

IN THE MATTER OF * **BEFORE THE**
AHMAD O. ALJAMAL, M.D. * **MARYLAND STATE**
Respondent * **BOARD OF PHYSICIANS**
License Number: D97464 * **Case Number: 2224-0016A**

* * * * *

FINAL DECISION AND ORDER

BACKGROUND

On October 23, 2023, Disciplinary Panel A of the Maryland State Board of Physicians (“Board”) charged Ahmad O. Aljamal, M.D. with unprofessional conduct in the practice of medicine, being professionally, physically, or mentally incompetent, being addicted to or habitually using any narcotic or controlled dangerous substance, and providing professional services while under the influence. *See Md. Code Ann., Health Occ. (“Health Occ.”) § 14-404(a)(3)(ii), (4), (8), and (9).*

The case was forwarded to the Office of Administrative Hearings (“OAH”) for an evidentiary hearing and a proposed decision. On August 26 and 27, 2024, a hearing was held before an Administrative Law Judge (“ALJ”) at OAH. At the hearing, the State presented testimony from four witnesses and Dr. Aljamal testified on his own behalf.

On November 15, 2024, the ALJ issued a proposed decision concluding that Dr. Aljamal was guilty of unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii). The ALJ proposed that the remaining charges be dismissed. Accordingly, the ALJ proposed that the Board’s charges be upheld, in part, and dismissed in part, and recommended that Dr. Aljamal’s license be suspended until he has been abstinent for six months.

Neither party filed exceptions to the ALJ's proposed decision. On January 29, 2025, this matter came before Disciplinary Panel B ("Panel B") of the Board. Panel B has considered the record in this case, including the proposed decision of the ALJ, and now issues this order based on Panel B's findings of fact and conclusions of law. *See* COMAR 10.32.02.05B(4).

FINDINGS OF FACT

Panel B adopts the ALJ's proposed joint factual stipulations, numbered 1 – 21, and the proposed findings of fact, numbered 1 - 16. *See* ALJ proposed decision, attached as **Exhibit 1**. These facts are incorporated by reference into the body of this document as if set forth in full. Neither party filed exceptions to any of the factual findings and the factual findings were proved by a preponderance of the evidence. The Panel also adopts the ALJ's discussion set forth on pages 12 - 48. The discussion section is incorporated by reference into the body of this document as if set forth in full.

CONCLUSIONS OF LAW

Panel B concludes that Dr. Aljamal is guilty of unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii). The remaining charges are dismissed.

SANCTION

Panel B agrees with the sanction of a six-month suspension recommended by the ALJ. The Panel will require, as a condition of the suspension, that Dr. Aljamal enroll in the Maryland Participant Rehabilitation Program ("MPRP") and participate and comply with all therapy, treatment, evaluations, and screenings as directed by MPRP. The Panel will also impose a reprimand and terms and conditions of probation, which may be imposed, in the Panel's discretion following the period of suspension.

ORDER

Based upon the findings of fact and conclusions of law, it is, on the affirmative vote of a majority of the quorum of Board Disciplinary Panel B, hereby

ORDERED that Ahmad Aljamal, M.D., is **REPRIMANDED**; and it is further

ORDERED that Dr. Aljamal's license to practice medicine is **SUSPENDED¹** for a minimum of **SIX (6) MONTHS**. During the suspension², Dr. Aljamal shall comply with the following terms and conditions of the suspension:

(1) Dr. Aljamal shall enroll in the Maryland Professional Rehabilitation Program (MPRP)

as follows:

(a) Within 5 business days, Dr. Aljamal shall contact MPRP to schedule an initial consultation for enrollment;

(b) Within 15 business days Dr. Aljamal shall enter into a Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP;

(c) Dr. Aljamal shall fully and timely cooperate and comply with all MPRP's referrals, rules, and requirements, including, but not limited to, the terms and conditions of the Participant Rehabilitation Agreement(s) and Participant Rehabilitation Plan(s) entered with MPRP, and shall fully participate and comply with all therapy, treatment, evaluations, and screenings as directed by MPRP;

(d) Dr. Aljamal shall sign and update the written release/consent forms requested by the Board and MPRP, including release/consent forms to authorize MPRP to make verbal and written disclosures to the Board and to authorize the Board to disclose relevant information from MPRP records and files in a public order. Dr. Aljamal shall not withdraw his release/consent;

(e) Dr. Aljamal shall also sign any written release/consent forms to authorize MPRP to exchange with (i.e., disclose to and receive from) outside entities (including all of Dr.

¹ If Dr. Aljamal's license expires during the period of suspension, the suspension and any conditions will be tolled.

² During the suspension period, Dr. Aljamal shall not:

(1) practice medicine;
(2) take any actions to hold himself out to the public as a current provider of medical services;
(3) authorize, allow or condone the use of Dr. Aljamal's name or provider number by any health care practice or any other licensee or health care provider;
(4) function as a peer reviewer for the Board or for any hospital or other medical care facility in the state;
(5) prescribe or dispense medications; or
(6) perform any other act that requires an active medical license.

Aljamal's current therapists and treatment providers) verbal and written information concerning Dr. Aljamal and to ensure that MPRP is authorized to receive the medical records of Dr. Aljamal, including, but not limited to, mental health and drug or alcohol evaluation and treatment records. Dr. Aljamal shall not withdraw his release/consent;

(f) Dr. Aljamal's failure to comply with any of the above terms or conditions including terms or conditions of the Participant Rehabilitation Agreement(s) or Participant Rehabilitation Plan(s) constitutes a violation of this Final Decision and Order;

(g) If, upon the authorization of MPRP, Dr. Aljamal transfers to a rehabilitation program in another state, Dr. Aljamal's failure to comply with any term or condition of that state's [the out-of-state's] rehabilitation program, constitutes a violation of this Final Decision and Order. Dr. Aljamal shall also sign any out-of-state written release/consent forms to authorize the Board to exchange with (i.e., disclose to and receive from) the out-of-state program verbal and written information concerning Dr. Aljamal, and to ensure that the Board is authorized to receive the medical records of Dr. Aljamal including, but not limited to, mental health and drug or alcohol evaluation and treatment records. Dr. Aljamal shall not withdraw his release/consent; and it is further

ORDERED that Dr. Aljamal shall not apply for early termination of suspension; and it is further

ORDERED that after the minimum period of suspension imposed by this Final Decision and Order has passed and Dr. Aljamal has fully and satisfactorily complied with all terms and conditions for the suspension Dr. Aljamal may submit a written petition to the disciplinary panel for termination of the suspension. Dr. Aljamal may be required to appear before the disciplinary panel to discuss his petition for termination. If the disciplinary panel determines that it is safe for Dr. Aljamal to return to the practice of medicine, the suspension shall be terminated through an order of the disciplinary panel, and the disciplinary panel may impose any terms and conditions it deems appropriate on Dr. Aljamal's return to practice, including, but not limited to, probation. If the disciplinary panel determines that it is not safe for Dr. Aljamal to return to the practice of medicine, the suspension shall be continued through an order of the disciplinary panel for a length of time determined by the disciplinary panel, and the disciplinary panel may impose any additional terms and conditions it deems appropriate;

ORDERED that, if Dr. Aljamal allegedly fails to comply with any term or condition imposed by this Final Decision and Order, Dr. Aljamal shall be given notice and an opportunity for a hearing. If the disciplinary panel determines there is a genuine dispute as to a material fact, the hearing shall be before an Administrative Law Judge of the Office of Administrative Hearings followed by an exceptions process before a disciplinary panel; and if the disciplinary panel determines there is no genuine dispute as to a material fact, Dr. Aljamal shall be given a show cause hearing before a disciplinary panel; and it is further

ORDERED that after the appropriate hearing, if the disciplinary panel determines that Dr. Aljamal has failed to comply with any term or condition imposed by this Final Decision and Order, the disciplinary panel may reprimand Dr. Aljamal, place Dr. Aljamal on probation with appropriate terms and conditions, or suspend with appropriate terms and conditions, or revoke Dr. Aljamal's license to practice medicine in Maryland. The disciplinary panel may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine on Dr. Aljamal; and it is further

ORDERED that this Order shall not be amended or modified and future requests for modification will not be considered; and it is further

ORDERED that Dr. Aljamal is responsible for all costs incurred in fulfilling the terms and conditions of this Order; and it is further

ORDERED that this is a public document. *See* Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6).

02/13/2025
Date

Signature On File

Christine A. Farrelly, Executive Director
Maryland Board of Physicians

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Md. Code Ann., Health Occ. § 14-408, Dr. Aljamal to seek judicial review of this Final Decision and Order. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of this Final Decision and Order. The cover letter accompanying this Order indicates the date the decision is mailed. Any petition for judicial review shall be made as provided for in the Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If Dr. Aljamal files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

**Maryland State Board of Physicians
Christine A. Farrelly, Executive Director
4201 Patterson Avenue
Baltimore, Maryland 21215**

Notice of any petition should also be sent to the Board's counsel at the following address:

**Stacey Darin
Assistant Attorney General
Maryland Department of Health
300 West Preston Street, Suite 302
Baltimore, Maryland 21201**

Exhibit 1:

Administrative Law Judge's Proposed Decision

MARYLAND STATE BOARD OF * **BEFORE JEFFREY T. BROWN,**
PHYSICIANS * **AN ADMINISTRATIVE LAW JUDGE**
v. * **OF THE MARYLAND OFFICE**
AHMAD O. ALJAMAL, * **OF ADMINISTRATIVE HEARINGS**
RESPONDENT * **OAH Nos.: MDH-MBP1-71-24-05426**
LICENSE No.: D97464 *

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FACTUAL STIPULATIONS
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
PROPOSED DISPOSITION

STATEMENT OF THE CASE

On October 23, 2023, the Maryland State Board of Physicians (Board) issued charges against and summarily suspended the license to practice medicine of Ahmad O. Aljamal, M.D. (Respondent) for alleged violations of the Maryland Medical Practice Act (Act) governing the practice of medicine. Md. Code Ann., Health Occ. §§ 14-101 through 14-508, and 14-601 through 14-607 (2021 & Supp. 2024)¹; Md. Code Ann., State Gov't § 10-226(c) (2021 and Supp. 2024)²; Code of Maryland Regulations (COMAR) 10.32.02.08. Specifically, the Board charged the Respondent with violating the following sub-subsections of Section 14-404(a): (3)(ii) (unprofessional conduct in the practice of medicine), (4) (is professionally, physically, or mentally incompetent), (8) (is addicted to or habitually abuses, any narcotic or controlled

¹ Unless otherwise stated, all subsequent references to the Health Occupations Article are to the 2021 volume. There were no substantive changes to this statute in the 2024 supplement.

² All subsequent references to the State Government Article are to the 2021 volume.

dangerous substance (CDS), and/or (9) (provides professional services while using any narcotic or CDS) of the Act. Health Occ. § 14-404(a)(3)-(4), (8)-(9) (2021); COMAR 10.32.02.03E(3)(d). The disciplinary panel to which the complaint was assigned scheduled a meeting with the Respondent on February 14, 2024, to explore the possibility of resolution. COMAR 10.32.02.03E(9). On February 20, 2024, the matter was delegated to the Office of Administrative Hearings (OAH) for a hearing, including the issuance of proposed findings of fact, proposed conclusions of law, and a proposed disposition. COMAR 10.32.02.03E(5); COMAR 10.32.02.04B(1).

On May 3, 2024, I held a scheduling conference via videoconference. COMAR 28.02.01.20B. Robert J. Gilbert, Assistant Attorney General, Deputy Counsel, and Administrative Prosecutor, and Rachael Krane, Assistant Attorney General, Administrative Prosecutor, represented the State of Maryland (State). Thomas J. Whiteford, Esquire, represented the Respondent, who was not present.

On July 17, 2024, I conducted a remote pre-hearing conference (Conference) via the Webex videoconference platform. COMAR 28.02.01.17A; COMAR 28.02.01.20B. Mr. Gilbert and Ms. Krane participated on behalf of the State. Mr. Whiteford participated on behalf of the Respondent, who was present. After an opportunity for input, the parties agreed that the hearing would be held on August 26, 27, and 28, 2024, commencing at 9:30 a.m. each day, at the OAH in Hunt Valley, Maryland.

