

IN THE MATTER OF * BEFORE THE
DANIEL R. ALEXANDER, M.D. * MARYLAND STATE
Respondent. * BOARD OF PHYSICIANS
License Number D52815 * Case Number 2016-0599B

* * * * *

FINAL DECISION AND ORDER

INTRODUCTION

Daniel Alexander, M.D. has held a license to practice medicine in the State of Maryland since December 1, 1997. On October 27, 2015, in the United States District Court for the District of Maryland (“U.S. District Court”), Dr. Alexander pled guilty to conspiracy to distribute and dispense oxycodone and alprazolam, a felony, in violation of 21 U.S.C. § 846¹ (Case No 1:14-cr-00412-CCB-5). The Court accepted the guilty plea and scheduled the sentencing hearing for a later date.

On October 28, 2016, the Office of the Attorney General filed with the Maryland State Board of Physicians (“Board”) a petition to suspend Dr. Alexander’s medical license (“the Petition”) and show cause order pursuant to section 14-404(b)(1) of the Medical Practice Act. The statute provides:

- (1) On the filing of certified docket entries with the Board by the Office of the Attorney General, a disciplinary panel shall order the suspension of a license if the licensee is convicted of or pleads guilty or nolo contendere with respect

¹ The elements of the offense, as stated in the plea agreement are:

- a. The Defendant knowingly, willfully, and unlawfully agreed with one of more persons to distribute and dispense (i) a mixture or substance containing a detectable amount of oxycodone, a Schedule II controlled substance, and (ii) a mixture or substance containing a detectable amount of alprazolam, a Schedule IV controlled substance, outside the scope of professional practice and not for a legitimate medical purpose; and
- b. The participation by the Defendant was knowing and voluntary, and not by accident or mistake.

to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside.

MD. CODE ANN., HEALTH OCC. ("Health Occ.") § 14-404(b)(1). Attached to the Petition were certified copies of the plea agreement, docket entries, and the plea hearing transcript, along with a copy of the superseding indictment.

On November 28, 2016, the Board received a written response from Dr. Alexander, wherein Dr. Alexander requested the Board to defer the petition to suspend his medical license until after the U.S. District Court judge ruled on his motion to reconsider the denial of his motion to withdraw his guilty plea. On November 30, 2016, the U.S. District Court judge entered an Order denying Dr. Alexander's motion to reconsider.

On December 8, 2016, the U.S. District Court judge sentenced Dr. Alexander to a total term of 18 months imprisonment, three years of supervised probation upon release, and ordered to pay an assessment of \$100.00. On December 21, 2016, Dr. Alexander noted an appeal of the Judgment entered on December 15, 2016. As of the date of this Order, Dr. Alexander's appeal has not been decided.

Having reviewed and considered the entire record in this case, Panel B issues this Final Decision and Order.

FINDINGS OF FACT

1. Dr. Alexander was initially licensed to practice medicine in the State of Maryland on December 1, 1997, and at all times relevant to the charges in this case, Dr. Alexander has held a license to practice medicine in the State of Maryland.
2. On September 3, 2014, Dr. Alexander was charged with a 16 count indictment for conspiracy to distribute and dispense oxycodone and alprazolam and distribution and dispensing of oxycodone and alprazolam.
3. On May 27, 2015, the grand jury returned a superseding indictment, which charged Dr. Alexander with one count for conspiracy to distribute and dispense oxycodone

and alprazolam and 25 counts for distribution and dispensing of oxycodone and alprazolam.

4. The United States Attorney's Office for the District of Maryland offered Dr. Alexander a plea agreement, wherein Dr. Alexander would agree to plead guilty to Count One in the superseding indictment, which charged him with conspiracy to distribute and dispense oxycodone and alprazolam, and agree to a stipulated statement of facts.
5. Dr. Alexander and his attorney agreed to the terms of the plea agreement and agreed that the government would have been able to prove the statement of facts, attached to the plea agreement as attachment A, had the case gone to trial. The statement of facts was, as follows:

In or about September 2011, Defendants MICHAEL RESNICK, ALINA MARGULIS, and GERALD WEISBERG hired Defendant DANIEL ALEXANDER to work as a physician at the Healthy Life Medical Group ("Healthy Life"). During his interview, ALEXANDER was told that Healthy Life only treated patients pharmacologically, meaning that Healthy Life only offered prescription pills to customers and would not offer any alternative therapies. ALEXANDER accepted the position and was paid \$150 per hour.

