

IN THE MATTER OF
Andrea N. Bailey, M.D.,
Respondent.

License No. D44694

*** BEFORE THE MARYLAND**
*** STATE BOARD OF**
*** PHYSICIANS**
*** Case No. 7717-0017B**

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ORDER AFTER SHOW CAUSE HEARING

Introduction

The issue in this case is whether Andrea N. Bailey, M.D. (“Dr. Bailey”) has violated the conditions of the Consent Order executed on August 25, 2016 (“2016 Consent Order”) by the Maryland State Board of Physicians (the “Board”). The Consent Order required Dr. Bailey to enroll in the Maryland Professional Rehabilitation Program (“MPRP”), and to comply with the requirements of any MPRP Rehabilitation Agreement and Rehabilitation Plan. Disciplinary Panel B (“Panel B”) of the Board is issuing this order after consideration of the presentations made by the State and Dr. Bailey at the show cause hearing held on September 27, 2017. Dr. Bailey admitted that she self-prescribed and refilled medications under a fictitious name while enrolled in MPRP, conduct that violated her MPRP Rehabilitation Agreement and the 2016 Consent Order, and for which she was terminated for cause from the program on June 12, 2017.

FINDINGS OF FACT

Licensure, Professional, and Employment Background

Dr. Bailey was originally licensed by the Board in 1993. Following the expiration of her license in 2009, Dr. Bailey submitted an application for reinstatement in October 2014, and the Board reinstated her license in December 2014. Dr. Bailey has also held medical licenses in New York and Virginia. Dr. Bailey does not hold any hospital privileges and is not board-certified by the American Board of Medical Specialties. Pediatrics is her self-reported area of specialization.

From October 2010, to September 2011, Dr. Bailey was employed by a private pediatric practice in Virginia, and worked at a Community Health Center in Virginia from 2012 to 2013. From approximately 2013 to approximately 2015, Dr. Bailey was employed part-time as a *locum tenens* physician with clinical assignments in Maryland and Virginia. She was employed part-time at a private pediatric office in Southern Maryland from approximately March 2016 to approximately October 2016. Dr. Bailey was also employed part-time at a private pediatric office on the Eastern shore of Maryland from approximately March 2016 to May 16, 2017, when she was terminated from that position.

Past Criminal and Disciplinary History

Virginia

Dr. Bailey was arrested in February 2013, by Virginia criminal authorities, and pled guilty in April 2013 to obtaining drugs by fraud and attempted prescription fraud between April 2010 and February 2013. The court deferred disposition until May 2015, at which time Dr. Bailey was convicted of attempted prescription fraud pursuant to her guilty plea. In March 2015, the Virginia Board of Medicine ("Virginia Board") summarily suspended Dr. Bailey's medical license based on her writing of controlled substances prescriptions for her personal use in the name of fictitious patients.

Maryland

Pursuant to a Consent Agreement dated April 2, 2015, the Maryland Board suspended Dr. Bailey's license until her license was reinstated by the Virginia Board. On July 22, 2015, the Virginia Board subsequently stayed the suspension of Dr. Bailey's license and on July 30, 2015, the Maryland Board stayed her suspension in Maryland.

New York

In December 2015, the New York State Board for Professional Medical Conduct (“New York Board”) issued charges against Dr. Bailey based on the disciplinary actions by the Maryland and Virginia medical boards. The charges also included unprofessional conduct based on Dr. Bailey’s fraudulent answers to questions and filing of a false report on her New York registration renewal application for her failure to disclose that criminal charges were pending against her in Virginia. In March 2016, the New York Board revoked Dr. Bailey’s license in that state after holding a hearing on the charges at which she did not appear. The Virginia Board subsequently suspended her license as a reciprocal action.

