

IN THE MATTER OF	*	BEFORE THE MARYLAND
VICTOR Y. KIM, M.D.	*	STATE BOARD OF PHYSICIANS
Respondent	*	Case Number: 2015-0210 B
License Number: D51586	*	
* * * * *	*	* * * * *

CONSENT ORDER

On September 30, 2015, Disciplinary Panel B of the Maryland State Board of Physicians (the "Board") charged, Victor Y. Kim, M.D. (the "Respondent"), License Number D51586, under the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. §§ 14-401 *et seq.* (2014 Repl.Vol.).

The pertinent provisions of the Act under H.O. § 14-404(a) provide as follows:

§ 14-404. Denials, reprimands, probations, suspensions, and revocations – Grounds.

(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:

- ...
 - (15) Pays or agrees to pay any sum to any person for bringing or referring a patient or accepts or agrees to accept any sum from any person for bringing or referring a patient;
- ...
 - (18) Practices medicine with an unauthorized person or aids an unauthorized person in the practice of medicine[.]

On December 16, 2015, a conference with regard to this matter was held before Panel B of the Board's Disciplinary Committee for Case Resolution Conference ("DCCR"). As a result of the DCCR, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. At all times relevant hereto, the Respondent, who is board-certified in Emergency Medicine, was and is licensed to practice medicine in the State of Maryland. The Respondent was initially licensed on January 21, 1997. His license is scheduled to expire on September 30, 2016.
2. At all times relevant to the charges, the Respondent owned and practiced at an urgent care center/medi-spa which operates in two locations in Howard County, Maryland ("Facility A" and "Facility B")¹,
3. On or about August 21, 2014, the Board received an anonymous complaint in which it was alleged *inter alia* that the Respondent "forced" staff to take x-rays at Facility A and failed to provide staff with radiation safety badges (dosimeter badges).²
4. Thereafter, Panel B initiated an investigation of the Respondent, which included an unannounced on-site visit of Facility A by Board staff and interviews of the Respondent, and three nurse practitioners and one physician assistant, all of whom are employed at Facility A. The results of the investigation are summarized below.

I. Findings of Fact Pertaining to Practicing Medicine with an Unauthorized Person (Health Occ. § 14-404(a)(18))

5. When interviewed by Board staff, the Respondent explained that all of the "providers" and "mid-level providers" at Facility A take x-rays. The

¹ The names of facility and patients are confidential.

² A dosimeter badge consists of a radiation-sensitive material, worn in a small package on a person's clothing. It records accumulated radiation over a period of time.

Respondent defined a “provider” as a physician and a “mid-level provider” as a nurse practitioner or a physician assistant.

6. The Respondent stated that a mid-level provider is often the only licensed practitioner staffing Facility A.
7. Board staff interviewed the mid-level providers then employed at Facility A. Each of the mid-level providers stated that she takes x-rays at Facility A. That is, each of the interviewees confirmed that she positions the patient, sets the exposure and activates the button that generates the x-ray exposure.
8. The mid-level providers explained that they typically take x-rays of a patient’s extremities as needed to confirm suspected fractures. One of the mid-level providers stated that she occasionally takes chest x-rays. All the mid-level providers stated that they refer more complex cases to a nearby radiology office.
9. None of the mid-level providers interpret the x-rays they take at Facility A. The images are sent to the Respondent for interpretation.
10. The mid-level providers stated that they have no specialized training in radiology; each was trained by the Respondent for approximately one hour and watched a video before taking x-rays at Facility A.
11. The physician assistant told Board staff that when she had questioned the Respondent about her qualifications to take x-rays without specialized training, the Respondent replied that as long as he interpreted the x-rays, it was “okay” for her to take them.

12. The mid-level providers stated that they do not have individual dosimeter badges. One of the nurse practitioners stated that she used a badge from her previous place of employment; the other interviewees stated that they shared the Respondent's dosimeter badge.
13. The Respondent informed Board staff that the x-ray machine at Facility A is digital and has a single log-in. According to the Respondent, the only way to identify the individual who took a particular x-ray is to check the work schedule on the date the x-ray was taken.
14. The Respondent stated that he had once employed a "rad tech"³ at Facility A, but that that individual had left employment "maybe a year and a half" earlier.
15. Panel B's investigation revealed that none of the mid-level providers at Facility A met the qualifications set forth in Health Occ. § 14-306(e)⁴ or were otherwise qualified to perform x-ray duties.

