

IN THE MATTER OF * **BEFORE THE MARYLAND**
KIMBERLY M. WALKER, M.D., * **STATE BOARD OF**
Respondent. * **PHYSICIANS**
APPLICANT * **Case No. 2010-0315**

* * * * *

FINAL DECISION AND ORDER

The Board issued a Notice of Initial Denial of Application for Initial Medical License to Dr. Kimberly M. Walker, M.D. on August 2, 2010. The initial denial was based on the Board’s concern with Dr. Walker’s mental, emotional and legal history, which included having been found not guilty of attempted murder by reason of insanity. While on leave of absence from her medical residency, Dr. Walker entered the hospital where she worked, pulled out a loaded handgun, pointed it at a hospital employee and pulled the trigger several times – fortunately, the gun did not actually fire. The initial denial was based on an allegation of mental, physical or professional incompetence, under Md. Health Occ. Code Ann. § 14-404(a) (4), based on the danger her mental condition would pose to patients, colleagues and hospital employees if Dr. Walker were permitted to practice medicine.

Dr. Walker requested a hearing on this denial, and an evidentiary hearing was held before Administrative Law Judge (“ALJ”) Henry R. Abrams on March 8, 9 and 19, 2012. The ALJ issued a proposed decision on June 13, 2012, finding

that Dr. Walker was not incompetent if certain stringent conditions were placed on her, including mandatory therapy and psychiatric medications, restrictions on her work setting, and other conditions. The ALJ proposed that Dr. Walker be granted a license with conditions that included ten years of monitoring by a “program specializing in monitoring health professionals,” the requirement that she initially obtain a residency where she would be closely monitored and supervised by an individual who is fully aware of her mental health issues and legal and professional history, that she be assessed and evaluated on an ongoing basis, that she continue all medications prescribed and be monitored through direct witness or toxicology screenings, and other conditions.

The State, through the Administrative Prosecutor, filed exceptions with the Board. Dr. Walker, through her attorney, filed a response to these exceptions. On December 19, 2012, an oral exceptions hearing was held before the Board. This is the Final Decision and Order of the Board on Dr. Walker’s licensure application. The Board has considered the entire record in making this decision.

FINDINGS OF FACT

The Board adopts the findings of fact 1 through 41 as set out in the ALJ’s proposed decision.

Dr. Walker suffers from a serious mental illness that first manifested itself in 2005 or 2006, while she was a resident at St. Peter’s Hospital in New Jersey. She was treated by the New Jersey Professional Assistance Program where she was diagnosed with cannabis dependence and possible paranoid delusions. She

voluntarily entered inpatient treatment at the Medical Center at Princeton. She experienced paranoid thinking, including the belief that people were following her and attempting to harm her, and she was suicidal. She was diagnosed with a mood disorder and released with a prescription for a mood stabilizer, but without any anti-psychotic medication. Upon discharge, her condition worsened, and she began experiencing auditory hallucinations and paranoia.

On October 26, 2006, she took a loaded handgun into the hospital, pointed it at the hospital security guard and pulled the trigger several times. Fortunately, the gun did not discharge, though it was her intention to harm the security guard. She was arrested and charged with attempted murder and other crimes. She was then admitted into the Anne Klein Forensic Center, where she admitted severe paranoid symptoms, including beliefs that the radio, computer and television were talking to her. She also believed, wrongly, that she had killed her boyfriend. Three forensic examiners diagnosed her, each with a different diagnosis: Bipolar, Type II with Psychotic Features; Schizoaffective, Bipolar Type; and Schizoaffective, Bipolar Type with a differential diagnosis of Schizophrenia, Paranoid Type. On February 29, 2007, she was found not guilty by reason of insanity. She was released from custody on condition that she continue her mental health treatment.

Dr. Walker continued her mental health treatment through the Washington Hospital Center. Dr. Walker received treatment from a psychiatrist as well as therapy from a licensed social worker. The hospital center diagnosed her illness as

Schizoaffective Disorder, Bipolar Type. She was prescribed Abilify, an anti-psychotic medication. Dr. Walker, however, stopped taking this medication on her own, without at first informing her psychiatrist, because she believed that Abilify was the cause of her illness. As a result, she began again suffering again from paranoid delusions. The psychiatrist persuaded her to resume taking the medication and increased the dosage of Abilify to 15 milligrams a day, which actions resulted in an abatement of her symptoms by early 2008.

