

Douglas Smith, PA-C

October 16, 2015

Devinder Singh, M.D., Chair
Disciplinary Panel A
Maryland State Board of Physicians
4201 Patterson Avenue, 4th Floor
Baltimore, Maryland 21215-2299

RE: Surrender of License to Practice as a Physician Assistant
License Number: C01138
Case Number: 2014-0975A

Dear Dr. Singh and Members of Disciplinary Panel A:

I have decided to **PERMANENTLY SURRENDER** my license to practice as a physician assistant in the State of Maryland, License Number C01138, effective immediately.¹ I understand that upon surrender of my license, I may not give medical advice or treatment to any individual, with or without compensation, and cannot otherwise engage in the practice of medicine in the State of Maryland as it is defined in the Maryland Physician Assistants Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ."), §§ 15-101 *et seq.*, (2014 Repl. Vol.) and other applicable laws. In other words, as of the effective date of this Letter of Surrender, I understand that the surrender of my license means that I am in the same position as an unlicensed individual in the State of Maryland.

I understand that this Letter of Surrender is a **PUBLIC** document and on Disciplinary Panel A of the Maryland State Board of Physicians' (the "Board's") acceptance becomes a **FINAL ORDER** of Disciplinary Panel A.

I have decided to surrender my license to practice medicine in the State of Maryland in lieu of prosecution of the disciplinary charges now pending before Disciplinary Panel A. I acknowledge that the Board's investigation was initiated based on allegations that I failed to follow the practice policy in my place of employment, and that a former patient alleged I had inappropriately touched her in a sexual manner

¹ I allowed my license to expire on June 30, 2015, but according to Md. Code Ann., Health Occ. § 14-403(a), my license may not lapse by operation of law while I am under investigation by the Board or while charges are pending.

Devinder Singh, M.D., and Members of Disciplinary Panel A

Re: Douglas Smith, PA-C

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during the course of her examination. The Board's investigation resulted in charges that I violated Md. Code Ann., Health Occ. ("Health Occ.") § 15-314(a)(3)(i) and (ii), pursuant in part to Md. Code Regs. 10.32.17.01 *et seq.*

I wish to make it clear that I have voluntarily, knowingly, and freely chosen to submit this Letter of Surrender in lieu of prosecution of Disciplinary Panel A's Charges. In addition, I have decided that I no longer wish to practice as a physician assistant. I acknowledge that for all purposes relevant to medical licensure only, Disciplinary Panel A's Charges will be treated as if proven.

I understand that by executing this Letter of Surrender, I am waiving any right I may have to contest the Charges in a formal evidentiary hearing at which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf and all other substantive and procedural protections provided by law, including the right to appeal.

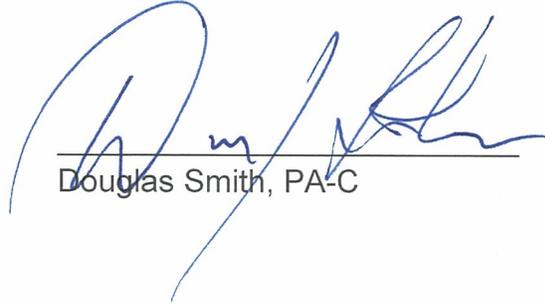
I understand that Disciplinary Panel A will advise the Federation of State Medical Boards, the National Practitioners' Data Bank, and the Healthcare Integrity and Protection Databank of this Letter of Surrender, and in any response to any inquiry, that I have surrendered my license in lieu of further disciplinary action. I also understand that in the event I apply for a license in any form in any other state or jurisdiction, this Letter of Surrender and the underlying investigative documents may be released or published by Disciplinary Panel A to the same extent as a final order that would result from disciplinary action, pursuant to Md. Code Ann., Gen. Prov. §§ 4-101-4-601 (2014), and that this Letter of Surrender is considered a disciplinary action by the Board.

I affirm that before the date of Disciplinary Panel A's acceptance of this Letter of Surrender, I shredded my initial license and my most recent renewal license issued by the Board.

I further recognize and agree that by submitting this Letter of Surrender, I have no right to reapply for a license to practice medicine, and that the Board or a disciplinary panel of the Board is not obligated to consider such an application.

