

IN THE MATTER OF	*	BEFORE THE
GARY J. KERKVLiet, M.D.	*	MARYLAND STATE
Respondent	*	BOARD OF PHYSICIANS
License Number: D45708	*	Case Number: 2016-1072B
* * * * *	*	* * * * *

CONSENT ORDER

On March 13, 2017, Disciplinary Panel B ("Panel B") of the Maryland State Board of Physicians (the "Board") charged Gary K. Kerkvliet, M.D. (the "Respondent"), License Number D45708, under the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. II ("Health Occ.") §§ 14-101 *et seq.* (2014 Repl. Vol. and 2015 Supp.).

The pertinent provision of the Act under Health Occ. II § 14-404 provides the following:

- (a) Subject to the hearing provisions of § 14-405 of this subtitle, a disciplinary panel, on the affirmative vote of a majority of the quorum of the disciplinary panel, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:
 - ...
 - (3) Is guilty of: (ii) Unprofessional conduct in the practice of medicine[.]

THE AMA CODE OF MEDICAL ETHICS

The American Medical Association ("AMA") Code of Medical Ethics provides in pertinent part:

OPINION 8.19 -- Self-Treatment or Treatment of Immediate Family Members

Physicians generally should not treat themselves or members of their immediate families. Professional objectivity may be compromised when an immediate family member or the physician is the patient; the physician's personal feelings may unduly influence his or her professional judgment, thereby interfering with the care being delivered. Physicians may fail to probe sensitive areas when taking the medical history

or may fail to perform intimate parts of the physical examination. Similarly, patients may feel uncomfortable disclosing sensitive information or undergoing an intimate examination when the physician is an immediate family member. This discomfort is particularly the case when the patient is a minor child, and sensitive or intimate care should especially be avoided for such patients. When treating themselves or immediate family members, physicians may be inclined to treat problems that are beyond their expertise or training. If tensions develop in a physician's professional relationship with a family member, perhaps as a result of a negative medical outcome, such difficulties may be carried over into the family member's personal relationship with the physician.

Concerns regarding patient autonomy and informed consent are also relevant when physicians attempt to treat members of their immediate family. Family members may be reluctant to state their preference for another physician or decline a recommendation for fear of offending the physician. In particular, minor children will generally not feel free to refuse care from their parents. Likewise, physicians may feel obligated to provide care to immediate family members even if they feel uncomfortable providing care.

It would not always be inappropriate to undertake self-treatment or treatment of immediate family members. In emergency settings or isolated settings where there is no other qualified physician available, physicians should not hesitate to treat themselves or family members until another physician becomes available. In addition, while physicians should not serve as a primary or regular care provider for immediate family members, there are situations in which routine care is acceptable for short-term, minor problems. Except in emergencies, it is not appropriate for physicians to write prescriptions for controlled substances for themselves or immediate family members.

On June 28, 2017, a conference with regard to this matter was held before Panel B, sitting as a Disciplinary Committee for Case Resolution ("DCCR"). As a result of the DCCR, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

BACKGROUND/LICENSING INFORMATION

1. At all times relevant to these charges, the Respondent was and is licensed to practice medicine in the State of Maryland. The Respondent was initially licensed to practice medicine in Maryland on February 8, 1994, under License Number D45708.

The Respondent's license is current and is scheduled for renewal on September 30, 2018.

2. The Respondent is board-certified in internal medicine and is a member of a group practice located in Lutherville, Maryland.¹

BOARD INVESTIGATIVE FINDINGS

3. On or about June 28, 2016, the Board received a complaint from a managed health care provider alleging that since 2014, the Respondent had been writing multiple prescriptions for himself and a family member. The complaint stated that since 2014, the Respondent self-prescribed medications on over 37 separate occasions.²

4. As a result of this complaint, the Board initiated an investigation of this matter. Pursuant to this investigation, the Board requested that the Respondent respond to the above complaints.

5. In a letter dated October 14, 2016, the Respondent acknowledged that beginning in 2014, he had written prescriptions for various medications for himself and a family member, and that he did not create or maintain a medical record chart for himself when writing such prescriptions. The Respondent further stated that he maintained a record of two phone encounter notes for his family member.

6. In the October 14, 2016 letter, the Respondent acknowledged that "as a general matter," he has prescribed to himself and, on occasion, his family member. The Respondent listed 11 different medications that he had prescribed to his family member

¹ The names of individuals and facilities are confidential.

² To maintain confidentiality, the identity of the medications prescribed by the Respondent to himself and his family member are not specified in this document. The Respondent is aware of this information.

and 17 different medications that he prescribed to himself. None of the medications are Controlled Dangerous Substances.

7. The information contained in ¶¶5 and 6 is consistent with records obtained by the Board in furtherance of its investigation.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, Disciplinary Panel B concludes as a matter of law that the Respondent is guilty of unprofessional conduct in the practice of medicine, in violation of Health Occ. II § 14-404(a)(3)(ii).

ORDER

It is, on the affirmative vote of a majority of the quorum of Disciplinary Panel B, hereby

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

ORDERED that the Respondent shall comply with the Maryland Medical Practice Act, Md. Code Ann., Health Occ. II §§ 14-101 – 14-702, and all laws and regulations governing the practice of medicine in Maryland; and it is further

ORDERED that, unless stated otherwise in the order, any time period prescribed in this order begins when the Consent Order goes into effect. The Consent Order goes into effect upon the signature of the Board's Executive Director, who signs on behalf of Panel B; and it is further

ORDERED that this Consent Order is a public document pursuant to Md. Code
Ann., Gen. Prov. §§ 4-101 *et seq.* (2014 & 2015 Supp.).

09/05/2017

Date

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

CONSENT

I, Gary J. Kerkvliet, M.D., acknowledge that I had the opportunity to be represented by counsel before entering this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

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

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

9-1-17
Date

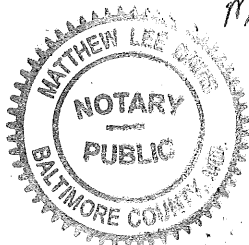

Gary J. Kerkvliet
Respondent

NOTARY

STATE OF MARYLAND
CITY/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 1st day of September 2017, before me, a Notary Public of the foregoing State and City/County, personally appeared Gary J. Kerkvliet, M.D. and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.



mld
Matthew Lee Davis
Notary Public
Matthew Lee Davis

mhw

My commission expires: January 27, 2018

