IN THE MATTER OF	*	**BEFORE THE MARYLAND**
KWAME AKOTO, M.D.	*	**STATE BOARD**
RESPONDENT	*	**OF PHYSICIANS**
LICENSE NO.: D68799	*	**CASE NO.: 2217-0097 B**

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CONSENT ORDER

On December 18, 2018, Disciplinary Panel B ("Panel B") of the Maryland State Board of Physicians (the "Board") charged **Kwame Akoto, M.D.** (the "Respondent"), License No. D68799, under the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") §14-401 *et seq.* (2014 Repl. Vol. & 2018 Supp.).

The pertinent provisions of Health Occ. §14-404(a) under which Panel B voted to charge the Respondent provide the following:

> (a) 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 licensee 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; and
>
> (40) Fails to keep adequate medical records as determined by appropriate peer review[.]

FINDINGS OF FACT

Panel B makes the following facts:

I. License and Medical Background

1. At all times relevant hereto, the Respondent was, and is, licensed to practice medicine in Maryland. The Respondent was originally licensed to practice medicine in Maryland on March 10, 2009 under license number D68799. The Respondent last renewed his license in or about September 2018, which will expire on September 30, 2020.

2. The Respondent is also licensed to practice medicine in Virginia and the District of Columbia.

3. The Respondent's self-designated practice areas are family medicine and internal medicine. In 2009, the Respondent was granted certification in Family Medicine by the American Board of Family Medicine.

4. Since 2009, the Respondent has been employed by a multi-specialty medical group (the "Medical Group") in the area of Baltimore City and Baltimore County.[1]

II. Complaint

5. On or about March 1, 2017, the Board received a complaint (the "Complaint") from a patient ("Patient 1") for whom the Respondent had provided care beginning on or about October 16, 2013. According to Patient 1, he suffered from, among other things, mental health and substance abuse issues, and chronic back and various joint pain for which the Respondent prescribed opioids. Patient 1 described his pain as "often is unbearable and described concerns about the Respondent's opioid prescribing practices

[1] Entity names and patient names are confidential and are not used in the Consent Order. The Respondent was provided a Confidential Identification List containing the names of the patients referenced in the Consent Order.

and "the volume of medications."

III. Board Investigation

6. On April 6, 2017, at the request of the Board, the Respondent submitted a written response to the complaint and a detailed narrative of the care he provided Patient 1.

7. On April 11, 2017, in response to a subpoena issued by the Board dated March 16, 2017, the Respondent sent a complete copy of Patient 1's medical record to the Board.

8. On May 25, 2017, the Board issued a subpoena to the Prescription Drug Monitoring Program ("PDMP") to obtain a computer-generated printout of all controlled dangerous substances ("CDS") written by the Respondent from January 1, 2015 to May 25, 2017.

9. On August 1, 2017, the Board issued a subpoena to the Respondent for a complete copy of the medical records of nine additional patients, who were selected by Board staff from the PDMP printouts; and, requested that Respondent provide a summary of care for each patient listed in the subpoena.

10. On August 18, 2017 and on September 11, 2017, respectively, the Board received the nine subpoenaed medical records and summaries of care.

11. On October 20, 2017, Board staff interviewed Respondent under oath who stated, among other things, the following:

a. The Respondent's coursework and/or professional training in pain management consists of one bi-monthly (every two months) eight-hour "lunchtime CME" course taught by the Medical Group's "pain board" on which he serves;

b. The Respondent treats all chronic medical illnesses, ranging from high blood pressure to diabetes, provides routine well care and preventative care, and treats substance abuse;

c. The Respondent treats approximately 2,000 patients in total. Only about five percent of those patients are treated for chronic pain; and

d. Despite reporting that Patient 1's X-Rays were unremarkable, the Respondent continued Patient 1's pain medication because "often the physical findings . . . on imaging do not necessarily correlate to the person's pain level . . ."

12. On December 11, 2017, the Board referred the case to an independent peer review agency, requesting a peer review of the Respondent's prescribing of CDS, by two physicians who are board-certified in pain medicine.

13. On April 18, 2018, the Board received the peer review reports. The reviewers concurred that regarding five of the ten patients reviewed (Patients 1, 2, 6, 7, and 8), the Respondent failed to meet appropriate standards for the delivery of quality medical care and that regarding seven of the ten patients reviewed (Patients 1, 2, 5, 6, 8, 9, and 10), the Respondent failed to maintain adequate medical records.[2]

14. On April 18, 2018, the Board sent copies of the peer review reports to the Respondent, with the names of the reviewers redacted, requesting the Respondent to provide a Supplemental Response.

15. On May 7, 2018, the Board received the Respondent's Supplemental Response, which was subsequently reviewed by the two reviewers, prior to the issuance of

[2] There were no charges pertaining to Patients 3 and 4.

