IN THE MATTER OF	*	**BEFORE THE MARYLAND**
Adam N. Summers, M.D.,	*	**STATE BOARD OF**
Respondent.	*	**PHYSICIANS**
License No. D 55340	*	**Case No. 2009-0538**

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FINAL DECISION AND ORDER

I. Introduction

Adam N. Summers, M.D. ("Dr. Summers") was charged by the Board on January 31, 2011, with committing unprofessional conduct in the practice of medicine, in violation of § 14-404(a) (3) (ii) of the Maryland Medical Practice Act.

A three-day evidentiary hearing was held on October 12, 13 and 18, 2011, before an Administrative Law Judge ("ALJ") of the Office of Administrative Hearings. The ALJ issued a Proposed Decision on January 17, 2012, finding that Dr. Summers did commit unprofessional conduct by intentionally misrepresenting to the public, by the use of the term "doctor," that a physician assistant in his employ was a physician, in violation of Md. Health Occ. Code Ann. § 14-602(b). The ALJ concluded that Dr. Summers had thus violated Md. Health Occ. Code Ann. § 14-404(a) (3) (ii) (prohibiting unprofessional conduct in the practice of medicine).

Dr. Summers filed exceptions with the Board, the State responded, and an oral exceptions hearing was held before the Board on April 25, 2012. This document results from that exceptions hearing and constitutes the Board's Final Decision and Order. In arriving at this decision, the Board has considered the entire record in this case,

including the record made before the ALJ, the ALJ's Proposed Decision, the written exceptions and responses to exceptions filed by the parties, and the oral exceptions argument.

II. FINDINGS OF FACT

The Board adopts the findings of fact made by the ALJ, including those findings made in the "Discussion" section of the ALJ's decision at pages 20-54 of that proposed decision. The proposed decision of the ALJ is attached to this decision as Attachment A and is incorporated into this Final Decision and Order. The Board adopts the credibility determinations made by the ALJ in that decision, and the inferences drawn from the evidence by the ALJ. Dr. Summers intentionally misrepresented on his website that his physician assistant was a "doctor," and instructed his staff to refer to her when speaking to patients as a doctor, for the purpose of marketing his practice as a two-physician practice, when in fact he was the only physician in the practice.

III. CONCLUSIONS OF LAW

The Board adopts the conclusions of law made by the ALJ, with the exception of only those items noted in the footnote below.[1] Dr. Summers violated Md. Health Occ. Code Ann. § 14-404(a)(3)(ii) and committed unprofessional conduct in the practice of medicine by misrepresenting his employee as a "doctor" with the intent to mislead patients and potential patients into believing that his employee was qualified to practice medicine as a licensed physician, in violation of the prohibition in Md. Health Occ. Code Ann. § 14-602(b).

[1] The Board will discuss the appropriate sanctions separately, even though they were addressed in the ALJ's "Conclusions of Law" paragraph. Also, the Board makes no ruling on the ALJ's conclusion that Dr. Summer's actions did not violate Md. Code Ann., Health Occ. § 14-602(a), as the Administrative Prosecutor did not file exceptions to that conclusion, and that conclusion is not necessary to this decision.

IV. CONSIDERATION OF EXCEPTIONS

Dr. Summers argues in his exceptions that the ALJ mistakenly evaluated the evidence. The Board disagrees. The Board believes that the ALJ fairly and comprehensively evaluated the evidence, and the Board has adopted the ALJ's findings of fact made based on that evidence because the Board agrees with them. The Board adopts the credibility findings made by the ALJ as well as the ALJ's wholly justified findings that Dr. Summers acted with the intent to misrepresent the facts. The Board rejects this factual exception.

The only legal issue that Dr. Summers raises in his exceptions is whether Md. Health Occ. Code Ann. § 14-602(b) contains an additional, unwritten exception for certain misleading representations made to patients and potential patients of a medical practice. *See* Respondent's exceptions at 4-5. The Board concludes that the recognition of such an exception under the facts of this case would contravene the statute. The Board rejects this legal exception.[2]

V. SANCTION

At the oral exceptions hearing, Dr. Summers appeared to argue regarding the sanction that, because there was no proof that large numbers of patients were completely misled by his actions, the sanction should be minimal. The State, however, did present the testimony of former patients who were misled,[3] at least at first, into believing that the physician assistant was a physician. The fact that many patients may

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[2] Dr. Summers describes his proposed exception to § 14-602(b) in terms of using the word "doctor" as a "nickname." *See* Respondent's exceptions at 5. These are not the facts of this case, however.

[3] The patients who did testify seem to have been misled more by the office staff's policy of referring to the physician as "Doctor Rossie" than by the website. As the ALJ found, however, Dr. Summers "was the architect of this strategy for using the term 'Dr. Rossie' to identify [the physician assistant] in his medical office." *See* ALJ's proposed decision at 35. The Board has adopted this finding.

have been informed, for the first time, that the physician assistant was not in fact a physician, at the point when the physician assistant entered the examination or procedure room, does not detract from the severity of the offense. By that time, a patient has already made an appointment, made arrangements to get to the office, and has been directed to the examination or procedure room, all under the representation that a doctor would be treating him or her. Revelation, at that point, that the health care provider is not in fact a physician, leaves the patient with the option of suffering the embarrassment and inconvenience of cancelling the appointment at that juncture or else acquiescing to the use of the alternative health care provider. The fact that some patients may have been informed at this late juncture and may have nevertheless acquiesced does not affect the fact that Dr. Summer's false representations put the patients into that position in the first place. The evidence shows that Dr. Summers' false representations were intended to enhance the professional credentials of his physician assistant and to market her as a physician licensed by the Board. The Board is especially concerned with the willfulness of this offense, designed as it was to enhance the marketing of his practice by misleading patients.

This is not the first instance of unprofessional conduct on the part of Dr. Summers. On October 24, 2007, in case number 2004-0603, the Board placed Dr. Summers on two years' probation and fined him $20,000 for unprofessional conduct in the practice of medicine, which conduct consisted of falsifying medical records to conceal the fact that he had surgically placed a breast implant filled with a substance other than that agreed to in the patient's consent form and other than that required by the manufacturer of the implant. The Board has taken into consideration this previous

sanction for unprofessional conduct which, although it was more closely connected to patient care than his actions in the instant case, does share the common element of making dishonest representations. The Board agrees with the sanction recommended by the ALJ. The Board will thus impose a reprimand, a fine of $5,000, and two years' probation, with the condition that Dr. Summers complete a tutorial in professional ethics.

VI. ORDER

It is therefore **ORDERED** that Adam D. Summers, M.D., license number D55340 be, and he hereby is, **REPRIMANDED**; and it is further

ORDERED that Dr. Summers be, and he hereby is, fined in the amount of $5,000, pursuant to Md. Health Occ. Code Ann. § 14-405.1 and COMAR 10.32.02.06C (4)(d);[4] and it is further

ORDERED that Dr. Summers is placed on **PROBATION** for **TWO (2) YEARS**, beginning on the effective date of this Final Decision and Order, and subject to the following conditions:

Within sixty (60) days of the date of this Final Decision and Order, Dr. Summers shall enroll in a Board-approved tutorial in medical ethics. The tutorial need not necessarily be one-to-one. Prior to enrolling in any tutorial, Dr. Summers shall first submit to the Board written documentation describing the particular tutorial he proposes as fulfillment of this condition. The proposed tutor shall be a Maryland-licensed physician, and shall not be connected with Dr. Summers through any current or past personal, collegial, professional or academic affiliation. The Board reserves the right to require Dr. Summers to provide further information regarding the tutorial he proposes,

[4] This fine is collected by the Board, but it is remitted to the general funds of the State. *See* COMAR 10.32.02.06C (6).

and further reserves the right to reject his proposed tutorial and require submission of an alternative proposal. The Board will approve a tutorial only if it deems the curriculum and the duration of the course adequate to fulfill Dr. Summers' needs. The tutorial will not be counted as fulfilling any part of the regular continuing educational requirements required of all physicians. Dr. Summers shall successfully complete the tutorial within one year of the date of this decision. Dr. Summers shall be responsible for all costs incurred in fulfilling this tutorial requirement and for submitting to the Board written verification of successful completion no later than fifteen (15) days after his completion of this tutorial. A failure to timely enroll in or to complete, or a failure of the substance of, the ethics tutorial, shall constitute a violation of probation and of this Final Decision and Order; and it is further

ORDERED that Dr. Summers shall comply with the Maryland Medical Practice Act and all laws and regulations governing the practice of medicine in Maryland; and it is further

ORDERED that if Dr. Summers violates any condition of probation, the Board may impose any sanction that the Board may have imposed in this case under §§ 14-404(a) and 14-405.1 of the Medical Practice Act, including additional probation, suspension, revocation and/or a monetary fine; and it is further

ORDERED that Dr. Summers may petition the Board for the termination of probation at the end of the two-year probationary period, at which time the Board will by order end the probationary period provided that Dr. Summers has complied with the conditions of probation; and it is further

ORDERED that this Final Decision and Order is a public document under Md. Code Ann. State Gov't § 10-611 *et seq.*

5-7-12
(Date)

Carole Catalfo,
Executive Director

Notice of Right to Appeal

If Dr. Summers is dissatisfied with this Final Decision and Order, he has the right to file a petition for judicial review of this decision with the circuit court, under Md. Code Ann., Health Occ. § 14-408(b), Md. Code Ann., State Gov't § 10-222 and the Maryland Rules of Procedure at Ch. 7-200 *et seq.* The petition must be filed within thirty days of the date this decision is mailed. The petition must be filed with the court. Neither the Board nor the Attorney General can file a court petition on Dr. Summers' behalf.

If Dr. Summers files a petition for judicial review, the Board is the party in interest and should be served at:

Maryland State Board of Physicians
Christine Farrelly, Compliance Division
4201 Patterson Avenue
Baltimore, Maryland 21215

In addition, Dr. Summers should notify the Board's counsel, at the following address, of any petition for judicial review:

Thomas W. Keech,
Assistant Attorney General
State Department of Health and Mental Hygiene
300 West Preston Street, Room 302
Baltimore, MD 21201.

STATE BOARD OF PHYSICIANS	* BEFORE DOUGLAS E. KOTEEN,
v.	* AN ADMINISTRATIVE LAW JUDGE
ADAM N. SUMMERS, M.D.,	* OF THE MARYLAND OFFICE
RESPONDENT	* OF ADMINISTRATIVE HEARINGS
License No. D55340	* OAH No. DHMH-SBP-71-11-29423

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PROPOSED DECISION

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PROPOSED DISPOSITION

STATEMENT OF THE CASE

On January 31, 2011, the Maryland State Board of Physicians (Board) issued charges against Adam N. Summers, M.D. (Respondent), alleging unprofessional conduct in the practice of medicine, in violation of the Maryland Medical Practice Act (Act). Md. Code Ann., Health Occ. § 14-404(a)(3)(ii) (Supp. 2011). The Board forwarded the charges to the Office of the Attorney General for prosecution.

I held a hearing on October 12, 13, and 18, 2011 at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Health Occ. § 14-405(a) (2009). Thomas V. Monahan, Jr., Esquire, and Megan Hatfield Yanacek, Esquire, of Goodell, DeVries, Leech & Dann, LLP, represented the Respondent, who was present. Dawn L. Rubin, Esquire, Assistant Attorney General and Administrative Prosecutor, represented the State of Maryland (State).

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the Rules of Procedure for the Board, and the Rules of Procedure of the Office of

Administrative Hearings. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2011); Code of Maryland Regulations (COMAR) 10.32.02; COMAR 28.02.01.

ISSUES

The issues in this case are:

1. Whether the Respondent is guilty of unprofessional conduct in the practice of medicine?

2. If so, what is the appropriate sanction?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the State:

1. Charges under the Maryland Medical Practice Act, dated January 31, 2011;
2. Certificate of Service, dated February 15, 2011;
3. Patient Identification List, undated;
4. Notice of Hearing, with attached Summons, dated May 13, 2011;
5. Certificate of Service, dated May 18, 2011;
6. Not admitted;
7. License Renewal Application, dated August 20, 2010;
8. Complaint Letter, dated January 10, 2008;
9. Letter from Shameeka Jones, Compliance Analyst, Board, to Respondent, dated August 28, 2009;
10. Letter from Thomas V. Monahan, Jr., Esquire, to S. Jones, dated September 11, 2009, with attached email from S. Jones, dated September 14, 2009;
11. Letter from T. Monahan to S. Jones, dated September 21, 2011; and email from T. Monahan to S. Jones, dated September 21, 2009;

12A. Excerpt from Maryland Plastic Surgery website, dated March 18, 2009;
12B. Excerpt from Maryland Plastic Surgery website, dated April 10, 2009;
12C. Excerpt from Maryland Plastic Surgery website, dated April 21, 2009;
12D. Excerpt from Maryland Plastic Surgery website, dated June 2, 2009;
12E. Excerpt from Maryland Plastic Surgery website, dated July 9, 2009;

13. Board Subpoena Duces Tecum, directed to Prosites, Inc., dated March 17, 2010, with attached Response from Lance V. McCollough, Chairman & CEO, Prosites, dated March 29, 2010;
14. Tracking Sheets from Prosites, Inc., dated March 22, 2010, (pp. 16, 19, 24, 29, 41, 42, 45, 50, 61, 65, 66, 99, 101, 107, and 108);
15. Board Subpoena Duces Tecum directed to Ceatus Media Group, LLC, dated May 11, 2010, with attached Response from David W. Evans, CEO, Ceatus, dated May 27, 2010;
16. Transcript of Interview with Rossie Madjaroff, dated June 11, 2009;
17. Transcript of Interview with Respondent, dated November 6, 2009;

18. Memo to File from S. Jones re: Interview with K. Gerami, dated May 11, 2010;
19. Transcript of Interview with Kimberly Gerami, dated May 12, 2010;
20. Medical/Office Records of Patient A, dated January 29 through April 23, 2009;
21. Memo to File from S. Jones re: Interview with Patient A, dated November 6, 2009;
22. Medical/Office Records of Patient B, dated April 21, 2006 through September 25, 2009;
23. Memo to File from S. Jones re: Interview with Patient B, dated November 6, 2009;
24. Medical/Office Records of Patient C, dated February 2, 2009;
25. Memo to File from S. Jones re: Interview with Patient C, dated June 17, 2010;
26. Email from Patient C, dated June 18, 2010; with attached business card, undated;
27. Medical/Office Records of Patient D, dated January 19 through September 11, 2009;
28. Memo to File re: Interview with Patient D, dated June 16, 2010;
29. Consent Order for Respondent, dated October 29, 2007;
30. Report of Investigation from S. Jones, dated August 23, 2010; and
31. Not Admitted as Rejected Exhibit.

