

IN THE MATTER OF  
NELSON H. HENDLER, M.D.

License No. D15330

Respondent.

\* BEFORE THE MARYLAND  
\* STATE BOARD OF PHYSICIANS  
\* Case Number: 2005-0885

\* \* \* \* \*

**FINAL DECISION AND ORDER**

**INTRODUCTION AND PROCEDURAL HISTORY**

Nelson Hendler, M.D. ("Dr. Hendler"), is a psychiatrist licensed by the Maryland State Board of Physicians ("Board") since 1973. The Board received an anonymous complaint in 2005 alleging that Dr. Hendler (1) had dispensed Dilaudid<sup>1</sup> pills to patients without counting them; (2) had taken Dilaudid from the stock bottle for himself on at least one occasion; and (3) had been observed by the patient-complainant to be intoxicated on several occasions while providing care to patients. According to the complaint, Dr. Hendler's actions took place at the Mensana Clinic in Stevenson, Maryland, where Dr. Hendler was the medical director. The Mensana clinic website included descriptions of the clinic as a multidisciplinary diagnostic facility for patients with chronic pain. Upon receipt of the complaint, the Board began an investigation of Dr. Hendler.

**A. Investigative Findings Leading to Current Summary Suspension<sup>2</sup>**

**Sexual Misconduct With Patients**

The Board investigative findings included complaints of sexual misconduct by Dr.

<sup>1</sup> Dilaudid is a Schedule II Controlled Dangerous Substance ("CDS").

<sup>2</sup> The Board's investigative findings are further detailed in the Board's "Order For Summary Suspension To Practice Medicine" issued by the Board on February 6, 2006, and attached to this Final Decision and Order as Attachment A. A police inventory and photographs taken by Board staff are not included with the attached "Order For Summary Suspension To Practice Medicine."

Hendler from three female patients<sup>3</sup> whom he treated for chronic pain. Dr. Hendler's records indicated that he treated the first patient, Patient A, at the Mensana Clinic from 1999 to 2004. During an interview with Board staff, Patient A reported that Dr. Hendler initiated sexual advances shortly after she commenced treatment with him, and further stated that she and Dr. Hendler had commenced a personal/sexual relationship, including sexual intercourse, around January, 2000. According to Patient A, she provided oral sex to Dr. Hendler at his request in his office on several occasions. When interviewed by Board staff, Dr. Hendler admitted that he had a sexual relationship with Patient A.

Dr. Hendler also employed Patient A at the Mensana Clinic in 2001, named her as the Chief Executive Officer of Mensana in 2002, and cohabited with her from March, 2003 to July, 2004. Patient A also alleged that Dr. Hendler became physically abusive to her on several occasions during their personal relationship. On July 4, 2004, Baltimore City police responded to a domestic violence call from the Marriott Waterfront Hotel in Baltimore, Maryland. Patient A reported that Dr. Hendler had shoved her up against the wall of the room that he had rented, tried to choke her, then left the scene. Patient A subsequently resigned her employment with Dr. Hendler on July 21, 2004.

The federal Drug Enforcement Agency ("DEA") reported to the Board a complaint from a second female patient, Patient B, who alleged that Dr. Hendler (1) treated her for chronic pain from 1999 to 2004<sup>4</sup>; (2) began to act in a flirtatious manner with her soon after her treatment began and initiated suggestive or graphic sexual conversations with

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<sup>3</sup> For purposes of confidentiality, the patients involved in this case are referred to as Patient A, Patient B and Patient C throughout this Final Decision and Order.

<sup>4</sup> Patient B's medical records, which the Board subpoenaed from the Mensana Clinic, revealed that Dr. Hendler treated Patient B from December, 1998 through August, 2005, at frequencies varying from once a month to three times a week.

her; (3) in 2002, administered a trigger point injection near her panty line, then stood in front of her, preventing her from leaving, placed one hand on her hip, the other on her breast and kissed her; (4) in the summer of 2002, pressured her for sexual favors, telling her that her health insurance was insufficient to compensate him for his services; (5) requested that she provide oral sex to him and masturbate in his presence in exchange for receiving trigger point injections and medications, which Patient B complied with on some occasions; (6) pressed his crotch against her body and become aroused when administering injections; (7) frequently re-dispensed medications to her that he had collected from patients, e.g., he gave her a large quantity of medications, including controlled dangerous substances (“CDS”), that had been prescribed for other patients; (8) in 2004, opened his desk drawer and gave her a handful of Hydrocodone<sup>5</sup> tablets in her hand; (9) on another occasion, took an empty Lidocaine syringe wrapper from the trash can, filled it with Hydrocodone and Oxycodone<sup>6</sup> tablets, and gave it to Patient B, telling her she now had her “own personal pill bottle.”

A third female patient, Patient C, who was treated by Dr. Hendler for chronic pain from 1994 to 2001, also filed a complaint with the Board alleging that Dr. Hendler sexually abused her and improperly administered medications to her in his office during treatment, which consisted of nerve block injections approximately three times a week. During the Board's interview with Patient C, she stated that Dr. Hendler's office was dark and dirty with a large cardboard box in plain view filled with medications, including CDS, that had been prescribed for other patients. According to Patient C, Dr. Hendler typically treated her at the end of the day and locked the door of his office during

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<sup>5</sup> Hydrocodone is an opioid analgesic and a Schedule III CDS.

