IN THE MATTER OF	*	**BEFORE THE MARYLAND**
Lawrence R. Feldman, M.D.	*	**STATE BOARD OF**
Respondent	*	**PHYSICIANS**
License Number: D32185	*	**Case Number: 2015-0263A**

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CONSENT ORDER

On January 6, 2017, Disciplinary Panel A ("Panel A") of the Maryland State Board of Physicians (the "Board"), charged Lawrence R. Feldman, M.D. (the "Respondent"), License Number D32185, under the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") §§ 14-101 *et seq.* (2014 Repl. Vol. & 2015 Supp.) Panel A charged the Respondent under the following provisions of Health Occ. § 14-404(a):

> (3) Is guilty of:
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> ...
>
> (ii) Unprofessional conduct in the practice of medicine;
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> ...
>
> (19) Grossly overutilizes health care services[.][1]

On May 10, 2017, Disciplinary 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, and Order.

[1] The charge of gross overutilization was based on the totality of the records reviewed, and not on a single patient.

I. FINDINGS OF FACT

Disciplinary Panel A finds:

Background

1. At all times relevant, the Respondent was licensed to practice medicine in the State of Maryland. The Respondent was initially licensed on or about September 16, 1976, and his license expired on September 30, 2016.[2]

2. The Respondent is licensed to practice medicine in Florida, and his license is presently active through January 31, 2019.

3. The Respondent is not board-certified.

4. The Respondent currently resides in Florida, and is engaged in the part-time practice of medicine in Florida.

5. From 1987 through September 2011, the Respondent owned a private medical practice, with locations in Westminster (Location A) and Eldersburg, Maryland (Location B).

6. At all times relevant, the Respondent supervised a Physician Assistant, Physician Assistant A, who worked at both Locations A and B.

7. In September 2011, the Respondent sold Locations A and B to Physician A and her husband, who owned a dermatology and dermatopathology practice, headquartered in Lilburn, Georgia ("Practice A").[3]

8. Physician A's husband, a non-physician, was the Manager of Practice A.

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[2] Md. Code Ann., Health Occ. § 14-403(a) provides that, "Unless a disciplinary panel agrees to accept the surrender of a license...the individual may not surrender the license...nor may the license...lapse by operation of law while the individual is under investigation or while charges are pending."

[3] At times relevant to these charges, Practice A owned offices several different states including Pennsylvania, Georgia and Maryland.

9. At times relevant to these charges, an additional location in Maryland was part of Practice A; specifically, in Cockeysville ("Location C").

10. After the Respondent sold Locations A and B to Practice A,[4] he became an independent contractor for Practice A through January 2014. He practiced at Locations A, B and C, and through January 2014, continued to supervise Physician Assistant A, who also remained on staff at Practice A at various locations.

11. Physician A was the Director and owner (with her husband) of Laboratory A, a pathology laboratory located in Georgia, and sometimes was the reviewing pathologist for specimens submitted by the Respondent after he became an Independent Contractor for Practice A.

Complaint

12. On or about October 20, 2014, the Board received a written complaint (the "Complaint") from a physician who worked in the same business complex as Location C, who alleged in part that Physician Assistant A was being improperly supervised and that the Respondent, Physician A and other providers were engaging in gross overutilization of dermatologic procedures.[5]

13. The Board initiated an investigation of the allegations, which included conducting interviews, issuing a subpoena for medical and billing records from Practice A,[6] and requesting summaries of care from the Respondent on 15 randomly selected patients.

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[4] Practice A is used to denote Physician A and her husband as owners.

[5] The Board's investigation did not find evidence to support improper supervision of Physician Assistant A, or that there was adequate evidence that Physician Assistant A violated the Physician Assistants Act. The Board charged Physician A under Case# 2015-0264A.

[6] Board staff subpoenaed 44 patient records from Practice A from Locations A, B and C. Practice A sent to the Board 43 records, and of those records, Board staff selected 15 for review.

