

Public

NEW YORK
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HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

June 15, 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Debra J. Young, Esq.
Thuillez, Ford, Gold, Butler & Young
20 Corporate Woods Boulevard
Albany, New York 12211

Brian S. Kahan, D.O.
Center for Pain Medicine & Psychiatric
Rehabilitation
2002 Medical Parkway – Suite 150
Annapolis, Maryland 21401

Joel E. Abelove, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Brian S. Kahan, D.O.

Dear Parties:

Enclosed please find the Determination and Order (No. 11-152) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

REDACTED

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
BRIAN S. KAHAN, D.O.¹

DETERMINATION
AND
ORDER

BPMC #11-152

COPY

A hearing was held on May 17, 2011, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated February 17, 2011, were served upon the Respondent, **Brian S. Kahan, D.O.**

Pursuant to Section 230(10)(e) of the Public Health Law, **Michael R. Golding, M.D.**, Chair, **Eleanor C. Kane, M.D.**, and **Janet M. Miller, R.N.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **David A. Lenihan, Esq.**, Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by **James E. Dering, Esq.**, General Counsel, by **Joel E. Abelove, Esq.**, of Counsel. The Respondent, **Brian S. Kahan, D.O.**, did appear, with counsel, **Debra J. Young, Esq.**, of Albany. Evidence was received and transcripts of these proceedings were made. After consideration of the entire record, the Hearing Committee issues this Determination and Order.

¹ Initially, this case was captioned Brian S. Kahan, **M.D.** This designation was in error as the correct title was **D.O.** At the hearing, this error was corrected and the papers were amended, on the consent of the parties, to read, "**D.O.**" (See Transcript, p. 7)

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10) (p). The statute provides for an expedited hearing when a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(b) and §6530(9)(d) by having been disciplined after being found guilty, through a Consent Order, of improper professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York State. Specifically, the Respondent was Reprimanded and fined \$5,000.00 by the Maryland State Board of Physicians for several enumerated charges as set forth in findings of fact below. Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1. A copy of the Maryland Consent Order (With terms of probation) is attached to this Determination and Order as Appendix 2.

WITNESSES

For the Petitioner: None
For the Respondent: Brian S. Kahan, D.O.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. The Respondent, Brian S. Kahan, D.O. did appear, with counsel, An Affidavit of Attempted Service and Due Diligence is in the record as Petitioner's Exhibit 2.
2. Brian S. Kahan, D.O. the Respondent, was authorized to practice medicine in New York State on March 30, 1993 , by the issuance of license number 191804 by the New York State Education Department (Petitioner's Ex. 4).
3. On or about June 24, 2010, the Maryland State Board of Physicians in a Consent Order, (hereinafter "Maryland Order") disciplined the Respondent. In this Order,

Respondent was Reprimanded, fined \$5,000.00, and placed on probation for one year. (Petitioner's Ex. 4) . A copy of the Maryland Consent Order (With terms of probation) is attached to this Determination and Order as Appendix 2.

4. The Maryland Consent Order found that the Respondent was guilty of unprofessional conduct in the practice of medicine in that he did not perform the physical examinations that he had documented. (Petitioner's Ex. 4)

5. The conduct resulting in the Maryland Board disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law Sec.6530(2) (practicing the profession fraudulently).
2. New York Education Law Sec. 6530(32) (failure to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST SPECIFICATION

"Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York State..."

VOTE: Sustained (3-0)

SECOND SPECIFICATION

"Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did appear at the hearing, with counsel. The Administrative Officer ruled that there was jurisdiction noting the Affidavit of Attempted Service (Exhibit 2) and that counsel for the Respondent acknowledged jurisdiction. The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in the State of New York should be put on probation, co-terminus with the present Maryland probation. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Respondent testified that he regrets signing the Maryland Consent Order and stated that he should have contested it. The Administrative Officer reminded the

Respondent that a Referral hearing is not the forum to appeal the Maryland Order and the purpose of this hearing was to determine an appropriate punishment for the misconduct that the Maryland Board found. The Administrative Officer ruled that full faith and credit would be given to the Maryland Order and its findings would be presumed dispositive. The panel took into account the testimonial letters of support, Exhibit A, and the evidence that the Respondent has completed the ethics requirements of the Maryland probation, Exhibit C. The panel took note of the Respondent's testimony and his written submission, Exhibit D, wherein the Respondent does acknowledge responsibility for his actions and recognizes that what he did was wrong. The panel accepted this statement of remorse as a mitigating circumstance in limiting the punishment to that imposed by the Maryland Order.