I admitted the following exhibits on behalf of the Respondent:

A. Not Admitted;
B1. Medical Records of Patient 2, dated November 11, 2005 through August 10, 2011;
B2. Affidavit of Patient 2, dated April 25, 2011;
C1. Medical Records of Patient 3, dated February 28, 2007 through October 14, 2009;
C2. Affidavit of Patient 3, dated April 27, 2011;
D1. Medical Records of Patient 4, dated July 12, 2007 through January 5, 2010;
D2. Affidavit of Patient 4, dated April 21, 2011;
E1. Medical Records of Patient 5, dated February 18, 2004 through July 5, 2011 (submitted by State);
E2. Not Admitted;
F. Affidavit of Patient 6, dated May 3, 2011;
G. Not Admitted;
H. Not Admitted;
I. Not Admitted;
J1. Transcript of Interview with Kimberly DeBoy, dated May 12, 2010;
J2. Affidavit of K. DeBoy, dated May 3, 2011;
K. Business Card of Rossie Madjaroff, undated (submitted by State); and
L. "About Our Staff" document from Maryland Plastic Surgery, dated December 23, 2009.

Testimony

The State presented the following witnesses:

1. Margaret A. Weiss, M.D.;
2. Patient C;
3. Kimberly R. Gerami, former Esthetician;
4. Shameeka Jones, Compliance Analyst, Board;
5. Rossie Madjaroff, P.A.;
6. Patient A;

7. Patient D; and
8. Patient B.

The Respondent presented the following witnesses:

1. Lisa Johnson, Esthetician;
2. Debra Wallace, Office Manager;
3. Stephanie Luethke, R.N.;
4. Patient 4;
5. Patient 2;
6. Patient 3;
7. Kimberly DeBoy, former Cosmetologist; and
8. Respondent.

FINDINGS OF FACT

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, practicing under license number D55340.

Complaint

2. In January 2008, the Board received a letter of complaint, dated January 10, 2008, based on information observed on the Respondent's website. On January 10, 2008, the Respondent's website identified Rossie Madjaroff, P.A. (Madjaroff), in the heading of her web page as "Dr. Rossie."

3. Shameeka Jones (Jones) investigated the complaint received by the Board. Jones interviewed four of the Respondent's patients, Patients A, B, C, and D. She also interviewed the Respondent, Madjaroff, and two other former employees, Kimberly Gerami and Kimberly DeBoy.

Rossie Madjaroff, P.A.

4. Madjaroff graduated as a medical doctor from the Medical University of Sofia in Bulgaria in 1984. She completed a residency program in dermatology in Bulgaria in 1989. (TR 197; State Ex. 16, p. 4).

5. Madjaroff came to the U.S. in 1997. She took the exams that are required for a foreign trained medical doctor to become a licensed physician in the U.S., but she was unable to pass those

exams. (TR 197, 204, 226).

6. Madjaroff obtained a master's degree in physician assistant studies in 2005 after completing a 26-month physician assistant program at Towson University. The program accepted Madjaroff's bachelor's degree from Bulgaria, so she was required to complete only the master's program at Towson University. (TR 196, 212). Madjaroff performed well in the program and was one of the top students. (TR 213). In 2005, Madjaroff became certified in Maryland as a physician assistant under Title 15 of the Health Occupations Article.

7. Madjaroff worked as a physician assistant (P.A.) in a dermatology practice with Drs. William and Janet Brown in Glen Burnie, Maryland from September through December 2005. (TR 198).

8. Madjaroff began working as a P.A. for the Respondent about January 2006. The Respondent trained Madjaroff and she assisted him with procedures in all of the duties she could perform. (TR 200; State Ex. 16, pp. 11-14, 31.) Some of Madjaroff's training was conducted in the presence of patients. (TR 217.) Madjaroff learned to take histories and perform skin evaluations and certain procedures with injectables. She was also trained with intense pulsed light (IPL) treatments and oxygen treatments. Madjaroff also shadowed the Respondent when he did surgery consultations. After Madjaroff was trained, she provided patients with injectables, like Botox or Jupiterderm, by herself. The Respondent was usually present in the facility when Madjaroff was providing these treatments, and often consulted with the patient. (TR 113-114; State Ex. 19, pp. 6-7).

9. Madjaroff did not tell the Respondent that she had the nickname "Dr. Rossie." She did not use that name because it was inappropriate and a joke for a physician in Bulgaria to be referred to with the title "Dr." followed by her first name. (TR 206.)

10. The Respondent used the name "Dr. Rossie" on his office website to identify Madjaroff. (TR 201.) The Respondent was solely responsible for creating the website for his practice. Madjaroff provided the Respondent with information about her professional background that the Respondent

used in creating the website. (TR 201-204). The Respondent asked Madjaroff to review the website on or about January 9, 2006. The website referred to Madjaroff as "Dr. Rossie" at that time. (TR 201-202). The Respondent advised Madjaroff in an email that this was a good way for him to start promoting Madjaroff in the practice. (TR 201-202). The Respondent was also responsible for updating the office website. (TR 357.)

11. The staff in the Respondent's office, including the Respondent, called Madjaroff "Dr. Rossie." (TR 205-206). The Respondent introduced Madjaroff to patients as "Rossie Madjaroff, P.A." or "Rossie Madjaroff, my physician assistant", and sometimes as "Dr. Rossie." (TR 214-215, 227). Madjaroff introduced herself to patients as "Rossie Madjaroff, P.A.," or "Rossie Madjaroff, Physician's Assistant." Madjaroff never introduced herself as "Dr. Rossie," "Dr. Rossie, M.D.," or "Dr. Rossie Madjaroff." (TR 214-216, 492.)

12. After Madjaroff was interviewed by the Board, she told the Respondent that he should no longer refer to her as "Dr. Rossie" because it could be misleading to patients. (TR 206). After this conversation, the Respondent had a meeting in about June 2009 with the entire office staff and told them not to refer to Madjaroff as "Dr. Rossie." (TR 206). After this meeting, the staff, including the Respondent, occasionally referred to Madjaroff as "Dr. Rossie" out of habit. (TR 206). The Respondent also made changes to the website after speaking with Madjaroff. (TR 205.)

13. The Respondent told patients and staff that Madjaroff was a foreign trained physician, but that she was a physician assistant in the United States. (TR 204, 227).

14. Madjaroff left her employment with the Respondent in March 2010 as a result of some disagreements with the Respondent. Madjaroff requested that the Respondent completely remove her from the website. The Respondent made some changes to the website, but Madjaroff's name remained on the website after she left the Respondent's practice. (TR 208-209.)

15. Sometimes the Respondent's patients referred to Madjaroff as "Dr. Rossie." When

Madjaroff heard this, she explained to the patient that this was related to her previous background, but that she was a physician assistant. (TR 216.)

16. The Respondent was proud to explain to patients that Madjaroff had a medical degree in her native country of Bulgaria. Usually, the Respondent explained to patients that Madjaroff was a physician in her native country and is a physician assistant here. (TR 216-217.)

17. Madjaroff wore a lab coat when she began working in the Respondent's office. This coat had the following identification stitched into the coat, "Rossie Madjaroff, PA-C, MPAS," which stood for "Physician's Assistant – Certified, Master's in Physician's Assistant Studies." (TR 218, 379). The Respondent subsequently told Madjaroff she did not need to wear her lab coat so long as she was nicely and professionally dressed. (TR 218-219.) Madjaroff wore the coat off and on, but began to wear it regularly after the Board's investigation. (TR 219.) Madjaroff brought the lab coat to the Respondent's practice. (TR 509-510; State Ex. 17, p. 41.)

18. Three to five months before Madjaroff left her employment with the Respondent, the Respondent provided her with a name tag, which stated "Rossie Madjaroff, Physician's Assistant Certified." The Respondent wore this name tag in the office once it was supplied to her. (TR 219, 509-510). After the Respondent learned about the Board complaint, he asked the staff to ensure that Madjaroff's lab coat and name tag were prominently displayed. (TR 510).

Respondent

19. The Respondent operates a private medical practice in Anne Arundel County under the business name Maryland Plastic Surgery. (TR 476). He employs about nine or ten employees in his practice. (TR. 481). The Respondent is the only physician employed by his practice. (TR 201.) He is board certified in plastic surgery. He also trained in and practices dermatology. There is overlap between dermatology and plastic surgery. (TR 537-538).

20. The Respondent obtained an undergraduate degree from the University of Missouri in

Kansas City and graduated from St. Louis University School of Medicine in 1993. (TR 477; Resp. Ex. 6). The Respondent attended a surgical residency program at the Medical College of Wisconsin, with three years of general surgery, two years of plastic surgery, and one additional year of fellowship. (TR 477-478). After completing his fellowship in 1998, the Respondent served as an assistant professor of plastic surgery for one year until 1999. (TR 478)

21. In 1999, the Respondent moved to Maryland. He opened his private medical practice in Anne Arundel County in 2000 that provides reconstructive plastic surgery and cosmetic surgery. (TR 478). He became licensed as a physician in Maryland on October 1, 1999. (State Ex. 6). His practice currently involves about 95% cosmetic surgery. (TR 478). The Respondent's practice also includes clinical procedures that are nonsurgical in nature. (TR 479). The Respondent performs surgical procedures in his surgical center and at Howard County General Hospital. (TR 479).

22. The Respondent hired Madjaroff as a physician assistant for his medical practice in January 2006. (State Ex. 17, p. 33). As a physician assistant, Madjaroff was permitted to practice medicine under the supervision of a licensed physician. (TR 508). She worked under the Respondent's supervision, pursuant to a delegation agreement that the Respondent signed with Madjaroff. She operated under that delegation agreement at all times relevant to this matter. (TR 200-201, 508, 515, 533-534.) Under this agreement, Madjaroff evaluated patients, performed histories and physicals, and performed other duties consistent with her training as a physician assistant. (State Ex. 17, p. 33.)

23. The supervising physician for a physician assistant is not required to be in the room with the physician assistant or be on site when the physician assistant is providing services, but must be available for consultation. On some occasions, Madjaroff evaluated a patient and provided treatment and the patient did not see the Respondent during that office visit. (TR 538-539.)

24. Madjaroff practiced dermatology, the treatment of skin diseases, and provided

dermatological services under the Respondent's supervision. (TR 493, 538.) The Respondent did not employ a Board-certified dermatologist in his practice while Madjaroff worked there. (TR 515).

25. The Respondent trained Madjaroff to consult with patients before he saw the patients. He also trained her to perform certain technical functions, treatments, and injections in the practice. (TR 485; State Ex. 17, pp. 23-31). The training period lasted about six to nine months because the Respondent treats a wide variety of patients. (TR 334-335; State Ex. 17, p. 24.) The training period varied based on the nature of the procedure or the proficiency of the trainee. (State Ex. 17, p. 31-32).

26. Madjaroff shadowed the Respondent for the first few months of her employment due to a noncompete clause in her previous employment contract. During the training process, Madjaroff accompanied the Respondent while he was treating patients. (TR 334-335, 485-487).

27. The Respondent introduced Madjaroff to his patients as "Rossie Madjaroff" and explained that she was a physician assistant and not a doctor. (TR 335, 488, 491, 526.) He told patients that she used to be a doctor in Bulgaria but was working in the Respondent's practice as a physician assistant. (TR 492.) He also told staff that she was a physician assistant. (TR 335). Before the complaint was filed, no one told the Respondent that they were confused or had the impression that Madjaroff was a licensed physician, or was practicing dermatology as an M.D. (TR 493, 496; State Ex. 17, p. 38.)

