

IN THE MATTER OF	*	BEFORE THE
EDWIN S. KULUBYA, M.D.	*	MARYLAND BOARD OF
Respondent	*	PHYSICIANS
License Number: D30198	*	Case Numbers: 2004-0729
* * * * *	* *	* * * * *

FINAL ORDER

Based on information received, the Maryland Board of Physicians (the "Board") charged Edwin S. Kulubya, M.D. (the "Respondent"), D.O.B. 03/12/57), License Number D30198, under the Maryland Medical Practice Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") § 14-404(a) (2000 Repl. Vol., 2004 Supp.).

The pertinent provision of the Act provides:

(a) Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on the affirmative vote of a majority of the quorum, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

(21) Is disciplined by a licensing or disciplinary authority or convicted or disciplined by a court of any state or country or disciplined by any branch of the United States uniformed services or the Veteran's Administration for an act that would be grounds for disciplinary action under this section.

The underlying grounds for disciplinary action under H.O. § 14-404(a)(21) are as follows:

(22) Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State; and

(40) Fails to keep adequate medical records as determined by appropriate peer review[.]

The Board informed the Respondent that a Final Order would be executed **THIRTY (30) DAYS** from the Respondent's receipt of the Board's notice, unless the Respondent requested a hearing. The Board further informed the Respondent that sufficient notice under Code Md. Regs. tit. 10, § 32.02.03 provides that the Board serve the charges by regular mail or hand delivery at the address the Respondent maintains for purposes of licensure notice. Md. State Gov't Code Ann. § 10-209(c) provides that a person holding a license shall be deemed to have had reasonable opportunity to know of the fact of service if: 1) the person is required by law to notify the agency of a change of address within a specified period of time; 2) the person failed to notify the agency in accordance with the law; 3) the agency of the Office mailed the notice to the address of record; and 4) the agency did not have actual notice of the change of address prior to service.

The Respondent received the Board's Charges and Notice of Intent to Sanction Under the Medical Maryland Practice Act on or about October 29, 2005. On November 29, 2005, the Respondent, through counsel, timely requested a hearing, a copy of which request is attached hereto as **Attachment A**. On December 19, 2005, the Respondent, through counsel, advised the Administrative Prosecutor that he was interested in resolving the matter without proceeding with a hearing. A copy of counsel's December 19, 2005 correspondence is attached hereto as **Attachment B**. On January 4, 2006, the Respondent, through counsel, advised the Administrative Prosecutor that the

Respondent agreed to accept this Final Order. A copy of counsel's January 4, 2006 letter is attached hereto as **Attachment C**.

FINDINGS OF FACT

1. At all times relevant to these charges, the Respondent was a physician licensed to practice medicine in the State of Maryland. He was initially licensed in Maryland on or about November 28, 1983.
2. On or around January 1, 1991, the Respondent became board-certified in anesthesiology.
3. The Respondent holds an active license to practice medicine in the state of Texas. His address of record with the Board is in Texas and he currently practices medicine in that state.
4. The Respondent also holds active licenses in: Illinois, Florida, Massachusetts, Georgia, Pennsylvania, Vermont, New York, North Carolina, Michigan, Arkansas, Nevada and California. The Respondent holds inactive licenses in: Arizona, Tennessee, Virginia and the District of Columbia.

I. Medical Board of California Discipline

5. At the time of the acts described in this subsection, the Respondent was licensed by the Medical Board of California ("California Board"), having been issued a license on or about January 7, 1985.
6. On or about April 26, 2004, the California Board issued a Decision ("California Board Decision") revoking the Respondent's license, then immediately staying the revocation and placing the Respondent on

probation for five (5) years with specified terms and conditions. The California Board decision is attached hereto as **Exhibit A**. The California Board Decision was based on the findings of an administrative law judge that the Respondent violated the standard of care and/or failed to maintain adequate medical records in several cases. The California Board Decision was supported by the following Findings of Fact:

- a. Patient E.G.¹- On or about September 16, 1995, the Respondent prescribed Vicodin over the telephone but did not actually examine the patient. The California Board found that the Respondent demonstrated incompetence which constituted an extreme departure from the standard of care in this instance.
- b. Patient 00775501- On or about January 15, 1996, the Respondent completed an anesthetic assessment form for this patient without performing an adequate examination of the patient or fully documenting his assessment. The California Board found that the Respondent's treatment of this patient constituted an extreme departure from the standard of care.
- c. Patient G.C.- On or about March 5, 1996, the Respondent made an inaccurate written statement on the patient's PACU orders regarding the time the Respondent ordered a medication. The California Board found that the Respondent was careless in his documentation.

¹ The patients' names are not provided to assure their confidentiality. The patients' identifiers are those used in the California Proposed Decision.

