

IN THE MATTER OF	*	BEFORE THE
ZAFAR M. MALIK, M.D.	*	MARYLAND STATE
Respondent	*	BOARD OF PHYSICIANS
License Number: D44996	*	Case Number: 2016-0406B
* * * * *	*	* * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

On May 11, 2017, Disciplinary Panel B ("Panel B") of the Maryland State Board of Physicians (the "Board") charged **ZAFAR M. MALIK, M.D.** (the "Respondent"), License Number D44996, 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, Panel B 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:
  - (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[.]

On August 23, 2017, the Respondent appeared before Panel B, sitting as a Disciplinary Committee for Case Resolution. As a result of negotiations occurring before Panel B, 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 B makes the following Findings of Fact:

#### **I. BACKGROUND**

1. At all relevant times, the Respondent was and is a physician licensed to practice medicine in the State of Maryland. He was initially licensed in Maryland on August 19, 1993. The Respondent's license is presently active and is scheduled for renewal on September 30, 2017.
2. The Respondent's primary concentration is internal medicine. He was board-certified in internal medicine but allowed the certification to lapse in 2003.
3. The Respondent holds hospital privileges at Hospital A.<sup>1</sup>
4. The Respondent is in private practice with his wife ("Physician A") in Hagerstown, Maryland and Boonsboro, Maryland.

#### **II. COMPLAINT**

5. On November 25, 2015, the Board received a complaint from a pharmacist (the "Complainant") who alleged that a patient of the Respondent and Physician A attempted to fill multiple prescriptions for controlled dangerous substances ("CDS") in a short period of time.
6. Thereafter, the Board initiated an investigation.
7. On February 19, 2016, the Board notified the Respondent of its full investigation and issued a subpoena for 10 patient medical records chosen from various drug

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<sup>1</sup> In order to maintain confidentiality, names will not be used in this Consent Order. The Respondent is aware of the identity of all health care facilities, physicians, complainants and patients referenced herein.

surveys. The Board also requested summaries of care for the 10 patients and a written response to the complaint.

8. On March 4, 2016, the Board received the Respondent's written response.

9. On March 15, 2016, the Board received seven patient records and summaries of care. The remaining three patients were Physician A's patients.

10. On April 18, 2016, a member of the Board's staff interviewed the Respondent under oath.

11. The Respondent stated that his training in pain management is from continuing medical education courses.

12. On June 30, 2016, in furtherance of its investigation, the Board transmitted the seven patient records (and other relevant documents) received from the Respondent for peer review by two physicians (the "Reviewers"), who are board-certified in family medicine and internal medicine, respectively. On September 6, 2016, the Board received the Reviewers' respective reports. The results of the peer review are set forth below.

13. On October 6, 2016, the Board sent a copy of both Reviewers' reports to the Respondent and requested a supplemental response. The Respondent submitted a supplemental response on October 26, 2016.

### **III. PATIENT-SPECIFIC FINDINGS**

Examples of the above investigative findings are set forth in the following patient specific findings.

## Patient A

1. Patient A was a male in his 40s when he began seeing the Respondent in November 2007. Patient A has a history of type II diabetes mellitus, hyperlipidemia, chronic depression, bilateral carpal tunnel syndrome, and chronic lower back pain.
2. The Respondent initially prescribed Endocet<sup>2</sup> for Patient A's low back pain. However, the Respondent failed to conduct an appropriate physical examination to justify the use of an opioid.
3. In 2009, the Respondent began regularly prescribing Percocet 5/325 TID<sup>3</sup> #90.<sup>4</sup>
4. Over time, the Respondent escalated the dosage of CDS and maintained Patient A on oxycodone 30 mg QID<sup>5</sup> #120.<sup>6</sup> The Respondent also prescribed Soma 350 mg TID #90.<sup>7</sup>
5. Despite Patient A's history of substance abuse, which the Respondent documented in the medical record, the Respondent failed to conduct urine drug screens to monitor Patient A's medication compliance and the risk for abuse or diversion.
6. In addition, the Respondent failed to consult the Prescription Drug Monitoring Program ("PDMP") when it became available.
7. The Respondent failed to conduct adequate physical examinations at most follow-up appointments at which he continued to prescribe CDS for Patient A's chronic pain.

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<sup>2</sup> Schedule II CDS.

<sup>3</sup> Three times per day.

<sup>4</sup> Schedule II CDS.

<sup>5</sup> Four times per day.

<sup>6</sup> Schedule II CDS.

<sup>7</sup> Schedule IV CDS.

8. The Respondent failed to assess improvements in Patient A's pain and function to justify the continued use and increasing dosages of opioids.

9. The Respondent failed to meet the standard of quality medical and surgical care with respect to his care of Patient A.

### **Patient B**

10. Patient B was a male in his late teens when he began seeing the Respondent in February 2008 for primary care. The Respondent treated Patient B for various acute complaints.

11. In approximately October 2011, Patient B complained of recurrent back pain and the Respondent referred him for imaging studies.

12. Patient B returned the following month and the Respondent prescribed Vicoprofen.<sup>8</sup>

13. In October 2012, Patient B disclosed to the Respondent that he injected heroin and wanted Suboxone.<sup>9</sup> The Respondent documented that Patient B appeared to have withdrawal symptoms. However, the Respondent prescribed Talwin.<sup>10</sup>

14. In November 2012, Patient B disclosed to the Respondent that he snorted cocaine and injected heroin intravenously. The Respondent prescribed methadone 10mg one tablet BID<sup>11</sup> #60.<sup>12</sup>

15. A note in Patient B's medical record indicated that Patient B needed a refill of Methadone after two weeks and requested more than 60 tablets. As a result, the Respondent prescribed 120 tablets going forward.