14. On or about July 30, 2015, the Board notified the Respondent of its investigation and requested a response.

15. On or about August 7, 2015, the Board received a written response from the Respondent denying the allegations in the Complaint.

16. In furtherance of its investigation, Board staff transmitted medical and billing records of 15 patients (identified as Patients A through O) referenced in ¶ 13, and other relevant documents from the Board's investigative file to a physician board-certified in dermatology (the "Expert") for the purpose of conducting an independent expert review. The Expert's opinions are set forth in pertinent part below.

Respondent's Interview

17. On or about March 2, 2016, Board staff conducted a telephonic interview of the Respondent under oath with regard to the allegations cited in the complaint.

18. Sometime in 2011, the Respondent contacted Practice A for the purpose of selling his practice locations ("Locations A and B").

19. The Respondent finalized the sale of his practice on or about September 1, 2011, and he became an independent contractor for Practice A. The Respondent remained at Practice A as an independent contractor through January 2014.

20. According to the Respondent, Practice A took over his billing and the day-to-day operations. The employees that remained became employees of Practice A.

21. According to the Respondent, he received payment based on a formula which was a percentage of the collections minus certain overhead. His reimbursement was based on a standard formula that Practice A had negotiated with other providers.[7]

22. The Respondent stated that he sent specimens to Laboratory A, but he also sent specimens to other laboratories.

Interview of Physician A

23. On or about March 4, 2016, Board staff conducted an interview of Physician A, principal owner of Practice A.

24. Physician A did not work directly with the Respondent. She resided in Georgia.

25. Physician A's husband was responsible for the transitions of Practice A's newly acquired locations including Locations A and B.

26. Practice A provided the computer systems and electronic medical record systems to the various locations including Locations A and B. Practice A provided the medical billing for all of the locations. The billing department was located in Atlanta, Georgia.

27. Physician A stated that she and her husband have owned Laboratory A since approximately 2001.

28. Physician A stated that the "management" of Practice A discussed with physician owners (including the Respondent) the process for sending specimens to Laboratory A when negotiating the purchase of their respective practices.

[7] According to the Respondent, he contacted 4-5 providers that had sold their practices to Practice A, and the contracts entered into were the same as the contract Practice A offered to him.

29. Physician A stated that Laboratory A provided Practice A's providers with electronic medical records containing a link to the pathology reports and the turnaround time was "quick."

Employee A

30. On or about May 12, 2016, Board staff made site visits to Locations A and B and interviewed the Office Manager for Locations A and B ("Employee A").

31. Employee A had worked at Locations A and B for 28 years, initially when the Respondent owned the practices. Employee A remained on staff following the Respondent's sale of Locations A and B.

32. Employee A stated that she was aware that Physician A owned Laboratory A. She stated that the staff was not "required" to send specimens to Laboratory A, but acknowledged that Practice A routinely sent specimens to Laboratory A for patients who were insured by Medicare and Medicaid.

Records review

33. Pathology reports from October 2011 through January 2014 for Patients A, B, C, E, F, J, M, N and O reflect that of the 18 specimens obtained by the Respondent and Physician Assistant A in Locations A, B and C for these 9 patients, all were initially sent to Laboratory A for pathology review.[8]

34. There was no informed consent or notification in the 15 patient records reviewed notifying patients that Physician A (as owner of Practice A) was also the owner of Laboratory A.

[8] Two of the specimens initially sent to Laboratory A were subsequently sent to "outside" laboratories.

35. There was no documentation in the 9 patient records identified in ¶ 33 that the Respondent or Physician Assistant A sent any patient specimens to laboratories other than Laboratory A between October 2011 and January 2014.

Patient-related findings

Patient A

36. Patient A, a female in her 90s, was treated by Practice A in 2012, from approximately March through December. Patient A was insured by Medicare and Blue Cross Blue Shield.