I convened the hearing as scheduled on August 26 and 27, 2024.³ Health Occ. § 14-405(a)-(b) (Supp. 2024); COMAR 10.32.02.04; COMAR 28.02.01.20B. Ms. Krane and Mr. Gilbert represented the State. Mr. Whiteford and Julia Levine, Esquire, represented the Respondent, who was present.

³ Since we concluded on August 27, 2024, the final date of August 28, 2024 was cancelled.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act (APA), the rules for hearings before the Board, and the Rules of Procedure of the Office of Administrative Hearings. Md. Code Ann., State Gov't §§ 10-201 through 10-226; COMAR 10.32.02; COMAR 28.02.01.

ISSUES

1. Is the Respondent subject to sanction under section 14-404(a)(3)(ii) of the Act for unprofessional conduct in the practice of medicine?
2. Is the Respondent subject to sanction under section 14-404(a)(4) of the Act for being professionally, physically, or mentally incompetent?
3. Is the Respondent subject to sanction under section 14-404(a)(8) of the Act for addiction to, or habitual abuses, of any narcotic or CDS, as defined in section 5-101 of the Criminal Law Article?
4. Is the Respondent subject to sanction under section 14-404(a)(9)(ii) of the Act for providing professional services while using any narcotic or CDS, as defined in section 5-101 of the Criminal Law Article, or other drug that is in excess of therapeutic amounts or without valid medical indication?
5. If so, what sanctions are appropriate?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following joint exhibits offered by the parties:

Jt. Ex. 1 - Joint Stipulations, August 26, 2024

Jt. Ex. 2 - Joint Demonstrative Exhibit: Chart of Drug Test Results, July 17, 2023 through January 12, 2024

I admitted the following exhibits into evidence on behalf of the State:

State Ex. 1 - Maryland State Board of Physicians Investigative Case File for Case No. 2224-0016, consisting of 252 pages (S001-S0252)⁴ divided into the following subparts:

State's Exhibit 1 cover page, (S001-S002)

Ex. 1(a) – Table of Contents for Board Investigative File, May 9, 2024 (S003-S005)

Ex. 1(b) – Respondent's Licensure Information (S007-S019), including:

- MBP Physician Profile Portal, printed July 18, 2024
- MBP Physician Profile Portal, undated
- Interstate Medical Licensure Compact Commission (IMLCC) Application for Expedited Licensure, September 20, 2022
- Attribute Verification, prepared for IMLCC, September 20, 2022

Ex. 1(c) – Mandated 10 Day Report and Letter from [REDACTED], D.O., August 4, 2024 (S021-025)

Ex. 1(d) – Board Investigative Memo by Amanda K. Jackson, August 18, 2024 (S029-S030)

Ex. 1(e) – Board initial contact letter to the Respondent, August 22, 2023 (S031-S038)

Ex. 1(f) – A set of documents consisting of an email from the Board to [REDACTED], August 22, 2023 (S039-S041); Subpoena to [REDACTED] (TRTMD), August 14, 2023 (S042); [REDACTED] response to the subpoena (S043-S110), including:

- Page of notes, undated (S044)
- Respondent's Curriculum Vitae (CV), current through June 2024 (S045)
- [REDACTED] – Respondent's Itinerary, March 9, 2023 through March 12, 2023, undated (S046-S047)
- [REDACTED] offer of employment letter to the Respondent, undated, signed by the Respondent on March 22, 2023 (S048-S049)
- Physician Employment Agreement, April 24, 2023 (S050-S063)
- Drug Enforcement Administration (DEA) Controlled Substance Registration Certificates (3), June 26, 2023 (S064-S065)
- DEA Controlled Substance Registration Certificate, October 21, 2021 (S066)
- IMLCC Medical License Issuance Information, June 5, 2023 (S067)

⁴ The numbering of the pages for each exhibit offered by the Board and by the Respondent includes a title page and often one or more blank pages. To maintain the continuity of the page numbers, I have identified the page numbers of each exhibit starting with its title page and ending with the last page before the next exhibit's title page.

- Nevada State Board of Pharmacy Controlled Licensure documents, October 31, 2023 (S068-S069)
- [REDACTED] Attire and Grooming Policy, signed by the Respondent on July 16, 2023 (S070-S072)
- [REDACTED] Drug-Testing Policy, signed by the Respondent on July 16, 2023 (S073-S075)
- [REDACTED] Written warning form, July 16, 2023 (S076)
- Email from [REDACTED] to the Respondent, July 19, 2023 (S077)
- American Toxicology, Inc. records, July 17-19, 2023 (S078-S084)
- Email from [REDACTED] (American Toxicology) to Ms. [REDACTED] with test results, August 7, 2023 (S085-S087)
- Cellular phone account page, July 19, 2023 (S088)
- iPad deactivation record, July 19, 2023 (S089)
- Locksmith invoice, July 19, 2023 (S090)
- Letter from [REDACTED], PLLC, to the Respondent, July 25, 2023 (S091-S093)
- Cashier's Check to the Respondent, July 21, 2023 (S094)
- [REDACTED] letter to the Nevada State Board of Medical Examiners, August 4, 2024 (S095)
- Package tracking information, August 8, 2023 (S096-S097)
- Additional copies of previously documented records, various dates (S098-S110)

Ex. 1(g) – Emails between the Board and Dr. [REDACTED]⁵, with attachments, August 28-30, 2023 (S111-S130)

Ex. 1(h) – Emails between the Respondent and the Board, August 28, 2023 to September 5, 2023 (S131-S138)

Ex. 1(i) – Emails between the Board and the Respondent's father, September 5, 2023 (S139-S144)

Ex. 1(j) – Letter from Mr. Whiteford to the Board, with attachments, September 12, 2023 (S145-S184)

Ex. 1(k) – Sworn interview transcript of [REDACTED], D.O., September 18, 2023 (S185-S204)

Ex. 1(l) – Sworn interview transcript of [REDACTED], September 19, 2023 (S205-S216)

Ex. 1(m) – Sworn interview transcript of [REDACTED], September 19, 2023 (S217-S240)

⁵ [REDACTED], M.D., was the Medical Director of the Maryland Professional Rehabilitation Program.

Ex. 1(n) – Text messages between [REDACTED] and the Respondent, August 3-5, 2023 (S241-S248)

Ex. 1(o) – Photograph of the Respondent at American Toxicology, July 17, 2023 (S249-S252)

State Ex. 2 - The Board's Order for Summary Suspension, October 18, 2023 (S253-S261)

State Ex. 3 - The Board's Charges Under the Medical Malpractice Act, October 23, 2023 (S263-S272)

State Ex. 4 - The Board's Order affirming summary suspension to the Respondent, November 2, 2023 (S273-S278)

State Ex. 5 - Curriculum Vitae (CV) of [REDACTED], M.D., undated (S279-S282)

State Ex. 6 - Report of Dr. [REDACTED], June 13, 2024 (S283-S288)

State Ex. 7 - Supplemental Report of Dr. [REDACTED], July 3, 2024 (S289-S293)

I admitted the following exhibits into evidence on behalf of the Respondent:

Resp. Ex. 1 - Respondent's CV, current through June 2024 (R001-R003)

Resp. Ex. 2 - A set of documents (R004 to R045) consisting of the following:

- American Toxicology Test Results, August 17-19 (R004-R011)
- Email from American Toxicology to [REDACTED], August 7, 2023 with attachments (R012-R014)
- Quest Diagnostics Medical Review Officer Report, August 14, 2023 (R015)
- United States Drug Testing Laboratories (USDTL) report, October 11, 2023 (R016)
- Omega Laboratories report, October 11, 2023 (R017)
- USDTL report, October 10, 2023 (R018-R019)
- Cansford Laboratories Expert Report, December 15, 2023 (R020-R030)
- Cansford Laboratories Expert Report, January 17, 2024 (R031-R045)

Resp. Ex. 3 - Email from Mr. Whiteford to [REDACTED], June 11, 2024, forwarding email with attachments from the Respondent to Mr. Whiteford, June 9, 2024 (R047-R059)

Resp. Ex. 4 - CV of [REDACTED], Ph.D., current through 2016 (R061-R063)

Resp. Ex. 5 - Report of Dr. [REDACTED], undated (R064-R068)

Resp. Ex. 6 - CV of [REDACTED], M.D., undated (R069-R074)

Resp. Ex. 7 - Report of Dr. [REDACTED], June 24, 2024 (R075-R082)

Testimony

The following witnesses testified on behalf of the State:

- [REDACTED], D.O.;
- [REDACTED];
- [REDACTED]; and
- [REDACTED], M.D., accepted as an expert in the fields of general medicine, addiction medicine, and as a Certified Medical Review Officer (MRO).

The Respondent testified on his own behalf, and presented no other witnesses.

PROPOSED FACTUAL STIPULATIONS

As a preliminary matter, the parties offered the following Joint Stipulations:

1. The [Board] issued [the Respondent] a license to practice medicine in Maryland on May 8, 2023 (License Number D97464), which was given an expiration date of September 30, 2024.
2. [The Respondent] is also licensed to practice medicine in Michigan (2021) and Nevada (2023).
3. [The Respondent] is board-certified in Internal Medicine.
4. On or about June 6, 2023, [the Respondent] began practicing at [REDACTED], a health care practice that has offices in Nevada and Maryland.
5. On July 17, 2023, [the Respondent], at [REDACTED]'s request, underwent urine toxicology testing at American Toxicology, a medical laboratory located in Nevada. A photograph was taken of [the Respondent] on that date at the laboratory.

6. On August 3-5, 2023, [REDACTED], CEO⁶ of [REDACTED]'s Nevada office, and [the Respondent] communicated by text message.

7. On August 4, 2023, the Board received a Mandated 10-Day Report (the "Report") from [REDACTED], D.O., a physician who owns and operates [REDACTED]. Dr. [REDACTED] notified the Board that on or about July 25, 2023, [REDACTED] terminated [the Respondent's] employment.

8. After reviewing the Report, the Board initiated an investigation of [the Respondent].

9. On August 14, 2023, the Board issued a *subpoena duces tecum* to [REDACTED] for its human resources file on [the Respondent].

10. On August 18, 2023, Board investigator Amanda K. Jackson ("Ms. Jackson") contacted Dr. [REDACTED] to discuss the Report and wrote a memorandum of the conversation.

11. By letter dated August 12, 2023, the Board informed [the Respondent] that it had opened a full investigation of him based on the allegations that were set forth in the Report.

12. On August 22, 2023, [REDACTED] sent the Board its human resources file for [the Respondent].

13. On September 18, 2023, Ms. Jackson interviewed Dr. [REDACTED] (transcript received September 26, 2023).

14. On September 19, 2023, Ms. Jackson interviewed [REDACTED] (transcript received September 22, 2023).

15. On September 19, 2023, Ms. Jackson interviewed [REDACTED] (transcript received September 22, 2023).

16. On August 28-September 1, 2023, the Board and [the Respondent] communicated by email.

⁶ At the hearing, Mr. [REDACTED] testified that he is the Chief Financial Officer (CFO) of the Nevada office.

17. On September 5, 2023, the Board and [the Respondent] communicated by email.

18. On September 12, 2023, [the Respondent's] counsel of record submitted a written memorandum to the Board.

19. Through an Order for Summary Suspension, dated October 18, 2023, Disciplinary Panel A ("Panel A") of the Board summarily suspended [the Respondent's] medical license.

20. On October 23, 2023, Panel A issued Charges Under the Maryland Medical Practice Act, in which it charged [the Respondent] with violating the following provisions of the Maryland Medical Practice Act under Health Occ. §14-404(a): (3) is guilty of: (ii) Unprofessional conduct in the practice of medicine; (4) Is professionally, physically, or mentally incompetent; (8) Is addicted to, or habitually abuses, any narcotic or controlled dangerous substance as defined in §5-101 of the Criminal Law Article; [and/or] (9) Provides professional services: (ii) While using any narcotic or controlled dangerous substance, as defined in §5-101 of the Criminal Law Article, or other drug that is in excess of therapeutic amounts or without valid medical indication.