The panel considered the full range of penalties available in this case and determined that a Stayed Suspension and a Probation co-terminus with the Maryland Probation Order would be appropriate. Upon the completion of his Maryland probation, the Respondent may petition the New York State Board for the removal of this restriction on his license.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specifications of professional misconduct, as set forth in the Statement of Charges, are **SUSTAINED**.
2. The Respondent's license to practice medicine is suspended until such time as the Maryland probation is completed and this suspension is stayed.

3. The Respondent is placed on probation co-terminus with the Maryland Board probation, the terms of which are attached hereto as Appendix 2.
4. Upon the completion of his Maryland probation, the Respondent may petition the New York State Board for the removal of this restriction on his license.
5. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Brooklyn, New York

June 11, 2011

REDACTED


Michael R. Golding, M.D., Chair

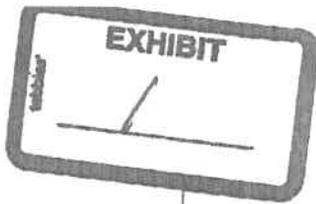
Eleanor C. Kane, M.D.
Janet M. Miller, R.N.

To:
Debra J. Young, Esq.
Attorney for Respondent
Thuillez, Ford, Gold, Butler & Young
20 Corporate Woods Boulevard
Albany, New York 12211

Brian S. Kahan, D.O.
Center for Pain Medicine and Psychiatric Rehabilitation
2002 Medical Pkwy
Suite 150
Annapolis, MD 21401

Joel E. Ablove, Esq.
Attorney for Petitioner
~~Associate Counsel~~
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX 1



STATE OF NEW YORK DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
BRIAN S. KAHAN, ^{P.O.} M.D.
CO-10-07-4133-A

NOTICE OF
REFERRAL
PROCEEDING

TO: BRIAN S. KAHAN, M.D.
Center for Pain Medicine and Psychiatric Rehabilitation
2002 Medical Pkwy
Suite 150
Annapolis, MD 21401

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 20th day of April, 2011, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, NY 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel who shall be an attorney admitted to practice in New York state. You may produce evidence and/or sworn testimony on your behalf. Such evidence and/or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered that would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten (10) days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten (10) days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health, whose name appears below. You may file a written brief and affidavits with the Committee. Six (6) copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen (14) days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney, indicated below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide, at no charge, a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner demands, hereby, disclosure of the evidence that Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence, and a description of physical and/or other evidence that cannot be photocopied.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five (5) days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

February 17, 2011

REDACTED

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Joel E. Ablove
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

IN THE MATTER
OF
BRIAN S. KAHAN, M.D.
CO-10-07-4133-A

STATEMENT
OF
CHARGES

BRIAN S. KAHAN, M.D., Respondent, was authorized to practice medicine in New York state on March 30, 1993, by the issuance of license number 191804 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about June 24, 2010, the Maryland State Board of Physicians (hereinafter "Maryland Board"), by a Consent Order (hereinafter "Maryland Order"), Reprimanded Respondent's license to practice medicine, placed his license on probation for a minimum of one (1) year, required that he complete a Board-approved course/ tutorial in medical ethics, and fined Respondent \$5,000.00, based on unprofessional conduct in the practice of medicine, in violation of H.O. §14-404(a)(3)(ii).

B. The conduct resulting in the Maryland Board disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law §6530(2) (practicing the profession fraudulently);
and/or
2. New York Education Law §6530(32) (failure to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based

would, if committed in New York state, constitute professional misconduct under the laws of New York state:

1. The facts in Paragraphs A and/or B.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having his license suspended or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the suspension or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

2. The facts in Paragraphs A and/or B.

DATED: *February 17, 2011*
Albany, New York

REDACTED

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct

APPENDIX 2

IN THE MATTER OF

BRIAN KAHAN, D.O.

Respondent

License Number: H53803

* BEFORE THE
* MARYLAND
* BOARD OF PHYSICIANS
* Case Numbers: 2008-0429 and
2008-0459 ✓

CONSENT ORDER

~~On December 3, 2009, the Maryland State Board of Physicians (the~~
"Board") charged Brian Kahan, D.O., (the "Respondent") (D.O.B. 03/17/1965),
License Number H53803, under the Maryland Medical Practice Act (the "Act"),
Md. Health Occ. Code Ann. ("H.O.") § 14-404(a) (2009 Repl. Vol.).

