

IN THE MATTER OF

*

BEFORE THE

ALBERTO R. YATACO, M.D.

*

MARYLAND STATE BOARD

Respondent

*

OF PHYSICIANS

License Number: D50652

*

Case Number: 2218 -0123A

* * * * *

CONSENT ORDER OF PERMANENT REVOCATION

On or about January 3, 2018, Disciplinary Panel A ("Panel A") of the Maryland State Board of Physicians (the "Board"), voted to charge Alberto R. Yataco, M.D. (the "Respondent"), License Number D50652, under the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") §§ 14-101 *et seq.*

The pertinent provision of Health Occ. § 14-404(a) under which Panel A voted to charge Respondent provides the following:

- (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:

- (i) Immoral conduct in the practice of medicine; or
- (ii) Unprofessional conduct in the practice of medicine[.]

Under the Board's Code of Maryland Regulations pertaining to sexual misconduct, unprofessional conduct in the practice of medicine includes "sexual misconduct."

Code Md Regs 10.32.17 provides:

...

.02 Definitions

...

- (3) "Sexual Misconduct" means a health care practitioner's behavior toward a patient ..., which includes:

...

- (a) Sexual violation[.]

...

- (4) Sexual Violation.

- (a) "Sexual violation" means health care practitioner-patient ... sex, whether or not initiated by the patient..., and engaging in any conduct with a patient ... that is sexual or may be reasonably interpreted as sexual, regardless of whether the sexual violation occurs inside or outside of a professional setting.

.03 Sexual Misconduct.

...

- B. Health Occupations Article § 14-404(a)(3)...Annotated Code of Maryland, includes, but is not limited to, sexual misconduct.

On January 4, 2018, Panel A Summarily Suspended the medical license of the Respondent, to practice in the State of Maryland, pursuant to its authority under Md. Code Ann., State Gov't § 10-226(c)(2)(i) (2014 Repl. Vol. & 2017 Supp.), concluding that the public health, safety, or welfare imperatively required emergency action.

On January 10, 2018, Panel A held an initial post-deprivation hearing. Previously, the Respondent had notified the Board that he did not intend to appear and contest the Board's action. Respondent did not attend. On January 11, 2018, the Board issued an Order, continuing the Summary Suspension.

The Respondent did not request an evidentiary hearing at the Office of Administrative Hearings to challenge the merits of the summary suspension.

Prior to the issuance of formal disciplinary charges, Respondent agreed to enter the following public Consent Order of Permanent Revocation, consisting of Findings of Fact, Conclusions of Law, and Order to resolve the summary suspension and the pending charges.

FINDINGS OF FACT

I. Background

1. The Respondent was originally licensed to practice medicine in Maryland on June 5, 1996, under license number D50652. He last renewed his license in or about September 2017, which will expire on September 30, 2019.

2. At all times relevant to this Consent Order, the Respondent maintained an office for the solo practice of medicine under the name of "Get Well Immediate Care" at 7825 York Road, Towson, Maryland, which the Respondent opened on July 1, 2015.¹ The office is directly across the street from Towson University. At the time of the complaints to the Board, the Respondent's sole employee was a practice administrator.

3. According to the Respondent's website, the Respondent offered "concierge medicine" in addition to immediate medical care. The Respondent's concierge medicine plan included house calls and 24/7 texting service.

4. Prior to opening "Get Well Immediate Care," the Respondent worked at an urgent care center in Bel Air, Maryland.

5. The Respondent's has not reported any self-designated practice areas or any specialty board certifications. The Respondent's post-graduate training was in

¹ A Baltimore Sun newspaper article of June 22, 2015, described the office as a "walk-in health clinic." The Respondent was quoted in the article as stating he is "aiming at the college student market." The article further stated that the clinic will open with about 11 physicians, mental health therapists, nurse-practitioners, laboratory technicians and medical assistants. It is not known whether the Respondent ever achieved this level of staffing.

internal medicine and geriatrics. He is not board-certified in any medical specialty.

II. Complaints to the Board

6. On or about December 18, 2017, the Baltimore County Police Department (the "BCPD") notified the Board that it is investigating the Respondent regarding two reports of sexual misconduct with patients, Patient 1 and Patient 2.

7. On or about December 19, 2017, the BCPD notified the Board that it was investigating a third report from a patient, Patient 3, regarding sexual misconduct.

8. The Board immediately opened the case for investigation.

9. Subsequently, the Board was informed that on December 20, 2017, the Respondent was arrested and charged in the District Court for Baltimore County, criminal case number 6C00456567, with seven counts regarding sexual assault of two female patients, Patient 1² and Patient 2, a teenager.³ The Respondent was detained in the Baltimore County Detention Center and held without bail.