21. On November 2, 2023, Panel A issued an Order affirming the summary suspension.

PROPOSED FINDINGS OF FACT

Having considered all of the evidence presented, I find the following facts by a preponderance of the evidence:

1. On June 15, 2021, the Respondent was a third-year Internal Medicine resident at the [REDACTED] in Detroit, Michigan.

2. On June 15, 2021, the Respondent consulted with [REDACTED], M.D., a psychiatrist at the [REDACTED].⁷

⁷ Resp. Ex. 3, pp. R053-R059.

3. The Respondent reported [REDACTED] ([REDACTED]) symptoms to Dr. [REDACTED] on June 15, 2021 including poor attention to detail at times, easy distractibility, disorganization, forgetfulness, difficulty with timeliness and time management, and restlessness.⁸

4. The Respondent was first diagnosed with [REDACTED] in the second or third grade.⁹

5. The Respondent had a past history as of June 15, 2021 of two episodes of [REDACTED] annually, which lasted weeks to months.¹⁰

6. The Respondent's past history of [REDACTED] in June 2021 also included elevated periods of happiness in which he required less sleep, was more talkative, and became comfortable with others.¹¹

7. The Respondent's employment history as a resident in Internal Medicine at the [REDACTED] as of June 2021 included poor evaluations due to forgetfulness, failing to complete intended tasks, failing to follow up with patient requests due to distractibility, careless errors, and timeliness issues. He was placed on a formal academic improvement plan and his performance improved.¹²

8. A review of the Respondent's psychiatric and behavioral symptoms by Dr. [REDACTED] on June 15, 2021 was positive for [REDACTED], [REDACTED], and [REDACTED]. It was negative for [REDACTED] and [REDACTED].

9. The Respondent was diagnosed by Dr. [REDACTED] on June 15, 2021 with [REDACTED], [REDACTED], and [REDACTED].¹³

⁸ Resp. Ex. 3, p. R054.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*, p. R057.

10. On June 15, 2021, Dr. [REDACTED] ordered a continuation of prescriptions for [REDACTED] and [REDACTED] to maintain stability of mood, and [REDACTED] and [REDACTED] for [REDACTED] concerns.¹⁴

11. On July 12, 2023, the Respondent was first seen by [REDACTED], nurse practitioner (N.P.), in Las Vegas, Nevada.¹⁵ The reason for the visit/chief complaint was [REDACTED].¹⁶

12. The findings by N.P. [REDACTED] on July 12, 2023 included that the Respondent's mood was appropriate, stable and congruent; his behavior was anxious, cooperative, appropriate and polite; his thought process was coherent, logical, and relevant; and his attention was distracted and hyperactive.

13. On July 12, 2023, N.P. [REDACTED] prescribed [REDACTED] and [REDACTED] for [REDACTED] symptoms.

14. On July 17, 2023, the Respondent identified to American Toxicology, a drug testing laboratory in Las Vegas, Nevada, that he was taking prescription medications consisting of [REDACTED], [REDACTED], and [REDACTED].¹⁷

15. On July 17, 2023, the Respondent submitted to a urine toxicology screen at American Toxicology and tested positive for methamphetamine.

16. The Respondent did not test positive for methamphetamine between July 17, 2023 and January 12, 2024, when the Respondent last submitted to a test.

¹⁴ *Id.*, p. R058.

¹⁵ State Ex. 1(j), pp. S155-S156.

¹⁶ It is on the basis of this complaint and the care plan that I have presumed that the first visit with N.P. [REDACTED] on July 12, 2023 is documented by pp. S155-S156. The care plan consists of refilling medications for [REDACTED] and following up in four weeks or as needed. The record of the second visit, at S158-159, on August 11, 2023, states no complaint as the reason for the visit but the care plan is to refill medications for [REDACTED] and follow up in three months or as needed.

¹⁷ Resp. Ex. 2, p. R006.

DISCUSSION

Standard and Burden of Proof

When not otherwise provided by statute or regulation, the standard of proof in a contested case hearing before the OAH is a preponderance of the evidence, and the burden of proof rests on the party making an assertion or a claim. Md. Code Ann., State Gov't § 10-217; COMAR 28.02.01.21K. To prove an assertion or a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

In this case, the State bears the burden to show by a preponderance of the evidence that the Respondent violated the following sub-subsections of Section 14-404(a): (3)(ii) (unprofessional conduct in the practice of medicine), (4) (professional, physical, or mental incompetence), (8) (addiction or habitual use of narcotic or CDS), and (9) (providing professional services while under the influence of alcohol or using any narcotic or CDS). COMAR 28.02.01.21K(1)-(2)(a).

Applicable Law

The APA states:

(c)(1) Except as provided in paragraph (2) of this subsection, a unit may not revoke or suspend a license unless the unit first gives the licensee:

- (i) written notice of the facts that warrant suspension or revocation; and
- (ii) an opportunity to be heard.

(2) A unit may order summarily the suspension of a license if the unit:

- (i) finds that the public health, safety, or welfare imperatively requires emergency action; and
- (ii) promptly gives the licensee:
 - 1. written notice of the suspension, the finding, and the reasons that support the finding; and
 - 2. an opportunity to be heard.

State Gov't § 10-226(c).

The Board's regulation governing summary suspensions specifies that the above subsection of the APA governs consideration of a summary suspension of a license. COMAR 10.32.02.08A. The regulation goes on to deviate slightly from the above subsection of the APA by establishing two different types of summary suspension hearings: pre-deprivation and post-deprivation. COMAR 10.32.02.08. A pre-deprivation hearing affords the licensee the ability to be heard prior to the imposition of a summary suspension. COMAR 10.32.02.08D. A post-deprivation hearing provides the licensee with the ability to be heard after the imposition of a summary suspension. COMAR 10.32.02.08E. This matter involves a post-deprivation hearing.

I. The Act

The grounds for reprimand or probation of a licensee, or suspension or revocation of a license under the Act include the following:

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

....
(3) Is guilty of:

....
(ii) Unprofessional conduct in the practice of medicine;
(4) Is professionally, physically, or mentally incompetent;

....
(8) Is addicted to, or habitually abuses, any narcotic or controlled dangerous substance as defined in § 5-101 of the Criminal Law Article;

(9) Provides professional services:

....
(ii) While using any narcotic or controlled dangerous substance, as defined in § 5-101 of the Criminal Law Article, or other drug that is in excess of therapeutic amounts or without valid medical indication[.]

Health Occ. § 14-404(a)(3)(ii), (4), (8)-(9).

II. Sanctions

The Board's regulation governing sanctions provides:

A. General Application of Sanctioning Guidelines

....

(2) Except as provided in §B of this regulation, for violations of Health Occupations Article, §§14-404(a) ... Annotated Code of Maryland, the disciplinary panel shall impose a sanction not less severe than the minimum listed in the sanctioning guidelines nor more severe than the maximum listed in the sanctioning guidelines for each offense.

(3) Ranking of Sanctions.

(a) For the purpose of this regulation, the severity of sanctions is ranked as follows, from the least severe to the most severe:

- (i) Reprimand;
- (ii) Probation;
- (iii) Suspension; and
- (iv) Revocation.

....

(4) The disciplinary panel may impose more than one sanction, provided that the most severe sanction neither exceeds the maximum nor is less than the minimum sanction permitted in the chart.

(5) Any sanction may be accompanied by conditions reasonably related to the offense or to the rehabilitation of the offender. The inclusion of conditions does not change the ranking of the sanction.

COMAR 10.32.02.09A.

A. Subject to provisions of Regulation .09A and B of this chapter, the disciplinary panel may impose sanctions as outlined in § B of this regulation on physicians for violations of Health Occupations Article, §§ 14-404(a) ..., Annotated Code of Maryland.

COMAR 10.32.02.10A.

The Parties' Positions

The State argued that within a ninety-six hour period including July 14, 2023 and July 17, 2023, when the Respondent underwent a drug test, the Respondent consumed methamphetamine, a CDS, which constituted unprofessional conduct in the practice of medicine;

professional, physical, or mental incompetence; addiction to or habitual use of a CDS; and providing professional services while using a CDS. In support of its case, the State called three fact witnesses and one expert witness.

The Respondent argued that he did not consume a CDS, that the urine test which was positive for amphetamine and methamphetamine was a false positive or was otherwise unreliable, that he was competent at all times, and that he did not provide professional services at the time he is alleged to have tested positive for a CDS. The Respondent testified on his own behalf and did not call other witnesses.

The State's Witnesses

[REDACTED], D.O.

Dr. [REDACTED] is a Board Certified physician in internal medicine and is the founder and medical director of [REDACTED]. Dr. [REDACTED] testified that he founded [REDACTED] as a concierge medical clinic specializing in testosterone replacement therapy.¹⁸ The practice is based in Maryland, and in 2023, it established an office of the practice in Las Vegas, Nevada. Dr. [REDACTED] explained that his son, [REDACTED], served as the CFO and general manager of the Las Vegas office. Dr. [REDACTED] testified that Mr. [REDACTED] conducted the initial search and screening of applicants for a medical doctor to be based in Las Vegas to serve the clientele there which the practice would generate. Dr. [REDACTED] spoke with the Respondent once, remotely, late in the screening stage before the Respondent was hired. The Respondent was employed with the practice from June 5, 2023 until July 18, 2023.

Dr. [REDACTED] testified that the Respondent's responsibility after he was hired in June 2023, for the first few weeks, was to shadow Dr. [REDACTED] remotely while he conducted video consults in Maryland. The Respondent participated via an iPad with a split screen. The

¹⁸ A concierge medical practice was described as one which does not accept insurance payments for its services.

purpose of having the Respondent shadow Dr. [REDACTED] was to establish a consistent method and approach to patients in both Maryland and Las Vegas. Dr. [REDACTED] testified that the Respondent performed well during the first three weeks.

However, Dr. [REDACTED] explained, at about the three-week mark of the Respondent's employment he began to show changes in attendance. The Respondent appeared late for video consults or missed some completely. Dr. [REDACTED] testified that he held a video meeting with the Respondent near the end of June 2023 and counseled him on the importance of attending meetings and doing so on time. He stated that the Respondent was being paid \$30,000.00 per month, and he expected him to perform up to the standards set by the practice.¹⁹ Dr. [REDACTED] testified that the Respondent's professional performance did not improve. He further testified that the Respondent's missed appointments reflected poorly on the practice, and they required Dr. [REDACTED] to pick up the missed video consults and the Respondent's co-workers to have to reschedule or work around the Respondent's absences. Dr. [REDACTED] stated that near the end of the Respondent's employment with the practice, he was aware of complaints from nurses and staff in the Las Vegas office that the Respondent was not answering his phone, was not responding to emails, and he was difficult to reach or could not be reached when necessary.

Dr. [REDACTED] testified that he knew of a "team building" event that occurred on July 14, 2023, in Las Vegas, but he was not present for it. He also stated that he was informed of the drug test of the Respondent on July 17, 2023, and that the Respondent was suspended with pay until the results were known at which time he was terminated. Dr. [REDACTED] testified

¹⁹ The Physician Employment Agreement between the Respondent and TRTMD established an annual salary for the first year of employment of \$350,000.00. State Ex. 1(f), p. S056.

that the practice's attorney informed him that they must notify the Nevada and Maryland medical boards of the result, which they did.

Regarding Dr. [REDACTED]'s personal observations and knowledge of the Respondent, he testified that he did not know of any person who observed the Respondent impaired at work; he did not have any concerns during the Respondent's employment of the use of illicit drugs; he did not have concerns about the Respondent's appearance while at work; he did not have concerns that the Respondent was ever impaired or under the influence of substances while at work; and, he did not have any concerns about patient safety. Dr. [REDACTED] agreed that he had not met the Respondent in person until the day of the hearing.