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<sup>8</sup> Schedule II CDS.

<sup>9</sup> Schedule III CDS.

<sup>10</sup> Schedule IV CDS.

<sup>11</sup> Twice per day.

<sup>12</sup> Schedule II CDS.

16. Subsequently, Patient B complained of back and leg pain.
17. The Respondent continued to prescribe methadone to Patient B through his last documented visit in February 2016.
18. Despite Patient B's substance abuse, the Respondent failed to conduct urine drug screens to monitor Patient B's medication compliance or the risk for abuse or diversion.
19. The Respondent failed to consult the PDMP when it became available.
20. The Respondent failed to conduct an adequate musculoskeletal examination at each visit.
21. The Respondent failed to meet the standard of quality medical and surgical care with respect to his care of Patient B.

### **Patient C**

22. Patient C was a female in her early 20s when she began seeing the Respondent in March 2003 for primary care. The Respondent treated Patient C for various acute complaints.
23. In July 2014, Patient C complained of neck and lower back pain and headache. The Respondent prescribed hydromorphone 4 mg one tablet QID #120 PRN,<sup>13</sup> which he continued to prescribe at subsequent appointments.
24. The Respondent prescribed oxycodone at regular intervals beginning in March 2015.
25. In August 2015, the Respondent ordered imaging studies of Patient C's neck, which supported the diagnosis of chronic neck pain and chronic headache.

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<sup>13</sup> Schedule II CDS.

26. The Respondent treated Patient C with short-acting opiates for her back and neck pain.

27. The Respondent failed to require that Patient C enter into a pain agreement, failed to conduct urine drug screens to monitor Patient C's medication compliance and the risk for abuse or diversion.

28. The Respondent failed to assess Patient C's functional improvement with pain medication.

29. The Respondent failed to address non-pharmacologic therapies with Patient C.

30. The Respondent failed to meet the standard of quality medical and surgical care with respect to his care of Patient C.

31. The Respondent's conduct, as set forth above, constitutes a violation of Health Occ. II § 14-404(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.

### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact, Panel B concludes as a matter of law that the Respondent violated the following provision of the Act: Health Occ. II § 14-404(a)(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.

### **ORDER**

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

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

**ORDERED** that the Respondent is placed on probation for a minimum period of **SIX (6) MONTHS**,<sup>14</sup> to begin upon the effective date of this Consent Order, subject to the following probationary terms and conditions:

1. The Respondent shall not treat patients for chronic pain. In emergency cases of acute pain, the Respondent may prescribe Schedule II and Schedule III opioids, but the prescription may not exceed the lowest effective dose and quantity needed for a duration of **FIVE (5) DAYS**. The prescription may not include refills, nor may it be renewed.

2. Within six (6) months, the Respondent shall successfully complete a Board disciplinary panel-approved course in the appropriate prescribing of opioid medications. The panel will not accept a course taken over the Internet. The course may not be used to fulfill the continuing medical education credits required for license renewal. The Respondent must provide documentation to the panel that the Respondent has successfully completed the course;

3. The Panel will issue administrative subpoenas to the Maryland Prescription Drug Monitoring Program on a quarterly basis for the Respondent's CDS prescriptions. The administrative subpoenas will request a review of the Respondent's CDS prescriptions from the beginning of each quarter;

**AND IT IS FURTHER ORDERED** that if the Respondent allegedly fails to comply with any term or condition of probation or 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

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<sup>14</sup> If the Respondent's license expires while the Respondent is on probation, the probationary period and any probationary conditions will be tolled.



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 Panel B determines that the Respondent has failed to comply with any term or condition of probation or this Consent Order, the Board or Panel B may reprimand the Respondent, place 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 B 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 not apply for early termination of probation; and it is further

**ORDERED** that the Respondent is responsible for all costs incurred in fulfilling the terms and condition of this Consent Order; and it is further

**ORDERED** that after **SIX (6) MONTHS**, the Respondent may submit a written petition to the Board or Panel B requesting termination of probation. After consideration of the petition, the probation may be terminated through an order of the Board or Panel B. The Respondent may be required to appear before the Board or Panel B to discuss his petition for termination. The Board or Panel B will grant the petition to terminate the probation if the Respondent has complied with all of the probationary terms and conditions and there are no pending complaints related to the charges; and it is further

**ORDERED** that the Respondent shall comply with the Maryland Medical Practice Act, Md. Code Ann., Health Occ. II §§ 14-101 -- 14-702, and all laws, statutes and regulations governing the practice of medicine.

**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 the Panel B; and it is further

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

09/18/2017  
Date

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

**CONSENT**


I, Zafar M. Malik, 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 Panel B 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 A 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.

9-11-17  
Date

  
Zafar M. Malik, M.D.  
Respondent

Read and approved:

  
Andrew D. Levy, Esquire  
Counsel for Dr. Malik

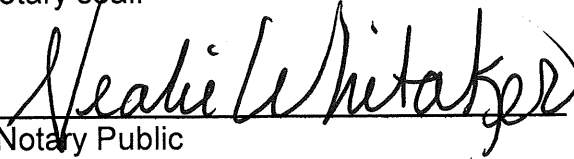
**NOTARY**

STATE OF Maryland  
CITY/COUNTY OF Washington

I HEREBY CERTIFY that on this 11 day of Sept.,  
2017, before me, a Notary Public of the foregoing State and City/County, did personally

appear Zafar M. Malik, 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.

  
Notary Public

My commission expires:

7/1/2018