

**IN THE MATTER OF**  
**ROOZBEH BADI, M.D.**  
**Respondent.**  
**License Number D73228**

**\* BEFORE THE**  
**\* MARYLAND STATE**  
**\* BOARD OF PHYSICIANS**  
**\* Case Numbers 2218-0147; 2219-0026**

\* \* \* \* \*

**FINAL DECISION AND ORDER**

**INTRODUCTION**

On April 11, 2019, Disciplinary Panel B (“Panel B”) of the Maryland State Board of Physicians (“Board”) charged Roozbeh Badi, M.D. under the Maryland Medical Practice Act with the following disciplinary grounds: Is professionally, physically, or mentally incompetent, in violation of Md. Code Ann., Health Occ. (“Health Occ.”) § 14-404(a)(4); and Fails to cooperate with a lawful investigation conducted by the Board or a disciplinary panel, in violation of Health Occ. § 14-404(a)(33). Dr. Badi requested an evidentiary hearing on the charges. On June 3, 2019, the case was forwarded to the Office of Administrative Hearings (“OAH”) for an evidentiary hearing on the charges.

A three-day hearing was held before an Administrative Law Judge (“ALJ”) at the OAH. Both parties offered testimony from fact witnesses and from expert witnesses who testified regarding Dr. Badi’s competency to practice medicine. On November 22, 2019, the ALJ issued a proposed decision concluding that Dr. Badi failed to cooperate with the Board’s investigation, in violation of Health Occ. § 14-404(a)(33). The ALJ did not uphold the charge that Dr. Badi was professionally, physically, or mentally incompetent, in violation of Health Occ. § 14-404(a)(4). The ALJ recommended that Dr. Badi’s license be suspended for a period not to

exceed one year, which could be reduced after the Board determined that Dr. Badii had fully complied with the Board's investigation.

On December 11, 2019, Dr. Badii filed exceptions to the ALJ's proposed decision and the State filed a response. The State filed exceptions to the ALJ's proposed decision on December 13, 2019. On February 12, 2020, both parties appeared before Disciplinary Panel A ("Panel A" or "the Panel") of the Board for an exceptions hearing.

### FINDINGS OF FACT

Panel A adopts the ALJ's joint stipulations of fact, numbers 1-18, and the ALJ's proposed findings of fact, numbers 1-50, and, numbers 54-59.<sup>1</sup> See ALJ proposed decision, attached as **Exhibit 1**.<sup>2</sup> These facts were proven by a preponderance of the evidence and are incorporated by reference into the body of this document as if set forth in full. The Panel also adopts the ALJ's discussion set forth on pages 24-28 regarding the failure to cooperate charge, which is incorporated into the body of this document as if set forth in full. The Panel does not adopt the remaining findings of fact or the ALJ's discussion on pages 28-34 regarding the professional, physical, or mental incompetence charge.

Dr. Badii was licensed by the Board to practice medicine in the State of Maryland on October 17, 2011. His license expired on September 30, 2018.<sup>3</sup> In or around February 2018, the Board initiated an investigation of Dr. Badii, under case number 2218-0147B, following a complaint filed by a pharmacy benefit management organization regarding Dr. Badii's telemedicine prescribing practices. As part of this investigation into Dr. Badii's prescribing

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<sup>1</sup> The Panel does not adopt the last sentence of finding of fact 33.

<sup>2</sup> The ALJ proposed decision has been redacted to remove confidential information from public view.

<sup>3</sup> Pursuant to section 14-403 of the Health Occupations Article, the license of an individual regulated by the Board may not "lapse by operation of law while the individual is under investigation or while charges are pending." The investigation in both cases began before the expiration of Dr. Badii's license. Therefore, by operation of law, Dr. Badii's license did not expire during these proceedings.

practices, the Board issued a subpoena to Dr. Badii for the complete medical records of ten patients and a subpoena to Dr. Badii to appear at the Board for an interview on July 12, 2018. Dr. Badii failed to comply with either subpoena despite numerous requests for the information.<sup>4</sup>

During the course of the Board's investigation of case number 2218-0147B, Dr. Badii filed a complaint against another physician accusing the physician of a series of professional improprieties.<sup>5</sup> After investigating the complaint, the Board ultimately decided to close the case with no action. Information submitted by Dr. Badii with his complaint raised concerns regarding Dr. Badii's ability to practice medicine safely and a new case was opened, under case number 2219-0026B, to investigate whether Dr. Badii was competent to practice medicine. The Board subpoenaed Dr. Badii's treatment records from the various physicians who had evaluated or treated him over the years and sent Dr. Badii for an independent evaluation by a Board-certified forensic psychiatrist to assess Dr. Badii's competency. The psychiatrist reviewed all of the evaluations and treatment records concerning Dr. Badii, as well as records from Dr. Badii's divorce proceeding and relevant portions of the Board's investigative file, and concluded that Dr. Badii was unable to safely practice medicine safely due to his anger, irritability, impulsivity, poor insight and judgment.

### **EXCEPTIONS**

Pursuant to the Board's regulations, any party may file exceptions to an ALJ's proposed decision within 15 days of its issuance. COMAR 10.32.02.05B(1)(a). The exceptions must be related to the ALJ's proposed decision and the disciplinary panel is not permitted to accept additional evidence through the written exceptions process. COMAR 10.32.02.05B(1)(e). Both

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<sup>4</sup> The ALJ found that, as of the date of the OAH evidentiary hearing, Dr. Badii had still not appeared for the Board interview or produced the records for nine out of the ten patients named in the subpoena.

<sup>5</sup> The details of the complaint and the identity of the physician who was the subject of the complaint are confidential Board records and not subject to disclosure.

parties filed exceptions in this case. The Panel will address the exceptions related to the ALJ's proposed decision and the charges in this case below.

## **DISCUSSION**

### **I. Failure to Cooperate**

Dr. Badii takes exception to the ALJ's conclusion that he failed to cooperate with the Board's investigation and disagrees with many of the ALJ's proposed findings of fact related to this charge. The Panel has carefully reviewed the ALJ's proposed findings of fact regarding Dr. Badii's failure to cooperate and finds that each of the proposed findings of fact were established in the record and supported by a preponderance of the evidence.

In connection with the complaint regarding Dr. Badii overprescribing prescription drugs to his telemedicine patients, the Board sent Dr. Badii several letters and two subpoenas via first-class mail to his address of record. The letters and subpoenas were not returned to the Board as undelivered. When Dr. Badii did not respond to the initial communications sent to his address of record, the compliance analyst sent an email to Dr. Badii, on April 30, 2018, and called Dr. Badii, on May 15, 2018, using the email address and phone number that Dr. Badii provided to the Board on his renewal application. The compliance analyst spoke to Dr. Badii on the phone, on May 15, 2018, and Dr. Badii confirmed his email address and informed the compliance analyst that his mailing address had changed and that the address he had provided to the Board was no longer valid. The compliance analyst sent all of the prior communications that were sent to Dr. Badii by first-class mail to Dr. Badii at the email address that Dr. Badii confirmed on the phone and gave Dr. Badii until May 30, 2018 to comply with the first Board subpoena, which requested the medical records of 10 named patients. Dr. Badii did not respond to the subpoena for medical records by May 30, 2018. The compliance analyst followed up with phone calls to

Dr. Badii on June 4 and June 7, 2018, and Dr. Badii produced the records for one of the ten patients named in the subpoena on June 7, 2018. On June 11, 2018, a subpoena ad testificandum for Dr. Badii to appear at the Board for an interview on July 12, 2018 was mailed to Dr. Badii by first-class mail at the new address of record that Dr. Badii provided to the Board. The subpoena was not returned to the Board as undelivered. Dr. Badii did not appear for the interview on July 12, 2018 and has never made any attempts to belatedly comply with the Board's subpoena.

Dr. Badii argues that he never received the Board subpoenas and argues that there was no evidence that the Board subpoenas and other documents were mailed or delivered to him. Licensees are required to update their addresses with the Board and have an obligation to cooperate with the Board's investigation. *See* Health Occ. § 14-316(f). Licensees who fail to cooperate with the Board's investigation are subject to discipline under the Medical Practice Act. *See* Health Occ. § 14-404(a)(33). Dr. Badii acknowledged that he failed to update his address with the Board and admitted that he only checked his mail once a month and that the post office stopped delivering mail when his mailbox was full. Because of the requirement to update the Board of their address and the importance of the Board being able to investigate complaints, licensees cannot avoid discipline if they fail to update their address and thwart the Board's ability to investigate. *See Maryland State Bd. of Nursing v. Sesay*, 224 Md. App. 432, 453-54 (2015) ("Ms. Sesay's argument could provide an incentive to licensees in the midst of administrative proceedings in which charges have been brought against them—or even before any such proceedings commence if they believe charges may be brought—to fail to update their address with the appropriate regulatory body.").

Dr. Badii also argued in his exceptions that he never received phone calls from the Board on May 15, 2018 and June 4, 2018 and accused the Board's compliance analyst of lying about

the phone calls and about mailing the subpoenas. This statement contradicts Dr. Badii's testimony before the ALJ at OAH, where he admitted that he received a phone call from the compliance analyst on June 4, 2018. Next, Dr. Badii points to a statement in the Report of Investigation where the compliance analyst stated that the June 11, 2018 subpoena ad testificandum was mailed and emailed to Dr. Badii and argues that this is evidence that the compliance analyst lied because there was no evidence that the subpoena was ever emailed to him. The compliance analyst was asked about this statement in her testimony and she corrected the error in the report during her testimony and confirmed that the June 11, 2018 subpoena was mailed by first-class mail to Dr. Badii at his address of record, but was not emailed to him. As a result, the ALJ found that the Board mailed the subpoena to Dr. Badii, on June 11, 2018, and the ALJ did not find that the subpoena was emailed to Dr. Badii on June 11, 2018. The Panel agrees with the ALJ that a preponderance of evidence supports the finding that the June 11, 2018 subpoena was sent to Dr. Badii by first-class mail to his address of record and was not emailed to him. The ALJ was unpersuaded by Dr. Badii's assertions that the compliance analyst was lying, and instead, found that the analyst's testimony was clear, concise, and consistent in explaining all her attempts to obtain the requested information from Dr. Badii on multiple occasions. The Panel adopts the ALJ's credibility determinations concerning the Board's compliance analyst and agrees that there is no credible evidence to support that she lied in her sworn testimony.

Dr. Badii argues that, assuming the truth of the compliance analyst's statements, he responded to the Board's subpoena only 7 days late and argues that he should not be sanctioned for his late compliance. Dr. Badii, however, fails to address that he only produced one of the ten patient records requested and that he has never produced the remaining nine patient records in compliance with the Board's subpoena. Dr. Badii argued that he was not able to produce the

records because the telemedicine companies maintained the records and he no longer had access to the records or some of the companies were no longer in business. The ALJ found that Dr. Badii was required to maintain his own patient records regardless of whether he practiced telemedicine or saw patients in-person and did not find that Dr. Badii's excuse that the telemedicine companies maintained the records excused him from his independent responsibility to keep patient records. In addition, Dr. Badii never responded to the Board's June 11, 2018 subpoena, which required Dr. Badii to appear at the Board for an interview. The ALJ found that Dr. Badii's failure to respond to repeated requests from the Board's compliance analyst continued to delay the Board's ability to investigate Dr. Badii's prescribing practices and fully supported a finding that Dr. Badii failed to comply with a lawful investigation by the Board or a disciplinary panel. The Panel agrees. Dr. Badii's exceptions are denied.