I acknowledge that I may not rescind this Letter of Surrender in part or in its entirety for any reason whatsoever. Finally, I wish to make clear that I have consulted with an attorney before signing this Letter of Surrender. I understand both the nature of the Board's actions and this Letter of Surrender fully. I acknowledge that I understand and comprehend the language, meaning, and terms and effect of this Letter of Surrender. I make this decision knowingly and voluntarily.

Sincerely,



Douglas Smith, PA-C

Reviewed by:



Richard M. Winters, Esquire

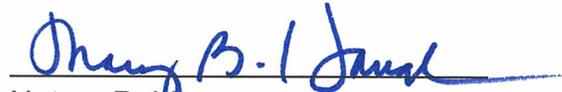
NOTARY

STATE OF MARYLAND

CITY/COUNTY OF FREDERICK

I HEREBY CERTIFY that on this 16 day of October 2015, before me, a Notary Public of the State and City/County aforesaid, personally appeared Douglas Smith, PA-C and declared and affirmed under the penalties of perjury that signing the foregoing Letter of Surrender was his voluntary act and deed.

AS WITNESS my hand and official seal.



Notary Public

My Commission expires: 2/26/17



ACCEPTANCE

On this 23rd day of October, 2015, I, Devinder Singh, M.D., on behalf of Disciplinary Panel A of the Maryland State Board of Physicians, accept Douglas Smith PA-C's **PUBLIC SURRENDER** of his license to practice as a physician assistant in the State of Maryland.


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

IN THE MATTER OF * BEFORE THE MARYLAND
DOUGLAS J. SMITH, PA-C * STATE BOARD OF
Respondent * PHYSICIANS
License Number: C01138 * Case Number: 2014-0975A

CHARGES UNDER THE
MARYLAND PHYSICIAN ASSISTANTS ACT

Disciplinary Panel A of the Maryland State Board of Physicians (the "Board") hereby charges Douglas J. Smith, PA-C (the "Respondent"), License Number C01138, with violating the Maryland Physician Assistants Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") § 15-314(a) (2014 Repl. Vol.).

The pertinent provisions of the Act provide:

- (a) *Grounds.* -- Subject to the hearing provisions of § 15-315 of this subtitle, a disciplinary panel, on the affirmative vote of a majority of the quorum, may reprimand any physician assistant, place any physician assistant on probation, or suspend or revoke a license if the physician assistant:

...

- (3) Is guilty of:
- (i) Immoral conduct in the practice of medicine; or
 - (ii) Unprofessional conduct in the practice of medicine[.]

The pertinent provisions of Md. Code Regs. 10.32.17 provide:

.01 Scope

This chapter prohibits sexual misconduct against patients or key third parties by individuals licensed or certified under Health Occupations Article, Titles 14 and 15, Annotated Code of Maryland.

.02 Definitions

...

B. Terms Defined.

...

(2) Sexual Impropriety.

(a) "Sexual impropriety" means behavior, gestures, or expressions that are seductive, sexually suggestive, or sexually demeaning to a patient or a key third party regardless of whether the sexual impropriety occurs inside or outside of a professional setting.

(3) "Sexual misconduct" means a health care practitioner's behavior toward a patient, former patient, or key third party, which includes:

(a) Sexual impropriety;

(b) Sexual violation;

...

(4) Sexual Violation.

(a) "Sexual violation" means health care practitioner-patient or key third party sex, whether or not initiated by the patient or key third party, and engaging in any conduct with a patient or key third party that is sexual or may be reasonably interpreted as sexual, regardless of whether the sexual violation occurs inside or outside of a professional setting.

(b) "Sexual violation" includes but is not limited to:

...

(v) Touching the patient's breasts, genitals, or any sexualized body part[.]

.03 Sexual misconduct.

A. Individuals licensed or certified under Health Occupations Article, Titles 14 and 15, Annotated Code of Maryland, may not engage in sexual misconduct.

B. Health Occupations Article, §§ 14-404(a)(3)...Annotated Code of Maryland, includes, but is not limited to, sexual misconduct.