2016 Consent Order

On May 26, 2016, Panel B of the Maryland Board issued charges against Dr. Bailey, based on false responses she provided to questions on her application for reinstatement of her Maryland medical license¹ in October 2014, and a determination that she submitted an altered CME certificate² with her application. Panel B charged Dr. Bailey with fraudulently attempting to obtain a license, unprofessional conduct in the practice of medicine, filing a false report in the practice of medicine, and making false representations on her reinstatement application, in

¹ Question 16 on the 2014 reinstatement Application required Dr. Bailey to answer thirteen sub-questions regarding her character and fitness to practice medicine based on events since her last application. Despite her guilty pleas to Virginia criminal authorities in 2013 to obtaining drugs by fraud and attempted prescription fraud, Dr. Bailey falsely answered “NO” to Question 16(g) which asked: Have you committed a criminal act to which you pled guilty or *nolo contendere* or for which you were convicted or received probation before judgment? Dr. Bailey also falsely answered “NO” to Question 16(i) which asked: excluding minor traffic violations, are you currently under arrest, released on bond, or are there any current or pending criminal charges against you in any court of law? Dr. Bailey was required to answer “YES” because the Virginia criminal court took her guilty plea to attempted prescription fraud under advisement in 2013 pending a disposition from the court. Dr. Bailey certified that the information she provided on her application was true. *See* 2016 Consent Order, ¶¶ 13-42, pp. 4-10.

² Dr. Bailey attached a certificate of continuing medical education (“CME”) to her application to show that she had taken a pediatric review course for 60 CMEs in May 2014. A subsequent investigation by the Board revealed that Dr. Bailey had altered the CME certificate she submitted with her application and that the actual date of the course was May 2001. On November 12, 2015, pursuant to a Board subpoena, Dr. Bailey testified under oath that she falsified the CME certificate.

violation of Md. Code Ann., Health Occ. II (“Health Occ. II”) §§ 14-404(a)(1), (3), (11), and (36), respectively. Panel B also charged Dr. Bailey with being disciplined by the New York Board for acts that would be grounds for disciplinary action in Maryland pursuant to Health Occ. II § 14-404(a)(21).

On August 25, 2016, Dr. Bailey entered into a Consent Order with Panel B to resolve the charges. Panel B concluded that Dr. Bailey violated Md. Code Ann., Health Occ. II §§ 14-404(a)(1), (3), (11), and (36) by failing to disclose her guilty pleas in 2013 for prescription fraud in Virginia on her 2014 reinstatement application to the Maryland Board. Pursuant to the reciprocal discipline provisions of Health Occ. II § 14-404(a)(21), Panel B also concluded that Dr. Bailey’s revocation by the New York Board constituted discipline by the licensing board of another state for acts that would be grounds for disciplinary action in Maryland under Health Occ. II §§ 14-404(a)(1), (3), (11), and (36), if committed in this state. These acts included unprofessional conduct based on Dr. Bailey’s fraudulent answers to questions and filing of a false report on her New York registration renewal application based on her failure to disclose that criminal charges were pending against her in Virginia.

Requirements of the 2016 Consent Order

In the 2016 Consent Order, Dr. Bailey agreed to a reprimand and probation for a minimum period of four (4) years with certain terms and conditions, including an ethics course which she completed in April 2017. Condition 1 of the Consent Order also stated as follows:

Respondent shall enroll in the Maryland Professional Rehabilitation Program (“MPRP”). Within five (5) business days, Respondent shall contact MPRP to schedule an initial consultation for enrollment. Within fifteen (15) business days, 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.

The 2016 Consent Order also stated that:

. . . any violation of the terms and conditions of probation is a violation of this Consent Order.

In addition, the 2016 Consent Order provided that:

If the Board or Panel B determines, after notice and an opportunity for . . . a show cause hearing before the Board or Panel B if there is no genuine dispute as to a material fact, that the Respondent has failed to comply with any term or condition of probation or this Consent Order, the Board or Panel B may extend Respondent's probation with appropriate terms and conditions, or suspend, or revoke Respondent's license to practice medicine in Maryland. . . .

