

IN THE MATTER OF
ISHTIAQ MALIK, M.D.

Respondent

License Number: D59281

*** BEFORE THE**
*** MARYLAND STATE**
*** BOARD OF PHYSICIANS**
*** Case Number: 7718-0122**

* * * * *

ORDER AFTER SHOW CAUSE HEARING

On November 14, 2012, Ishtiaq Malik, M.D. entered into a Consent Order with the Maryland State Board of Physicians (“Board”) where he was reprimanded and placed on probation for a minimum of three (3) years with certain terms and conditions.¹ On March 5, 2020, Disciplinary Panel A² of the Board issued a Violation of Board Order and Notice to Show Cause, charging Dr. Malik with violating the November 14, 2012 Consent Order. On May 13, 2020, Panel A held a show cause hearing where Dr. Malik had the opportunity to argue why his license should not be subject to further discipline.

FINDINGS OF FACT

Background

On or about February 28, 2011, the Board received a complaint from the Office of the Inspector General of the State of Maryland (“OIG”) alleging that Dr. Malik billed for services that were not rendered. The Board opened an investigation into the allegations and sent a subpoena to Dr. Malik for the medical records of the named patients in the OIG Investigative Report. The Board sent the records for peer review by two peer reviewers board-certified in

¹ There are several terms and conditions of probation imposed under the November 14, 2012 Consent Order that remain unfulfilled. This Order is separate from the November 14, 2012 Consent Order and Dr. Malik is still required to successfully complete the remainder of the terms and conditions he agreed to in the Consent Order. The probation imposed under the November 14, 2012 Consent Order will continue until Dr. Malik has fully complied with all terms and conditions under that Order.

² In 2013, pursuant to § 14-401 of the Health Occupations Article (2014 Repl. Vol.), the Board was divided into two disciplinary panels to resolve licensure disciplinary actions against physicians.

nuclear medicine and both reviewers concurred that Dr. Malik billed for services not rendered and engaged in unprofessional conduct in the practice of medicine in regards to his submission of billing records in all eleven cases reviewed.

On August 21, 2012, based on the results of the peer review reports and the investigative file, the Board charged Dr. Malik with fraudulently or deceptively using a license, unprofessional conduct in the practice of medicine, making or filing a false report or record in the practice of medicine, and submitting false statements to collect fees for which services were not provided. *See* Md. Code Ann., Health Occ. (“Health Occ.”) § 14-404(a)(2), (3)(ii), (11), (23). On November 14, 2012, Dr. Malik entered into a Consent Order with the Board to resolve the charges against him.

November 14, 2012 Consent Order

In the Consent Order, the Board found that Dr. Malik was guilty of unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii), makes or files a false report or record in the practice of medicine, in violation of Health Occ. § 14-404(a)(11), and submits false statements to collect fees for which services were not provided, in violation of Health Occ. § 14-404(a)(23). The Board dismissed the charge that Dr. Malik fraudulently or deceptively uses a license, in violation of Health Occ. § 14-404(a)(2). Dr. Malik was reprimanded and placed on probation for a minimum of three years, subject to certain terms and conditions, which included, in pertinent part:

8. Respondent shall comply with agreements or settlements with the United States Government, or injunctions and final judgments, in United States of America v. Ishtiaq A. Malik, M.D., et al., Civil Action No. 12-1234 (RLW), and failure to do so shall be deemed a violation of probation, as described below[.]

The Consent Order also stated:

ORDERED if Respondent violates any term or condition of probation or this Consent Order, the Board, in its discretion, after notice and an opportunity for a show cause hearing before the Board, or opportunity for an evidentiary hearing

before an Administrative Law Judge at the Office of Administrative Hearings if there is a genuine dispute as to the underlying material facts may impose any sanction which the Board may have imposed in this case under §§ 14-404(a) and 14-405.1 of the Medical Practice Act, including a probationary term and conditions of probation, reprimand, suspension, revocation and/or a monetary penalty, said violation of the terms and conditions being proved by a preponderance of the evidence[.]

Dr. Malik signed the Consent Order, agreeing and accepting to be bound by the Consent Order and all of its terms and conditions.