Specifically, the Board charged the Respondent with the following
provisions of the Act under H. O. § 14-404:

(a) Subject to the hearing provisions of § 14-405 of this subtitle, the
Board, on the affirmative vote of a majority of the quorum, 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;

(11) Willfully makes or files a false report or record in the practice of
medicine; [and];

(17) Makes a willful misrepresentation in treatment.

On March 3, 2010, a Case Resolution Conference was convened in this matter. Based on negotiations occurring as a result of this Case Resolution Conference, the Respondent agreed to enter into this Consent Order consisting of Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The Board finds the following:

- ~~1. At all times relevant to these charges, Respondent was and is a physician~~
licensed to practice medicine in the State of Maryland. He was initially licensed in Maryland on or about August 7, 1998, and his license is presently active and has an expiration date of September 30, 2010.
2. At the time of the acts described herein, the Respondent was a physician engaged in the practice of psychiatry at 2002 Medical Parkway, Suite 150, Annapolis, Maryland, 21401. He has hospital privileges at Anne Arundel Medical Center.
3. On or about December 27, 2007, the Board received two identical complaints from two of the Respondent's former patients ("Patient A" and "Patient B")¹ that alleged that the Respondent provided a detailed report to their primary care physician documenting physical examinations that were not performed.
4. The Board conducted an investigation that included an interview under oath of the Respondent on December 15, 2008.

¹ In order to maintain confidentiality, patient names will not be used in this document. The Respondent is aware of the identities of all individuals referenced in this document.

I. PATIENT-RELATED ALLEGATIONS²

Patient A

5. Patient A was a 67 year-old male when he saw the Respondent for medical care on November 5, 2007. Patient A had been referred to the Respondent by his primary care provider ("PCP") for evaluation and treatment of Patient A's chronic low back pain. Patient A is a retired physician who specialized in internal medicine.

6. Patient A brought to his appointment a copy of his February 2001 MRI of the lumbar spine without contrast for the Respondent to review.

7. During the appointment, Patient A reviewed his medical history and chief complaint with the Respondent. The Respondent then reviewed Patient A's MRI.

8. According to Patient A, the Respondent gave Patient A several printed pages of exercises to strengthen his core muscles. The Respondent instructed Patient A to return in six weeks for further evaluation and treatment if there was no improvement in Patient A's pain.

9. According to Patient A, at no time during his appointment did the Respondent perform a physical examination on any part of his body.

10. During his August 19, 2008 interview with the Board's investigator, Patient A stated, "except for shaking my hand on the way in the door, Dr. Kahan never, ever, ever touched my body. He never had me sit on the examination table. He never touched my skin." Patient A further stated that the Respondent "never asked [him] to do anything that would resemble an examination" and that the only

² Patients A and B are husband and wife who presented to the Respondent's office on the same day for individual appointments. Patients A and B submitted two separate complaints describing identical experiences with the Respondent.

time he stood up "was to stand up and leave, and to shake his hand when he walked into the room."

11. Approximately one week later, Patient A requested a copy of his medical records from the Respondent and received a dictated report that the Respondent had sent to Patient A's PCP.

12. The Respondent's report on Patient A stated that "[a] complete history and physical was performed and pertinent historical and physical findings were

dictated." In addition, the report stated the following:

PHYSICAL EXAMINATION: Reveals pain with lumbar extension and pain with lumbar flexion. Neurologically he is grossly intact. There is no evidence of pain amplification syndrome.

13. On November 28, 2007, Patient A hand-carried a letter to the Respondent's office to express his concern about following a treatment plan that was developed without a physical examination. In his letter, Patient A asked the Respondent if he would like to meet to discuss this issue.

14. After receiving no response from the Respondent, Patient A hand-carried a second letter to the Respondent's office on December 3, 2007. Patient A did not receive a response. Patient A later called the Respondent's office and asked for a response to his letter within 48 hours.

15. On December 14, 2007, Patient A met with the Respondent. According to Patient A, when he attempted to discuss his concerns the Respondent stated that he would discuss Patient A's pain and nothing more. The Respondent also provided Patient A with a copy of his entire office record.

16. Patient A reviewed his office records in the Respondent's presence. The Respondent's handwritten notes from Patient A's initial visit documented that Patient A's flexion was "limited to 24" from [the] floor" and that his extension was "limited to [illegible] due to pain." The Respondent also wrote "function" over the blank spaces for Patient A's rotation. Regarding provocative tests, the Respondent noted that Patient A was negative for three provocative tests (Hoover's, SLR, Waddell's (sic)).³ In addition, under palpatory findings, the

Respondent documented "pain psis region, no spasms, no ecchymosis." The Respondent also documented that Patient A's manual muscle testing was within normal limits.