<sup>6</sup> Oxycodone is an opioid analgesic and a Schedule II CDS.

treatments. Patient C reported that as her treatment continued, Dr. Hendler drew physically closer to her as he administered her injections, eventually began kissing her and rubbing his crotch against her knee, becoming sexually aroused. Then he would go into the bathroom that adjoins his office, where he would stay for five minutes. During this time, Patient C was alone in his office and would take medications from the cardboard box, including Oxycontin,<sup>7</sup> Soma,<sup>8</sup> Valium,<sup>9</sup> Percocet<sup>10</sup> and Oxycodone. Patient C subsequently terminated the physician/patient relationship with Dr. Hendler.

#### Board and Police Inspection of Mensana

On January 19, 2006, Board staff conducted an unannounced site visit to Dr. Hendler's practice location at the Mensana Clinic. Detectives from the Baltimore County Police Vice/Narcotics Squad accompanied Board staff. Dr. Hendler agreed to cooperate with the Board inspection and with the Board subpoenas issued during the inspection that directed him to produce documents including, but not limited to, patient medical records and employee files. Dozens of bottles of prescription medications, including CDS, were immediately observed in plain view in Dr. Hendler's office and in a room adjoining his office. The police contacted the DEA Drug Diversion Unit requesting assistance for identification of the drugs. The DEA Drug Diversion Unit arrived, issued a Notice of Inspection and interviewed Dr. Hendler.

Dr. Hendler stated that he was unaware it was illegal to possess unused returned CDS medications from patients, and to dispense them to other patients. Dr. Hendler

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<sup>7</sup> Oxycontin is a Schedule II CDS opioid agonist.

<sup>8</sup> Soma is a non-narcotic analgesic.

<sup>9</sup> Valium, a benzodiazepine, is a Schedule IV CDS.

<sup>10</sup> Percocet, an opioid analgesic containing Oxycodone, is a Schedule II CDS.

also told Board staff that he was playing "Robin Hood" to help patients without health insurance or who were unable to afford medication. Board staff informed Dr. Hendler that federal regulations require a dispensing physician to maintain records of dispensing and biennial inventory. 21 C.F.R. 1304.3(d) and 21 C.F.R. 1304.11(c). State law also requires a physician to obtain a dispensing permit in order to dispense prescription drugs. Md. Health Occ. Code Ann. § 12-102(c)(i)(2) (2005 Repl. Vol.). Dr. Hendler acknowledged that he did not maintain the required federal dispensing records, nor did he have a State dispensing permit.

In addition, Dr. Hendler stated that he had no security system in his office and that he did not regularly lock or otherwise secure CDS in his office as required by federal regulation. 12 C.F.R. 1301.71. He further reported that there had been incidents of prescription drug theft from his office. Dr. Hendler also confirmed that he treats patients for pain in his office, including administering trigger point injections, and that he often leaves patients alone in his office.

Dr. Hendler surrendered his DEA Certificate of Registration to DEA agents. The Baltimore county police seized, *inter alia*, a total of 360 bottles of prescription drugs. A police inventory revealed that the drugs had been originally prescribed to over 160 different patients; over 5,800 tablets of CDS, the vast majority of which were Schedule II CDS including Morphine, Dilaudid, MS Contin, Methadone, Demerol and Oxycontin, were among the prescription drugs seized.

Upon arrival at Mensana, the police asked Dr. Hendler if he had any weapons on the premises. Dr. Hendler stated that he had only one unloaded rifle in his office, which he used to shoot deer on his property. The police removed an unloaded Marlin .22 rifle from the premises. Pursuant to a search and seizure warrant, the police also discovered

and removed a loaded .22 caliber Derringer handgun from an unlocked top right hand drawer of Dr. Hendler's desk, and an antique .22 caliber handgun in working order from another unlocked desk drawer.

During the site visit, Board staff also observed that Dr. Hendler's office was in disarray with patient records, packaged syringes and medical records haphazardly strewn about, dust on most horizontal surfaces, a stained and dirty carpet and a dirty toilet and sink, in violation of the federal Occupational Safety and Health Act ("OSHA"), 29 C.F.R. § 1910.1030(b).

In addition, eight private and semi-private in-patient rooms were located on the second and third floors of the Mensana Clinic, and four patients were present at the in-patient facility that same day. Board staff observed one patient, a frail female, walking with difficulty with a cane. The police became concerned about patient safety and notified the Baltimore County Fire Department ("BCFD"). During an inspection by the BCFD, Dr. Hendler's office was cited for code violations that included: unserviced fire extinguishers, inadequately-serviced fire alarms, and inadequate egress from the main stairwell.

Based on these investigative findings, the Board determined that the public health, safety and welfare imperatively required emergency action. On February 6, 2006, therefore, the Board summarily suspended Dr. Hendler's license to practice medicine. Md. State Gov't Code Ann. § 10-226(c)(2) (2004). The Board later convened to conduct a post-deprivation hearing regarding the summary suspension. Dr. Hendler, through counsel, declined to appear at the hearing, and did not contest any of the investigative findings. Dr. Hendler was given the opportunity to appeal the summary suspension, but he did not do so. His medical license remains suspended to date.

**B. Criminal Guilty Plea and Proceedings under Md. Health Occ. Code Ann. § 14-404(b).**

In May, 2006, the Grand Jury of the State of Maryland for Baltimore County indicted Dr. Hendler for seven counts of Felony Possession of Controlled Dangerous Substances with the Intent to Distribute, in violation of Md. Crim. L. § 5-602.

In February, 2007, Dr. Hendler tendered an Alford plea<sup>11</sup> to the first count of Felony Possession of Oxycodone with Intent to Distribute in the Circuit Court for Baltimore County (Criminal Case No. 03-K-06-002400). Count One stated that Dr. Hendler "on and between 1/1/2002 and 1/19/2006, in Baltimore County, did possess a controlled dangerous substance of Schedule II of the Criminal Law Article Sec 5-602 of the Annotated Code of Maryland, which is a narcotic drug, in sufficient quantity reasonably to indicate under all circumstances an intent to distribute a controlled dangerous substance, to wit: Oxycodone: . . . ." The remaining counts were entered as *nolle prosequi*.