28. "Elaine" became a patient of the Respondent in about 2005 before Madjaroff was employed by the Respondent. When Elaine first mentioned Madjaroff's name to the Respondent in 2005, she called her "Dr. Rossie." (TR 482-483.) The Respondent did not learn that Madjaroff was a physician assistant until Madjaroff subsequently visited the Respondent in his office in about 2006 to discuss possible employment and discussed her background and training. (TR 483-484.)

29. The Respondent's office staff at times referred to Madjaroff as "Dr. Rossie." (TR 497, 518-

519). The staff did not tell patients that Madjaroff was a licensed physician, but staff did tell a patient that she was a dermatologist. (TR 498, 238.)

30. Madjaroff generally obtained an initial history from the patient before the Respondent met with the patient. (TR 498). The Respondent generally required that all patients be seen by both Madjaroff and the Respondent during their office visits. (TR 499-500). This did not always occur. (TR 538-539.) The Respondent often met with a patient together with Madjaroff and decided what treatment would be performed. (TR 462).

31. Madjaroff was listed on the computer schedule as "Rossie Madjaroff, P.A." (TR 502). This listing was located adjacent to the computer listing for Kimberly Gerami, an esthetician in the Respondent's office. (TR 501-502).

32. The Respondent had a conversation with his staff in 2006 in which he told the staff that Madjaroff would be called "Dr. Rossie." (TR 336, 355.) After that conversation, the Respondent's staff regularly called Madjaroff "Dr. Rossie." (TR 365). After the Respondent became aware of the Board's concern about how Madjaroff was being identified, he held a staff meeting in June 2009 and instructed his staff to stop referring to Madjaroff as "Dr. Rossie" and to make it clear to patients that she was a physician assistant. (TR 355-356, 359-360, 507). After that meeting, the staff generally stopped calling Madjaroff "Dr. Rossie." (TR 359-360).

33. The Respondent was responsible for the content of his office website, including the heading on Madjaroff's web page of "Dr. Rossie." (TR 517.) The Respondent wrote the biographies that appeared on the website. (State Ex. 17, p. 22.) The heading of "Dr. Rossie" appeared on the Respondent's website from at least January 2008 through at least April 21, 2009. (State Ex. 12A – 12C; TR 516-517.) The Respondent created the "Dr. Rossie" heading on Madjaroff's web page for convenience and because Madjaroff had a former medical background as a physician. (TR 542;

State Ex. 17, pp. 34-35.) He placed the name "Dr. Rossie" in quotation marks because he considered it to be a nickname. (TR 540).

34. The Respondent made changes to his website after he learned of the Board's concerns. He changed the website heading for Madjaroff from "Dr. Rossie" to "Rossie Madjaroff, P.A." (TR 540; State Ex. 17, p. 37.) This change was made on or before June 2, 2009. (State Ex. 12D; State Ex. 17, p. 36; State Ex. 14.) At this time, Madjaroff's website biography included the sentence, "In respect of her European medical degree, some patients choose to fondly refer to her as 'Dr. Rossie.'" (TR 517; State Ex. 12D).

35. On or about July 9, 2009, the Respondent made further revisions to his website. It no longer included a separate web page for Madjaroff. Instead, it included a page entitled, "Our Staff," which listed "Adam N. Summers, M.D.," "Rossie Madjaroff, P.A.," and "Suzette Luethke, R.N.," with short biographies for each. The revised "Our Staff" web page identified Madjaroff as a physician assistant at the beginning of the first sentence of her biographical paragraph. The last sentence of Madjaroff's biography continued to include the sentence, "In respect of her European medical degree, many patients choose to fondly refer to her as 'Dr. Rossie.'" (State Ex. 12E).

36. Medical records for two patients from the Respondent's practice, Patients 4 and 5, referred to Madjaroff as "Dr. Rossie." (Resp. Ex. D1, E1; TR 519-525).

37. After the Respondent learned of the Board's concern regarding his identification of Madjaroff, he began providing a document to patients in 2009 entitled "About Our Staff." (TR 360; State Ex. 16, p. 33). The "About Our Staff" document identified Madjaroff as "Rossie Madjaroff, P.A." and included the sentence, "In respect of her European medical degree, many patients choose to fondly refer to her as 'Dr. Rossie.'" (TR 365-366, 525-526; Resp. Ex. L; State Ex, 22).

38. The Respondent authorized business cards for himself and for the other employees in his

practice. (TR 526-527.) The Respondent created a business card for Madjaroff that was on display in the office. It identified Madjaroff as "Rossie Madjaroff, FMG-MD, PA-C, MPAS, General and Cosmetic Dermatology." (Resp. Ex. K; TR 220-221, 354, 527.) The abbreviations on the business card stand for Foreign Medical Graduate – Medical Doctor, Physician Assistant – Certified, Master's in Physician Assistant Studies. (TR 220-221, 225, 527).

Debra Wallace

39. Debra Wallace (Wallace) is the Office Manager in the Respondent's medical practice and has been employed there since February 2006. (TR 332, 350.) Wallace supervises the staff that handles the front desk. (TR 333).

40. In February 2009, Wallace crossed out the name of Kim Gerami, an esthetician in the Respondent's office, on her business card and wrote "Dr. Rossie Madjaroff" on the card because there were no business cards available for Madjaroff that day. (TR 338-339.) Wallace gave this business card to Patient C at that time. (State Ex. 26; TR 357-358). The Respondent did not authorize Wallace to do this. (State Ex. 26; TR 534-535.)

41. Wallace was present during the conversation in 2006 when the Respondent approved the decision to refer to Madjaroff as "Dr. Rossie." (TR 336, 355.) Wallace also attended the staff meeting in 2009 when the Respondent instructed the staff to longer refer to Madjaroff as "Dr. Rossie." (TR 355-356, 359-360).

Kimberly Gerami

42. Kimberly Gerami (Gerami) was employed as a medical esthetician in the Respondent's office from July 2006 through June 2009. (TR 93).

43. When Gerami began working in Respondent's office, someone introduced Madjaroff to her as "Dr. Rossie" and the Respondent told her that Madjaroff was a dermatologist. The office staff called Madjaroff "Dr. Rossie." (TR 94).

44. Gerami attended the staff meeting in 2009 in which the Respondent informed the staff that Madjaroff was not a dermatologist, that she was a physician assistant, and that the staff should no longer call her "Dr. Rossie." (TR 95). Prior to that meeting, Gerami was under the impression that Madjaroff was a physician. (TR 123).

45. A patient (J*J*) asked Gerami regarding the "About Our Staff" document that was sent to the Respondent's patients. Gerami explained to the patient that Madjaroff is a physician assistant and had been a dermatologist in her native country. The patient continued to see Madjaroff and the Respondent after that conversation. (TR 108-109).

46. Gerami resigned from the Respondent's practice in June 2009 after the Respondent spoke to her in a way that was not acceptable to her. Gerami resigned the same day as the incident. After her resignation, Gerami met with the Respondent to discuss the reason for her resignation because she cared about him and his practice. (TR 111, 123-124).

47. Gerami subsequently called the Respondent's office after she resigned and asked Wallace for her job back. After checking with the Respondent, Wallace informed Gerami around August 2009 that she would not be rehired. (TR 122-123, 350-351.)

48. After her resignation, Gerami saw the Respondent two times as a patient, later in 2009 and in 2010. The Respondent was professional and friendly during those patient visits. (TR 111, 124).

Suzette Luethke

49. Suzette Luethke (Luethke), Registered Nurse (R.N.), was employed as a staff nurse in the Respondent's medical practice from April 1, 2008 through March 2011. Luethke ran the Respondent's outpatient surgery center and assisted him in the clinic. Luethke was present in a patient room with Madjaroff only if a patient felt dizzy, weak or nauseous after an injection. (TR 374-375).

50. When Luethke first became employed in 2008, the Respondent's office staff introduced her

to Madjaroff as "Dr. Rossie." The staff also advised Luethke that Madjaroff was a P.A. (TR 376-377). Luethke called Madjaroff "Rossie" and "Dr. Rossie." (TR 377.)

51. Luethke heard Madjaroff introduce herself as "Rossie Madjaroff, a Physician's Assistant." The Respondent introduced Madjaroff in Luethke's presence as "Rossie" or "Dr. Rossie, my physician's assistant." (TR 377.) Luethke introduced Madjaroff to patients as "Dr. Rossie, our P.A." (TR 378.)

52. If patients asked, Luethke explained that Madjaroff was a physician assistant in the U.S., but was a physician in Bulgaria. (TR 378). Luethke did not hear staff members tell patients that Madjaroff was a physician or a dermatologist. (TR 378-379).

53. Luethke was never told what to call Madjaroff. (TR 380.) Luethke was present at staff meetings where it was discussed that the Respondent, as a doctor, had to be on-site or nearby before procedures could be performed. (TR 381.)

Kimberly DeBoy

54. Kimberly Deboy (DeBoy) was employed full-time in the Respondent's medical practice as a cosmetologist from 2006 until 2008. (TR 452-454; Resp. Ex. J2).

55. DeBoy frequently worked with Madjaroff in the Respondent's practice. She knew that Madjaroff was a physician assistant and not a doctor. (TR 454-455, 463, 464.)

56. DeBoy heard one patient refer to Madjaroff as "Dr. Rossie." (TR 469-470.) DeBoy did not hear Madjaroff or the Respondent describe Madjaroff as a licensed physician to patients. (TR 458-460.)

57. DeBoy did not use Respondent's website and was not familiar with Madjaroff's web page. (TR 466.)

Lisa Johnson

58. Lisa Johnson (Johnson) became a patient of the Respondent in 2004. Johnson became

employed by the Respondent's office as an esthetician in May 2009. (TR 315).

59. When Johnson was a patient, she learned that Madjaroff was a physician assistant and needed the Respondent to be present to sign off on the chart before she could perform a treatment. (TR 317). When she became an employee, Johnson observed the Respondent sign off on patient charts before Madjaroff performed treatment. (TR 323).

60. The Respondent introduced Madjaroff to Johnson as "Rossie Madjaroff, P.A., physician assistant." (TR 316). Madjaroff introduced herself in Johnson's presence as "Rossie Madjaroff. P.A." or "physician assistant." (TR 318-319). The Respondent never told a patient in Johnson's presence that Madjaroff was a licensed physician. (TR 319, 324).

61. Johnson never heard anyone refer to Madjaroff as "Dr. Rossie." (TR 325-326). Johnson did not attend the 2009 staff meeting in which the Respondent told staff not to refer to Madjaroff as "Dr. Rossie." (TR 326).

Patient A

62. Patient A was a patient of the Respondent's practice. She met with Madjaroff on January 29, 2009 for Botox treatments because the Respondent's schedule was booked. When Patient A made the appointment, the receptionist on the telephone referred to Madjaroff as "Dr. Rossie." (TR 237).

63. At the time of her appointment with Madjaroff, Patient A believed that Madjaroff was a licensed physician in Maryland. When Patient A made her appointment, she asked whether Madjaroff was a plastic surgeon and the staff member on the telephone told Patient A that Madjaroff was a dermatologist. If Patient A had known that she was not a physician, she would not have allowed Madjaroff to treat her. (TR 238).

64. A member of the Respondent's office staff introduced Madjaroff to Patient A as "Dr. Rossie." (TR 241; State Ex. 21.)

65. After a friend told Patient A that she did not think that Madjaroff was a doctor, Patient A called the Respondent's office. A staff member told her that Madjaroff was a doctor in another country but not in the U.S. (TR 243; State Ex. 21.)

Patient B

66. Patient B referred to Madjaroff as "Dr. Rossie" because that is how Wendy Middledorf (Middledorf), who performed laser hair removals in the Respondent's office, referred to Madjaroff. (TR 304-305.) Other staff in the Respondent's office referred to Madjaroff as "Rossie Madjaroff." The Respondent did not refer to Madjaroff as a doctor in Patient B's presence. (TR 306-307).

67. Patient B was first treated by Madjaroff in January 2007. Patient B was happy with the services she received in the Respondent's office. (State Ex. 23). Middledorf had Madjaroff come in the exam room and adjust the settings on the laser. (TR 305).

68. Patient B thought that Madjaroff was a doctor in the Respondent's office. (TR 304-305, 309; State Ex. 23.) Patient B also believed that the Respondent was Madjaroff's supervisor. (TR 308-309.) When she signed the document "About Our Staff" in September 2009, she understood that Madjaroff was a physician assistant because the letters "P.A." appeared after her name. (TR 309).

Patient C

69. In February 2009, Patient C went to see Madjaroff for Botox injections. The staff in the Respondent's office referred to Madjaroff as "Dr. Rossie." (TR 62-63.)

70. Patient C visited the Respondent's office three times and was treated by Madjaroff twice. Patient C met the Respondent in the hallway for the first time during her last visit in December 2009. (TR 65, 72.)

71. The Respondent was not present in the exam room when Madjaroff administered Botox injections to Patient C. (TR 72.)

72. During her first office visit in February 2009, Patient C asked for Madjaroff's business card.

Office Manager Deborah Wallace, who was present at the front desk, handed Patient C a business card for Madjaroff. There were no pre-printed Madjaroff business cards available at the front desk at that time, so Wallace used another staff member's business card, crossed out that person's name, and wrote "Dr. Rossie Madjaroff" on the card. (TR 66; State Ex. 26.)

73. When she received this business card in February 2009, Patient C believed that Madjaroff was a licensed physician in Maryland. (TR 67).