II. Findings of Fact Pertaining to Paying or Agreeing to Pay Any Sum to Any Person for Bringing or Referring a Patient (Health Occ. § 14-404(a)(15))

16. The Panel's investigation revealed that the Respondent offered a "New Client Referral" offer, the terms of which are as follows:

Bring this card into [Facility A] & receive **20% OFF** your first visit.
Your friend will receive a special bonus, too! ...

Name: _____
Referred by: _____

Cannot be combined with other offers. Valid for new clients only.

³ Presumably a licensed radiologic technologist.

⁴ Health Occ. § 14-306(e) sets forth the qualifications of individuals to whom a physician may delegate x-ray duties and the limitations on those duties. The qualifications include the requirement that the individual to whom x-ray duties are delegated must have, before October 1, 2002, taken "at least 30 hours of training...approved by the Maryland Radiological Society in consultation with the Maryland Society of Radiologic Technologists; and successfully passed an examination based on that course..."

****Must be referred by another cosmetic patient to be eligible for Referral Promotion. Discount is applied to full retail pricing and cannot be combined with any other discounts, promotions, special pricing, or other offers.****

17. When interviewed by Board staff, the Respondent confirmed that the 20% discount is available to medi-spa patients only.
18. When asked what the “special bonus” entailed, the Respondent replied, “[t]hat’s the same thing, just a referral for medi-spa patients.”
19. The Respondent stated that the services he provides at the medi-spa include IPL (intense pulse light) laser and microdermabrasion. Both of these procedures are defined as cosmetic medical services (see Code Md. Regs. 10.32.09.02) and are within the scope of the practice of medicine.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, Panel B concludes as a matter of law that the Respondent paid or agreed to pay any sum to any person for referring a patient, in violation of Health Occ. § 14-404(a)(15), and practiced medicine with an unauthorized person or aided an unauthorized person in the practice of medicine, in violation of Health Occ. § 14-404(a)(18).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is, by Disciplinary Panel B, hereby

ORDERED that Respondent is **REPRIMANDED**; and it is further

ORDERED that within six months of the effective date of this Consent Order, the Respondent shall successfully complete a Panel-approved remedial course in medical ethics. The course will not count towards the Continuing Medical Education credits necessary for continued medical licensure; and it is further

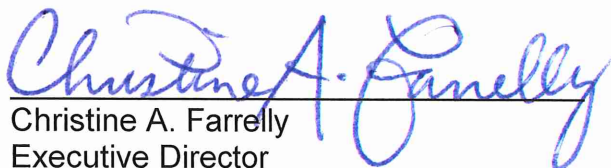
ORDERED that within one month of the effective date of the Consent Order, the Respondent shall pay a monetary fine in the amount of \$2,500.00 to be paid in full to the Board by certified or bank guaranteed check made payable to the Maryland State Board of Physicians, P.O Box 37217, Baltimore, Maryland 21297; and it is further

ORDERED that if the Respondent fails to comply with any of the terms of this Consent Order, a Disciplinary Panel of the Board, in its discretion, after notice and opportunity for a show cause hearing before a Disciplinary Panel or an evidentiary hearing if material facts are disputed at the Office of Administrative Hearings, may impose additional sanctions authorized under the Maryland Medical Practice Act, including a reprimand, suspension, probation, revocation and/or a monetary fine; and it is further

ORDERED that the Respondent is responsible for all costs associated with the Consent Order; and it is further

ORDERED that the Consent Order is considered a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., General Provisions, §§ 4-101 *et seq.* (2014).

02/25/2016
Date


Christine A. Farrelly
Executive Director
Maryland State Board of Physicians

CONSENT

I, Victor Y. Kim, M.D., acknowledge that I was represented by counsel before entering this Consent Order. By this Consent and for the purpose of resolving the issues raised by Disciplinary Panel B, I agree and accept to be bound by the foregoing Consent Order and its conditions.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided by the law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of Disciplinary Panel B to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of a disciplinary panel of the Board that I might have filed after any such hearing.

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

2/19/2016
Date

Victor Y. Kim
Victor Y. Kim, M.D.
Respondent

NOTARY

STATE OF Maryland

CITY/COUNTY OF Howard

I HEREBY CERTIFY that on this 19 day of February 2016, before me, a Notary Public of the foregoing State and City/County, personally appeared Victor Y. Kim, M.D., and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.



Notary Public



My commission expires: _____