

IN THE MATTER OF	*	BEFORE THE
RAKESH K. MATHUR, M.D.	*	MARYLAND STATE
RESPONDENT	*	BOARD OF PHYSICIANS
License Number: D39170	*	Case Number: 7719-0073A
* * * * *	*	* * * * *

CONSENT ORDER

On September 19, 2019, Disciplinary Panel A ("Panel A") of the Maryland State Board of Physicians (the "Board") charged **RAKESH K. MATHUR, M.D.** (the "Respondent"), License Number D39170, with violating conditions of probation initially set forth in the Consent Order dated July 27, 2012 (the "2012 Consent Order"), and continued in the Order Terminating Suspension and Imposing Probation, issued by the Board on May 29, 2013. Specifically, the Board placed the Respondent on probation for a minimum of five years and ordered that he be subject to a chart and/or peer review.

Panel A charged the Respondent with violating the following terms and condition of the 2012 Consent Order:

ORDERED that...the Respondent will be placed on probation for a minimum period of five (5) years, with the following terms and conditions:

- ...
- d. The Respondent is subject to a chart and/or peer review
- e. The Respondent shall comply with the Maryland Medical Practice Act and all laws and regulations applicable to the practice of medicine in Maryland[.]

Panel A also charged the Respondent under the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") §§ 14-101 *et seq.* (2014 Repl. Vol. and 2018 Supp.).

The pertinent provisions of the Act under Health Occ. § 14-404 provide the following:

- (a) 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;
 - ...
 - (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 maintain adequate medical records[.]

On January 15, 2020, 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

Panel A finds:

1. The Respondent was initially licensed to practice medicine in Maryland on October 11, 1989, under License Number D39170. The Respondent's license is scheduled to expire on September 30, 2021.
2. The Respondent is board-certified in anesthesiology.
3. The Respondent practices in a group medical office ("Group Practice") in Baltimore, Maryland.¹

PRIOR DISCIPLINARY HISTORY

FEBRUARY 2012 SUMMARY SUSPENSION AND CHARGES UNDER THE MARYLAND MEDICAL PRACTICE ACT

4. Effective February 7, 2012, the Board summarily suspended the Respondent's license to practice medicine after concluding that his improper and excessive prescribing and dispensing of Controlled Dangerous Substances ("CDS") constituted a substantial likelihood of risk of serious harm to the public health, safety, or welfare that imperatively required emergency action.
5. On February 14, 2012, the Board charged the Respondent with the following provisions of Health Occ. § 14-404(a): (3) Is guilty of (i) immoral conduct in the practice of medicine; (3)(ii) unprofessional conduct in the practice of medicine; (22)

¹ The names of the medical office and patients are confidential.

failure to meet the standard of quality care; (27) sells, prescribes, gives away, or administers drugs for illegal or illegitimate purposes; and (40) fails to keep adequate medical records, based on his improper CDS dispensing and prescribing.

6. On April 27, 2012, the Board convened a hearing to give the Respondent the opportunity to show cause why the summary suspension should not be continued. After considering the arguments presented, the Board ordered the continuation of the Respondent's summary suspension.

JULY 2012 CONSENT ORDER

7. On July 27, 2012, in order to resolve the February 2012 charges, the Respondent entered into a Consent Order with the Board in which the Board concluded as a matter of law that the Respondent violated the provisions of the Act with which he had been charged.
8. The Board terminated the summary suspension of the Respondent's license, suspended his license, permanently banned him from dispensing medication, and required him to pay of fine of \$25,000 within two years. The Board further ordered the Respondent to complete Board-approved courses on internal medicine, medical recordkeeping, and ethics within the first six months of the probationary period.
9. The Board further ordered that if the Respondent successfully completed the conditions applicable to the suspension, his suspension would terminate on December 31, 2012, and that upon the termination of the suspension, the Respondent would be placed on probation for five years.

10. The terms of probation prohibited the Respondent from prescribing CDS, except for in an emergency, in which case the dosage period was limited to three days. The Respondent was prohibited from practicing pain management and was subject to chart and/or peer review.

MAY 2013 ORDER TERMINATING SUSPENSION AND IMPOSING PROBATION

11. On May 29, 2013, following the Respondent's completion of the required courses, the Board issued an Order that terminated the Respondent's suspension, reiterated the requirement that he pay the \$25,000 fine and the permanent dispensing ban, placed him on probation for a minimum of five years, required that he not prescribe CDS or practice pain management, and required him to undergo peer and/or chart review of his patient care.