- d. Patient P.C.- On or about February 27, 1997, the Respondent failed to observe and evaluate the eighty-one year old patient following his inadvertent arterial placement of an intravenous catheter that resulted in the failure to detect a critical and near-fatal hemorrhage. The California Board found that the Respondent's care of Patient P.C. constituted an extreme departure from the standard of care.
 - e. Patient J.B.- On or about February 28, 1999, the Respondent placed a cuffed tracheostomy tube fifty-five (55) minutes after Patient J.B., a seventy-eight (78) year old male with a permanent tracheostomy, had produced copious brown material from his tracheostomy. The California Board found that the Respondent's failure to place a cuffed tracheostomy tube or otherwise protect Patient J.B.'s airway from further aspiration in a timely manner constituted a departure from the standard of care.
 - f. Patient T.B.- On or about June 29, 1999, the Respondent diagnosed Patient T.B. with bronchospasm and failed to recognize that the patient had negative pressure pulmonary edema after the patient self-extubated by pulling out his endotracheal tube. The California Board found that the Respondent's failure to correctly diagnose Patient T.B.'s condition constituted a departure from the standard of care.
7. Under the terms of the California Board Decision, the Respondent was revoked, which revocation was immediately stayed and the Respondent

was placed on probation for five (5) years conditioned upon his completion of specified continuing medical education, re-examination and reimbursement in the amount of \$13,000.00 for the California Board's investigative and prosecution costs.

II. Subsequent Reciprocal Discipline Based on California Discipline

a. Georgia Medical Board

8. On September 15, 2000, the Respondent was licensed to practice medicine in the state of Georgia.
9. On April 14, 2005, the Respondent entered into a Consent Order with the Georgia Composite State Board of Medical Examiners ("Georgia Medical Board") based on the California Board Decision. The Georgia Medical Board found that the disciplinary action imposed by the California Board constituted sufficient grounds for the imposition of discipline upon the Respondent's license to practice medicine in Georgia. The Georgia Consent Order is attached hereto as **Exhibit B**.
10. Under the terms of the Consent Order, the Respondent was publicly reprimanded and was required to pay to the Georgia Medical Board a fine in the amount of \$2,500.00

b. Pennsylvania Medical Board

11. On August 10, 2000, the Respondent was licensed to practice medicine in the Commonwealth of Pennsylvania.
12. On May 11, 2005, the Pennsylvania Board of Medicine issued an Order based on the California Board Decision. The Order was issued after the

Pennsylvania Board charged the Respondent with violation of the Pennsylvania Medical Practice Act by reason of the discipline imposed by the California Board, provided the Respondent with an opportunity for a hearing and the Respondent's failure to appear at the hearing. The Pennsylvania Board found that the disciplinary action imposed by the California Board constituted sufficient grounds for the imposition of discipline upon the Respondent's license to practice medicine in Pennsylvania. The Pennsylvania Order is attached hereto as **Exhibit C**.

13. Under the terms of the Pennsylvania Board's Order, the Respondent's license to practice medicine in Pennsylvania was suspended until he has completed the probationary terms set forth in the California Decision and his license in California has been reinstated without restriction.

c. Michigan Medical Board

14. On June 2, 2000, the Respondent was licensed to practice medicine in the state of Michigan.
15. On May 18, 2005, the Respondent entered into a Consent Order with the Michigan Board of Medicine. The Consent Order was based on the California Decision. The Michigan Board found that the disciplinary action imposed by the California Board constituted sufficient grounds for the imposition of discipline upon the Respondent's license to practice medicine in Michigan. The Michigan Consent Order is attached hereto as **Exhibit D**.

16. Under the terms of the Michigan Consent Order, the Respondent was placed on probation for four (4) years and was required to comply with all of the terms of the California Decision.

d. New York Medical Board

17. On July 7, 2000, the Respondent was initially licensed to practice medicine in the state of New York.
18. Effective July 26, 2005, the New York State Board for Professional Medical Conduct ("New York Board") issued a Consent Order and Agreement based on the California Decision. The New York Board found that the disciplinary action imposed by the California Board constituted sufficient grounds for the imposition of discipline upon the Respondent's license to practice medicine in New York. The New York Consent Order and Agreement is attached hereto as **Exhibit E**.
19. Under the terms of the Consent Order and Agreement, the Respondent's license to practice medicine in the state of New York was revoked, which revocation was stayed and his license was then indefinitely suspended, concurrent with the probation imposed by the California Decision.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law the disciplinary action taken by the California Board constitutes disciplinary action by a licensing or disciplinary authority for acts which are grounds for disciplinary action under H.O. § 14-404(a). The California Board's findings regarding the Respondent's care of the five (5) patients described above and his

failure to document his care adequately constitute the Respondent's failure to meet appropriate standards of care as determined by appropriate peer review for the delivery of quality medical care, in violation of H.O. § 14-404(a)(21) and his failure to keep adequate medical records, in violation of H.O. § 14-404(a)(40).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 22nd day of February, 2006^{HK}, by a majority of the quorum of the Board considering this case,

ORDERED that the Respondent's license to practice medicine in the State of Maryland is hereby **SUSPENDED**; and it is further

ORDERED that the Respondent may not petition for reinstatement of his license to practice medicine in the State of Maryland **UNLESS AND UNTIL** his license to practice medicine in California is reinstated without restrictions of any kind; and it is further

ORDERED that this Final Order is a public document pursuant to Md. State Gov't Code Ann. § 10-617.