The court (Cox, J.) sentenced Dr. Hendler to probation before judgment. Dr. Hendler was placed on probation for eighteen (18) months during which the Court ordered him to perform 150 hours of community service. Dr. Hendler did not file an appeal, and his guilty plea has not been set aside.

As a result of Dr. Hendler's guilty plea to possession with intent to distribute Oxycodone, the Office of the Attorney General filed with the Maryland State Board of Physicians ("Board") a Petition to Revoke Dr. Hendler's Medical License and Show Cause Order in June, 2007, pursuant to § 14-404 (b) of the Maryland Medical Practice Act. The statute provides:

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<sup>11</sup> An Alford plea is a "specialized type of guilty plea where the defendant, although pleading guilty, continues to deny his or her guilt but enters the plea to avoid the threat of greater punishment." *Ward v. State*, 83 Md. App. 474, 478 (1990), citing *North Carolina v. Alford*, 400 U.S. 25, 37 (1970).

- (1) On the filing of certified docket entries with the Board by the Office of the Attorney General, the Board shall order the suspension of a license if the licensee is convicted of or pleads guilty or nolo contendere with respect to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside.
- (2) After completion of the appellate process if the conviction has not been reversed or the plea has not been set aside with respect to a crime involving moral turpitude, the Board shall order the revocation of a license on the certification by the Office of the Attorney General.

Md. Health Occ ("H.O") Code Ann. § 14-404 (b)(2)(2005). Enclosed with the petition were the following Attachments: certified copies of: the case history in the criminal court proceedings; the criminal indictment; a transcript of the Plea Hearing Proceedings of February 12, 2007; and the Probation/Supervision Order.

The Show Cause Order mandated that Dr. Hendler show cause, in writing, by August 2, 2007, why his medical license should not be revoked pursuant to H.O. § 14-404 (b)(2). On July 24, 2007, Dr. Hendler filed a written Response to the Show Cause Order and Petition to Revoke Medical License, in which he requested that that the Board deny the State's petition to revoke his medical license. Dr. Hendler also filed a signed Consent stating that he had allowed his Maryland medical license to expire, and that he was permanently and irrevocably surrendering his license. The State filed a Reply to Dr. Hendler's written Response and Consent on August 6, 2007.

The full Board convened for a final decision on October 24, 2007. Having reviewed and considered the entire record in the § 14-404(b) proceedings, and the written submissions of the parties in this case, including the State's Petition with attachments, Dr. Hendler's written Response Show Cause Order and Petition and Consent, as well as the State's Reply, the Board issues this Final Decision and Order.



## FINDINGS OF FACT

The Board finds the following facts by a preponderance of the evidence:

1. Dr. Hendler is a board-certified psychiatrist licensed by the Board since 1973.
2. At all times relevant to the charges in this case, Dr. Hendler has held a license to practice medicine in the State of Maryland.
3. In May, 2006, the Grand Jury of the State of Maryland for Baltimore County indicted Dr. Hendler for seven counts of Felony Possession of Schedule II, III, and IV Controlled Dangerous Substances in sufficient quantities reasonably to indicate an Intent to Distribute, in violation of Md. Crim. L. § 5-602.<sup>12</sup>
4. In February, 2007, following extensive plea negotiations, Dr. Hendler pled guilty to Count One of the indictment - felony possession with intent to distribute Oxycodone, a violation of Md. Crim. L. § 5-602, in the form of an Alford plea. The State entered the remaining counts as *nolle prosequi*, in exchange for Dr. Hendler's guilty plea.
5. Dr. Hendler was represented by counsel throughout his criminal proceedings.
6. The Board reviewed all of the documentary evidence submitted by the State and Dr. Hendler, including the transcripts of Dr. Hendler's guilty plea and sentencing proceedings, and the statements and findings of the criminal court, pursuant to COMAR 10.32.02.04 C.

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<sup>12</sup> Section 5-602 provides:

Except as otherwise provided in this title, a person may not:

- (1) Manufacture, distribute, or dispense a controlled dangerous substance; or
- (2) Possess a controlled dangerous substance in sufficient quantity reasonable to indicate under all circumstances an intent to manufacture, distribute, or dispense a controlled dangerous substance.

Md. Crim. L. Code Ann. § 5-602 (2002).

7. The criminal Court accepted Dr. Hendler's guilty plea to possession with intent to distribute Oxycodone only after determining that: (1) Dr. Hendler understood the nature of his criminal offense, and the legal effect of his plea; (2) his plea was voluntary with a knowing and intelligent waiver of his rights to a trial; and (3) there was a factual basis for his plea. **(Plea Agreement Proceedings Transcript ("T."), pp. 4-11)**

8. In response to the Court's questions, Dr. Hendler stated that he believed it was in his best interests to plead guilty so as to avoid the consequence of a federal indictment. **(T., p. 9)**

9. Through his counsel, Dr. Hendler acknowledged that his Alford plea was "still a guilty plea" and that "legally its still going to be the same as if [he] pled guilty saying [he] did do it." Dr. Hendler also stated that he wanted to accept the deal offered by the State because the alternative could be much worse for him. **(T., pp. 9-11)**