17. According to Patient A, the Respondent did not conduct any of the testing that he documented in his notes.

18. Patient A asked the Respondent if he performed any of the testing that he documented. According to Patient A, the Respondent repeated that he is a pain specialist and would discuss only Patient A's pain.

Patient B

19. Patient B, wife of Patient A, was a 60 year-old female when she saw the Respondent for medical care on November 5, 2007. Patient B had been referred to the Respondent by her PCP for evaluation and treatment of her acute back pain. Patient A is a registered nurse.

³ The blank spaces next to the other listed provocative tests were left blank by the Respondent. Hoover's test determines whether the patient is malingering when he states that he cannot raise his leg, and should be performed in conjunction with the straight leg raise. SLR is the straight leg raise, which tests the function of the quadriceps muscle and its attachment to the shin bone by having the patient lie flat on a bed, raise his foot off the bed and hold it in the air while keeping the leg straight. Waddell's are a group of physical signs that, when present, may indicate a psychological component to low back pain.

20. Patient B brought to the appointment a copy of her recent MRI of the lumbar spine without contrast for the Respondent to review.

21. During the appointment, Patient B gave an account of a July 2007 episode of acute back pain. Patient B also stated that she felt residual tenderness, but no pain. According to Patient B, her goal in consulting with the Respondent was to determine what exercises were safe to engage in without causing further injury to her back.

22. According to Patient B, the Respondent reviewed her MRI and noted atrophy of the supportive muscles. As a result, he prescribed exercises to strengthen Patient B's core muscles. The Respondent instructed Patient B to return in six weeks for further evaluation and treatment if there was no improvement.

23. According to Patient B, at no time during her appointment did the Respondent perform a physical examination on any part of her body. Patient B stated that her appointment lasted less than ten minutes.

24. During Patient B's interview with the Board's investigator on August 19, 2008, Patient B stated, "He did no exam on me. I stayed fully clothed the whole time." Patient B further stated that the Respondent did not ask her to walk, bend, or turn. According to Patient B, the only time she stood up from her chair was to review the MRI with the Respondent.

25. Approximately one week later, Patient B requested a copy of her medical records from the Respondent and received a dictated report that the Respondent sent to Patient B's PCP.

26. The Respondent's report stated that during Patient B's appointment, "[a] complete history and physical was performed and pertinent historical and physical findings were dictated." In addition, the report stated the following:

PHYSICAL EXAMINATION: Her gait is non-antalgic. There is no evidence of any leg length discrepancy. She has pain with lumbar extension. She has no pain with lumbar flexion. She has a negative straight leg raise, negative seated root test, negative Ober's and negative Gaenslen's test. Manual muscle testing is 5/5. There is no evidence of any paravertebral tenderness or any pain with percussion.

27. Patient A, Patient B's husband, hand-carried two letters to the Respondent's office to express his concern about following a treatment plan that was developed without a physical examination. The letters, as described above in ¶¶ 13 and 14, were written on behalf of both Patients A and B.

28. Patient B was also present at Patient A's December 14, 2007 appointment with the Respondent. Patient B also recalled that during the appointment the Respondent refused to discuss anything other than Patient A's pain.

29. The Respondent provided Patient B with a copy of her office records. The Respondent's handwritten notes from Patient B's initial visit documented a physical examination of Patient B's flexion ("function") and extension ("funct"), as well as the completion of Hoover's and SLR provocative tests (both negative).⁴ In addition, the Respondent noted that Patient B's manual muscle testing and sensory testing were within normal limits.

30. According to Patient B, the Respondent did not conduct the testing that he documented in his notes. Further, the Respondent's report to Patient B's PCP

⁴ As with Patient A, the blank spaces next to the other provocative tests listed were left blank by the Respondent.

stated that he conducted two provocative tests, Ober's and Gaenslen, yet the Respondent did not document conducting those tests in his handwritten notes.⁶

31. In his response to the Board regarding the complaints against him, the Respondent stated that he "completed a history and physical examination as documented in [his] records." The Respondent failed to address the allegations that he did not perform the examinations that were documented, and instead

~~focused on explaining the treatment plans he developed for Patients A and B.~~

32. On December 15, 2008, the Respondent was interviewed, under oath, by the Board's investigator. When asked if it was fair to say that his examinations of Patients A and B were mostly from visual observation and questioning, the Respondent answered, "I guess I would have to say yes, that's fair to say."