In April of 2008, Dr. Walker, on her own, reduced her dosage of Abilify to 10 milligrams a day. Her psychiatrist, upon discovering this, cautioned her against this; but the psychiatrist then reduced the dosage to 10 milligrams, then 5, then 2.5, then eliminated Abilify altogether by July 9, 2009.

Dr. Walker applied for a medical license in Maryland on July 15, 2009.

Dr. Walker's paranoia returned by the end of July of 2009. She was then placed on 15 milligrams daily again; then, on September 8, 2009, she was placed on 7.5 milligrams daily, an amount that has not been changed since then. Dr. Walker has not suffered any severe symptoms since that time. Dr. Walker has been monitored since October 29, 2010 by the Maryland Physician Health Program established by MedChi. Her treatment plan includes random toxicology screenings and meetings with her treatment team. That program has reported that her mental status, level of stability and overall functioning have been positive.

The Board engaged Jeffrey S. Janofsky, M.D. ("Dr. Janofsky"), a forensic psychiatrist, who testified in this case. Dr. Janofsky diagnosed Dr. Walker with

Schizoaffective Disorder, Bipolar Type. Dr. Janofsky testified that Dr. Walker will need to be on Abilify or a similar medication for the rest of her life. Dr. Janofsky opined that, if Dr. Walker remains compliant with her medication regimen, and if she continues her psychotherapy and is monitored for compliance, any relapse can be caught “at the incipient stage ... before it becomes dangerous.” Dr. Janofsky opined that Dr. Walker is therefore competent to practice medicine, with the proviso that she continue her medications and therapy and is appropriately monitored. The Maryland Physician Health Program opined similarly, as did the New Jersey Professional Assistance Program and Dr. Walker’s treating psychiatrist.

The State did not argue, nor did the record show, that Dr. Walker lacks the credentials, training or expertise to be a competent physician, or that she displays any behavioral defect other than that caused by her illness.

CONCLUSIONS OF LAW

The ALJ proposed, and all of the witnesses agreed, that Dr. Walker cannot practice medicine safely without conditions assuring her continued compliance with her medication regimen and continued monitoring and treatment. Without these safeguards, it is apparent that Dr. Walker would pose a grave danger not only to her patients and colleagues but also to the public as well.

The legal issue is whether Dr. Walker is thus “professionally, physically or mentally incompetent” to practice medicine, within the meaning of Md. Health Occ. Code Ann. § 10-404(a)(4). If Dr. Walker is mentally incompetent within the

meaning of that provision, then the Board may deny her a license. *See* Md. Health Occ. Code Ann. § 14-205(a)(1)(iii). If, on the other hand, Dr. Walker is not mentally incompetent, the Board must grant her a license. Md. Health Occ. Code Ann. § 14-313.

Much of the legal argument centered on how the statutory requirement that an applicant be mentally competent should be applied in this case. The parties presented various hypothetical factual scenarios which do demonstrate the difficulty of interpreting the statute. Dr. Walker argues that the statute must always be interpreted to measure competence only as the applicant presents himself or herself at the time of the application. If this theory were strictly followed, of course, Dr. Walker would not be found competent, because she was suffering from paranoia in July of 2009 when she applied for licensure. The Board does not believe that the statute should be read so narrowly.

Dr. Walker's illness is not in the same category as an illness that is completely in the past, or even an illness that is presently easily and safely remediated. In this case, the underlying cause of that incompetence still exists; and, if it were permitted to emerge, it would be literally life-threatening. The underlying cause of the incompetence can be suppressed only by requiring numerous conditions, which include: restrictions on the physician's type of employment; workplace monitoring; the revelation of Dr. Walker's psychiatric condition to the monitor; mandatory treatment, including the use of psychoactive drugs; continuing therapy, and Dr. Walker's submission to ongoing chemical

monitoring on an indefinite if not lifelong basis. The issue is not resolved by simply stating that the physician is competent *if* these severe intrusions on her life, and these elaborate and complicated efforts required of others, are instituted and sustained for an indefinite period. The issue is resolved by determining what statutory authority the Board has and how it should be applied.