10. Since December 21, 2017, after a press release of the Respondent's arrest, the Board received information from the BCPD that 18 additional female patients had filed criminal complaints.

11. On January 2, 2018, after a bail review hearing, the Respondent's detention without bail was continued.

² Patient names are confidential and are not used in this document. The Respondent was provided a Confidential Patient Identification List.

³ According to the Statement of Charges, the Respondent was charged with assault in the second degree and a sexual offense in the fourth degree (sexual contact with another without the consent of the other) regarding Patient 1. The Respondent was charged with assault in the second degree, sexual abuse of a minor (a person who has temporary care or custody or responsibility for the supervision of a minor may not cause sexual abuse to the minor), rape in the second degree, and sexual offense in the third degree, regarding Patient 2.

III. Patient 1

Patient 1's Criminal Complaint of Sexual Misconduct

12. On or about October 30, 2017, Patient 1, a female in her 20's, presented to the BCPD to report a sexual assault that occurred on October 26, 2017 at the Respondent's office. Patient 1 reported that she consulted the Respondent, her "primary care physician" for a stomach virus.⁴ During the examination, the Respondent "pushed on her stomach and pushed on her pelvic region below her belly button." The Respondent told her, "I'm going to lift your panties and check for vaginal discharge." According to Patient 1, the Respondent directly touched her vagina and clitoris without wearing rubber gloves. The Respondent stated that Patient 1's "clit" was red. Patient 1 thought the touching was unnecessary based on her medical complaint. At the end of the office visit, the Respondent hugged her. Patient 1 stated that the Respondent always hugs her at the end of visits.

13. In addition, Patient 1 reported that in summer 2017, she consulted the Respondent for a pinched nerve in her back. The Respondent dimmed the lights in the examination room, stating "now it is like a spa" and massaged Patient 1's back for about 20 minutes. Patient 1 stated she felt very uncomfortable. Patient 1 stated that she will no longer be using the Respondent as her primary care physician.

14. On December 22, 2017, Patient 1 was interviewed by a detective of the BCPD. Patient 1 reiterated the facts as stated in paragraphs 10 and 11. In addition, Patient 1 reported that when the Respondent was massaging her lower back, he stated, "Baby, you are stressed." The Respondent offered to massage her whenever she wanted.

⁴ The Respondent treated Patient 1 for about three years.

Respondent's Medical Records of Patient 1

15. On July 14, 2017, Patient 1 presented to the Respondent's office with the chief complaint of "rear ended, neck/back pain radiating to right/ shoulder pain." The Respondent documented a physical examination and recommend Ibuprofen and a heating pad. The Respondent did not document that he performed therapeutic massage on Patient 1.

16. On October 26, 2017, the Respondent saw Patient 1 in his office. Patient 1's chief complaint was "abdominal possible stomach virus." Office staff documented "nausea, diarrhea (sic) chills. no appetite and trouble sleeping. episodes of diarrhea (sic). last night took peptobismal (sic) last night, abdominal pain." The Respondent's handwritten note of Patient 1's recent history is not legible. The Respondent assessed "gastro, viral" and recommended (illegible) diet.

17. The Respondent's medical records do not state that Patient 1 complained of a vaginal discharge. The Respondent did not document any concern about "vaginal discharge" and did not document a vaginal physical examination.

IV. Patient 2

Patient 2's Criminal Complaint of Sexual Misconduct

18. On December 14, 2017, Patient 2 and her mother, contacted the assistant principal of Patient 2's high school requesting to report a sexual assault. The School Resource Officer interviewed Patient 2, alone. Patient 2 reported that she has been a patient of the Respondent for about one year and sees him for pain management. Patient 2 reported the following:

- a. On Monday, December 11, 2017, she went to the Respondent's office. The Respondent administered "an unknown shot" to help her pain. The

shot makes her feel tired and she “often falls asleep.”⁵ The Respondent told her he would try massage therapy. The Respondent asked her to remove her pants and underwear and lay on the examination table. The Respondent massaged her upper leg and buttocks. The Respondent massaged her shoulders reaching in front, “touching her breast numerous times.” The Respondent “was not focusing on the areas” that were causing her pain. She would redirect the Respondent to those areas but he would go back to massaging her buttocks and breast areas. After being in the office about three hours, she told the Respondent she wanted to leave and go to school. The Respondent “insisted” on driving her to her school.