10. In support of Dr. Hendler's guilty plea, the State read into the record a Statement of Facts. The State asserted that had the case gone to trial, the State would have proven the following facts beyond a reasonable doubt:

a) ) In January, 2006, members of the Baltimore County Narcotics Unit and Patricia Bramlet of the Maryland Board of Physicians executed a search and seizure warrant at 1718 Greenspring Valley Road. That location housed the Mensana Clinic, a pain management clinic operated and owned by Dr. Nelson Hendler. The search warrant was obtained after several patients of the clinic came forward with allegations that Dr. Hendler illegally stored and distributed controlled dangerous substances at the location.

b) Upon executing the search warrant, the detectives seized a large number of pill bottles containing controlled dangerous substances including Oxycodone, Hydromorphone, Clonazepam, Lorazepam and others. Several thousand pills were removed from the location.

c) Witnesses would testify that Dr. Hendler would collect the medications from patients, store them in his office, and eventually dispense these medications to other patients. Dr. Hendler was not licensed to do that, kept no records of these distributions, and made no report to the Drug Enforcement Administration or any

other agency.

d) If called upon to testify, the detectives would state in their expert opinion that the amount of controlled dangerous substances and witness testimony would indicate that Dr. Hendler possessed these drugs, specifically the Oxycodone, with the intent to distribute them. (T., pp. 11-12)

11. Through his counsel, Dr. Hendler also stipulated to the expertise of the detectives and the analysis of the narcotics recovered from Dr. Hendler's practice location at the Mensana Clinic, and agreed that the State could have produced competent evidence to prove these facts. In the Court's view, the facts were "certainly sufficient to prove guilt beyond a reasonable doubt." (T., p. 13)

12. Dr. Hendler did not appeal his guilty plea, nor was the plea set aside.

#### **CONCLUSIONS OF LAW**

Dr. Hendler pled guilty to possession with intent to distribute Oxycodone, a Schedule II CDS, in the form of an Alford plea. The Court of Special Appeals held that "an *Alford* plea is the functional equivalent of a guilty plea." *Ward v. State*, 83 Md.App. 474, 480 (1990), and further stated: "we do not see how an *Alford* plea could be construed as anything short of a guilty plea." *Ward* at 479.

In the Court's view, the standard in determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *Id.* at 480, citing *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). Because of the strong factual basis for the guilty plea demonstrated by the State and Dr. Hendler's clearly expressed desire to enter it despite his denial of guilt, this standard is met. The trial court properly accepted Dr. Hendler's guilty plea, and properly concluded that his *Alford* plea was "an intelligent and appropriate decision." As explained to Dr. Hendler by his counsel, Dr. Hendler's *Alford* plea was

“still a guilty plea . . . legally its still going to be the same as if you pled guilty saying you did do it.” Both Dr. Hendler and his counsel understood his plea to be a guilty plea and have the legal effect of a guilty plea at the time it was made. There is no merit to Dr. Hendler’s argument that his *Álford* plea did not constitute a guilty plea.

If a licensee “is convicted of or pleads guilty or nolo contendere with respect to a crime of moral turpitude,” the Medical Practice Act mandates that the Board suspend the licensee’s medical license. Md. Health Occ. Code Ann. § 14-404(b)(1). The statute further requires automatic revocation of a license “If the conviction has not been reversed or the plea has not been set aside <sup>13</sup> . . . ” Md. Health Occ. Code Ann. § 14-404(b)(2). The plain disjunctive terms of § 14-404(b) mean that either a conviction or a guilty plea suffices, and require the Board to act on either a conviction or a guilty plea, regardless of the subsequent disposition, unless the guilty plea is set aside. *Final Decision and Order In the Matter of Michael S. Rudman, M.D.* Because Dr. Hendler’s voluntary guilty plea has not been set aside, the Board is statutorily mandated to revoke his medical license under H.O. § 14-404(b)(2).

Moreover, in the criminal law context, Dr. Hendler’s guilty plea is unaffected by the disposition of probation before judgment, which requires a “determination of guilt” under the relevant criminal statute. Md. Crim. Proc. Code Ann. § 6-220(b)(1)(ii) (2001, Cum. Supp. 2004); *Myers v. State*, 303 Md. 639, 646-48 (1985). The criminal court’s grant of probation before judgment to Dr. Hendler, therefore, does not nullify his guilty plea. Rather, Dr. Hendler’s guilty plea remains in effect and could result in criminal penalties if he violates his probation. *Myers*, 303 Md. at 646.

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<sup>13</sup> Dr. Hendler does not argue that the guilty plea has been set aside.

In the context of administrative law, Dr. Hendler's guilty plea also triggers the operation of the Medical Practice Act. Section 14-404(b) expressly provides for revocation if the Board determines that he pled guilty to a crime of moral turpitude. The Legislature did not create an exception to its rule for cases of probation before judgment in the Medical Practice Act, and the Board could not create one. The legislature's careful drafting of the Medical Practice Act is no accident. Dr. Hendler's arguments to the contrary are unavailing.

Under established Maryland law, Dr. Hendler's crime of felony possession with intent to distribute Oxycodone, in violation of Md. Crim. L. § 5-602, is a crime of moral turpitude. In *Attorney Grievance Comm'n of Maryland v. Proctor*, 309 Md. 412, 418-19 (1987), the Court of Appeals held that possession of marijuana with intent to distribute is a crime of moral turpitude. The Court also noted that the "illegal distribution of controlled dangerous substances is a serious offense against society." *Proctor*, 309 Md. at 418. Dr. Hendler's criminal actions of possessing Oxycodone, a Schedule II controlled dangerous substance, with the intent of distributing it, is an equally "serious offense against society." *Id.*

The Maryland Court of Appeals has also defined moral turpitude as:

" . . . an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man."

