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| IN THE MATTER OF | * | BEFORE THE MARYLAND |
| SURENDRA KUMAR, M.D. | * | STATE BOARD OF |
| Respondent | * | PHYSICIANS |
| License Number: D32224 | * | Case Number: 2016-0804A |

CONSENT ORDER

On June 29, 2017, Disciplinary Panel A of the Maryland State Board of Physicians (the "Board") charged Surendra Kumar, M.D. (the "Respondent"), License Number D32224, with violating the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. II ("Health Occ. II") § 14-404(a) (2014 Repl. Vol. & 2016 Supp.).

The pertinent provision of the Act provides:

(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:

...

(3) Is guilty of:

...

(ii) Unprofessional conduct in the practice of medicine[.]

AMERICAN MEDICAL ASSOCIATION'S ("AMA'S") OPINION ON PHYSICIANS WITH DISRUPTIVE BEHAVIOR

AMA Opinion 9.045, adopted in June 2000 provides in pertinent part:

...

(1) Personal conduct, whether verbal or physical, that negatively affects or that potentially may negatively affect patient care constitutes disruptive behavior.¹

¹ In 2011, the Joint Commission revised the term "disruptive behavior" to "behavior or behaviors that undermine a culture of safety."

(This includes but is not limited to conduct that interferes with one's ability to work with other members of the health care team.) However, criticism that is offered in good faith with the aim of improving patient care should not be construed as disruptive behavior[.]

On September 13, 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.

FINDINGS OF FACT

Disciplinary Panel A finds:

BACKGROUND

1. At all times relevant, the Respondent was a physician licensed to practice medicine in the State of Maryland. The Respondent was initially licensed in Maryland on or about May 1, 1985.
2. The Respondent was trained as a pediatrician. He is not board-certified in any medical specialties. At all times relevant to these charges, he practiced part-time at a chiropractic office in Kensington, Maryland ("Practice A").² His responsibilities included providing trigger point injections as well as pain injections to the knees and other joints. At all times relevant to these charges, he did not hold any hospital privileges.
3. Practice A was owned by a chiropractor ("Chiropractor A") and his wife ("Employee A"). Employee A functioned as an administrator for Practice A.

² In order to maintain confidentiality, facility, patient and employee names will not be used in this document, but will be provided to the Respondent on request.

4. The Respondent was employed by Practice A from June 29, 2015 through September 4, 2015, when Chiropractor A terminated him for unprofessional conduct.

5. On or about April 1, 2016, the Board received a complaint from the Office of the Inspector General, United States Department of Health and Human Services alleging that the Respondent had been terminated from Practice A for cause, and that subsequent to his termination Practice A had identified several patients to whom the Respondent had prescribed controlled dangerous substances ("CDS") without medical record documentation.

6. Based on receipt of the complaint referenced in ¶ 5, the Board initiated an investigation which included conducting interviews and subpoenaing the Respondent's employment file from Practice A and patient medical records. A summary of the Board's investigation is set forth below.

7. By letter dated July 22, 2016, the Board notified the Respondent of its investigation and requested a written response to the allegations.

8. The Respondent filed several written responses with the Board in 2016, dated July 30, August 16, August 17 and August 18, respectively. He denied any wrongdoing, and cast blame on Chiropractor A and Employee A for his termination from Practice A.

PRIOR HISTORY

9. On or about May 22, 2013, the Board issued to the Respondent an Advisory Letter resolving a complaint that had been filed by a former colleague alleging that the Respondent had sent him threatening email and voicemail messages in which the Respondent accused his colleague of having committed Medicare and billing fraud.

Following its investigation, as a resolution, the Board recommended that the Respondent enroll in the Maryland Physician Health Program (“MPHP”).³

PRESENT COMPLAINT

UNPROFESSIONAL CONDUCT IN OFFICE SETTING

Inappropriate sexual comments

10. On or about September 21, 2016, Board staff interviewed Employee B, a former medical assistant at Practice A. Employee B stated that during the Respondent’s employment at Practice A, the Respondent had made inappropriate comments of a sexual nature in her presence by providing details of his sexual relationship with his spouse.

11. On or about April 12, 2017, Board staff interviewed Employee C, a temporary summer employee, and she stated that the Respondent discussed in Employee C’s presence⁴ details of his sexual relationship with his spouse.

Erratic conduct

12. On or about July 21, 2016, Board staff conducted an interview of Chiropractor A. Chiropractor A stated that on September 4, 2015, during office hours, in his presence and in the presence of Employee A, the Respondent engaged in “screaming at the top his lungs” at Chiropractor A regarding office procedures, while patients were present.

13. At the end of the work day on September 4, 2015, during a meeting with Chiropractor A and Employee A, the Respondent relayed that Employee D (the Office Manager) was intending to “quit” her employment at Practice A. Employee D overheard

³ When Board staff asked the Respondent during an interview conducted on March 9, 2017, whether he had enrolled in MPHP, he stated that he did not recall having received the Advisory Letter. The Board had mailed the Advisory Letter to the Respondent’s address of record at the time.