[REDACTED]

[REDACTED] testified that she is the Human Resources Director for the [REDACTED] clinics since July 2023. Her previous position was Manager of the [REDACTED] Las Vegas office. She testified that she assisted the CFO, [REDACTED], in the search for a physician to staff that office, including choosing candidates and scheduling virtual interviews. She first met the Respondent during the search process and described her impression of him during that phase as a brilliant young man with an excellent demeanor. Ms. [REDACTED] testified that the hours for the Las Vegas office were 8:30 a.m. to 4:30 p.m., Pacific Standard Time (PST), and that patients were never seen outside of these hours. She explained that the Respondent was scheduled to shadow Dr. [REDACTED] three days per week and was supposed to watch videos regarding peptide treatments and train during the other two days. Ms. [REDACTED] stated that when the Respondent shadowed Dr. [REDACTED], video consults were scheduled for 10:00 a.m. PST. In addition, the Respondent was not required to come into the office to attend and shadow during video consults.

Ms. [REDACTED] testified that during the first few weeks of employment, the Respondent was seldom in the office. Ms. [REDACTED] described the Respondent's appearance during that period as

appropriate, but not professional. She explained that the Respondent was young, and needed a haircut, but he did appear in scrubs in the office, which was appropriate. Ms. [REDACTED] stated that during that period, there were no complaints about his performance. However, after those first few weeks, Ms. [REDACTED] said she observed changes in the Respondent's appearance and performance. She testified that the nurses began to complain that the Respondent did not respond to texts during regular work hours, or would respond hours later, creating difficulties when the nurses required a response. In addition, she explained, the Respondent began to be tardy for appointments, even though he had only one or two telehealth appointments each day.

Ms. [REDACTED] testified that this pattern progressed to missed appointments, resulting in verbal counseling from Dr. [REDACTED] not to be late and to continue to engage in training. The Respondent stated the reason for his tardiness or absence was that he overslept. Ms. [REDACTED] stated that the Respondent was informed that after July 14, 2023, he would need to be in the office more often, as she only saw him two times per week to that point.

Ms. [REDACTED] testified concerning a meeting planned for him and Las Vegas office staff with Quest Diagnostics, in which Quest Diagnostics was to provide lunch and training for the Respondent concerning new testing methods for the practice. She stated that the Respondent was informed of the date and time for the training two weeks in advance and was given reminders, including the day before the training. In addition, the Respondent was scheduled to conduct a telehealth consultation on the morning of the Quest Diagnostics training. Ms. [REDACTED] testified that the Respondent missed the telehealth consultation and could not be reached by nurses. She stated that the Respondent then arrived for the meeting with Quest Diagnostics at least two hours late, when the training was nearly over.

Ms. [REDACTED] testified that on Friday, July 14, 2023, the Respondent was in the office. One meeting and one telehealth follow-up consultation were scheduled. Ms. [REDACTED] did not

clarify the nature of the meeting or whether the follow-up consultation was a shadowed observation. On that day, Mr. [REDACTED] decided to hold a team-building gathering at his home after work, and all staff were expected to attend. Ms. [REDACTED] arrived at Mr. [REDACTED] [REDACTED]'s home around 5:10 p.m. The Respondent arrived later and, according to Ms. [REDACTED], acted differently than usual. She explained that the Respondent was more talkative than usual and interacted with co-employees, unlike his normally more private demeanor. The Respondent also arrived with two puppies that were ill, so Mr. [REDACTED] told the Respondent that the puppies had to be taken outside so Mr. [REDACTED]'s dogs would not catch whatever illness affected the Respondent's dogs. The Respondent took the puppies out to his car, turned on the car and air conditioning, and left them in the car, checking on them periodically. Ms. [REDACTED] testified that she found the Respondent's behavior at the gathering to be unusual because he was talkative, interacting with the nurses, and smoking a cigar.

On Sunday morning, July 16, 2023, Ms. [REDACTED] testified she received a telephone call from Mr. [REDACTED], and he requested that she arrange a meeting between Mr. [REDACTED], the Appellant and herself for the following morning, July 17, 2023, to address his tardiness, changes of behavior, and unsatisfactory performance in recent weeks. Ms. [REDACTED] testified that she scheduled the meeting for Monday morning at a café near the office, to keep the discussion confidential from other employees, and texted the Respondent that he was to attend the meeting at 7:00 a.m. on July 17, 2023. Ms. [REDACTED] stated that she and Mr. [REDACTED] were present at the cafe at 7:00 a.m., but the Respondent was twenty minutes late. She further testified that when the Respondent arrived, he drove past the café more than once, parked in the middle of the street for several minutes, and then parked his vehicle and entered the café. Ms. [REDACTED] described the Respondent's appearance as disheveled, as if he had just woken up, and he was in a shirt that was not clean.

Ms. [REDACTED] testified that once the meeting commenced, the Respondent's tardiness, missed appointments, and professional appearance were addressed by Mr. [REDACTED]. The Respondent was then asked to review and sign an attire and grooming policy form, a written warning form, and a drug testing policy form, which he did. After the Respondent signed these forms, Mr. [REDACTED] asked the Respondent to go to a nearby toxicology laboratory to be tested for the presence of drugs. She testified that the Respondent said that he would take a drug test, but requested to first go to the office, and that he would go from there for the drug test. Ms. [REDACTED] said that the Respondent drove himself from the café to the office, where he remained for a period of time before she took him to the toxicology laboratory to undergo a urine screen. She described the Respondent as very quiet and noted that he was scratching himself. Ms. [REDACTED] stated that when they arrived at the toxicology lab, the Respondent removed the scrubs shirt he wore and left it in the car. At the lab, while waiting to be tested, the Respondent sat on the floor, though there were seats available.

Ms. [REDACTED] testified that when she received the positive toxicology test result the following day indicating methamphetamine use, the practice moved quickly to terminate the Respondent. She testified about subsequent contacts between the Respondent and herself, and between the Respondent and Mr. [REDACTED], and about calls received by Mr. [REDACTED] from members of the Respondent's family who inquired about him when they could not contact him.

Ms. [REDACTED] confirmed that she knew of no evidence that the Respondent provided professional services while using narcotics or while under the influence of alcohol. She confirmed that she never detected or observed signs that the Respondent was impaired by drugs or alcohol while in the office. Ms. [REDACTED] confirmed that before July 17, 2023, she never saw the Respondent under the influence of drugs or alcohol and had no concerns that the Respondent

had been impaired at work, and she did not know of any colleagues who expressed that concern. She confirmed that on July 17, 2023, the date of the toxicology test, the Respondent saw no patients.

[REDACTED]

Mr. [REDACTED] testified that he is the CFO of the Las Vegas office of [REDACTED] and that the Respondent came to his attention as the result of a search for a medical doctor through a placement agency. Mr. [REDACTED] stated that the hope was that the Respondent would move to Las Vegas, make it his home, and become invested in succeeding within the practice. He was the first medical doctor hired to staff the Las Vegas office. Mr. [REDACTED] testified that the Respondent signed an employment contract, though the date of signing was not made entirely clear, and that the contract addressed the Respondent's work hours and schedule, which would be set by the practice. Mr. [REDACTED] stated that the position was subject to a probationary period of ninety days. He explained that the Respondent's initial training included shadowing Dr. [REDACTED] during consults online from Maryland and reviewing video courses provided by the practice to be completed independently. The earliest scheduled video observations by the Respondent were approximately 6:00 a.m. to 6:30 a.m. PST, due to the three-hour time difference between Maryland and Las Vegas. However, Mr. [REDACTED] explained, if the Respondent shadowed a video consult that early, which was rare, his workday would be over by 3:00 to 3:30 p.m. PST.

Mr. [REDACTED] testified that the Respondent exhibited poor punctuality early in his employment, including being late or missing scheduled appointment to shadow Dr. [REDACTED]. In addition, nurses began expressing frustration to Mr. [REDACTED] that the Respondent could not be reached, though he was required to be on call from home during office work hours when he worked remotely. Mr. [REDACTED] testified about the scheduled meeting

and training with Quest Diagnostics, for which the Respondent appeared one and a half hours late. He stated that a verbal counseling was conducted pertaining to the Respondent's punctuality and availability, but these problems persisted. Mr. [REDACTED] testified that the Respondent had previously disclosed that he had been diagnosed with [REDACTED], for which he took medication, but that the Respondent did not request any adjustments or accommodation on that basis in relation to his employment duties.

Mr. [REDACTED] testified concerning the team-building event previously described by Ms. [REDACTED]. He testified that he scheduled a pool party at his house for Friday, July 14, 2023 for employees of the practice. He stated that the Respondent arrived two hours late, with two sick and very dirty puppies which he brought into the house. Mr. [REDACTED] testified that he asked the Respondent to remove the dogs out of concern for his own dogs, and that the Respondent took his dogs outside, hosed them off, and put them in his own car with the air conditioning running. Mr. [REDACTED] stated that the Respondent returned to the gathering in a state he described as excited and spastic, with pressured speech and some expression of paranoia that the nurses were conspiring against him in the office. Mr. [REDACTED] testified that he believed the Respondent was impaired but not by alcohol. Mr. [REDACTED] further testified that at the end of the evening, he accompanied the Respondent to his car and that when the car door was opened, Mr. [REDACTED] smelled "burnt methamphetamine."

Mr. [REDACTED] explained that he is familiar with that smell due to some kind of law enforcement training and certification he received in North Carolina, but no more details of that training were provided in his testimony. Mr. [REDACTED] further stated that in addition to his time at a Police Academy in 2010, he had previously been employed as a bail bondsman, that he had arrested two thousand people between 2006 and 2011, and that he had commonly dealt with people charged with possession of substances with intent to distribute. He further stated that he

had been in plenty of trailers where methamphetamine was cooked. Mr. [REDACTED] stated that the law enforcement agency he was associated with was in Pitt County, North Carolina, in 2010. Some clarification of Mr. [REDACTED]'s professional law enforcement experience came from his sworn statement on September 19, 2023 when he told Ms. Jackson that he had been a private investigator in Maryland.²⁰

Although Mr. [REDACTED] implied that the Respondent's behavior was consistent with being under the influence of a CDS, and he smelled what he believed was burnt methamphetamine from the Respondent's car, he allowed the Respondent to drive away from the gathering without further comment.

After the work gathering on July 14, 2023, Mr. [REDACTED] called his father, Dr. [REDACTED], and expressed concern that the Respondent was smoking crystal methamphetamine. He stated his intention to have the Respondent tested the following Monday morning, July 17, 2023. He stated that he spoke to Ms. [REDACTED] and instructed her to prepare documents to give to the Respondent on July 17, 2023, and to coordinate a meeting. Mr. [REDACTED] testified that even though the Respondent was scheduled to work on July 17, 2023, he wanted the meeting to take place outside of the office due to privacy concerns.

Mr. [REDACTED] stated that he arrived at the café on July 17, 2023, but the Respondent was thirty minutes late. When he arrived, Mr. [REDACTED] saw him circle the block several times before finally parking and coming into the café. Mr. [REDACTED] described the Respondent as wearing scrubs that were wrinkled from head to toe, incredibly unkempt, and looking as if he had not slept. He testified that after the Respondent was given the forms and had signed them, he was asked to go to be tested at American Toxicology, at which time the Respondent allegedly began to sob. Mr. [REDACTED] asked the Respondent to return to the

²⁰ State Ex. 1(m), p. S220 (page 5 of the transcript).

office and then go to be tested. They all returned to the office, where Mr. [REDACTED] described additional interactions with the Respondent, including telling him that if the Respondent had reason to know the result would be positive, he did not need to take the test and he could self-report substance abuse through the practice's attorney and seek treatment. Mr. [REDACTED] said the Respondent did not take him up on this offer. The Respondent denied to Mr. [REDACTED] that he had taken illicit drugs and agreed to be tested.

Mr. [REDACTED] testified that he selected American Toxicology to conduct a drug test because it had a contract with the Nevada Division of Correction and Nevada courts. He wanted tests of urine and hair but learned that only the urine test had been performed. Mr. [REDACTED] testified that he spoke with American Toxicology and was informed that the initial result of the urine test was positive for methamphetamine. He said that the lab manager suggested an additional test which would indicate if the test was positive for an illicit form of the drug, which he approved. He testified that the lab manager informed him that the second test was positive for illicit methamphetamine. Mr. [REDACTED] testified that the practice elected to terminate the Respondent from employment immediately, and that Dr. [REDACTED] directed the practice's Las Vegas attorney to prepare a letter to that effect.