37. On April 10, 2012, Patient A had an "excision" (removal) of a lesion on her right cheek performed by the Respondent that was sent to Laboratory A for pathology review.[9]

38. The pathologist, Physician D, determined that Patient A had basal cell carcinoma.

39. On April 24, 2012 Patient A had papules consistent with actinic keratosis on her left cheek. This area was treated at that time with cryotherapy. On June 5, 2012, the Respondent documented that he again treated Patient A with cryotherapy to the "upper right cheek." If this were treatment of the same lesion by excision and cryotherapy on two occasions within two months it would be evidence of overutilization of treatment procedures.

[9] It was billed as an excision, which is intended as a removal of the lesion.

Patient B

40. Patient B, a male in his 70s, was treated by the Respondent from approximately October 2011 through April 2013. Patient B was insured by Medicare and Blue Cross Blue Shield.

41. The Respondent conducted biopsies of Patient B on three separate dates: October 2011 (neck), October 2012 (neck) and January 2013 (abdomen and right lower back).

42. Patient B's biopsy specimens were referred by the Respondent to Laboratory A, and Physician A was the pathologist.

43. On October 6, 2011, the Respondent performed cryotherapy on Patient B's ears for "actinic keratosis."[10] Practice A billed Patient B's insurance companies for care rendered by the Respondent including destruction of a malignancy of the scalp, neck, hands and feet. There is no documentation that the Respondent treated a malignancy on this date.

44. Practice A submitted bills to Patient B's insurance companies for care rendered by the Respondent on December 28, 2011, March 7, 2012, March 28, 2012 and June 6, 2012 for destruction of a malignancy. There is no documentation in Patient B's record that the Respondent or Practice A's staff treated him for malignancies on those dates.

45. On January 9, 2013, the Respondent conducted shave biopsies of lesions on Patient B's abdomen and right lower back, and referred the biopsies to Laboratory A. Physician A, the assigned pathologist, reviewed the lesions as basal cell carcinoma.

[10] Rough, scaly patch that develops on the skin following sun exposure, a small percentage of which develop into skin cancer.

Practice A erroneously billed these shave biopsies conducted by the Respondent as "excisions" instead of biopsies.

46. On February 2013, Patient B opted to be treated with liquid nitrogen instead of undergoing excisions of the lesions.

47. Practice A's billing for services not rendered, or billing for the Respondent's services to Patient B that were redundant or not clinically appropriate, constitutes evidence of unprofessional conduct in the practice of medicine and/or the gross overutilization of health care services.

Patient C

48. Patient C, a male in his 60s, was treated by Practice A from approximately October 2011 through July 2013, at Location A. Patient C was insured by Blue Cross Blue Shield.

49. During his care at Practice A, Patient C underwent biopsies conducted by the Respondent on October 20, 2011 (left arm and two of the back) and March 8, 2012 by Physician Assistant E (nose).

50. Two of the October 20, 2011 biopsy specimens were positive for basal cell carcinoma.

51. The March 8, 2012 biopsy was normal. Physician A was the pathologist.

52. On September 18, 2012, the Respondent documented that he had treated a "superficial" basal cell carcinoma on Patient C's lower back with cryosurgery. There was no corresponding pathology report, or documentation that he had biopsied the site.

53. On November 5, 2012, the Respondent documented he treated Patient C's back and mid-back with liquid nitrogen for basal cell carcinoma. Other than the October, 20, 2011 pathology reports, there was no corresponding pathology report, or documentation that he had biopsied the sites. Practice A billed Patient C's insurance companies for destruction of malignancies.

54. On December 3, 2012, January 21, 2013, March 21, 2013, May 23, 2013 and July 5, 2013, Practice A billed for skin cancer destruction codes. There was again no corresponding pathology report, or documentation that the Respondent had biopsied the site.

55. The Respondent's provider services to Patient C that were redundant or not clinically appropriate, constitute evidence the Respondent engaged in gross overutilization of health care services and/or unprofessional conduct in the practice of medicine.

Patient D

56. Patient D, a female in her 80s, was treated by Practice A from approximately October 2011 through December 2013, at Location B. Patient D was insured by Medicare and Blue Cross Blue Shield.