ALLEGATIONS OF FACT¹

I. BACKGROUND

Disciplinary Panel A of the Board bases its charges on the following facts that it has cause to believe are true:

1. At all times relevant to these charges, the Respondent was a physician assistant licensed to practice medicine in the State of Maryland. The Respondent was initially licensed in Maryland on or about June 23, 1988, and he held an active license through June 30, 2015.²
2. At all times relevant to these charges, the Respondent was employed as a physician assistant at Practice A, an occupational healthcare facility located in Frederick, Maryland. The Respondent was employed by Practice A from 1993 through April 1, 2014 when his employment was terminated for cause.
3. On or about April 18, 2014, Practice A notified the Board that effective April 1, 2014, the practice had terminated the Respondent's employment for his failure to follow practice policy.
4. On or about June 11, 2014, the Board received a complaint from a former patient of the Respondent ("Patient A") alleging the Respondent had inappropriately touched her in a sexual manner during the course of her examination.

¹ The allegations set forth in this document are intended to provide the Respondent with notice of the alleged charges. They are not intended as, and do not necessarily represent, a complete description of the evidence, either documentary or testimonial, to be offered against the Respondent in connection with these charges.

² Md. Code Ann., Health Occ. § 14-403(a) provides the Respondent's license may not lapse by operation of law while he is under investigation or while charges are pending.

5. After receiving the initial complaint, the Board initiated an investigation of the Respondent.

6. During the course of the Board's investigation, the Respondent's employment file from Practice A revealed a second patient ("Patient B") had filed a complaint alleging inappropriate touching by the Respondent during a physical examination.

7. During the course of the Board's investigation, the Board's staff interviewed Patient A, Patient B, corroborating witnesses and the Respondent. The allegations are set forth more specifically below.

8. By letter dated March 2, 2015, the Board notified the Respondent of its investigation stemming from Patient A's complaint, and requested a written response to the allegations.

9. On or about March 17, 2015, the Respondent submitted a written response to the Board in which he denied the allegations with regard to Patient A's complaint.

10. On or about March 26, 2015, during the Respondent's interview under oath by Board staff, the Respondent denied the allegations with regard to Patient A and Patient B.

11. The allegations are set forth below.

II. PATIENT-RELATED ALLEGATIONS

PATIENT A

12. On or about March 19, 2014, Patient A, a female in her 40s, saw the Respondent for a work-related back injury that had occurred earlier that day.³ When asked by the

³ Patient A had seen the Respondent on one other occasion, in 2010, for another work-related injury.

Respondent the degree of pain she was in between 1 and 10, she described it as being 12 or 13.

13. On March 19, 2014, the Respondent documented in Patient A's medical record that she had been treated for lumbar strain, that he had dispensed Flexeril 10 mg (20 tablets) to her, and scheduled her for a follow-up visit on March 21. Patient A did not return to Practice A for a follow-up visit.

14. On July 22, 2014, during an interview with Board staff, Patient A described her March 19, 2014 scheduled visit with the Respondent, that included but was not limited to the following:

- a. A medical assistant escorted Patient A to the examination room, and provided her with two gowns, asking her to disrobe to her undergarments. The medical assistant left the room and did not return to chaperone during the Respondent's examination/evaluation of Patient A;
- b. Patient A informed the Respondent that pain was present in her lower back and right leg;
- c. Patient A stated the Respondent began massaging her body starting with her back and described areas on her body in which the "muscle hits the nerve" as "knots." According to Patient A, the Respondent located approximately 7 "knots" on her body;
- d. According to Patient A, the Respondent located a "knot" inside of her underwear area. Patient A stated the Respondent touched her pubic hair and she grabbed his hands – both of his wrists, and she stated, "...don't touch me. You're hurting me";
- e. The Respondent offered Patient A a "shot" for her pain, but she refused the offer of injectable medication. She accepted the oral medication (muscle relaxant) that he dispensed to her; and
- f. Patient A stated that after the evaluation, the Respondent helped Patient A descend from the examination table, keeping his hand on her back and rubbed his finger over the "crack" of her [buttocks].

15. According to Patient A, she reported the Respondent's conduct to her acupuncturist (Provider A).⁴ Provider A documented a progress note regarding Patient A's report to her that she had been "touched" by a doctor.