## **II. Professional, Physical, or Mental Incompetence**

During the Board's investigation of Dr. Badii's prescribing practices, Dr. Badii submitted a complaint to the Board regarding another physician, which contained attachments from a California court proceeding, including a financial statement in which Dr. Badii reported a lower income due to a medical diagnosis and inability to work as a physician. As a result of the information provided to the Board in the complaint, the Board initiated an investigation to determine whether Dr. Badii was competent to practice medicine and referred Dr. Badii for an independent evaluation, which revealed that Dr. Badii was not competent to safely practice medicine due to his anger, irritability, impulsivity, poor insight and judgment.<sup>6</sup>

The evidence showed that Dr. Badii has been evaluated by several medical professionals over the course of his medical career with different focuses and reasons for the evaluations. Dr.

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<sup>6</sup> The details of the evaluations, diagnoses, and specific medications are not disclosed in this document in order to protect Dr. Badii's private health information.

Badii has had several treating psychiatrists who evaluated Dr. Badii as a patient on a clinical basis. Dr. Badii was ordered to undergo an evaluation as part of a child custody dispute in California. Dr. Badii was ordered by the Board in this case to undergo an independent forensic evaluation to determine whether he was competent to practice medicine and Dr. Badii hired his own expert in this case to conduct an evaluation. There is a lack of consensus between the medical professionals on a diagnosis, but Dr. Badii's treatment history is largely undisputed. Outside of the two evaluations conducted pursuant to this case, none of the other medical professionals were specifically asked to evaluate whether Dr. Badii is competent to practice medicine. The Panel gives little weight to the opinions and reports of the other medical professionals who evaluated Dr. Badii in different contexts, who were not asked to opine on the specific question at issue in this case, and who were not called as witnesses in this case.

At the OAH hearing, the State offered testimony from the independent evaluator who conducted the evaluation of Dr. Badii as part of the Board's investigation. Dr. Badii offered testimony from the psychiatrist that he hired to conduct an evaluation of him. The ALJ accepted both physicians as experts in forensic psychiatry and the evaluation reports of both experts were admitted into evidence.

The State's expert explained that a medical diagnosis in and of itself does not mean that someone is incompetent to practice medicine and acknowledged that there are many physicians who have mental conditions who are able to competently practice medicine. The individual, however, must have insight into the condition in order to ensure the condition is being properly monitored and they are getting the appropriate treatment. The State's expert testified that Dr. Badii exhibited poor judgment and insight into his condition, explaining that Dr. Badii believed he was misdiagnosed, that the doctors who diagnosed him were wrong, and that Dr. Badii



contacted a prior psychiatrist in order to convince the psychiatrist to change his diagnosis. The State's expert concluded that given Dr. Badii's anger, irritability, impulsivity, poor insight and judgment, Dr. Badii was unable to safely practice medicine.

Dr. Badii's expert, on the other hand, stated that, according to Dr. Badii's reports, Dr. Badii was insightful as to his condition and that Dr. Badii does not take telemedicine consultations when he is symptomatic. Dr. Badii's expert noted that Dr. Badii acknowledges he has a condition, although he may disagree about the specific label, and that he has been continuously taking his medications for a significant period of time, recognizes the need to take the medication on a regular, daily basis and is agreeable to continuing to take the medication for the foreseeable future. Dr. Badii's expert administered psychological testing, which revealed that Dr. Badii minimized his faults, denied any problems, and was not very introspective or insightful about his behavior. In addition, the psychological testing revealed that Dr. Badii is likely to project an excessively positive self-image, externalize blame, see other people as being responsible for his difficulties, and is unlikely to seek treatment or cooperate fully with treatment if it is implemented. Dr. Badii's expert, however, reviewed the patient comments and ratings provided by Dr. Badii and opined that it was highly doubtful that Dr. Badii would have received the positive feedback and performance ratings if his condition was impacting his ability to practice medicine safely. The opinion of Dr. Badii's expert, therefore, relied more on the patient feedback selected and provided by Dr. Badii and an interview conducted with Dr. Badii's girlfriend than on the objective psychological testing. As a result, Dr. Badii's expert concluded that Dr. Badii did not display anger, irritability, impulsivity, poor insight and judgment that would render him unable to safely practice medicine, and that Dr. Badii was not professionally, physically, or mentally incompetent.

The ALJ compared the reports of the experts and noted that Dr. Badii's history and background was generally consistent in both reports. The difference, according to the ALJ, was in how the experts viewed Dr. Badii's work history and whether they considered the quality of medical care provided by Dr. Badii in determining whether he was mentally competent to practice medicine. In reaching the conclusion that Dr. Badii was not mentally incompetent to practice medicine, the ALJ gave greater weight to the testimony of Dr. Badii's expert than to the testimony of the State's expert. The ALJ pointed out that Dr. Badii's expert considered patient reviews provided by Dr. Badii, the lack of any patient complaints or malpractice lawsuits filed against Dr. Badii, and interviewed Dr. Badii's live in girlfriend, all of which the State's expert did not take into consideration in formulating his opinion. The ALJ found that Dr. Badii was currently under the care of a psychiatrist and that Dr. Badii had insight into his condition and recognized when he needed to take his medications and when he should not be treating patients using telemedicine. The ALJ found that Dr. Badii's condition was being managed and that there was no evidence that he was putting his patients at risk and, therefore, concluded that Dr. Badii was not mentally incompetent to practice medicine. The ALJ found that there was no evidence presented or allegations that suggested Dr. Badii was professionally or physically incompetent to practice medicine.

The State takes exception to the ALJ's proposed finding that the charge of professional, physical, or mental incompetence should be dismissed. The State argues that the ALJ's conclusions were based on unreliable evidence, such as online patient reviews, and testimony from biased witnesses, such as Dr. Badii's girlfriend and an expert that Dr. Badii paid to testify on his behalf. The State points out that Dr. Badii has made different representations to different professionals regarding the medications he is taking and his medication management and,

therefore, the State contends that, contrary to the ALJ's belief and the opinion of Dr. Badii's expert, there is no reliable evidence that Dr. Badii's condition is being properly managed. The State argues that the ALJ erroneously relied on Dr. Badii's board-certification and unverified patient surveys to conclude that Dr. Badii was competent to practice medicine.

The Panel owes no deference to the non-demeanor based credibility findings of the ALJ and makes "its own decisions about bias, interest, credentials of expert witnesses, the logic and persuasiveness of their testimony, and the weight to be given their opinions." *See State Bd. of Physicians v. Bernstein*, 167 Md. App. 714, 761 (2006). Both experts agree that Dr. Badii has a medical condition and further agree that a medical condition in and of itself does not mean that someone is incompetent to practice medicine and acknowledged that there are many physicians who have mental conditions who are able to competently practice medicine. The relevant consideration, however, is whether the physician has sufficient insight into the condition and is aware of the symptoms, so that they are able to participate in treatment and ensure that the condition is being appropriately managed and controlled.

The State's expert opined that Dr. Badii demonstrated poor insight into his condition while Dr. Badii's expert opined that Dr. Badii reported being insightful into his condition. Dr. Badii's expert's opinion and the ALJ's proposed decision were based on assumptions that Dr. Badii was being prescribed medication on a daily basis by his treating psychiatrist, that he had been taking the medication regularly since 2017, and that he saw his psychiatrist on a regular basis for pharmacologic management. Dr. Badii's expert also relied on the statements made by Dr. Badii that he recognized the need to take his medication on a regular, daily basis and agreed to continue taking the medication for the foreseeable future. These assumptions were directly contradicted by Dr. Badii in his own testimony. Dr. Badii explained that he has been taking two

medications off and on to treat his condition and that he decides whether to take one or both medications based on his mood. Dr. Badii told his expert that his treating psychiatrist had been prescribing one of the medications since 2017, but then stated during his testimony that he had just informed his psychiatrist three or four months prior to the hearing that he was taking the medication. Dr. Badii admitted that his treating psychiatrist had not prescribed the medication and that he had ordered it on his own from overseas due to the cost. The Panel is unpersuaded by the unsupported assumptions of Dr. Badii's expert's and the contradictory testimony of Dr. Badii and does not defer to the ALJ's findings on this issue.

Dr. Badii's expert also explained that he considered the feedback from Dr. Badii's telemedicine patients and the interview with Dr. Badii's girlfriend as a more reliable measure of Dr. Badii's temperament and professional competence in comparison to the objective psychological tests. The Panel is similarly unpersuaded by this testimony and the basis for the testimony. The fact that there have been no patient complaints against Dr. Badii made to the Board is of little relevance to whether Dr. Badii is competent to practice medicine and does not alter the potential for patient harm if Dr. Badii continues to practice medicine while his condition is not under control. The Panel does not have to wait for patient harm to occur in order to act. *See Pickert v. Maryland Bd. of Physicians*, 180 Md. App. 490, 505 (2008) ("No proof of injury or harm is required to take disciplinary actions against a physician's license."). A Maryland medical license allows an individual to practice in any specialty and the Board cannot control or guarantee that Dr. Badii will continue to work in the telemedicine field in a low stress environment where his interactions with patients are limited and his schedule is flexible where he can choose not to work on days that he feels symptomatic. The Panel gives little weight to the

patient reviews and testimony of Dr. Badii's girlfriend regarding Dr. Badii's telemedicine practice.

The Panel agrees with the testimony and conclusion of the State's expert that Dr. Badii's insight into his condition is insufficient to ensure that his condition is being appropriately monitored and he is getting appropriate treatment. Dr. Badii continues to dispute the diagnoses of several medical professionals, has self-diagnosed himself based on his reluctant admittance to any sort of condition, and has self-medicated by ordering medications from overseas that were not prescribed by, monitored by, or disclosed to his current psychiatrist. The Panel, therefore, does not adopt the ALJ's findings that Dr. Badii has adequate insight into his condition and that his condition is being appropriately managed and under control. After the considering the entirety of the record, the Panel finds that the State has met its burden of proving that Dr. Badii is mentally incompetent by a preponderance of the evidence. The State's exceptions are granted, in part.<sup>7</sup>

### **CONCLUSIONS OF LAW**

Panel A concludes that Dr. Badii is professionally, physically, or mentally incompetent, in violation of Health Occ. § 14-404(a)(4), and that Dr. Badii failed to cooperate with a lawful investigation conducted by the Board or a disciplinary panel, in violation of Health Occ. § 14-404(a)(33).

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<sup>7</sup> The Panel grants the State's exception with regard to mental incompetence and finds that Dr. Badii is mentally incompetent to practice medicine. The Panel, however, agrees with the ALJ that there is insufficient evidence in the record to support a conclusion that Dr. Badii is professionally or physically incompetent to practice medicine. The focus of the Board's investigation and the State's expert report was on whether Dr. Badii was mentally competent to practice medicine. The State's expert clarified that he was not asked to evaluate the quality of Dr. Badii's care, but rather whether Dr. Badii had any mental condition that would affect his ability to practice medicine safely.

## SANCTION

The ALJ recommended that Dr. Badii's license be suspended for a period not to exceed one year, which could be reduced after the Board determined that Dr. Badii had fully complied with the investigation. Dr. Badii argues that the sanction proposed by the ALJ is too harsh for, what he describes as, a seven-day delay in providing the subpoenaed medical records. The State argues that Dr. Badii's license should be suspended for a minimum of one year and until he has fully cooperated with the Board's investigation.