⁴ Employee C is related to Chiropractor A and Employee A.

the conversation between the three and began crying. Chiropractor A and Employee A witnessed the Respondent chase Employee D around the office and accuse her of “batting her eyes” at him, stating that was not a “Christian thing to do.”⁵

14. Following the incident described in ¶ 13, Chiropractor A terminated the Respondent’s employment and asked him to turn in his keys and parking pass. In response to this request, the Respondent stated, “I’m really an undercover detective and I came here to investigate you for the past two months.”

15. Following the Respondent’s termination from Practice A, according to Chiropractor A, the Respondent harassed Chiropractor A by leaving several voice mail messages and emails of a threatening nature alleging in part, “breach of contract and felony charge of stealing my notebook.”

16. After Chiropractor A terminated the Respondent from employment at Practice A, the Respondent was unable to locate a spiral bound notebook in which he had purportedly kept patient notes. He accused Chiropractor A and Employee A of taking his notebook. He referred to the missing notebook in a September 9, 2015 email directed to Chiropractor A, stating, “Sadly my investigation proved the **DISAPPEARANCE** of my **NOTEBOOK** is an **INSIDER JOB**.”⁶ [Emphasis provided]

Inappropriate prescribing of CDS and other medications

17. During Chiropractor A’s interview with Board staff, he stated that he had identified several individuals to whom the Respondent had prescribed CDS while

⁵ During the Respondent’s March 9, 2017 interview with Board staff, he denied chasing Employee D. The Respondent stated Employee D was “running around screaming.” The Respondent stated that Employee D was “flickering” her eyes.

⁶ The Respondent returned to Practice A on September 9, 2015 to search for his notebook, and was unable to locate it.

employed at Practice A who were not the Respondent's patients. Some examples are set forth below.

Employee E

18. Employee E, a male, was employed by Practice A as a chiropractic assistant. On or about September 28, 2016, Board staff interviewed Employee E regarding his relationship at Practice A with the Respondent.

19. Employee E stated that sometime during August 2015, a dentist evaluated him for an impacted wisdom tooth.⁷ The dentist had recommended Employee E have the impacted wisdom teeth removed; however, Employee E could not afford the procedure. The dentist would not prescribe pain medication to Employee E. Employee E returned to work at Practice A following his dental appointment.

20. According to Employee E, on his return from the dentist's office to Practice A, he complained of pain and the Respondent offered to prescribe oxycodone or hydrocodone to him. Employee E stated that the Respondent prescribed the medication to him on three consecutive Fridays.

21. According to Employee E, on the initial date in August the Respondent prescribed the medication to him, the Respondent reviewed Employee E's "paperwork" and x-rays from Patient E's dentist. He did not examine Employee E.

22. According to Employee E, on the Friday following the Respondent's initial prescription for hydrocodone, the Respondent asked Employee E if he was "still in pain." When Employee E stated that he was, the Respondent wrote him another

⁷ Employee E provided a written statement to Practice A regarding his receipt of prescriptions in which he recalled that he had visited a hospital emergency room the Saturday before his dental visit, and had received a prescription for penicillin and hydrocodone.

prescription for pain medication. The Respondent repeated his request to Employee E, the following week.

23. According to Employee E, the Respondent offered to write the prescriptions for him; he never asked the Respondent to do so.

24. The Respondent's version of events differs from Employee E's description. According to the Respondent's interview with Board staff, he purportedly told Employee E to visit a dentist. When Employee E returned from the dental visit, according to the Respondent, Employee E asked the Respondent to prescribe Percocet to him, as he had forgotten to ask the dentist. According to the Respondent he documented the "visit" with Employee E in his "notebook" as Employee E was not a patient of Practice A, and did not have a medical record. The Respondent acknowledged that he had prescribed Percocet to Employee E on four occasions.

25. Copies of prescriptions obtained during the Board's investigation confirmed that the Respondent had prescribed Percocet to Employee E on the following dates in 2015: August 14 (30 tablets), August 21 (30 tablets), August 28 (30 tablets) and September 4, 2015 (20 tablets).

Employee F

26. Employee F, a female employed by Practice A, worked at the "front desk."

27. On or about July 25, 2015, Employee F complained to the Respondent of "knee pain" and the Respondent provided her with a prescription for Tramadol.⁸

⁸ Tramadol is a Schedule IV controlled dangerous substance ("CDS").

28. During the Respondent's interview with Board staff, he stated that he was not able to examine an "employee" so he "briefly looked at her. Her knees were swollen and she was limping...".

29. The Respondent failed to document Employee F's medical care in a medical record.

Patient A

30. Patient A was the minor daughter of Employee G (a receptionist employed by Practice A).

31. According to the Respondent's March 9, 2017 interview with Board staff he acknowledged he had never met Patient A.

32. According to the Respondent, Employee G showed him a photograph of Patient A. Based on the photograph, the Respondent estimated Patient A's age as being between four and six years old and he diagnosed Patient A as having eczema.

33. Based on the Respondent's evaluation of the photograph of Patient A provided to him by Employee G, on July 27, 2015, the Respondent prescribed Westcort cream (a topical corticosteroid) to Patient A.

