

IN THE MATTER OF	*	BEFORE THE
JONATHAN SAFREN, M.D.	*	MARYLAND STATE
Respondent	*	BOARD OF PHYSICIANS
License Number: D41711	*	Case Number: 2016-0273A
* * * * *	*	* * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

On February 17, 2017, Disciplinary Panel A of the Maryland State Board of Physicians (the "Board") charged **JONATHAN SAFREN, M.D.** (the "Respondent"), License Number D41711, under the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. II ("Health Occ. II") §§ 14-101 *et seq.* (2014 Repl. Vol.)

Specifically, Disciplinary Panel A charged the Respondent with violating the following provision of the Act under Health Occ. II § 14-404:

- (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[.]

On May 10, 2017, the Respondent appeared before Panel A, sitting as a Disciplinary Committee for Case Resolution. As a result of negotiations occurring before Panel A, the Respondent agreed to enter into the following Consent Order,

consisting of Procedural Background, Findings of Fact, Conclusions of Law, Order, Consent and Notary.

### FINDINGS OF FACT

Panel A makes the following Findings of Fact:

#### **I. 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 in Maryland on or about May 6, 1991, under License Number D41711. The Respondent's license is currently active and is scheduled for renewal on September 30, 2017.

2. The Respondent is board certified in cardiology and internal medicine.

3. At all times relevant hereto, the Respondent had medical staff privileges at a health care facility ("the "Facility")<sup>1</sup> located in Maryland.

4. From in or around June 2011 until in or around July 2013, the Respondent was professionally associated with a practice group (the "Practice Group") at the Facility. During this time period, the Respondent was authorized to access the Facility's electronic medical records ("EMR") system.

5. In or around July 2013, the Respondent voluntarily resigned from his employment relationship with the Practice Group. The Respondent continued to maintain active, clinical privileges as a member of the Facility's medical staff. As a member of the Facility's medical staff, the Respondent was permitted to access the Facility's EMR system.

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<sup>1</sup> To ensure confidentiality, the names of all health care facilities, patients or other individuals will not be identified by name in this document. The Respondent is aware of the identity of all health care facilities, patients and other individual referenced herein.

6. In or around September 2013, the Respondent associated with another health care organization and established offices near his former Practice Group. The Respondent practiced at these offices until in or around January 2016, when he relocated to the health care facility where he now serves as Chief of Cardiology.

## **II. FACILITY REPORT**

7. After receiving reports from physicians from his former Practice Group alleging that the Respondent contacted them about treatment of their patients, the Facility initiated an investigation to determine if the Respondent accessed patient EMR without authorization.

8. The Facility's audit alleged that the Respondent inappropriately accessed the EMR of approximately 250 patients. With regard to 15 of the patient names accessed, the Facility alleged that it found no evidence that the Respondent was the admitting, attending or consulting physician or that he had a treatment relationship with the patient(s).

9. In or around March 2015, the Facility submitted a Mandated 10-Day Report (the "Report") to the Board in which it reported the following:

*A dispute arose between the hospital and the physician concerning whether the physician had inappropriately accessed patient records in the Hospital's medical record system. This dispute was unrelated to quality of patient care. The physician denied any inappropriate access. The physician decided to voluntarily resign his privilege and move his practice elsewhere.*

## **III. BOARD INVESTIGATION**

10. The Board subsequently initiated an investigation following the receipt of the Facility's Report.

11. In conjunction with that investigation, Board staff interviewed the Respondent under oath about his access of patient medical records in the Facility's EMR system. Board staff questioned the Respondent about the Facility's allegations that he accessed the EMR of patients at the Facility with whom he did not have a documented treatment relationship.

12. The Respondent stated that following his resignation from the Practice Group and while still a member of the Facility's medical staff, the Facility did not supply him with a new password for approximately two (2) months during which he was unable to access the Facility's EMR system. During that period of time, the Respondent stated that a colleague and former practice partner voluntarily lent the Respondent his username and password. The Respondent represented that he accessed the Facility's EMR system using the colleague's username and password, primarily to inform his patients of his new practice arrangement and location, and to provide continuity of care to his active patient population.

13. The Respondent acknowledged that during the Facility's audit period, he accessed the EMR of approximately 250 patients. The Respondent stated that he either had treatment relationships with these patients or inadvertently/unintentionally accessed the records of patients while searching for specific patient contact information in the Facility's EMR system. The Respondent provided no explanation for accessing the EMR of 12-to-14 patients that the Facility cited in its audit, and acknowledged that a few of those records involved his professional colleagues.

14. The Respondent acknowledged that he provided his user name and password to three staff members at his office in order to access the Facility's EMR system to obtain patient contact information.