Mr. [REDACTED] testified to his actions and contacts with the Respondent after he was terminated, including a text message from the Respondent on August 3, 2023, stating that his prescribed medications include [REDACTED], and on August 5, 2023, stating that he had learned the reason for the false positive result on July 17, 2023. Mr. [REDACTED] testified that both the practice and the Respondent's family were unable to reach the Respondent in the several days following the test, and family members called and spoke to Mr. [REDACTED] about whether the Respondent was alright.

Mr. [REDACTED] testified that even though the Respondent appeared to be disheveled and sleep deprived on the morning of July 17, 2023, he did not show signs of impairment. He also testified that before July 14, 2023, no other employee of the practice had expressed concern that the Respondent was impaired during work hours, even if his behavior had been erratic.

[REDACTED], M.D.

Dr. [REDACTED] is currently employed as a MRO by [REDACTED] located in Venice, Florida, and has held that position since 2008. Dr. [REDACTED] is Board Certified in addiction medicine and is a certified MRO. Dr. [REDACTED] is licensed to practice medicine in Florida and Georgia. I accepted Dr. [REDACTED], without objection, as an expert in the fields of general medicine, addiction medicine, and as a Certified MRO.

Dr. [REDACTED] testified that the Medical Association of Maryland²¹ is a client of [REDACTED], and that Mr. Gilbert referred this case to him for review through [REDACTED]'s association with the Board. Dr. [REDACTED] summarized the underlying facts, before the drug test, by noting that the Respondent was employed by a testosterone replacement clinic, that behavioral abnormalities had been observed, that the Respondent's employer requested a drug screen, and the Respondent had tested positive for mood-altering [REDACTED].

Dr. [REDACTED] testified that the length of active impairment from methamphetamine depends on the amount of the dose. He explained that the effects of a single dose can last from eighteen to twenty-four hours, and the effects last longer with repeated doses. Traces of the drug can be detected in urine for three to four days for a one-time use, and the detection window will be greater if there have been multiple uses. He described chronic use as more than one time usage, and usually multiple uses over multiple days. Dr. [REDACTED] testified that signs of active impairment from methamphetamine included stimulated behavior, such as pressured speech, flights of

²¹ It is presumed that Dr. [REDACTED] was referring to the Maryland State Medical Society.

thought, and an itching or picking component. He clarified that the itching or picking symptom can appear after a single dose when it is wearing off. Dr. [REDACTED] testified that the sleep patterns of a user of methamphetamine will be disrupted and can result in being awake for twenty-four to thirty-six hours, followed by a physical "crash," meaning exhaustion and possibly sleeping for several days. In addition, Dr. [REDACTED] testified that as the effects of the drug wear off, the user may exhibit behaviors such as inability to concentrate, itching or picking oneself, and cravings to use the drug again.

Dr. [REDACTED] testified that he was aware of the Respondent's prescription of medications containing [REDACTED], whether [REDACTED] or [REDACTED], both of which are stimulants used to treat [REDACTED]. He explained that methamphetamine can metabolize to [REDACTED], but not the reverse, so taking a [REDACTED] does not result in a positive test for methamphetamine. Dr. [REDACTED] also testified that there are two isometrically different forms of methamphetamine, Dextro-methamphetamine (D-methamphetamine) and Levo-Amphetamine (L-methamphetamine), so it is important to determine which form is present in the sample. Dr. [REDACTED] explained that D-methamphetamine is the mood-altering variety and is a CDS.

Conversely, L-methamphetamine is non-mood altering and it is not a CDS.

Dr. [REDACTED] testified that he reviewed the American Toxicology test results and spoke personally with the lab coordinator for American Toxicology about their chain of custody and testing methods. He explained that the initial test performed on the Respondent's urine sample was an immunoassay test, which detects [REDACTED], but is unreliable for the detection of methamphetamine specifically, because methamphetamine is a type of [REDACTED]. To determine whether methamphetamine is present in the urine sample, a small amount of the sample was subjected to liquid chromatography/mass spectrometry (LC/MS) testing, which is more sensitive than immunoassay testing and rules out the risk of a false positive for

methamphetamine. The LC/MS testing was positive for [REDACTED] and methamphetamine separately, with a positive methamphetamine level approximately ten times greater than the [REDACTED] level.²² Dr. [REDACTED] testified that a third test method, isomer testing, was performed using a portion of the urine sample to determine whether the methamphetamine detected was D-methamphetamine or L-methamphetamine. He stated that the isomer test was 100 percent positive for D-methamphetamine, the mood-altering variety. Dr. [REDACTED] testified that the positive test results cannot be explained by the Respondent's prescriptions for [REDACTED] or [REDACTED], and the Respondent reported no other prescriptions or substances to the lab that could explain a positive methamphetamine result.

Dr. [REDACTED] testified to his opinion, within a reasonable degree of medical certainty, that the positive test results for methamphetamine were accurate. He further opined that the Respondent's behaviors in the weeks leading up to the test and on the day of testing were consistent with a person who used or had used methamphetamine.

Dr. [REDACTED] was questioned about a urine test to which the Respondent submitted on August 10, 2023, which was negative for methamphetamine, and testified that the subsequent result did not negate his opinion.²³ He clarified that a urine drug screen for methamphetamine has a detection window of twenty-four to ninety-six hours, meaning one to four days, so a negative result weeks after the positive test on July 17, 2023 does not call the positive test into question. Dr. [REDACTED] also testified to his knowledge of subsequent hair and nail testing to which the Respondent submitted in the months following the positive result on July 17, 2023.²⁴ He explained that hair and nail testing can be informative but it is not determinative, and it is not as

²² Board Ex. 6, p. S286.

²³ See Resp. Ex. 2, p. R015.

²⁴ *Id.*, pp. R016-R019, showing a nail sample collected on October 6, 2023 by United States Testing Laboratories (USTL), a hair sample collected on October 6, 2023 by Omega Laboratories, and a hair sample collected by USTL on December 6, 2023. See also pp. R021-R045, documenting hair and nail sample testing by Canford Laboratories, Cardiff, England, in December 2023 and January 2024.

reliable as urine testing to detect methamphetamine use, especially if the subject used one dose or infrequent doses. Dr. [REDACTED] testified that hair and nails are exposed to the environment, they can be adulterated by foreign substances, and that substances in hair samples can deteriorate over time. He went on to state that with hair and nail samples, a positive result may prove the use of illicit substances, but a negative result does not prove abstinence. Accordingly, he testified, a subsequent negative urine test result from the August 10, 2023 sample, and negative hair and nail testing months later, does not prove that the Respondent had not ingested methamphetamine within twenty-four to ninety-six hours before the urine test on July 17, 2023.

Dr. [REDACTED] was questioned concerning an email exchange in which he was included between Ms. Jackson and [REDACTED], M.D. (Medical Director, Maryland Professional Rehabilitation Program, Maryland State Medical Association), in which he was asked to opine on a preliminary basis about possible prescriptions that can cause a positive methamphetamine test result, and Dr. [REDACTED] identified three substances: [REDACTED], [REDACTED], and [REDACTED]. He stated, “If none of these are in play, would run isomers of methamphetamine on tube A and reconfirm on tube B.”²⁵ On cross-examination, Dr. [REDACTED] acknowledged that American Toxicology did not retain a “B” tube of the Respondent’s urine in the event confirmatory testing was necessary, but testified that the lack of a B tube did not negate the test results deriving from the urine sample obtained by American Toxicology. Dr. [REDACTED] was also questioned whether he would have had better or more reliable information about the Respondent’s medical history and prescriptions if he had interviewed the Respondent, as is customary for a MRO to do. Dr. [REDACTED] testified that an interview is useful to elicit a list of prescription medications the subject is taking at the time of testing, but because the Respondent self-reported his prescriptions to American Toxicology, it was already clear that none of his medications could have resulted in a positive result for

²⁵ State Ex. 1(g), pp. S113-130; Dr. [REDACTED]’s email is on p. S127.

methamphetamine. Dr. [REDACTED] also testified that in his professional experience, involving approximately 1,500 tests involving A and B tubes, the B tube invalidated the original test only three or four times.²⁶

Dr. [REDACTED] testified that his opinion regarding the Respondent's use of methamphetamine is limited to July 17, 2023 and the one to four day window prior to that date. Dr. [REDACTED] testified that he does not have an opinion whether the Respondent was a chronic or habitual user of methamphetamine before July 17, 2023. He stated that his opinion is only that the Respondent used mood-altering methamphetamine within one to four days of July 17, 2023, and he inferred from the Respondent's reported behaviors that his use of the substance preceded the test on July 17, 2023.²⁷

The Respondent's Witness

The Respondent

The Respondent testified on his own behalf. He described his family background, including that he follows the tenets of Islam, which forbids the ingestion of alcohol or illicit substances. He testified to his medical training, including a residency at the [REDACTED] in Michigan as an internist. He remained at that hospital as a hospitalist following his residency. He became Board Certified in internal medicine in 2021. He is currently licensed to practice medicine in Michigan and Nevada, but his Maryland license remains suspended.

The Respondent testified that he has been diagnosed with [REDACTED], [REDACTED], and [REDACTED].

[REDACTED]. He explained that he experiences episodes of [REDACTED], which occasionally manifest

²⁶ To demonstrate this as a percentage of times the B sample contradicted the A sample in 1,500 cases, I chose 3.75 as a number on the high end between three and four and calculated the percentage of 1,500 represented by 3.75 contradictions. I calculated that 3.75 is 0.25 percent of 1,500.00 ($1,500 \times .0025 = 3.75$). That is, the rate of error of A tube samples based on inconsistent B tube samples in Dr. [REDACTED]'s experience is one quarter of one percent of 1,500. That represents a rate of accuracy of 99.75% of A tube samples tested ($1,500 \times .9975 = 1,496.24$, and $1,500 - 1496.25 = 3.75$).

²⁷ Dr. [REDACTED] testified to having read and relied on the sworn interviews of Dr. [REDACTED], Ms. [REDACTED], and Mr. [REDACTED] for descriptions of the Respondent's behaviors prior to and on July 17, 2023. See State Ex. 1(k), 1(l), and 1(m), pp. 185- 240.

as [REDACTED]. The Respondent described the symptoms he experiences during [REDACTED] as feeling happy or high, and not needing much sleep. He described these symptoms as similar to symptoms resulting from stimulant use. The Respondent testified to being under the care of a psychiatrist since the age of eighteen. He stated that when he moved from Michigan to Nevada to begin his employment with [REDACTED], he had no psychiatrist in Nevada until he saw a psychiatrist, Dr. [REDACTED], in Las Vegas on July 13, 2023.²⁸

The Respondent testified that he was recruited as a candidate for the [REDACTED] position in Las Vegas through an email from a recruiter. He made himself available for the position due to the stress of seeing thirty to forty patients a day at the [REDACTED] and the inability to provide specialized care to so many patients. He believed that the [REDACTED] position offered him a chance to more fully treat patients. The Respondent testified that within two weeks of beginning employment with [REDACTED] on June 16, 2023, he realized the position was not what he thought it would be. He testified that he offered suggestions to Mr. [REDACTED] to improve the practice but his suggestions were not well received. The Respondent stated that there was no schedule identified to him, and the first time he recalls being told that the work hours were from 8:30 a.m. until 4:30 p.m. was on July 17, 2023, at the café. He described how he shadowed Dr. [REDACTED] [REDACTED] at hours ranging from 5:00 to 6:00 a.m. PST, and that he was presentable and professionally attired in clinic-provided scrubs. The Respondent acknowledged missing one appointment, when he shadowed a morning telehealth consult and dozed off afterward. He

²⁸ Although the Respondent referred to "Dr. [REDACTED]", it was clarified that he is a psychiatric nurse practitioner and not a medical doctor. In addition, although N.P. [REDACTED]'s medical records were referred to in an expert report admitted on the Respondent's behalf (Resp. Ex. 7, p. R078), the only medical records from N.P. [REDACTED] which were produced for this hearing identified encounter visit dates of July 12, 2023 and August 11, 2023. (See State Ex. 1(j), pp. S155-S159). Each reports identifies both encounter dates, and repeats identical findings, so they are difficult to distinguish from each other. Both reports describe the Respondent as alert and oriented, clear and coherent, stable mood, anxious and cooperative, and logical, but distracted and hyperactive.

denied ever being reprimanded by [REDACTED] before July 17, 2023. He denied having been given an attire policy or a drug testing policy in writing before July 17, 2023.