- b. On Tuesday, December 12, 2017, she presented to the Respondent’s office “for treatment.” The Respondent again began massage therapy “much like what occurred” on December 11, 2017. The Respondent “attempted to stretch her muscles in the area of her vagina.” Patient 2 told the Respondent “that this was not helping and directed him to areas on her legs that were in pain.” At some point she fell asleep. After about two to three hours, she left the office.
- c. On Wednesday, December 13, 2017, at approximately 11:00 a.m., she went to the Respondent’s office “for treatment.” She again received a shot. The Respondent began massaging her “in the same way.” She was “suspicious of his methods” so she told him she just wanted to sleep. She put her pants and underwear on and “pretended to fall asleep.” He left the room and returned in a few minutes. The Respondent pulled down her pants and underwear and inserted his fingers in her vagina. The Respondent did this several times and he also “grabbed her on the breast and buttocks.” She “wanted to scream” but “knew there was no one else in the office.” She then “pretended to wake up” and he began massaging her leg. The Respondent told her she was having a spasm in her leg while she slept and he was “rubbing it out.” She fell asleep. When she awoke, the Respondent was sitting next to her and rubbing her leg. She was experiencing “significant pain” in her vagina. She noticed that the Respondent had braided her hair while she was asleep. He was talking with her and said, “something about a wife.” She got up and attempted to leave but the Respondent hugged her and asked her to sit down. He talked with her for several minutes and then “insisted” on driving her home. Later, the Respondent sent a text to her telephone asking if the medication he had prescribed was working. She responded that it was “the wrong medication.” She did not return to his office.

19. On December 14, 2017, the School Resource Officer transported Patient 2, and Patient 2’s mother to the Crimes Against Children Unit (CACU) of the BCPD,

⁵ Apparently, the Respondent administered this “shot” to Patient 2 on previous occasions.

where Patient 2 was forensically interviewed by a supervisor of the Department of Social Services.

20. On December 14, 2017, a BCPD took Patient 2 to a hospital for a Sexual Assault Forensic Examination (SAFE).

Respondent's Medical Records of Patient 2

21. On December 11, 2017,⁶ at or about 9:15 a.m., Patient 2 presented to the Respondent with the chief complaint of "pain all over." Several areas of the Respondent's medical record are illegible; however, the legible areas show that the Respondent's sole physical findings were LBP (lower back pain) and tender/sore thigh. The Respondent documented that at 10:00 a.m. he injected Ketorolac⁷ (the milligram strength is not legible) in Patient 2's right buttock.⁸

22. On December 11, 2017, at or about 6:00 p.m., Patient 2 returned to the Respondent's office. The Respondent documented that at 6:00 p.m. he injected Ketorolac (the milligram strength is not legible) in Patient 2's left buttock. The Respondent's treatment plan and discharge medication is not legible, other than a prescription for Amoxicillin.

23. Patient 2 takes several different medications. On December 11, 2017, the Respondent printed a "Drug Interaction Report" which he placed in Patient 2's medical record.

⁶ The Board does not have the Respondent's medical records of care of Patient 2 prior to December 11, 2017.

⁷ Ketorolac Tromethamine (brand name Toradol), a non-steroidal anti-inflammatory, is indicated for the short-term (up to 5 days in adults) management of moderately severe acute pain that requires analgesia at the opioid level.

⁸ The Respondent holds a dispensing permit which was issued by the Board on April 11, 2013 and will expire on April 10, 2018. Previously, the Respondent held a dispensing permit from 2009 to 2014.

24. On December 12, 2017, at 1:30 p.m., Patient 2 and her mother presented to Respondent's office with the chief complaint of body aches and (illegible). The Respondent documented, "Pt had a seizure last nite (sic). went to a DC hospital (Hospital A). Pt. was cath (Foley). No meds were given." The Respondent noted that appetite, energy and sleep were depressed and that Patient 2 felt tired. The Respondent's examination of her back was "normal." The Respondent's clinical impressions included LBP, even though his examination of her back was "normal." His treatment plan was to continue (illegible) therapy.

25. On December 13, 2017, at or about 11:57 a.m., Patient 2 presented to the Respondent's office with the chief complaint of LBP and (illegible). The Respondent documented tenderness in the cervical, thoracic and lumbar regions, as well as bilaterally on the upper outer thighs. The Respondent's discharge medications were (illegible) rectal suppositories, #6 and (illegible).

26. The Respondent completed a "Doctor's Note" stating that he had seen and evaluated Patient 2 and she should be excused from school/work from December 11 to December 14, 2017.

V. Patient 3

Patient 3's Criminal Complaint of Sexual Misconduct

27. On December 18, 2017, Patient 3, a female university student, presented to the BCPD to report a sexual assault that occurred on October 8, 2017 at the Respondent's office. Patient 3 reported that she consulted the Respondent for "stomach pains." Patient 3 stated that the Respondent called her "sweetheart" and during the examination, he asked her what she wears when she goes out with friends to

the bars in Towson. The Respondent used his hands to press on her abdomen and then “worked his hands up to her breast area, touching (her) breast.” The Respondent then moved his hands to her vagina, “attempting to insert his fingers inside her vagina.” Patient 3 reported that she was not comfortable and crossed her legs and told the Respondent that his conduct was “inappropriate” and left the examination.