*Board of Dental Examiners v. Lazell*, 172 Md. 314, 320 (1937). Dr. Hendler's use of his medical license and his pain management clinic to collect, store and possess Oxycodone from patients in his practice, with the intent to illegally distribute or dispense this CDS to others, was not only "intentional," *Lazell*, 172 Md. at 322, but it also

endangered patients. The Board thus concludes that Dr. Hendler pled guilty to a “base, vile, and shameful” act that is “contrary to the accepted and customary rule of right and duty” that he owes to his fellow citizens in the State of Maryland. *Id.* at 320, 321. For this reason alone, his crime constitutes moral turpitude under Maryland law.

Moreover, case law arising under the Medical Practice Act requires the Board to determine what types of crimes are crimes of moral turpitude for licensing and disciplinary purposes. Md. Health Occ. Code Ann. § 14-404(b). In the context of a licensing board’s review of the conduct of its licensee, the concept of moral turpitude is rather broad. *Oltman v. Maryland State Board of Physicians*, 162 Md. App. 457, 462 (2005); *Stidwell v. Maryland State Board of Chiropractic Examiners*, 144 Md. App. 613, 619 (2002) (a criminal offense that undermines the public’s confidence in a profession may be a crime of moral turpitude if so determined by the appropriate licensing board). Courts defer to the “propriety of a licensing board’s determinations” in setting ethical standards for its own licensees and assessing what constitutes moral turpitude in a professional licensing setting. *Stidwell*, 144 Md. App. at 619; *Ricketts v. State*, 291 Md. 701, 712 (1981). In the Board’s view, Dr. Hendler’s illegal distribution of dangerous CDS to persons for whom the drugs were not prescribed, undermines the public’s confidence in the medical profession. His criminal conduct not only disparaged professional principles, but was a disgrace to the medical profession.

To summarize, Dr. Hendler’s possession of Oxycodone with intent to illegally distribute this CDS was a crime of moral turpitude. *Proctor*, 309 Md. at 418-19. Dr. Hendler’s crime is also one that the Board could reasonably infer might place his vulnerable patients in danger, is harmful to the integrity of the profession, and provokes public mistrust regarding his fitness to practice medicine. Under any definition of the

term in Maryland law, Dr. Hendler's crime constituted a crime of moral turpitude. The Board therefore concludes that Dr. Hendler was convicted of a crime of moral turpitude, in violation of H.O. § 14-404 (b)(2).

**ORDER**

It is hereby:

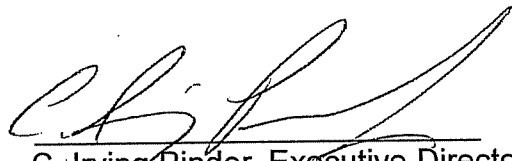
**ORDERED** that the license of Nelson H. Hendler, M.D., license number D15330, to practice medicine in the State of Maryland, is hereby **REVOKED** as mandated by Md. Health Occ Code Ann. § 14-404 (b)(2);<sup>14</sup> and it is further

**ORDERED** that the Board will not accept an application for reinstatement from Dr. Hendler any earlier than **FIVE (5) YEARS** from the date of this Final Decision and Order, which application may be accepted or denied by the Board at its sole discretion; and it is further

**ORDERED** that this is a Final Order of the Maryland Board of Physicians and as such is a **PUBLIC DOCUMENT** pursuant to Md. State Gov't Code Ann. §§ 10-611 *et seq.*

12/31/07

Date



C. Irving Pinder, Executive Director  
Maryland State Board of Physicians

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<sup>14</sup> Pursuant to Md. Health Occ. Code Ann. § 14-403, the Board declines to accept Dr. Hendler's signed Consent stating that he had let his license to practice medicine expire, and that he was surrendering his license. That section requires the Board's agreement for the surrender of a medical license and provides: "Unless the Board agrees to accept the surrender of a license . . . of an individual the Board regulates, the individual may not surrender the license, . . . nor may the license . . . lapse by operation of law while the individual is under investigation or while charges are pending." Md. Health Occ. Code Ann. § 14-403(a).

### **NOTICE OF RIGHT TO APPEAL**

Pursuant to Md. Health Occ. Code Ann. § 14-408(b), Dr. Hendler has the right to take a direct judicial appeal. Any appeal shall be filed within thirty (30) days from the receipt of this Final Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Md. State Gov't Code Ann. § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If Dr. Hendler files an appeal, the Board is a party and should be served with the court's process at 4201 Patterson Avenue, Baltimore, Maryland 21215. In addition, Dr. Hendler should send a copy to the Board's counsel, Thomas W. Keech, Esq., Assistant Attorney General, at the Department of Health and Mental Hygiene, 300 W. Preston Street, Suite 302, Baltimore, Maryland 21201.



IN THE MATTER OF  
NELSON H. HENDLER, M.D.

Respondent

License Number: D15330

\* BEFORE THE  
\* MARYLAND BOARD OF  
\* PHYSICIANS  
\* Case Number: 2005-0885

\* \* \* \* \*

**ORDER FOR SUMMARY SUSPENSION  
OF LICENSE TO PRACTICE MEDICINE**

The Maryland Board of Physicians (the "Board") hereby **SUMMARILY SUSPENDS** the license of Nelson H. Hendler (the "Respondent") (D.O.B. 08/15/44), License Number D15330, to practice medicine in the State of Maryland. The Board takes such action pursuant to its authority under Md. State Gov't Code Ann. § 10-226(c)(2004) concluding that the public health, safety or welfare imperatively requires emergency action.