As discussed above, Dr. Badii fails to appreciate that his actions have resulted in the Board being unable to investigate a complaint alleging that Dr. Badii overprescribed high cost drugs to telemedicine patients. In addition, the Panel has also found that Dr. Badii is professionally, physically, or mentally incompetent, in violation of Health Occ. § 14-404(a)(4). Pursuant to the Board's sanctioning guidelines, the minimum sanction for a violation of Health Occ. § 14-404(a)(4) is suspension until competence is established to the Board's satisfaction. COMAR 10.32.02.10B(4). The Panel finds that a suspension for a minimum period of one year, and until the Panel determines that it is safe for Dr. Badii to return to the practice of medicine, with a referral to the Maryland Professional Rehabilitation Program is necessary.

## ORDER

On an affirmative vote of a majority of a quorum of Disciplinary Panel A, it is hereby

**ORDERED** that the license of Roozbeh Badii, M.D. to practice medicine in Maryland, license number D73228, is **SUSPENDED**<sup>8</sup> for a minimum of one (1) year.<sup>9</sup> During the suspension, Dr. Badii shall comply with the following terms and conditions of the suspension:

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<sup>8</sup> Dr. Badii's license expired on September 30, 2018. The time period of the suspension and the conditions of suspension are tolled until Dr. Badii applies for reinstatement and administratively reinstates his license. The suspension and any conditions will go into effect if and when Dr. Badii's license is administratively reinstated. COMAR 10.32.02.05C(3)(a).

- (a) Dr. Badii shall enroll in the Maryland Professional Rehabilitation Program (MPRP);
- (b) Within 5 business days, Dr. Badii shall contact MPRP to schedule an initial consultation for enrollment;
- (c) Within 15 business days, Dr. Badii shall enter into a Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP;
- (d) Dr. Badii shall fully and timely cooperate and comply with all MPRP's referrals, rules, and requirements, including, but not limited to, the terms and conditions of the Participant Rehabilitation Agreement(s) and Participant Rehabilitation Plan(s) entered with MPRP, and shall fully participate and comply with all therapy, treatment, evaluations, and screenings as directed by MPRP;
- (e) Dr. Badii shall sign and update the written release/consent forms requested by the Board and MPRP, including release/consent forms to authorize MPRP to make verbal and written disclosures to the Board and to authorize the Board to disclose relevant information from MPRP records and files in a public order. Dr. Badii shall not withdraw his release/consent;
- (f) Dr. Badii shall also sign any written release/consent forms to authorize MPRP to exchange with (i.e., disclose to and receive from) outside entities (including all of Dr. Badii's current therapists and treatment providers) verbal and written information concerning Dr. Badii and to ensure that MPRP is authorized to receive the medical records of Dr. Badii, including, but not limited to, mental health and drug or alcohol evaluation and treatment records. Dr. Badii shall not withdraw his release/consent;
- (g) Dr. Badii's failure to comply with any of the above terms or conditions including terms or conditions of the Participant Rehabilitation Agreement(s) or Participant Rehabilitation Plan(s) constitutes a violation of this Order; and it is further

**ORDERED** that Dr. Badii shall not apply for early termination of suspension; and it is

further

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<sup>9</sup> (a) During the suspension period, Dr. Badii shall not:

- (1) practice medicine;
- (2) take any actions after the effective date of this Order to hold himself out to the public as a current provider of medical services;
- (3) authorize, allow or condone the use of Dr. Badii's name or provider number by any health care practice or any other licensee or health care provider;
- (4) function as a peer reviewer for the Board or for any hospital or other medical care facility in the state;
- (5) prescribe or dispense medications; or
- (6) perform any other act that requires an active medical license; and

(b) Dr. Badii shall establish and implement a procedure by which his patients may obtain their medical records without undue burden and notify all patients of that procedure.

**ORDERED** that after the minimum period of suspension imposed by the Order has passed, Dr. Badii has fully and satisfactorily complied with all terms and conditions for the suspension, and MPRP finds and notifies the Board that Dr. Badii is safe to return to the practice of medicine, Dr. Badii may submit a written petition to the disciplinary panel to terminate the suspension of Dr. Badii's license. Dr. Badii may be required to appear before the disciplinary panel to discuss his petition for termination. If the disciplinary panel determines that it is safe for Dr. Badii to return to the practice of medicine, the suspension will be terminated through an order of the disciplinary panel, and the disciplinary panel may impose any terms and conditions it deems appropriate on Dr. Badii's return to practice, including, but not limited to, probation and/or continuation of Dr. Badii's enrollment in MPRP. If the disciplinary panel determines that it is not safe for Dr. Badii to return to the practice of medicine, the suspension shall be continued through an order of the disciplinary panel until the disciplinary panel determines that it is safe for Dr. Badii to return to the practice of medicine, and the disciplinary panel may impose any additional terms and conditions it deems appropriate; and it is further

**ORDERED** that, if Dr. Badii allegedly fails to comply with any term or condition imposed by this Order, Dr. Badii shall be given notice and an opportunity for a hearing. If the disciplinary panel determines 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 the disciplinary panel determines there is no genuine dispute as to a material fact, Dr. Badii 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 Dr. Badii has failed to comply with any term or condition imposed by this Order, the disciplinary



panel may reprimand Dr. Badii, place Dr. Badii on probation with appropriate terms and conditions, or suspend with appropriate terms and conditions, or revoke Dr. Badii'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 Dr. Badii; and it is further

**ORDERED** that Dr. Badii is responsible for all costs incurred in fulfilling the terms and conditions of this Order; and it is further

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

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

04/20/2020  
Date

***Signature on File***

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. Badii 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. Badii 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  
Maryland Department of Health  
300 West Preston Street, Suite 302  
Baltimore, Maryland 21201**

# **Exihbt 1**

MARYLAND STATE BOARD OF  
PHYSICIANS

v.

ROOZBEH BADI, M.D.,

RESPONDENT

LICENSE No.: D73228 (expired)

\* BEFORE STUART G. BRESLOW,  
\* ADMINISTRATIVE LAW JUDGE,  
\* THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No.: MDH-MBP1-71-19-17397

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PROPOSED DECISION

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
JOINT STIPULATIONS  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSIONS OF LAW  
PROPOSED DISPOSITION

STATEMENT OF THE CASE

On April 11, 2019, the Maryland Board of Physicians (Board) issued charges against Roozbeth Badi, M.D., (Respondent) based on alleged violations of the Maryland Medical Practice Act, Md. Code Ann., Health, Occ. §§ 14-101 *et. seq.* (2014 & Supp. 2019). Specifically, the Respondent is charged with violating section 14-404(a)(4), being professionally, physically, or mentally incompetent, and section 14-404(a)(33), failing to cooperate with a lawful investigation conducted by the Board or a disciplinary panel. A Disciplinary Conference for Case Resolution in this matter resulted in no resolution of the case. Code of Maryland Regulations (COMAR) 10.32.02.03E(9)(b). On June 3, 2019, the Respondent requested a hearing in this matter, and on the same date, the Board forwarded the case to the Office of Administrative Hearings (OAH) for a hearing. The Board delegated to the OAH the authority to issue Proposed Findings of Fact, Proposed Conclusions of Law, and a Proposed Disposition.

I held a hearing on September 4, 5, and 6, 2019 at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland. Health Occ. § 14-405(a) (Supp. 2019); COMAR 10.32.02.04. Jamaal W. Stafford, Esquire, represented the Respondent, who was present.<sup>1</sup> Robert J. Gilbert, Deputy Counsel, Health Occupations Prosecution and Litigation Division of the Office of the Attorney General, represented the State of Maryland (State). Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the Rules for Hearings Before the Board of Physicians, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2019); COMAR 10.32.02; COMAR 28.02.01.

### ISSUES

1. Did the Respondent violate the cited provisions of the applicable law? If so,
2. What sanctions are appropriate?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits into evidence on behalf of the Board:

#### **EXHIBITS PERTAINING TO CASE NUMBERS 2218-0147B AND 2219-0026B**

1. Licensing information, Initial Medical License letter, dated October 17, 2011 with attachments
2. Renewal Application, dated July 16, 2016
3. Consent Order, Case Number 2016-0245B, dated November 1, 2016
4. Advisory Letters dated January 10, 2017 and January 5, 2018
5. Charges Under the Maryland Medical Practice Act, dated April 11, 2019

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<sup>1</sup> On October 17, 2019, Jamaal W. Stafford, Esquire, filed with the OAH a Notice of Termination of Representation stating that he no longer represents the Respondent and directed that all pleadings, orders, rulings and other correspondence be sent directly to the Respondent.

**EXHIBITS PERTAINING TO CASE NUMBER 2218-0147B**

6. Complaint, dated December 8, 2017 (received February 5, 2018)
7. Letter from the Board (M. Dicken) to Dr. Badii, dated March 28, 2018, containing:
  - *Subpoena Duces Tecum* for medical records of 10 patients, dated March 28, 2018
  - Ten (10) blank Certification of Medical Records forms<sup>2</sup>
  - One (1) blank Information Form
8. Email from Board (M. Dicken) to Dr. Badii, dated April 30, 2018 at 9:14 a.m.
9. Email from Board (M. Dicken) to Dr. Badii, dated May 15, 2018 at 2:57 p.m.
10. Email from Dr. Badii to Board (M. Dicken) dated June 7, 2018 at 8:27 p.m. (response to May 15, 2018 email)
11. Email from Dr. Badii to Board (M. Dicken) dated June 7, 2018 at 9:38 p.m.
12. *Subpoena Ad Testificandum* to Dr. Badii from Board, dated June 11, 2018
13. Report of Investigation, dated October 12, 2018

**EXHIBITS PERTAINING TO CASE NUMBER 2219-0026B**

14. Complaint from Dr. Badii re: ██████████, M.D., dated July 9, 2018 (received July 12, 2018), with attachments
15. *Subpoena Duces Tecum* (SDT), dated July 27, 2018, to ██████████ for medical records for Roozbeh Badii, and response to SDT (Dr. Badii's medical records)
16. *Subpoena Duces Tecum*, dated August 7, 2018, to ██████████ Hospital for Dr. Badii's quality assurance/risk management file, and response to SDT (Dr. Badii's ██████████ RM/QA file)
17. Letter from Board (██████████) to Dr. Badii, dated September 6, 2018, with attachments
18. Emails and correspondence between the Board (██████████) and Dr. Badii, dated September 6—10, 2018
  - Email from Board (██████████) to Dr. Badii, dated September 6, 2018 at 4:02 p.m.
  - Email from Dr. Badii to Board (██████████), dated September 6, 2018 at 4:24 p.m.
  - Email from Board (██████████) to Dr. Badii, dated September 7, 2018 at 8:00 a.m.

<sup>2</sup> Because all ten of the blank forms in the mailing were identical, only one of the forms is included here.