In determining the meaning of Md. Health Occ. Code Ann. §14-404(a)(4), the Board is most persuaded by two factors. First, the Board must grant a license to any applicant who meets the qualifications for licensure. Md. Health Occ. Code Ann. §14-313. Second, the Board has no authority to grant a license with conditions attached. No party has suggested that Dr. Walker should simply be given a license and trusted to comply with all of the proposed conditions on her own. Indeed, the very nature of her disease makes that too dangerous a course. Because the Board has no power to grant a license that is contingent on the licensee complying with conditions, and because the alternative is to give the applicant a license without restrictions and thereby place the public in grave danger, the Board will interpret § 14-404(a)(4) as follows: competence includes the ability to practice safely without the imposition of elaborate and intrusive conditions that include mandatory treatment with psychoactive drugs, revelation of the physician's treatment history and progress to employers, continuous supervision at the workplace, and cooperation and coordination between the applicant and various independent entities and persons that must continue for at least ten years and possibly for a lifetime. Because Dr. Walker could not practice

safely without the imposition of such extensive conditions, she does not meet that standard.

Nevertheless, the Board recognizes that it was the opinion of Dr. Janofsky, and of all of the other witnesses, that Dr. Walker can practice safely if she complies with all of these numerous conditions, and if this monitoring system is established and maintained. Although the Board cannot grant Dr. Walker a contingent license, as explained above, the Board accepts the uncontradicted evidence that Dr. Walker is capable of safely practicing under these conditions. The Board will thus offer Dr. Walker a Consent Order permitting her to practice medicine under these conditions. A Consent Order will give the Board the clear authority to require Dr. Walker's compliance with these conditions. The Board has also modified the proposed conditions somewhat in the interest of public safety.

The Consent Order is attached to and incorporated into this decision. If Dr. Walker executes and returns the Consent Order as written within 20 calendar days of the date this Final Decision and Order is mailed, the Consent Order will be signed by the Board and will then supersede this Final Decision and Order. If Dr. Walker does not sign and return the Consent Order, this Final Decision and Order will remain in effect and will not be affected by the attached Consent Order.

ORDER

It is therefore **ORDERED** that the application for medical licensure filed by Dr. Kimberly Walker is **DENIED** under Md. Health Occ. Code Ann. §§14-205(a)(1)(iii) and 14-404(a)(4); and it is further

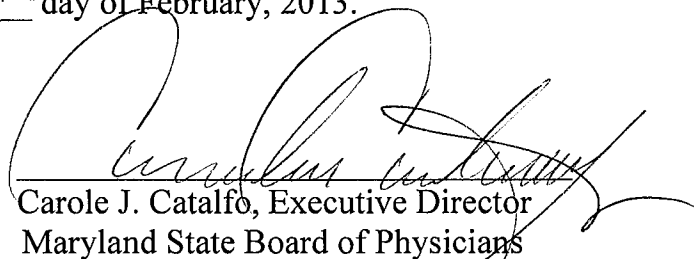
ORDERED that, on the twenty-first calendar day after the date it is mailed, this Final Decision and Order will not be subject to being superseded by the Consent Order; and it is further

ORDERED that, in addition to issuing this Order, the Board offers to Dr. Walker the Consent Order attached to this Final Decision and Order; and it is further

ORDERED that, should Dr. Walker sign, have notarized and return the attached Consent Order within twenty calendar days of the date this Order is mailed, the Consent Order will supersede this Final Decision and Order on the date of the Board's execution of the Consent Order; and it is further

ORDERED that this Final Decision and Order will remain as a public final order of the Board effective on the date of mailing but will be superseded by the Consent Order if Dr. Walker signs the Consent Order within 20 days, and the Consent Order will then also become a public final order of the Board as of the date the Board executes the Consent Order.

SO ORDERED this 15th day of February, 2013.



Carole J. Catalfo, Executive Director
Maryland State Board of Physicians

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Section 14-408(b) of the Health Occupations Article, Dr. Walker has the right to seek judicial review of this decision. Any petition for

judicial review must be filed within 30 days from the date this Final Decision and Order is mailed. The cover letter accompanying this decision indicates the date the decision is mailed. Any petition for judicial review shall be made as provided for in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222, and the Maryland Rules at 7-201 *et seq.*

If Dr. Walker files an appeal, the Board should be notified at the following address:

**Maryland State Board of Physicians
Christine Farrelly, Deputy Director
Compliance and Licensure
4201 Patterson Avenue
Baltimore, Maryland 21215**

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

**Thomas W. Keech
Assistant Attorney General
Department of Health and Mental Hygiene
300 West Preston Street, Suite 302
Baltimore, Maryland 21201.**

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CONSENT ORDER

PROCEDURAL BACKGROUND

On August 2, 2010, the Board issued a Notice of Initial Denial of Application for Initial Medical License **KIMBERLY WALKER, M.D.** (“Dr. Walker”) on the ground that she was incompetent to practice medicine within the meaning of Md. Health Occ. Code Ann. (“H.O.”) §§ 14-404(a)(4). The incompetence alleged was not due to insufficient education, training or medical skill, or any character flaws, but to the danger allegedly posed to the public caused by her mental and emotional condition. Dr. Walker desires to resolve these charges by entering into this Consent Order.