DECEMBER 2014 CHARGES AND MARCH 2015 CONSENT ORDER

12. On December 17, 2014, Disciplinary Panel A ("Panel A")² of the Board charged the Respondent with failing to pay the \$25,000 fine by October 3, 2014,³ in violation of a condition in his May 29, 2013 Consent Order. Panel A also charged the Respondent with unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii).

² Chapter 401, Acts 2013 created the Board's disciplinary panels

³ Panel A had extended the Respondent's payment deadline from July 24, 2014 to October 3, 2014.

13. On March 31, 2015, the Respondent entered into a Consent Order with the Board, in which Panel A concluded as a matter of law that the Respondent violated the terms under the terms of which, *inter alia*, he remained suspended until such time as he paid the fine. The Board further ordered that the Respondent remain on probation consistent the terms of his prior Orders.

APRIL 15, 2015 ORDER TERMINATING SUSPENSION

14. Effective April 15, 2015, Panel A terminated the Respondent's suspension upon the Respondent's payment of the \$25,000 fine.
15. The Order expressly stated that the Respondent remained on probation and subject to the probationary terms of his prior Orders.
16. The Respondent remains on probation pursuant to the remaining terms of the 2012 Consent Order; specifically, that he is subject to chart and/or peer review.

CURRENT ALLEGATIONS

17. In February 2018, pursuant to the terms of the July 2012 Consent Order, Board staff notified the Respondent that he was subject to peer review and issued a subpoena for 10 patient records.
18. The Respondent advised that he is employed as an independent contractor at the Group Practice and is paid a fixed amount for each vagus nerve stimulation device he places. Stivax, the vagus nerve stimulation device the Respondent places, is intended to treat pain and various neuropathies.

19. According to product information provided by the Respondent, “The Stivax is a single use, battery-powered, electrical nerve stimulator which is used for the stimulation of the vagus nerves via the ear. The device connects an electrode cable to two sterile (radiation) acupuncture needles that have been applied by a healthcare practitioner. The stimulator connects to a clip holder on medical grade adhesive tape.”
20. Further, according to product information provided by the Respondent, “Stivax is an electro-acupuncture device for use in the practice of acupuncture by qualified practitioners of acupuncture as determined by the states.”
21. Health Occ. § 14-504 provides in pertinent part:

§ 14-504. Acupuncture

...

- (b) *Registration required.* – Unless licensed under Title 1A [the Maryland Acupuncture Act] of this article, a physician shall be registered by the Board before the physician may perform acupuncture in this State.
- (c) *Qualifications for registration.* – The Board shall register to perform acupuncture any physician who meets the following requirement:

(1)(i) Successful completion of at least 200 hours of training in a program of study in acupuncture, including any examinations required under the program, approved for category 1 continuing education by an institution accredited or recognized by the Accreditation Council of Continuing Medical Education; or

(ii) Successful completion of a course of study approved by the Board which includes at least 200 hours of instruction in:

1. General and basic aspects of acupuncture;
2. Specific uses and techniques of acupuncture; and
3. Indications and contraindications of acupuncture administration;

- (2) Ability to communicate in the English language;
- (3) Payment of application and registration fees; and
- (4) Other reasonable conditions determined by the Board[.]

22. The Respondent does not meet the qualifications to perform acupuncture in Maryland.

FINDINGS OF THE PEER REVIEWERS

23. Two peer reviewers, both of whom are board-certified in anesthesiology, determined that the Respondent failed to meet the standard of quality care and failed to keep adequate medical records in all 10 of the patient records they reviewed.

24. The peer reviewers concurred that the Respondent:

- a) Failed to document medical history, physical examination or medical reasoning for use of Stivax;
- b) Failed to document the Stivax placement procedure to a degree that another physician could reproduce the procedure;
- c) Failed to sign Stivax procedure notes. When Board staff inquired why his signature did not appear on any of the records, the owner of the Practice submitted a “clinical addendum” indicating that the Respondent had treated the patients on specific dates.

CONCLUSIONS OF LAW

Panel A concludes that the Respondent violated the terms of the 2012 Consent Order, committed unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii); failed to meet the standard of quality medical 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 Disciplinary Panel A of the Board, hereby:

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

ORDERED that that the Respondent is placed on **PROBATION** for a minimum of **TWO YEARS**. During probation, the Respondent shall comply with the following terms and conditions of probation:

(1) Within **15 DAYS**, the Respondent shall enroll in a Board-approved program (the “Program”) for the purpose of assessing his clinical competency and medical documentation:

(a) the Respondent shall fully and timely cooperate and comply with all of the Program’s rules, and requirements;

