

IN THE MATTER OF	*	BEFORE THE
EVA C. DICKINSON, M.D.	*	MARYLAND STATE BOARD
Respondent	*	OF PHYSICIANS
License Number D57476	*	Case Number 2017-0162
* * * * *	*	* * * * *

FINAL DECISION AND ORDER

Procedural History

On January 19, 2017, Disciplinary Panel A of the Maryland State Board of Physicians (the “Board”) charged Respondent Eva C. Dickinson, M.D. under the Maryland Medical Practice Act, Md. Code Ann., Health Occ. §§ 14-101—14-702, with unprofessional conduct in the practice of medicine, *see* Health Occ. § 14-404(a)(3)(ii); addiction to, or habitual abuse of, any narcotic or controlled dangerous substance as defined in § 5-101 of the Criminal Law Article, *see* Health Occ. § 14-404(a)(8); and providing professional services while using any narcotic or controlled dangerous substance, as defined in § 5-101 of the Criminal Law Article, or other drug that is in excess of therapeutic amounts or without valid medical indication, *see* Health Occ. § 14-404(a)(9)(ii).¹ The charges notified the Respondent that, if there were grounds for action under these § 14-404 provisions, disciplinary sanctions, including revocation, could be imposed against her license. On May 11, 2017, the case was referred to the Office of Administrative Hearings (“OAH”) for an evidentiary hearing.

After notice to the Respondent and the State, OAH held a Scheduling Conference on June 1, 2017, at 9:30 a.m. at OAH in Hunt Valley, Maryland. The Respondent did not appear for the

¹ On December 28, 2016, Panel A summarily suspended the Respondent’s Maryland medical license. On January 11, 2017, Panel A held an initial post-deprivation hearing and reaffirmed the summary suspension. The Respondent did not request an evidentiary hearing to contest the summary suspension.

Scheduling Conference and no one appeared on her behalf. The State was represented by the Administrative Prosecutor from the Maryland Office of the Attorney General, who appeared at the conference. After waiting more than 15 minutes for the Respondent to appear, the ALJ proceeded with the Scheduling Conference in the Respondent's absence. COMAR 28.02.01.23A. During the Scheduling Conference, a Prehearing Conference was scheduled for July 6, 2017, at 9:30 a.m. at OAH in Hunt Valley, Maryland. COMAR 28.02.01.17.

On June 2, 2017, OAH mailed a Notice of In-Person Prehearing Conference (Notice of Prehearing Conference) to each party at the party's respective address of record. The Notice of Prehearing Conference mailed to the Respondent was not returned to OAH by the postal service. The Notice of Prehearing Conference informed the parties of the date, time, and location of the Prehearing Conference and enclosed instructions directing each party to prepare and submit a Prehearing Statement in advance of the Prehearing Conference. Further, the Notice of Prehearing Conference informed the parties that failure to attend the July 6, 2017, Prehearing Conference could result in a decision against the party for failing to appear.

Separately, on June 1, 2017, the ALJ issued a Scheduling Order notifying the parties of the date, time, and location of the Prehearing Conference, among other things, which was mailed to each party at the party's respective address of record. The copy of the Scheduling Order mailed to the Respondent was not returned to OAH by the postal service.

The Respondent did not appear for the July 6, 2017, Prehearing Conference as scheduled, nor did anyone appear on his behalf. The Respondent did not request a postponement of the Prehearing Conference and did not submit a Prehearing Statement in advance of the prehearing Conference, as instructed. After waiting more than fifteen minutes for the Respondent to appear, the ALJ commenced the Prehearing Conference in the Respondent's absence. The State,

represented by the administrative prosecutor, moved for a default judgment against the Respondent and offered the exhibits that it had planned to offer into evidence if the matter had proceeded to a merits hearing. The ALJ admitted those exhibits into evidence so that the disciplinary panel of the Board would be able to consider them in reaching its final disposition. Md. Code Ann., Health Occ. § 14-405 (2014).