16. Also, according to Patient A, she reported the Respondent's conduct to her husband.

17. On or about March 20, 2015, Patient A reported the Respondent's conduct to her supervisor at work, who in turn reported it to the Frederick County police department and her employer's legal department.

18. On or about March 21, 2014, Patient A filed a police report with the Frederick County Police Department alleging the Respondent had sexually assaulted her during the March 19 office visit.⁵

19. On or about April 9, 2014, Patient A reported the Respondent's conduct to her therapist, Provider B. According to Provider B, Patient A showed up at Provider B's office without an appointment, broke down in tears and said she needed to see Provider B "right away." Provider B scheduled an appointment to see Patient A on April 10, 2014. Provider B had not provided counseling to Patient A since 2010.

20. On April 10, 2014, Patient A reported to Provider B in part that the Respondent had touched her inappropriately in the groin area and buttocks, and had offered her a "shot" to relax her. During the session, Provider B stated that Patient A had been "very emotional" and cried during most of the session.

⁴ Patient A stated she reported the Respondent's conduct to Provider A by telephone, and Provider A recalled that she reported the conduct to her in-person.

⁵ The Frederick County State's Attorney's Office declined to prosecute the Respondent. The standard of proof in criminal proceedings differs from administrative proceedings.

PATIENT B

21. On or about February 4, 2014, Patient B, a female in her 20s, saw the Respondent for medical care for a work-related injury to her upper back and shoulder.

22. The Respondent saw Patient B for medical care over the course of the next two months in 2014 for approximately seven additional visits (2/7, 2/14, 2/24, 3/5, 3/12, 3/18, 3/20).

23. During Patient B's final visit to the Respondent, on March 20, 2014, Patient B presented with additional complaints of hip pain that was not secondary to her initial injury.

24. On October 24, 2014, the Board's staff conducted an interview of Patient B, and in part, Patient B described the Respondent's conduct during her visits with the Respondent as follows:

- a. Patient B stated there was never a chaperone present in the room during any of her medical visits with the Respondent;
- b. Patient B stated that the Respondent would "go very low on my chest when he was checking the front of my chest area, and he would always be getting very close to my nipples";
- c. During Patient B's final visit with the Respondent on March 20, 2014, Patient B presented with hip pain, and during his examination of her hip asked her to bend over the table, and his touching of her back and legs made her very uncomfortable. She stated, "it made me feel like I was going to vomit";
- d. Patient B stated that during several of the visits with the Respondent he would "side hug" her; and
- e. During one visit, Patient B stated that the Respondent called her a "'pretty young girl' or a 'beautiful young girl.'"

25. During Patient B's last visit with the Respondent on March 20, 2014, he recommended that she follow-up with him on March 27, 2014.

26. On or about March 21, 2014, the worker's compensation adjuster ("adjuster") assigned to Patient B's case documented that Patient B reported to the adjuster that she (Patient B) felt uncomfortable with the Respondent's care when he (the Respondent) "side hugged" her (Patient B) when she was not completely dressed, and that he examined her hip while standing behind her. Additionally, the adjuster documented that Patient B told her that there was no chaperone present when the Respondent examined her hip area.

27. The adjuster offered Patient B other providers in the practice, however, because of the Respondent's conduct, Patient B stated that she was too uncomfortable to return to Practice A, and did not return for her scheduled follow-up care.

28. The adjuster reported Patient B's complaints noted in ¶ 26 to the customer care manager for the worker's compensation company, who in turn reported the allegations to the Respondent's supervisor, Dr. M.

29. On or about November 17, 2014, Board staff interviewed Patient B's mother who stated that Patient B had reported to her that the Respondent had touched her inappropriately and had made comments in reference to her appearance. According to Patient B's mother, the Respondent's comments made her daughter "highly upset."

30. On or about February 18, 2015, Board staff interviewed Patient B's supervisor at work who stated that Patient B had reported to her that a healthcare provider at Practice A had "inappropriately touched her." Patient B had reported to her supervisor that she did not want to see another provider at Practice A because it would be too upsetting for her to enter the building.

