

IN THE MATTER OF	*	BEFORE THE MARYLAND
JAMES I. HARRING, M.D.	*	STATE BOARD OF PHYSICIANS
Respondent.	*	Case Number 7714-0044
License Number D52919	*	

SUPPLEMENTAL ORDER AFTER SHOW CAUSE HEARING

INTRODUCTION

The issue in this case is whether James I. Harring, M.D. ("Dr. Harring") has violated the conditions of an Order executed on November 14, 2014 by Disciplinary Panel A ("Panel A")¹ of the Maryland State Board of Physicians ("the Board"). Panel A issues this Supplemental Order after consideration of the presentations made by the parties at the show cause hearing held on June 10, 2015.

PROCEDURAL HISTORY

1. January 15, 2014 Consent Order

On January 15, 2014, Dr. Harring entered into a Consent Order with the Board to resolve charges stemming from complaints concerning his conduct and his delivery of medical care. The Consent Order included factual findings that Dr. Harring had engaged in sexual impropriety with employees at his practice and with two of his patients, and that he failed to meet the standards of quality medical care in prescribing controlled dangerous substances to seven patients. Dr. Harring agreed to a suspension of his license to practice medicine for a minimum period of three months and until he had satisfactorily complied with certain requirements, including enrolling in the Maryland Professional Rehabilitation Program ("MPRP") and undergoing an evaluation by the

¹ In 2013, the Board was divided into two disciplinary panels to resolve allegations of grounds for disciplinary action against a licensed physician. See House Bill 1096, Ch. 401, 2013 Md. Laws; MD. CODE ANN., HEALTH OCC. ("Health Occ.") § 14-401.

MPRP. The Consent Order also required Dr. Harring to fully cooperate in the MPRP's evaluation and to sign all releases to enable the Board or a Board panel to continue investigating and monitoring his compliance.

2. Imposition of the November 14, 2014 Order

On November 12, 2014, following his written request for termination of his suspension, Dr. Harring and his lawyer met with Panel A and the administrative prosecutor to discuss the MPRP evaluation and whether his suspension should be lifted. Because Dr. Harring failed to renew his suspended license when his license expired on September 30, 2014, he was required to petition a disciplinary panel for termination of his suspension "only after applying for and meeting the requirements for reinstatement set out in COMAR 10.32.01.10." See COMAR 10.32.02.06A(4). Prior to November 12, 2014, Dr. Harring did not apply for reinstatement of his medical license pursuant to the Board's regulations.²

On November 14, 2014, following the November 12th meeting and review of the MPRP evaluation, Panel A issued an Order terminating Dr. Harring's suspension and imposing several conditions.³ Condition 1 of the November 14, 2014 Order required Dr. Harring to enroll in the MPRP for treatment and enter a Board-monitored participant rehabilitation agreement within 10 days of the execution of the Order, and further ordered Dr. Harring to comply with any treatment and evaluations recommended by the

² A physician whose license is expired and who wishes to practice medicine in Maryland shall apply for reinstatement on a form supplied by the Board and meet the requirements for reinstatement in Regulation .11 of this chapter, including the continuing medical education requirements. The physician is not licensed to practice medicine until the license is reinstated. COMAR 10.32.01.09B; See also COMAR 10.32.01.11.

³ The November 14, 2014 Order also imposed conditions of probation for 2 years upon the reinstatement of Dr. Harring's license. Dr. Harring submitted an application for reinstatement on December 29, 2014, but failed to submit the required number of continuing medical education credits at that time, and was notified by the Board of this deficiency in his application.

MPRP. The Order also notified Dr. Harring of the possible sanctions that Panel A could impose if he violated any term or condition of the Order, which included suspension or revocation of his medical license, denial of reinstatement, and/or a fine.

3. Compliance with the November 14, 2014 Order

On December 15, 2014, Dr. Harring re-enrolled in the MPRP, signed a Participant Rehabilitation Agreement ("Agreement"), and agreed to abide by all its provisions, including any inpatient and/or outpatient and/or residential treatment recommendations of the MPRP. Dr. Harring agreed not to consume any controlled substances or mood-altering substance, obtained through prescription or otherwise, unless prescribed in an appropriate manner for a legitimate purpose. Dr. Harring also agreed to undergo random toxicology screens, to provide any types of specimens requested by the MPRP, and to follow all toxicology screening protocols and/or procedures. In addition, Dr. Harring acknowledged that failure to report to a scheduled toxicology screen or failure or refusal to go for recommended or required treatment constituted reportable actions to the Board.

Dr. Harring also signed two Agreement Addendums and a Consent for Service form. In the first Addendum, Dr. Harring agreed to adhere to specific toxicology screening criteria, which required him to completely abstain from all mood-altering substances, including alcohol. The second Addendum informed Dr. Harring that use of mouthwashes containing ethyl alcohol, flavoring extracts and alcohol-containing cold preparations would not be considered as an excuse for a positive test result and would be considered a violation of the Agreement. The Consent for Service form listed several examples of events that were reportable to the Board, which included:

- (a) One missed appointment for a scheduled chemical screen, regardless of the reason or excuse given;
- (b) One missed positive screen and/or failure to submit to a chemical screen when notified;
- (c) One failure or refusal to go for recommended/required treatment, attend a scheduled meeting with the case manager or other staff of the Rehabilitation Program, keep a scheduled appointment with a psychiatrist, psychotherapist or other health care provider or employer[.]