**INVESTIGATIVE FINDINGS**

Based on information received by, and made known to the Board, and the investigatory information obtained by, received by and made known to and available to the Board, including the instances described below, the Board has reason to believe that the following facts are true:<sup>1</sup>

1. At all times relevant hereto, the Respondent was and is licensed to practice medicine in the State of Maryland. The Respondent was originally licensed to practice medicine on July 19, 1973 and was issued license number D15330. The Respondent is board-certified in psychiatry.

<sup>1</sup> The statements regarding the Respondent's conduct are intended to provide the Respondent with notice of the basis of the suspension. They are not intended as, and do not necessarily represent a complete description of the evidence, either documentary or testimonial, to be offered against the Respondent in connection with this matter.

2. At the time of the incidents described herein, the Respondent was the medical director of the Mensana Clinic ("Mensana"), 1718 Greenspring Valley Road, Stevenson, Maryland 21153. The Mensana website describes its "world renowned reputation in the diagnosis and treatment of chronic pain" as follows: "Mensana Clinic is a multidisciplinary diagnostic and treatment facility for patients with chronic pain, such as low back pain, neck pain, limb pain, face pain, reflex sympathetic dystrophy, nerve entrapments, radiculopathies, broken fusions, poor recovery after laminectomy, and pain for which there is no diagnosis."

3. The Respondent holds privileges at the Johns Hopkins Hospital in Baltimore, Maryland.

I. **PROCEDURAL BACKGROUND**

4. On or about May 16, 2005, the Board received a report from a physician located in North Carolina alleging that a former patient of the Respondent, who wished to remain anonymous, had expressed concerns to the physician regarding the Respondent's practice. According to the complaining physician, the patient alleged that the Respondent dispensed Dilaudid (a Schedule II Controlled Dangerous Substance ("CDS")) to patients without counting them and on at least one occasion took Dilaudid from the stock bottle for himself. The patient further alleged that she had observed the Respondent to be intoxicated on several occasions.

5. Upon receipt of the complaint, the Board initiated an investigation of the Respondent, including an unannounced inspection of Mensana, the results of which are set forth below.

## II. INVESTIGATIVE FINDINGS

### a. Patient-Specific Investigative Findings

#### i. Patient A<sup>2</sup>

6. Board staff reviewed the Respondent's Johns Hopkins Hospital Quality Assurance/Risk Management File. Contained in the file was an allegation that the Respondent had inflicted physical violence upon a patient ("Patient A") on July 4, 2004, during the course of their concurrent personal relationship.
7. The Respondent's records indicate that he treated Patient A at the Mensana Clinic from November 1999 through July 16, 2004.
8. Board staff interviewed Patient A. She reported that the Respondent and Patient A commenced a personal/sexual relationship, including sexual intercourse, in or around January 2000. Patient A reported that the Respondent initiated sexual advances shortly after she had commenced treatment. At the Respondent's request, Patient A kissed him and provided him with oral sex in his office on several occasions.
9. When interviewed by Board staff, the Respondent admitted to Board staff that he had had a sexual relationship with Patient A.

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<sup>2</sup> The names of the patients are confidential. The Respondent may obtain the names from the Administrative Prosecutor.

10. On or about November 19, 2001, the Respondent employed Patient A at Mensana. Effective December 4, 2002, the Respondent named Patient A as the Chief Executive Officer of Mensana.
11. The Respondent cohabited with Patient A from March 20, 2003 to July 4, 2004.
12. Patient A alleged that the Respondent became physically abusive to her on several occasions during their personal relationship. On July 4, 2004, Baltimore City Police responded to a domestic violence call at the Baltimore Waterfront Marriott Hotel. Patient A reported that the Respondent had shoved her up against the wall of the room the Respondent had rented and choked her. The Respondent then left the scene.
13. Effective July 21, 2004, Patient A resigned her employment at the Mensana Clinic.

**ii. Patient B**

14. On or about December 1, 2005, Board staff received a report from the U.S. Department of Justice – Drug Enforcement Administration (“DEA”) regarding a complaint that agency had received from a former patient of the Respondent (“Patient B”).
15. Patient B had initially contacted DEA to inquire about the legality of a physician re-dispensing prescription medications to patients that had been previously prescribed to other patients.

16. Patient B reported to DEA that she had been treated by the Respondent at Mensana from 1999 for chronic pain.<sup>3</sup> Her treatment consisted, in part, of Lidocaine<sup>4</sup> injections.
17. Patient B further reported the Respondent frequently re-dispensed medications he had collected from patients. The Respondent prescribed Soma<sup>5</sup> to Patient B on her first visit, but the pharmacy was unable to fill the prescription. Patient B became upset and telephoned the Respondent who told her to return to Mensana. When she arrived at Mensana, the Respondent gave her a full prescription bottle of Soma that had been prescribed to another patient. The Respondent marked out the patient's name on the label.
18. Patient B stated that her initial impression of the Respondent was positive; however, he soon began to act in a flirtatious manner with her and initiated suggestive or graphic sexual conversations with her.
19. In or around February 2002, the Respondent administered a trigger point injection to Patient B near her panty line. As Patient B was leaving the office, the Respondent stood in front of her, preventing her from leaving, placed one hand on her hip, the other on her breast and kissed her.
20. During the summer of 2002, the Respondent pressured Patient B for sexual favors, stating that her health insurance was insufficient to compensate him for his services. To continue receiving trigger point

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<sup>3</sup> In furtherance of its investigation, Board staff subpoenaed Patient B's records from Mensana. The records reveal that Patient B was treated by the Respondent from December 1998 through August 30, 2005, at frequencies varying from once a month to three times a week.