- Letter from Board (██████████) to Dr. Badii, dated September 7, 2018
  - Email from Dr. Badii to Board (██████████), dated September 7, 2018 at 11:35 a.m.
  - Email from Board (██████████) to Dr. Badii, dated September 7, 2018 at 12:15 p.m.
  - Email from Dr. Badii to Board (██████████), dated September 10, 2018 at 10:00 a.m.
19. Email from Dr. Badii and the Board (██████████), dated September 13, 2018 at 12:44 p.m. (with attachments)
20. Letters, subpoenas and release forms to Dr. Badii's treatment providers, dated September 14, 2018.
21. Emails between Dr. Badii and the Board (M. Dicken), dated September 18—22, 2018
- Email from Dr. Badii to Board (M. Dicken), dated September 18, 2018 at 12:50 p.m.
  - Email from Board (M. Dicken) to Dr. Badii, dated September 20, 2018 at 9:24 a.m.
  - Email from Dr. Badii to Board (M. Dicken), dated September 20, 2018 at 9:42 a.m.
  - Email from Dr. Badii to Board (M. Dicken), dated September 20, 2018 at 1:14 p.m.
  - Email from Dr. Badii to Board (M. Dicken), dated September 20, 2018 at 2:16 p.m.
  - Email from Dr. Badii to Board (M. Dicken), dated September 21, 2018 at 3:39 p.m.
  - Email from Dr. Badii to Board (M. Dicken), dated September 21, 2018 at 3:53 p.m.
  - Email from Dr. Badii to Board (M. Dicken), dated September 21, 2018 at 3:56 p.m.
  - Email from Dr. Badii to Board (M. Dicken), dated September 21, 2018 at 3:59 p.m.
  - Email from Dr. Badii to Board (M. Dicken), dated September 22, 2018 at 2:27 p.m. (with attachment)
  - Email from Dr. Badii to Board (M. Dicken), dated September 22, 2018 at 2:31 p.m. (with attachment)
22. Transcript, Interview, ██████████, M.D., dated September 24, 2018
23. Treatment record of Dr. Badii from ██████████, M.D., received September 24, 2018
24. Psychological evaluation of Dr. Badii by ██████████, Psy.D., dated January 29, 2018

25. Emails between the Board (M. Dicken) and Dr. Badii, dated September 26—27, 2018
- Email from the Board (M. Dicken) to Dr. Badii, dated September 26, 2018 at 7:49 a.m.
  - Email from Dr. Badii to Board (M. Dicken), dated September 27, 2018 at 2:22 a.m.
  - Email from Dr. Badii to Board (M. Dicken), dated September 27, 2018 at 4:44 p.m.
26. Letter, *Subpoena Duces Tecum* and release to Dr. [REDACTED] September 28, 2018
27. Letter from the Board (M. Dicken) to Dr. Badii, dated September 28, 2018
28. Emails between Dr. Badii and the Board and the Maryland Office of the Attorney General, dated September 28, 2018
- Email from Board (M. Dicken) to Dr. Badii, dated September 28, 2018 at 10:47 a.m. (with attachment, see Exhibit 27 above)
  - Email from Dr. Badii to Board (M. Dicken), dated September 28, 2018 at 1:52 p.m.
  - Email from Dr. Badii to Board (M. Dicken), dated September 28, 2018 at 4:40 p.m.
  - Email from Dr. Badii to Board (M. Dicken), dated September 28, 2018 at 5:18 p.m.
  - Email from Dr. Badii to Board (M. Dicken), dated September 28, 2018 at 5:18 p.m. (forwarded message)
  - Email from Dr. Badii to Board (M. Dicken), dated September 28, 2018 at 5:19 p.m. (forwarded message)
  - Email from Dr. Badii to Board (M. Dicken), dated September 28, 2018 at 5:22 p.m. (forwarded messages)
  - Email from Dr. Badii to Board (M. Dicken), dated September 28, 2018 at 5:22 p.m. (forwarded message)
  - Email from Dr. Badii to Board (M. Dicken), dated September 28, 2018 at 5:22 p.m. (forwarded message)
  - Email from Dr. Badii to Board (M. Dicken), dated September 28, 2018 at 5:23 p.m. (forwarded message)
  - Email from Dr. Badii to Board (M. Dicken), dated September 28, 2018 at 5:23 p.m. (forwarded message)
  - Email from Dr. Badii to Board (M. Dicken), dated September 28, 2018 at 5:23 p.m. (forwarded message)
  - Email from Dr. Badii to Board (M. Dicken), dated September 28, 2018 at 5:24 p.m. (forwarded message)
  - Email from Dr. Badii to Board (M. Dicken), dated September 28, 2018 at 5:24 p.m. (forwarded message)
  - Email from Dr. Badii to Board (M. Dicken), dated September 28, 2018 at 5:24 p.m. (forwarded message)



- Email from Dr. Badii to Board (M. Dicken), dated September 28, 2018 at 5:26 p.m. (forwarded message)
  - Email from Dr. Badii to Board (M. Dicken), dated September 28, 2018 at 5:27 p.m. (forwarded message)
  - Email from Dr. Badii to Board (M. Dicken), dated September 28, 2018 at 5:28 p.m. (forwarded message)
  - Email from Dr. Badii to Board (M. Dicken), dated September 28, 2018 at 5:28 p.m. (forwarded message)
  - Email from Dr. Badii to Board (M. Dicken), dated September 28, 2018 at 5:29 p.m. (forwarded message)
  - Email from Dr. Badii to Board (M. Dicken), dated September 28, 2018 at 5:29 p.m. (forwarded message)
  - Email from Dr. Badii to Board (M. Dicken), dated September 28, 2018 at 5:45 p.m. (with attachment)
  - Email from Dr. Badii to Board (M. Dicken), dated September 28, 2018 at 5:56 p.m. (forwarded message)
  - Email from Dr. Badii to Board (M. Dicken), dated September 28, 2018 at 5:59 p.m. (forwarded message)
29. Text messages sent by Dr. [REDACTED] to Board (M. Dicken) re: Dr. Badii, received October 1, 2018
30. Treatment records of Dr. Badii from [REDACTED], M.D., Ph.D., received October 1, 2018
31. Emails from Dr. Badii to the Board (M. Dicken), dated October 1, 8, 11, 2018
- Email from Dr. Badii, dated October 1, 2018 at 5:15 p.m.
  - Email from Dr. Badii, dated October 8, 2018 at 12:50 p.m.
  - Email from Dr. Badii, dated October 11, 2018 at 4:44 p.m.
32. Treatment records of Dr. Badii from Dr. [REDACTED], received October 9, 2018
33. Letter and *Subpoena Duces Tecum* to Prescription Drug Monitoring Program for Dr. Badii, dated October 15, 2018
34. Emails between Dr. Badii and the Board (M. Dicken), dated October 22, 2018
- Email from Dr. Badii to Board (M. Dicken) at 1:03 p.m.
  - Email from Board (M. Dicken) to Dr. Badii at 2:07 p.m.
  - Email from Dr. Badii to Board (M. Dicken) at 6:46 p.m. (with attachments)
35. Email from Dr. Badii to the Board (M. Dicken), dated October 24, 2018 at 3:05 p.m.
36. Email from [REDACTED] M.D., Ph.D. to Board (M. Dicken), dated October 25, 2018 at 6:59 a.m. (with attachment)

37. Emails between Dr. Badii and the Board (M. Dicken), dated November 7, 2018
  - Email from Dr. Badii to Board (M. Dicken) at 11:00 a.m.
  - Email from Board (M. Dicken) to Dr. Badii at 2:53 p.m.
38. Treatment record of Dr. Badii from [REDACTED], M.D., received November 28, 2018
39. *Subpoena Duces Tecum*, dated October 15, 2018 to [REDACTED] Hospital for Dr. Badii's quality assurance file and response, received December 11, 2018
40. Emails between Dr. Badii and the Board (M. Dicken), dated December 11-13, 2018
  - Email from Dr. Badii to Board (M. Dicken), dated December 11, 2018 at 6:24 p.m.
  - Email from Board (M. Dicken) to Dr. Badii, dated December 12, 2018 at 1:19 p.m.
  - Email from Dr. Badii to Board (M. Dicken), dated December 12, 2018 at 1:23 p.m.
  - Email from Dr. Badii to Board (M. Dicken), dated December 12, 2018 at 1:29 p.m.
  - Email from Dr. Badii to Board (M. Dicken), dated December 13, 2018 at 4:24 p.m.
41. Letter from the Board (M. Dicken) to Dr. Badii, dated December 13, 2018 and return to sender, non-deliverable, dated January 22, 2019
42. Emails between Dr. Badii and the Board (M. Dicken), January 2019
  - Email from Dr. Badii to Board (M. Dicken), dated January 8, 2019 at 12:35 p.m.
  - Email from Dr. Badii to Board (M. Dicken), dated January 25, 2019 at 3:05 p.m.
  - Email from Dr. Badii to Board (M. Dicken), dated January 28, 2019 at 10:33 a.m.
  - Email from Dr. Badii to Board (M. Dicken), dated January 28, 2019 at 5:10 p.m.
  - Email from Board (M. Dicken) to Dr. Badii, dated January 29, 2019 at 3:03 p.m.
  - Email from Dr. Badii to Board (M. Dicken), dated January 29, 2019 at 3:10 p.m.
  - Email from Dr. Badii to Board (M. Dicken), dated January 30, 2019 at 4:20 p.m.
43. Emails between Dr. Badii and the Maryland Professional Rehabilitation Program (MPRP), dated February 1, 2019
  - Email from MPRP to Dr. Badii at 1:53 p.m.
  - Email from Dr. Badii to MPRP at 1:57 p.m.
  - Email from Dr. Badii to MPRP at 2:01 p.m.
44. Emails between Dr. Badii and the Board (M. Dicken), February 2019

- Email from Dr. Badii to Board (M. Dicken), dated February 4, 2019 at 2:13 a.m.
  - Email from Dr. Badii to Board (M. Dicken), dated February 13, 2019 at 4:32 p.m.
  - Email from Board (M. Dicken) to Dr. Badii, dated February 15, 2019 at 7:38 a.m.
  - Email from Dr. Badii to Board (M. Dicken), dated February 15, 2019 at 12:05 p.m.
  - Email from Dr. Badii to Board (M. Dicken), dated February 20, 2019 at 1:40 p.m.
  - Email from Dr. Badii to Board (M. Dicken), dated February 26, 2019 at 1:35 a.m. (with video attachment)
45. *Curriculum Vitae*, [REDACTED], M.D.
46. Independent Psychiatric Evaluation, [REDACTED], M.D., dated February 28, 2019
47. Emails from Dr. Badii to the Board (M. Dicken), March 2019
- Email from Dr. Badii, dated March 3, 2019 at 3:24 p.m.
  - Email from Dr. Badii, dated March 3, 2019 at 4:29 p.m.
  - Email from Dr. Badii, dated March 3, 2019 at 5:20 p.m.
  - Email from Dr. Badii, dated March 3, 2019 at 5:47 p.m.
  - Email from Dr. Badii, dated March 4, 2019 at 3:46 a.m.
  - Email from Dr. Badii, dated March 5, 2019 at 4:22 p.m. (forwarded message)
  - Email from Dr. Badii, dated March 5, 2019 at 4:27 p.m. (forwarded message)
  - Email from Dr. Badii, dated March 5, 2019 at 5:43 p.m. (with attachment)
  - Email from Dr. Badii, dated March 5, 2019 at 8:05 p.m.
  - Email from Dr. Badii, dated March 5, 2019 at 8:49 p.m.
  - Email from Dr. Badii, dated March 6, 2019 at 11:27 a.m.
  - Email from Dr. Badii, dated March 6, 2019 at 7:50 p.m. (see attached email from Dr. Badii to Board (M. Dicken), dated May 5, 2019 at 2:43 p.m.)
  - Email from Dr. Badii, dated March 8, 2019 at 11:10 a.m.
  - Email from Dr. Badii, dated March 8, 2019 at 12:16 p.m.
  - Email from Dr. Badii, dated March 9, 2019 at 6:16 p.m.
  - Email from Dr. Badii, dated March 9, 2019 at 10:48 p.m.
  - Email from Dr. Badii, dated March 10, 2019 at 5:21 p.m.
  - Email from Dr. Badii, dated March 20, 2019 at 9:27 p.m.
  - Email from Dr. Badii, dated March 22, 2019 at 12:59 p.m. (forwarded message)
  - Email from Dr. Badii, dated March 22, 2019 at 1:35 p.m. (forwarded message)
  - Email from Dr. Badii, dated March 22, 2019 at 1:42 p.m. (forwarded message)
  - Email from Dr. Badii, dated March 22, 2019 at 1:55 p.m. (forwarded message)
  - Email from Dr. Badii, dated March 22, 2019 at 2:09 p.m. (forwarded message)
  - Email from Dr. Badii, dated March 22, 2019 at 2:45 p.m. (with attachment)
  - Email from Dr. Badii, dated March 22, 2019 at 2:56 p.m. (forwarded message)
  - Email from Dr. Badii, dated March 22, 2019 at 2:57 p.m. (forwarded message)
  - Email from Dr. Badii, dated March 22, 2019 at 3:21 p.m. (forwarded message and attachment)