74. During Patient C's third visit to the Respondent's office on December 23, 2009, the office staff handed Patient C a document that contained information about the Respondent's staff. During that visit, Patient C signed the document, entitled "About Our Staff," which identified Madjaroff as "Rossie Madjaroff, P.A." (Resp. Ex. L.) The staff did not give Patient C a copy of this document to keep because the office copier was not working. Patient C did not have much time to read it because she had to enter the exam room for her treatment. (TR 67-68, 77-78.)

75. The Respondent's staff offered to send Patient C a copy of the document, but she declined. The staff offered to give her a copy of the document on her next visit, but Patient C never returned to the Respondent's office and never received a copy. (TR 90-91.)

76. Upon signing the document, Patient C became concerned that Madjaroff, who had administered Botox to her, was not a doctor. Patient C then viewed the Respondent's revised website and concluded, based on the document and the website, that Madjaroff was a physician assistant and not a doctor. (TR 67-68, 77-78, 89-90.)

Patient D

77. Patient D was treated by Madjaroff in the Respondent's office for Botox and filler injections in January 2009. When she was in the office, Patient D saw both Madjaroff and the Respondent. When Patient D was leaving the office, the office staff at the front desk referred to Madjaroff as "Dr. Rossie." (TR 276.)

78. Patient D continued to refer to Madjaroff as "Dr. Rossie" when calling the office or making follow-up appointments because that is how the Respondent's office staff referred to Madjaroff. (TR 281.) At that time, Patient D thought Madjaroff was a physician. (TR 282.)

79. Patient D signed the "About Our Staff" document on June 29, 2009. She was not given a copy of the document. (TR 290; State Ex. 27.)

80. Sometimes when Patient D was being treated in the Respondent's office, both Madjaroff and the Respondent were present. The Respondent sometimes told Madjaroff where to put the injections and Patient D thought that the Respondent was supervising Madjaroff. (TR 294.) At times, Madjaroff treated Patient D alone without the Respondent present. (TR 296-297).

81. The Respondent never described Madjaroff to Patient D as an M.D. or as "Dr. Rossie." (TR 295.) Patient D did not recall Madjaroff wearing a lab coat and did not observe her with a name tag. (State Ex. 28).

Patient 2

82. Patient 2 began receiving treatment from the Respondent in 2005. During his first appointment with Madjaroff, Patient 2 was seen by both the Respondent and Madjaroff. Patient 2 believed that Madjaroff was learning the trade by observing the Respondent. (TR 404-405.)

83. Patient 2 sometimes received treatment or shots from Madjaroff when the Respondent was not present in the exam room. (TR 420-421.) Patient 2 believed the Respondent was always present in the office when he was being treated by Madjaroff. (TR 422.)

84. Madjaroff told Patient 2 that she was a doctor in Europe. Patient 2 observed her to be an assistant in the Respondent's practice. (TR 406-407.)

85. Patient 2 heard the Respondent's staff refer to Madjaroff as "Dr. Rossie." Patient 2 believed that title was used out of respect because Madjaroff was a doctor in Europe. (TR 408). Patient 2 referred to Madjaroff as "Dr. Rossie." (TR 420).

86. Patient 2 signed the "About Our Staff" document on August 27, 2009 (TR 410; Resp. Ex. B1.)

Patient 3

87. Patient 3 became a patient of the Respondent in 2007. Patient 3 frequently visited the Respondent's office as a patient and while accompanying her husband, who was also the Respondent's patient. (TR 424-425.)

88. Patient 3 thought Madjaroff was an esthetician or a P.A. in the Respondent's office, but not a physician. (TR 429, 435). When Madjaroff administered Botox injections to Patient 3, she frequently consulted with the Respondent to ensure the injections were administered in the proper location. (TR 429-432.)

89. On one occasion when Patient 3 heard a patient refer to Madjaroff as "Dr. Rossie," she told the patient that Madjaroff was a P.A. and not a doctor. (TR 432-433.) Patient 3 never heard staff refer to Madjaroff as "Dr. Rossie." (TR 443.)

90. Patient 3 signed the "About Our Staff" document on August 26, 2009. (TR 434-435, 439-440; Resp. Ex. B1.)

Patient 4

91. Patient 4 was treated by the Respondent, beginning in 2007. When Patient 4 had a consultation with Madjaroff for skin care and laser treatments, Madjaroff told her that she was the Respondent's assistant. (TR 386-387.) Patient 4 received two laser treatments from Madjaroff. (TR 388-389.)

92. Patient 4 heard staff refer to Madjaroff as "Dr. Rossie," and Patient 4 also referred to Madjaroff as "Dr. Rossie." (TR 394.) Patient 4 thought Madjaroff might have a doctorate, but did not believe that she was a medical doctor. (TR 387-388). Patient 4 thought that Madjaroff was an esthetician, laser, or skin care person, and was an assistant. (TR 389.)

93. Patient 4 never saw Madjaroff's web page on the Respondent's website. The Respondent

never informed Patient 4 that Madjaroff was a physician. (TR 388.)

94. Patient 4 signed the "About Our Staff" document on July 14, 2009. When she signed it, she was mostly reading about the Respondent so the document did not affect her opinion of Madjaroff's role in the practice. (TR 391; Resp. Ex. D1.)

Prior Discipline

95. The Board issued a Consent Order on October 24, 2007 in which it found the Respondent responsible for unprofessional conduct in the practice of medicine in violation of section 14-404(a)(3)(ii) of the Act for his actions related to patient care.

96. The Board ordered that the Respondent receive the following sanctions for his 2007 violation: a reprimand, two years of probation, completion of a prior Board-approved intensive ethics course/tutorial, and a monetary fine of $20,000.00.

DISCUSSION

The State has charged the Respondent with unprofessional conduct in the practice of medicine in violation of section 14-404(a)(3)(ii) of the Act. The State contends this result is warranted based on information the Respondent maintained on the website for his medical office, as well as the statements and actions of the Respondent and his office staff with regard to the use of the name "Dr. Rossie" to identify Rossie Madjaroff, P.A., who was employed by the Respondent as a physician assistant. The Respondent denies that he violated the Act.

Legal Background

In accordance with certain provisions in the Maryland Medical Practice Act, the Board may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

> (3) Is guilty of:
> ...
> (ii) Unprofessional conduct in the practice of medicine[.]
> ...

Md. Code Ann., Health Occ. § 14-404(a)(3)(ii) (Supp. 2011).

While the statute does not define "unprofessional conduct in the practice of medicine," the State contends that other provisions in the Act provide guidance for determining whether the Respondent violated that provision in this case. The Act provides at section 14-602, in pertinent part, as follows:

> **§ 14-602. Misrepresentation as practitioner of medicine.**
>
> (a) In general. – Unless authorized to practice medicine under this title, a person may not represent to the public, by description of services, methods, or procedures, or otherwise, that the person is authorized to practice medicine in this State.
> (b) Certain representations prohibited. – Except as otherwise provided in this article, a person may not use the words or terms "Dr.", "doctor", "physician", "D.O.", or "M.D." with the intent to represent that the person practices medicine, unless the person is:
>
> (1) Licensed to practice medicine under this title;
> (2) A physician licensed by and residing in another jurisdiction, while engaging in consultation with a physician licensed in this State;
> (3) A physician employed by the federal government while performing duties incident to that employment;
> (4) A physician who resides in and is licensed to practice medicine by any state adjoining this State and whose practice extends into this State; or
> (5) An individual in a postgraduate medical program that is approved by the Board.
>
> ...

Md. Code Ann., Health Occ. § 14-602(a), (b) (2009). I conclude that if the Respondent is shown to have violated the provisions of section 14-602 of the Act, this would meet the test of "unprofessional conduct in the practice of medicine," as discussed further below.

Certain provisions of Title 15 of the Health Occupations Article that govern the certification of physician assistants are also relevant to the charges in this case.[1] Section 15-101 provides, in

[1] Effective October 1, 2010, Title 15 of the Health Occupations Article was revised to provide for the licensure, rather than certification, of physician assistants, and included other definitional changes under Title 15 governing physician assistants. As the conduct at issue in this case occurred prior to October 1, 2010, I will rely on the provisions of the statute that existed before October 1, 2010.

pertinent part, the following definitions governing the activities of physician assistants in Maryland:

§ 15-101. Definitions.

(a) In general. – In this title the following words have the meanings indicated.

...

(d) Certificate. – "Certificate" means a certificate issued by the Board to a physician assistant under this title.

...

(h) Delegated medical acts. – "Delegated medical acts" means activities that constitute the practice of medicine delegated by a physician under Title 14 of this article.

(i) Delegation agreement. – "Delegation agreement" means a document that is executed by a supervising physician and a physician assistant containing the requirements of § 15-302 of this title.

...

(m) Physician Assistant. – "Physician Assistant" means an individual who is certified under this title to perform delegated medical acts under the supervision of a physician.

(n) Practice as a physician assistant. – "Practice as a physician assistant." means the performance of medical acts that are:

(1) Delegated by a supervising physician to a physician assistant;
(2) Within the supervising physician's scope of practice; and
(3) Appropriate to the physician's assistant's education, training, and experience.

...

(r) Supervising physician. – "Supervising physician" means a physician who has been approved by the Board to supervise one or more physician assistants.

(s) Supervision. – (1) "Supervision" means the responsibility of a physician to exercise on-site supervision or immediately available direction for physician assistants performing delegated medical acts.

(2) "Supervision" includes physician oversight of and acceptance of direct responsibility for the patient services and care rendered by a physician assistant, including continuous availability to the physician assistant in person, through written instructions, or by electronic means and by designation of one or more alternate supervising physician assistants.

Md. Code Ann., Health Occ. § 15-101 (2009).

Positions of the Parties

The Board contends that the Respondent violated the Act when he used the title "Dr. Rossie"

on his website to identify Rossie Madjaroff, P.A., a physician assistant employed in his medical office, and also used that title and directed and permitted his office staff to use that title in his office, with the intent to represent that Madjaroff was licensed to practice medicine as a physician under Title 14 of the Health Occupations Article. The Board contends these actions are prohibited by section 14-602(b) of the Act and, therefore, constitute unprofessional conduct in the practice of medicine in violation of section 14-404(a)(3)(ii) of the Act. The Respondent argues that use of the title "Dr. Rossie" is appropriate because it is a nickname for Madjaroff that reflects her prior practice of medicine as a physician in her native country of Bulgaria. He also contends that he notified patients on his website and in the office that Madjaroff was practicing as a physician assistant in Maryland. The Respondent contends that despite the use of this title both on his website and in his medical office, he did not intend to represent that Madjaroff was a licensed physician in Maryland.

The State also alleges unprofessional conduct in the practice of medicine based on an alleged violation of section 14-602(a) of the Act that the Respondent misrepresented to the public that Madjaroff was authorized to practice medicine as a physician in Maryland based on information he maintained on his website by the description of services, methods, procedures, or otherwise. The Respondent denies that he violated the Act because he alleges that a physician assistant is authorized to practice medicine in Maryland under the supervision of a licensed physician and that the biographical information maintained on his website regarding Madjaroff's background and credentials was accurate and authorized under Titles 14 and 15 of the Health Occupations Article.

For the reasons addressed below, I conclude that the Respondent was guilty of unprofessional conduct in the practice of medicine under section 14-404(a)(3)(ii) of the Act based on a violation of section 14-602(b) of the Act. This violation arises from the Respondent's use of the title "Dr. Rossie" on his website and in his office, by himself and through his office staff, to

identify a physician assistant employed in his office, with the intent to represent that Madjaroff was licensed as a physician in Maryland.

For the additional reasons addressed below, I do not find unprofessional conduct in the practice of medicine based on an alleged violation of section 14-602(a) of the Act because I do not find the Respondent misrepresented to the public that Madjaroff was authorized to practice medicine in Maryland as a physician based on information he maintained on his website by the description of services, methods, procedures, or otherwise.

In the Practice of Medicine

The Maryland Court of Appeals has consistently recognized that physician conduct is considered "in the practice of medicine" not only when it relates to diagnosing and treating patients but also when it involves "misconduct related to the effective delivery of patient care." *Kim v. Maryland State Bd. of Physicians*, 2011 Md. Lexis 679, at 13 (2011); *Finucan v. Md. Bd. of Physician Quality Assurance*, 380 Md. 577, 597 (2004). The Maryland Court of Appeals has consistently expanded the definition of "in the practice of medicine" to include conduct such as sexual misconduct by physicians with patients or hospital employees, false statements made by physicians during hospital peer review investigations, Board investigations and disciplinary proceedings, and false statements made on physician license renewal applications. The Court has considered whether the conduct "occurred while the physician was performing a task integral to his or her medical practice," *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 74 (1991), and whether the conduct was "sufficiently intertwined with patient care." *Kim*, 2011 Md. Lexis 679, at 13-14. In reaching this broad interpretation of the phrase "in the practice of medicine," the Court has recognized that the term "practice medicine" is more narrowly defined at section 14-101(n) of the Health Occupations Article. Md. Code Ann., Health Occ. § 14-101(n) (Supp. 2011).