While working at Healthy Life ALEXANDER saw a very large number of customers each day he worked. ALEXANDER only spent a limited amount of time with each patient in order to see the maximum number of patients in order to increase the profitability of the business. ALEXANDER noticed that many of the customers were from out of state. Between September 2011 and March 2012, ALEXANDER issued prescriptions to 627 patients on 946 separate office visits. Of those 946 visits, the customer received a prescription for oxycodone 97% of the time, and a prescription for alprazolam 23% of the time. ALEXANDER knew that many of the customers presenting to Healthy Life did not have a legitimate medical need for oxycodone. Nevertheless, ALEXANDER issued prescriptions for oxycodone and alprazolam to Healthy Life customers without a legitimate medical need and outside the bounds of acceptable medical practice. In a few instances, ALEXANDER issued prescriptions for oxycodone to customers that at the same time he discharged from Healthy Life based on indications they were abusing illicit drugs.

The parties stipulate that the amount of oxycodone that was distributed without a legitimate medical need and outside the bounds of medical practice, and that was related to this conspiracy and reasonably attributable to Defendant ALEXANDER, was at least at least [sic] 105 grams of oxycodone, but less than 149 grams of oxycodone, which

translates to 700 kilograms of marijuana but less than 1,000 kilograms of marijuana pursuant to Drug Equivalency Tables in U.S.S.G. § 2D1.1. The parties further stipulate that ALEXANDER obtained a total of \$30,000 for his activities related to, and in furtherance of, this conspiracy.

6. On October 27, 2015, Dr. Alexander and his attorney appeared before a judge in the U.S. District Court and Dr. Alexander entered a plea of guilty to one count of conspiracy to distribute and dispense oxycodone and alprazolam, in violation of 21 U.S.C. § 846. The judge read the above statement of facts to Dr. Alexander and Dr. Alexander agreed that he did the things stated and that he was guilty of the offense.
7. The Court found that Dr. Alexander was competent to enter his guilty plea, that he understood the charge and the penalties he was subject to, that he understood the rights he was giving up by pleading guilty, and that his plea was voluntary. The Court also found that there was a factual basis for the guilty plea and, as a result, accepted Dr. Alexander's guilty plea to Count 1, conspiracy to distribute and dispense oxycodone and alprazolam.
8. On June 10, 2016, Dr. Alexander filed a motion to withdraw his guilty plea.
9. On October 18, 2016, the Court denied Dr. Alexander's motion to withdraw his guilty plea.
10. On November 23, 2016, Dr. Alexander filed a motion to reconsider the denial of his motion to withdraw his guilty plea.
11. On November 30, 2016, the U.S. District Court judge entered an Order denying Dr. Alexander's motion to reconsider.
12. On December 8, 2016, the U.S. District Court judge sentenced Dr. Alexander to a total term of 18 months imprisonment, three years of supervised probation upon release, and ordered to pay an assessment of \$100.00.
13. On December 21, 2016, Dr. Alexander noted an appeal of the Judgment entered on December 15, 2016. As of the date of this Order, Dr. Alexander's appeal has not been decided.

DISCUSSION

Panel B has considered all of the evidence before it and, hereby, decides the legal issues as follows:

Pursuant to COMAR 10.32.02.07 E(2), a response to a show cause order must be limited to the following issues: “(a) Lack of conviction or plea; (b) Whether the crime is one involving moral turpitude; (c) Misidentity of the respondent with the defendant in the criminal matter; and (d) Other relevant issues, if any, other than mitigation.” Dr. Alexander does not contest that he pled guilty to conspiracy to distribute and dispense oxycodone and alprazolam and he does not argue that this crime is not a crime involving moral turpitude. Instead, Dr. Alexander’s response was limited to requesting that the Board defer the suspension of his license until after the U.S. District Court ruled on his motion to reconsider. As stated above, the U.S. District Court Judge denied Dr. Alexander’s motion to reconsider.

Health Occ. § 14-404(b)(1) requires a disciplinary panel of the Board to “order the suspension of a license if the licensee is convicted of or pleads guilty or nolo contendere with respect to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside.” The Board, therefore, is required to order the suspension of Dr. Alexander’s license even though an appeal is pending.

“The term ‘moral turpitude’ has been defined generally as importing ‘an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.’” *Attorney Grievance Comm’n of Maryland v. Walman*, 280 Md. 453, 459 (1977) (quoting *Braverman v. Bar Ass’n of Balt. City*, 209 Md. 328, 344, *cert. denied*, 352 U.S. 830 (1956)). It is well established that “in the context of a licensing board’s review of the conduct of its licensee, the concept of moral turpitude is rather broad.” *Oltman v. Maryland State Bd. Of Physicians*, 162 Md. App. 457, 483 (2005). The determination of moral turpitude “hinges on the facts present in the individual case at hand.” *Walman*, 280 Md. at 462.

The Court of Appeals has established that the “illegal distribution of controlled dangerous substances is a serious offense against society, and possession with intent to distribute is but a short step removed from that in terms of culpability.” *Attorney Grievance Comm’n of Maryland v. Proctor*, 309 Md. 412, 418 (1987). The Court “conclude[d] that although conduct in violation of this section will ordinarily involve moral turpitude, each case must be decided on its own facts.” *Id.* at 419.