- Email from Dr. Badii, dated March 30, 2019 at 4:21 p.m. (forwarded message and attachment)
  - Email from Dr. Badii, dated March 31, 2019 at 7:04 a.m.
48. Statement, Dr. [REDACTED], dated July 17, 2019
49. Report of Investigation, dated April 1, 2019

I admitted the following exhibits into evidence on behalf of the Respondent:

Resp. 1 [REDACTED], M.D. Psychiatric Evaluation of Respondent, undated with the following attachments:

- *Curriculum Vitae* of Respondent
- Patient Reviews of Respondent ([REDACTED])
- Letter from [REDACTED], MD, MACP, President and CEO of the American Board of Internal Medicine to the Respondent, dated June 3, 2019
- Timeline, Respondent, September 7, 1974 through June 3, 2019

Resp. 2 Withdrawn

Resp. 3 American Board of Internal Medicine: Maintenance of Certification for Respondent (Spring 2019)

Resp. 4 *Subpoena Ad Testificandum* issued to Respondent by Christine A. Farrelly, Executive Director, Board, dated June 11, 2018.

Resp. 5 *Subpoena Duces Tecum*, issued to Respondent from Christine A. Farrelly, Executive Director, Board, dated March 28, 2018

Resp. 6 *Curriculum Vitae*, Respondent, undated

Resp. 7 Email from Respondent to Molly Dickens, dated June 7, 2018 with attached records for one patient; email from Respondent to Molly Dickens, dated June 7, 2018

Resp. 8 Email from [REDACTED] Director, Maryland Professional Rehabilitation Program to Respondent, dated February 1, 2019; email from Respondent to [REDACTED], dated February 1, 2019

Resp. 9 Healthline Article: Will Eating Apples Help if You Have Acid Reflux?

Resp. 10 *Curriculum Vitae*, [REDACTED], M.D., undated

Testimony

The Board presented the following witnesses at the hearing:

Molly Dicken, Compliance Analyst, Board

██████████, M.D.

██████████, M.D., accepted as an expert in adult psychiatry and forensic psychiatry.

The Respondent testified and presented the following witnesses:

██████████, M.D., testified by telephone

██████████, live-in partner of the Respondent

██████████, M.D., accepted as an expert in general psychiatry and forensic psychiatry.

JOINT STIPULATIONS OF FACT

1. On October 17, 2011, the Board issued the Respondent a license to practice medicine in the State of Maryland.
2. The Respondent retained continuous licensure in Maryland until September 30, 2018, which is when his medical license expired and he did not renew his medical license.
3. In or around February 2018, the Board initiated an investigation of the Respondent under Board Case Number 2218-0147B following a report from a pharmacy benefit management organization related to purported prescribing practices by Dr. Badii concerning topical creams, ointments and other high cost medications.
4. On July 9, 2018, the Respondent filed a complaint with the Maryland Board of Physicians against ██████████ M.D.

5. Dr. Badii accused Dr. [REDACTED] of a series of professional improprieties.
6. In a Subpoena *Duces Tecum* (SDT) dated July 27, 2018, the Board directed [REDACTED] to provide its records for the Respondent.
7. On August 6, 2018, the Board received the Respondent's medical records from [REDACTED].
8. After considering this information, the Board closed the case against Dr. [REDACTED] on August 27, 2018 and shortly thereafter opened an investigation of the Respondent under Case Number 2219-0026B. The Board informed the Respondent of the fact that they were opening an investigation through a letter dated September 6, 2018, stating that its investigation was "based upon information alleging you may have mental health issues that could impact your ability to practice medicine safely."
9. On September 14, 2018, the Board issued letters and SDTs for any treatment records to various health care professionals who had treated or evaluated the Respondent, including: [REDACTED], Psy.D. (Psychologist); [REDACTED] M.D.; [REDACTED], M.D.; [REDACTED], M.D.<sup>3</sup>; [REDACTED], M.D.; and [REDACTED], MFT (Marriage and Family Therapist).
10. On September 24, 2018, Board staff interviewed Dr. [REDACTED].
11. On September 24, 2018, the Board received treatment records from Dr. [REDACTED].

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<sup>3</sup> The Board erroneously sent the subpoena to [REDACTED], M.D. Dr. [REDACTED] actual first name is [REDACTED]. The Board notified the Respondent of this through an email dated September 26, 2018. The Respondent provided a corrected records release for Dr. [REDACTED]. On September 28, 2018, the Board reissued the letter and subpoena to Dr. [REDACTED] for the Respondent's records.

12. On September 25, 2018, the Board received the report from [REDACTED], Psy.D. (Psychologist).

13. In a letter to the Respondent, dated September 28, 2018, the Board, pursuant to Health Occupations Section 14-402(a)<sup>4</sup>, directed the Respondent to contact the Maryland Professional Rehabilitation Program (MPRP)<sup>5</sup> for "purposes of scheduling an examination."

[REDACTED] M.D., a forensic psychiatrist, was assigned to perform this report.

14. On October 1, 2018, the Board received treatment records from Dr. [REDACTED].

15. On October 9, 2018, the Board received treatment records from Dr. [REDACTED].

16. On November 28, 2018, the Board received treatment records from Dr. [REDACTED].

17. Dr. [REDACTED] issued a report titled, "Independent Psychiatric Evaluation" of the Respondent, dated February 28, 2019.

18. On April 11, 2019, the State issued disciplinary charges against the Respondent under Board Case Numbers 2218-0147B and 2219-0026B, alleging that he violated the following provisions of the Maryland Health Occupations Section 14-404(a): (4) Is professionally, physically, or mentally incompetent; and (33) Fails to cooperate with a lawful investigation conducted by the Board or a disciplinary panel.

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<sup>4</sup> Health Occ. § 14-402(a) states: In reviewing an application for licensure, certification, or registration or in investigation against a licensed physician or any allied health professional regulated by the Board under this title, the Physician Rehabilitation Program may request the Board to direct, or the Board on its own initiative may direct, any physician or any allied health professional regulated by the Board under this title to submit to an appropriate examination.

<sup>5</sup> According to its website, MPRP was created by the Maryland legislature to evaluate physicians and other allied health care professionals for alcoholism, chemical dependency, or other physical or psychological conditions who have been referred by the Board. MPRP also performs evaluations for the Board.

## PROPOSED FINDINGS OF FACT

Having considered all of the evidence presented, I find the following facts by a preponderance of the evidence:

1. At all times relevant to this proceeding, the Respondent was a licensed physician in the State of Maryland until his license expired on September 30, 2018. As of the date of the hearing, the Respondent has not applied for reinstatement of his license to practice medicine in Maryland. The Respondent is licensed to practice medicine in other jurisdictions.
2. The Respondent is certified by the American Board of Internal Medicine in internal medicine. On June 3, 2019, he was notified by the American Board of Internal Medicine that he had passed the Spring 2019 Internal Medicine Maintenance Certification Examination.
3. The Respondent practices medicine where he lives in southern California. He primarily practices telemedicine and is affiliated with several telemedicine providers.
4. When an initial application for a medical license is received by the Board, the applicant provides the Board with both a public and a non-public mailing address. The non-public address is requested by the Board for its own use to communicate with the physician by mail. In addition, the Board obtains an email address and a telephone number from the applicant.
5. A licensed physician is required to notify the Board of a change of address within sixty days of the change. Failure to do so may result in an administrative penalty.
6. The Respondent renewed his Maryland license to practice medicine in 2016.
7. When the Respondent renewed his license in Maryland in 2016, he provided the Board with his non-public address of [REDACTED], La Jolla, California 92037.
8. On January 5, 2018, the Executive Director of the Board sent a letter to the Respondent at his non-public address. The letter was not returned by the United States Postal



Service. Included in that letter was a reference to the requirement that a licensee must notify the Board of any change in address within sixty days of the change.

9. On December 8, 2017, a complaint was received by the Maryland Department of Management and Budget from [REDACTED] a provider of prescription medicines, stating its concern that the Respondent may have been overprescribing topical creams, ointments and other high cost medications when compared to his peers. The complaint was forwarded to the Board and the matter was assigned to Molly Dicken for investigation.

10. Ms. Dicken, as was her typical practice, subpoenaed copies of documents from [REDACTED] [REDACTED] provided its investigative file to Ms. Dicken.

11. On March 28, 2018, Ms. Dicken wrote a letter to the Respondent at his non-public address of record, [REDACTED] La Jolla, California 92037, informing the Respondent of the pending investigation involving his prescription practices and requested that he respond by providing complete medical records for ten patients within ten business days from March 28, 2018. The letter was sent by first class mail. The practice of the Board is to send correspondence by first class mail rather than certified or registered mail. The March 28, 2018 letter was not returned as undeliverable by the United States Postal Service.

12. Having not received the requested information in a timely manner and with no confirmation that the Respondent received and read the March 28, 2018 letter, Ms. Dicken requested, by email on April 30, 2018, that the Respondent confirm his email address so that she could send documents to him by email. The Respondent did not respond to the email. The email address was the same email address that the Respondent had provided to the Board when he renewed his license in 2016. There was no email received by Ms. Dicken indicating that the email was not delivered.

13. Having not received a reply to her letter or her email, Ms. Dicken called the Respondent on May 15, 2018 and spoke to him. He advised her that he had a new address, [REDACTED] San Diego, California 92122. Although this was a new address that was not previously contained in the Board's files, Ms. Dicken was unable to change the Respondent's non-public address on his license. The Board is only allowed to make the change following notification from the Licensee. Ms. Dicken informed the Respondent of this requirement and urged him to notify the Board in accordance with the applicable procedure.

14. One hour following the phone call, Ms. Dicken sent the Respondent, by email, all of the information she previously sent by letter and email. She requested a response by May 30, 2018; however, she did not receive a response. She spoke with the Respondent again on June 7, 2018 and was informed that he did not have medical records because of his inability to access them as a telemedicine provider. He did not maintain records of his patients, but was able to obtain the records of only one of the ten patients' medical records requested by the Board. Prior to the June 7, 2018 conversation, the Respondent never informed Ms. Dicken or anyone else on the Board that he had limited access to his patients' records.

15. The Respondent was issued a subpoena on June 11, 2018 to appear for an interview with Molly Dicken on July 12, 2018. The subpoena was mailed to the Respondent at his latest non-public address, [REDACTED] San Diego, California 92122.