Just as the Board is entitled to receive accurate and truthful information from physicians on their license renewal applications which may affect a physician's fitness to practice medicine, so too are patients entitled to receive accurate and unambiguous information from physicians and their staff regarding the qualifications and fitness of their employees on medical office websites and in oral and written communications provided to patients in the medical office itself. Such information is sufficiently intertwined with patient care because it can impact patient decisions regarding the selection of health care providers and the consideration of treatment options. Information set forth on a physician's website is an extension of the medical office and is as much a part of the physician's medical practice as the information communicated to patients in person in the office suite.

For the foregoing reasons, I conclude that the conduct at issue in this case meets the standard for conduct that is "in the practice of medicine" under section 14-404(a)(3)(ii) of the Act.

Section 14-602(b)

A. Website

The State established, by a preponderance of the evidence in this record that, from at least January 10, 2008 through April 21, 2009, the Respondent's website included a web page for Madjaroff with a heading that identified her as "Dr. Rossie" without quotation marks. (State Ex. 8, 12A – 12C.) The excerpts from the Respondent's website that are in evidence in this record demonstrate that Madjaroff was identified in the heading on the Respondent's website as "Dr. Rossie" on January 10, 2008; March 18, 2009; April 10, 2009; and April 21, 2009 without any changes to Madjaroff's web page during that period. (State Ex. 8, 12A, 12B, and 12C.)

The Prosites Tracking Sheets submitted into evidence by the State suggest that the heading for Madjaroff on the Respondent's website identified her as "Dr. Rossie" for a longer period of time, perhaps from December 1, 2006 through May 26, 2009. (State Ex. 14.) The Respondent did not directly refute this evidence, and stated only that he could not recall when his office website included

the designation for "Dr. Rossie." (TR 516-517.) Madjaroff believed that the website included the designation for her as "Dr. Rossie" from on or about January 9, 2006, around the time of her employment with the Respondent. (TR 201-202.) She referred to an email from the Respondent but the State did not produce that evidence. Despite some evidence to suggest that the website identified Madjaroff as "Dr. Rossie" for the longer period from December 1, 2006 through May 26, 2009, the evidence in the Tracking Sheets is not clear on its face without explanation and the entries in those documents were not adequately explained in this record.

Therefore, I conclude that the State has established by a preponderance of the evidence that the Respondent's website identified Madjaroff as "Dr. Rossie" in the web page heading from at least January 10, 2008 through at least April 21, 2009. In any event, regardless of whether the Respondent identified Madjaroff as "Dr. Rossie" in the heading on the Respondent's office website for fifteen months or for two and one-half years, this distinction does not affect my determination. It is undisputed that the designation of "Dr. Rossie" in the heading for Madjaroff appeared on the Respondent's office website for at least fifteen months from January 2008 to April 2009.

I shall review the biographical information for Madjaroff that appeared on the website under the "Dr. Rossie" heading to fully analyze the charges. On January 10, 2008, when the complaint was filed with the Board, the web page for Madjaroff that appeared on the Respondent's website stated, in pertinent part, as follows:

> Dr. Rossie
>
> Rossie Madjaroff has practiced general dermatology for over 12 years. She obtained her medical degree in Europe, where she initially practiced dermatology. She also has a Masters degree in Higher Education and she is a certified Laser practitioner. Upon relocating to the United States, she obtained training and a license to practice medicine as a Physician Assistant. She has a broad knowledge of dermatologic conditions and is expert in treating both typical and atypical skin conditions. Her patients fondly refer to her as "Dr. Rossie."

> Working in conjunction with Dr. Adam Summers, medical director of Maryland Plastic Surgery, she is proud to offer her patients the full spectrum of general dermatology and cosmetic dermatology services.

(State Ex. 8.) The Madjaroff web page also addressed issues of insurance coverage and included a list of services provided by Madjaroff under the headings of "General Dermatology" and "Cosmetic Rejuvenation." (State Ex. 8.) Madjaroff's web page on the Respondent's office website remained the same with no changes to the heading or biographical information from January 10, 2008 through at least April 21, 2009. (State Ex. 8, 12A, 12B, 12C.)

On or about June 2, 2009, the Respondent made changes to the website. At that time, the revised web page for Madjaroff stated, in pertinent part, as follows:

> Rossie Madjaroff, PA
>
> Rossie Madjaroff, PA has practiced general dermatology for over 12 years. She obtained her medical degree in Europe, where she initially practiced dermatology. She also has a Masters degree in Higher Education and she is a certified Laser practitioner. Upon relocating to the United States, she obtained training and a license to practice medicine as a Physician Assistant. She has a broad knowledge of dermatologic conditions and is experienced in treating a variety of skin conditions. In respect of her European medical degree, some patients choose to fondly refer to her as "Dr. Rossie."

(State Ex. 12D.) The Madjaroff web page continued to include other information about insurance coverage and a list of services provided by Madjaroff under the headings "Various Skin Conditions" and "Cosmetic Rejuvenation." (State Ex. 12D.)

On or about July 9, 2009, the Respondent's website was revised further to include a new web page for "Our Staff," which included biographical information for Madjaroff and similar information for the Respondent and the Respondent's office nurse, Suzette Luethke, R.N. This revised website no longer included a separate web page for Madjaroff. The paragraph describing Madjaroff's biographical information on the revised "Our Staff" web page for the Respondent's medical office stated as follows:

> **Rossie Madjaroff, PA** is a physician assistant with extensive experience in general and cosmetic dermatology. She was raised in Europe, where she graduated from medical school and practiced dermatology for 12 years. Upon relocating to the United States, Rossie obtained a license to practice medicine as a physician assistant. Under the direction of Dr. Summers, she continues to receive advanced training in providing non-surgical cosmetic treatments. She has a broad knowledge of dermatological conditions and has expertise in treating a variety of skin conditions. In respect of her European medical degree, many patients choose to fondly refer to her as "Dr. Rossie."

(State Ex. 12E.)

The Respondent admitted that he was solely responsible for the contents of the website. He also acknowledged that he drafted the description of Madjaroff's biography based on information that she provided. (TR 517, 201; State Ex. 17, p. 22.) The Respondent acknowledged that he created the heading of "Dr. Rossie" that appeared on Madjaroff's web page. When interviewed by the Board during its investigation, he explained under oath that he used this title because "Rossie Madjaroff, P.A." was too long and hard to pronounce and he thought it necessary to shorten her name, that "Rossie" alone was not professional, and because Madjaroff had "a former medical background as a physician." (TR 542; State Ex. 17, pp. 34-35.) The Respondent did not claim in this explanation that he used the name "Dr. Rossie" on his website because he believed it to be Madjaroff's existing nickname. Instead, he explained that he established this name on the website for convenience and to promote her background as a former physician.

There was a factual dispute in this record regarding the origin of the name, "Dr. Rossie." Although I will address this issue as it has some relevance, ultimately I do not find the origin of the name to be determinative because, once the Respondent hired Madjaroff, he made a conscious decision to market her as "Dr. Rossie" both on his office website and in his medical office, despite his knowledge that she was not licensed as a doctor in Maryland. The Respondent claimed that Madjaroff already had the nickname of "Dr. Rossie" when he hired her in 2006. In contrast, Madjaroff stated that the use of this name was the Respondent's idea and that she never told him

that "Dr. Rossie" was her nickname. (TR 201.) According to Madjaroff, the Respondent told her he was using the "Dr. Rossie" terminology because it was a good way for him to begin promoting her. (TR 202.) Madjaroff explained that this was not a nickname she used because nobody in Bulgaria would call a physician "Dr." followed by the person's first name as that would be inappropriate and a joke. (TR 206.)

Madjaroff also stated that the Respondent was really proud to explain that she had a medical degree in Bulgaria. (TR 216-217.) She also stated that the Respondent believed Madjaroff's background as a foreign trained physician was an extra benefit that would enable patients to feel more relaxed and comfortable with her and with the training process. (TR 204, 218.)

In contrast to Madjaroff's testimony, the Respondent denied that he created the name "Dr. Rossie" and claimed that Madjaroff already had this nickname when she came to his practice. (TR 497; State Ex. 17, p. 38.) The Respondent asserted that the nickname of "Dr. Rossie" was used by a patient named "Elaine," who claimed that Madjaroff had referred her to the Respondent and that Madjaroff was unhappy in her then-current job with another dermatology practice. The Respondent also claimed that the nickname was used during Madjaroff's training and was used by her patients. He claimed further that Madjaroff's family used the name "Dr. Rossie" when they called the Respondent's office. The Respondent denied that he created the name "Dr. Rossie." (TR 482-483, 497, 517-518.)

Madjaroff's explanation was logical and convincing that she did not previously use the name "Dr. Rossie" because it was inappropriate and a joke for people in Bulgaria to refer to a physician using the word "Dr." followed by her first name. Moreover, the Respondent did not provide sufficient detail to support his claim that the name "Dr. Rossie" was used in Madjaroff's training, by her patients, or by her family. He failed to explain whether he was referring to Madjaroff's training as a physician assistant in Maryland or her training as a physician in Bulgaria,

or whether he was referring to Madjaroff's patients while she was practicing as a physician in Bulgaria, or whether he meant her patients after she was certified as a physician assistant in Maryland. That distinction is critical since she was a physician in Bulgaria but only a physician assistant in Maryland. Moreover, as he employed an office staff to answer telephones, the Respondent did not explain the basis for his claimed knowledge as to how Madjaroff's family identified her when they called the office, or to which family members he was referring.

The Respondent's testimony that a patient named Elaine referred to Madjaroff as "Dr. Rossie" before the Respondent met Madjaroff was not refuted in this record. Yet, the origin and background for Elaine's use of the term "Dr. Rossie" to identify Madjaroff was never explained.

Accordingly, I conclude that a preponderance of the evidence establishes that Madjaroff herself did not bring the nickname "Dr. Rossie" to the Respondent's practice and did not lobby for its use. However, I find that the Respondent first heard the name "Dr. Rossie" when it was used by the patient identified as Elaine. Yet, regardless of how the Respondent was introduced to the name "Dr. Rossie," the evidence is clear that the Respondent was solely responsible for placing the name "Dr. Rossie" on his website and promoting it in his office to identify an individual whom he knew was not licensed as a physician in Maryland. The evidence established that the Respondent made an independent decision to use the name "Dr. Rossie" on his website to identify Madjaroff, a physician assistant. Once the Respondent made this independent decision, the origin of the name is irrelevant to the central issue of whether he is responsible for unprofessional conduct in the practice of medicine.

The Respondent claims the term "Dr. Rossie" was a nickname for Madjaroff that was used to shorten and simplify her long foreign name, and reflected that Madjaroff had previously practiced as a physician in Bulgaria. The Respondent further claims that the use of the name in quotation marks was intended to reflect that it was only a nickname. However, the excerpts from the

Respondent's website present in this record demonstrate that the designation of "Dr. Rossie" in the heading for Madjaroff on her web page never appeared in quotation marks. (State Ex. 8, 12A, 12B, 12C). The additional reference to "Dr. Rossie" that appears in a sentence on the website does place the name in quotation marks. That reference initially stated, "Her patients fondly refer to her as 'Dr. Rossie.'" (State Ex. 8, 12A, 12B, 12C). A revision to that sentence subsequently stated on the website, "In respect to her European medical degree, some patients choose to fondly refer to her as 'Dr. Rossie.'" (State Ex. 12D, 12E).

The Respondent's claim that he used the designation "Dr. Rossie" on the website because it was a nickname for Madjaroff does not justify his use of this term. Furthermore, his use of the term "Dr. Rossie" on the website to reflect that Madjaroff had previously practiced as a physician in Bulgaria also fails to justify his use of that term to identify Madjaroff because in Maryland she was only a physician assistant. His claim that he sought to shorten her actual name on the website for convenience also fails to justify the use of the term "Dr." to identify a physician assistant. Section 14-602(b) prohibits the use of the term "Dr." unless an individual is licensed as a physician under Title 14 of the Health Occupations Article. Madjaroff was not licensed as a physician in Maryland under Title 14. The statute includes no exceptions to this prohibition against using the word "Dr." if the name is used as a nickname, appears in quotes, or because the individual previously practiced as a physician in a foreign country. The statute at section 14-602(b) sets forth a list of licensed *physicians* who may lawfully use the designation of "Dr." without violating the statute. Md. Code Ann., Health Occ. § 14-602(b)(1-5). This includes an individual who is licensed to practice medicine under Title 14 of the Health Occupations Article, which Madjaroff was not. At the time of the alleged violation, Madjaroff was certified as a physician assistant under Title 15 of the Health Occupations Article.

The statute also permits other licensed physicians to use the designation of "Dr." These include under section 14-602(b)(2) a physician who is licensed by and residing in another jurisdiction, while that physician is consulting with a physician licensed in Maryland. These circumstances clearly do not apply to Madjaroff's situation after she relocated to the U.S. in 1997. The statute does not permit a certified physician assistant in Maryland to use the term "Dr." if she was previously licensed as a physician in a foreign country years ago. The statute also permits the use of the term "Dr." by a physician employed by the federal government, a physician licensed in any state adjoining Maryland whose practice extends into Maryland, and by an individual in a postgraduate medical program approved by the Board. The Respondent has not shown that any of these other circumstances for licensed physicians apply to Madjaroff's practice as a physician assistant certified under Title 15 of the Health Occupations Article. Therefore, I conclude that the statute prohibited the use of the term "Dr." at all times to identify Madjaroff, who was a physician assistant.