(b) the Respondent shall sign and update the written release/consent forms requested by the Board and the Program, including release/consent forms to authorize the Program to make verbal and written disclosures to the Board and to authorize the Board to disclose relevant information from Program records and files in a public order. The Respondent shall not withdraw his release/consent;

(c) the Respondent’s failure to comply with any of the above terms or conditions constitutes a violation of the Consent Order;

(d) a determination by the Program that the Respondent is not clinically competent to practice medicine shall be deemed a violation of this Consent Order;

(2) Respondent shall be subject to supervision for a minimum of **ONE YEAR**⁴ by a disciplinary panel-approved supervisor who is board-certified in anesthesiology as follows:

(a) within **30 CALENDAR DAYS** of 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 there is no personal or professional relationship with the supervisor;

(b) the Respondent's proposed supervisor, to the best of the Respondent's knowledge, should not be an individual who is currently under investigation, and has not been disciplined by the Board within the past five years;

⁴ If the Respondent is not practicing medicine, the supervision shall begin when the Respondent resumes the practice of medicine and the disciplinary panel has approved the proposed supervisor. The Respondent shall submit the name of a proposed supervisor within 30 days of resuming the practice of medicine and shall be subject to supervision by a disciplinary panel approved supervisor upon the return to the practice of medicine.

- (c) if the Respondent fails to provide a proposed supervisor's name within 30 calendar days from the effective date of the 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 a name and professional background, and written notice of confirmation from a different supervisor;
- (e) the supervision begins after the disciplinary panel approves the proposed supervisor;
- (f) the disciplinary panel will provide the supervisor with a copy of this Consent Order and any other documents 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 practicable, 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 Respondent has submitted the name and professional background, and written notice of confirmation, from a proposed replacement supervisor to the disciplinary panel;
- (i) it shall be the Respondent's responsibility to ensure that the supervisor:

(i) reviews the records of 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 and discuss in-person with the Respondent the care the Respondent has provided for these specific patients;

(iii) be available to the Respondent for consultations 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.

(j) if the disciplinary panel, upon consideration of the supervisory reports and the Respondent's response, if any, has a reasonable basis to believe that the Respondent is not meeting the standard of quality care or failing to keep adequate medical records in his or her practice, the disciplinary panel may find a violation of probation after a hearing; and it is further

(3) Within **ONE YEAR**, the Respondent shall pay a civil fine of \$5,000. The Payment shall be by money order or bank certified check made payable to the Maryland Board of Physicians and mailed to P.O. Box 37217, Baltimore,

Maryland 21297. The Board will not renew or reinstate the Respondent's license if the Respondent fails to timely pay the fine to the Board;

- (4) The Respondent may not prescribe Controlled Dangerous Substances (CDS), as defined in Maryland's statutes and regulations, except for in the case of an emergency. And, in the case of an emergency, the CDS prescription may not be for a dosage period of more than three days;
- (5) The Board may conduct pharmacy runs to ensure that the Respondent complies with the probationary CDS prescribing limitations
- (6) The Respondent may not practice pain management; and it is further

ORDERED that the Respondent shall **CEASE AND DESIST** from the placement of electrical vagal nerve stimulants, including but not limited to Stivax, until such time as he qualifies and has registered to perform acupuncture, under Health Occ. § 14-504; and it is further

ORDERED that the Respondent is permanently banned from dispensing medication; and it is further

ORDERED that if the Respondent allegedly fails to comply with any term 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 B and it is further

ORDERED that, after the appropriate hearing, if the Board or a disciplinary panel determines that the Respondent has failed to comply with any term of this Consent Order, the Board or a 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 a 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 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. *See* Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6)

03/04/2020

Date

Signature on File

Christine A. Farrelly
Executive Director
Maryland State Board of Physicians

CONSENT

I, Rakesh K. Mathur, M.D., assert that I am aware of my right to consult with and be represented by counsel in considering this Consent Order and in any proceedings that would otherwise result from the charges currently pending. I have chosen to proceed without counsel and I acknowledge that the decision to proceed without counsel is freely and voluntarily made.

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 this right 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 my 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 into 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.

Signature on File

2/28/2020
Date

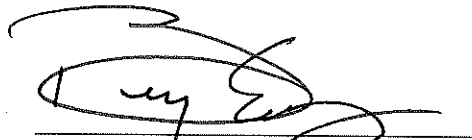
~~Rakesh K. Mathur, M.D.
Respondent~~

NOTARY

STATE OF Maryland
CITY/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 28 day of February 2020, before me, a Notary Public of the foregoing State and City/County, personally appeared Rakesh K. Mathur, M.D., and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.



Notary Public

My Commission expires: 09/08/2020