Dr. Bailey agreed to the conditions and signed the Consent Order. On September 8, 2016, Dr. Bailey enrolled in MPRP and entered into a Five-Year Rehabilitation Agreement. The pertinent portions of the Agreement are as follows:

- a. Provision 12 – I will neither self-prescribe nor provide my own medical care or treatment.
- b. Any violation of the provisions below, without exception, will be reported to the Board, which, at its sole discretion, may declare such events as non-compliance.

On September 8, 2016, Dr. Bailey also agreed to comply with the requirements of her Rehabilitation Plan, which included:

- a. Outpatient therapy with a physician;
- b. A vocational monitor;
- c. Daily check-in and monthly face-to-face meeting with MPRP; and
- d. Toxicology monitoring.

Violation of the 2016 Consent Order

May-June 2017: Non-Compliance with MPRP Conditions

On May 10, 2017, MPRP reported a critical event to the Board based on notification from Dr. Bailey that she had been contacted by a detective in Virginia for “practicing medicine without a license.” Dr. Bailey informed MPRP staff that for some period of time, she had been

self-prescribing a non-controlled dangerous substance (“non-CDS”) and filling it in Maryland. She stated that on this occasion, she was unable to pick it up in Maryland, so she picked it up in Virginia. Dr. Bailey does not have an active license to practice medicine in Virginia.

Dr. Bailey failed to inform MPRP that police in Virginia Beach had issued a warrant for her arrest and that she was being investigated in the Commonwealth of Virginia for prescription fraud for writing a prescription, intended for herself, in the name of a fictitious person. She also failed to inform MPRP that she had been picking up prescriptions at a pharmacy in Virginia which she had self-prescribed in the name of a fictitious person on other occasions as well as the one occasion when a pharmacist became suspicious.³

On May 11, 2017, MPRP notified the Board that Dr. Bailey had failed to check-in⁴ as required by her Rehabilitation Plan, and that she may be in the custody of Virginia law enforcement. MPRP also informed the Board that Dr. Bailey’s employer/vocational monitor terminated Dr. Bailey’s employment based on concerns about her unreliability and behavior in the pediatric office where she was employed.

On May 15, 2017, the Board sent correspondence to Dr. Bailey advising her that it had received a critical event report from MPRP, described the report, and requested her written response to the report.

On May 16, 2017, Dr. Bailey’s outpatient psychiatrist informed MPRP that he had been contacted by a detective in Virginia who informed him that Dr. Bailey was writing prescriptions for herself. The physician stated that he was unable to “help” Dr. Bailey although he has seen her for years.

³ A police investigation in Virginia determined that between September 2015 and March 2017, Dr. Bailey submitted numerous prescriptions to a pharmacy in Virginia Beach for herself in the name of a fictitious person.

⁴ Under the terms of her Agreement with MPRP, Dr. Bailey was required to “check-in” by phone or email.

On May 25, 2017, the Board received a written response from Dr. Bailey in which she stated that she did not realize until after she had completed the ethics course that self-prescribing with any other name than her own “would get [her] into trouble.” She also stated that she wrote the prescriptions for herself to “continue my therapy with medications previously prescribed to me for [certain] . . . diagnosed conditions.”⁵

On June 12, 2017, MPRP notified Dr. Bailey in writing that she was being discharged from MPRP “for cause.” The causes cited by MPRP included Dr. Bailey’s failure to comply with conditions of her Rehabilitation Agreement and Rehabilitation Plan as follows:

- a. Her arrest on May 10, 2017 resulting in MPRP’s inability to monitor her for at least nine days;
- b. Her admission in a phone call on May 19, 2017, that she had been self-prescribing for the duration of her participation in MPRP since September 2016, which is a violation of Provision 12⁶ of her Agreement.
- c. Her termination as a patient by her psychiatrist due to non-compliance in treatment;
- d. MPRP’s inability to meet with her; and
- e. Her refusal to sign a practice cessation agreement that was sent to her on May 30, 2017, followed by two additional reminders that were sent by email and two by telephone.