Under OAH's Rules of Procedure, "[i]f, after receiving proper notice, a party fails to attend or participate in a prehearing conference, hearing, or other stage of a proceeding, the judge may proceed in that party's absence or may, in accordance with the hearing authority delegated by the agency, issue a final or proposed default order against the defaulting party." COMAR 28.02.01.23A. Similarly, the Health Occupations Article provides, in pertinent part:

(d) If after due notice the individual against whom the action is contemplated fails or refuses to appear, nevertheless the hearing officer may hear and refer the matter to the Board or a disciplinary panel for disposition.

(e) After performing any necessary hearing under this section, the hearing officer shall refer proposed factual findings to the Board or a disciplinary panel for the Board's or disciplinary panel's disposition.

Md. Code Ann., Health Occ. § 14-405 (2014). Read in conjunction with the OAH Rules of Procedure, subsection 14-405(d) which provides that the ALJ "may hear" the matter if the individual fails to appear, and subsection (e), which uses the language "any necessary hearing," clearly contemplate situations such as defaults where no hearing is required. *See also* COMAR 28.02.01.23A.

The ALJ found the Respondent had proper notice of the July 6, 2017, Prehearing Conference and failed to appear and participate in the Prehearing Conference.

On July 7, 2017, the ALJ issued a Proposed Default Order, based upon the OAH proceedings described above, which the ALJ recounted in the proposed decision. The ALJ also proposed that the Panel:

1. Find the Respondent in default;
2. Adopt as fact the statements set out in the Allegations of Fact section of the Charges;
3. Conclude as a matter of law that the Respondent violated the Maryland Medical Practice Act, subsections 14-404(a)(3), (8), and (9) of the Health Occupations Article, Annotated Code of Maryland, in the manner set forth in the Charges; and
4. Revoke the Respondent's license to practice medicine in the State of Maryland.

On July 7, 2017, copies of the ALJ's Proposed Default Order were mailed to Dr. Dickinson, the administrative prosecutor, and the Board. The proposed decision notified the parties that they may file written exceptions to the proposed decision but must do so within 15 days of the date of the proposed order. The proposed order states that any exceptions must be sent to the Board with attention to the Board's Executive Director.

The case came before Board Disciplinary Panel B for final disposition. Neither party filed exceptions.

FINDINGS OF FACT

Because Panel B concludes that the Respondent has defaulted, the following findings of fact are adopted from the Allegations of Fact set forth in the January 19, 2017, Charges Under the Maryland Medical Practice Act and are deemed proven by the preponderance of the evidence:

I. Licensure Information/Background

The Respondent was originally licensed to practice medicine in Maryland on April 27, 2001, under license Number D57476. The Respondent maintained an active medical license in Maryland until December 28, 2016, when her license was summarily suspended based on her arrest on felony and misdemeanor drug charges and suspected drug misuse.

The Respondent is board-certified in emergency medicine.

The Respondent was initially issued a license to practice medicine in the State of Delaware on or about November 27, 2001, under Delaware License Number C1-0006413. The Respondent maintained an active medical license in Delaware until January 18, 2017, when the Delaware Board of Medical Licensure and Discipline (the “Delaware Board”) temporarily suspended her Delaware medical license.

Until the time of the summary suspension of the Respondent’s Maryland medical license, the Respondent provided medical care and saw patients at her Maryland residence. Until the time of the temporary suspension of the Respondent’s Delaware medical license, she operated a pain management practice in Harrington, Delaware, named the “Cutting Edge Treatment Center.”

II. Police Investigation/Pending Criminal Charges

In or around September 2016, the Maryland State Police (“MSP”) received information that caused it to obtain a search and seizure warrant (the “Warrant”) for the Respondent’s residence, which is located in Maryland.

MSP officers, acting in conjunction with the Caroline County Drug Task Force, executed the Warrant on September 12, 2016. Upon entering the residence, MSP officers detected the overwhelming odor of raw marijuana, a Schedule I controlled dangerous substance (“CDS”).

MSP officers found the Respondent upstairs in a makeshift laboratory area of the residence. MSP officers searched the Respondent and found an unlabeled pill bottle in her pocket that contained a variety of Schedule II opioid-containing pills (32 oxycodone pills, 35 morphine pills, 6 Hysingla pills, 9 hydromorphone pills, 6 Nucynta pills), and a prescription-only medication (4 Vyvanse pills).