On January 26, 2015, the MPRP discharged Dr. Harring for violating numerous provisions of the Agreement. The MPRP notified Dr. Harring and the Board of seven specific instances of his noncompliance, which included testing positive on two occasions for alcohol, failing to enter in-patient treatment, failing to report for screening check-ins, and failing to communicate with the MPRP, as instructed. The MPRP ultimately closed the case “for cause” based on the clinical manager’s observations that Dr. Harring continued to minimize and deny alcohol abuse and that he had not put forth a good faith effort to participate in the program.

4. Show Cause Hearing

On April 29, 2015, as a result of Dr. Harring’s discharge from the MPRP, Panel A charged Dr. Harring with violating Condition 1 of the November 14, 2014 Order. Panel A granted Dr. Harring the opportunity to show cause, at a hearing with his counsel on June 10, 2015, as to why the panel should not issue further sanctions pursuant to the provisions of the November 14, 2014 Order.

The show cause hearing was not a formal evidentiary hearing and was not a contested case proceeding under the Administrative Procedure Act. A disciplinary panel uses show cause hearings to determine whether further action is necessary in

cases where there are no facts in dispute, such as when reviewing compliance with conditions of consent orders or other Board or panel orders. COMAR 10.32.02.14.

At the show cause hearing, Dr. Harring did not dispute that he violated the November 14, 2014 Order due to his noncompliance with the MPRP. Dr. Harring also made clear that he had no intention of abstaining from alcohol despite his MPRP Agreement. He further argued that he was under no obligation to comply with the MPRP program because his license was never reinstated and, therefore, he was not subject to the terms and conditions of probation.

DISPOSITION

Panel A rejects Dr. Harring's arguments. First, the Medical Practice Act precludes the lapse of a license "by operation of law while the individual is under investigation . . ." Health Occ. § 14-403(a). Dr. Harring has been under continuous investigation from the time the Board received the initial complaint in February of 2011 all the way through the monitoring of his compliance with the conditions of the January 15, 2014 Consent Order and the November 14, 2014 Order. Accordingly, Dr. Harring's license was not permitted to lapse for disciplinary purposes just because he allowed it to expire.

Second, Dr. Harring misconstrues the language of the November 14, 2014 Order, which provides that "if Dr. Harring violates any term or condition of probation or this order, the Board or a disciplinary panel of the Board, after notice and an opportunity to be heard, may impose additional sanctions[.]" (Emphasis added). The condition Dr. Harring violated was a fundamental condition of the Order itself that was effective as of the date of the Order, and was not dependent on his reinstatement or the date probation

began. As such, Dr. Harring was subject to the conditions of the November 14, 2014 Order even though his license was not reinstated and he was not on probation.

The language in Condition 1 is abundantly clear that Dr. Harring was required to enroll in the MPRP for treatment and to enter a Board-monitored participant rehabilitation agreement, within 10 days of the execution of the Order. Dr. Harring, however, did not enroll in the MPRP or sign the requisite Agreement until December 15, 2014, well after the 10 day deadline. While he agreed at that time to comply with the provisions of his MPRP Agreement, Dr. Harring repeatedly failed to do so. He tested positive for alcohol on January 7 and 8, 2015, failed to call or check in for toxicology screening several times in January, 2015, failed to return numerous telephone calls placed by his Clinical Manager, and failed to enter in-patient treatment either before or after the MPRP deadline of January 23, 2015.

Based upon the information and material presented, Panel A concludes that Dr. Harring violated Condition 1 of the November 14, 2014 Order. Dr. Harring's noncompliance with the Order is of serious concern to Panel A. The privilege of medical licensure in Maryland involves a physician's obligation to fulfill conditions necessary to ensure fitness to practice medicine safely. Following his suspension, Dr. Harring was given an opportunity to prove to Panel A, by undergoing treatment with the MPRP, that he was fit to return to the practice of medicine. Dr. Harring's failure to put forth even a "good faith" effort to participate in the MPRP program demonstrates not only his lack of commitment to his own rehabilitation, but his lack of fitness to resume medical practice. Accordingly, the revocation of Dr. Harring's license to practice medicine is an appropriate sanction in this case.

On April 2, 2015, Dr. Harring submitted an application for reinstatement, which he now seeks to withdraw. Panel A grants Dr. Harring's request.

ORDER

It is, by Panel A, hereby:


ORDERED that the medical license of James I. Harring, M.D. is **REVOKED**; and it is further

ORDERED that Dr. Harring's request to withdraw his April 2, 2015 application for reinstatement is **GRANTED**; and it is further

ORDERED that this is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Prov. § 4-101*et seq.* (2014).

Date

11/6/2015


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