A subsequent Board investigation confirmed Dr. Bailey’s arrest for prescription fraud in Virginia in 2017 and the termination of her employment by the pediatric practice on Maryland’s Eastern shore. Dr. Bailey also admitted to self-prescribing in a sworn Board interview.

⁵ The specific diagnoses have been omitted in this Order.

⁶ Provision 12 of Dr. Bailey’s MPRP Agreement states: I will neither self-prescribe nor provide my own medical care or treatment.

May 2017: Current Criminal Case in Virginia for Self-Prescribing under a Fictitious Name

On May 11, 2017, Dr. Bailey was arrested by the Virginia Beach Police Department and charged with one count of felony prescription fraud and one count of misdemeanor practicing without a medical license for actions that occurred on April 2, 2017. Investigation by the Virginia Beach Police Department revealed that a pharmacist at a chain pharmacy notified the police that Dr. Bailey picked up a prescription for a non-CDS medication and later attempted to pick up a prescription for a different non-CDS medication under a fictitious name and fictitious date of birth. Dr. Bailey told the pharmacist that she was an active practitioner in the Commonwealth of Virginia. The Virginia Beach Police Department also called Dr. Bailey's pediatric office employer on Maryland's Eastern shore about her arrest. The Commonwealth Attorney informed the Board that Dr. Bailey was arrested but was currently out on a \$25,000 surety bond with pretrial supervision and drug and alcohol screenings following a hearing on May 22, 2017. The Commonwealth Attorney also apprised the Board that numerous blank prescription pads with other doctors' names were found in Dr. Bailey's car when she was arrested.

May 16, 2017: Termination from Employment

From October 2016 through May 2017, vocational reports from Dr. Bailey's pediatric office employer to MPRP showed ratings that went from "excellent" to "poor" in the categories of attendance, relationship with colleagues, managing stress, and overall quality of work. Dr. Bailey was given a neutral rating in work performance with problems involving "decreasing reliability, not completing work on time, leaving without notifying anyone, and a change in relationship with staff and patients." More specifically, beginning in October 2016, on several occasions Dr. Bailey left the office, and also submitted a text regarding being out sick without

informing the manager on duty. In February 2017, she was two hours late for an evening shift with additional incidents of being gone from the office for 30 to 40 minutes without the staff having knowledge of her whereabouts. In April 2017, the practice counseled Dr. Bailey regarding staff and parent complaints that she was rude to parents, left patients in examining rooms for extended periods of time while she was in the break area, and left the medical office while she had patients waiting to be seen. In May 2017, there was a complaint that Dr. Bailey had left the building while her patients were waiting to be seen, without informing the manager on duty, a situation that required another pediatrician having to see her patients. In addition, there were reports that Dr. Bailey failed to document her clinical activity in two patients' charts and failed to answer about a dozen calls during the night when she was "on-call." On May 16, 2017, the pediatric practice terminated Dr. Bailey's employment.

July 3, 2017: Board Interview under Oath – Admission to Self-Prescribing

In a telephonic interview with Board staff under oath on July 3, 2017, Dr. Bailey admitted that she had been self-prescribing medications for certain medical conditions and refilling them herself. Dr. Bailey stated that she had received these prescriptions from other physicians for previously diagnosed conditions, and at some point, did not have medical insurance or a doctor, so she "called in" her own refills using a fictitious patient's name if she ran out of refills in her own name. Dr. Bailey also acknowledged that in April 2017, she "called in" a prescription to a chain pharmacy in Virginia Beach for a medication for a medical condition in the name of a fictitious patient, and represented herself as a Maryland prescriber, after which one of the pharmacists became suspicious and reported concerns to the Virginia Beach authorities. Dr. Bailey further stated that she paid in cash for the prescriptions and had been intermittently calling in prescriptions in a fictitious name for the past ten years. She conceded

that she had no good explanation for self-prescribing her medication while enrolled in MPRP and that she knew using a fictitious name would be illegal.⁷

SHOW CAUSE HEARING

On August 9, 2017, the Office of the Attorney General issued a Violation of Consent Order and Notice of Show Cause Hearing scheduled for August 23, 2017. On August 21, 2017, Dr. Bailey requested a 30-day postponement of the hearing which was granted by Panel B. The show cause hearing⁸ was conducted on September 27, 2017.