The MSP search found two marijuana growing operations in the Respondent's master bedroom on the first floor. The main growing operation was located in the open area of the bedroom and was housed in a tent-style structure. It was equipped with a watering source, grow lights and fans, with three healthy, two-to-three foot tall marijuana plants growing in buckets. The other growing operation was found in the bedroom closet. It was equipped with grow lights, fans and a watering system, and contained six marijuana plants. Next to the bed in the master bedroom were seven additional marijuana plants, all of which were less than one inch tall. These plants were growing in an herbal starter kit equipped with lighting and a watering system. Police also recovered a notebook containing what appeared to be marijuana growing notes and eight ziplock packets of suspected marijuana seeds from the bedroom.

Police searched the exterior of the Respondent's residence and found nine additional marijuana plants growing in pots at or around a detached garage that was on the premises. All of the marijuana plants appeared to be healthy and well-maintained.

Police searched the upstairs laboratory area and found three gallon-size ziplock bags containing marijuana plant material on a table. Located inside the rear closet of the laboratory was another unlabeled pill bottle that contained approximately 140 Tramadol pills, a narcotic analgesic and Schedule IV CDS, and three pills of Tizanidine, a prescription-only muscle relaxer. In that closet, police also found an unlabeled pill bottle containing approximately 76

pills of Lyrica (a Schedule V CDS anti-seizure medication that is sometimes also prescribed for neuropathic pain) and 36 pills of gabapentin (a prescription-only neuropathic pain medication). Located in the mini-refrigerator were three boxes (each containing 45 dosages) of “Belladonna-Opium” suppositories (a Schedule II CDS). These suppositories were prescribed to an individual who did not reside at the residence.

Located in the bathroom area of the laboratory was a large wooden box containing many empty fentanyl sublingual spray applicators. Fentanyl is a Schedule II CDS and opioid medication.

MSP officers arrested the Respondent for various drug offenses and transported her to the Caroline County Sheriff’s Office for processing.

On or about November 9, 2016, the Respondent was charged pursuant to a Criminal Information in the Circuit Court for Caroline County with the following: one count of manufacturing a Schedule I CDS (marijuana), a felony, in violation of Md. Code Ann., Crim. Law § 5-603; one count of possession of a Schedule II CDS (Belladonna and opium), a misdemeanor, in violation of Crim. Law § 5-601(a)(1); one count of possession of a Schedule I CDS (marijuana), a misdemeanor, in violation of Crim. Law § 5-601(a)(1); one count of possession of a Schedule IV CDS (Tramadol), a misdemeanor, in violation of Crim. Law § 5-601(a)(1); one count of possession of a Schedule II CDS (oxycodone), a misdemeanor, in violation of Crim. Law § 5-601(a)(1); and one count of possession of a Schedule II CDS (morphine), a misdemeanor, in violation of Crim. Law § 5-601(a)(1).

III. Subsequent Board Investigation

The Board initiated an investigation of the Respondent based on the above information. On or about October 28, 2016, Board staff interviewed an individual (“Individual A”) about the

Respondent. Individual A stated that on or about September 8, 2016, he/she observed “grow rooms” in the master bedroom of the Respondent’s residence, which he/she photographed and provided to MSP officers. Individual A stated that after making these observations, he/she reported the matter to the police. Individual A stated that he/she never observed the Respondent use marijuana but did witness her using “narcotic pills” and described her as an “addict.” Individual A stated that the Respondent writes prescriptions for opioids for a “friend,” who shares the prescriptions with her. Individual A stated that he/she had knowledge that the Respondent has accepted the remainder of narcotics prescriptions from patients and reconstituted them in her Maryland residence into a different form for sale. Individual A also stated that one of the Respondent’s former employees told him/her that the Respondent takes used fentanyl sublingual spray packaging home and ingests the residual drug out of the spray applicator.

On or about November 17, 2016, Board staff scheduled an interview with the Respondent. The Respondent arrived more than one hour late for the interview. As a result, Board staff rescheduled the interview and instructed the Respondent to go to a specific medical laboratory for toxicology testing at 1:00 p.m. Board staff provided the Respondent with printed directions to the laboratory, which was approximately 12 miles from the Board’s office. The Respondent arrived at the laboratory more than two hours late for her appointment. During that time, Board staff had multiple conversations with the Respondent, who sounded confused and disoriented. The Respondent underwent testing that was positive for the presence of Fentanyl, oxymorphone and oxycodone.