Settlement Agreement

On January 8, 2015, Dr. Malik entered into a settlement agreement in the case of United States of America v. Ishtiaq A. Malik, M.D., et al., Civil Action No. 12-1234 (RLW) (“Settlement Agreement”). The Settlement Agreement included the following pertinent provisions:

20. On or before June 1st in each year from 2015 to 2019, Malik shall provide the United States a copy of his personal, as-filed tax returns for the prior tax year. For example, on or before June 1, 2015, Malik shall provide a copy of his personal tax returns for the 2014 tax year.

21. On or before June 1st each year from 2015 to 2019, Malik shall pay to the United States by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Attorney’s Office for the District of Columbia an amount equal to the sum of the following (the “Periodic Payments”)[.]

22. Malik’s obligation to make the payments described in Paragraph 21 shall cease if and when Defendants collectively pay the entire amount of the Judgment Amount plus accrued post-judgment interest (at a rate of 2.5% per annum) through, collectively, the Settlement Payment, the Medicare Settlement Abandonment, the Injunction Payment, the Injunction Abandonment, the Net Proceeds from the Real Property (or the net amount recovered by the United States upon sale of the Real Property after recording the Escrow Deed), and the Periodic Payments.

24. Conditioned upon Defendants’ full performance of the obligations set forth in Paragraphs 1 to 22 above, the Government Parties agree that Defendants have fully satisfied the Judgments entered in the Civil Action and shall not otherwise seek to enforce or collect the Judgments against Defendants. After Defendants fully perform their obligations set forth in Paragraphs 1 to 22 above, the Parties shall jointly file a Notice of Satisfaction of Judgment in the Civil Action.

38. In the event that Defendants fail to pay any amount required in Paragraphs 1 to 22 above within five (5) business days of the date on which such payment is due or otherwise fail to fulfill the obligations set forth in Paragraph 1 to 22 above as they become due, Defendants shall be in default of their payment obligations (“Default”). The United States will provide written notice of the Default to Defendants through Dr. Malik or his counsel, and Defendants shall have the opportunity to cure such Default within five (5) business days from the date of receipt of the notice. . . . If Defendants fail to cure such Default within five (5) business days of receiving the Notice of Default . . . the Government Parties’ agreements set forth in Paragraphs 24 to 26 above shall be rescinded and each Government Party may seek to enforce the Judgments in whole[.]

On November 19, 2015, the United States issued a Notice of Default to Dr. Malik and his counsel. The notice informed Dr. Malik that he “has failed to (i) provide his personal tax returns for 2014 by June 1, 2015, as required by Paragraph 20 of the Agreement, and (ii) remit the payment required by Paragraph 21 of the Agreement by June 2, 2015, with respect to Malik’s 2014 tax returns.” The notice also explained that the United States delayed issuing the notice of default as a courtesy to Dr. Malik, but the United States had no other choice except to issue the default because Dr. Malik’s obligations were “more than four months past due and his past promises of prompt compliance have remained unfulfilled.”

On June 3, 2019, Dr. Malik sent an email to the Deputy Chief for the Civil Division of the U.S. Attorney’s Office attaching his tax return for 2018. Dr. Malik acknowledged he was in default of the agreement since November of 2015 for his late filing in 2015 and asked for reconsideration and for the parties to be able to file the notice of satisfaction of the judgment in the Civil Action. The Deputy Chief responded and explained that Dr. Malik was in default as of November 19, 2015, he failed to cure the default within five business days, and that sending any tax returns or other documents at any time does not cure the prior uncured default.

Violation of November 14, 2012 Consent Order

On January 23, 2020, Board staff received documentation from the Deputy Chief for the Civil Division of the U.S. Attorney’s Office, demonstrating that Dr. Malik had failed to timely

submit his tax returns to the United States and confirming that Dr. Malik was in default of the Settlement Agreement.

On January 28, 2020, the Board sent a letter to Dr. Malik notifying him that the Board received documentation from the United States Department of Justice (“DOJ”) that demonstrated he failed to comply with the Settlement Agreement, in violation of Condition 8 of the November 14, 2012 Consent Order. The letter requested a written response no later than February 4, 2020.

On February 2, 2020, Dr. Malik responded to the Board’s letter and acknowledged that he was in default of the Settlement Agreement due to the late filing of his 2014 tax return. He claimed that he complied with all other terms and conditions of the Settlement Agreement and he believed he was fully compliant with the Settlement Agreement, and, therefore, did not violate Condition 8 of the November 14, 2012 Consent Order.