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent is guilty of unprofessional conduct in the practice of medicine, in violation of H.O. § 14-404(a)(3)(ii). The Board dismisses the charges under H.O. §§ 14-404(a)(11) and (17).

⁶ Ober's test is done to assess tightness of the iliotibial band and the tensor fascia lata. During the test the patient lies on the unaffected side and the clinician causes the upper leg to be flexed at the knee and abducted. The test is positive if the patient can't adduct the knee back in direction to the examination table. Gaenslen's test is used to detect musculoskeletal abnormalities and primary-chronic inflammation of the lumbar vertebrae and sacroiliac joint. The test is conducted by having the patient lie on his or her back, lifting the knee to push towards the patient's chest while the other leg is allowed to fall over the side of an examination table, and is pushed toward the floor, flexing both sacroiliac joints. The test is considered positive if the patient experiences pain while this test is performed.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this
24th day of June, 2010, by a majority of a quorum of the Board considering
this case:

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

~~ORDERED that within the Respondent shall pay in full a civil fine in the~~
amount of **FIVE THOUSAND DOLLARS (\$5000.00)** to the Board by certified
check, payable to the "Maryland Board of Physicians," at the following address:
Maryland Board of Physicians, P.O. Box 37217, Baltimore, Maryland 21297; and
it is further

ORDERED that the Respondent shall be placed on probation for a
minimum of **ONE (1) YEAR** subject to the following terms and conditions:

1. Within one (1) year of the date that Board executes this Consent
Order, the Respondent shall enroll in and complete a Board-approved
course/tutorial in medical ethics which shall range from one (1) to three
(3) days. Final selection of the course will be made by the Board in
consultation with the Respondent;
2. The Respondent shall be solely responsible for furnishing the Board
with adequate written verification that he has completed the course;
3. The Respondent may not use any continuing medical education credits
earned through taking such coursework to fulfill any continued medical

education requirements that are mandated for licensure renewal in this State;

4. The Respondent shall be responsible for all costs associated with fulfilling the terms and conditions of this Consent Order; and
5. The Respondent shall practice according to the Maryland Medical Practice Act and in accordance with all applicable laws, statutes and regulations pertaining to the practice of medicine.

AND BE IT FURTHER ORDERED that if the Respondent violates any of the terms and conditions of Probation and this Consent Order, the Board, in its discretion, after notice and an opportunity for a show cause hearing before the Board, or opportunity for an evidentiary hearing before an Administrative Law Judge at the Office of Administrative Hearings if there is a genuine dispute as to the underlying material facts, may impose any sanction which the Board may have imposed in this case under §§ 14-404(a) and 14-405.1 of the Medical Practice Act, including a probationary term and conditions of probation, reprimand, suspension, revocation and/or a monetary penalty, said allegations of violation of the terms and condition of this Consent Order shall be proven by a preponderance of the evidence; and be it further

ORDERED that after one (1) year from the date of this Consent Order, the Respondent may submit a written petition to the Board requesting termination of probation. After consideration of the petition, the probation may be terminated, through an order of the Board, or a designated Board committee. The Board, or designated Board committee, will grant the termination if the Respondent has

fully and satisfactorily complied with all of the probationary terms and conditions and there are no pending complaints related to the charges; and it is further

ORDERED that this Consent Order is considered a **PUBLIC DOCUMENT** pursuant to Md. State Gov't Code Ann. § 10-811 *et seq.* (2009 Repl. Vol.)

6/24/10
Date

REDACTED

John Papavasiliou, Deputy Director
Maryland Board of Physicians

CONSENT

I, Brian Kahan, D.O., acknowledge that I have had the opportunity to consult with counsel before signing this document. By this Consent, I accept to be bound by this Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact and Conclusions of Law.

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

I sign this Consent Order after having had an opportunity to consult with counsel, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order. I voluntarily sign this Order, and understand its meaning and effect.

Date 5/26/10

REDACTED

Brian Kahan, D.O.
Respondent

NOTARY

STATE OF MARYLAND

CITY/COUNTY OF Anne Arundel:

I HEREBY CERTIFY that on this 26th day of May, 2010, before me, a Notary Public of the foregoing State personally appeared Brian Kahan, D.O. License Number H53803, and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.

REDACTED

Notary Public U

TONI C. WILLEY

My Commission Expires: Notary Public of Prince George's Co., MD
Commission Expires June 16, 2012