<sup>4</sup> Lidocaine is a local anesthetic.

<sup>5</sup> Soma is a non-narcotic analgesic.

injections and medications, Patient B provided oral sex to the Respondent on more than one occasion and masturbated in his presence on several occasions, all at the Respondent's request. When administering injections, the Respondent would press his crotch against her body and become aroused.

21. Patient B reported that in or around September 2004, the Respondent opened his desk drawer and dumped a handful of Hydrocodone<sup>6</sup> tablets in her hand. On another occasion, the Respondent took an empty Lidocaine syringe wrapper from the trash can, filled it with Hydrocodone or Oxycodone<sup>7</sup> tablets and gave it to Patient B stating that now she had her "own personal pill bottle."
22. During the course of Patient B's treatment, the Respondent gave to her a very large quantity of medications, including CDS, that had been prescribed to other patients.

### iii. Patient C

23. In furtherance of its investigation, Board staff interviewed Patient C, who had filed a complaint with the Board against the Respondent alleging sexual abuse and improper administration of medications. Patient C is a female who was treated by the Respondent for chronic pain from September 1994 until April 30, 2001. Patient C was treated by the Respondent approximately three times a week with nerve block injections.

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<sup>6</sup> Hydrocodone, an opioid analgesic, is a Schedule III CDS.

<sup>7</sup> Oxycodone, an opioid analgesic, is a Schedule II CDS.

24. Patient C described the Respondent's office as dark and dirty. Situated in plain view and easy access was a large open cardboard box filled with medications, including CDS, that had been prescribed to other patients.
25. The Respondent typically treated Patient C at the end of the day. The Respondent locked his office door while he treated her.
26. As Patient C's treatment continued, the Respondent drew physically closer to her as he administered her injections. The Respondent eventually began kissing Patient C and rubbing his crotch against her knee, becoming sexually aroused. The Respondent would then go into the bathroom that adjoins his office, where he would stay for approximately five minutes. During this time, Patient C was alone in the Respondent's office and would take medications from the cardboard box, including Oxycontin,<sup>8</sup> Soma, Valium,<sup>9</sup> Percocet<sup>10</sup> and Oxycodone.
27. Patient C subsequently terminated the physician/patient relationship.

### III. Board's Inspection of Mensana

28. On January 19, 2006, at approximately 9:05 a.m., Board staff commenced an unannounced site visit of the Mensana Clinic.<sup>11</sup> Board staff was accompanied by detectives with the Baltimore County Police Vice/Narcotics Squad.
29. The Respondent agreed to cooperate with the Board inspection and with the Board subpoenas that were issued during the inspection that directed

<sup>8</sup> Oxycontin is a Schedule II CDS opioid agonist.

<sup>9</sup> Valium, a benzodiazepine, is a Schedule IV CDS.

<sup>10</sup> Percocet, an opioid analgesic containing Oxycodone, is a Schedule II CDS.

<sup>11</sup> Pursuant the Maryland Medical Practice Act, the Board's duly authorized agents may enter at any reasonable hour a place of business of a licensed physician. H.O. § 14-206(d).

him to produce documents including, but not limited to, patient medical records and employee files.

**a. Drugs**

30. Dozens of bottles of prescription medications, including CDS, were immediately observed in plain view in the Respondent's office and in a room adjoining his office. The police contacted the DEA Drug Diversion Unit requesting assistance for identification of the drugs.
31. Upon their arrival at Mensana at approximately 11:25 a.m., DEA agents issued to the Respondent a Notice of Inspection and interviewed the Respondent.<sup>12</sup> The Respondent initially stated that he keeps his patients' prescription drugs to discourage them from diverting their CDS. He later stated that he redistributes previously prescribed Schedule III and IV CDS to patients other than those to whom the drugs were originally prescribed, but does not redistribute Schedule II CDS.
32. The Respondent stated that he was unaware that it was illegal to possess returned CDS and dispense them to other patients. The Respondent told Board staff that he was "playing Robin Hood" in order to help patients who did not have insurance or who could not afford to pay for medication.
33. The Respondent was informed that as a dispensing physician, he is required by Federal regulation to maintain records of dispensing and biennial inventory. 21 CFR 1304.3(d) and 21 CFR 1304.11 (c). State law

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<sup>12</sup> The Respondent consented to the DEA administrative inspection without an administrative search warrant.



also requires a physician to obtain a dispensing permit in order to dispense prescription drugs. H.O. § 12-102(c)(i)(2).

34. The Respondent stated that he did not maintain the required records, nor did he have a dispensing permit.<sup>13</sup>
35. The Respondent further stated that he does not have a security system in his office and does not regularly lock or otherwise secure CDS in his office as required by Federal regulation. 21 CFR 1301.71. He reported that there have been incidents of theft of prescription drugs from his office.
36. The Respondent confirmed that he treats patients in his office, including administering trigger point injections. The Respondent stated that he often leaves patients alone in his office.
37. The Respondent surrendered to DEA agents his DEA Certificate of Registration.
38. Baltimore County police seized a total of 360 bottles of prescription drugs, computer equipment and a total of three firearms, *infra*.
39. The police inventory reveals that the drugs had been originally prescribed to over 160 different patients; over 5,800 tablets of CDS, the vast majority of which were Schedule II CDS including morphine, Dilaudid, MS Contin, Methadone, Demerol and Oxycontin, were among the prescription drugs seized.

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<sup>13</sup> During the inspection, Board staff issued to the Respondent a subpoena that directed him to deliver immediately upon service his original permit to dispense prescription drugs. The Respondent wrote on the subpoena, "I don't have a permit to dispense prescription drugs." The Respondent signed and dated this statement.