Show Cause Hearing

On March 5, 2020, Panel A issued a Violation of Board Order and Notice to Show Cause, alleging a violation of the terms and conditions of the November 14, 2012 Consent Order for failing to comply with the terms of the Settlement Agreement.

On May 13, 2020, Dr. Malik appeared with counsel at a show cause hearing before Panel A. During the hearing, Dr. Malik admitted that the Settlement Agreement required him to submit his tax returns by a certain date and that he was late in submitting one of the tax returns, which resulted in him being in default and owing a larger amount of money. He asked the Panel to allow him to work out the details with the DOJ and not to impose any additional sanctions against his license.

In response, the Administrative Prosecutor argued that Dr. Malik did not comply with the terms of the settlement agreement because he did not file his tax returns by the June 1st deadline, as the Settlement Agreement required, which resulted in the Government notifying Dr. Malik

that he was in default of the Settlement Agreement. The Administrative Prosecutor also pointed out that Paragraph 24 of the DOJ Settlement agreement states that if Dr. Malik complies with the terms of the DOJ settlement agreement the parties were to jointly file a notice of satisfaction of judgment in the civil action, but a notice was never filed, and instead, Dr. Malik received several notices of default as a result of his noncompliance. The Administrative Prosecutor asked the Panel to find that Dr. Malik violated the terms of the 2012 Consent Order and asked the Panel to reprimand Dr. Malik and continue Dr. Malik's probation until he submits proof from the DOJ that he has satisfied the Settlement Agreement.

DISCUSSION

It is undisputed that Dr. Malik did not file his 2014 tax return by June 1, 2015, as required by the Settlement Agreement he entered into with the U.S. Government. The November 14, 2012 Consent Order required Dr. Malik to “comply with agreements or settlements with the United States Government, or injunctions and final judgments, in United States of America v. Ishtiaq A. Malik, M.D., et al., Civil Action No. 12-1234 (RLW)[.]” The Consent Order further stated that “failure to do so shall be deemed a violation of probation[.]” By failing to submit his tax return in accordance with the terms of the Settlement Agreement, Dr. Malik failed to comply with the terms of the Settlement Agreement, which required him to submit his tax return by June 1st and pay an amount commensurate with his income. When Dr. Malik failed to comply with the specific terms laid out in the Settlement Agreement, he was in default, and because he failed to cure the default, the Government parties were entitled to seek enforcement of the full judgment amount as a penalty for Dr. Malik's failure to comply with the terms. Pursuant to probation condition 8 of the November 14, 2012 Consent Order, failure to comply with the Settlement Agreement entered into with the U.S. Government is a violation of probation. The Panel agrees with the State that Dr. Malik should remain on probation until he

demonstrates to the Panel that he has fully satisfied the terms of the U.S. DOJ Settlement Agreement and cured his noncompliance.

CONCLUSIONS OF LAW

Panel A concludes that Dr. Malik violated probation condition 8 of the November 14, 2012 Consent Order by failing to comply with the terms of the Settlement Agreement entered into in United States of America v. Ishtiaq A. Malik, M.D., et al., Civil Action No. 12-1234 (RLW), which required him to submit his tax returns on or before June 1st in each year from 2015 to 2019.

ORDER

It is, thus, by Board Disciplinary Panel A, hereby

ORDERED that Ishtiaq Malik, M.D. is **REPRIMANDED**; and it is further

ORDERED that Dr. Malik is placed on **PROBATION** until he submits satisfactory documentation to the Panel that he has fulfilled the terms of the Settlement Agreement entered into in United States of America v. Ishtiaq A. Malik, M.D., et al., Civil Action No. 12-1234 (RLW); and it is further

ORDERED that, after Dr. Malik has submitted satisfactory documentation that he has fulfilled the terms of the Settlement Agreement, Dr. Malik may submit a written petition for termination of probation. After consideration of the petition, Dr. Malik's probation, imposed by Panel A in this Order, may be administratively terminated through an order of the disciplinary panel if there are no pending complaints relating to the charges; and it is further

ORDERED that the probation and any unfulfilled probationary conditions imposed by the November 14, 2012 Consent Order remain in effect; and it is further

ORDERED that this Order is a public document. See Md. Code Ann., Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6).

06/17/2020
Date

Signature on File

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