FINDINGS OF FACT

Dr. Walker suffers from a mental disorder currently diagnosed as Schizoaffective Disorder, Bipolar Type. The disorder became first apparent during her medical residency. As a result of this disorder, and despite previous treatment, Dr. Walker entered the hospital at which her residency was located and pulled a loaded firearm and fired it several times at a hospital employee. The gun, however, did not discharge. Dr.

Walker was charged with attempted murder. She was acquitted of that charge by a finding of not guilty by reason of insanity.

Dr. Walker subsequently sought treatment and was then for the first time prescribed anti-psychotic medications. During the first two years of treatment, Dr. Walker twice stopped taking her anti-psychotic medication, once of her own accord and once as prescribed by her psychiatrist. Each time, her paranoid delusions returned. She recognized this each time and was thus able to assist her psychiatrist in recognizing the problem and thus eventually reaching stability again by resuming the medication.

Since September of 2009, Dr. Walker has taken the same medication amount, has not discontinued it, and had been mentally stable. Dr. Walker has been monitored by the Maryland Physicians Health Program since October of 2010. Throughout that period, her mental status has been stable and she has been functioning well. Her treating psychiatrist, as well as the Board's expert psychiatrist, Dr. Jeffrey Janofsky, have opined that Dr. Walker suffers from a mental disease but that with therapy, including psychotropic therapy, supervision, and monitoring, she can safely practice medicine.

CONCLUSIONS OF LAW

Dr. Walker fails to meet the requirements of § 14-404(a)(4) of the Medical Practice Act because she is not capable of practicing safely without the imposition of elaborate and intrusive conditions that include mandatory treatment with psychotropic drugs, mandatory therapy, revelation of her condition and treatment history to her employer, continuous supervision at the workplace, and continuous, long-term

cooperation and coordination between the applicant and various independent entities and persons. The Board does not have the authority to issue a license conditioned upon such requirements. Nevertheless, if Dr. Walker does comply with the conditions and safeguards set out in this Consent Order, Dr. Walker will be rendered fully competent to practice medicine safely.

ORDER

Dr. Walker desires to enter into this Consent Order agreeing to certain mandatory conditions and subjecting herself to certain continuing requirements in order to resolve this Initial Denial of Initial Medical License. The Board grants a license to Dr. Walker pursuant to the terms of this Consent Order.

It is hereby **ORDERED** that Dr. Kimberly Walker is granted a license to practice medicine in Maryland effective the date this order is executed by the Board, subject to the conditions set out in this Consent Order; and it is further

ORDERED that Dr. Walker, no later than ten (10) business days of the date the Board executes this Consent Order, shall enter into a Board-monitored Rehabilitation Agreement with the Maryland Professional Rehabilitation Program (“MPRP”) that shall have a minimum duration of ten years. If recommended by the MPRP at any time, Dr. Walker shall enter into a Rehabilitation Agreement with a duration of longer than ten years. At the end of the ten years, and if recommended by MPRP, Dr. Walker shall enter into a new Rehabilitation Agreement, or an extension of the initial Rehabilitation Agreement, for the length of time recommended by the MPRP. Dr. Walker shall fully,

timely, and satisfactorily cooperate and comply with all MPRP recommendations and requirements, including but not limited to, the terms and conditions of all Rehabilitation Agreement(s) and Rehabilitation Plan(s) entered into with the MPRP. If, at any time during the monitoring period, the MPRP is replaced by another program providing the same type of rehabilitation program under contract with the Board, Dr. Walker agrees to be transferred to that program and that her duties with respect to the replacement program shall be the same as her duties with respect to the MPRP; and it is further