57. On January 17, 2012, the Respondent diagnosed Patient D with basal cell carcinoma of the scalp and skin of neck and skin of trunk; however, there was no corresponding pathology report in her medical record. The Respondent documented he treated Patient D for "actinic keratosis," a benign condition, with cryotherapy. Yet,

Practice A billed Patient D's insurance company for the Respondent's destruction of a malignancy.

58. On November 13, 2012, the Respondent "diagnosed" Patient D with squamous cell carcinoma of her upper arm; however, there was no corresponding pathology report in her medical record. Physician A documented he treated Patient D's actinic keratosis and "squamous cell carcinoma" with cryotherapy.

59. The billing by Practice A for services not provided by the Respondent or the Respondent's procedures that were not clinically appropriate as outlined in pertinent part above constitutes evidence the Respondent engaged in unprofessional conduct in the practice of medicine.

Patient G

60. Patient G, a male in his 70s, was treated by Practice A from approximately September 2011 through January 2015, at Locations A and B. Patient G was insured by Medicare and Blue Cross Blue Shield.

61. Patient G was treated by the Respondent, Physician A and Physician Assistant A.

62. On or about September 22, 2011, Patient G was seen by the Respondent and diagnosed with actinic keratosis and basal cell carcinoma of the scalp/neck. Practice A billed Patient G's insurance companies for destruction of a malignancy.

63. On November 10, 2011, the Respondent again saw Patient G for a skin cancer check, and noted that the spot on Patient G's scalp that was treated with liquid nitrogen

was healing well. A "flat pink shiny macule on the scalp 2.5 cm" was treated on that date with liquid nitrogen.

64. The Expert opined that repeated treatments to the same scalp lesion were redundant and not clinically indicated.

65. To the extent the Respondent's services to Patient G were redundant or not clinically appropriate as outlined in pertinent part above, such would constitute evidence the Respondent engaged in unprofessional conduct and/or gross overutilization of health care services.

Patient I

66. Patient I, a male in his 70s, was treated by Practice A from approximately September 2011 through April 2015, at Location C. Patient I was insured by Blue Cross Blue Shield and Medicare.

67. Patient I was seen by several providers at Practice A including the Respondent, and treated for various skin lesions of the face and arm.

68. On or about March 6, 2012, Patient I was seen by the Respondent for a skin check for a hand lesion. The Respondent documented that Patient I had basal cell carcinoma of the skin and squamous cell carcinoma of the upper limb. Above these listed diagnoses, the Respondent documented, "...examination of the all [*sic*] within normal limits." The Respondent did not document that he had conducted biopsies on this date, or that he had treated Patient I.

69. An invoice was submitted by Practice A to Medicare and Blue Cross Blue Shield for care rendered by the Respondent on March 6, 2012 (and payment received) for

"destruction, malignant, scalp, neck, hands, feet" and "destruction by any method, benign/ premalignant, 1st lesion."

70. Practice A's billing for services not rendered by the Respondent as outlined in pertinent part above constitutes evidence the Respondent engaged in unprofessional conduct in the practice of medicine.

Patient O

71. Patient O, a male in his 60s, was treated by Practice A from approximately December 2011 through May 2015, at Locations B and C. Patient O was insured by Medicare and Blue Cross Blue Shield.

72. Patient O was treated by providers including but not limited to the Respondent, Physician A and Physician Assistant A, for lesions on his back, shoulder and arm. He had a history of melanoma on his back from 1998, dysplastic nevus syndrome and basal cell carcinoma.

73. On May 14, 2012, Patient O saw the Respondent for a full body examination. The Respondent had seen Patient O previously at Practice A on December 5, 2011, for a full body examination.

74. Practice A (for the Respondent's services) billed Patient O's insurance company for a new patient consultation (CPT code 99244)[11] on May 14, 2012 despite having provided the same service five months earlier.

75. On October 18, 2012, Patient O returned to see the Respondent for a skin examination. The Respondent conducted two shave biopsies of lesions on Patient O's

[11] CPT, the abbreviation for Current Procedural Terminology, is the code set maintained by the American Medical Association.

upper and lower mid back, and told Patient O to return to the office in three months. The results showed both to be dysplastic nevi with atypia with margins involved.