The Respondent denied that he ever possessed or consumed methamphetamine, or being present when it was used. The Respondent denied that he ever provided professional services while under the influence of a CDS or illicit substance. He denied ever being diagnosed with a substance addiction or use disorder. He denied that he had ever been deemed mentally or physically incompetent.

The Respondent testified to his recollections of the work gathering on July 14, 2023 at Mr. [REDACTED]'s home. He stated that the gathering was discussed at work that day, and he was asked if he was coming, to which he replied that he probably would not attend. He testified that later that day, he received several calls informing him that Mr. [REDACTED] wanted him to attend. The Respondent explained that he had been to an emergency veterinarian the night before with a sick puppy, so he brought the dog with him to the gathering in a portable kennel, in which the dog had vomited on the way to Mr. [REDACTED]'s home. The Respondent testified that he presumed Mr. [REDACTED] would be understanding of this situation, but he was not, and demanded that the Respondent take the dog out to his car and keep it there with the air conditioning on. The Respondent testified that the car was a rental, and he obtained it only one day before the July 14, 2023 gathering. He stated that it had an unusual smell when he got it, and he had it cleaned.

At the July 14, 2023 gathering, the Respondent recalled seeing Ms. [REDACTED] and saying hello, but having no further interaction with her. He testified to socializing with Mr. [REDACTED], [REDACTED], including smoking a cigar. Food was served, after which the Respondent sat in a hot tub and chatted with others before he decided to leave. He recalled that as he was at his car, about to leave, Mr. [REDACTED] called him back to take a plate of food that had been prepared

for him. The Respondent said that neither he nor Mr. [REDACTED] said anything in particular, and he left.

The Respondent testified that on Sunday, July 16, 2023, he was chatting with Ms. [REDACTED]

[REDACTED] by text when she told him that Mr. [REDACTED] wanted to meet with him the next day at a coffee shop. He arrived at the coffee shop on the 17th, and Ms. [REDACTED] and Mr. [REDACTED] [REDACTED] were there, looking serious. He testified that Mr. [REDACTED] addressed his tardiness and grooming issues, and said the Respondent would be subject to a probationary period to improve his performance. Mr. [REDACTED] then stated that he wanted the Respondent to be drug-tested to rule out possible drug use as a cause of his performance deficiencies. The Respondent acknowledged that the request for a drug test was made, and he agreed to it, before he was asked to sign a drug test policy presented to him at that time. He testified that after he signed the papers presented to him, he expressed his own concerns about the circumstances of his position, including working odd hours, having to respond to random calls each day from nurses at the office, and working in Las Vegas but having to be available for EST hours. The Respondent testified that Mr. [REDACTED] was not interested in his complaints. The Respondent stated that they all decided to go into the office from the café, and that he was feeling unwell from the weekend. He described feeling dizzy and faint, possibly from being overwhelmed. However, the Respondent stated that he had no concerns about being drug tested as he had prescriptions for the medications he was taking.

The Respondent testified that after submitting to drug testing on July 17, 2023, he lost access to email because his telephone had broken. He stated that four or five days after the test, he replaced his cell phone and received an email from Ms. [REDACTED] saying he had been terminated due to a positive drug test result. The Respondent testified that at first he felt the result was a mistake, a false positive caused by his [REDACTED] or [REDACTED] prescription. He

testified that he has no explanation for the false test but has theories, including that the result may have been due to a pre-workout supplement he was taking around that time. He stated that he has never received a full copy of the test results.

The Respondent testified that he understood he may not be able to successfully contest the positivity of a prior test, but he wanted to establish a historical context, so he submitted to another urine screen in August 2023 to show that he had not used methamphetamine and continued not to use it from the time of his employment to the present. Similarly, he testified that he submitted hair and nail samples to be tested to show that even at the time of the positive test, there was no long-term evidence of methamphetamine in his body.

The Physician Employment Agreement was reviewed with the Respondent, and he agreed that he was ethically bound to follow federal and State laws and to adhere to the ethical standards required of a physician. The Respondent agreed that the use of methamphetamine would be unethical and unprofessional conduct. The Respondent also testified to the difficulties he encountered in trying to conform to the requirements of his position with [REDACTED], and that he believed that due to fragmented sleep, he slowly began to experience [REDACTED] and an increase in his [REDACTED]. He testified that these problems got worse after he got his dogs, and that after an argument with Mr. [REDACTED], they worsened further. The Respondent admitted to his insufficiency and poor performance but testified that he had wanted to change and perform better. He did not dispute Mr. [REDACTED]'s testimony concerning his own poor appearance at times. He agreed that he never asked [REDACTED] for any accommodation for the difficulties he testified to having.

The Respondent testified inconsistently that he had not taken his [REDACTED] medications, [REDACTED] and [REDACTED], for two months prior to July 17, 2023, and then stated that he took those medications as needed during his employment with [REDACTED]. The Respondent also described

being prescribed [REDACTED] and [REDACTED], 5 milligrams daily, for [REDACTED], but at the time he was employed by [REDACTED] he was not taking the [REDACTED] prescription. The urine screen on July 17, 2023, did not reveal either drug.

Analysis

Practice Act Violations Charged

A. Whether the Respondent is Guilty of Unprofessional Conduct in the Practice of Medicine Pursuant to Health Occ. § 14-404(a)(3)(ii).

The State argued that I may infer from the totality of the evidence that the Respondent used methamphetamine during his employment in June and July 2023, and that I may do so even without the positive test on July 17, 2023. The State further argued that circumstantial evidence suffices when impairment is suspected. However, the State relied expressly on the positive test result for methamphetamine on July 17, 2023 as proof of the Respondent's use of that substance in the weeks prior to the test, when witnesses reported that he began to be late for or miss appointments, and his appearance changed. The State argued that the Respondent was likely using methamphetamine around the time his performance worsened, when he became unresponsive to office staff, and when he was late for appointments, because such changes are consistent with use of methamphetamine. The State argued that such changes provided a sufficient basis to find that the Respondent was unprofessional in the practice of medicine due to methamphetamine use prior to July 17, 2023, and evidence of his use was not limited to the twenty-four to ninety-six hour window identified by Dr. [REDACTED].

In making this argument, the State clearly attributed the Respondent's changes in performance and appearance to an extended period of methamphetamine use, and not to one use of the substance or to mere carelessness or neglect. That is, the State did not argue that I may find that the Respondent was unprofessional in the practice of medicine due to causes other than methamphetamine use. Rather, the State argued that I should reasonably infer methamphetamine

use in the several weeks preceding the test on July 17, 2023 as the explanation for all of the Respondent's performance deficiencies and worsening appearance, thereby proving that he was unprofessional in the practice of medicine due to methamphetamine use for longer than twenty-four to ninety-six hours before the test.

In reply to this argument, the Respondent noted that the scope of time argued by the State for which there was evidence of methamphetamine use exceeded the opinion of its own expert, Dr. [REDACTED], who clearly limited his opinion to methamphetamine use within a twenty-four to ninety-six hour window including and preceding July 17, 2023. The Respondent pointed out that while the drug remained detectable for one to four days, Dr. [REDACTED] had testified that the behavioral effects of the drug lasted from eighteen to twenty-four hours. The Respondent also argued that I should find the positive test result for methamphetamine to be unreliable and reject it, especially considering that Dr. [REDACTED] testified that there was no B tube sample to verify the accuracy of the A tube test result, and because no MRO called and spoke to the Respondent about his medical or prescription history, as Dr. [REDACTED] said he might have done as an MRO. The Respondent argued that Dr. [REDACTED] declared the July 17, 2023 test unreliable, and I should find it to be invalid.

However, the Respondent further argued that if I should find the July 17, 2023 test result to be valid, I should still decline to find that the Respondent engaged in unprofessional conduct in the practice of medicine because there was no evidence that he saw patients on Friday, July 14, 2023, or Monday, July 17, 2023, so he was not impaired during patient visits. At most, the Respondent argued, his observed behavior on the evening of Friday, July 14, 2023, after work hours, suggested possible impairment outside of work, and no sign of impairment was observed on Monday, July 17, 2023, when he met with Ms. [REDACTED] and Mr. [REDACTED]. As

such, the Respondent argued that any evidence of possible impairment was outside of work hours and was not in the practice of medicine.

The Respondent also argued that his behaviors were consistent with both [REDACTED] and methamphetamine use, and it was the State's burden to prove methamphetamine use was the more likely cause of his behaviors. He argued that the State failed to rule in methamphetamine use and rule out [REDACTED] as the cause of his behaviors, based on the evidence presented.

Unprofessional Conduct in the Practice of Medicine

Judge Harrell, writing for the Supreme Court of Maryland²⁹ in *Finucan v. Maryland Board of Physician Quality Assurance*, 380 Md. 577 (2004), and addressing a constitutional challenge to the Act's prohibition of "unprofessional conduct", stated:

The meaning of terms such as "immoral conduct" and "dishonorable conduct" is determined by the "common judgment" of the profession as found by the professional licensing board. . . . A statute prohibiting "unprofessional conduct" or "immoral conduct," therefore, is not per se unconstitutionally vague; the term refers to "conduct which breaches the rules or ethical code of a profession, or conduct which is unbecoming a member in good standing of a profession."

Id. at 593 (citations omitted).

The Maryland legislature, through its enactment of the Act, including the prohibition on "unprofessional conduct," has empowered the Board to render a "common judgment" as to the propriety of a physician's behavior. The Board has not attempted to delineate the exact contours of "unprofessional conduct", which is not defined in the statute.³⁰

Maryland's appellate courts have been called upon on multiple occasions to consider whether certain conduct by a physician was "in the practice of medicine." Initially, the Supreme Court of Maryland narrowly construed the term to mean that the conduct is "directly tied to the

²⁹ Effective December 14, 2022, the Maryland Court of Appeals was renamed the Supreme Court of Maryland, and the Maryland Court of Special Appeals was renamed the Appellate Court of Maryland.

³⁰ The Board has given notice, through its regulations governing disciplinary hearings, that it "may consider the Principles of Ethics of the American Medical Association" in disciplinary and licensing matters before the Board. COMAR 10.32.02.16.

physician's conduct in the actual performance of the practice of medicine, i.e., in the diagnosis, care, or treatment of patients." *McDonnell v. Comm'n on Med. Discipline*, 301 Md. 426, 436-437 (1984).³¹ Over time, the conduct considered to be "in the practice of medicine" has been expanded by the appellate courts, as has the test for determining when conduct is "in the practice of medicine." *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59 (1999) (doctor's conduct of sexually harassing co-employees was "in the practice of medicine"); *Finucan, supra*. (physician's three sexual relationships with patients were accomplished "in the practice of medicine"); *Cornfeld v. State Bd. of Physicians*, 174 Md. App. 456 (2007) (physician's false statements to peer reviewers constituted unprofessional conduct "in the practice of medicine"); *Salerian v. Maryland State Bd. of Physicians*, 176 Md. App. 231 (2007) (conducting a forensic evaluation is "in the practice of medicine").

The test for whether conduct is "in the practice of medicine" is whether it "relates to the effective delivery of patient care." *Cornfeld*, 174 Md. App. at 477-478. The State may show that conduct relates to the effective delivery of patient care by, *inter alia*, "evidence that the physician abused his status as a physician in a manner that either harmed patients, created a substantial risk of harm to them, or diminished the standing of the medical profession as caregivers." *Id.* at 478.