34. The Respondent acknowledged that he did not document the care he had rendered to Patient A in a medical record. He stated that he recorded the prescription in his personal notebook.

Patient B

35. Patient B was a female patient of Practice A, who presented with left knee pain. She had no history of taking any CDS for her knee pain.

36. During June and July 2015, Patient B saw the Respondent, a nurse practitioner and Chiropractor A for care.

37. The Respondent saw Patient B during three office visits: June 22, 2015; July 1, 2015; and July 15, 2015. During those visits the Respondent conducted therapeutic injections to Patient C's knee. He did not prescribe CDS to her.

38. On August 31, 2015, the Respondent prescribed Percocet #75 to Patient B without evaluating her or documenting the prescription in her medical record.

Patient C

39. Patient C was a female patient of Practice A, who initially presented with back pain on or about August 17, 2015.

40. Patient C saw a nurse practitioner for care on August 17 and September 9, 2015.

41. Patient C's medical record contained no documented visits with the Respondent.

42. The Respondent prescribed CDS to Patient C on two occasions without evaluating her or documenting the prescriptions in her medical record: Percocet #60 on August 17, 2015; and oxycodone with APAP #60 on August 21, 2015.

II. CONCLUSION OF LAW

Based on the foregoing Findings of Fact, Disciplinary Panel A concludes as a matter of law that the Respondent's conduct constitutes unprofessional conduct in the practice of medicine in violation of Md. Code Ann., Health Occ. II § 14-404 (a)(3)(ii).

III. ORDER

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

ORDERED that the Respondent's license is immediately **SUSPENDED**; and it is further **ORDERED**:

1. The Respondent shall enroll in the Maryland Professional Rehabilitation Program ("MPRP"). Within **5 business days**, the Respondent shall contact MPRP to schedule an initial consultation for enrollment. Within **15 business days**, the Respondent shall enter into a Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP. The Respondent shall fully and timely cooperate and comply with all of MPRP's referrals, rules, and requirements, including but not limited to, the terms and conditions of the Participant Rehabilitation Agreement(s) and Participant Rehabilitation Plan(s) entered into with MPRP, and shall fully participate and comply with all therapy, treatment, evaluations, and toxicology screenings as directed by MPRP;

2. The Respondent shall sign and update the written release/consent forms requested by the Board and MPRP. The Respondent shall sign the release/consent forms to authorize MPRP to make verbal and written disclosures to the Board, including disclosure of any and all MPRP records and files possessed by MPRP. The Respondent shall also sign any written release/consent forms to authorize MPRP to exchange with (i.e., disclose to and receive from) outside entities (including all of the Respondent's current therapists and treatment providers) verbal and written information concerning the Respondent and to ensure that MPRP is authorized to receive the medical records of the Respondent, including, but not limited to, mental health and drug or alcohol treatment records;

3. The Respondent shall remain in the MPRP for the length of time recommended by the MPRP. The Respondent shall fully, timely, and satisfactorily cooperate and comply with all MPRP recommendations and requirements, including but not limited to, the terms and conditions of any Rehabilitation Agreement(s) and Rehabilitation Plan(s) entered into with the MPRP; and it is further

ORDERED the Respondent may petition the Board to lift the suspension of his medical license, but only after MPRP advocates that the Respondent is safe to resume the practice of clinical medicine; and it is further

ORDERED that on the termination of the Respondent's suspension, Panel A or the Board may impose additional terms and conditions including but not limited to probation; and it is further

ORDERED that if the Respondent allegedly fails to comply with any term or condition of 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 the Board or Panel A; and it is further

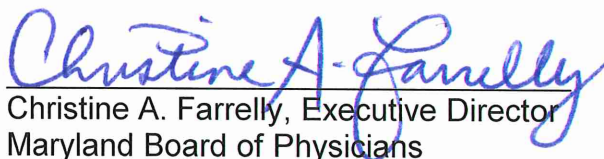
ORDERED that, after the appropriate hearing, if the Board or Disciplinary Panel determines that the Respondent has failed to comply with any term or condition of this Consent Order, the Board or Disciplinary Panel may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, or suspend or revoke the Respondent's license to practice medicine in Maryland. The Board or 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 the Respondent shall comply with all laws governing the practice of medicine under the Maryland Medical Practice Act and all rules and regulations promulgated thereunder; 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 this Consent Order shall be a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen Prov. §§ 4-101-4-601 (2014 & 2016 Supp.).

10/13/2017
Date


Christine A. Farrelly, Executive Director
Maryland Board of Physicians

CONSENT

I, Surendra Kumar, M.D., License No. D32224, 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.

OCTOBER - 5th - 2017
Date

Surendra Kumar
Surendra Kumar, M.D.
Respondent

STATE OF MARYLAND

CITY/COUNTY OF: Bowie/PRINCE GEORGES

I HEREBY CERTIFY that on this 5 day of OCT, 2017, before me, a Notary Public of the State and County aforesaid, personally appeared Surendra Kumar, 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.

[Signature]
Notary Public

My commission expires: 10/30/2019