Charges. The Respondent, among other points, stated that:

a. All ten patients came under the Respondent's care already dependent on opioids;

b. Many of the ten patients reduced or ended use of opioids under the Respondent's care;

c. With some exceptions, neither peer reviewer acknowledged that much of the Respondent's care of the ten patients preceded publication of the CDC ("Centers for Disease Control") recommendations of March 2016[3];

d. Review of the Respondent's current pain patient records would indicate more detailed documentation as well as careful adherence to current CDC recommendations for treating non-cancer chronic pain;

e. The Respondent acknowledged, in retrospect, that more frequent office visits and clearly detailed notes "would have been better;"

f. The Respondent acknowledged that prescribing of two short acting opioids at the same time "is not an effective practice;"

g. The Respondent acknowledged that he should have been monitoring with urine drug screens ("UDS"), which he has since corrected;

h. The Respondent acknowledged that he should have had more frequent visits, which is now his standard; and

i. The Respondent stated that his medical record documentation has substantially improved since the review.

IV. Findings of Fails to Meet Standards of Quality Medical Care and Inadequate Documentation

[3] The "CDC Guideline for Prescribing Opioids for Chronic Pain – United States", was published on March 18, 2016. There was, however, considerable information available to physicians for standard of care pain management, prior to the CDC publication. The concept of responsible opioid prescribing preceded the publication of the CDC Guideline.

16. In five of the ten cases reviewed[4], the reviewers concurred that the Respondent failed to meet standards for quality medical care in prescribing opioids for non-cancer related chronic pain, and in seven of the ten cases reviewed[5], the Respondent failed to keep adequate medical records[6], in that the Respondent:

a. In regard to four patients, failed to perform and comprehensively document an adequate work-up of the underlying source of the pain prior to prescribing opioids, or continuing to prescribe opioids to patients who had been treated by another physician;

b. In regard to one patient, incorrectly treated the pain associated with acute renal insufficiency despite laboratory findings of declining renal function;

c. Inappropriately managed pain with escalating and high dosing of opioids without documented evaluation or examination;

d. In regard to four patients, misrepresented the dosing of opioids and other CDS in that, he documented a sixty-day supply but frequently renewed prescriptions before their refill dates;

e. In regard to one patient, inappropriately prescribed more than one short-acting agent simultaneously;

f. Failed to document a risk/benefits assessment and assess goals for opioid therapy prior to prescribing opioids;

g. Failed to document patients' responses to continued treatment with opioids;

h. Failed to obtain informed consent or document an opioid

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[4] Patients 1, 2, 6, 7, and 8.
[5] Patients 1, 2, 5, 6, 8, 9, and 10.
[6] A summary of care that the Respondent provided to the five individual patients, based on documentation in the medical records, is set forth in the two peer review reports which have previously been provided to the Respondent. In addition, specific examples of failure to meet standards of care and examples of inadequate documentation with references to the Respondent's medical records are provided in the peer review reports.

agreement/contract;

i. Failed to consistently utilize UDS or perform pill counts to verify compliance or to test for signs of diversion or taking illicit substances, particularly on high risk patients;

j. In regard to four patients, failed to consider the results of UDS for subsequent prescribing;

k. In regard to three patients, failed to utilize non-opioid treatments such as referrals for interventional pain management, use of non-opioid adjuvant pain medications, and medication rotation instead of escalating prescription opioids;

l. In regard to three patients, failed to utilize non-pharmacologic treatment options such as TENs units, physical therapy, and counseling, and to counsel patients on the use of illicit "gateway drugs";

m. In regard to four patients, failed to routinely monitor the PDMP and Chesapeake Regional Information System for our Patients ("CRISP"); and

n. Prescribed and refilled opioid prescriptions based upon telephone communications with patients and/or e-mail communications in lieu of face-to-face encounters.

CONCLUSIONS OF LAW

Disciplinary Panel B concludes as a matter of law that the Respondent failed to meet standards of quality medical care, in violation of Health Occ. §14-404(a)(22), and failed to maintain adequate medical records, in violation of Health Occ. § 14-404(a)(40).

ORDER

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

ORDERED that the Respondent is placed on **PROBATION** for a minimum of **one-year** (1) year.[7] During probation, the Respondent shall comply with the following terms and conditions of probation:

1. Within **FIVE (5) BUSINESS DAYS** of the effective date of this Consent Order, the Respondent shall inform the Board in writing of his current employer or employers, the employer's or employers' address or addresses, and all locations, including hospitals, at which the Respondent provide health care services. The Respondent shall keep the Board informed of any subsequent employment changes within five business days of the change

2. Within **SIX (6) MONTHS** of the effective date of this Consent Order, the Respondent is required to take and successfully complete **TWO** courses: (i) one course in the prescribing of controlled dangerous substance; and (ii) a separate course in medical record keeping. The following terms apply to each course:

   a. It is the Respondent's responsibility to locate, enroll in and obtain the disciplinary panel's approval of the course before the course is begun;
   b. The disciplinary panel will not accept a course taken over the internet;
   c. The Respondent must provide documentation to the disciplinary panel that the Respondent has successfully completed the course;
   d. The course may not be used to fulfill the continuing medical education credits required for license renewal; and
   e. The Respondent is responsible for the cost of the course.