The Respondent argues further that his use of the term "Dr. Rossie" to identify Madjaroff on the website was proper because he explained in the biographical information that "Her patients fondly refer to her as 'Dr. Rossie.'" After the Respondent made certain revisions to the website, he changed that sentence to state, "In respect of her European medical degree, some patients choose to fondly refer to her as 'Dr. Rossie.'" When this revised sentence was used on or after June 2, 2009, the Respondent had also changed the website heading for Madjaroff to "Rossie Madjaroff, PA." (State Ex. 12D). The Respondent claims these sentences were proper because they demonstrate that the term "Dr. Rossie" was used only as a nickname, that her patients "fondly" referred to her in this manner, and because the term reflected her previous practice as a physician in Bulgaria.

I do not find that use of the term "Dr. Rossie" on the website to identify a physician assistant was ever justified, either in the heading without quotation marks, or in other sentences with quotation marks. As addressed further below, the use of the term 'Dr. Rossie" was confusing to

some patients and gave the impression that Madjaroff was licensed as a physician in Maryland when she clearly was not. As addressed above, the statute includes no exception for using a nickname to the general prohibition against use of the term "Dr." and other similar terms for an individual who is not a licensed physician in Maryland or elsewhere. The Respondent's claim that it was only a nickname does not alter the confusion and misrepresentation that can result from using the designation of "Dr." for an individual who is not a Maryland physician and is certified in Maryland only as a physician assistant. Although the term "Dr." might be used innocently in other non-medical contexts as a nickname, or to reflect the receipt of a doctorate in another field, when used in the context of the Respondent's medical practice, common sense and the language of section 14-602(b) of the Act demonstrate that such use is prohibited.

Additionally, the record does not support the Respondent's claim that "her patients fondly referred to her as 'Dr. Rossie.'" As Madjaroff explained, while "Dr. Rossie" could be considered a term of endearment from the Respondent's point of view, she did not know whether it was a term of endearment from the patients' point of view. (TR 222-223.) It is clear from this record that patients and office staff referred to Madjaroff as "Dr. Rossie" not because of their own fondness, but because the Respondent decided to use this designation on his website and, as explained below, in his medical office.

Furthermore, although Madjaroff was previously licensed as a physician in Bulgaria, she was not a licensed physician in Maryland. Pursuant to her certification as a physician assistant in Maryland, she was authorized to perform delegated medical acts only under the supervision of a licensed physician. Md. Code Ann., Health Occ. § 15-101(m), (n) (2009). Madjaroff admitted that she attempted to become licensed as a physician in Maryland by taking the examination offered to foreign trained medical doctors, but was unable to pass that exam. (TR 197, 204, 226.) The record also fails to support the claim on the website that patients fondly referred to Madjaroff as "Dr.

Rossie" because of her European medical degree. Madjaroff attended medical school in Bulgaria and was licensed by that country, not by Europe as a whole. The only witness who stated that he believed the title of "Dr. Rossie" was used out of respect because she had been a doctor in Europe was Patient 2. He also admitted that he heard the Respondent's office staff refer to Madjaroff as "Dr. Rossie" and that he also called her "Dr. Rossie." (TR 408, 420.) The logical conclusion from this testimony is that Patient 2 referred to Madjaroff as "Dr. Rossie" because the Respondent's office staff used that name. As discussed more fully below, the evidence establishes that the office staff referred to Madjaroff as "Dr. Rossie" because the Respondent, who was the owner of the medical practice, decided after a conversation with office staff, that they would refer to Madjaroff in this manner. (TR 336, 355).

The State has proven that the Respondent used the term "Dr." to describe Madjaroff in his website despite the prohibition in section 14-602(b) of the Act. The Respondent has failed to present sufficient justification for use of the term "Dr. Rossie" on his website, despite the statutory prohibition. The Respondent's use of the term "Dr. Rossie" to identify a physician assistant on his office website that is accessible to the public to promote his medical practice clearly subjects the public to potential confusion and misrepresentation regarding Madjaroff's professional status in Maryland.

B. Office

The State also alleges that the Respondent violated section 14-602(b) of the Health Occupations Article because both he and office staff referred to Madjaroff at times as "Dr. Rossie" in his office in the presence of patients. The Respondent concedes that this occurred on occasion but argues that both he and Madjaroff introduced her to patients as a physician assistant in his practice so that he never misrepresented that Madjaroff was licensed as a physician in Maryland.

A preponderance of the evidence establishes that the Respondent had a conversation in 2006 with Debra Wallace, his office manager, and other staff shortly after Madjaroff's hire at which time

he decided that the employees in the office would refer to Madjaroff as "Dr. Rossie." The evidence demonstrates that, just like his central role in deciding to use that term on the website, the Respondent was also the architect of this strategy for using the term "Dr. Rossie" to identify Madjaroff in his medical office as well. (TR 336, 355, 365.) Wallace testified about a conversation in 2006 involving most of the office staff, including the Respondent, in which the employees discussed how to refer to Madjaroff and that the decision was made to refer to her as "Dr. Rossie." (TR 336, 355). Wallace acknowledged that the Respondent was present. Although Wallace did not expressly state that the decision for the office staff to call Madjaroff "Dr. Rossie" was made by the Respondent, he was present for the conversation, he owns and operates his medical office, and he was responsible for identifying Madjaroff on the website as "Dr. Rossie." Under these circumstances, I reasonably conclude that the Respondent made the decision to call Madjaroff "Dr. Rossie" in the office and there is no evidence that he discouraged his office staff from using that terminology for three years until the staff meeting in 2009.

The evidence established that both the Respondent and his office staff referred to Madjaroff as "Dr. Rossie" in the office in the presence of patients. Many of the witnesses who testified acknowledged that the Respondent's office staff referred to Madjaroff as "Dr. Rossie." Those who testified that they heard office staff refer to Madjaroff as "Dr. Rossie" included Patients A, B, C, and D; Patients 2 and 4; Kimberly Gerami, a former esthetician in the Respondent's office; Madjaroff; Debra Wallace, the Respondent's Office Manager; and Suzette Luethke, R.N., a nurse in the Respondent's office. The Respondent also admitted that members of his office staff at times referred to Madjaroff as "Dr. Rossie." When questioned about whether he heard office staff call Madjaroff "Dr. Rossie," the Respondent stated, "Typically not in my presence." (TR 519.) I interpret this evasive answer from the Respondent to mean that he heard his office staff use that name at times but not regularly. I do not find that answer persuasive because the Respondent's

office manager indicated that the name "Dr. Rossie" was used consistently by office staff to refer to Madjaroff from the time of the conversation in 2006 until the staff meeting in 2009.

The Respondent acknowledged that after he became aware of the Board's concern regarding the manner in which he identified Madjaroff, he held a staff meeting with all staff and instructed them to stop referring to Madjaroff as "Dr. Rossie." (TR 507.) It would not be logical for the Respondent to instruct his staff to stop referring to Madjaroff as "Dr. Rossie," if it was not a regular practice in the office. Wallace, Gerami, and Madjaroff all confirmed that the Respondent held a staff meeting in 2009 at which he instructed the staff to stop referring to Madjaroff as "Dr. Rossie."

Several witnesses testified that they also observed the Respondent refer to Madjaroff as "Dr. Rossie." These included Madjaroff, Wallace, and Luethke. Wallace acknowledged that the staff, including the Respondent, decided that Madjaroff should be referred to as "Dr. Rossie" during the 2006 conversation in the office. (TR 336, 355, 365.) Wallace acknowledged that the staff continued to refer to Madjaroff as "Dr. Rossie" from the time of that 2006 conversation until the 2009 staff meeting. (TR 365.) Madjaroff stated that even after the 2009 staff meeting the Respondent and other office staff occasionally referred to Madjaroff as "Dr. Rossie" out of habit. (TR 206.) Wallace acknowledged that many patients continued to call Madjaroff "Dr. Rossie" after the 2009 staff meeting. (TR 359.) Wallace explained that after the 2009 staff meeting the staff no longer referred to Madjaroff as "Dr. Rossie," but she acknowledged that the staff did not correct patients when they continued to refer to Madjaroff as "Dr. Rossie" because they did not want to "bring attention to it." (TR 359-360.)

Wallace acknowledged that she handed a business card to Patient C on one occasion and crossed out another employee's name and wrote "Dr. Rossie Madjaroff" on the card. Wallace explained that she gave this business card to Patient C because no pre-printed Madjaroff business cards were available that day. (TR 338-339, 357-358).

Several witnesses testified that they initially believed Madjaroff was a physician based on the staff's practice of calling her "Dr. Rossie." Those witnesses who testified that they initially believed Madjaroff was a physician included Patient C, Patient A, Patient D, and Gerami. In Patient C's case, she explained that her belief was based primarily on her receipt of the business card from Wallace that identified Madjaroff as "Dr. Rossie Madjaroff" during her initial office visit in February 2009. (TR 66; State Ex. 26.) Patient C explained that she did not learn that Madjaroff was a physician assistant until she was shown the "About Our Staff" document during her third office visit in December 2009 and then reviewed the Respondent's revised office website. (TR 67-68, 77-78, 89-90; Resp. Ex. L.)

Patient A stated that when she made an appointment with Madjaroff in January 2009, she thought that Madjaroff was a licensed physician in Maryland. (TR 238.) Patient A explained that when she called the Respondent's office, the receptionist referred to Madjaroff as "Dr. Rossie" and stated that she was a dermatologist. Patient A indicated that she made the appointment with Madjaroff based on the information provided by the receptionist because the Respondent's schedule was booked up for quite a while. (TR 237.) Patient A also testified that when she came to the office for a Botox procedure, it was performed by Madjaroff and that she did not see the Respondent during that visit. (TR 237-238.) Patient A testified further that had she known Madjaroff was not a physician, she would not have allowed Madjaroff to treat her. (TR 238.)

Patient B was first treated by Madjaroff in January 2007. She told the Board's investigator that she believed Madjaroff was a doctor in the Respondent's office. (State Ex. 23). Patient B testified that when she signed the "About Our Staff" document in September 2009, she understood that Madjaroff was a physician assistant because the letters "P.A." appeared after her name. (TR 309; State Ex. 22.)

These witnesses testified in a straightforward and direct manner, their testimony was logical, and they were not shown to have a motive to fabricate. Some of the witnesses and other patients who initially believed that Madjaroff was a physician indicated they were generally satisfied with their treatment in the Respondent's office and continued to receive treatment from the Respondent or indicated they would continue with such treatment if needed. Consequently, I credit the testimony of these witnesses regarding their belief that Madjaroff was a physician, which resulted from the Respondent and his office staff using the name "Dr. Rossie" to identify Madjaroff.

Gerami, who worked as an esthetician in the Respondent's office for three years, testified that the office staff called Madjaroff "Dr. Rossie" and that the Respondent told her that Madjaroff was a dermatologist. (TR 94.) Gerami stated that she believed Madjaroff was a dermatologist for more than two years until she attended the staff meeting in 2009 where she learned that Madjaroff was not a licensed physician in Maryland, was a physician assistant, and that the staff was to no longer call her "Dr. Rossie." (TR 95.)

The Respondent argued that Gerami's testimony was not believable because an employee in the Respondent's office could not hold the belief for several years that Madjaroff was a physician in Maryland, whom she described as a dermatologist, rather than a physician assistant. The Respondent claimed that Gerami had motive to fabricate her testimony because, after she resigned, the Respondent refused her request for rehire. I do not find that to be a sufficient basis to discredit Gerami's testimony. Gerami resigned in June 2009 and was told by Wallace in August 2009 that the Respondent had decided not to rehire her. (TR 123.) Although the Respondent refused to rehire Gerami, she explained that she returned as a patient of the Respondent later in 2009 and in 2010 and described the Respondent's behavior during her patient visits as "incredibly professional and extremely friendly." (TR 124.) Perhaps Gerami did not pay as close attention to detail as other employees in the Respondent's office. She was trained as an esthetician, but not as a licensed health

care professional under Titles 14 or 15 of the Health Occupations Article. Based on the testimony that office staff and the Respondent referred to Madjaroff as "Dr. Rossie" for several years before the staff meeting in 2009, I do not find her testimony incredible. Moreover, the language on the website, the "About Our Staff" document, and Madjaroff's business card could reasonably give the impression that Madjaroff was a dermatologist or other physician. (State Ex. 12A-E, 26, 27; Resp. Ex. K.) Moreover, Gerami explained that she was not present in the exam room while the Respondent and Madjaroff were treating patients so she did not know what was said or done in the exam room at those times.

This evidence demonstrates the confusion that resulted among the Respondent's patients and one employee regarding Madjaroff's professional status based on the regular use by office staff and the Respondent of the name "Dr. Rossie" to refer to Madjaroff. I have considered that other patients and employees understood that Madjaroff was a P.A. But that does not negate the evidence that the Respondent's promotion of the term "Dr. Rossie" on the website and in the office was confusing and misleading.[2]

The evidence also indicated that Madjaroff's business card that was maintained in the Respondent's office and was authorized by the Respondent could cause confusion among patients, employees, and other individuals who were not sophisticated, highly trained health care providers. That card included the following abbreviations: "FMG – MD, PA – C, MPAS." The card also stated "General and Cosmetic Dermatology." (Resp. Ex. K.) The abbreviations stood for "Foreign Medical Graduate – Medical Doctor, Physician Assistant – Certified, Masters in Physician Assistant Studies." The Board did not charge the Respondent with a violation of the Act based on the information set forth on Madjaroff's pre-printed business card. However, the information contained on Madjaroff's business card is relevant to the confusion that existed in the Respondent's medical office regarding

[2] Even if I had discounted Gerami's testimony, this would not have changed my decision.