40. The Baltimore County Police Department Property Inventory (patient names redacted) is attached hereto as **Attachment A**.
41. Selected photographs taken by Board staff during the January 19, 2006 inspection of the Respondent's office are attached hereto as **Attachment B 1 - 5**.

**b. Guns**

42. Upon arrival at Mensana, Baltimore County Police Sergeant Robert Gibbons asked the Respondent if he had any weapons on the premises. The Respondent stated that he had only one unloaded rifle in his office, which he used to shoot deer on his property. Sergeant Gibbons removed the unloaded Marlin .22 rifle from the premises.
43. The police obtained a search and seizure warrant and commenced a search of the Mensana premises.<sup>14</sup>
44. Notwithstanding the Respondent's assertion that the .22 caliber rifle was the only gun in his office, the police found a loaded .22 caliber Derringer handgun in the unlocked top right hand drawer of the Respondent's desk. The gun was in a leather case that enables an individual to discharge the weapon in a concealed and undetectable manner. Police also found an antique .22 caliber handgun in the unlocked middle right hand drawer of the Respondent's desk. This gun was determined to be in working order. The police seized both guns.

**c. Patient Safety Issues**

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<sup>14</sup> The Respondent was also advised of his *Miranda* rights.

45. During the inspection of Mensana, Board staff observed that the Respondent's office, in which he treats patients, was in disarray with patient records, packaged syringes and medical records haphazardly strewn about. The carpet was stained and dirty and a coat of dust covered most horizontal surfaces. The bathroom that adjoins the Respondent's office contained a toilet, vanity, shower, refrigerator and shelf. The toilet and sink were dirty with brown streaks and marks. The Respondent's failure to maintain his office in a clean and sanitary condition is a violation of Federal Occupational Safety and Health Act ("OSHA"), 29 CFR § 1910.1030(b).
46. Mensana is an in-patient and out-patient facility. Four in-patients were present at Mensana on the date of the inspection.<sup>15</sup> Board staff observed one of the patients, a frail female, walking with difficulty with a cane. There are eight private and semi-private patient rooms located on the second and third floor of the facility. The police became concerned regarding patient safety and requested that the Baltimore County Fire Department ("BCFD") inspect Mensana. Violations that were cited during the BCFD's inspection of January 19, 2006 include, but are not limited, to the following: all fire extinguishers needed to be serviced; the main stairwell connecting all three floors of the premises was not enclosed, providing inadequate egress; no secondary means of egress for a patient room on the second floor; the main electrical box was inadequately enclosed; fire alarms were inadequate as they had not been serviced

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<sup>15</sup> Mensana staff advised that the facility treats an average of eight in-patients.

annually, lacked pull stations throughout the facility, were not UL certified and lacked strobe lights.

### CONCLUSIONS OF LAW

Based on the foregoing investigative facts, the Board concludes that the public health, safety or welfare imperatively require emergency action in this case, pursuant to Md. State Gov't Code Ann. § 10-266(c)(2)(2004).

### ORDER

It is this 6th day of February, 2006, by a majority of the quorum of the Board:

**ORDERED** that pursuant to the authority vested by Md. State Gov't Code Ann. §10-226(c)(2), the Respondent's license to practice medicine in the State of Maryland be and hereby is **SUMMARILY SUSPENDED**; and be it further

**ORDERED** that a post-deprivation hearing in accordance with Code Md. Regs. tit. 10, § 32.02.05.B(7) C, D and E on the Summary Suspension has been scheduled for **Wednesday, February 22, 2006 at 11:00 a.m.**, at the Maryland Board of Physicians, 4201 Patterson Avenue, Room 108, Baltimore, Maryland 21215-0095; and be it further

**ORDERED** that at the conclusion of the **SUMMARY SUSPENSION** hearing held before the Board, the Respondent, if dissatisfied with the result of the hearing, may request within ten (10) days an evidentiary hearing, such hearing to be held within thirty (30) days of the request, before an Administrative Law Judge at the Office of Administrative Hearings, Administrative Law Building, 11101 Gilroy Road, Hunt Valley, Maryland 21031-1301; and be it further

**ORDERED** that on presentation of this Order, the Respondent **SHALL SURRENDER** to the Board's investigator the following items:

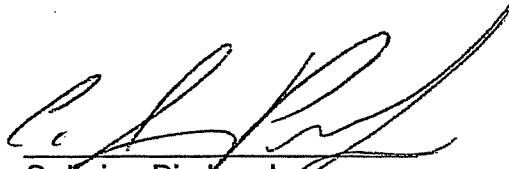
- (1) his original Maryland License D15330;
- (2) his current renewal certificate;
- (3) All controlled dangerous substances in his possession and/or practice;
- (4) All Medical Assistance prescription forms;
- (5) All prescription forms and pads in his possession and/or practice; and
- (6) Any and all prescription pads on which his name and DEA number are imprinted; and be it further

**ORDERED** that the Respondent shall immediately **SURRENDER** to the Maryland Division of Drug Control, 4201 Patterson Avenue, Baltimore, Maryland his Maryland Controlled Dangerous Substance Registration; and be it further

**ORDERED** that a copy of this Order of Summary Suspension shall be filed with the Board in accordance with Md. Health Occ. Code Ann. § 14-407; and be it further

**ORDERED** that this is a Final Order of the Board and, as such, is a PUBLIC DOCUMENT pursuant to Md. State Gov't Code Ann. § 10-611 *et seq.* (2004).

2/6/06  
Date

  
C. Irving Pinder, Jr.  
Executive Director  
Maryland Board of Physicians