Xanax.

Dr. Davis failed to keep appropriate medical records because he failed to document: (1) physical examinations; (2) results from diagnostic or laboratory testing; (3) whether he communicated with patients' primary care physicians; (4) changes in his patients' medical conditions; (5) changes in medications prescribed by his patients' primary care physicians; (6) a review of psychological symptoms relevant to obesity; (8) evidence of counseling, nutritional

support, and exercise duration; and (9) informed consent for long-term and off-label use of Phentermine.

Dr. Davis appealed the 2008 Final Decision and Order revoking his license. On December 23, 2009, the Circuit Court for Harford County vacated the Board's Order, thus, the Board issued an Order on January 27, 2010, reinstating his license. On December 8, 2011, however, the Court of Special Appeals vacated the decision of the circuit court. On August 27, 2012, based on the Court of Special Appeal's decision, the Board reinstated its 2008 revocation of Dr. Davis's license. The Court of Appeals denied Dr. Davis's petition for certiorari.

III. APPLICATION FOR REINSTATEMENT

On April 25, 2016, the Board received Dr. Davis's application for reinstatement. The Board asked Dr. Davis to respond to a series of questions including the following:

1. What is your understanding of the nature and circumstances of your conduct, which resulted in the revocation of your Maryland license?
2. What is your understanding of the concerns of the Board with respect to your conduct?
3. Have you accepted responsibility for the action(s) resulting in the revocation of your license?
4. What steps have you taken to lessen the likelihood of recurrence?

In his written response, Dr. Davis offered that he "could have performed at a higher level." He admitted that there was "insufficient contact between [his] office and the patients' primary care providers." He also agreed that he "should have: been more assertive with the patients to allow transfer of their medical records to [his] office;" contacted the Board regarding using prescription weight loss pharmaceuticals for weight maintenance; had "a more methodological return policy;" and been "more introspective concerning [his] medical records." He claimed to have lessened the likelihood of recurrence by reviewing other medical records and familiarizing himself with new electronic medical record systems.

Dr. Davis also discussed issues unrelated to the questions. Specifically, Dr. Davis offered three lengthy paragraphs to correct what he calls “factual inaccuracies in the procedural history.” In those paragraphs, Dr. Davis claims to have newly discovered information demonstrating the 1992 revocation of his license was in error.

Following the receipt of the administrative prosecutor’s letter proposing a denial of Dr. Davis’s reinstatement, Dr. Davis submitted a second eight-page letter with 35 pages of accompanying documents. In that letter, Dr. Davis presents what he describes as exculpatory documentary evidence about his first revocation and also described what he called the “dubious” nature of the charges for the second revocation.

IV. CONSIDERATION OF APPLICATION

Reinstatement of a physician’s medical license after revocation is a discretionary decision by the Panel. Md. Code Ann., Health Occ. § 14-409. The Panel must consider whether post-disciplinary reinstatement is in the interest of the health and welfare of the general public and consistent with the best interest of the profession. COMAR 10.32.02.06B(7). Critical issues for the Panel’s consideration include Dr. Davis’s understanding of the nature of his violations, his acceptance of responsibility for these violations, and potential danger to the public.

As an initial matter, the Panel notes the serious nature of his conduct and its relation to patient care. Dr. Davis was revoked twice for standard of care violations, which directly related to patient care. The revocations were both based on potential or actual patient harm. The safety of patients is the Board’s primary mission and thus the Panel must be mindful that Dr. Davis’s license was twice revoked for patient safety concerns. The Panel is also mindful that the Board’s 2008 Final Decision and Order revoking Dr. Davis’s license for a second time concluded, “[Dr.

Davis] continues to violate well established standards of medical care in treating patients. . . . despite the Board giving him a second chance and attempting to re-educate and rehabilitate him.”