Madjaroff's professional status and, as explained below, is relevant to the issue of intent.

C. Intent

The State alleges that the Respondent's actions demonstrate the intent to represent that Madjaroff was practicing medicine as a licensed physician in Maryland. The statute states in pertinent part:

> Except as otherwise provided in this article, a person may not use the words or term "Dr.", "doctor", "physician", "D.O.", or "M.D." with the *intent* to represent that the person practices medicine, unless the person is:
>
> (1) Licensed to practice medicine under this title[.]

Md. Code Ann., Health Occ. § 14-602(b) (2009) (Emphasis supplied.)

The Respondent alleges that he did not violate section 14-602(b) of the statute because he did not intend to represent that Madjaroff practices medicine as a licensed physician in Maryland. The Respondent argues that under the provisions of section 14-602(b), the statute requires a finding of such intent before a violation can be found. The Respondent argues that the State presented no evidence in this record of the Respondent's intent to misrepresent that Madjaroff practiced medicine as a licensed physician. The Respondent contends that the evidence demonstrates just the opposite, that the Respondent explained to patients and employees in the office and on the website that Madjaroff was a physician assistant in his practice and was previously a physician in Europe.

Implied intent is a person's state of mind that can be inferred from speech or conduct, or from language used in an instrument to which the person is a party. *Black's Law Dictionary* 826 (8th ed. 2004). The Maryland Court of Appeals has held that because intent is a state of mind, it can be inferred from a person's actions. In *Fuller v. Fuller*, 249 Md. 28, 31 (1968), the Court stated:

> The actual intent of a person is a state of mind and as such can be shown to the world at large only through the outward acts and manifestations of the one who has formed the intent. This may be shown by what one has said or by inferring intent from what one has done. In many respects a person's actions may be more reliable indications of his true intent than what he had said to a third person, for one's intent as communicated to a third person today can easily be recanted tomorrow with

> nothing lost, while his acts, once done, are irrevocable and their consequences are there for the world to see.

Therefore, I conclude that it is appropriate to infer the Respondent's intent from his actions.

The Respondent denies that he intended to misrepresent that Madjaroff practices medicine as a licensed physician in Maryland.[3] I agree that in order to find the Respondent guilty of unprofessional conduct in the practice of medicine in this case, the State must establish that he had the requisite intent set forth in section 14-602(b). For the reasons addressed below, I find that the State has established, by a preponderance of the evidence, the requisite intent because it can reasonably be inferred from the facts in this record that the Respondent intended to represent that Madjaroff was practicing medicine as a licensed physician in Maryland.

When the Respondent met with Madjaroff in early 2006, he learned at that time that she was a physician assistant who had recently completed P.A. school. The Respondent hired Madjaroff as a physician assistant for his practice. (TR 483-484.) Despite his knowledge that Madjaroff's professional status in Maryland was limited to that of a physician assistant, the Respondent chose to market her on the website for his medical office as "Dr. Rossie." The usual understanding of the term "Dr.," when used in the context of a medical practice, is that it refers to a person who is practicing medicine as a licensed physician. That is the purpose of the language in section 14-602(b) which prohibits the use of this and similar terms by and regarding persons who are not licensed physicians. While the term "Dr." could, in another context, refer to someone who has a doctorate in a different field, or constitute a nickname for an individual outside the medical

[3] The Respondent did not argue that section 14-602(b) of the Health Occupations Article was only intended to regulate the conduct of an individual who is not a licensed physician who uses the term "Dr." to describe himself or herself, rather than to also regulate the conduct of a licensed physician who uses the term "Dr." to describe another individual who is not a licensed physician. I conclude that the provision does extend to a licensed physician who uses the term "Dr." to describe someone else, such as Madjaroff, who is a physician assistant and not a licensed physician. I conclude that such regulation was intended because the provision appears in Title 14 of the Health Occupations Article, which regulates licensed physicians in Maryland.

profession, when used in connection with a medical practice the reasonable and common sense meaning is that it refers to a licensed physician.

The Respondent acknowledged that he was solely responsible for the content of the website. He made the decision to use a web page for Madjaroff that included the heading "Dr. Rossie" without quotation marks. The use of a website accessible to the public is a marketing tool designed to generate business and enhance the reputation and qualifications of the employees in the medical practice. That marketing tool must be accurate and unambiguous and not violate any statute that regulates the conduct of the medical profession. When the Respondent included Madjaroff's name in the heading as "Dr. Rossie," he intended to give the public the impression that the Respondent's medical practice employed two physicians, rather than one. A careful review of the biographical information that appeared under the "Dr. Rossie" heading from at least January 10, 2008 through April 21, 2009 demonstrates that it emphasized Madjaroff's practice of dermatology and her medical degree in Europe in the first two lines of the paragraph. The paragraph did not even mention Madjaroff's professional status as a physician assistant until the fourth line. In line five, the paragraph again referred to Madjaroff as "Dr. Rossie" in quotation marks. The paragraph was confusing and could reasonably lead one to conclude that Madjaroff was licensed as a physician who had elected to obtain additional training and licensure as a physician assistant. Although Madjaroff's medical degree was obtained in Bulgaria, the Respondent chose to state that she obtained her medical degree in Europe, a broader region and arguably more desirable location from a marketing perspective. Certainly these factors raise the question of why the paragraph was written as it was, and why Madjaroff's status as a physician assistant was buried lower in the paragraph. The Respondent was solely responsible for the website and for drafting the language, and this language remained unchanged for at least fifteen months.

The Respondent was not prohibited from referring to Madjaroff's prior experience as a physician in Bulgaria. However, he was obligated to present clear and accurate information and was prohibited from emphasizing her experience as a former foreign doctor above her current status as a certified physician assistant in Maryland, with no legal authority to practice medicine as a licensed physician. The Respondent chose to draft a confusing biography that emphasized her practice of dermatology and her "medical degree in Europe," and suggested that upon relocating to the United States she obtained another degree, this time as a physician assistant. I conclude that this implies intent by the Respondent to represent to the public that Madjaroff was a physician and that the Respondent's medical practice employed two physicians.

A clear illustration of the problem with the manner in which the Respondent drafted Madjaroff's biography on his website is demonstrated by the subsequent revisions that are part of this record. It was not until July 9, 2009, more than eighteen months after he first included the "Dr. Rossie" heading in his website, that he made substantial modifications.[4] At that time, he changed the format to include a web page for "Our Staff" that included biographies for the Respondent, Madjaroff, and his office nurse. (State Ex. 12E.) The first sentence of the new paragraph describing Madjaroff's biography stated as follows: "*Rossie Madjaroff, P.A. is a physician assistant* with extensive experience in general and cosmetic dermatology." (State Ex. 12E.)(Emphasis supplied.) This was the first time the Respondent chose to state up front on his website in the first line of the Madjaroff biography that she was a *physician assistant.* Once he chose to clarify her current professional status as a physician assistant at the very beginning of the paragraph, then the

[4] Although the Respondent changed the heading on the website to read "Rossie Madjaroff, P.A." on or about June 2, 2009, the biography that followed remained virtually unchanged until July 9, 2009. (State Ex. 12D, 12E.)

additional information he included about her past experience in graduating from medical school and practicing dermatology in Europe was no longer confusing or misleading. However, the quoted reference to "Dr. Rossie" in the last sentence of the paragraph remained inappropriate and should have been deleted entirely. As previously stated, there is no exception in section 14-602(b) of the statute, that prohibits use of the term "Dr." and other similar terms, to allow the term to be used if it is a nickname or because the individual previously practiced as a physician in a foreign country.

Madjaroff stated that the Respondent told her that his use of the terminology "Dr. Rossie" was a good way for him to begin promoting her. (TR 202). Madjaroff also stated that the Respondent was really proud to explain that she had a medical degree in Bulgaria. (TR 216-217). She stated further that the Respondent believed Madjaroff's background as a foreign trained physician was an extra benefit that would enable patients to feel more relaxed and comfortable. (TR 204, 218.) Consequently, the Respondent admitted to Madjaroff that his purpose in using this name was to enhance her qualifications in the eyes of the public. I found Madjaroff's testimony in this regard to be logical, straightforward, and without motive for fabrication. I conclude by a preponderance of the evidence that the Respondent intended to give the impression to his patients that Madjaroff was practicing medicine as a physician when he used the term "Dr. Rossie" and emphasized her Bulgarian medical degree before identifying her subsequent training as a physician assistant. To the extent that the Respondent denied this, I do not find his denial credible. It is self-serving and inconsistent with his regular practice of representing to the public on the website and in the office that his office employed two physicians rather than one.

The evidence also established that the Respondent met with his staff and decided that Madjaroff should be called "Dr. Rossie" in the office. Wallace confirmed that the staff called Madjaroff "Dr. Rossie" for three years until the 2009 staff meeting when the Respondent instructed them to stop this practice. While the Respondent may have liked the name "Dr. Rossie" for several reasons, which he

characterizes as a nickname, and may have been proud of her European medical degree, his use of the term "Dr. Rossie" was designed to give current and potential patients the impression that Madjaroff was a physician and was more qualified in Maryland than she actually was. Madjaroff admitted that she was unable to become licensed as a physician in Maryland because she could not pass the medical licensing exam offered to foreign trained medical doctors. Madjaroff explained that the Respondent asked her to furnish all of her professional papers and licensing exams so he would be familiar with her professional background and qualifications. (TR 204.) This included her attendance at a P.A. program in Maryland after she failed to pass the licensing exams that were required to become licensed as a physician in Maryland. Yet, despite this knowledge, the Respondent was the architect of the strategy to represent her on his medical office website and in his medical office as a doctor – "Dr. Rossie."

The evidence also established that the Respondent's office staff regularly referred to Madjaroff as "Dr. Rossie" for several years. The Respondent originated this practice, was aware that his office staff used this name, and he used the "Dr. Rossie" terminology himself at times. The Respondent also approved Madjaroff's business card that was regularly displayed at the front desk in the office. The top left corner of the business card stated as follows:

> Rossie Madjaroff
> FMG-MD, PA-C, MPAS
> General and Cosmetic Dermatology

(Resp. Ex. K.) The "MD" on the card stood for "medical doctor." The "MD" designation appeared on Madjaroff's business card before the "PA-C" designation for "Physician Assistant – Certified." Moreover, the "P.A." designation did not appear on the business card immediately after Madjaroff's name as it did on the revised website.

As discussed above, several patients initially believed that Madjaroff was a licensed physician in Maryland because the office staff regularly referred to her as "Dr. Rossie," because a receptionist identified Madjaroff as a dermatologist, and because the office manager gave a patient a

business card in which she wrote, "Dr. Rossie Madjaroff." It was only after these patients inquired, received the "About Our Staff" document, or viewed the Respondent's revised website that they learned that Madjaroff was not a physician in Maryland. The Respondent approved the use of the name "Dr. Rossie," approved Madjaroff's pre-printed business card, and he was in charge of his medical practice and responsible for the conduct of his office staff. Even though the Respondent did not authorize Wallace to write "Dr. Rossie Madjaroff" on a business card, it was his policy that led to this result. The Respondent acknowledged his responsibility when he subsequently instructed his staff to stop using the name "Dr. Rossie," and to ensure that patients understood Madjaroff's role as a physician assistant. Curiously, even after he issued this directive, revised the website, and created the "About Our Staff" document, the Respondent continued to improperly employ the name "Dr. Rossie" in the document and on the website. The Respondent's claim that some patients "fondly" referred to Madjaroff as "Dr. Rossie" was misleading because the use of the name by the Respondent's medical practice both on the website and in the office was orchestrated by the Respondent himself. Also puzzling, was Wallace's revelation that while the staff no longer used the "Dr. Rossie" name, they refrained from correcting patients who still used this name so as not to draw attention to the issue.

The Respondent denies that he intended to represent Madjaroff as a licensed physician in Maryland. The Respondent claims that he always introduced Madjaroff as a physician assistant, that Madjaroff introduced herself as a physician assistant, that she wore a lab coat and a name tag identifying her as a P.A., and exercised a subordinate role in the practice. He contends further that the information on the website was accurate and identified Madjaroff as a physician assistant.

These factors raised by the Respondent provide some evidence of mitigation, but they do not overcome the violation or the evidence of intent. While the evidence demonstrates that both the Respondent and Madjaroff generally introduced her as a physician assistant while treating patients

in an exam room, the evidence does not establish that every time the Respondent's staff used the name "Dr. Rossie," they followed that statement by immediately explaining that she was a physician assistant. The misrepresentation was perpetuated whenever the name was used alone without correction. As previously addressed, the use of the "Dr. Rossie" name caused some patients to conclude that she was a physician. The evidence established that the staff used the "Dr. Rossie" name in person and on the telephone and identified her as a dermatologist, which affected patients' understanding of her professional status and their decision making in selecting a health care provider and scheduling appointments.