Having considered all of the evidence, I find that the State has proved by a preponderance of the evidence that the Respondent engaged in unprofessional conduct in the practice of medicine. Dr. [REDACTED] was the only expert witness to testify in the case, and he was cross-examined extensively. The Respondent's exhibits, admitted by stipulation at the outset of the hearing, included two expert reports, but neither expert testified subject to cross-examination on

³¹ This case pertained to an earlier version of the Medical Practice Act, and specifically a provision prohibiting "immoral conduct of a physician in his practice as a physician." *McDonnell v. Comm'n on Med. Discipline*, 301 Md. 426, 429-430 (1984).

the facts or conclusions stated in those reports. Of those two expert reports, only one directly pertained to the reliability of the American Toxicology test on July 17, 2023.³² It was the written opinion of the Respondent's expert, Dr. [REDACTED], that the American Toxicology results should be considered inconclusive and suspect because there was no B tube to enable a confirmation of the positive methamphetamine test on July 17, 2023; the original documents in support of the lab manager's summary report³³ were not provided; the lab's MRO did not specify which records he reviewed, to whom they belonged, or what drug screen was positive;³⁴ and the subsequent urine test on August 10, 2023, and hair and nail sample tests in December 2023 and January 2024, supported the Respondent's claim that he had not ingested methamphetamine.

Concerning the reliability of the American Toxicology urine screen on July 17, 2023, and the reliability of the positive result, I found the testimony of Dr. [REDACTED] to be more comprehensive, thorough, and credible than the four-page, double-spaced, written report expressing Dr. [REDACTED]'s concerns, rather than a definitive refutation of the positive test result. Contrary to the Respondent's argument, Dr. [REDACTED] did not declare the July 17, 2023 test result to be unreliable or invalid. He testified that while a B tube confirmation would have been beneficial, he was satisfied that American Toxicology conducted an immunoassay test for [REDACTED], conducted a more specialized LC/MS test for methamphetamine, and conducted a third test of isomers to confirm that the A tube sample was positive for D-methamphetamine, a CDS. He did not find an error in the testing. He did not find that the lack of a telephone call to the Respondent to inquire of his prescription medications was an issue because the Respondent self-reported them to the lab. He did not find the lack of a B tube sample to be dispositive

³² See the Report of [REDACTED], M.D., Resp. Ex. 5, pp. R064-R068. The other expert report, by [REDACTED], M.D., pertained to the unlikelihood that the Respondent suffered from a substance use or stimulant use disorder.

³³ See Resp. Ex. 2, p. R007.

³⁴ *Id.*, p. R013.

because its absence did not demonstrate that the positive test was incorrect or unreliable as conducted. Rather, Dr. [REDACTED] testified to a reasonable degree of medical certainty that the July 17, 2023 test was a reliable positive urine screen result, which he testified is the most reliable test method available for the presence of methamphetamine.

Dr. [REDACTED] also addressed the conclusion stated in Dr. [REDACTED]'s report that the subsequent negative urine screen on August 10, 2023, and hair and nail testing months later than that, suggested that the Respondent may not have ingested methamphetamine. Dr. [REDACTED] explained clearly that a urine screen on August 10, 2023 will not provide evidence disproving the use of methamphetamine weeks earlier. Similarly, he explained that hair and nail testing is unreliable evidence to rule out the prior use of a substance due to the number of variables which affect the integrity of the substance remaining over time in the hair and nails sampled. Dr. [REDACTED]'s doubts did not contradict the affirmative evidence which supported the reliability of the positive methamphetamine result.

Having found the test result for methamphetamine to be reliable, I also considered the Respondent's argument that he was not unprofessional in the practice of medicine because he did not see patients within the twenty-four to ninety-six hour window described by Dr. [REDACTED]. If one counts Monday, July 17, 2023 as the last of the four days within which a positive test result can be had from the time of usage, and the sample was collected on that day at 2:02 p.m.,³⁵ the Respondent was positive for methamphetamine on a day when he was expected to work. He was asked to go to the café first that morning, but he arrived in scrubs as expected when working. The Respondent's work did not include only seeing patients remotely or in person. He was also on call to answer the questions of nurses in the practice should a patient issue arise during business hours that required a doctor's response and, by his testimony, even after business hours.

³⁵ Resp. Ex. 2, p. R005.

Such random calls from nurses was one of the issues about which the Respondent complained to Mr. [REDACTED] after he was asked to undergo drug testing. Had his medical expertise been required that day, the delivery of that service would have occurred while the Respondent had a significant level of methamphetamine in his system, even if he did not outwardly show signs of impairment.

Similarly, if one counts backwards four days from Monday at 2:02 p.m., the earliest day is Thursday, July 13, 2023, not Friday, July 14, 2023, as argued. Whether the Respondent saw patients on Thursday the 13th is not clear, but he was on call as needed every workday to render medical judgments in patient care. He was similarly on call on July 14. Accordingly, whether the Respondent was positive for methamphetamine on only Monday the 17th, or also on Thursday the 13th and Friday the 14th, he was on call to render his medical judgment and make care decisions on any or all of those days.

I find that the State has proved by a preponderance of the evidence that the Respondent was unprofessional in the practice of medicine. The State presented persuasive evidence that the Respondent tested positive for methamphetamine on a day or days when he was expected to be prepared to provide medical judgment and/or care recommendations to patients of the practice.

B. Whether the Respondent is Guilty of Being Professionally, Physically, or Mentally Incompetent Pursuant to Health Occ. § 14-404(a)(4).

The State argued that the Board can disqualify a physician's medical license if his or her mental competence is compromised and the incompetence impedes the provision of medical care. The Board further argued that if a physician uses methamphetamine, then such use renders them professionally or mentally incompetent to practice medicine.

The Respondent argued that a finding of incompetence, whether physical or mental, requires expert testimony, which the State did not present. As such, the Respondent argued that the State did not carry its burden of proof on this charge.

Professionally, Physically, or Mentally Incompetent

The Act does not define “incompetent.” Merriam-Webster defines the adjective “incompetent” in pertinent part as:

- 1a: lacking the qualities needed for effective action
- b: unable to function properly
- ...
- 3: inadequate to or unsuitable for a particular purpose

<https://www.merriam-webster.com/dictionary/incompetent> (last visited November 13, 2024).

Merriam-Webster defines the adverb “physically” in pertinent part as “in respect to the body”.

<https://www.merriam-webster.com/dictionary/physically> (last visited November 13, 2024).

In *Blaker v. State Board of Chiropractic Examiners*, 123 Md. App. 243 (1998), the Appellate Court of Maryland reviewed the Board of Chiropractic Examiners’ decision to suspend Dr. Blaker and place him on probation for professionally incompetent treatment of a patient. The language in the statute governing chiropractors mirrors the language governing physicians and states the “Board may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the applicant or licensee . . . (9) is professionally, physically, or mentally incompetent.” 123 Md. App. at 249. The Board deemed Dr. Blaker professionally incompetent for: (1) failing to take a complete health history; (2) failing to perform and document an adequate physical examination, including undertaking a basic visual analysis of the patient with his clothing removed and obtaining vital signs; (3) failing to perform neurological, diagnostic, and orthopedic tests; (4) failing to document properly the treatment that was performed on each visit; and (5) failing during the last two visits to diagnose that the Patient’s pain was caused by a tumor. *Id.* at 251-52.

Blaker argued that since the term “incompetent” was not defined, the statute was void for vagueness and unconstitutional. The Appellate Court held “the term ‘professionally

incompetent' ... is plain language commonly understood by members of the chiropractic community and, as such, does not render the statute void for vagueness." *Id.* at 258. The Court further opined that "in any profession, there are minimum standards of performance that must be met for a professional to practice in a competent manner." *Id.*

The Supreme Judicial Court of Maine weighed in on the definition of incompetence with respect to dental licenses and held:

"Incompetence or unskillfulness" plainly refers to incompetence or unskillfulness in the practice of that profession and does not refer to a dentist's incompetence or lack of skill in any other activity. In common parlance, "incompetence" means a lack of the learning or skill necessary to perform, day in and day out, the characteristic tasks of a given calling in a reasonably effective way. Competency does not mean perfection, and incompetence is not ordinarily established by the showing merely of an isolated instance in which performance has been inadequate.

Bd. of Dental Exam'rs v. Brown, 448 A.2d 881, 883 (Me. 1982). In *Brown*, the Court affirmed the lower court's conclusion that Brown was incompetent for failing to use proper diagnostic procedures (i.e., x-rays), failing to formulate and implement appropriate treatment plans, failing to achieve desired results in a reasonable period of time, and failing to create and maintain adequate patient records. *Id.* at 882.

The State argued that the Respondent was incompetent due to methamphetamine use on a long-term basis, as evidenced by his increasingly unreliable behavior and declining physical appearance. As stated previously, there is an insufficient factual basis for me to conclude that the Respondent's declining performance or appearance were the products of long-term methamphetamine use because he tested positive only once, and the State's expert limited his opinion to a single use which was detectable within one to four days of the test. In addition, the role played by the Respondent's [REDACTED], and whether he was medication-compliant in the weeks before July 17, 2023, suggest an alternative cause of those changes.

As noted above in *Brown*, the term incompetence is not ordinarily used to describe a singular occurrence of being unable to function properly. It is notable that in *Blaker* and *Brown*, the conduct in question took place over a long period of time. Therefore, a better reading of the statutory provision is that the term incompetence is applicable in situations where a physician has a physical or mental impairment, including a temporary one that results from use of a CDS, that substantially impedes their ability to professionally perform the minimum standards of performance of the job.

The State did not offer evidence of any occasion when the Respondent failed to abide by proper standards of care in any instance in which a patient was actually involved. Though he was tardy and disheveled in the last few weeks of his tenure with [REDACTED], no witness testified that he ever appeared to them to be under the influence of any substance while employed. While he apparently failed to adhere to office protocols, there is no evidence of a time when he improperly provided care or breached any standard of care in the delivery of medical services. In addition, even though the State urged me to find that his changes of behavior during the latter half of his employment with [REDACTED] were evidence of methamphetamine use, and the resulting incompetence of mind affected patient care, I do not find that to be a reasonable inference.

Only one positive drug test has been identified to me, and the use of the detected drug have been limited by expert testimony to a one-to-four-day window. The same expert testimony limited the effects of a single use of the drug to a twenty-four hour window. I cannot reasonably infer from a positive test on July 17, 2023 that the Respondent's competence was hypothetically impaired by the use of methamphetamine earlier than July 13, 2023. Similarly, there is insufficient evidence that he saw patients or made care decisions between July 13, 2023 and July 17, 2023, and that the care or decisions were affected by an impairment that rendered the Respondent incompetent at that time.

Indeed, it would be difficult to pinpoint the date or dates on which the Respondent was most impaired by methamphetamine since no one witnessed him ingest it, which makes it difficult to know on what days he was affected and what he did professionally on those days. At the very least, he was under the influence of methamphetamine on July 17, 2023, a day when he was scheduled to work and would have been required to render medical judgments or care if requested. He did not render care on that date, and I cannot discern on which other dates he was impaired and possibly made medical judgments or provided care. As such, my consideration of his incompetence is subject to a narrow window, and no evidence of actual incompetence has been offered within that timeframe.

Accordingly, I find that the State has not proved by a preponderance of the evidence that the Respondent is guilty of professional, physical, or mental incompetence based on one proven use of methamphetamine, because there is no evidence of the exercise of medical judgment or professional care while affected by its use.

C. Whether the Respondent is Guilty of Being Addicted To or Habitually Using Any Narcotic or Controlled Dangerous Substance Pursuant to Health Occ. § 14-404(a)(8).

The State argued that it is not necessary to find that the Respondent was addicted to or habitually used a narcotic or CDS to prove this charge. Rather, it argued, the totality of the evidence shows that the Respondent used methamphetamine more than once. The State argued that the positive result from the July 17, 2023 test confirms witnesses' suspicions and explains the Respondent's changes in behavior, and this suffices to prove addiction to or habitual use of methamphetamine, the only drug for which the Respondent tested positive. That is, I may reasonably infer addiction or habitual use from these facts.

The Respondent argued that a determination of addiction or habitual use requires an expert opinion, which the State did not provide. The Respondent also pointed out that the State's

own expert, Dr. [REDACTED], expressly declined to render an opinion about use of methamphetamine by the Respondent other than within the four day window before the positive July 17, 2023 drug test. The Respondent argued that it was not reasonable for me to infer more than the State's expert allowed.