16. The Respondent never provided the documents for the nine other patients, nor did he ever appear for an interview pursuant to the June 11, 2018 subpoena. As of the date of the hearing, the Respondent has not appeared for the interview and has not provided medical records for nine patients.

17. On or about July 9, 2018, the Respondent filed a complaint against Dr. [REDACTED] with the Board. He alleged violations of the Health Insurance Portability Accountability Act of

1996 (HIPPA) including slanderous and false statements Dr. [REDACTED] made to Dr. [REDACTED] a psychologist, in January 2018. The Board opened an investigation into the Respondent's Complaint.

18. Based on information contained in the Complaint and the attachments to the Complaint, which included statements from the Respondent filed in an unrelated custody matter stating that he was unable to work because of a psychiatric diagnosis and had undergone a court-ordered psychiatric evaluation with [REDACTED], PhD in January 2008, the Board opened on its own volition, an investigation of the Respondent. The Board's investigation did not arise based on a complaint filed by an individual with the Board. At or about the same time, the Board administratively closed the complaint filed by the Respondent against Dr. [REDACTED].

19. On September 6, 2018, Molly Dicken sent a letter to the Respondent informing him that the Board had opened a full investigation based upon information alleging that he may have a mental health condition that could impact his ability to practice medicine safely.

20. Shortly after receiving notice of the pending investigation, the Respondent requested that he be advised as to who filed the complaint against him. He was unaware at the time that no complaint had been filed against him and that the investigation was prompted by the Board and not through a complaint. The Respondent's request was denied.

21. The Respondent, based upon his interactions with Dr. [REDACTED] incorrectly assumed that a complaint was filed by either Dr. [REDACTED] or the Respondent's ex-wife, [REDACTED].

22. At the time of the investigation into the mental health of the Respondent and whether it was safe for him to practice medicine, the Respondent was embroiled in a very contentious domestic dispute with his ex-wife, [REDACTED].

23. The Respondent filed a report with the court in California in the domestic case that included written statements from the Respondent that he was unemployed since January 31,

2018 through the date of the report, July 9, 2018. The reason stated for his unemployment was his psychiatric diagnosis.

24. On September 28, 2018, the Respondent was referred by Ms. Dicken to the MPRP for an evaluation.

25. As part of his evaluation through the MPRP, the Respondent was directed to undergo an evaluation by Dr. [REDACTED] to determine if he was professionally, physically or mentally incompetent to practice medicine.

26. As part of Dr. [REDACTED] evaluation, he reviewed the personal and professional history of the Respondent.

27. The Respondent was born and raised in Tehran, Iran. He left Iran in 1986. He married Ms. [REDACTED] in 2008, divorced in 2013, and remarried her in 2015. They were divorced in 2016.

28. The Respondent was hospitalized when he was 26 while he was enrolled in medical school. He was admitted to a psychiatric hospital and spent three days at the hospital before being discharged. He was diagnosed with [REDACTED] and was prescribed [REDACTED] and [REDACTED].

29. The Respondent returned to Iran for several months and returned to the United States to complete medical school. He was treated by a psychiatrist, Dr. [REDACTED], who indicated a possible diagnosis of [REDACTED]. He was subsequently treated by Dr. [REDACTED] who indicated a diagnosis of [REDACTED] for the Respondent. The [REDACTED] and [REDACTED] were discontinued by Dr. [REDACTED] and replaced them with [REDACTED] and [REDACTED].

30. The Respondent disagrees that he should be diagnosed as having a [REDACTED]. He is convinced that his occasional mood swings are a result of [REDACTED].

██████████ When he feels ██████████ he will not practice telemedicine for periods of time until the symptoms dissipate.

31. Dr. ██████████, the Respondent's psychiatrist from May 6, 2013 through September 2013, treated the Respondent for a ██████████.

32. Dr. ██████████, a psychiatrist, evaluated the Respondent. He did not identify a current diagnosis ██████████ nor did he believe that the Respondent needed additional treatment with medication.

33. The Respondent's current psychiatrist is ██████████, M.D., PhD. She confirms that the Respondent has a ██████████, but it is not clear exactly what the ██████████ is. She disputes the conclusions drawn by Dr. ██████████ as the conclusions relied solely on the information provided by his ex-wife and former employer, Dr. ██████████, both of whom ended their relationship with the Respondent on unfavorable terms. The Respondent is currently taking ██████████ on a daily basis.

34. On August 5, 2016, ██████████ M.D. examined the Respondent for the purpose of obtaining disability insurance. He was diagnosed with ██████████ and advised that he should continue treatment with ██████████.

35. As part of a custody proceeding in San Diego, California, the Court ordered the Respondent to complete anger management courses and undergo a mental health assessment. The Respondent was referred to ██████████ PsyD to conduct the evaluation. On January 29, 2018, Dr. ██████████ issued her report to the Court in which she diagnosed the Respondent with ██████████

36. As part of Dr. ██████████ mental assessment of the Respondent for the court, she had occasion to speak with Dr. ██████████.

37. Dr. [REDACTED] employed the Respondent in 2013, where the Respondent worked treating patients in person. He worked as an employee of Dr. [REDACTED] medical practice, [REDACTED] until May 2015 when he abruptly left the office exclaiming that he quit.

38. The Respondent's tenure with Dr. [REDACTED] began after a long search by Dr. [REDACTED] for a physician to join his practice. The Respondent started to see patients immediately upon being hired and slowly began to build up his practice. Dr. [REDACTED] did not notice anything unusual about the Respondent. The Respondent did not inform Dr. [REDACTED] that he had a history of mental health problems when he was hired. The Respondent did, however, inform Dr. Saedi that he was [REDACTED] during a social gathering, but indicated that he was stable and under control.

39. The Respondent started to exhibit unusual behavior which became apparent to Dr. [REDACTED] s staff and eventually Dr. [REDACTED]. The Respondent would not shave regularly, slept in the office, did not shower, did not dress appropriately, and stated, at times, that he had not slept in days.

40. During the Respondent's tenure with Dr. [REDACTED], Dr. [REDACTED] submitted a bid to [REDACTED] Hospital for [REDACTED] to become a hospitalist for the hospital. If the bid was accepted, Dr. [REDACTED] advised the Respondent that the Respondent would become the Director of the unit. Dr. [REDACTED] s bid was not accepted. The Respondent thought the process was unfair and that Dr. [REDACTED], who was the Chief Medical Officer of [REDACTED] Hospital at the time, may have been receiving payments from the hospitalist group that won the contract. The Respondent claimed that the FBI and the CIA were involved. The Respondent threatened to bring an antitrust suit against [REDACTED] Hospital and he also contacted the Federal Trade Commission and the Maryland Attorney General's Office. Despite threats of litigation, the Respondent has not filed a lawsuit claiming antitrust violations.

41. Initially, Dr. [REDACTED] was persuaded by the Respondent that the loss of the bid was due to unfair practices by Dr. [REDACTED]. However, as the Respondent's response to the bid failure became more bizarre, including allegations of mafia connections, Dr. [REDACTED] began to believe that the Respondent's behavior was due to the Respondent suffering from a mental health episode.

42. The relationship between the Respondent and Dr. [REDACTED] ended when the Respondent, who had seen a 93 year-old patient of the practice for chest pains, prescribed the patient to eat red apples, not green ones, to treat the symptoms. The patient had called Dr. [REDACTED] and relayed the Respondent's recommendation to him.

43. The Respondent quit the practice when Dr. [REDACTED] confronted the Respondent with the patient's report to Dr. [REDACTED].

44. The termination of the Respondent's employment did not, however, end the relationship between Dr. [REDACTED] and the Respondent. Immediately after quitting the practice, the Respondent and Dr. [REDACTED] exchanged numerous text mail messages accusing each other of improper practices, which included the liberal use of expletives to make their point. Dr. [REDACTED] felt threatened and sought a restraining order. The restraining order was not granted by the court.

45. Dr. [REDACTED] was unaware that the Respondent had filed a complaint against him with the Board until a month or two before the hearing. He was also unaware at that time that the Board administratively closed the case filed by the Respondent against him.

46. Once the Respondent left [REDACTED], the Respondent worked at nursing homes in Maryland and continued his telemedicine practice.

47. In 2016, the Respondent moved to San Diego, California because he was convinced that he had a [REDACTED] and the more favorable weather in southern California would help to alleviate the symptoms he was experiencing.

48. On January 25, 2019, as a result of being referred to the MPRP, the Respondent met for three hours with [REDACTED], M.D., during which time, Dr. [REDACTED] evaluated him as part of being asked by the Board to determine if the Respondent's mental condition had an impact on his ability to practice medicine.

49. In addition to his evaluation conducted on January 25, 2019, Dr. [REDACTED] was provided with email correspondence, evaluations from other medical professionals, partial transcripts of court proceedings, orders from various courts and other documents described in detail in Dr. [REDACTED]'s February 28, 2019 Independent Psychiatric Evaluation. (Board Exhibit 46).

50. The Independent Psychiatric Evaluation prepared by Dr. [REDACTED] consists of seventeen pages. The first fourteen pages of the report describe the Respondent's history. The remaining pages include the Respondent's current symptoms, formulation and opinion of Dr. [REDACTED]. Dr. [REDACTED] offered no opinion as to the quality of care provided by the Respondent as he was not asked to evaluate the quality of care.

51. To determine whether a physician who has been diagnosed with [REDACTED] is mentally incompetent to practice medicine, it is appropriate, as part of a mental evaluation of the physician, to review the quality of care provided by the physician.

52. Dr. [REDACTED] did not speak to any current colleague of the Respondent or any of his patients, to determine whether the Respondent had any complaints brought against him as a practicing physician. As a telemedicine practicing physician, the Respondent consults with twenty to twenty-five patients a day.

53. Dr. [REDACTED] did not perform any psychological testing on the Respondent.

54. Dr. [REDACTED], formerly the Chief Medical Officer of [REDACTED], a telemedicine company, managed the Respondent for several years. As part of his



responsibilities; he conducts quality control reviews of physicians who work for the company. He never had any complaints from any patients of the Respondent and found the Respondent to be an excellent physician and one whom he would trust providing medical services to his own family.

55. [REDACTED], the Respondent's live-in girlfriend can hear the Respondent talking to his telemedicine patients; however, she is unable to hear any of the specifics of his communications with them. She has never heard the Respondent display anger towards his patients or raise his voice while communicating with his patients. Although she was available to talk with Dr. [REDACTED], she was not interviewed by him as part of the psychiatric evaluation of the Respondent.

56. Ms. [REDACTED] has not observed the Respondent experiencing any [REDACTED], [REDACTED], or any [REDACTED].

57. She has observed the Respondent appear angry, frustrated and upset, primarily as a result of the domestic dispute with his ex-wife and the pending Board investigations.

58. As a result of the custody dispute, the Respondent was ordered to participate in an anger management program. He spent six weeks in the program from August 2017 through October 2017. His anger was due to in large part due to the domestic dispute. The program did not interfere with his ability to practice medicine.

59. Telemedicine patient feedback indicates that the Respondent is highly rated over many years of telemedicine practice.