INTERVIEW OF DR. M

31. On December 7, 2005, Dr. M notified his staff by e-mail of an office policy that stated:

Due to a recent patient concern all male caregivers are to utilize a female chaperone for ANY examinations of female patients who are undressed (in other words for injury exams as well as physical exams).

The Respondent was included on the e-mail distribution list.

32. Dr. M stated during his interview that the policy noted in ¶ 31 had been precipitated by a patient complaint regarding the Respondent.⁶

33. Dr. M stated that in 2007, the Respondent required professional intervention as he did not "know the boundaries of personal space." The Respondent was required to attend sexual harassment training. See ¶ 36.

RESPONDENT'S EMPLOYMENT FILE

34. On or about July 24, 2003, Dr. M verbally counseled the Respondent based on employee complaints of "interpersonal behaviors that produced discomfort." The conduct included rubbing co-workers' shoulders.

35. The Respondent's file contained documentation that two patient complaints had been filed on or about September 21, 2005, and on or about December 6, 2005, independently alleging in part that the Respondent had provided the patients with his personal cell phone number.

36. On or about August 17, 2007, Dr. M issued to the Respondent a written warning regarding his conduct toward female co-workers at Practice A and required the

⁶ The Respondent's employment file reflected that two patient complaints had been filed independently alleging in part that the Respondent had provided them with his personal cell phone number. See ¶ 35.

Respondent to complete a training program in sexual harassment. Dr. M stated in the letter that the Respondent could be terminated should Practice A receive another complaint.

37. On or about March 26, 2014, Dr. M met with the Respondent regarding the complaints filed by Patients A and B.

38. Based on the Respondent's failure to ensure a chaperone had been present pursuant to Practice A's policy, Dr. M terminated the Respondent's employment from Practice A.

RESPONDENT'S INTERVIEW

39. On March 26, 2015, Board staff conducted an interview under oath of the Respondent.

40. The Respondent stated that he used chaperones for pre-employment physical examinations, but was not aware of Practice A's policy that directed the use of chaperone's during "injury" examinations. The Respondent did not recall having received an e-mail from Dr. M regarding Practice A's chaperone policy.

41. With regard to Patient A, the Respondent stated that Patient A had grabbed his wrist and pulled it across her body to her right lower back and hip area, and that he had, "pulled back."

42. The Respondent denied Patient A's allegations that he had touched her vaginal area or her buttocks.

43. With regard to Patient B, the Respondent stated that her complaints had been "posterior" and denied palpating her bra or chest area. He stated that on March 20 when she had complained of a hip injury, he had performed a cursory examination.

44. The Respondent stated that he sometimes hugged patients, but did not recall hugging Patient B.

45. The Respondent stated that he sometimes "puts his arm on the patient" as he escorts them out the door.

46. The Respondent denied that he made personal comments about patients' appearances as they could "take it the wrong way."

47. The allegations relating to the Respondent as outlined in pertinent part above constitute immoral or unprofessional conduct in the practice of medicine in violation of Health Occ. § 15-314(a)(3)(i) and/or (ii).

NOTICE OF POSSIBLE SANCTIONS

If, after a hearing, Disciplinary Panel B finds that there are grounds for action under Md. Code Ann., Health Occ. § 15-314 (a)(3)(i) and/or (3)(ii) pursuant in part to Md. Code Regs. 10.32.17.01 et seq., the Board may impose disciplinary sanctions against Respondent's license, including revocation, suspension, reprimand and/or probation and/or may impose a fine.

NOTICE OF DISCIPLINARY COMMITTEE FOR CASE RESOLUTION

A Disciplinary Committee for Case Resolution ("DCCR") Conference in this matter is scheduled for **October 14, 2015, at 9:00 a.m.** at the Board's office, 4201 Patterson Avenue, Baltimore, Maryland 21215. The nature and purpose of the DCCR is described in the attached letter to the Respondent. If this matter is not resolved on terms accepted by Disciplinary Panel A, an evidentiary hearing will be scheduled.

BRIAN E. FROSH
ATTORNEY GENERAL OF MARYLAND

7/16/2015

Date



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Administrative Prosecutor
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