15. The Respondent acknowledged that he did not appreciate the significance of his misjudgment in accessing patient information through the Facility's EMR system, using a colleague's user name and password. The Respondent further acknowledged that he inadvertently accessed patient information for patients whose names sounded similar to those of his own patients, and that this unintentional access was not authorized. The Respondent acknowledged that allowing his staff to use his username and password for the primary purpose of notifying patients of his new office location and practice arrangement was impermissible and a lapse in judgment.

#### CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Panel A concludes as a matter of law that the Respondent violated the following provision of the Act under Health Occ. II § 14-404(a): (3) Is guilty of: (ii) Unprofessional conduct in the practice of medicine.

#### ORDER

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

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

**ORDERED** that within **SIX (6) MONTHS**, the Respondent shall pay a civil fine in the amount of **FIVE THOUSAND DOLLARS (\$5,000.00)**, by money order or bank certified check, made payable to the Maryland Board of Physicians, P.O. Box 37217, Baltimore, Maryland 21297; and it is further

**ORDERED** that the Respondent is placed on **PROBATION**<sup>2</sup> until he has complied with the following terms and conditions:

1. Within **SIX (6) MONTHS**, the Respondent shall successfully complete a Board disciplinary panel-approved course in medical records privacy issues. The course may not be used to fulfill the continuing medical education credits required for license renewal. The Respondent must provide documentation to the Board that the Respondent has successfully completed the course;

2. Within **SIX (6) MONTHS**, the Respondent shall successfully complete a Board disciplinary panel-approved course pertaining to Health Insurance Portability and Accountability Act (HIPAA) compliance issues. The course may not be used to fulfill the continuing medical education credits required for license renewal. The Respondent must provide documentation to the Board that the Respondent has successfully completed the course;

3. Within **ONE (1) YEAR**, the Respondent shall provide Grand Rounds instruction in medical records privacy issues at all health care facilities where he maintains active privileges. Prior to providing this instruction, the Respondent shall notify and consult with the HIPAA Compliance Department of the health care facilities where he maintains active privileges. The Respondent shall submit a written proposal to the Board or Panel A and obtain prior Board or Panel A approval before commencing providing such instruction. The Respondent shall provide not less than five hours of Grand Rounds instruction at each health care facility where he maintains active privileges.

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<sup>2</sup> If Dr. Safren's license expires while he is on probation, the probationary period and any probationary conditions will be tolled.

4. The Respondent shall comply with the Maryland Medical Practice Act, Health Occ. II § 14-101 -- 14-702, and all laws and regulation governing the practice of medicine in Maryland.

**AND IT IS FURTHER ORDERED** that if the Respondent has fully and timely complied with the terms and conditions of probation, and there are no pending complaints related to the charges, the Board or Panel A will administratively terminate the probation. The administrative termination of probation will be issued through an order of the Board or Board panel; and it is further

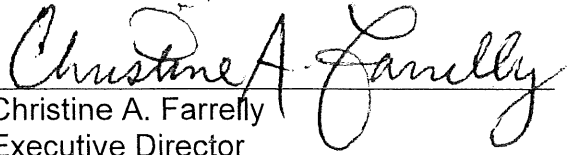
**ORDERED** that if the Board or Panel A determines, after notice and an opportunity for a hearing before an Administrative Law Judge of the Office of Administrative Hearings if there is a genuine dispute as to a material fact or a show cause hearing before the Board or Panel A if there is no genuine dispute as to a material fact, that the Respondent has failed to comply with any term or condition of this Consent Order, the Board or Panel A 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 Panel A 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 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 the Respondent is responsible for all costs incurred in fulfilling the condition of this Consent Order; and it is further

**ORDERED** that this Consent Order is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Provisions §§ 4-101 *et seq.* (2014).

06/08/2017  
Date

  
Christine A. Farrelly  
Executive Director  
Maryland State Board of Physicians

**CONSENT**

I, Jonathan Safren, M.D., acknowledge that I have had the opportunity to consult with counsel before signing this document. By this Consent, I agree and accept to be bound by this Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact, Conclusions of Law and Order.

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 as provided by law. I acknowledge the legal authority and the jurisdiction of Disciplinary Panel A to initiate these proceedings and to issue and enforce this Consent Order. I also affirm that I am waiving my right to appeal any adverse ruling of Disciplinary Panel B that might have followed any such hearing.

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



May 30, 2017  
Date

Jonathan Safren MD  
Jonathan Safren, M.D.  
Respondent

Read and approved:

Natasha Wesker  
Natasha Wesker, Esquire  
Counsel for Dr. Safren

NOTARY

STATE OF Maryland

CITY/COUNTY OF Carroll Westminster

I HEREBY CERTIFY that on this 30 day of May 2017,  
2017, before me, a Notary Public of the foregoing State and City/County, did personally  
appear Jonathan Safren, 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 notary seal.

Cheryl D. Ebaugh  
Notary Public

My commission expires: 3/24/2018

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.

Cheryl D. Ebaugh

Christine A. Lanelly  
EXECUTIVE DIRECTOR  
MARYLAND BOARD OF PHYSICIANS