3. The Respondent is subject to a chart and/or peer review conducted by the

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[7] If the Respondent's license expires during the period of probation, the probation and any conditions will be tolled.

disciplinary panel or its agents as follows:

a. The Respondent shall cooperate with the peer review process;

b. The disciplinary panel in its discretion may change the focus of the peer review if the Respondent changes the nature of his practice;

c. If the disciplinary panel, upon consideration of the peer review and the Respondent's response, if any, determines that the Respondent is meeting the standard of quality care in his practice, the disciplinary panel shall consider the peer review condition of the Consent Order met; and

d. If the disciplinary panel, upon consideration of the peer review and the Respondent's response, if any, has a reasonable basis to believe that the Respondent is not meeting the standard of quality care in his practice or cannot safely and competently practice, the disciplinary panel may charge the Respondent with a violation of probation and/or under the Medical Practice Act.

4. The disciplinary panel may issue administrative subpoenas to the Maryland Prescription Drug Monitoring Program on a quarterly basis for the Respondent's Controlled Dangerous Substances ("CDS") prescriptions. The administrative subpoena will request the Respondent's CDS prescriptions from the beginning of each quarter.

5. The Respondent shall not apply for early termination of probation.

6. the Respondent shall comply with the Maryland Medical Practice Act, Md. Code Ann., Health Occ. §§ 14-101—14-702, and all federal and state laws and regulations governing the practice of medicine in Maryland; and it is further

ORDERED that a violation of probation constitutes a violation of the Consent Order; and it is further

ORDERED that if the Respondent allegedly fails to comply with any term or condition imposed by 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 Administrative Hearings followed by an exceptions process before a disciplinary panel; and if there is no genuine dispute as to a material fact, the Respondent shall be given a show cause hearing before a disciplinary panel; and it is further

ORDERED that after the appropriate hearing, if the disciplinary panel determines that the Respondent has failed to comply with any term or condition imposed by this Consent Order, the disciplinary panel may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, or suspend or revoke the Respondent's license to practice medicine in Maryland. The disciplinary panel may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine on the Respondent, and it is further

ORDERED that after the Respondent has complied with all the terms and conditions of probation, and the minimum period of **ONE (1) YEAR** of probation imposed by the Consent Order has passed, the Respondent may submit a written petition to the panel for termination of probation. The Respondent may be required to appear before the panel to discuss his petition for termination. After consideration of the petition, the Respondent's probation may be administratively terminated through an order of the disciplinary panel if the Respondent has complied with all probationary terms and conditions and if there are no pending complaints relating to the charges; and it is further

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

ORDERED that the effective date of the Consent Order is the date the Consent Order is signed by the Executive Director of the Board or her designee. The Executive Director signs the Consent Order on behalf of the disciplinary panel which has imposed the terms and conditions of this Consent Order, and it is further

ORDERED that this Consent 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).

03/27/2019
Date

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

CONSENT

I, Kwame Akoto, M.D., acknowledge that I have consulted with counsel before signing this document.

By this Consent, I agree to be bound by this Consent Order and all its terms and conditions and understand that the disciplinary panel will not entertain any request for amendments or modifications to any condition.

I assert that I am aware of my right to a formal evidentiary hearing, pursuant to Md. Code Ann., Health Occ. § 14-405 and Md. Code Ann., State Gov't §§ 10-201 *et seq*. concerning the pending charges. I waive these rights and have elected to sign this Consent Order instead.

I acknowledge the validity and enforceability of this Consent Order as if entered 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 their behalf, and to

all other substantive and procedural protections as provided by law. I waive those procedural and substantive protections. I acknowledge the legal authority and the jurisdiction of the disciplinary panel to initiate these proceedings and to issue and enforce this Consent Order.

I voluntarily enter and agree to comply with the terms and conditions set forth in the Consent Order as a resolution of the charges. I waive any right to contest the Findings of Fact and Conclusions of Law and Order set out in the Consent Order. I waive all rights to appeal this Consent Order.

I sign this Consent Order, without reservation, and fully understand the language and meaning of its terms.

Signature on File

03/20/2019
Date

Kwame Akoto, M.D., Respondent

NOTARY

STATE OF MARYLAND

CITY/COUNTY OF MONTGOMERY

I HEREBY CERTIFY that on this 20th day of MARCH, 2019 before me, a Notary Public of the State and County aforesaid, personally appeared Kwame Akoto, M.D., License Number D68799, 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.

My commission expires 03-22-2021

TIMOTHY NYAGO ONSERIO
My Commission Expires
NOTARY PUBLIC
03-22-2021
MONTGOMERY COUNTY, MD