60. The Respondent has good insight into his illness. He acknowledges that he has a [REDACTED]. However, he is not sure of whether the diagnosis [REDACTED] [REDACTED] or [REDACTED]. He knows that he must continue to take prescribed medications as well as participate in regular psychiatric visits as part of managing his [REDACTED]

██████████. He has been evaluated since his years in medical school by psychiatrists and psychologists on numerous occasions and is currently under the care of Dr. ██████████. He is taking ██████████ on a daily basis to treat his ██████████. He knows that when he is experiencing mental health symptoms, he does not practice medicine. He will take time off from practicing until he is no longer symptomatic.

61. A diagnosis that a physician has a ██████████ does not automatically mean the physician is professionally, physically, or mentally incompetent to practice medicine. Symptoms of a ██████████ can be managed effectively with medication monitored by a physician.

#### DISCUSSION

The grounds for reprimand or probation of a licensee, or suspension or revocation of a license under the Act include 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:

...  
(4) Is professionally, physically, or mentally incompetent;

...  
(33) Fails to cooperate with a lawful investigation conducted by the Board or a disciplinary panel[.]

Health Occ. § 14-404(a)(4), (33) (Supp. 2019).

#### *Burden of Proof*

The burden of proof is by a preponderance of the evidence and rests with the State. To prove something by a “preponderance of the evidence” means “to prove that something is more

likely so than not so” when all of the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002). Under this standard, if the supporting and opposing evidence is evenly balanced on an issue, the finding on that issue must be against the party who bears the burden of proof. *Id.* For the reasons articulated below, I find the State has satisfied its burden of proof to demonstrate the Respondent violated section 14-404(a)(33) and, as a result, he is appropriately subject to the imposition of sanctions. I further find that the State has not satisfied its burden of proof to demonstrate the Respondent violated section 14-404(a)(4) and is therefore, not subject to sanctions under that provision.

*The Merits of Board Case #2218-0147B Failure to cooperate with a lawful investigation conducted by the Board or a disciplinary panel[:]*

A physician licensed in the State of Maryland is required to provide both a public and non-public mailing address to the Board. In addition to that requirement, a licensed physician is required to notify the Board of any change to his addresses within sixty days of the event. Health Occ. § 14-316(f)(1) (Supp. 2019).

In addition to the public and non-public mailing address, the Board requests a telephone number and a valid email address to assist the Board in communicating with the physician. At the time of the Respondent’s renewal of his license, the Respondent provided Board with his non-public address of [REDACTED] La Jolla, California 92037.

On January 5, 2018, the Executive Director of the Board sent a letter to the Respondent at his listed non-public address. The letter was not returned by the United States Postal Service (USPS) as undeliverable. Correspondence from the Board is not sent by certified mail. The practice of the Board is to send correspondence by ordinary first class mail.

The origin of this case was a complaint received by the Maryland Department of Management and Budget (DBM) from a prescription provider that contracts with the State to provide prescription coverage for State employees. In the complaint, the provider stated its

concern that the Respondent may have been overprescribing topical creams, ointments and other high cost medications when compared to his peers. The prescription provider included a detailed report documenting a comparison of the prescribing practices of the Respondent with his peers. It also detailed the cost of these prescribing practices on the State of Maryland and various options the State may consider if it determined that the Respondent's prescribing practices were inappropriate. One of those options was to refer the matter to the state medical board.

The matter was referred by DBM to the Board and the matter was assigned to Molly Dicken, Compliance Analyst, to investigate this matter further on behalf of the Board. Ms. Dicken issued a subpoena to the prescription provider for its investigative file. The documents were received by Ms. Dicken in response to the subpoena.

Following receipt and review of the documents, Ms. Dicken sent a letter on March 28, 2018 to the Respondent at his listed non-public address, [REDACTED] La Jolla, California. In accordance with standard practice of the Board, the letter was sent by first class mail. It was not returned as undeliverable by the USPS. Ms. Dicken requested in her letter that the Respondent provide records of ten patients within ten business days of receipt of the letter. Ms. Dickens did not receive a response to her letter.

Having not received a response, Ms. Dicken sent an email on April 30, 2018, to the Respondent at the email address provided by him in his application to renew his medical license. The email was merely intended to confirm the Respondent's email address so that she could send documents by email. She did not receive an email in response to her email, either from the Respondent or an email from the Respondent's email service provider indicating that the email sent by Ms. Dicken was returned as undeliverable.

Ms. Dicken followed up her email with a phone call to the Respondent on May 15, 2018, which the Respondent answered and informed Ms. Dicken that the initial non-public address had

changed and was no longer valid. Although he provided Ms. Dicken with a new non-public address, he was advised by her that he must notify the Board of the change and furthermore, she could not change it herself. After speaking with the Respondent and informing him that he would be sent an email, Ms. Dicken sent all of the information she previously sent to the Respondent by email immediately following the phone call and requested that he respond by May 30, 2018. Once again, he did not respond to Ms. Dicken's request.

When she did not receive a response as requested, Ms. Dicken called the Respondent on June 7, 2018 to inquire of the Respondent why he had not sent the requested information. The Respondent advised Ms. Dicken that he had only limited access to patient information due to the fact that he was unable to access records from telemedicine companies that he worked for that have filed for bankruptcy or otherwise ceased operations. He was only able to access one patient's records out of the ten requested. Ms. Dicken was not satisfied with his response. Licensed physicians practicing telemedicine are required to maintain documentation just like physicians who practice in-person health care settings. COMAR 10.32.05.06. Although the Respondent was not charged in this case for any violations of the Act relating to recordkeeping, his inability to provide the requested information limited the investigator's ability to determine whether the complaint filed by the prescription provider has merit.

To obtain further information from the Respondent, a subpoena was issued on June 11, 2018 for the Respondent to appear for an interview on July 12, 2018. The subpoena was sent to his latest non-public address and the mail was not returned by the USPS. The Respondent never appeared for the interview, nor has the Respondent requested or suggested a new date for the interview.

The Respondent acknowledged that he failed to notify the Board of changes in his non-public address. He stated during his testimony that he did not routinely check his mail and that

the email sent by Ms. Dicken was delivered to his email spam folder, which he does not routinely check. Only after speaking with Ms. Dicken on the phone and learning that an email was sent, did he discover the email in his spam folder.

The Respondent claimed, during his testimony, that he never spoke to Ms. Dicken on May 15, 2018 and accused her of lying about that phone call. I am unpersuaded by the Respondent's assertion. Ms. Dicken's testimony was clear and concise and not evasive. She was consistent in explaining all of her attempts to obtain the requested information on multiple occasions. When the information was not forthcoming, she followed up with letters and emails. The Respondent, on the other hand, was defensive and could not explain why he has, to date, failed to submit to the requested interview. The Respondent claims he maintains some records and others he does not maintain because they are held by the telemedicine companies. He also stated that some of the paper records were in a house that he did not have access to because of a restraining order. However, he never told Ms. Dicken the reasons why he did not have access to all the records. He claims that Ms. Dicken was lying about the May 15, 2018 phone call, yet he has never filed a written response to the March 28, 2018 letter. I found the Respondent's testimony on this point evasive and unpersuasive. He claims that he was prevented from obtaining records due to a restraining order and now the records are gone. He also testified that the telemedicine companies have the patient records, yet he was only able to provide one record when the regulations make it clear that he is required to maintain records for all of his patients. Although he objects to the charge of failing to cooperate with a lawful investigation of the Board or disciplinary panel, his actions in response to the investigation and his inconsistent testimony clearly demonstrate a deliberate failure to cooperate with the investigation. He stated during his testimony that he was willing to pay a \$100.00 penalty for not providing the Board with a current address within sixty days of a change, as required by section 14-316(f)(2), yet he fails to

understand that his failure to notify the Board of the address change is what caused an unnecessary delay in the investigation into his prescribing practices. His failure to report the change in address is sufficient alone to establish that he failed to cooperate with a lawful investigation. While the Respondent continues his failure to cooperate with the lawful investigation by the Board, including his failure to even schedule an interview, which was requested in June 2018, his prescribing practices continue, unabated, without the ability of the Board to determine whether his prescribing practices are appropriate. I find his lack of candor as it relates to the storage of records and his access to them troubling. He is required to maintain records regardless of whether he practices telemedicine or in-person medicine. The law provides for no distinction. While he may not agree with the law, it is his responsibility to follow it, unless and until it is changed.

Finally, his accusation, without support, that Ms. Dicken did not tell the truth during her testimony, is unfounded and unsupported by the evidence. The Respondent's failure to respond to repeated requests from the Board's compliance analyst, causing a delay in the investigation that continues today, fully supports a finding that the Respondent failed to comply with a lawful investigation by the Board or a disciplinary panel.

*The Merits of Board Case #2219-0026B Is professionally, physically, or mentally incompetent;*

This matter originated with a complaint filed with the Board by the Respondent on July 9, 2018. The complaint was filed against Dr. [REDACTED], the Respondent's former employer. The Respondent worked for Dr. [REDACTED] from September 2013 through May 2015. The Respondent accused Dr. [REDACTED] of violating HIPAA by providing medical records to a court without consent and by making slanderous and false statements to Dr. [REDACTED].

At the time the Respondent's complaint against Dr. [REDACTED] was filed with the Board, the Respondent was under investigation by the Board as a result of his prescribing practices. Ms.

Dicken was in communication with the Respondent concerning that investigation, but was not involved in investigating the complaint filed by the Respondent.

The Respondent left the employ of Dr. [REDACTED] as a result of a dispute involving the treatment one of Dr. [REDACTED] patients. Prior to his separation from employment, Dr. [REDACTED] noticed that the Respondent was sleeping at the office and not taking care of his personal hygiene. Additionally, Dr. [REDACTED] and the Respondent were disappointed in not being awarded the hospitalist position at [REDACTED] Hospital. Dr. [REDACTED] promised the Respondent that he would be the director if they were successful in their bid. The Respondent believed that they lost the bid due to illegalities on the part of the Chief Medical Officer for [REDACTED] Hospital. He threatened to bring an antitrust suit and notified both the Maryland Attorney General and the Federal Trade Commission of his concerns. Dr. [REDACTED] became more concerned when the Respondent believed that the mafia or the CIA was involved in the practice not receiving the bid.

When the Respondent left the practice after a heated argument with Dr. [REDACTED] over the treatment of a patient, the relationship did not end. There were numerous text messages sent between the two physicians indicating their dislike of each other. Following the end of their communication, the Respondent suspected that Dr. [REDACTED] had filed the complaint against him with the Board that resulted in the investigation of his prescribing practices. Dr. [REDACTED] never filed a complaint with the Board against the Respondent.

Dr. [REDACTED] became aware of the Respondent's mental health issues as a result of a child custody dispute in the Superior Court of the State of California for the County of San Diego. After a hearing, the court ordered that the Respondent participate in anger management training and undergo a psychological examination. The exam was performed by Dr. [REDACTED]. All the objective tests conducted by Dr. [REDACTED] were normal. Dr. [REDACTED] was interviewed by Dr. [REDACTED] as



part of her examination on January 12, 2018. Dr. [REDACTED]'s report was issued to the court on January 29, 2018. The report was provided to the Board as attachments to the Respondent's complaint. In the attached documents was part of an income and expense statement which the Respondent provided to the California court. The Respondent indicated on the form that the reason for his change in income was due to "psychiatric diagnosis and inability to work as a physician." As a result of the statements in the application made by the Respondent, the Board initiated its own investigation to determine if the Respondent is mentally competent to practice medicine.

The Board is empowered to refer its licensees for an appropriate evaluation by the MPRP if it believes that the public safety is affected. The Board referred the matter to the MPRP on September 28, 2018. The MPRP referred the matter to Dr. [REDACTED]. On February 28, 2019, Dr. [REDACTED] filed his report.