ORDERED that, within ten (10) business days of the date the Board executes this Consent Order, Dr. Walker shall sign any consent forms authorizing the release of records to the Board and to the MPRP, and Dr. Walker shall update those releases as required by the Board and the MPRP. Specifically, Dr. Walker shall sign any written consent forms authorizing the release of records by the Maryland Physician Health Program and the MPRP to the Board and also authorizing the Maryland Physician Health Program and the MPRP to make verbal and written disclosures to the Board, including disclosure of any and all records and files and confidential drug and alcohol abuse information about Dr. Walker. Dr. Walker shall also sign any written consent forms required by the MPRP or the Board to authorize the MPRP exchange with (*i.e.*, disclose to and receive from) outside entities (including all of the Respondent's therapists and treatment providers, the Maryland Physician Health Program and, where provided in the Rehabilitation Agreement or Rehabilitation Plan, Dr. Walker's workplace supervisors) verbal and written information about her, including confidential drug and alcohol abuse

information. These requirements include any consent forms necessary to authorize the Board and the MPRP to receive written reports from any treatment providers; and it is further

ORDERED that Dr. Walker initially obtain a residency approved by the Board in which she shall be directly and closely monitored and supervised at all times in her work environment by a supervisor who is fully aware of her mental health, legal and professional history. The supervisor must agree to and shall be required to provide regular vocational reports on her overall performance and stress management, and shall provide reports to the Board on at least a quarterly basis; however, if Dr. Walker is unable to gain acceptance to a residency immediately, all other employment requiring a medical license, including non-clinical positions such in an administrative and research capacity, must be with the knowledge and advance approval of the Board; and it is further

ORDERED that Dr. Walker shall be assessed and evaluated on an ongoing basis and continue to meet with her treatment providers at least monthly until such time as there is agreement that a reduction in her treatment is clinically appropriate and best serves the goals of maximizing her overall health and stability and protecting herself, her colleagues, her patients and the general public; and it is further

ORDERED that Dr. Walker shall continue her psychiatric treatment, shall take all medications as prescribed and shall undergo regular monitoring and verification, through direct witnessing or random toxicology screenings, of her compliance with her medication regimen; and it is further

ORDERED that Dr. Walker shall undergo regular monitoring, including chemical screening, for abstinence from alcohol, controlled dangerous substances, or other drugs, if recommended by the MPRP; and it is further

ORDERED that Dr. Walker shall be responsible for assuring that any treatment providers submit written reports to the MPRP and to the Board at least once every three months regarding her attendance, progress, medications (and dosages) prescribed, and her compliance with the prescribed medication regimen; and it is further

ORDERED that Dr. Walker shall not write prescriptions for any controlled dangerous substances; and it is further

ORDERED that Dr. Walker shall not own, possess, carry or use any firearm; and it is further

ORDERED that if Dr. Walker violates of any of the requirements of this Consent Order, the Board, in its discretion, after giving notice and an opportunity to be heard at an evidentiary hearing if there are material facts in dispute or at a show cause hearing otherwise, may impose any sanctions authorized under § 14-404 of the Medical Practice Act, including reprimand, probation, suspension, revocation, and/or a fine; and it is further

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

ORDERED that this Consent Order is considered a **PUBLIC DOCUMENT** pursuant to Md. State Gov't. Code Ann. § 10-611 *et seq.* (2009 Repl. Vol. and 2012 Supp.).

Approved by the Board this ____ day of _____, 2013.

Carole J. Catalfo
Executive Director
Maryland State Board of Physicians

CONSENT

I, Kimberly Walker, M.D., acknowledge that I have had the opportunity to consult with counsel before signing this document. By this Consent, I agree to the foregoing Consent Order, which consists of Procedural Background, Findings of Facts, Conclusions of Law, Order, and Consent, and I accept and agree 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 set out in this Consent Order.

I acknowledge that I participated in a formal evidentiary hearing and also in a formal exceptions hearing before the Board, and that during both proceedings I was represented by counsel. I acknowledge that as a result of those proceedings the Board issued a Final Decision and Order that was adverse to me, and that I had the right to file a petition for judicial review of that Final Decision and Order. I hereby waive my right to file a petition for judicial review of that Final Decision and Order. Instead of filing a petition for judicial review, I have elected to sign this Consent Order which will supersede that Final Decision and Order. I acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I sign this Consent Order without reservation after having had an opportunity to consult with counsel, 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: _____

Kimberly Marion Walker, M.D.

NOTARY PUBLIC CERTIFICATION

STATE OF _____

CITY/COUNTY OF: _____

I HEREBY CERTIFY that on this _____ day of _____, 2013, that Kimberly M. Walker, M.D. personally appeared before me, a Notary Public of the State of Maryland, and gave oath in due form of law that the foregoing Consent Order was her voluntary act and deed.

AS WITNESS, my hand and Notary Seal.

Notary Public

My commission expires: _____