At the hearing, Dr. Bailey did not dispute that Provision 12 of her MPRP Rehabilitation Agreement required that she not self-prescribe and not self-treat. Nor did she dispute her discharge by MPRP for failing to comply with that provision and with other conditions of her Rehabilitation Plan requiring vocational and toxicology monitoring, daily check-in and monthly face-to-face meetings with MPRP, and outpatient therapy with a mental health provider. Dr. Bailey admitted to the Panel that she self-prescribed and refilled prescriptions under a fictitious name while enrolled in MPRP and that she had done so intermittently for ten years. She also confirmed that her self-prescribing of medications led to her latest arrest in Virginia. The State argued that Dr. Bailey violated Provision 12 and thus violated a condition of her probation and the 2016 Consent Order because her arrest and criminal charges in Virginia for prescription fraud were based on her self-prescribing under a fictitious name. The State further argued that MPRP's

⁷ On July 17, 2017, Panel B summarily suspended Dr. Bailey's medical license in the state of Maryland, and continued the summary suspension after a post-deprivation hearing on July 27, 2017. Dr. Bailey's summary suspension was not at issue in the Show Cause proceedings.

⁸ The hearing was not a formal evidentiary hearing. A show cause hearing is not a full evidentiary hearing and is not a contested case proceeding under the Administrative Procedure Act. The Board uses show cause hearings to determine whether further action is necessary in cases where there are no facts in dispute, especially where it is reviewing compliance with conditions of consent orders or conditions of probation.

discharge of Dr. Bailey for cause was based on that violation of her Rehabilitation Agreement and her failure to comply with other conditions of her Rehabilitation Plan. In addition, the State highlighted the fact that Dr. Bailey was no longer under the care of a mental health provider because her psychiatrist had terminated her as a patient due to her non-compliance with treatment. The State also pointed out the serious concerns of MPRP's clinical team regarding Dr. Bailey's inability to make progress in the program.

Dr. Bailey stated that she was now under the care of a primary care physician who is responsible for prescribing her medications, and that she was making progress in another program since the summary suspension hearing.

By self-prescribing and refilling medications under a fictitious name, by being terminated from the pediatric practice where she had been employed, by being terminated from outpatient therapy by her psychiatrist, and by being terminated for cause by MPRP, Dr. Bailey failed to comply with Provision 12 of her MPRP Rehabilitation Agreement and the therapy, check-in, meeting, vocational and toxicology monitoring requirements of her MPRP Rehabilitation Plan. Based upon all of the information presented at the show cause hearing, Panel B finds that Dr. Bailey failed to comply with Condition 1 of her probation and the 2016 Consent Order. Dr. Bailey's violation is undisputed.

CONCLUSIONS OF LAW

Disciplinary Panel B concludes that Dr. Bailey violated Condition 1 of her probation and the 2016 Consent Order.

DISPOSITION

Dr. Bailey's noncompliance is of serious concern to Panel B. The privilege of medical licensure in Maryland involves a physician's obligation to fulfill conditions necessary to ensure fitness to practice medicine safely. In the 2016 Consent Order, Dr. Bailey was given an opportunity to prove to Panel B, by undergoing rehabilitation and treatment with MPRP, that she was fit to practice medicine safely. She failed to do so. Accordingly, the revocation of Dr. Bailey's license to practice medicine is the appropriate sanction in this case.

ORDER

It is, by Panel B, hereby:

ORDERED that the medical license of Andrea N. Bailey, M.D., license number D44694, is **REVOKED**; and it is further

ORDERED that the summary suspension of the medical license of Andrea N. Bailey, M.D. imposed by Panel B on July 17, 2017 and affirmed on July 27, 2017, is **TERMINATED** as moot; and it is further

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

Date

01/23/2018

Christine A. Farrelly, Executive Director