After reviewing the records provided to him and after interviewing the Respondent, Dr. [REDACTED] diagnosed the Respondent as having an [REDACTED]. The Respondent admits to having a [REDACTED] and there is evidence from other psychiatrists that he has [REDACTED]. Others have diagnosed him with having [REDACTED]. In addition to [REDACTED], Dr. [REDACTED] diagnosed the Respondent with [REDACTED] and [REDACTED]. Among the individuals who have examined the Respondent, there is a lack of consensus on his diagnosis. It is not necessary that a diagnostic label be established to determine whether the Respondent is mentally competent to practice medicine. As previously stated, the Respondent acknowledges that he has a [REDACTED]. He is prone to anger and impulsivity. There is no question that he has an acrimonious relationship with his ex-wife, centered on his custody battles in the courts. This ongoing battle causes much stress in his life. While Dr. [REDACTED] states in his report that the Respondent lacks insight into

his illness, the evidence suggests otherwise. He has been under the care of various psychiatrists for many years. His mental illness symptoms started during medical school. He also knows that when he becomes depressed due to bad weather; he will not treat patients during this period. His live-in partner, [REDACTED], has never heard him raise his voice while talking to a patient, which suggests that in a professional setting, he is able to control his anger. Although available to be interviewed by Dr. [REDACTED] during the Respondent's examination, Dr. [REDACTED] did not find it pertinent to interview Ms. [REDACTED]. Dr. [REDACTED] did, however, spend a considerable amount of time reviewing the mental health history of the Respondent. It is this history, which accounts for the vast majority of Dr. [REDACTED]'s report and forms the basis of his opinion on the Respondent's mental competency to practice medicine. He did not look into the Respondent's history and quality of work as a practicing physician before rendering his opinion. The fact that he has not had any complaints filed against him by patients, receives excellent reviews from patients, and has received awards from hospitals where he practiced was of no value to Dr. [REDACTED] in formulating his opinion. Dr. [REDACTED] testified that in the population of physicians as a whole, there are many who are diagnosed with [REDACTED] or other psychiatric conditions, yet they can function and practice medicine competently. These physicians have their illnesses under control with medication and other means, which certainly could include therapy as well. The Respondent is currently under the care of [REDACTED], MD, PhD. She has prescribed [REDACTED]. Her reports indicate that the Respondent's insight, judgment, cognition and impulse control are intact. She has observed the Respondent over many sessions. Dr. [REDACTED] has not. Other than his one-time examination of the Respondent, Dr. [REDACTED]'s conclusions are based primarily on the psychiatric history of the Respondent. I find that Dr. [REDACTED]'s role as his treating psychiatrist, who knows the Respondent

far better than Dr. [REDACTED] puts her in a better position to assess the Respondent's mental competence to practice medicine.

The Respondent ended his relationship with Dr. [REDACTED] on very bad terms. They despised each other as evidenced by the text messages sent to each other following the Respondent's separation from employment. There was even an attempt by Dr. [REDACTED] to obtain a restraining order against the Respondent. The Respondent has been described as manipulative. He is prone to anger with others, especially in the context of the custody dispute. He has sent many emails to the Board, Dr. [REDACTED], and Ms. Dicken, inquiring about the investigation, and requesting the name of the person who allegedly filed a complaint against him with the Board. There was an abundance of emails, many of which were inappropriate and unjustified. He may not have a pleasant demeanor, but that is not a criterion for determining whether he is mentally competent to practice medicine.

The Respondent recently passed his Internal Medicine Maintenance of Certification Examination. He performed approximately 2000 telemedicine consultations between October 2017 and January 2018. He returned to performing telemedicine consultations in December 2018 and continues today. He estimates that he has conducted 1,000 more consultations during this period and has never received a complaint or been named in a medical malpractice lawsuit during this time.

The Respondent, in addition to taking [REDACTED], also is taking [REDACTED], a [REDACTED] [REDACTED] medication. It is unclear where he obtains this medication, but there is an indication in his testimony that the medication may be sourced from overseas due to cost. The records of Dr. [REDACTED] do not indicate that he is taking this medication and it is unknown whether she is aware of it. He did, however, disclose its use to Dr. [REDACTED], the expert witness retained by the Respondent.

Both experts detailed an extensive history of the Respondent, including his work history as well as his psychiatric history. His history was generally consistent with each expert. Where they diverge involves how they treated the Respondent's work history. Dr. [REDACTED] focused on the issues involving the Respondent's practice with Dr. [REDACTED] and how it deteriorated when the Respondent began to sleep in the office and not practice appropriate hygiene. It is important to note that the Respondent's working relationship with Dr. [REDACTED] ended in 2015. Since then, Dr. [REDACTED] focused on the Respondent's actions in court involving the custody dispute. He was ordered to attend anger management training and be evaluated by Dr. [REDACTED]. This was an extremely stressful period for the Respondent. Again, there was no consideration given by Dr. [REDACTED] as to the quality of medical care provided by the Respondent. Dr. [REDACTED], by contrast, focused his attention on whether the Respondent, despite his mental illness, can competently practice medicine. He looked at patient reviews; he noted that there has never been any patient complaints or medical malpractice lawsuits filed against him. He looked at awards given to him for excellence and his recent Maintenance of Certification by the American Board of Internal Medicine as evidence of his competency to practice internal medicine.

I gave more weight to the testimony of Dr. [REDACTED] than the testimony of Dr. [REDACTED]. The Respondent is currently under a doctor's care. He is aware of his mental illness even though he may disagree with the diagnosis or the label applied. The diagnosis does not matter as long as the Respondent is mentally competent to practice medicine. He understands that when his mood changes, he will not take telemedicine consultations during that period. He knows not to take any risks when it comes to his patients. He knows that he needs to continue to be under the care of a psychiatrist. His mental illness is being managed and there is no evidence that he is putting his patients at risk because of his mental illness. The Board presented no evidence or allegations that the Respondent is physically or professionally incompetent to practice medicine. The only

issue is whether he is mentally incompetent to practice medicine. Having considered the record in its entirety, I find that he is not mentally incompetent to practice medicine.

### Sanctions

As there is no violation of Health Occupations section 14-404(a)(4), no sanction applies. However, having found that the Respondent did violate section 14-404(a)(3), the Board recommended that the Respondent's license to practice medicine be suspended for a period of one year and he be required to comply with the Board's original directives.

The Board is Maryland's "governmental agency responsible for investigating and disciplining physicians for professional misconduct." *Cornfeld v. Board of Physicians*, 174 Md. App. 456, 481 (2007). "The Board's mission [is] to regulate the use of physician's licenses in Maryland in order to protect and preserve the public health." *Id.* at 481 (internal quotations and citations omitted). The purpose of the Board's disciplinary authority is to protect the public, not to punish physicians. *McDonnell v. Comm. on Med. Disc.*, 301 Md. 426, 436 (1984).

COMAR 10.32.02.10B(33) provides that the maximum sanction for a violation of 14-404(a)(33) is revocation. The minimum sanction is a reprimand. Sanctions may also include a fine, which would range from \$10,000.00 to \$50,000.00. In this case, the Board recommends that the Respondent's license be suspended for a year and that he comply with the Board's directives.

COMAR 10.32.09B provides for the mitigating and aggravating factors to be considered in recommending a sanction. In this case, there are few, if any, mitigating factors to consider for the Respondent's failure to cooperate with a lawful investigation. To this day, he has not complied with the Board's request for an interview and has not fully explained why he was unable to provide the requested information on his patients even though he is obligated and held to the same standards of practice and documentation as those applicable in in-person health care

settings. COMAR 10.32.05.06A. There are no exceptions for licensees who practice telemedicine. The Respondent's failure to cooperate with the investigation demonstrates a lack of good faith. Furthermore, I have previously determined that his misconduct was a deliberate attempt to impede the lawful investigation into his prescription practices. The fact that the Respondent deliberately failed to comply with the lawful request from the Board's investigator is an aggravating factor.

The Board did not request that the Respondent be fined for his actions, even though a minimum fine of \$10,000.00 is included in the guidelines for this offense. I agree with the Board's recommendation and no fine should be imposed. While this is outside the range of sanctions listed in the sanctioning guidelines, it is permissible to make this exception. COMAR 10.32.02.09A(8). The Respondent has demonstrated that he is currently experiencing financial strain and a fine would only add to his financial problems without providing an incentive for him to comply with the investigation. It is important to note that the underlying complaint has yet to be resolved. It is unknown, at this point, whether the Respondent's prescribing practices are appropriate or not. Therefore, the proposed sanction is not intended to presume the outcome of the investigation, but is intended to encourage the Respondent to cooperate with the Board's investigation. Therefore, I propose that the Board suspend the Respondent's license for a period not to exceed one year. The suspension may be less than a year provided the Board finds the Respondent has fully cooperated with its investigation by complying with its requests to enable it to complete its investigation into the Respondent's prescribing practices. Whether any further charges may be filed by the Board will depend on the outcome of its investigation into the Respondent's prescribing practices once he has fulfilled his obligation under the proposed disposition.

**PROPOSED CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent violated the Maryland Health Occupations Article Section 14-404(a)(33) (Supp. 2019). I do not find that the Respondent violated section 14-404(a)(4). As a result, I conclude that the Respondent is subject to disciplinary sanctions of a suspension of his Maryland license for a period not to exceed one year which may be reduced once the Board determines that the Respondent has fully complied with its investigation. COMAR 10.32.02.09.

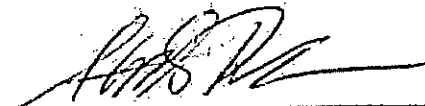
**PROPOSED DISPOSITION**

I PROPOSE that charges filed by the Maryland State Board of Physicians against the Respondent on April 11, 2019 be upheld in part as to the Respondent's failure to cooperate with a lawful investigation conducted by the Board and dismissed as to the charge that the Respondent is professionally, physically, or mentally incompetent, and

I PROPOSE that the Respondent be sanctioned by imposing a suspension of his Maryland license to practice medicine for a period not to exceed one year which may be reduced once the Board determines that the Respondent has fully complied with its investigation.

November 22, 2019  
Date Decision Issued

SGB/cj  
#182556

  
\_\_\_\_\_  
Stuart G. Breslow  
Administrative Law Judge

**NOTICE OF RIGHT TO FILE EXCEPTIONS**

Any party adversely affected by this proposed decision may file written exceptions with the disciplinary panel of the Maryland State Board of Physicians that delegated the captioned case to the Office of Administrative Hearings (OAH), and request a hearing on the exceptions: Md. Code Ann., State Gov't § 10-216(a) (2014); COMAR 10.32.02.05. Exceptions must be filed within fifteen (15) days of the date of issuance of this proposed order. COMAR 10.32.02.05B(1). The exceptions and request for hearing must be addressed to the Disciplinary Panel of the Board of Physicians, 4201 Patterson Avenue, Baltimore, MD, 21215-2299, Attn: Christine A. Farrelly, Executive Director.

A copy of the exceptions should be mailed to the opposing attorney, and the other party will have fifteen (15) days from the filing of exceptions to file a written response addressed as above. *Id.* The disciplinary panel will issue a final order following the exceptions hearing or other formal panel proceedings. Md. Code Ann., State Gov't §§ 10-216, 10-221 (2014); COMAR 10.32.02.05C. The OAH is not a party to any review process.

**Copies Mailed To:**

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