SO ORDERED this 22nd day of February, 2006^{HK}.

2/22/06 HK
Date

Harry C. Knipp
Harry C. Knipp, M.D.
Chair
Maryland Board of Physicians

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Health Occ. Code Ann. § 14-408(b), the Respondent has the right to take a direct judicial appeal. Any appeal shall be filed within thirty (30) days from the receipt of this Final Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Md. State Gov't Code Ann. § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If the Respondent files an appeal, the Board is a party and should be served with the court's process. In addition, the Respondent should send a copy to the Board's counsel, Thomas W. Keech, Assistant Attorney General, at the Office of the Attorney General, 300 West Preston Street, Suite 302, Baltimore, Maryland 21201. The Administrative Prosecutor is not involved in the circuit court process and need not be served or copied on pleadings filed in that court.

1 **IUNGERICH & SPACKMAN**
2 **A Professional Law Corporation**
3 Russell Iungerich, State Bar No. 43440
4 Paul Spackman, State Bar No. 149754
5 28441 Highridge Road, Suite 201
6 Rolling Hills Estates, California 90274-4871
7 Telephone: (310) 697-0288

8 Attorneys for Respondent,
9 EDWIN S. KULUBYA, M.D.

10 **MARYLAND BOARD OF PHYSICIANS**

11 In the Matter of

Case No. 2004-0729

12 EDWIN S. KULUBYA, M.D.,

**REQUEST FOR ADMINISTRATIVE
REVIEW HEARING**

13 Respondent.

14 License Number D30198

15
16 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:

17 NOTICE IS HEREBY GIVEN that Respondent EDWIN G. KULUBYA, M.D., hereby
18 request a review hearing with regard to the above-captioned matter.

19 Dated: November 29, 2005.

20 **IUNGERICH & SPACKMAN**
21 **A Professional Law Corporation**

22 By

23 
24 PAUL SPACKMAN, ESQ.
25 Attorneys for Respondent

26
27 ATTACHMENT A

28
REQUEST FOR REVIEW HEARING

RUSSELL IUNGERICH
PAUL SPACKMAN

IUNGERICH & SPACKMAN
A PROFESSIONAL LAW CORPORATION
SUITE 201, ALMAR PLAZA
28441 HIGHRIIDGE ROAD
ROLLING HILLS ESTATES, CA 90274-4869
TELEPHONE: (310)697-0288

TELECOPIER (310)697-0289

December 19, 2005

**BY FAX (410) 358-2252
AND FIRST CLASS MAIL**

Victoria H. Pepper, Asst. Attorney General
Maryland Department of Health and Mental Hygiene
4201 Patterson Avenue
Baltimore, MD 21215-2299

Re: Edwin Kulubya, M.D.

Dear Ms. Pepper:

I have discussed this matter in detail with Dr. Kulubya. He is interested in resolving this matter without going to a hearing. Please advise me of what the next step will be and when we can anticipate resolution of this matter.

Very truly yours,



Paul Spackman for

IUNGERICH & SPACKMAN
A Professional Law Corporation
Attorneys for EDWIN S. KULUBYA, M.D.

cc: Edwin Kulubya, M.D.

ATTACHMENT B

RUSSELL IUNGERICH
PAUL SPACKMAN

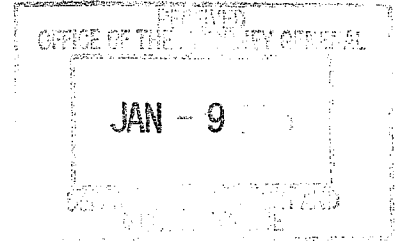
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January 4, 2006

BY FIRST CLASS MAIL

Victoria H. Pepper, Assistant Attorney General
Office of the Attorney General
State of Maryland
300 West Preston Street, Suite 302
Baltimore, MD 21201



Re: Edwin S. Kulubya, M.D.
Case No. 2004-0729

Dear Ms. Pepper:

Dr. Kulubya has agreed to accept the Final Order which was provided to him in this matter. Please provide my office and Dr. Kulubya with a copy of this order after it has been signed by the Board.

Very truly yours,

A handwritten signature in cursive script that reads "Paul Spackman".

Paul Spackman for
IUNGERICH & SPACKMAN
A Professional Law Corporation
Attorneys for Respondent
EDWIN S. KULUBYA, M.D.

cc: Dr. Kulubya

ATTACHMENT C