Consistent with my previous conclusions, I do not find there is sufficient evidence for me to infer addiction or habitual use of methamphetamine solely on the basis of one positive test, in which the sole testifying expert has said the effects lasted up to twenty-four hours, and were detectable within a four-day window. I have also taken note of the sworn interviews of Dr. [REDACTED] [REDACTED], Ms. [REDACTED], and Mr. [REDACTED], in which each affirmed that they had never seen the Respondent apparently impaired, they had no concerns that he was impaired while working, and no one had reported to them a concern that the Respondent was impaired while performing his professional duties.³⁶

While I do not find that a conclusion of addiction or habitual use necessarily requires an expert medical opinion, it does include evidence that the Respondent showed signs of obvious impairment over a period of time suggesting more than one dose of a CDS. Accordingly, I find that the State has not proved by a preponderance of the evidence that the Respondent was addicted to or habitually used methamphetamine.

D. Whether the Respondent is Guilty of Providing Professional Services While Using any Narcotic or CDS Pursuant to Health Occ. § 14-404(a)(9)(ii).

The State argued, on the basis of Ms. [REDACTED]'s testimony, that the Respondent was involved in a telehealth appointment on July 14, 2023, and because he was acting "bizarrely" that night, and because he tested positive for methamphetamine on July 17, 2023, they have proved that the Respondent provided professional services while using a narcotic or CDS.

³⁶ State Ex. 1(k), pp. 185-204.

The Respondent replied that Dr. ██████████ testified that the Respondent was always on point with patients and was very intelligent. He argued that the State offered no evidence that he was incapacitated or impaired during any patient interaction.

The Act does not define “professional services,” or “while using.” It is clear that methamphetamine is a CDS. Black’s Law Dictionary defines the noun “service” in pertinent part as “the official work or duty that one is required to perform.” Service Definition, *Black’s Law Dictionary* (12th ed. 2024), *available at* Westlaw. Merriam-Webster defines the adjective “professional” in pertinent part as “of, relating to, or characteristic of a profession.” <https://www.merriam-webster.com/dictionary/professional> (last visited November 13, 2024). Although “while using” is not defined, I find it to be equivalent in application in this instance to the term “under the influence”, since the issue is the effect of the CDS on the Respondent, and how it influences him, while he is providing professional services. Black’s Law Dictionary defines “under the influence” as “deprived of clearness of mind and self-control because of drugs or alcohol.” Under the Influence Definition, *Black’s Law Dictionary* (12th ed. 2024), *available at* Westlaw. Merriam Webster defines “under the influence” as “affected by alcohol or drug intoxication.” <https://www.merriam-webster.com/dictionary/under%20the%20influence> (last visited November 13, 2024).

The term “while using” implies that the influence of the narcotic or CDS affects the provision of professional services when they are delivered. On the evidence before me, it is possible that the Respondent may have used methamphetamine on Thursday, July 13, 2023, but no evidence was offered to show that he delivered professional services on that date. Similarly, it is possible that the Respondent may have ingested methamphetamine on Friday, July 14, 2023, on a date when he may have been involved to an unspecified degree in a telehealth consult. However, it is equally possible that he may have ingested methamphetamine on Saturday,

July 15, or Sunday, July 16, 2023, when he provided no services at all, and still tested positive on the following Monday.

Given that the actual date of ingestion is not known, and it could have been on any one of the four days between July 13, 2023 and July 17, 2023, it is necessary to consider relevant evidence bearing on the Respondent's observed behaviors within that timeframe, and when those observations occurred. There are no reported unusual behaviors observed on Thursday, July 13, 2023. However, all of the State's witnesses agreed that they had never observed the Respondent show signs of impairment while working, which necessarily includes that day.

The State's evidence emphasized events on July 14, 2023 to prove that he most likely used methamphetamine, was impaired by it, and delivered professional services while using it, since Ms. [REDACTED] testified that he had a meeting and was involved in a telehealth consult that day. I paid particular attention to the testimony of Ms. [REDACTED] and Mr. [REDACTED], as well as their sworn interviews to the Board, concerning their observations on July 14. Ms. [REDACTED] did not testify to any observed behaviors of the Respondent during work hours on July 14. She testified that there was a meeting and a telehealth consult he was involved in that day, but she did not mention either of those events in her sworn interview on September 19, 2023.³⁷ Her testimony at the hearing pertained more to the Respondent's behaviors at the afterwork gathering at Mr. [REDACTED]'s home on July 14, where she found the Respondent's behavior unusual because he was socializing with the nurses and was more talkative than usual. Her sworn statement also emphasized that it was unusual that the Respondent was talkative and socializing, but no objectively abnormal conduct was reported by Ms. [REDACTED]. This testimony did not suggest abnormal behavior in a social setting, even if the Respondent was usually more reserved

³⁷ State Ex. 1(l), p. S210 (page 16 of the transcript).

professionally. In addition, the behavior was observed at a time when the Respondent was providing no professional services.

In Mr. [REDACTED]'s sworn interview on September 19, 2023, he offered no evidence that the Respondent saw patients or provided care on Friday, July 14, 2023, or that he observed the Respondent on that date before he arrived at Mr. [REDACTED]'s home for the gathering. Mr. [REDACTED] stated in that interview that throughout the Respondent's employment, he was involved with no more than twenty-five patients, including those he shadowed, that almost all of them had been seen in a video setting with Dr. [REDACTED], and that he was not yet involved in clinical practice.³⁸ He stated in the interview that if the Respondent had been present in person with a patient, a nurse would have also been present. However, the only persons Mr. [REDACTED] identified as ever having been seen by the Respondent were two of Mr. [REDACTED]'s relatives from California who were provided as "trainer patients."³⁹ He did not say that this training session occurred on July 13 or 14, 2023 or that it included the delivery of professional services. Mr. [REDACTED] confirmed in the sworn interview that there had been no patient complaints about the Respondent, that no patients requested not to see him again, and that he had no clinical concerns regarding the Respondent.⁴⁰

At the hearing, Mr. [REDACTED]'s testimony about his observations of the Respondent on July 14, 2023 began with the Respondent's arrival at his home after work. No witness testified to observing the Respondent providing professional services on any date, or to him being impaired at any time during work hours throughout the entirety of his employment.

I find that the State has not proved, by a preponderance of the evidence, that the Respondent provided professional services while using a narcotic or CDS.

³⁸ *Id.*, p. S225 (pages 27-28 of the transcript).

³⁹ *Id.*, p. S226 (page 31 of the transcript).

⁴⁰ *Id.*

Sanctions

The State argued that its goals are the rehabilitation of the Respondent and the protection of the public, and that a sanction would effect both goals. The State argued that appropriate sanctions include a continuation of the suspension; that the Respondent report to the Maryland Professional Rehabilitation Program (MPRP) and submit to evaluation for substance use; that the Respondent sign any contracts required by the MPRP and cooperate with all required treatment and monitoring required by the MPRP; that once the MPRP determines that the Respondent is safe to practice medicine, he be permitted to petition to have the suspension lifted; and that any lifting of the suspension shall be accompanied by a probationary period and appropriate conditions that the Board would determine at that time.

The Respondent argued that Nevada has closed its investigation arising from the same facts, without suspension or sanction, and he has a current license to practice medicine in that State. The Respondent similarly pointed out that his medical license in Michigan has just been renewed, confirming that Michigan was satisfied as to his physical, mental, and professional competence. The Respondent urged that all charges against him be dropped as unsupported, and that his license in Maryland be immediately returned to him.

Here, I have found only one ground for discipline arising from the violation of section 14-404(a)(3)(ii) of the Health Occupations Article. The guideline for the applicable sanction is found in COMAR 10.32.02.10B(3)(e), which applies to a finding of unprofessional conduct in the practice of medicine that is not sexual in nature. The maximum sanction for that ground is revocation, and the minimum sanction is reprimand. There may also be a fine of no more than \$25,000.00 and no less than \$10,000.00. I do not find there are any mitigating or aggravating factors that require me to consider deviating from these guidelines. COMAR 10.32.02.09B.

There is no evidence that the Respondent has used any narcotic or CDS since July 17, 2023. The Respondent has undergone a negative urine screen on August 10, 2023 and negative subsequent hair and nail testing through January 12, 2024.⁴¹ However, neither is there clear evidence that he has not used methamphetamine since January 12, 2024. The last test result before the hearing was of head hair, chest hair, and toenail, on January 12, 2024, all of which were negative for methamphetamine. There was no evidence of substance testing having been conducted from January 12, 2024 to August 27, 2024, the last day of the hearing. Thus, while I have no evidence that the Respondent continues to behave in a manner which is unprofessional in the practice of medicine,⁴² due to use of a CDS, neither do I have clear evidence that he does not continue to use a CDS.

While the State argued that the Respondent should be subjected to the full panoply of sanctions it proposed, that argument was premised on the State having proved all of the charges against the Respondent. The State did not offer some lesser set of sanctions in the event that I did not find in its favor on all charges.

Conversely, the Respondent did not argue on the basis that any of the charges, whether individually or in combination, might have been proved, and propose a sanction tailored to the evidence of guilt of fewer than all four charges. Like the State, the Respondent argued on the premise of a finding in his favor on all charges.

The State argues that its goals are rehabilitation of the Respondent and protection of the public. These are worthy goals, but the severity and length of the sanctions proposed by the State exceed what I believe is necessary to accomplish goals which arise from evidence supporting only one charge. The initial issue is whether the Respondent is safe to practice

⁴¹ Joint Ex. 2.

⁴² As noted, the Respondent maintains active medical licenses in Nevada and Michigan. No evidence was offered whether he practices medicine in either State.

medicine, based on abstinence from the use of methamphetamine. If the Respondent demonstrates over a reasonable period of testing and counseling that he does not use and has not used methamphetamine, the public safety will have been protected and the Respondent should be permitted to petition to have the suspension lifted and his license reinstated.

In accordance with the Board's sanctioning guidelines, I recommend a sanction of continuation of the suspension for six months, during which the Respondent shall undergo substance abuse counseling and/or treatment, as well as urine drug screen testing. If the Respondent complies with this sanction and has been abstinent for six months based on urine testing during that period, he may petition the Board to lift the suspension.

PROPOSED CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent violated Md. Code Ann., Health Occ. § 14-404(a)(3)(ii) (2021). As a result, I conclude that the Respondent is subject to disciplinary sanctions of a suspension until the Respondent is in treatment and has been abstinent for six months for the cited violation. *Id.*; COMAR 10.32.02.09A; COMAR 10.32.02.10B(3)(e).

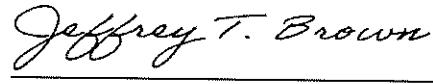
I conclude as a matter of law that the Respondent did not violate Md. Code Ann., Health Occ. §§ 14-404(a)(4), (8), and (9)(ii) (2021 and Supp. 2024).

PROPOSED DISPOSITION

I PROPOSE that charges filed by the Maryland State Board of Physicians against the Respondent on October 23, 2023 be **UPHELD IN PART** as to § 14-404(a)(3)(ii), and **DISMISSED IN PART** as to §§ 14-404(a)(4), (8), and (9)(ii); and

I PROPOSE that the Respondent be sanctioned by a suspension until the Respondent is in treatment and has been abstinent for six months.

November 15, 2024
Date Decision Mailed



Jeffrey T. Brown
Administrative Law Judge

JTB/kh
#214814

NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party adversely affected by this proposed decision may file written exceptions with the disciplinary panel of the Maryland State Board of Physicians that delegated the captioned case to the Office of Administrative Hearings (OAH), and request a hearing on the exceptions. Md. Code Ann., State Gov't § 10-216(a) (2021); COMAR 10.32.02.05. Exceptions must be filed within fifteen (15) days of the date of issuance of this proposed order. COMAR 10.32.02.05B(1). The exceptions and request for hearing must be addressed to the Disciplinary Panel of the Board of Physicians, 4201 Patterson Avenue, Baltimore, MD, 21215-2299, Attn: Christine A. Farrelly, Executive Director.

A copy of the exceptions should be mailed to the opposing attorney, and the other party will have fifteen (15) days from the filing of exceptions to file a written response addressed as above. *Id.* The disciplinary panel will issue a final order following the exceptions hearing or other formal panel proceedings. Md. Code Ann., State Gov't §§ 10-216, 10-221 (2021); COMAR 10.32.02.05C. The OAH is not a party to any review process.

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