76. Practice A (for the Respondent's services) billed Patient O's insurance company for an excision for each (CPT code 11402), despite having documented that he had only conducted shave biopsies.

77. On November 5, 2012, Patient O returned to Practice A and saw the Respondent for excision to remove the two dysplastic nevi. The Respondent documented that he conducted excisions of the two sites that he had biopsied on October 18.

78. The pathology report prepared for the specimens submitted from November 5, 2012 noted that the biopsy specimens were "re-shave[s]",[12] yet Practice A (for the Respondent's services) again billed CPT code 11402 for two excisions conducted on the same sites documented on October 18.

79. A few months later, on May 7, 2013, Patient O saw the Respondent for a skin check, and the Respondent again conducted a shave biopsy of Patient O's right lower back. Again, Practice A (for the Respondent's services) billed Patient O's insurance company for an excision of a benign lesion (CPT code 11402) instead of a shave biopsy (CPT code 11302).

80. Physician A was the reviewing pathologist for the May 7, 2013 shave biopsy specimen, and diagnosed the lesion as severe dysplastic nevus, requiring "complete re-excision."

[12] Re-shaves should have been coded as 11302.

81. Approximately one month later, on June 20, 2013, the Respondent conducted a "re-excision" of a right lower back lesion, which showed the margins to be free of residual melanocytic lesion. Physician A was the reviewing pathologist.

82. To the extent the Respondent's services to Patient O were redundant and/or not clinically appropriate, that constitutes evidence that the Respondent is guilty of unprofessional conduct and/or gross overutilization of health care services.

II. CONCLUSIONS OF LAW

Based on the Findings of Fact, Panel A concludes as a matter of law that the Respondent engaged in unprofessional conduct in violation of Health Occ. § 14-404(a)(3)(ii) and gross overutilization of health care services in violation of Health Occ. § 14-404(a)(19).

III. ORDER

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

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

ORDERED that should the Respondent apply for reinstatement of his Maryland license, prior to reinstatement, he shall appear before the Disciplinary Panel for the imposition of any terms and conditions; 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, unless stated otherwise in the order, any time period prescribed in this order begins when the Consent Order goes into effect. The Consent Order goes

into effect upon the signature of the Board's Executive Director, who signs on behalf of Panel A; and it is further

ORDERED that this Consent Order is a public document pursuant to Md. Code Ann., Gen. Prov. §§ 4–101 *et seq.*

06/08/2017
Date

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

CONSENT

I, Lawrence Feldman, M.D., License No. D32185 (expired), by affixing my signature hereto, acknowledge that:

I am represented by counsel and have consulted with counsel before entering into this Consent Order. By this Consent and for the sole purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

I acknowledge the validity of this Consent Order as if entered into 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 own behalf, and to all other substantive and procedural protections provided by law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of the Board that I might have filed after any such hearing.

I sign this Consent Order after having an opportunity to consult with counsel, voluntarily and without reservation, and I fully understand and comprehend the language, meaning and terms of the Consent Order.

5/19/2017
Date

Lawrence Feldman, MD
Lawrence Feldman, M.D.
Respondent

STATE OF FLORIDA

CITY/COUNTY OF:

I HEREBY CERTIFY that on this 19 day of May, 2017, before me, a Notary Public of the State and County aforesaid, personally appeared Lawrence Feldman, M.D., 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.

Notary Public

CYNTHIA L. KANASKI
NOTARY PUBLIC
My Comm. Expires November 2, 2018
FF 173555
STATE OF FLORIDA

My commission expires: 11/2/2018

I HEREBY ATTEST AND CERTIFY UNDER PENALTY OF PERJURY ON 06/08/2017 THAT THE FORGOING DOCUMENT IS A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN MY OFFICE AND IN MY LEGAL CUSTODY.

EXECUTIVE DIRECTOR
MARYLAND BOARD OF PHYSICIANS