Madjaroff's business card, approved by the Respondent, was particularly troublesome because no initials appeared immediately after Madjaroff's name, and the card listed the "M.D." designation before it listed the "P.A." designation. The card also included the description of "General and Cosmetic Dermatology." A layperson, who was not a trained health care professional and did not understand the meaning of each of the abbreviations, could reasonably conclude from the information on Madjaroff's business card that she was a physician. While the State's charges did not expressly allege that the information in Madjaroff's pre-printed business card established a separate violation, it is relevant and provides further evidence of the Respondent's intent to represent that Madjaroff was practicing medicine as a physician.

The Respondent also argued that the manner in which he and Madjaroff scheduled and treated patients, and the extensive training that he provided her, demonstrated that the Respondent was the supervising physician and Madjaroff the subordinate physician assistant. The mere fact that the Respondent held himself out as Madjaroff's supervisor and the more experienced health care professional does not negate the evidence of intent. The evidence presented regarding the Respondent's training and scheduling methods, and the manner in which patients were treated, could also demonstrate, particularly to a layperson, that the Respondent was the more experienced

supervising physician who owned the medical practice, and that Madjaroff was a less experienced physician and subordinate employee who was learning her profession. Additionally, this evidence could also demonstrate that the Respondent was trained as a surgeon and that Madjaroff was not. Furthermore, although the Respondent claimed that he was always present in the office when Madjaroff was treating patients, the evidence established that there were occasions, depending upon the nature of the treatment provided, when Madjaroff saw and treated a patient without the Respondent ever seeing the patient during that office visit.

The evidence showed that Madjaroff often took histories and conducted evaluations of patients before the Respondent entered the exam room. Moreover, the evidence demonstrated that Madjaroff frequently consulted with the Respondent outside the exam room or brought the Respondent in for consultation with a patient. This practice did not demonstrate by itself, as the Respondent argues, that he intended to hold her out as a physician assistant. It could reasonably demonstrate that the Respondent was a more experienced physician and supervisor and that Madjaroff was a less experienced physician and subordinate employee.

While Madjaroff's lab coat identified her as a physician assistant, she stated that she did not always wear it in the office. She indicated that the Respondent wanted the patients to feel more relaxed as though they were at a spa, so he instructed her during her employment that so long as she was professionally dressed, she was not required to wear her lab coat. (TR 218-219.) This was confirmed by several patients during the Board's investigation who did not recall seeing Madjaroff wearing her lab coat and recalled that she was nicely dressed. Madjaroff's name tag also identified her as a physician assistant. However, Madjaroff stated that the Respondent did not issue her a name tag until several months before she resigned her employment with the Respondent's medical office in early 2010. (TR 208, 219.)

For the foregoing reasons, I conclude by a preponderance of the evidence in the record that the evidence demonstrates that the Respondent used the term "Dr." with the intent to represent that Madjaroff was practicing medicine as a licensed physician in Maryland in violation of section 14-602(b) of the Health Occupations Article. I further conclude that this constitutes unprofessional conduct in the practice of medicine in violation of section 14-404(a)(3)(ii) of the Act.

Section 14-602(a)

The State also charges the Respondent with unprofessional conduct in the practice of medicine based on a violation of section 14-602(a) of the Act. The State alleges that the Respondent represented to the public, by a description of services, methods, procedures, or otherwise, that Madjaroff was authorized to practice medicine in Maryland.

The statute provides, at section 14-602(a) of the Act, as follows:

> Unless *authorized* to practice medicine under this title, a person may not represent to the public, by description of services, methods, or procedures, or otherwise, that the person is *authorized* to practice medicine in this State.

Md. Code Ann., Health Occ. § 14-602(a) (2009) (Emphasis supplied). The Respondent denies that he violated the terms of this statute.

Section 14-602(b) uses the term "authorized" rather than the term "licensed" with regard to the practice of medicine. The language set forth in the statute shall be construed to have a distinct meaning and not be superfluous. A review of the definitional sections in Title 15 of the Health Occupations Article, which govern the certification of physician assistants in Maryland, demonstrate that a physician assistant is certified to perform delegated medical acts under the supervision of a physician. "Delegated medical acts" means activities that constitute the practice of medicine delegated by a physician. A physician assistant may perform medical acts that are delegated by a supervising physician to the physician assistant within the supervising physician's

scope of practice, and appropriate to the physician assistant's education, training, and experience. Md. Code Ann., Health Occ. § 15-101(m), (h), (n) (2009).

Although Board-certified in plastic surgery, the Respondent was trained in plastic surgery and dermatology and practices both in his office. Madjaroff was trained as a physician in medical school in Bulgaria and practiced dermatology in Bulgaria for about twelve years. A certified physician assistant may practice medicine under the supervision of a licensed physician according to the language in Title 15 of the Health Occupations Article. Although not entirely clear from this record, it is presumed that the charge involving section 14-602(a) of the Act is based on the language the Respondent included in his website regarding Madjaroff's professional background and the activities and services that she was able to provide in the Respondent's medical practice. My analysis of the alleged violation under section 14-602(a) excludes the Respondent's use of the term "Dr. Rossie," which has already been addressed at length above under section 14-602(b).

I have considered the Respondent's training and experience, the scope of his practice and his supervision of Madjaroff, as well as Madjaroff's education, training, and experience, as the statutes provide. In addition, the website indicated at various times that Madjaroff was working in conjunction with the Respondent or was working under the direction the Respondent. As a result, I do not find that the State has established on this record that the Respondent misrepresented to the public, by description of services, methods, or procedures, or otherwise, that Madjaroff was authorized to practice medicine in Maryland. Although Madjaroff was not *licensed* to practice medicine in Maryland under Title 14, she was *authorized* to practice medicine under the supervision of the Respondent, a licensed Maryland physician. The State did not offer into evidence the delegation agreement signed by both the Respondent and Madjaroff that is required under Titles 14 and 15 of the Health Occupations Article. Therefore, the actual content and scope of that agreement is unclear in this record.

Based on all of the evidence in this record, I do not find that the State has established that the Respondent was responsible for a separate violation of section 14-602(a) that is distinct from the violation established under section 14-602(b) of the Act.

Sanction

Having found the Respondent responsible for unprofessional conduct in the practice of medicine, I shall consider the appropriate sanction to be imposed. The State recommends that the Respondent be sanctioned for his violation with a reprimand, three years of probation, a one-to-one ethics tutorial, and a $10,000.00 fine. (TR 554-555.)

The Board is authorized to "reprimand any licensee, place any licensee on probation, or suspend or revoke a license" if a licensee violates any of the provisions of section 14-404 of the Act. Md. Code Ann., Health Occ. § 14-404(a) (Supp. 2011). The Board may impose a monetary penalty instead of, or in addition to, such violations. Md. Code Ann., Health Occ. § 14-405.1 (2009); COMAR 10.32.02.06A, C(2)(b). The Board abuses its discretionary authority to impose sanctions only when the discipline imposed is "extreme and egregious." *Bd. of Physician Quality Assurance v. Mullan*, 381 Md. 157, 171 (2004).

The State argues that because the Respondent was previously disciplined for unprofessional conduct in the practice of medicine, the sanction in this case with regard to the length of the probation and requirement for a one-to-one tutorial in ethics should be based on progressive discipline with the issuance of a more severe sanction than that imposed previously to account for the Respondent's disciplinary history as a repeat offender. It does not seek a more severe sanction with regard to the reprimand or the amount of the fine. The State contends that if the sanction imposed in this case is virtually the same as that rendered in the prior matter, this increases the risk that the Respondent will not alter his behavior and conform to the requirements of the Act.

The Respondent argues that his past disciplinary history is so prejudicial that it should not be considered at all and that "it is almost a violation of due process" for the State to present evidence of prior sanctions. (TR 587.)

I disagree with the Respondent's position. The State made clear that it was submitting the Respondent's prior Consent Order only for its relevance to the issue of sanctions. I have considered the Respondent's prior disciplinary history only with regard to the appropriate sanction. The Respondent's contention that he could not receive a fair hearing because the State was permitted to submit evidence of his prior disciplinary history is unwarranted. In *Neutron Products, Inc. v. Dep't of Environment*, 166 Md. App. 549, 594 (2006), the Maryland Court of Special Appeals determined that "it is not arbitrary or capricious to consider a violator's repeat history of infractions when imposing a sanction."

While progressive discipline is an appropriate principle, it is also appropriate to consider the nature of the violation in this case and the previous conduct for which the Respondent was disciplined. Both this case and the Respondent's prior discipline involved unprofessional conduct in the practice of medicine in violation of section 14-404(a)(3)(ii) of the Act. However, the Respondent's previous violation was directly related to the provision of patient care. The violation in this case is intertwined with patient care and might impact patient decision making, but it does not involve the actual delivery of patient care. It is also appropriate to consider mitigating factors when fashioning a sanction for this violation.

On the one hand, the evidence established that the Respondent used the "Dr. Rossie" designation on his website for at least fifteen months without revision, and authorized the use of the "Dr. Rossie" name in his office for approximately three years without modification, that he was responsible for orchestrating this conduct, and that he did it with the intent to represent that

Madjaroff, a physician assistant, was a physician. This conduct was misleading and intentional and gave patients the impression that Madjaroff was a licensed physician in Maryland.

In mitigation, however, both the Respondent and Madjaroff introduced her as a physician assistant when treating patients in the exam room and the Respondent's website included information that Madjaroff was a physician assistant. Madjaroff also wore a lab coat and name tag at times with identification as a physician assistant. After the Respondent was notified that the Board was concerned with his use of the "Dr. Rossie" name, he took steps to revise his website and change his office practice.

Upon consideration of these factors, I conclude that that the Respondent's misconduct warrants issuance of a reprimand under section 14-404(a) of the Act.

The State also seeks a $10,000.00 fine, completion of a one-to-one tutorial in ethics, and three years of probation. The regulations provide that if a penalty is imposed in addition to a reprimand, the fine shall be for not less than $5,000.00 and not more than $30,000.00. COMAR 10.32.02.06C(4)(d). The regulations also address factors to be considered in determining the amount of a fine. COMAR 10.32.02.06C(3). The factors to be considered with regard to the amount of the fine include the extent to which the Respondent derived any financial benefit from the misconduct, the willfulness of the sanctioned conduct, and the extent of actual or potential harm caused by the conduct.

Although the Respondent's actions might have been undertaken for marketing purposes, there is no evidence that he derived any actual financial benefit from his misconduct. As addressed above, I have concluded that the Respondent intended to represent that his physician assistant was licensed as a physician in Maryland. There is evidence in this record that the Respondent's actions caused actual and potential public harm. The evidence established that some patients initially believed Madjaroff was a physician, which could have affected their decision making with regard to seeking treatment

from Madjaroff. Furthermore, the information included on the Respondent's website and information provided in the office could have resulted in potential harm to other current or prospective patients with regard to their clear knowledge of Madjaroff's professional qualifications.

I have considered the mitigating factors noted above regarding the Respondent's actions in also identifying Madjaroff as a physician assistant on the website and in the office and taking prompt steps to revise his website and office practices after he learned of the Board's concerns. I have also considered that the State did not prove a violation under section 14-602(a) of the Act. Although both this matter and the Respondent's previous discipline are based on a finding of unprofessional conduct in the practice of medicine, this case is distinct in that it does not involve the actual delivery of patient care.

Accordingly, I propose a penalty in the amount of $5,000.00, placement on two years probation, and the requirement that the Respondent complete a tutorial in professional ethics that is not required to be one-to-one. I conclude that is the appropriate sanction under the circumstances of this case.

CONCLUSIONS OF LAW

I conclude that the Respondent violated section 14-404(a)(3)(ii) of the Act for engaging in unprofessional conduct in the practice of medicine based on the violation of section 14-602(b) of the Act. I also find that the State has not proven a violation under section 14-602(a) of the Act. I further conclude that, as a result, the Board may discipline and fine the Respondent. Md. Code Ann., Health Occ. § 14-404(a) (Supp. 2011) and § 14-405.1 (2009); COMAR 10.32.02.06. I conclude that the appropriate sanction in this case is a reprimand, a $5,000.00 fine, two years probation, and completion of a tutorial in professional ethics that is not required to be one-to-one.

PROPOSED DISPOSITION

I **PROPOSE** that the charges filed by the Board on January 31, 2011 against the Respondent alleging a violation of section 14-404(a)(3)(ii) of the Act arising under section 14-602(b) be **UPHELD** consistent with this Proposed Decision. I also **PROPOSE** that the alleged violation arising under section 14-602(a) of the Act is **NOT UPHELD**. I further **PROPOSE** that the Board issue a reprimand, impose a fine of $5,000.00, place the Respondent on two years probation, and require the Respondent to complete a tutorial in professional ethics that is not required to be one-to-one.

January 17, 2012
Date Decision mailed

Douglas E. Koteen
Administrative Law Judge

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NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party may file exceptions, in writing, to this Proposed Decision with the Board of Physicians within fifteen days of issuance of the decision. Md. Code Ann., State Gov't § 10-216 (2009) and COMAR 10.32.02.03F. The Office of Administrative Hearings is not a party to any review process.

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