On or about November 28, 2016, Board staff interviewed the Respondent, who appeared approximately two hours late for the interview. The Respondent claimed that she was delayed because she had filed a police report for a break-in at her home the previous night and that she

had been “attacked.” Board staff questioned the respondent about her delay in appearing for the toxicology screening. The Respondent provided a series of explanations that included being unable to find the person who drove her to the Board, stopping to eat, losing directions to the laboratory, and getting lost.

Board staff questioned the Respondent about whether her toxicology screen would come back positive for any substances. The Respondent initially replied no but then stated that, depending on how sensitive the hair test she underwent was, she may test positive for Fentanyl, claiming that she had used a prescribed patch for knee pain. The Respondent also stated that she did take “a couple of oxycodones,” too.

The Respondent stated that although her medical office was in Delaware, she also provided medical care and treatment to patients at her Maryland residence. The Respondent cited one instance in which an individual stopped by her residence because he “needed his prescription changed.” Board investigation noted other evidence that the Respondent practiced medicine in Maryland, including reports that the Respondent kept patient files in her residence and personal vehicle. In addition, pharmacy surveys indicate that the Respondent prescribed extensive amounts of CDS and prescription medication in Maryland. The Respondent also admitted to police that she saw patients at her Maryland residence.

The Board’s investigation determined that the Respondent made inconsistent statements regarding her knowledge of the CDS and marijuana that police recovered as a result of the execution of the Warrant at her residence. In a written submission to the Board, the Respondent claimed that the evidence against her was “pointing to a conspiracy” and that she has “never sold, grown or used marijuana.” Likewise, in her Board interview, the Respondent stated that she knew nothing about the marijuana that was growing in and around her home and that what

the marijuana police found there was “planted” by someone with an animus against her. Also, when interviewed during her arrest, the Respondent stated that she did not know what marijuana “looks or smells like.” Board investigators, however, found an on-line news article that described the Respondent as a medical advisor for a group that was “hoping to get licensed to grow medical cannabis.” In a video that accompanied the article, the Respondent stated that she was involved in an ongoing project to grow cannabis with aeroponics and that she was focusing on researching the use of cannabis in pain management. In addition, during her Board interview, the Respondent addressed the numerous plants found in the master bedroom by stating that she never went into the “bedroom where they do the grow.” Police reports, however, document that the Respondent’s name was affixed to the door of the master bedroom and that she kept articles of clothing, family photographs and packages addressed to her in the room.

The Respondent also provided several explanations for the CDS the police recovered. For example, she stated that the oxycodone and morphine police recovered from her pocket during the execution of the Warrant belonged to a friend who was traveling with the pill containers. The Respondent stated that the Tramadol was prescribed for her dog, although she stated to police that they were samples she no longer used in her practice. The Respondent also stated that a patient gave her the Belladonna-Opium suppositories for her to destroy, which she had forgotten to do. The Respondent also claimed that she possessed the Fentanyl containers because she was “a big recycler repurposer.”

IV. Order for Summary Suspension, December 28, 2016

On December 28, 2016, Panel A issued an Order for Summary Suspension of License to Practice Medicine, in which it summarily suspended the Respondent’s medical license pursuant

to Md., Code Ann., State Gov't II § 10-226(c)(2), concluding that the public health, safety or welfare imperatively required emergency action. In its Order, Panel A stated,

the Respondent presents a substantial likelihood of risk of serious harm to the public, health, safety and welfare. The Respondent is currently facing felony CDS manufacturing charges and misdemeanor CDS possession charges. The CDS possession charges involve, *inter alia*, the possession of Schedule II opioid medications. During the Board's investigation, the Respondent exhibited erratic, impaired and aberrant behaviors, and in toxicology testing, tested positive for multiple opioid medications.

On January 11, 2017, the Respondent appeared for a post-deprivation hearing before Panel A to address its Order. After hearing arguments from the parties, Panel A continued the summary suspension.