Dr. Davis has not demonstrated that he understands his treatment errors nor has he accepted responsibility for his actions. Dr. Davis presented two letters. The first is a half-hearted demonstration of acknowledgement and regret for his violations. The second is a full-throated defense of his actions that led to his violation of the Maryland Practice Act. Rather than explain his acknowledgement of his practice deficiencies in the 2008 Order or offer plans to elevate his practice to meet the standard of care, Dr. Davis’s second letter contends that the 2008 Order was wrongly decided. In that letter, Dr. Davis describes the charges as “dubious in nature,” claims that the charges “misrepresented actual chart data,” and asserts that the reviewer “was not an expert in the substance of the core charges.” Dr. Davis also claims that his administrative hearing was flawed as he “was not allowed to put on a defense.” In attempting to re-litigate his revocation Dr. Davis demonstrates a lack of recognition of his practice deficiencies. Dr. Davis is not entitled to further re-litigation of the 2008 Final Order revoking his license. The Panel is not convinced Dr. Davis is focused on reforming his practice.²

In his first letter to the Panel, Dr. Davis only goes as far as to say that his “approach . . . could have been more sophisticated than is reflected in the medical records” and that he “could have conducted [himself] with a higher degree of professionalism.” He admits that his use of prescription weight loss pharmaceuticals for maintenance of weight was a “gray area.” Dr. Davis’s acknowledgement of certain practice deficiencies is insufficient. Dr. Davis does not

² Dr. Davis also submitted numerous documents that purport to be “exculpatory in nature” regarding his 1992 revocation, accusing the Attorney General’s Office and the Department of Health and Mental Hygiene of fraud, challenging the validity of the peer reviews and accusing the administrative prosecutor of a “malicious administrative presentation . . . designed to malign the respondent.” The Panel will not address the 1992 Final Order revoking Dr. Davis’s license. The Board already gave Dr. Davis a second chance regarding his practice by reinstating his license in 1995. Dr. Davis’s additional violation ultimately resulted in a second revocation, in 2008, on separate and distinct grounds.

acknowledge error for the main reasons the Board revoked his license. Specifically, Dr. Davis ignores his failure to perform physical examinations on follow-up visits. He also disregards his failure to obtain psychological review of patients related to their weight loss issues. He also does not mention his failure to perform diagnostic tests to assess other medical or co-morbid conditions. Dr. Davis's tepid acknowledgement that he could have done better does not address a significant number of the standard of care violations set forth in the Board's 2008 Final Decision.

Moreover, his excuses for his inadequate records are unconvincing. He claims that his old system discouraged extensive written notes and will be solved by his new electronic medical records. However, his charting was not insufficient because of its brevity. Rather, Dr. Davis failed to document the crucial information. He did not document physical examinations, diagnostic or laboratory testing, changes in his patients' medical conditions, or changes in medications prescribed by other physicians. Dr. Davis did not address this concern in his answers to the questions on his reinstatement application.

In sum, Dr. Davis fails to acknowledge the most significant deficiencies that led to his revocation. Instead of demonstrating that he understands the nature of his violations and his efforts to remedy his substandard practices, he remains fixated on his disagreements with the revocation.

The Panel is not satisfied that it is in the interest of the public for Dr. Davis to return to the practice of medicine. Dr. Davis has not recognized his practice deficiencies nor strived to remedy those deficiencies. There is scant indication that he will practice medicine competently and within the standard of care. The Panel will, therefore, deny his application for reinstatement and will not entertain any further applications for reinstatement.

ORDER

It is, by Board Disciplinary Panel B, hereby

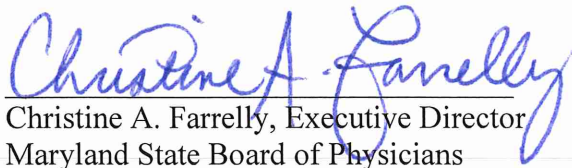
ORDERED that the Petition for Reinstatement of Medical Licensure of Mark Davis, M.D., former license number D23760, is **DENIED**; and it is further

ORDERED that Dr. Davis shall not reapply for reinstatement of his license to practice medicine in Maryland; and it is further

ORDERED that this Order is a public document under Md. Code Ann., Gen. Prov. § 4-101 *et seq.* and § 14-411.1 of the Health Occupations Article.

02/01/2017

Date


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