In *Attorney Grievance Comm’n of Maryland v. Marcalus*, 414 Md. 501, 520 (2010), the Court of Appeals cited *Proctor* for the proposition that violations of the Controlled Dangerous Substances Act “will usually involve moral turpitude.” The Court recognized “the felonious nature of this crime and intentional manner in which Marcalus acted” and determined that “there is no reason to deviate from the hearing judge’s finding that this violation implicates Rule 8.4(b).” *Id.* at 520-21. The underlying facts of the case involved the exchange of Vicodin, a controlled dangerous substance, in exchange for the performance of a sexual act. The Court held as follows: “We need not decide whether Marcalus’s sexual encounter with Michelle rises to the level of ‘moral turpitude’ necessary to reach a violation under Rule 8.4(b) - Marcalus’s distribution of Vicodin is sufficient on its own.” *Id.* at 521.

The Board has determined in several cases that the illegal distribution and dispensing of controlled dangerous substances are crimes of moral turpitude. In one case, the Board found that the distribution of Dilaudid, a Schedule II controlled dangerous substance, was a crime of moral turpitude because it violated medical ethics and “constitutes an act of depravity in the private and social duties which the Respondent owed to society.” *In the Matter of Mays*, Case No. 94-0219. Similarly, in *In the Matter of Hicks*, Case No. 2001-0208, the Board found that a physician’s

possession and distribution of oxycodone, a Schedule II controlled dangerous substance, was a crime of moral turpitude.

Dr. Alexander's conspiracy to distribute and dispense oxycodone and alprazolam was "intentional" and "not innocent in its purpose." *Board of Dental Exam'rs v. Lazzell*, 172 Md. 314, 322 (1937). Dr. Alexander knowingly issued prescriptions for oxycodone and alprazolam to patients without a legitimate medical need and outside the bounds of acceptable medical practice. In several instances, Dr. Alexander issued prescriptions for oxycodone to patients at the same time that they were discharged from the practice for abusing illicit drugs.

Dr. Alexander's criminal conduct in this case undermines the public's confidence in the medical profession. *See Stidwell v. Maryland State Bd. of Chiropractic Exam'rs*, 144 Md. App. 613, 619 (2002) (a criminal offense that undermines the public's confidence in a profession may be a crime of moral turpitude if so determined by the appropriate licensing board). Dr. Alexander's felony conviction for conspiracy to distribute and dispense oxycodone and alprazolam is as much a crime of moral turpitude as the substantive crime of distribution and dispensing the drug. *See, e.g., Attorney Grievance Comm'n of Maryland v. Molovinsky*, 300 Md. 291, 296 (1984) (the fact "that the conviction was for conspiracy rather than the substantive offense is of little significance"). In the Board's view, Dr. Alexander acted "contrary to the accepted and customary rule of right and duty" that he owes to his fellow citizens in the State of Maryland. *Walman*, 280 Md. at 459.

CONCLUSIONS OF LAW

Based on the above findings of fact and discussion, Panel B concludes that Dr. Alexander pled guilty to a crime involving moral turpitude. As a result, Health Occ. § 14-404 (b)(1), requires Panel B to order the suspension of Dr. Alexander's medical license.

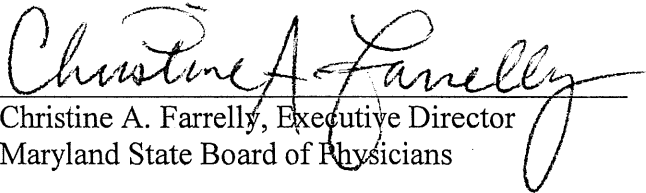
ORDER

It is, by Board Disciplinary Panel B, hereby:

ORDERED that the license of Daniel Alexander, M.D., license number D52815, to practice medicine in the State of Maryland, is **SUSPENDED**, as mandated by Health Occ. § 14-404(b)(1); and it is further

ORDERED that this Final Decision and Order is a **PUBLIC DOCUMENT**.

01/11/2017
Date


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

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Md. Code Ann., Health Occ. § 14-408, Dr. Alexander has the right to seek judicial review of this Final Decision and Order. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of this Final Decision and Order. The cover letter accompanying this final decision and order indicates the date the decision is mailed. Any petition for judicial review shall be made as provided for in the Administrative Procedure Act, MD. CODE ANN., STATE GOV'T § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If Dr. Alexander files a Petition for Judicial Review, the Board is a party and should be served with the court's process at the following address:

**Christine A. Farrelly, Executive Director
Maryland State Board of Physicians
4201 Patterson Avenue
Baltimore, Maryland 21215**

Notice of any Petition for Judicial Review should also be sent to the Board's counsel at the following address:

**Stacey M. Darin, Assistant Attorney General
Office of the Attorney General
Department of Health and Mental Hygiene
300 West Preston Street, Suite 302
Baltimore, Maryland 21201**