28. On December 26, 2017, Patient 3 was interviewed by a BCPD detective. Patient 3 reiterated the facts as stated in paragraph 26. In addition, Patient 3 stated that at some point during the Respondent’s examination of her, he turned the lights off in the room. There was a lamp that was lit. The Respondent did not wear gloves when he rubbed her stomach. The Respondent reached under her shirt and pushed her bra up and touched her breasts by “cupping” them. The Respondent ran his fingers through her hair. The Respondent told Patient 3 that she had a “nice body.” The Respondent “slid” his ungloved hand inside her pants and her underwear. He touched her labia and partially inserted his fingers. After she crossed her legs, he moved his hand back up to her stomach and breasts. His hands were moving when he was feeling her breasts. The Respondent again attempted to penetrate her vagina with his fingers but was unsuccessful. He touched her labia again.

VI. Criminal Complaints of Additional Patients

29. Between December 22, 2017, and December 29, 2017, the BCPD received criminal complaints from 13 additional female patients. The Board has obtained the Incident Reports containing the interviews of each of these women. The women are in their early to mid-twenties. The incidents of sexual misconduct occurred in 2016 and 2017. Many of the patients came to the Respondent for cold and flu

symptoms. With some of the women, the Respondent “pressed on their breasts.” With some of the other women, he asked them to lift their pants and underwear. With one of the patients, the Respondent rubbed her clitoris during a routine GYN examination, “to get her to relax.” The Respondent offered to buy her drinks if she would go to a bar with him; and on another visit, the Respondent inserted his finger in her vagina. The Respondent asked another patient about her “sex life.” The Respondent inserted his finger in another patient’s vagina after he had used a vaginal swab to check for a yeast infection.

30. Between December 29, 2017 and January 3, 2018, the BCPD received complaints from five additional females.

31. There was a total of 21 women who alleged sexual misconduct by the Respondent during medical visits in 2016 and 2017.

VII. Criminal Indictments

32. On January 17, 2018, Respondent was indicted in the Circuit Court for Baltimore County, criminal case number 03K18000227, with 44 counts, involving multiple patients, including Patients 1, 2, and 3, which included multiple counts of fourth degree sexual contact and multiple counts second degree assault .

33. On July 13, 2018, Respondent entered a Plea Agreement wherein he pled guilty to one count of Second Degree Assault, six counts of Fourth Degree Sexual Offense for conduct occurring on October 26, 2017 (Patient 1), December 8, 2017 (Patient 3), December 11 – 13, 2017 (Patient 2), and one count of Visual Surveillance with Prurient Intent. The remainder of the charges were *nolle prossed*.

34. On July 13, 2018, the Respondent was sentenced to eight years of

incarceration with all but three years suspended and five years of supervised probation, which included the special conditions that he surrender his license to practice medicine, that he not practice medicine, and that he comply with any requirements of immigration proceedings of which he may be subject. The Respondent was required to register as a "Tier I Sexual Offender."

CONCLUSIONS OF LAW

Based on the foregoing facts, Panel A concludes as a matter of law that the Respondent is guilty of immoral and unprofessional conduct in the practice of medicine in violation of Health Occ. § 14 404(a)(3)(i) and (ii) and that Respondent engaged in sexual misconduct with patients in violation of Code Md. Regs. 10.32.17.03.

ORDER

It is, by the affirmative vote of a majority of the quorum of Panel A considering this case:

ORDERED that the Respondent's medical license (license number D50652) to practice as a physician in the State of Maryland is **PERMANENTLY REVOKED**; and it is further

ORDERED that the January 4, 2018, Order of Summary Suspension is terminated as moot, and it is further

ORDERED that the Respondent **MAY NOT APPLY FOR REINSTATEMENT** of his medical license; and it is further

ORDERED that, unless stated otherwise in the Order, any time 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** pursuant to Md. Code Ann., Gen. Prov. §§ 4–101 *et seq.*

08/08/2018
Date

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

CONSENT

I, Alberto R. Yataco, M.D., License No. D50652, by affixing my signature hereto, acknowledge 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 if charges were filed. 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 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 after the conclusion of a formal evidentiary hearing in which I would have 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 am waiving those procedural and substantive protections. 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, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

Signature on File

July 24, 2018
Date

Alberto R. Yataco, M.D., Respondent

NOTARY

STATE OF Maryland
CITY/COUNTY OF Cecil

I HEREBY CERTIFY that on this 24 day of July, 2018 before me, a Notary Public of the State and County aforesaid, personally appeared Alberto R. Yataco, M.D., License number D50652, 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.

Eric Carl Nich
Notary Public

7-24-18
Date

My commission expires June 28 2020