V. Temporary Suspension of Respondent's Delaware Medical License, January 18, 2017

On January 18, 2017, the Delaware Board issued an Order Accepting Complaint and Granting Emergency Temporary Suspension, in which it temporarily suspended the Respondent's Delaware medical license, finding that it had a reasonable belief that the Respondent's continued practice presented a clear and immediate danger to the public health.

The Delaware Board set forth several ground for suspending the Respondent's Delaware medical license, including those that were referenced in the Board's order of summary suspension. In addition, the Delaware Board noted that the Delaware Department of Justice filed with the Delaware Board a Complaint and Motion for Temporary Suspension, in which it alleged:

Dr. Dickinson prescribed Subsys^[2] to her patients for the off-label use of treating non-cancer pain. Dr. Dickinson took possession of one of her patient's Subsys prescriptions, indicating she would return it to the pharmacy after the patient indicated he did not want it. Dr. Dickinson

² Subsys is a trade name for sublingual formulation of fentanyl, which is typically prescribed for breakthrough cancer pain.

did not return the prescriptions. Dr. Dickinson's partner also took possession of one of Dr. Dickinson's patient's prescriptions for Subsys and did not deliver the medication to the patient. Dr. Dickinson documented destroying a third patient's Subsys prescription, but the medication, labeled to that third patient, was found in Dr. Dickinson's home. Dr. Dickinson similarly took possession of the Subsys prescriptions of a fourth patient in her care.

CONCLUSIONS OF LAW

Panel B adopts the ALJ's proposed default order issued pursuant to COMAR 28.02.01.23A. Panel B thus finds the Respondent in default based upon the Respondent's failure to appear at the Office of Administrative Hearings for the Prehearing Conference scheduled for July 6, 2017. *See* State Gov't § 10-210(4). Based upon the findings of fact, Panel B concludes that the Respondent is guilty of unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii); the Respondent was addicted to, or habitually abused, any narcotic or controlled dangerous substance as defined in § 5-101 of the Criminal Law Article, in violation of Health Occ. § 14-404(a)(8); and the Respondent provided professional services while using any narcotic or controlled dangerous substance, as defined in § 5-101 of the Criminal Law Article, or other drug that is in excess of therapeutic amounts or without valid medical indication, in violation of Health Occ. § 14-404(a)(9)(ii).

Sanction

The ALJ recommended the revocation of the Respondent's license to practice medicine in Maryland. Panel B adopts the ALJ's recommendation.

ORDER

Based upon the findings of fact and conclusions of law, it is, on the affirmative vote of a majority of the quorum of Board Disciplinary Panel B, hereby

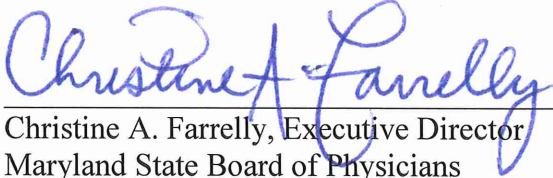
ORDERED that Eva C. Dickinson, M.D.'s license to practice medicine in Maryland (License No. D57476) is **REVOKED**; and it is further

ORDERED that the summary suspension of the Respondent's Maryland medical license, issued on December 28, 2016 (and reaffirmed on January 11, 2017), is terminated as moot, based upon the revocation of the Respondent's Maryland medical license; and it is further

ORDERED that this is a public document.

August 31, 2017

Date


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

NOTICE OF RIGHT TO APPEAL

Pursuant to § 14-408(a) of the Health Occupations Article, Dr. Dickinson has the right to seek judicial review of this Final Decision and Order. Any petition for judicial review shall be filed within 30 days from the date this Final Decision and Order is mailed. The cover letter accompanying this Final Decision and Order indicates the date the decision is mailed. The petition for judicial review must be made as directed in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222, and Maryland Rules 7-201 *et seq.*

If Dr. Dickinson petitions for judicial review, the Board is a party and should be served with the court's process. In addition, Dr. Dickinson should send a copy of her petition for judicial review to the Board's counsel, David Wagner, Assistant Attorney General, Office of the Attorney General, 300 W. Preston Street, Suite 302, Baltimore, Maryland 21201. The administrative prosecutor is not involved in the circuit court process and does not need to be served or copied on pleadings filed in circuit court.